

**Report on the
Leonard L. P., Henard Enterprises, Inc.,
J. H. Spurgeon, R & J Development Co., LLC,
and Crown Point Developments, Inc. -
City of Bristol - County of Washington
Annexation Action**



**Commission on Local Government
Commonwealth of Virginia**

October 2004

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**REPORT ON THE
LEONARD L. P., HENARD ENTERPRISES, INC., J. H. SPURGEON,
R & J DEVELOPMENT CO., LLC, AND CROWN POINT DEVELOPMENTS,
INC. – CITY OF BRISTOL – COUNTY OF WASHINGTON
ANNEXATION ACTION**

PROCEEDINGS OF THE COMMISSION

On November 27, 2002 the Commission on Local Government received notice from six landowners, pursuant to Section 15.2-3203(A) of the Code of Virginia, of their intent to petition for the annexation to the City of Bristol of 1.1 square miles of territory located in Washington County.¹ In accordance with statutory requirements, the petitioners gave notice of the proposed annexation action to Washington County, the City of Bristol, and 18 other potentially affected local governments.²

On January 13, 2003 the Commission met with representatives of the parties for the purposes of making preliminary arrangements for its formal review of the proposed annexation. At that meeting, the petitioners officially withdrew their November 27, 2003 notice of annexation, but a new notice was filed, also pursuant to Section 15.2-3203(A) of the Code of Virginia, from seven landowners seeking the annexation to the City of Bristol of land located in Washington County which collectively contained 1.27 square

¹“In the matter of the Notice of Trammell Investments, LLC, the Leonard L. P., a Virginia Limited Partnership, Henard Enterprises, Inc., J. H. Sprugeon, R & J Development Co., LLC, and Crown Point Development, Inc., landowners in Washington County, Virginia, of their intention to petition the Circuit Court for the County of Washington requesting that certain territory located in the County of Washington, Virginia, a political subdivision of the Commonwealth, be annexed to the City of Bristol, an incorporated City of the Commonwealth, pursuant to Article 1 of Chapter 32 of Title 15.2, Code of Virginia (1950), as amended.” Section 15.2-3203(A), of the Code of Va. permits voters or owners of real estate to petition for the annexation of property to adjacent municipalities. Such petitions must contain the signatures of 51% of the qualified voters or 51% of the owners of real estate in number and land area in the area to be annexed. The six landowners were reported to represent more than 51% of the landowners in the area and held ownership to more than 51% of the property in that area. Consistent with the Commission’s Rules of Procedure, the notice was accompanied by data and materials in support of the proposed annexation.

²Sec. 15.2-2907, Code of Va.

miles of territory.³ Consistent with the Commission's Rules of Procedure, the petitioners' notice was accompanied by data and materials supportive of the proposed annexation.⁴ Copies of the second notice were concurrently provided by the property owners to the City of Bristol and Washington County.⁵

The Commission's review of the proposed annexation, scheduled at that meeting for June 2003, was delayed as a result of a motion filed by the County with the Circuit Court of Washington County, and subsequently with a special three-judge court appointed pursuant to Chapter 30, Title 15.2 of the Code of Virginia, challenging the legality of the annexation action and seeking to enjoin the Commission's proceedings.⁶

³“In the matter of the Notice of Trammell Investments, LLC, the Leonard L. P., a Virginia Limited Partnership, Henard Enterprises, Inc., J. H. Sprugeon, R & J Development Co., LLC, Crown Point Development (sic), Inc., and Singer Highland (sic) Hotel, Inc. landowners in Washington County, Virginia, of their intention to petition the Circuit Court for the County of Washington requesting that certain territory located in the County of Washington, Virginia, a political subdivision of the Commonwealth, be annexed to the City of Bristol, an incorporated City of the Commonwealth, pursuant to Article 1 of Chapter 32 of Title 15.2, Code of Virginia (1950), as amended.” The seven landowners, which included the six property owners who had filed the November 2003 annexation request and an additional property owner, comprised more than 51% of the owners of real estate in number and land area in the area proposed for annexation. On April 1, 2003 a representative for the property owners amended the January 13, 2004 notice to correct the names of two of the petitioning property owners to Crown Point Developments, Inc. and Singer Island Hotel, Inc.

⁴**Notice of Property Owners Pursuant to VA Code Ann. §§15.2-2907(A) and 15.2-3203(A) of Their Intent to Petition for the Annexation of Their Properties in Washington County to the City of Bristol** (hereinafter cited as **Property Owners' Notice**).

⁵The property owners also gave notice of their annexation request to 18 other potentially affected local governments. On January 22, 2003, in response to objections raised by Washington County, the property owners notified seven additional Virginia localities of the January 13, 2003 annexation notice. Notification of the proposed annexation was also provided to Bristol, Tennessee and Sullivan County, Tennessee.

⁶On January 10, 2003, Washington County filed motions for declaratory judgment with the Circuit Court of Washington County. The County's motions were amended on January 19, 2003 to reflect the property owners' January 13, 2003 notice to the Commission. The issues were subsequently referred to the special three-judge court that had been empanelled previously to review the 1998 voluntary settlement agreement between Bristol and the County.

On March 11, and again on August 20, 2003, the parties requested postponement of the Commission's scheduled review to allow additional time for the special three-judge court to hear the County's pleadings.⁷ The special court dismissed the County's motions in mid-December 2003.⁸

On January 12, 2004 the Commission met with representatives of the petitioners, the City of Bristol, and Washington County for the purpose of making arrangements for its formal review of the annexation actions. At that meeting, the Commission established a schedule which called for the submission of materials by the City and County in response to the annexation petition by April 30, for public presentations and hearings on June 16-18, and for submission of the Commission's report on August 20, 2004.⁹

On May 25, 2004, the Commission was advised by the representative for the petitioners that the owner of two of the tracts seeking incorporation into Bristol, Trammell Investment, LLC and Singer Island Hotel, Inc., had negotiated an agreement with Washington County concerning the proposed annexation.¹⁰ As a result of that agreement, Trammell Investment, LLC and Singer Island Hotel, Inc. withdrew their request for annexation, and thus, did not participate further in the Commission's proceedings.

⁷In addition, a prior ruling by the Virginia Supreme Court required that challenges to the initiation of an annexation suit must be resolved by the special court before the Commission reviews the merits of the annexation request. [See County of Bedford, et al. v. City of Bedford, et al., 243 Va. 330 (1992).]

⁸The special court held a hearing on the merits of Washington County's complaints on December 16-17, 2003, and subsequently dismissed the two suits brought by the County challenging the property owner annexation.

⁹The report date was extended by agreement of the City and County to October 20, 2004.

¹⁰Gregory J. Haley, Special Counsel, The Leonard L. P., et al., letter to staff of Commission on Local Government, May 25, 2004; and C. Richard Cranwell, Special Counsel, County of Washington, letter to staff of Commission on Local Government, May 21, 2004.

Adhering to the schedule adopted in January, the Commission toured the five properties proposed for annexation and other relevant areas and facilities in the City and County on June 16, 2004. Further, the Commission received oral presentations from representatives of the property owners, the City of Bristol, and Washington County on June 16-18, 2004. In addition to the receipt of testimony from the parties, the Commission held a public hearing, advertised in accordance with Section 15.2-2907(A) of the Code of Virginia, on the evening of June 17, 2004 in Abingdon for the receipt of citizen comment. The public hearing was attended by approximately 25 persons, and produced testimony from 4 individuals. In order to afford the public an additional opportunity to submit comment, the Commission kept open its record for the receipt of written testimony through July 6, 2004.¹¹

SCOPE OF REVIEW

The Commission on Local Government is directed by law to review any action to annex territory instituted by any local government or private entity. Upon receipt of notice of such action, the Commission is directed “to hold hearings, make investigations, analyze local needs” and to submit a report containing findings of fact and recommendations regarding the issue to the affected local governments.¹² The Commission’s report on each proposed action must be based upon, as required by Section 15.2-2907 (B) of the Code of Virginia, “the criteria and standards established by law” for consideration in such action.

The criteria and standards prescribed for consideration in annexation issues are set forth in Chapter 32 of Title 15.2 of the Code of Virginia, principally in Section 15.2-3209. That statute directs the reviewing court, and thus the Commission, to determine

¹¹Because of illness, Commissioner Frank Raflo resigned from the Commission on May 10, 2004. Commissioner Kathleen K. Seefeldt, who was appointed to the Commission on June 15, 2004, did not participate in the Commission’s review of the proposed annexation and is not a signatory to this report.

¹²Sec. 15.2-2907 (A), Code of Va.

“the necessity for and expediency of annexation.” As a guide in determining such “necessity and expediency,” Section 15.2-3209 requires the reviewing entity to consider the “best interests” of the people of the area and the affected jurisdiction as well as the “best interests of the people in the remaining portion of the county, and the best interests of the State in promoting strong and viable units of government.” This statute also specifies a number of fiscal concerns, public service functions, community of interest factors, and State policies which are to be evaluated in considering the best interests of the parties and the State.

The analysis and recommendations which follow in this report are based upon the Commission’s collective experience in local government administration and operation. The Commission leaves questions of law for appropriate resolution elsewhere. The Commission trusts that this report will be of assistance to the parties, the court, the citizens of the area, and the Commonwealth generally.

GENERAL CHARACTERISTICS OF THE CITY OF BRISTOL, THE COUNTY OF WASHINGTON, AND THE AREAS PROPOSED FOR ANNEXATION

CITY OF BRISTOL

Bristol was originally incorporated as the Town of Goodson in 1856 and became one of Virginia’s cities in 1890.¹³ As of that date, the new independent city assumed the name “Bristol”, thereby conforming its appellation to that of the contiguous municipality in Tennessee. The City of Bristol, Virginia has grown over the years through a series of annexations to its present size of 13.02 square miles.¹⁴ Although Bristol expanded its

¹³Emily J. Salmon and Edward D. C. Campbell, Jr. (Editors), **The Hornbook of Virginia History**, p. 189. (Richmond: The Library of Virginia, 1994). See Appendix A for a map of the City of Bristol, a portion of Washington County, and the areas proposed for annexation. See Appendix B for statistical profile of the City, the County, and the areas proposed for annexation.

¹⁴City of Bristol, **City of Bristol’s Response to the Property Owners’ Notice of Intention to Petition for Annexation** (hereinafter cited as **City Response**), Volume I, p. 76. All references to the City of Bristol in the following sections of this report refer to the Virginia municipality unless otherwise noted.

boundaries by agreement with Washington County in 1998, its last major annexation occurred in 1972, when 7.10 square miles of territory, containing 5,267 persons, were added to its jurisdiction.¹⁵

Like many other Virginia municipalities, the City of Bristol experienced a population loss during the previous decade, with the number of its residents decreasing between 1990 and 2000 from 18,426 to 17,367, or by 5.8%.¹⁶ Moreover, preliminary population estimates for 2003 report that during the three-year period immediately following the decennial census the City's population decreased to 17,200 persons, or by 1.0%.¹⁷ Based on its 2003 estimated population and its current land area, the City has a population density of 1,321 persons per square mile.

In terms of the nature of its population, the evidence indicates that the City's populace is considerably older and less affluent than the State as a whole. Data reveal that, as of 2000, the median age of Bristol residents was 41.3 years, notably greater than that for the State overall (35.7 years).¹⁸ Further, the percentage of the City's population age 65 or over was 20.5%, also conspicuously exceeding the comparable figure for the

¹⁵The 1998 annexation by the City, effected by agreement with Washington County, added an unpopulated area containing 1.57 square miles of territory.

¹⁶U. S. Department of Commerce, Bureau of the Census, **1990 Census of Population and Housing, Summary Population and Housing Characteristics, Virginia**, Table 2; and U. S. Department of Commerce, Bureau of the Census, Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Bristol City, Virginia. (Online) Available: http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/Counties_Cities/05051520.pdf.

¹⁷Weldon Cooper Center for Public Service, University of Virginia, Population Estimates for Virginia's Counties & Cities, 2003 provisional, 2002 & 2001 final estimates. (Online) Available: <http://www3.ccps.virginia.edu/demographics/estimates/city-co/2003estimates.xls>, Feb. 2, 2004.

¹⁸Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Bristol City, Virginia; and U. S. Department of Commerce, Bureau of the Census, Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Virginia. (Online) Available: http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/04051.pdf.

State (11.2%).¹⁹ With regard to personal wealth, data disclose that Bristol residents had a median adjusted gross income (AGI) in 2002 of \$20,991, an amount only 69.5% of that of the Commonwealth collectively (\$30,203).²⁰ Alternatively, the median family income in Bristol in 1999 was \$34,266, or only 63.3% of the comparable figure for the State overall (\$54,169).²¹

With respect to the nature and extent of the City's current physical development, 2003 land use data reveal that 27.6% of Bristol's total land area was devoted to residential usage, 6.4% was engaged in commercial enterprise, 5.0% was utilized for industrial activity, 14.5% was consumed by transportation rights-of-way, 12.1% to other public or semi-public purposes, while 34.4% (2,872 acres) remained vacant or agricultural in nature.²² Of the total vacant land within the City, however, 1,380 acres are located in the flood plain or on slopes in excess of 20%.²³ Accordingly, the City retains

¹⁹Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Bristol City, Virginia.

²⁰Weldon Cooper Center for Public Service, University of Virginia, Local Area AGI, All Returns, 2002. (Online) Available: <http://www.virginia.edu/coopercenter/vastat/income/income.html#AGI>. While adjusted gross income, which is derived from State tax returns, encompasses most sources of personal income, it excludes some Social Security benefits and various other transfer payments, investment income retained by life insurance carriers and private uninsured pension funds, non-cash imputed income, tax-free interest and dividends, and the income received by "nonresident" military personnel stationed in Virginia. AGI also does not reflect the income of Virginia residents who are exempt from filing State tax returns. Further, AGI reported by the Weldon Cooper Center for Public Service does not take into account the Virginia income declared by out-of-state taxpayers.

²¹U. S. Department of Commerce, Bureau of the Census, Table DP-3, Profile of Selected Economic Characteristics: 2000, Geographic Area: Bristol City, Virginia. (Online) Available: http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/Counties_Cities/05051520.pdf); and U. S. Department of Commerce, Bureau of the Census, Table DP-3, Profile of Selected Economic Characteristics: 2000, Geographic Area: Virginia. (Online) Available: http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/04051.pdf.

²²**City Response**, Vol. I, p. 76.

²³**Ibid.**

1,492 acres of vacant property, or 17.9% of its total area, free from major environmental constraints affecting its development.

Notwithstanding the City's recent loss of population and diminishing prospects for future economic development, Bristol continues to play a prominent role in the corporate life of its general area. Located within the City's boundaries are Virginia Intermont College; a variety of federal, State, and local governmental offices; an array of entertainment and cultural facilities; and a broad spectrum of commercial and retail establishments. Bristol also provides a significant component of the employment opportunities in the region as a whole. While employment opportunities in the City have increased slightly over the past decade (with total employment within Bristol increasing between 1993 and 2003 from 12,140 to 12,927 positions), the City remains the site for employment for many nonresidents.²⁴ Indeed, data from the 2000 decennial census disclose that 9,164 persons commuted to Bristol from outlying jurisdictions for employment, with 3,589 of that total coming from Washington County.²⁵ In sum, while Bristol did experience a population decline during the previous decade, the City continues to play a prominent role in the corporate life of the general area.

COUNTY OF WASHINGTON

The County of Washington was created in 1777 from territory formerly a part of Fincastle and Montgomery Counties.²⁶ In terms of physical size, Washington County is the 15th largest county in the Commonwealth with a land area of approximately 563

²⁴Virginia Employment Commission, Automated Labor Information on the Commonwealth's Economy, ES-202 Average Annual Employment By Size Code for Bristol City. (Online) Available: <http://ditmvs3.state.va.us:8080/servlet/resqportal/resqportal>.

²⁵Virginia Employment Commission, 2000 Commuting Patterns, In Commuting Patterns. (Online) Available: http://www.vec.state.va.us/pdf/in_comm.pdf, p. 98. The largest source of in-commuting workers to the City from other jurisdictions was Sullivan County, Tennessee which encompasses the City of Bristol, Tennessee.

²⁶**Hornbook of Virginia History**, p.171.

square miles.²⁷ Approximately 12.3 square miles of County territory is located within the boundaries of Washington County's four incorporated towns -- Abingdon, Damascus, Glade Spring and a portion of Saltville. Washington County's seat of government is located in the Town of Abingdon, approximately 15 miles from the City of Bristol.

Between 1990 and 2000 the County's population, unlike that of Bristol's, increased from 45,887 persons to 51,103, or by 11.4%.²⁸ Further, the provisional population estimate for 2003 placed the County's populace at 51,700, an increase of 1.2% since the 2000 decennial census.²⁹ Based on its land area and 2003 population estimate, the County has an overall population density of 92 persons per square mile.³⁰

With respect to the nature of its population, various statistical measures disclose that the County's populace, like that of Bristol, is older and less affluent than that of the State generally. Data indicate that in 2000 the median age of residents of Washington

²⁷U. S. Department of Commerce, Bureau of the Census, GCT-PH1, Population, Housing Units, Area, and Density: 2000, Geographic Area: Virginia – County. (Online) Available: http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=04000US51&-_box_head_nbr=GCT-PH1&-ds_name=DEC_2000_SF1_U&-format=ST-2.

²⁸**1990 Census of Population and Housing, Summary Population and Housing Characteristics, Virginia**, Table 1; and U. S. Department of Commerce, Bureau of the Census, Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Washington County, Virginia. (Online) Available: http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/Counties_Cities/05051191.pdf. During the decade of the 1990s, Washington County was the fastest growing county in Southwestern Virginia. Further, between 1990 and 2000 the population of the unincorporated portion of Washington County increased by 12.2%. [**1990 Census of Population and Housing, Summary Population and Housing Characteristics, Virginia**], Table 1; and U. S. Department of Commerce, Bureau of the Census, GCT-PH1, Population, Housing Units, Area, and Density: 2000, Geographic Area: Virginia – Places. (Online) Available: http://factfinder.census.gov/servlet/GCTTable?_bm=y&-geo_id=04000US51&-_box_head_nbr=GCT-PH1&-ds_name=DEC_2000_SF1_U&-redoLog=false&-mt_name=DEC_2000_SF1_U_GCTPH1_ST2&-format=ST-7.]

²⁹Population Estimates for Virginia's Counties & Cities, 2003 provisional, 2002 & 2001 final estimates.

³⁰In 1990 the density of the unincorporated portions of Washington County (i.e., exclusive of the population and land area of its four towns) was 66 persons per square miles.

County was 40.3 years, a statistic less than that of the City (41.3 years), but greater than that of the State as a whole (35.7 years).³¹ Further, statistics reveal that as of 2000, approximately 15.3% of the County's population was age 65 or over, an elderly component significantly less than that of the City (20.5%), but greater than that of the Commonwealth overall (11.2%).³² In terms of income, in 2002 Washington County residents had a median AGI of \$23,262, a measure exceeding that of Bristol (\$20,991), but only 77.0% of that of the State generally (\$30,203).³³ Further, median family income of County residents in 1999 was \$40,162, significantly greater than that of the City's populace (\$34,266), but only 74.1% of that for the Commonwealth collectively (\$54,169)³⁴

Washington County, like numerous other Virginia counties, has experienced in recent years development and a diversification in its economic base. The data indicate that between 1993 and 2003 employment in the County increased from 16,846 to 19,867, or by 17.9%.³⁵ Of the 3,021 new employment positions created in the County during that period, 2,280 (approximately 95% of the total) were in the transportation or services sectors. Despite the growth in employment opportunities in Washington County, most of the County's labor force is engaged in agricultural production or required to seek

³¹Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Washington County, Virginia. Unless otherwise indicated, statistics for Washington County include data for the residents of the County's four incorporated towns.

³²**Ibid.**

³³Local Area AGI, All Returns, 2002.

³⁴U. S. Department of Commerce, Bureau of the Census, Table DP-3, Profile of Selected Economic Characteristics: 2000, Geographic Area: Washington County, Virginia. (Online) Available: http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/Profiles2/Counties_Cities/05051191.pdf; and Table DP-3, Profile of Selected Economic Characteristics: 2000, Geographic Area: Virginia.

³⁵Virginia Employment Commission, Automated Labor Information on the Commonwealth's Economy, ES-202 Average Annual Employment By Size Code for Washington County. (Online) Available: <http://ditmvs3.state.va.us:8080/servlet/resqportal/resqportal>.

employment outside the County, mainly in the City of Bristol. According to 2000 data, 9,651 County residents commuted to jobs located beyond the County's boundaries.³⁶

While the increase in employment in Washington County denotes a growth and diversification of its economy, agricultural and forestal operations remain significant components of the County's economic base. As of 2002, there were 1,821 active farms in the County, collectively occupying a total of 197,495 acres (309 square miles), with the average market value of their agricultural products being \$27,784.³⁷ Further, according to 2001 data, there were 192,734 acres of property (301 square miles) in Washington County classified as "forest land."³⁸ Thus, while Washington County has experienced significant population and economic growth in recent years, portions of it remain largely rural and undeveloped.

³⁶ Virginia Employment Commission, 2000 Commuting Patterns, Out Commuting Patterns. (Online) Available: http://www.vec.state.va.us/pdf/out_comm.pdf, p. 91. In 2000, 3,589 County residents, or 37.2% of its work force, commuted to Bristol for employment.

³⁷U. S. Department of Agriculture, National Agricultural Statistics Service, **2002 Census of Agriculture, Virginia, State and County Data**, Table 1, p. 216. The average market value of agricultural products sold by farms in the State collectively was \$49,593. (**Ibid** ., p. 204.)

³⁸U. S. Department of Agriculture, Forest Service, Southern Research Station, Forest Inventory and Analysis, Forest Inventory Mapmaker Version 1.0, Geographic area of interest is Virginia 2001: Washington. (Online) Available: <http://www.ncrs2.fs.fed.us/4801/FIADB/index.htm>. The Forest Service defines "forest land" as land at least 10 percent stocked by forest trees of any size, or formerly having such tree cover, and not currently developed for nonforest uses. The minimum area considered for classification as forest land is one acre. Such property may also be included in the Census Bureau's definition of "farm land." Between 1986 and 2001, the average annual value of timber harvested in Washington County was approximately \$1.3 million. [Virginia Department of Forestry, Forest Economics, County Ranking. (Online) Available: <http://www.vdof.org/R6/was-econ-cty-rank.shtml>.]

AREAS PROPOSED FOR ANNEXATION

Leonard L.P.

The Leonard property proposed for annexation constitutes approximately 352.2 acres located adjacent to the southwestern boundary of the City of Bristol.³⁹ While the tract is currently used principally for agricultural purposes, Washington County has zoned the property for low and medium density residential uses.⁴⁰ Further, the landowner proposes to construct on the parcel a mixed use development that will ultimately contain approximately 341 dwelling units and approximately 105,000 square feet of commercial area.⁴¹ The Leonard tract had an assessed value in 2002 of \$1.2 million.⁴² Both the City and the Washington County Service Authority (WCSA) have water and sewer lines available to serve that property.⁴³

³⁹**Property Owners' Notice**, Tab 4, p. 18. The Leonard L.P. parcel also consists of approximately 73 acres located in Tennessee, and another 18 acres of land located within Bristol.

⁴⁰Testimony of Scott Nowak, General Manager, Leonard L.P., **Oral Presentation, Commission on Local Government, Southwest Virginia Higher Education Center, Abingdon, Virginia, June 16, 17, & 18, 2004** (hereinafter cited as **Transcript**), p. 82. Data indicate that approximately six persons reside on the Leonard parcel as tenants of the property owner.

⁴¹The Leonard, L.P., et al., **Reply of Property Owner Petitioners to Washington County's Response** (hereinafter cited as **Property Owners' Reply**), June 7, 2004, pp. 6-7. The development proposed for the property, which is known as Leonard Farms, will include townhouses, patio homes, and large-lot single-family residences located in a gated community. Development has begun on 72 residential lots located on the Tennessee portion of the property, with the construction of paved streets, curb and gutter, the installation of public utilities, and the preparation of 72 lots for sale. (**Ibid.**, p. 5; and testimony of Nowak, **Transcript**, p. 75.)

⁴²**Property Owners' Notice**, Tab 4, p. 16.

⁴³**City Response**, Vol. II – Map Exhibits, Exhs. M-15, M-16; and County of Washington, **Washington County Map Exhibits**, May 2004, Tab 9, Map 38.

Crown Point Development, Inc.

The Crown Point property proposed for annexation embraces 18.6 acres of territory adjoining the northeastern boundary of the City of Bristol.⁴⁴ Although currently undeveloped, the owner of the Crown Point tract proposes to construct 27 townhouse dwelling units on the property as well as 5 lots reserved for single-family residential units.⁴⁵ Further, Washington County has zoned the property for such residential uses.⁴⁶ While there are no public utilities serving the Crown Point parcel at the present time, the City has water and sewer lines within approximately 700 feet of that tract.⁴⁷ As of 2002, this property contained an estimated \$80,400 in real property assessed values subject to local taxation.⁴⁸

R & J Development Company, LLC

The property owned by R & J Development Company proposed for annexation contains approximately 45.6 acres located adjacent to the southwestern border of the City at the intersection of U. S. Highway 58 and Interstate Highway 81.⁴⁹ At the present time the R & J Development Company tract, which had an assessed value in 2002 of \$116,800, is undeveloped and zoned for agricultural purposes by the County.⁵⁰ The property owners, however, have indicated that commercial businesses oriented toward

⁴⁴**Property Owners' Notice**, Tab 4, p. 21. The Crown Point property is also comprised of an additional one-acre of contiguous territory located within the City's current boundaries.

⁴⁵**Property Owners' Reply**, p. 17. The property owner plans to construct his residence on one of the single-family lots in the Crown Point development. (Testimony of David W. Phillips, Crown Point Developments, Inc., **Transcript**, pp. 64-65.)

⁴⁶Testimony of Phillips, **Transcript**, p. 72.

⁴⁷**City Response**, Vol. II – Map Exhibits, Exhs. M-13, M-14; and **Washington County Map Exhibits**, Tab 7, Map 33.

⁴⁸**Property Owners' Notice**, Tab 4, p. 16.

⁴⁹**Ibid.**, p. 23.

⁵⁰**Ibid.**, pp. 16, 23.

highway travelers would be the most appropriate use for the parcel.⁵¹ While public water service is available to the R & J Development Company parcel from water mains owned by WCSA, the closest sewerage to the property is owned by either Bristol, Virginia or Bristol, Tennessee.⁵²

J. H. Spurgeon

The area proposed for annexation also includes property owned by J. H. Spurgeon which encompasses approximately 39.4 acres located adjacent to that portion of Interstate Highway 81 which comprises the southwestern border of the City of Bristol.⁵³ Although predominantly undeveloped, Washington County has zoned the parcel for both agricultural and residential uses.⁵⁴ Although the Spurgeon parcel is adjacent to a water line owned by the WCSA, public sewer service would have to be provided by Bristol, Virginia or Bristol, Tennessee.⁵⁵ According to 2002 data, this property contained approximately \$176,600 in real estate assessed property values.⁵⁶

Henard Enterprises, Inc.

The Henard Enterprises property proposed for annexation embraces approximately 202.61 acres of territory contiguous to the northern and western

⁵¹Testimony of John Paul Wilson, Agent, R & J Development Company, **Transcript**, p. 430.

⁵²**City Response**, Vol. II – Map Exhibits, Exhs. M-17, M-18; and **Washington County Map Exhibits**, Tab 8, Map 34.

⁵³**Property Owners' Notice**, Tab 4, p. 22. The Spurgeon tract is contiguous to the Henard Enterprises property.

⁵⁴Testimony of Bruce D. Martin, Henard Enterprises, **Transcript**, p. 169; and **Property Owners' Notice**, Tab 4, p. 23. According to a representative for the petitioners, there is one occupied residence located on the Spurgeon tract. (Haley, communication with staff of Commission on Local Government, Oct. 5, 2004.)

⁵⁵**City Response**, Vol. II – Map Exhibits, Exhs. M-17, M-18; and **Washington County Map Exhibits**, Tab 8, Map 34.

⁵⁶**Property Owners' Notice**, Tab 4, p. 16.

boundaries of the Spurgeon tract.⁵⁷ Currently, the Henard property is unoccupied, but the owners propose to develop the tract for a mix of land uses, including residential, highway-oriented retail, light industrial, and offices.⁵⁸ The County's zoning for the tract is for residential and business uses.⁵⁹ Similar to the Spurgeon parcel, the WCSA has a water line adjacent to the Henard property, but central sewer service could only be provided by the extension of existing lines owned by either Bristol Virginia or Bristol, Tennessee.⁶⁰ As of 2002, this property contained an estimated \$379,400 in real property values subject to local taxation.⁶¹

Collectively, the five areas proposed for annexation comprise 695.8 acres (1.1 square miles), which, as of 2002, encompassed approximately \$1.9 million in assessed property values.⁶² Those areas, then, as of 2002 represented 0.18% of the County's total area, and 0.11% of its real property assessables.⁶³ Further, although the areas proposed for annexation are predominantly vacant, they do contain properties with considerable

⁵⁷**Property Owners' Notice**, Tab 4, p. 15. In addition, Henard Enterprises owns approximately 92 acres of property in Tennessee contiguous to its Virginia holdings. (**Property Owners' Reply**, Tab 3.)

⁵⁸The proposed project, known as Henard Meadows, would also include the Tennessee portion of the property where water and sewer lines owned by Bristol, Tennessee have been installed. Further, a road constructed by the developer extends into the Tennessee portion of the tract from U. S. Highway 11. (**Property Owners' Notice**, Tab 4, pp. 20-21.)

⁵⁹**Ibid.**, p. 22.

⁶⁰**City Response**, Vol. II – Map Exhibits, Exhs. M-17, M-18; and **Washington County Map Exhibits**, Tab 8, Map 34. The City of Bristol, Tennessee's water and sewer lines terminate at the Virginia – Tennessee border. (**Property Owners' Notice**, Tab 4, pp. 20-21.)

⁶¹**Property Owners' Notice**, Tab 4, p. 16.

⁶²The total territory in the areas proposed for annexation also includes 37.4 acres of property that are located in the right-of-way of Interstate Highway 81 in the vicinity of Exit 1 from that thoroughfare.

⁶³In the aggregate, the properties proposed for annexation are estimated to contain a population of approximately 8 persons, which would give that area a population density of 7.3 persons per square mile. Further, the population of the areas proposed for annexation represented 0.02% of the County's estimated 2003 population.

development potential with access to major thoroughfares and to public water and sewerage.

STANDARDS AND FACTORS FOR ANNEXATION

As noted previously, the Code of Virginia directs this Commission, and ultimately the court, to consider in each annexation issue the best interest of the municipality, the area proposed for annexation, the remaining portion of the County, and the best interests of the Commonwealth. The annexation statutes prescribe a series of factors for consideration in the evaluation of the best interest of the parties, and the following sections of this report constitute the Commission's analysis of these various considerations.

NEED OF THE CITY TO EXPAND TAX RESOURCES

While the evidence suggests that the City of Bristol remains a vigorous and economically viable municipality, there is evidence to suggest that the City does have a need to strengthen its fiscal base. The data reveal that between 1990 and 2000 the total true value of real estate and public service corporation property in the City rose from \$470.6 million to \$735.3 million, or by 56.3%. During the same span of years the true value of such property in the County increased from \$1,352.7 million to \$2,526.4 million, or by 86.8%.⁶⁴ As of 2000, the per capita true value of real estate and public service corporation property in the City (\$42,377) was less than that in Washington County (\$49,437).⁶⁵ Of greater concern, however, are more recent data indicating that by the

⁶⁴ Virginia Department of Taxation; **1990 Virginia Assessment/Sales Ratio Study**, Mar. 1992, Table 6; and Virginia Department of Taxation, **2000 Virginia Assessment/Sales Ratio Study**, Feb. 2003, Table 4. The Commission notes that Bristol's 1999 annexation pursuant to an agreement with Washington County increased the total nominal real estate property values within the City by approximately \$1.0 million. True values are calculated by the Department of Taxation on the basis of that agency's analysis of the ratio of the assessed value to the sales price of property sold, which eliminates the variance in assessment practices among the State's 134 counties and cities. True property values, rather than fair market values, are used by agencies of the Commonwealth as a component of State aid distribution formulas.

⁶⁵ **Ibid.**

succeeding year (2001) the total true value of real estate and public service corporation property in the City grew by \$45.4 million, or by 6.2%, while that in the County increased by \$358.4 million, or by 14.2%.⁶⁶

In terms of taxable retail sales, the second major component of the City's tax base, statistics reveal that between 1990 and 2000 the total value of taxable retail sales in Bristol increased from \$220.6 million to \$303.7 million, or by 37.6%. During the same interval, the value of such sales in Washington County grew from \$199.8 million to \$435.2 million, or by 117.8%.⁶⁷ When these taxable sales values are standardized by population, the disparity in growth rates remains significant. During the decade of the 1990s the per capita taxable sales in the City increased from \$11,975 to \$17,485 (46.0%), while that in the County rose from \$4,355 to \$8,517 (95.6%).⁶⁸ Further, recent data reveal that between 2000 and 2003 the total taxable retail sales in the City of Bristol increased by 3.1%, while those in the County increased by 5.7%.⁶⁹ While the 1% local sales tax does not constitute a source of local revenue comparable to real property in most jurisdictions, sales tax revenues do represent a significant component of Bristol's fiscal base.⁷⁰

With respect to other measures of Bristol's fiscal resources, consideration should also be given to the City's adjusted gross income (AGI) as reported by Bristol's residents for State tax purposes. This statistic can be considered a measure of the general affluence of a locality's population which also manifests itself in other forms of local tax revenue

⁶⁶Virginia Department of Taxation, **2001 Virginia Assessment/Sales Ratio Study**, Apr. 2004, Table 4.

⁶⁷Weldon Cooper Center for Public Service, University of Virginia, Annual Taxable Sales, 1984-2003. (Online) Available: http://www.virginia.edu/coopercenter/vastat/taxablesales/tax_sales.html.

⁶⁸**Ibid.**

⁶⁹**Ibid.**

⁷⁰For the 2003 Fiscal Year, sales and use tax receipts comprised 11.8% of the City's total local-source revenues and 12.2% of those revenues for Washington County. (Auditor of Public Accounts, **Comparative Report of Local Government Revenues and Expenditures, Year Ended June 30, 2003**, Exh. B-2.)

(e.g., personal property taxes). Data disclose that the 2002 per capita resident AGI for Bristol residents (\$12,450) was less than that of County residents (\$14,100), and only 59.5% of the comparable statistic for the State as a whole (\$20,938).⁷¹

Additional evidence of Bristol's overall fiscal condition is presented by annual statistical analyses conducted by this Commission. These analyses have been based upon the Virginia-adapted "representative tax system" methodology which establishes a theoretical level of revenue capacity for each county and city derived from six local revenue generating "sources" and a statewide average "yield rate" for each. Our calculations reveal that for the 2001/02 fiscal period (the most recent period for which the analysis has been completed) the per capita revenue capacity of Bristol (\$961.31) was 5.4% less than that for the County (\$1,016.15).⁷² Further, for the same period the per capita revenue capacity for the City and County was only 78.1% and 82.6%, respectively, of the statewide average (\$1,230.59).⁷³ Moreover, the Commission's most recent comparative fiscal stress analysis found that relative to all Virginia counties and cities in 2001/02, Bristol experienced "high fiscal stress," with only six of those 134 jurisdictions

⁷¹Local Area AGI, All Returns, 2002. Washington County has suggested that married couple AGI is a more appropriate measure of the income disparities between the two jurisdictions. [County of Washington, **Washington County's Supplemental Response Pursuant to Rule 3.28 of the COLG Rules of Procedure, Tabular Exhibits and Supplemental Tabular Exhibits** (hereinafter cited as **County Supplemental Response**), June 2004, p. 16; and Testimony of Thomas Muller, Consultant, County of Washington, **Videotaped Deposition, Deposition of Thomas Muller, June 12, 2004, 10:09 p.m. – 12:02 p.m., Vinton Virginia** (hereinafter cited as **Videotaped Deposition**), pp. 29-30.] By virtue of its widespread use in State aid distribution formulas, AGI of all residents of a particular locality is a more comprehensive measure than married couple AGI.

⁷²Commission on Local Government, **Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, 2001/2002**, Apr. 2004, Table 1.2.

⁷³**Ibid.**, Table 1.1.

recording a higher measure of fiscal duress, while Washington County recorded “below average stress” during that period.⁷⁴

Considering fiscal effort, or the extent to which local fiscal resources are utilized for local governmental purposes, the evidence reveals that City residents are required to bear a substantially greater burden than residents of the County. Excluding receipts from the local 1% sales and use tax, as well as revenue from Bristol’s meals and lodging taxes, City residents paid \$689.24 in local taxes in Fiscal Year 2002-03, while County residents bore a per capita local tax burden of only \$469.72.⁷⁵ Further when the same local 2003 tax collections are compared to total resident adjusted gross income in 2002 (the latest year for which the statistic is available), the calculation reveals that those taxes constituted a considerably larger percentage of total adjusted gross income in the City (5.5%) than they did in Washington County (3.4%).⁷⁶ Thus, considered either on a per capita basis or as a percentage of total resident adjusted gross income, the local tax burden of the City was substantially greater than that in Washington County. The disparity in local tax rates can also be used as a general index of the fiscal pressure on a locality’s tax base. With respect to this point, between 1990 and 2001 (the latest year for which such calculation has been made) the effective true tax rate on real property in the City declined by 9.7%, while the rate for the County declined by 12.7%.⁷⁷ By the latter

⁷⁴Ibid., Table 6.3. In establishing the level of “fiscal stress” of Virginia’s counties and cities, the Commission considers the theoretical revenue capacity, revenue effort, and resident income (as reported on State tax returns) for each jurisdiction.

⁷⁵Comparative Report of Local Government Revenues and Expenditures, Year Ended June 30, 2003, Exhs. B, B-2. The inclusion of sales and use, meals, and lodging taxes would overstate the tax burden of City residents, for it is reasonable to expect that a significant percentage of the tax collections from those three sources are derived from purchases by non-residents.

⁷⁶Ibid.; and Local Area AGI, All Returns, 2002.

⁷⁷2001 Virginia Assessment/Sales Ratio Study, Table 3. The Commission has noted the contention that Bristol’s reduction in its nominal real estate tax from \$1.12 in 1996 to \$0.98 in 2002 denotes an improvement in its fiscal condition. (County’s Supplemental Response, Table 2-A; and Testimony of Muller, Videotaped Deposition, p. 13.) However, between 1996 and 2001, Bristol’s effective true property tax rate actually increased from \$0.89 to \$0.93. (Virginia Department of Taxation, 1996 Virginia Assessment/Sales Ratio Study, Apr. 1998, Table 3; and 2001 Virginia

year, the effective true real property tax rate in Bristol was \$0.93 per \$100 of assessed value, or more than one and one-half times that in Washington County for the same year (\$0.55).⁷⁸

An alternative measure of revenue effort of the Commonwealth's localities may be obtained through the methodology used by this Commission in its annual analysis of the comparative fiscal condition of Virginia's counties and cities. This measurement of a jurisdiction's "revenue effort" is obtained by expressing the total of a locality's actual tax revenue collections as a percentage of its theoretical absolute revenue capacity during a specified fiscal period.⁷⁹ Based on this methodology, during FY2001/02 the City's total local collections equaled 161.9% of its theoretical revenue capacity, while for the same period the comparable measure for Washington County was only 66.1%.⁸⁰ During that designated time frame only four of Virginia's counties and cities recorded higher measures of revenue effort than the City of Bristol.⁸¹

Assessment/Sales Ratio Study, Table 3.) The Commission has also observed the contention that the fiscal burden of Bristol residents is reduced by virtue of the fact that in 2002 the City had the lowest true personal property tax rate of any municipality in the Commonwealth (\$1.40). (**County's Supplemental Tabular Response**, Table 2-B; and Testimony of Muller, **Videotaped Deposition**, pp. 14-15.) Such a level of taxation does not alter the fact that the residents of the City of Bristol bear an inordinately high local tax burden, and one substantially in excess of that borne by the County's residents.

⁷⁸**1996 Virginia Assessment/Sales Ratio Study**, Table 3; and **2001 Virginia Assessment/Sales Ratio Study**, Table 3.

⁷⁹The revenue effort statistic for a locality expresses the total of its revenue collections as a percentage of its theoretical revenue capacity. Through this calculation the receipts which a locality derives from its various resource bases are, in essence, compared to the yield the jurisdiction could anticipate if its local revenue-raising efforts reflected the average rate of return for the State overall.

⁸⁰**Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, 2001/2002**, Table 3.2. During FY2001/02, the State's counties and cities, considered collectively, utilized 95.9% of their absolute revenue capacity.

⁸¹In FY2001/02 the cities with a greater revenue effort than Bristol were Covington, Emporia, Norfolk, and Portsmouth. (**Ibid.**)

According to Washington County, Bristol's claim of a need for additional tax resources is subject to challenge on the grounds that its fiscal distress is a result of a higher level of discretionary spending in relation to that of the County.⁸² Consultants for the County have noted that since the revenue capacity and adjusted gross income for Bristol and the County are similar, the only explanation for Bristol's high relative stress score is its revenue effort. The County has asserted that the additional revenues which Bristol receives from non-residents in the form of sales, meals, and lodging taxes are, in the main, responsible for the City's increased fiscal effort.⁸³ Further, citing data that estimates the portion of Bristol's local-source revenues derived from non-residents, the County has contended that the Commission's fiscal stress methodology overstates the City's revenue effort.⁸⁴

The Commission acknowledges that Bristol and Washington County, as well as most jurisdictions throughout the Commonwealth, benefit from tax exportation, a process by which the local revenue burden is shifted to non-residents, such as absentee landowners, tourists, and shoppers and workers from nearby communities.⁸⁵ Contrary to the County's assertions, however, our analysis of sales, meals, and lodging tax receipts

⁸²**County Supplemental Tabular Response**, pp. 17-18; testimony of Walter Cox, Consultant, County of Washington, **Transcript**, pp. 568-570; and testimony of Muller, **Transcript of Hearing Before Commission on Local Government**, July 19, 2004, p. 40.

⁸³The County has also asserted that greater "revenue effort" by the City reflects the spatial difference in the demand for public services in a dense city and a rural, but urbanizing, county. (**County Supplemental Response**, p. 17.) We note, however, that almost all previous annexation issues in Virginia have involved municipalities with high population densities and rural counties with urbanizing areas. Further, some of the City's increased expenditures are a result of the need to provide public services, such as planning, law enforcement, judicial administration, to non-residents (e.g., travelers and commuters).

⁸⁴Cranwell, letter to staff of Commission on Local Government, July 29, 2004.

⁸⁵In FY2003, Bristol's receipts from sales, lodging, and meals taxes comprised 24.3% of the City's total local-source revenues. For that same period, the Cities of Colonial Heights, Fredericksburg, Harrisonburg, Norton, Williamsburg, and Winchester derived a larger percentage of their total local-source revenues from those three tax sources than did Bristol. With the exception of Norton, none of those other cities ranked as "high stress" localities during the 2001/02 period.

derived from non-residents does not reveal a significant impact on the revenue capacity or revenue effort of the City and County. In terms of fiscal ability during the 2001/2002 period, the Commission has reported that the per capita revenue capacity for the City and County was \$961.31 and \$1,016.15, respectively.⁸⁶ After making the appropriate adjustments in the data to remove estimated non-resident tax collections, Bristol's revenue capacity diminished to \$869.48, or by 9.6%, while the similar statistic for Washington County decreased to \$990.75, or by 2.5%.⁸⁷ Our calculations on the consequence of non-resident tax receipts on the revenue effort of both localities yielded similar results. In FY2001/02, the Commission has reported the revenue effort of Bristol and Washington County to be 1.6187 and 0.6606, respectively.⁸⁸ After estimated non-residents revenues are subtracted from the actual tax collections of the two localities, the modified revenue effort score for the City fell by 6 cents in total tax collections per dollar of potential revenue, while the adjusted value for Washington County increased by approximately 1.2 cents.⁸⁹ Based upon our analysis of the data and a review of the calculations offered by the County, we can find no evidence to indicate that the added revenues that Bristol derives from non-residents in the form of sales, meals, and lodging taxes would significantly alter the fiscal effort of the City in relation to that of Washington County.

In sum, the evidence clearly indicates that in recent years the City of Bristol has not experienced growth in its real and public service corporation property tax base comparable to that which has occurred in the County. Further, the data also reveal that

⁸⁶**Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, 2001/2002**, Table 1.2.

⁸⁷See Appendix C, Exh. A. The methodology employed by the County's consultant estimated non-resident contributions to Bristol's tax base to be \$2,826,286 while the Commission ascribed revenues of \$3,513,016 (or 12.9% of Bristol's total local-source revenues in FY2002).

⁸⁸**Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, 2001/2002**, Table 2.3. The revenue effort of a locality is expressed in relation to its theoretical revenue capacity.

⁸⁹See Appendix C, Exh. B. The adjusted revenue effort values for the City and County are 1.5587 and 0.6725, respectively.

City taxpayers bear a substantially higher local tax burden, whether measured on a per capita basis or as a percentage of resident adjusted gross income, than do those in the County. Based on all of the evidence cited above, the Commission finds that the City has a need to expand its tax resources.⁹⁰

NEED OF THE CITY FOR LAND FOR DEVELOPMENT

As stated previously in this report, the City of Bristol currently contains 2,872 acres of vacant property or approximately 34.5% of its total land area.⁹¹ Of this total amount of vacant land, however, only 1,492 acres are free of major environmental constraints (e.g., slopes of 20% or greater or floodplain) and suitable for development.⁹² Some of this vacant property which is free of major environmental constraint is affected in its development potential by other appropriate factors such as parcel size, proximity to transportation arteries, adjacent development, and zoning restrictions. While the Commission recognizes that environmental factors, land ownership patterns, and locational concerns are not absolute barriers to the development of land, they do render sites less attractive to potential commercial, industrial, and residential developers and may, indeed, constitute major impediments to development.

⁹⁰The Commission has noted the contention that it is inappropriate to compare data concerning Bristol's fiscal condition to that of Washington County because of the distinctive nature the current annexation issue (i.e., tax exportation, the undeveloped nature of the areas proposed for annexation, etc.). Further, the County has asserted that Bristol's need for additional tax resources should only be analyzed in relation to "comparable" cities selected by its consultant. (Testimony of Muller, **Transcript of Hearing Before Commission on Local Government**, pp. 56-57; and **County Response**, Tab 3B, p. 1.) We can find no evidence to support the County's proposition that the comparison of Bristol's fiscal data to that of certain other municipalities is the only means by which the City's need for additional tax resources should be measured. Our examination of boundary change issues over the past 20 years can find no other instance where this Commission and the court did not consider the fiscal position of a city in relation to that of the adjoining county, regardless of the unique aspects of the affected localities or the area proposed for annexation.

⁹¹**City Response**, Vol. II, p. 76.

⁹²**Ibid.**

In terms of Bristol's potential for future industrial growth, data reveal that the City has only 89.6 acres of vacant property within its boundaries on sites containing five acres or more which are zoned for industrial use.⁹³ Further, the records of the Virginia Economic Development Partnership disclose that only three sites within the City's boundaries, which collectively contain 51 acres, are currently listed with the State's principal agency for promoting industrial growth.⁹⁴ Moreover, a recent survey of Bristol has revealed that there are also three vacant industrial buildings in the City with a total floor area of approximately 230,000 square feet.⁹⁵

Some measure of the City's ability to attract and accommodate new industrial growth in recent years may be obtained from an examination of building permit data. Between 1993 and 2003, Bristol issued 7 permits, valued at \$2.4 million, for new industrial construction.⁹⁶ During the same period, Washington County issued 23 permits for the construction of industrial property valued collectively at \$15.9 million.⁹⁷ In support of the contention that industrial sites in Bristol are at a competitive disadvantage to those in the County, City officials have submitted evidence that in recent years three

⁹³Glass, letter to staff of Commission on Local Government, July 6, 2004.

⁹⁴Virginia Economic Development Partnership, VirginiaScan: Building Site Search. (Online) Available: http://virginiascan.yesvirginia.org/results_sites.cfm, May 11, 2004. Located within Washington County are nine industrial properties listed with the Virginia Economic Development Partnership that that collectively contain approximately 900 acres.

⁹⁵Ibid., Aug. 12, 2004. A representative for Bristol has indicated that an additional vacant industrial facility, which contains approximately 125,000 square feet, is located within the City. (Testimony of Jerry Brown, Director, Bristol Economic Development Office, Transcript, p 356.) According to State records, there are 9 vacant buildings located within the County suitable for industrial purposes that collectively contain approximately 655,000 square feet. [VirginiaScan: Building Site Search, (Online), Aug. 12, 2004.]

⁹⁶Glass, letter to Cranwell, Mar. 17, 2004.

⁹⁷County Response, Tab 8, pp. 40-41.

industrial operations formerly situated in Bristol have ceased operation or relocated outside the City's corporate boundaries.⁹⁸

In terms of future commercial development, the data reveal that Bristol currently has only 89.1 acres of vacant property on sites of five acres or more that are free from environmental constraints and are zoned for commercial activity.⁹⁹ While this commercial acreage is certainly not large, the evidence indicates that the City has continued to benefit from a modest increase in its taxable retail sales and, further, has continued to receive virtually the same share of total taxable retail sales in the City of Bristol – Washington County – Sullivan County, Tennessee area as it did in 1998.¹⁰⁰ In addition, records disclose that between 1993 and 2003 the City issued 131 permits for commercial construction having a total value of \$70.4 million, while during the same period of time the County issued 172 permits for the construction of commercial

⁹⁸Testimony of Brown, **Transcript**, pp. 340-341. Over the past four years, one company that employed approximately 300 persons ceased its operations within Bristol, while two companies, with an aggregate workforce of approximately 70 persons, relocated within Washington County. The latter industries could not locate appropriate sites within the City to accommodate the proposed business expansion plans. During the same period, two companies that collectively employed approximately 165 persons located in the City.

⁹⁹Glass, letter to staff of Commission on Local Government, July 6, 2004. In addition, Washington County has identified approximately 275 acres of vacant land located within the City in the vicinity of Interstate Highway 81 Exits 5 and 7 that have a potential for commercial development. (**County Supplemental Tabular Response**, Table 1-J.1.) It should be noted, however, that portions of the vacant commercial property identified by the County may be located on steep slopes or in the 100-year flood plain and not zoned for business uses.

¹⁰⁰Between 1998 and 2003, the City's share of the total taxable retail sales in the three-jurisdiction area (Bristol-Washington County-Sullivan County, Tennessee) increased marginally from 11.0% to 11.1%. [Weldon Cooper Center for Public Service, University of Virginia, Annual Taxable Sales, 1984-2003. (Online) Available: http://www.virginia.edu/coopercenter/vastat/taxablesales/tax_sales.html; and Tennessee Department of Revenue, Retail Sales by CY/Month, Year 1998. (Online) Available: <http://www.state.tn.us/revenue/collections/retail/retail1998print.xls>, and Year 2003 (Online) Available: http://www.state.tn.us/revenue/collections/retail/retail_2003a.xls.]

establishments having an aggregate value of \$36.6 million.¹⁰¹ Moreover, the City's commercial base includes the Bristol Mall as well as the major retail center that has developed in the last decade at Exit 7 of Interstate Highway 81.¹⁰² Given the City's recent commercial development and its sustained share of the region's commercial base, the Commission cannot find that the City has a current need for additional land for commercial growth.

With respect to the City's need for land for residential development, the data indicate that the City contains 366 acres of vacant property zoned for residential use and located on tracts of five acres or more which are not affected by major environmental constraints.¹⁰³ That inventory, however, does not include the 445-acre Clear Creek golf course and residential community in the northeastern portion of the City that will ultimately contain 240 residential lots.¹⁰⁴ Further, the Commission notes that between 1993 and 2003, the City issued 373 permits for all forms of residential construction, while during the same span of years the County issued 2,544 residential building permits.¹⁰⁵ Thus, the data reveal over the past decade the residential development in the

¹⁰¹Glass, letter to Cranwell, Mar. 17, 2004; and **County Response**, Tab 8, pp. 40-41.

¹⁰²According to a representative for Bristol, the City fostered much of the commercial development located at Exit 7 within its jurisdiction by making building sites with water and sewerage available for businesses that wanted to locate in that area. (Testimony of Brown, **Transcript**, pp. 350-351.) Further, the presence of City water and sewerage at Exit 7 also facilitated the commercial development in the County portion of that area.

¹⁰³Glass, letter to staff of Commission on Local Government, July 6, 2004.

¹⁰⁴Commission on Local Government, **Report on the City of Bristol – County of Washington Voluntary Settlement Agreement**, Mar. 1997. At the time of the Commission's review of the voluntary settlement agreement between the City and Washington County, Bristol indicated a need to enlarge and diversify its housing inventory. Specifically, Bristol presented data to indicate that the City had a shortage of houses for upper income residents. At that time, the homes in the Clear Creek development were to range in price from \$150,000 to \$250,000.

¹⁰⁵Glass, letter to Cranwell, Mar. 17, 2004; and **County Response**, Tab 8, pp. 40-41. Building permit data for Washington County does not include mobile homes or permits issued for residential construction within the Town of Abingdon. In addition, the County only reported the number of building permits issued for eight months during

Bristol environs was concentrated within the unincorporated portions of Washington County.

Examination of several demographic statistics also suggests that the City, in relation to Washington County, is already experiencing a loss of its younger residents. First, the City's population between 1990 and 2000 declined due, in part, to the out-migration of 507 persons.¹⁰⁶ Second, during the same decade the percentage of the City's population aged 65 and over increased from 18.8% to 20.5%, while that in the County only rose from 14.2% to 15.3%.¹⁰⁷ Further, during the decade of the 1990s, the number of married families with children under 18 years of age decreased in the City by 21.9%, while the number of such families in Washington County decreased by only 4.6%.¹⁰⁸ The evidence clearly discloses that during the previous decade various demographic changes have left Bristol with a higher concentration of elderly persons.

As the Commission has stated in numerous reports, we believe that the ability of a locality to offer an array of new housing opportunities to its residents is an important

Calendar Year 1993. Further, according to a representative for Bristol, the City only issues one permit per multi-family structure regardless of the number of residences contained within the structure. (Testimony of Shari Brown, Planning Director, City of Bristol, **Transcript**, pp. 322-323.) Such a practice would tend to under-report the pace of residential construction within Bristol.

¹⁰⁶Weldon Cooper Center for Public Service, University of Virginia, Population Growth & Components of Change, 1990-2000. (Online) Available: http://www3.ccps.virginia.edu/demographics/2000_Census/growth_rates/1990-2000change.xls, Dec. 9, 2003. During the decade of the 1990s, net migration into Washington County was 4,994 persons.

¹⁰⁷**1990 Census of Population and Housing, Summary Population and Housing Characteristics**, Table 2; and Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Bristol City, Virginia and Washington County, Virginia.

¹⁰⁸Weldon Cooper Center for Public Service, University of Virginia, Table DP1C. Profile of General Demographic Characteristic for Virginia, 1990: Household Relationship & Household by Type. (Online) Available: http://www3.ccps.virginia.edu/demographics/2000_Census/DemoProfiles/County_City_data/DP1C-1990.xls; and Table DP-1, Profile of General Demographic Characteristics: 2000, Geographic Area: Bristol City, Virginia and Washington County, Virginia.

element in its efforts to attract and retain a heterogeneous population. While the evidence reveals that Bristol did experience a significant loss in the number of its younger families during the previous decade, and while its residential construction since 1993 has been less than 15% that of the County, this Commission is unable to conclude that such is due to the lack of suitable property for new residential development within the City's corporate boundaries.

It is appropriate to note here that the Commission is cognizant of the substantial evidence introduced by Washington County that the City of Bristol has sufficient land within its current boundaries to meet its current and prospective needs for residential, commercial, and industrial development.¹⁰⁹ Citing data from historical land consumption patterns and an analysis of future market trends, the County has asserted that the vacant land within the City would be sufficient to accommodate many decades, or even centuries, of future growth.¹¹⁰ With respect to the analysis of vacant land performed by the County, the Commission observes that the County's calculations are based on an urban planning methodology known as build-out analysis whose principal purpose is to determine the future development that would be allowed to occur within a locality under the jurisdiction's current development regulations.¹¹¹ The County has acknowledged, however, that their analysis did not consider the current zoning classification of the vacant land within Bristol.¹¹² The County's calculations also did not take into account

¹⁰⁹Testimony of Bogorad, **Transcript**, pp. 444-551; **County Response**, Tab 3-A; and **County Supplemental Tabular Exhibits**, Tab 1.

¹¹⁰**County Supplemental Exhibits**, Table 1-K. Based on past land consumption rates, the County has identified vacant land within Bristol free of major environmental constraints that could accommodate more than 1,000 years of residential growth, 51 years of future commercial uses, and 85 years of industrial development. Using the market analysis approach, the County's consultant has calculated that Bristol currently has land suitable for 258 years of new residential construction, 330 years of additional commercial demand, and 64 years of industrial enterprise.

¹¹¹U. S. Environmental Protection Agency, Green Communities, How to Do a Build-Out Analysis. (Online) Available: http://www.epa.gov/greenkit/build_out.htm, May 13, 2004.

¹¹² Testimony of Bogorad, **Transcript**, p. 538. It should be noted that the build-out analysis performed by the County's consultant in a similar context included

other factors important to locational decisions such as the space required for additional public facilities to accommodate new growth, difficulty in obtaining easements for access, and assembling tracts of land from multiple owners.¹¹³ Further, while the analysis of historic land use absorption rates to determine prospective development needs is a component of the build-out methodology, the Commission recognizes that such calculations must be viewed with caution.¹¹⁴ Indeed, a representative for Bristol has indicated that there is some uncertainty concerning the data derived from land use surveys conducted by the City in prior years which form the basis for the County's analysis.¹¹⁵ Moreover, the County's use of market analysis techniques to determine the prospective demand for land for residential, commercial, and industrial development relies, to a significant degree, upon projections of population and socio-economic data, as

consideration of the current zoning classification of the vacant land suitable for development. (See County of Loudoun, **Response by the County of Loudoun**, June 2002, Tab 3A.) Although the County has indicated that Bristol could change the zoning classification of a parcel "...if necessary," it has been our experience that rezoning land for uses incompatible with the surrounding properties, even to benefit the community at large, can be a lengthy and contentious process with uncertain results. (Testimony of Bogorad, **Transcript**, p. 537.)

¹¹³Testimony of Bogorad, **Transcript**, p. 538. The County's consultant had acknowledged previously that unique parcel size or locational concerns are disadvantages for commercial development. (**Response by the County of Loudoun**, Tab 3A.)

¹¹⁴A representative for the County has acknowledged that based on an examination of historical land consumption rates, Bristol has sufficient vacant land within its current boundaries for more than 100 million years of residential growth! (Testimony of Bogorad, **Transcript**, pp. 509-10.)

¹¹⁵Testimony of Shari Brown, Planning Director, City of Bristol, **Transcript**, pp. 331-332. The County has presented data, drawn from land use surveys conducted by Bristol's Planning Department which show that between 1981 and 2003 the number of acres of land available for residential use in the City decreased by 67 acres. (**County Supplemental Tabular Exhibits**, Table 1-C.) The validity of that data is called into question, however, by information from the Census Bureau which reported that between 1980 and 2000 the City's housing stock increased by 725 dwelling units, which would consume almost 250 acres of vacant land. [Elizabeth H. Young, ed. **Virginia Statistical Abstract**, 1999-2000 Edition, (Charlottesville: Weldon Cooper Center for Public Service, University of Virginia, 1999), Table 3.11; and Table DP-1, Profile of General Demographic Characteristics, Geographic area: Bristol City, Virginia.] Calculations of residential land consumption are based upon the County's standard of 3 dwelling units per acre. (**County Supplemental Tabular Exhibits**, Table 1-E.)

well as assumptions concerning future trends with respect to the current preferences of citizens and businesses. In our judgment, those projections and assumptions are not without uncertainty and vulnerability. In this instance the County's calculations rest on the official population projections published by the Commonwealth and the State of Tennessee; but such forecasts are by nature conservative and are subject to significant influence by unanticipated social and economic events.¹¹⁶

Finally, throughout its analysis Washington County has asserted that the need for vacant land for future development within Bristol is only related to the demand for such property.¹¹⁷ In support of this principle, the County has cited data that based on future demand calculated from employment projections, the combined Bristol-Washington County area currently has sufficient vacant land to accommodate 75 years of industrial growth.¹¹⁸ The County's contention, however, stands in contrast to an official policy of the Commonwealth which invests public funds for the development of new industrial parks and the expansion of existing facilities regardless of demand for such. In this instance, Washington County has received over \$3.0 million in loans and grants from State and federal sources since 1999 to develop the Glade Highlands and Oak Park industrial parks despite a surplus of vacant industrial property within the County and absent any immediate need for additional industrial sites.¹¹⁹ Further, the County has also invested local resources to assist in the development of those new industrial parks despite

¹¹⁶**County Supplemental Tabular Response**, Tables 1-E, 1-G. For example, Virginia's population projections, which were published in 1993, forecast that Washington County would have a 2000 population of 45,421 persons and then decline to 44,944 persons by 2010. (Virginia Employment Commission, **Virginia Population Projections 2010**, June 1993.) As noted previously, the 2000 Census population for Washington was 51,103 persons.

¹¹⁷**Ibid.**, p. 453; and **County Response**, Tab 3A, p. 1.

¹¹⁸**County Supplemental Tabular Response**, Table 1-I.

¹¹⁹Shea Hollifield, Deputy Director, Virginia Department of Housing and Community Development. Washington County Industrial Parks. (Online) Available email: Ted.McCormack@dhcd.virginia.gov from Shea.Hollifield@dhcd.virginia.gov, May 20, 2004; and Virginia Tobacco Indemnification and Community Revitalization, Special Project Awards. (Online) Available: <http://www.vatobaccocommission.org>, Sep. 21, 2004.

the data that clearly show the area currently has a large number of vacant sites for industrial uses in excess of current and future demand. In sum, based upon the evidence, we cannot conclude that a locality's need for land for future development is contingent only upon the demand for that commodity.

The Commission finds that while the County's abstract calculations of the City's development potential suggests that Bristol could accommodate substantial growth within its current boundaries, we are obliged to conclude that the City has a need for additional vacant land for future industrial development. The evidence clearly shows that the City has not shared in the industrial growth which has occurred in the general area.

IMPACT ON THE COUNTY

The impact of the proposed annexation on Washington County would be minimal. The proposed transfer of territory to the City of Bristol will result in the County's loss of only 0.18% of its land area and only 0.11% of its total 2002 real property values subject to local taxation. The proposed annexation involves no County-owned facilities, and the assumption by the City of responsibility for certain services should reduce the fiscal burden which would otherwise confront the County as development occurs in the areas proposed for annexation. Given the County's past population and economic growth, the County's fiscal assets being completely unaffected by the proposed annexation, and the evidence which indicates that the areas proposed for annexation, in the aggregate, constitute only a small portion of County land and tax revenue, the Commission finds that the boundary expansion proposed by the property owners will not affect Washington County's capacity to serve its remaining residents nor adversely affect in any way the County's long-term economic strength and viability.

URBAN SERVICE CONSIDERATIONS

The annexation statutes require that consideration be given to the urban service needs of the area proposed for annexation, the level of services currently provided by the municipality proposing annexation and by the affected county, and the relative ability of the two jurisdictions to serve the area in question. In this instance, five property owners

are seeking to have incorporated into the City approximately 1.1 square miles of territory which is predominantly vacant or used for agricultural purposes. Although the properties proposed for annexation are essentially undeveloped, the County had zoned all but one of the parcels for residential, commercial, or industrial purposes.¹²⁰ With respect to future conditions, the current Washington County comprehensive plan, which was based upon a comprehensive analysis of the County's needs and anticipated growth, calls for development to occur in the areas immediately adjacent to the City of Bristol and within the individual parcels proposed for annexation.¹²¹ Consistent with the County's comprehensive plan, each of the property owners seeking annexation to Bristol plan to develop their respective parcels in the immediate future for commercial, industrial, or residential purposes. Thus, the nature and scope of the development planned by the property owners must be considered in evaluating the urban service needs of the area proposed for annexation.

Sewage Treatment

The City of Bristol operates a sewage collection system that serves approximately 7,600 connections, and the sewage collected by the City's system is treated at the Bristol VA – TN Regional Wastewater Treatment Plant.¹²² Although Bristol is authorized 5.85

¹²⁰**City Response**, Vol. II, Maps M-30 – M-32. The R & J Development property has been zoned by the County for general agricultural uses, but permitted uses within that zoning district allow single and multi-family residences. In addition, hotels and motels are allowed in that zoning district by special permit. (County of Washington, **Code of Washington County**, Ch. 66, Zoning, Division 6.)

¹²¹County of Washington, **2002 Comprehensive Plan**, Map III-7. The County's current comprehensive plan designates the R & J. Development and Spurgeon properties for future industrial growth and calls for the development of the Leonard tract for residential purposes. In addition, the County's plan places the Crown Point parcel in an area selected for commercial development. With respect to the Henard property, which is recommended in the comprehensive plan for both commercial and industrial purposes, the County has also designated it as a "Special Strategy Area" in recognition of its development potential for mixed uses and for future growth by virtue of its location. (**Ibid.**, p. 90.)

¹²²**City Response**, Vol. I, p. 10. Under the terms of an interlocal agreement with Washington County, City collection lines extend to the Bristol-Washington County Industrial Park east of Bristol and serve 29 connections within the County. The regional

million gallons per day (MGD) of treatment capacity at the regional facility, a contractual arrangement with Washington County reduces the City's allocation to 5.28 MGD.¹²³ Since Bristol currently discharges an average of 4.22 MGD of effluent to the regional plant for treatment, it retains 20.1% of its allocation to serve the areas proposed for annexation.¹²⁴

Sewage collection service in areas adjacent to Bristol is the responsibility of the Washington County Service Authority (WCSA). As noted previously, in 1993 the County contracted with Bristol to purchase 572,000 gallons per day (0.572 MGD) of sewage treatment capacity from the City for use by the WCSA.¹²⁵ According to City records, the average daily flow from the unincorporated territory beyond Bristol's current boundaries is 534,000 gallons per day, leaving the County with only approximately 38,000 gallons per day of sewage treatment capacity to meet the current and future need for such in the areas adjacent to Bristol.¹²⁶ Further, since Bristol has estimated that the developments planned for the areas proposed for annexation would require the treatment of between 75,000 and 200,000 gallons per day of effluent, the City notes that the County does not have sufficient sewer capacity remaining to serve those properties.¹²⁷

wastewater treatment plant, which was enlarged in 1986, is located in Sullivan County, Tennessee, and it is jointly owned by Bristol, Virginia and Bristol, Tennessee.

¹²³The regional treatment plant has a design capacity of 15 MGD, and over the course of the past three years, the average daily flow to that facility from all sources has been 10.78 MGD. (***Ibid.***; and Glass, letter to Cranwell, Mar. 17, 2004.) Under the terms of a 1993 contact, the County purchased 0.572 MGD of treatment capacity from the City's allocation at the regional treatment plant. (***City Response***, pp. 10-11.)

¹²⁴***City Response***, Vol. I, pp. 11-12.

¹²⁵Sewage collected by WCSA lines in areas adjacent to Bristol is transmitted through the City's interceptor lines to the regional wastewater treatment plant. The County paid the City \$554,000 for the sewage treatment capacity. (***City Response***, Vol. I, Tab 10, Sec. 2.)

¹²⁶***Ibid.***, Vol. I, p. 11.

¹²⁷Testimony of Wes Rosenbaum, Chief Executive Officer, Bristol Virginia Utilities Board, ***Transcript***, p. 202. A representative for the City has also estimated that the full development of areas adjacent to Bristol currently served by WCSA sewerage would require an additional 380,000 gallons per day in treatment capacity. (***Ibid.***, p. 202.)

Washington County reports, however, that the average daily flow from WCSA lines connected to City collectors over the past 34 months was 95,000 (0.095 MGD), leaving the County with slightly more than 83% (477,000 gallons per day) of its allocation in the regional treatment plant to serve current and future sewer customers.¹²⁸

The basis for the disagreement over the County’s remaining sewage treatment capacity is found in the different interpretations made by the two localities of certain provisions of the 1993 wastewater contract. One component of that agreement authorized the City to construct a collection line through a portion of the County to the Bristol-Washington County Industrial Park, and further, to serve sewer customers in that facility as well as any other County customers that subsequently connected to the municipal line.¹²⁹ Another provision of the contract provided that sewage collected “...from all Washington County, Virginia sources” would be counted against the treatment capacity purchased by the County.¹³⁰ Based on its interpretation of the latter provision, Bristol has asserted that all effluent emanating from the unincorporated territory adjacent to the City, regardless of whether those connections are served by municipal or WCSA collection lines, is to be counted against the County’s allocation in the regional treatment plant.¹³¹ In response, Washington County has contended that viewed in the proper context, the sewer contract provides that only wastewater collected by WCSA lines adjacent to the City is to be attributed to the County’s purchased share in the regional facility.¹³² While a court may ultimately be required to interpret the 1993 wastewater contract between Bristol and Washington County, the Commission is obliged

¹²⁸**County’s Supplemental Response**, p.12.

¹²⁹**City Response**, Vol. I, Tab 10, Sec. 1. While the collector line would be owned and maintained by Bristol, the County contributed approximately \$998,000 to the City for the construction of that sewer line. Further, Bristol agreed to waive for ten years the higher monthly user fee imposed on non-residents who may connect to the City’s collection line. (**Ibid.**, Secs. 3, 4.)

¹³⁰**Ibid.**, Sec. 2.

¹³¹**Ibid.**, p. 11.

¹³²**County’s Supplemental Response**, pp. 13-14.

to note that the resolution of the issue has a fundamental impact upon the capacity of the County to address the prospective sewer needs of the areas proposed for annexation.

With respect to the extension of public sewerage to the areas proposed for annexation, the City and the WCSA adhere to a general policy of requiring the developers of new residential subdivisions or new businesses to pay the cost of installing sewer lines from existing public facilities to the boundaries of private property.¹³³ That policy may be waived by the localities, however, where the economic benefit of the proposed development exceeds the cost of the utility extension.¹³⁴ Thus, the cost of public sewer service to the areas proposed for annexation is directly related to the proximity of existing collection lines and appurtenances owned by either the City or the WCSA to those properties.¹³⁵

In terms of the presence of wastewater collection lines to the areas proposed for annexation, the Leonard parcel is served by both WCSA and City sewerage. Located on that tract is a WCSA collector which intersects with Bristol's Sinking Creek interceptor line that traverses the property.¹³⁶ While the extension of WCSA sewerage to the mixed use development planned for the Leonard tract would require the construction of pump

¹³³**City Response**, Vol. I, pp. 78-79; **Property Owners' Reply**, Tab 8; and testimony of Mark Reeter, County Administrator, County of Washington, **Transcript**, p. 646.

¹³⁴**Ibid.** In instances where the new sewer facilities would enhance service to existing utility customers or a new business would result in increased employment opportunities or local-source revenue, the City or County may construct the needed sewage collection lines or reimburse the developer for the cost of such facilities.

¹³⁵Washington County has suggested that in the absence of WCSA sewer, the developments planned for the areas proposed for annexation could be served by septic tanks or package sewage treatment plants. While those facilities may be appropriate in some circumstances, it has been our experience that connection to public sewerage eliminates the potential public health problems resulting from the improper maintenance of on-site sewage disposal systems as well as the ongoing cost of operating such facilities.

¹³⁶**City Response**, Vol. I, p. 14; and **County Map Exhibits**, Tab 9, Map 35. The City's owns a 12-inch collection line that bisects the parcel from north to south, while the 8-inch line owned by the WCSA line is located in the northern portion of the property.

stations and force mains, the City could serve that property through the use of gravity collection lines.¹³⁷ With respect to the other properties proposed for annexation, the WCSA does not own or operate any sewage facilities in the vicinity of those areas. Thus, the developments planned for the remainder of the areas proposed for annexation will require central sewerage service from the City of Bristol. In this regard, we note that the City currently has a sewer line adjacent to the Crown Point tract.¹³⁸ In order to serve the R & J Development, Henard, and Spurgeon properties, however, the City would be required to install a line under Interstate Highway 81 in the vicinity of Exit 1.¹³⁹ Alternatively, sewerage could be extended to those three parcels from an existing collection line owned by Bristol, Tennessee that is located in the Tennessee portion of the Henard property.¹⁴⁰

¹³⁷**City Response**, Vol. I, p. 14; and testimony of Rosenbaum, **Transcript**, p. 205.

¹³⁸**County Map Exhibits**, Tab 7, Map 33. The closest WCSA sewer line to the proposed Crown Point development is approximately one mile away. According to the Crown Point property owner, the WCSA was requested to authorize the City to provide wastewater services to the tract, but the Authority took no action on the request. (**Property Owners' Reply**, Tab 8.)

¹³⁹**City Response**, Vol. I, pp. 14-15.

¹⁴⁰In 1997 the City of Bristol, Tennessee installed a sewer line to serve the portion of the Henard property located in that state. According to the City, an agreement between Bristol, Virginia and Bristol, Tennessee concerning the joint use of certain wastewater facilities could be amended to authorize Bristol, Virginia's use of that existing sewage collection line currently serving the Henard tract. (**City Response**, Vol. I, p. 15.) A representative for Henard Enterprises has stated that the WCSA has authorized the property owner to negotiate directly with the City of Bristol, Tennessee to secure wastewater collection services. (Testimony of Martin, **Transcript**, p. p. 185.) Bristol, Tennessee, however, declined to serve directly customers in Virginia because of administrative and legal concerns. (**Ibid**, p. 160; and Haley, communication with staff of Commission on Local Government, Sep. 8, 2004.) It should be noted that if a non-Virginia entity, such as the City of Bristol, Tennessee, serves more than 50 customers in this State, that entity could be subject to regulation by the State Corporation Commission as to rates and levels of service. Moreover, unlike Virginia localities, "foreign" entities cannot exercise the power of eminent domain. (Marc A. Tufaro, Energy Regulation Division, State Corporation Commission, communication with staff of Commission on Local Government, Sep. 30, 2004.)

In sum, while the areas proposed for annexation do not have an existing need for central sewerage, the density of development planned for those properties will require such in the future. Since the only central sewage collection system in close proximity to the areas proposed for annexation with the wastewater treatment capacity to serve those properties is operated by Bristol, the City, in our judgment, is the appropriate entity to meet the sewerage needs of those areas. Moreover, by supporting the property-owners' annexation request, the City has indicated its willingness and ability to provide sewer service to areas annexed.

Water Supply and Distribution

The City of Bristol owns and operates a 10.0 MGD water treatment plant, which obtains its raw water from the South Holston Lake in southern Washington County.¹⁴¹ Bristol's water distribution system consists of approximately 109 miles of water lines, principally within the City's present borders.¹⁴² Currently, Bristol serves approximately 7,900 connections, which consumes an average of 3.67 MGD.¹⁴³ Thus, approximately 63.3% of the capacity in the City's water treatment plant is uncommitted and available to serve the prospective need for water in the areas proposed for annexation.

The Washington County Service Authority has available five potable water sources capable of supplying 6.3 MGD.¹⁴⁴ In addition, the WCSA water system is interconnected so that difficulty with one source need not interrupt supply to any area of the County. Since connections to the WCSA system currently consume only 3.0 MGD, the system has an unused reserve capacity of 3.3 MGD.¹⁴⁵ In terms of storage, the

¹⁴¹**City Response**, Vol. I, p. 19.

¹⁴²**Ibid.**, p. 20. In terms of storage, the City has five storage tanks which collectively hold 5.5 million gallons of treated water.

¹⁴³**Ibid.**, p. 19. City water mains serve 22 connections located in the County to the east of Bristol.

¹⁴⁴**County Response**, Tab 8, p. 16. Sources owned by the WCSA include two water treatment plants (7.1 MGD), one well (0.043 MGD), one spring (0.85 MGD), and contractual commitments for water from Bristol and the Town of Saltville.

¹⁴⁵Cranwell, letter to staff of Commission on Local Government, June 15, 2004.

WCSA system has facilities capable of storing 10.5 MG of water, including five facilities, with a collective capacity of 4.7 MG of potable water, located within the Bristol environs.¹⁴⁶

As in the case of sewerage, the ability of the City or the WCSA to serve the areas proposed for annexation is dependent, in part, on the location of existing water mains to those areas.¹⁴⁷ In this regard, we note that the Leonard Farms tract is capable of being served by either WCSA or City water lines.¹⁴⁸ However, since Bristol owns the closest water mains to the Crown Point tract, any need for central water service to that property can be met more efficiently by the City.¹⁴⁹ WCSA water lines are located adjacent to the R & J Development, Henard, and Spurgeon properties proposed for annexation and could serve those tracts.¹⁵⁰ In order for Bristol to serve those parcels, it would be required to

¹⁴⁶**Ibid.**

¹⁴⁷Bristol and the WCSA generally require developers to install water mains to serve proposed residential subdivisions or commercial enterprise. In those instances, however, where the prospective economic benefit that would accrue to the locality exceeds the construction cost of public utilities required to serve the proposed development, the City and County may assume the responsibility for the installation of the needed water lines.

¹⁴⁸The WCSA owns a 6-inch water line located in the northeastern segment of the Leonard tract. In addition, a City water main of similar size is located adjacent to the Bristol portion of that property. (**County Map Exhibits**, Tab 9, Map 35; and **City Response**, Vol. II, Map 16.)

¹⁴⁹While the City has an 8-inch water line located approximately 700 feet from the Crown Point property, the closest WCSA water main to that parcel is approximately 2,000 feet away. (**County Map Exhibits**, Tab 7, Map 33; and **City Response**, Vol. II, Map 14.) It should be noted that the owner of the Crown Point tract requested that the WCSA authorize Bristol to provide potable water to the proposed development, or alternatively, that the Authority fund improvements to the adjacent City water line for improved fire flow. The WCSA did not act on the property owner's first request, and declined to participate financially in the request to upgrade a City water line since the project would only benefit the Crown Point development. (**Property Owners' Reply**, Tab 8.)

¹⁵⁰**County Map Exhibits**, Tab 8, Map 34. The 6-inch WCSA water line along the eastern boundary of the Henard property also terminates in the northeastern portion of the Spurgeon parcel. Further, a 6-inch WCSA water main is located along the eastern border of the R & J Development tract.

install a water line under Interstate Highway 81 or to secure an agreement with Bristol, Tennessee to extend an existing water main located adjacent to the Henard property.¹⁵¹

Although the areas proposed for annexation have no immediate need for central water service, the demand for such service to those properties will increase as the developments planned by the respective landowners go forward. The data suggest that that the WCSA has the capability to address the future public water needs of the Leonard Farms, R & J Development, Henard, and Spurgeon portions of the areas proposed for annexation. The evidence indicates, however, that the City of Bristol would be the appropriate entity to meet the current and prospective need for potable water to serve Crown Point.

Solid Waste Collection and Disposal

The City of Bristol provides its residents with weekly curbside solid waste collection service and extends to its businesses establishments a schedule of collections dependent upon their individual needs.¹⁵² The cost of residential collection service is \$3.00 per month, while the cost of solid waste collection services to business concerns varies according to the frequency and type of collection.¹⁵³ In addition, the seasonal collection of leaves and yard debris from residences is offered at no additional charge.¹⁵⁴ Bristol disposes of its refuse at a new landfill located within the City's current boundaries which has an estimated life of 26 years.¹⁵⁵

¹⁵¹A water line owned by Bristol, Tennessee serves the portion of the Henard property located in that State.

¹⁵²**City Response**, Vol. I, p. 42. Four private companies also provide refuse collection service to businesses in the City.

¹⁵³**Ibid.**

¹⁵⁴**Ibid.** The weekly collection of bulk items is also offered at no additional charge.

¹⁵⁵**Ibid.**, pp. 43-44. The City's solid waste disposal facility, which is in an abandoned limestone quarry, also accepts refuse from 13 other localities.

Washington County does not provide any solid waste collection services to individual residences, but County residents can dispose of their household wastes without charge at one of several County-operated solid waste collection sites located throughout its jurisdiction.¹⁵⁶ County residents and businesses also have the option of contracting directly with private firms for collection services, with the cost of such service determined by the frequency of collection.¹⁵⁷ In terms of disposal, refuse from the County's solid waste collection sites is taken to a central transfer station where it is then transported to a landfill located in Johnson City, Tennessee.¹⁵⁸

At the present time, the areas proposed for annexation have a minimal need for solid waste collection and disposal services. As those areas experience development, however, they will have an increasing need for a higher level of solid waste collection and disposal services such as that offered by the City of Bristol. In our judgment, the provision of regular and inexpensive municipal solid waste collection service does encourage the proper and timely disposal of refuse and contributes to the sanitary quality of an area.

Crime Prevention and Detection

Law enforcement services within the City of Bristol are provided by the City's Police Department, which includes 58 full-time sworn law enforcement personnel.¹⁵⁹ Of that law enforcement staff, 38 officers are assigned patrol duties, which provide the City with one patrol officer for every 456 persons based on 2003 population estimates.¹⁶⁰

¹⁵⁶**County Response**, Tab 8, p. 29. The County does, however, impose a fee for the disposal of building materials, construction debris, and used tires. There are 14 solid waste collection sites located throughout Washington County. The closest County refuse collection stations are located more than two road miles from any of the properties proposed for annexation. (**County Map Exhibits**, Tab 1, Map 1.

¹⁵⁷**County Response**, Tab 8, p. 31; and Cranwell, letter to staff of Commission on Local Government, June 15, 2004.

¹⁵⁸**Ibid.**, p. 29.

¹⁵⁹**City Response**, Vol. I, pp. 26-27. The City's Police Department also employs 21 full-time and 6 part-time support personnel who are not sworn officers.

¹⁶⁰**Ibid.**, pp. 27-28.

In terms of patrol activity, the City is divided into four zones with a minimum of eight patrol officers on duty at all times.¹⁶¹ This assignment patterns provides the City with a geographic intensity of patrol equivalent to one officer for each 0.88 square miles of municipal territory. Further, the City's overall level of patrol staffing permitted it to respond during 2003 to emergency calls for service in an average of slightly over three minutes.¹⁶²

Several other aspects of the City's law enforcement activities should be noted. First, the Bristol Police Department has an active crime prevention program and has assigned a full-time non-sworn employee to oversee that program. The City's crime prevention activities include the neighborhood watch program, presentations on a variety of crime prevention topics, and lectures to schools and civic organizations.¹⁶³ Second, the Police Department has an extensive career development program for its personnel and all officers meet or exceed State-mandated in-service training requirements.¹⁶⁴ Finally, in 2002, the Bristol Police Department was accredited by the Commission on Accreditation for Law Enforcement Agencies.¹⁶⁵ Such an accreditation is international recognition of the effectiveness and efficiency of the City's law enforcement.

¹⁶¹**Ibid.** The City's patrolling activity is divided into three work shifts in order to provide 24-hour coverage, with a lieutenant and two sergeants per shift also on duty with each shift.

¹⁶²**Ibid.**, p. 28

¹⁶³**Ibid.**, p. 32.

¹⁶⁴**Ibid.**, p. 34.

¹⁶⁵**Ibid.**; and Commission on Accreditation for Law Enforcement Agencies, Inc., CALEA Online. (Online) Available: [http:// www.calea.org/agcysearch/agencydisplay.cfm?IDWEB=6233](http://www.calea.org/agcysearch/agencydisplay.cfm?IDWEB=6233) Only 17 other local law enforcement agencies in Virginia have received similar accreditation. The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) is an independent accrediting authority established in 1979 by the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriffs' Association, and the Police Executive Research Forum. The purpose of CALEA's voluntary accreditation program is to improve delivery of law enforcement services by offering a body of best practices, developed by law enforcement practitioners, that recognizes professional achievement.

Law enforcement services in Washington County are the responsibility of the Sheriff's Department. The personnel complement of the Sheriff's Department consists of 90 sworn officers, 23 of whom are assigned regular patrol responsibilities.¹⁶⁶ Based on 2003 population estimates, this level of staffing provides the County with one sworn patrol deputy for each 1,770 residents, exclusive of the population residing in the County's incorporated towns.

For patrol purposes the County has been divided by the Sheriff's Department into patrol districts, with two of those districts encompassing the areas adjacent to the City of Bristol.¹⁶⁷ Patrolling activities in the County are conducted 24-hours per day by two shifts of law enforcement officers comprised of five deputies each.¹⁶⁸ Since the Sheriff's Department has on duty during the period of greatest need a total of seven law enforcement personnel (five deputies, a captain, and a lieutenant), it provides the County with an average geographic intensity of service of one officer per 80.8 square miles of territory. Further, in 2003 that level of service permitted an average response time to calls for service of 14.3 minutes.¹⁶⁹

[Commission on Accreditation for Law Enforcement Agencies, Inc., About CALEA, (Online) Available: <http://www.calea.org/newweb/AboutUs/Aboutus.htm>.]

¹⁶⁶**County Response**, Tab 8, p. 42 and Cranwell, letter to staff of Commission on Local Government, July 16, 2004. In addition, the Sheriff's Department has 17 non-sworn support personnel and 12 auxiliary deputies. The County's law enforcement efforts are also supplemented by a total of 16 officers in the Towns of Abingdon, Damascus, and Glade Springs, as well as 8 officers employed by the Town of Saltville who patrol the portion of that Town located in Washington County. (Virginia Department of State Police, **Crime in Virginia, 2003**, Table VII.)

¹⁶⁷Cranwell, letter to staff of Commission on Local Government, July 16, 2004.

¹⁶⁸The Sheriff's Department patrol operations are comprised of four platoons organized into two shifts to provide 24-hour per day coverage. Each of the two shifts is manned by one five-member platoon. Further, the day shift is also staffed by a captain and a lieutenant, while the night shift is supported by a lieutenant. (**Ibid.**)

¹⁶⁹Cranwell letter to Glass, Apr. 6, 2004.

Several other activities should be noted regarding law enforcement services in Washington County. First, the Sheriff's Department has an organized crime prevention program and has assigned five full-time personnel to administer such activities.¹⁷⁰ The Department's efforts are directed toward neighborhood watch programs, presentations to citizen groups, and anti-drug activities in the schools.¹⁷¹ Second, Washington County has joined with 8 other localities to create a regional jail authority to construct three new regional facilities to serve Southwestern Virginia.¹⁷² Currently, a new regional jail is under construction in the County.¹⁷³ Finally, in recognition of the law enforcement needs in the Bristol environs, the deputy assigned to the area between the City and Abingdon generally patrols along U. S. Highway 11 between Interstate Exit 7 and Exit 10.¹⁷⁴ Further, due to the continued retail development in the Exit 7 commercial area, the County has also agreed to encourage the Sheriff's Department to assign one deputy exclusively to that area in the immediate future.¹⁷⁵

In comparing the adequacy of its law enforcement services to those provided by the City, Washington County has submitted data, drawn from State records, which reveal that in 2002 the rate of criminal incidents within the County is lower than that recorded in

¹⁷⁰The crime prevention activities in the County are conducted by the Sheriff Department's Community Services Bureau.

¹⁷¹**County Response**, Tab 8, p. 44.

¹⁷²**Ibid.**, pp. 46-47. In addition to Washington County, the other localities in the regional jail authority include the Counties of Lee, Scott, Wise, Smyth, Dickenson, Russell, Buchanan, and the City of Norton.

¹⁷³The regional authority is also in the process of constructing two other jail facilities within its service area.

¹⁷⁴Cranwell, letter to staff of Commission on Local Government, July 16, 2004. According to the County, the Sheriff's Department receives more calls for law enforcement services from the area between Interstate Highway 81 Exits 7 and Exit 10 than any other portion of Washington County. It should be noted that the deputy assigned principal patrol responsibility for the U. S. Highway 11 area would also be responsible for providing law enforcement services to any development that would occur on the R & J Development, Henard, and Spurgeon properties.

¹⁷⁵**Ibid.**; and Washington County Board of Supervisors, "Incentive Package Proposal for *The Highlands* Commercial Development," May 20, 2004.

the City, and further, the arrest rate for the Sheriff's Department was higher than that of the City's Police Department.¹⁷⁶ With respect to the County's data, the City has indicated that the information on criminal activity within Bristol for 2002 is incomplete and does not accurately reflect the performance of the Police Department.¹⁷⁷ However, information published in 2003 reveals that the City had a criminal incidence rate of 10,337.20 per 100,000 population, while the similar rate for the unincorporated portion of the County was 4,633.70 per 100,000 population.¹⁷⁸ Further, data from State records indicate that for 2003 the City reported a total of 1,360 arrests for all offenses, while there were 1,963 such arrests recorded from within the portion of the County not covered by municipal law enforcement activities.¹⁷⁹ These data reflect the higher density and greater degree of urbanization within the City.¹⁸⁰

¹⁷⁶**County Supplemental Response**, Table 3-B. It should be noted that arrest figures cannot be compared to criminal incidences since several persons could be arrested for the same offense, or the arrest of one individual may solve several offenses. In addition, since many reports of a crime are unfounded and many crimes unsolved, the number of incidents within a locality would exceed the number of arrests recorded within that jurisdiction. [Captain Michael E. Frank, Criminal Intelligence Division, Virginia State Police, Crime Stats Question. (Online) Available email: lmcmillan@clg.state.va.us from mchapman@vsp.va.us, Mar. 27, 2003.]

¹⁷⁷Testimony of Lieutenant Darrell Milligan, Special Operations Division, Bristol Police Department, **Transcript**, p. 294. According to a representative for the City, there was a computer software problem that prevented accurate information from being transmitted to the Virginia State Police.

¹⁷⁸**Crime in Virginia, 2003**, Table VIII. Criminal activity occurring within those towns located in Washington County that have their own police departments is reported separately. In 1999 the Virginia State Police began using an Incident Based Reporting system for recording criminal activity at the State and local levels. This system requires that extensive data be reported for each crime occurring during a particular criminal incident; formerly, only data concerning the most serious crime occurring during a particular incident was reported. (**Ibid.**, p. 2.)

¹⁷⁹**Ibid.**, Table IX.

¹⁸⁰According to the Virginia State Police, some of the other factors that affect the type and volume of crime within a particular locality include population size, composition, and stability; economic conditions and employment stability; family cohesiveness; and citizen attitudes toward crime and police. (**Crime in Virginia**, p. 3.)

Although the areas proposed for annexation do not have an immediate need for increased law enforcement services, the nature and character of the development proposed for those areas is such that they will, in time, benefit from the more proximate and intensified law enforcement services which can be provided by the City of Bristol.¹⁸¹

Fire Prevention and Protection

Fire prevention and protection services in the City of Bristol are provided by the City's Fire Department which is staffed by 45 full-time paid firefighters who function under the direction of a professional fire chief.¹⁸² The department operates three fire stations geographically spread throughout the City to minimize response times.¹⁸³ The department has available for its fire suppression work two pumpers, a combination aerial ladder and pumper, and other support vehicles.¹⁸⁴ As a result of its staffing levels and dispersion of its facilities, the City's Fire Department has an average response time to fire calls of slightly over 3.25 minutes.¹⁸⁵ Due to the City's overall fire suppression capabilities, residential properties in Bristol have been classified "4" by the Insurance Services Office (ISO) in terms of their exposure to fire loss.¹⁸⁶

¹⁸¹At the present time the only road access for law enforcement services to the Crown Point property is through the City of Bristol.

¹⁸²**City Response**, Vol. I, p. 37. The personnel compliment of the City's Fire Department also includes a Fire Marshal, as well as an Environs Control Officer who is responsible for enforcing the BOCA National Property Maintenance Codes, as well as the City's property maintenance code. (**Ibid.**, pp. 37-38)

¹⁸³**Ibid.**, p. 38; and **City Response**, Vol. II, Map M-23. Bristol plans to relocate its main fire station from its current downtown location to one more central within the City. (**City Comprehensive Plan**, p. 73.)

¹⁸⁴**City Response**, Vol. I, pp. 38, 40.

¹⁸⁵**Ibid.**, pp. 38-39. Response time for all calls for service, including requests for emergency medical services, was 4.5 minutes.

¹⁸⁶**Ibid.**, p. 39. The ISO classification is based on a scale of "1" to "10" for comparison with other public fire protection systems and represents an indication of a system's ability to defend against the major fire which may be expected in any given community. Where protection class "10" is assigned, there is no or minimal protection. Protection class "1" represents a fire protection system of extreme capability. The principal features used by ISO in grading a community's fire system are water supply, fire department, fire communications, and fire safety control. [John L. Bryan and

Several factors regarding the City's fire prevention and protection services should be noted. First, the City's Fire Department also provides emergency medical response to the residents of Bristol. Second, the City has adopted a fire prevention code for the protection of residents and businesses.¹⁸⁷ Third, the department is a State-sponsored hazardous materials response team and responds to incidents throughout the region.¹⁸⁸ Finally, Bristol maintains an active fire prevention program for presentation to the City's schools and other groups.

Washington County provides protection services in the areas adjacent to Bristol by means of two volunteer fire companies, the Washington County Volunteer Fire Department (WCVFD) and the Goodson-Kinderhook Volunteer Fire Department (G-KVFD).¹⁸⁹ The WCVFD, which is located along U. S. Highway 11 approximately 1.5 miles west of the current City boundaries, is comprised of 24 volunteer firefighters supplemented by three full-time paid firefighters.¹⁹⁰ This company operates two pumper trucks, a crash truck, and a brush truck.¹⁹¹ According to County records, the average response time by the WCVFD to fire calls within its first-run service area, which includes

Raymond C. Picard, Managing Fire Services (Washington, DC: International City Management Association, 1979, p. 102.) Only 34 of the 822 fire service providers in Virginia which are rated by the ISO have a fire protection classification of "4" or less. [Insurance Services Office, ISO Mitigation Online, Virginia, Distribution of Communities by PPC Class. (Online) Available: <http://www.isomitiagation.com/ppchart.virginia.html>.]

¹⁸⁷City Response, Vol. I, pp. 38-39.

¹⁸⁸Ibid., p. 38; and City Comprehensive Plan, p. 73. The City receives funds from the Commonwealth to support its regional hazardous materials response team.

¹⁸⁹County Map Exhibits, Tab 1, Map 1. Both volunteer fire departments that serve the Bristol environs also provide emergency medical response. (County Response, Tab 8, pp. 77, 79.)

¹⁹⁰County Response, Tab 8, p. 78. Two of the paid firefighters serve on the day shift, while the other paid employee is present during the overnight hours.

¹⁹¹Ibid., pp. 78-79.

the Leonard and Crown Point properties, averages 3.7 minutes.¹⁹² The Department's fire suppression capabilities are such that properties located within five road-miles of the WCVFD facility and within 1,000 feet of a WCSA fire hydrant are classified "6" by the ISO in terms of their exposure to fire loss, while other properties more distant from the Company's station are rated a "9" or higher by that organization.¹⁹³

The R & J Development, Henard, and Spurgeon properties proposed for annexation are located within the first-run service area of the G-KVFD. That Department is located near the intersection of State Routes 633 and 640 approximately three miles north of the City's corporate limits and slightly over five road-miles from the R & J Development tract. The G-KVFD, which is staffed by 34 volunteers and one full-time paid firefighter, operates four pumpers, a tanker, a crash truck, and 2 brush trucks.¹⁹⁴ Data provided by the County indicate that the Department's average response time to all calls for service was 10.25 minutes.¹⁹⁵ The fire suppression capabilities of the G-KVFD have resulted in an ISO classification of "7" for properties located within five road miles of its facility and within 1,000 feet of a fire hydrant.¹⁹⁶ Other properties more distant from a fire hydrant have a higher ISO classification.¹⁹⁷

¹⁹²**Ibid.**, p. 78. As is the case with law enforcement service, access to the Crown Point property for emergency fire and rescue vehicles is only available through City streets. According to a representative for Bristol, the closest City fire station to the Leonard and Crown Point parcels is located approximately 2.5 road-miles away. (Testimony of Walter C. Ford, Fire Chief, City of Bristol, **Transcript**, pp. 275-276.)

¹⁹³**City Response**, Vol. I, p. 40. A business or residence located over five road-miles from a fire station is generally assigned a fire protection classification of "10".

¹⁹⁴**County Response**, Tab 8, pp. 79-80. Currently, at least one firefighter staffs the G-KVFD 20 hours per day.

¹⁹⁵**Ibid.**, p. 80. The G-KVFD has the largest geographic service area of any of the volunteer fire companies in Washington County. Data for response times for calls for service include those for emergency medical services. Information provided by a Bristol representative indicate that the R & J Development, Henard, and Spurgeon properties are located only approximately 2.5 road-miles from a City fire station. (Testimony of Ford, **Transcript**, p. 274.)

¹⁹⁶**City Response**, Vol. I, p. 40.

¹⁹⁷Depending on the distance to a nearby fire hydrant or the G-KVFD fire station, properties may receive a fire protection classification of either "9" or "10".

Several other facets of the County's fire services require comment. First, Washington County financially supports the work for the volunteer fire departments by providing grants to purchase emergency vehicles on a regular basis.¹⁹⁸ Second, although the County exercises no formal control over the volunteer fire departments, it has established a committee to coordinate certain activities of those units.¹⁹⁹ Finally, there is no indication that the County has adopted a fire prevention code which can be enforced for the prevention and elimination of fire hazards.

Although there is no immediate need for additional fire prevention and protection services to serve the areas proposed for annexation, the development of those areas will be accompanied by an increased demand for the level of fire services provided by the City of Bristol. Indeed, the superior fire response times of Bristol's Fire Department, as well as the shorter distance to City fire stations, lower ISO classification, and the City's adoption of a fire prevention code, will enhance the public safety of those areas as they develop.

Street Maintenance

Currently all of the public roads in Washington County are maintained by the Department of Transportation (VDOT) in accordance with State-prescribed policies. The City of Bristol, unlike the County, is responsible for the construction and maintenance of its public thoroughfares. While the City receives State assistance to support that activity,

¹⁹⁸**County Response**, Tab 8, pp. 75-76. Washington County's policy calls for funds to be provided to the volunteer fire companies and emergency rescue squads serving County residents to replace equipment and vehicles on a 10-year rotational basis. Further, the County may also provide additional financial assistance to the volunteer fire units. Finally, volunteers serving with one of the County's emergency response units receive a free automobile license decal and are subject to a reduced personal property tax rate.

¹⁹⁹**Ibid.**, p. 76. The County's Emergency Services Committee, which is composed of two members of the Board of Supervisors, the presidents of the Firefighter's Association and the Emergency Volunteers Association, and the County Emergency Services Coordinator, coordinates requests for financial assistance from the County and discusses general issues affecting emergency services in the County.

it regularly appropriates local funds to augment the State's contribution. The City has reported expending approximately \$166,000 in local funds during FY2002-03 to improve and maintain the approximately 263 lane-miles of local roadway within its corporate boundaries.²⁰⁰ In our judgment, the City's ability to plan and conduct the maintenance of its public streets with its own personnel and equipment, and its willingness to expend local funds in the maintenance of its public thoroughfares, will be of benefit to the properties proposed for annexation.²⁰¹

Summary of Service Considerations

In the preceding sections of this report the Commission has endeavored to analyze the existing and prospective urban service needs of the areas proposed for annexation and the relative ability of the City and Washington County to meet those needs. In this instance, due to their predominantly undeveloped nature, the Commission finds no evidence of any current unmet service needs in those areas. We note, however, that the areas proposed for annexation will experience significant development in the near future and increasingly require the provision of urban services. Further, Bristol has indicated its willingness to extend urban services to the areas proposed for annexation as needed, and further, the data indicate that the annexation of those areas will not place a financial burden on the City. The Commission acknowledges that the uncertain scope and nature of the development planned for the areas proposed for annexation render it impossible to determine with certainty the timing for intensification of services to those areas. Based upon our experience in local government administration and operation, we find that the City of Bristol can appropriately meet the public service needs of the areas proposed for annexation.

²⁰⁰ **City Response**, Vol. I, p. 52.

²⁰¹ It should be noted, however, that the plans for the Virginia portion of the Leonard parcel call for the development of residential areas with controlled access, which will likely not be served by public roadways. (Testimony of Nowak, **Transcript**, p. 76.)

COMPLIANCE WITH APPLICABLE STATE POLICIES

Another of the factors prescribed for consideration in annexation issues is the extent to which the affected jurisdictions have made efforts to comply with applicable State policies promulgated by the General Assembly. In our judgment, there are only three policy areas of relevance in these annexation issues which merit consideration. The following sections of this report review those State policies.

Public Planning

The Code of Virginia requires localities to establish a planning commission and to adopt a comprehensive plan and subdivision regulations to guide their development.²⁰² Consistent with these statutory requirements, the City of Bristol and Washington County have established planning commissions and have adopted such development control instruments.²⁰³ In addition, each jurisdiction has adopted a zoning ordinance which enhances its ability to regulate its future development.²⁰⁴ In our judgment, both the City and the County have taken the required steps to comply with the State's concern for public planning.

Public Housing

By various statutory provisions the General Assembly has recognized that proper housing for the State's residents is a matter of "grave concern to the Commonwealth."²⁰⁵ The Commission notes that, consistent with this fundamental State concern, the City and the County, have made notable efforts to attend to this basic need of their residents. The record discloses that the City has adopted a fire prevention code and a housing maintenance code to improve its housing stock. Further, the City established a redevelopment and housing authority in 1938, and it is actively involved in the promotion

²⁰² See Secs. 15.2-2210, 15.2-2233, and 15.2-2240, Code of Va.

²⁰³ **City Response**, Vol. I, pp. 54-55; and **County Response**, Tab 8, pp. 35-36.

²⁰⁴ **Ibid.**

²⁰⁵ Sec. 36-2, Code of Va.

and administration of a variety of housing programs.²⁰⁶ Bristol's housing authority owns and administers 399 units of public housing located in various sites through the City. The authority is also involved in the direct administration of the U. S. Department of Housing and Urban Development's (HUD) Section 8 Housing Choice Voucher Program.²⁰⁷

The evidence also suggests that Washington County is cognizant of the housing needs of its residents and has been responsive to those needs. In 1981 the County established a HUD Section 8 Housing Voucher Program, and presently there are 91 such assisted housing units within its jurisdiction.²⁰⁸ Further, the County has supported the efforts of People Incorporated, a non-profit community action agency that serves portions of Southwestern Virginia, to develop a Homeless Intervention Program that currently supports 23 transitional housing assistance units.²⁰⁹ Moreover, the County received a grant from the Virginia Department of Housing and Community Development to develop a subdivision with affordable housing units.²¹⁰ The efforts on the part of both jurisdictions to address directly the housing needs of their low and moderate income residents are to be commended.

Education

By both constitutional provision and general law the State of Virginia has declared that public education is a fundamental concern of the Commonwealth.²¹¹ These various legal provisions prescribe a set of minimum standards for public education

²⁰⁶ **City Response**, Vol. I, p. 72. Bristol was the second jurisdiction in the State to establish a redevelopment and housing authority.

²⁰⁷ **Ibid.**

²⁰⁸ Cranwell, letter to staff of Commission on Local Government, July 7, 2004.

²⁰⁹ **Ibid.**; and Cranwell, letter to staff of Commission on Local Government, July 8, 2004.

²¹⁰ Cranwell, letter to staff of Commission on Local Government, July 8, 2004; and William C. Shelton, Director, Virginia Department of Housing and Community Development, letter to Joe W. Derting, Chairman, Washington County Board of Supervisors, Apr. 19, 2001.

²¹¹ Article VIII, Sec. 1, Constitution of Virginia.

which must be met by each local school division in the Commonwealth. The Commission's research indicates that the educational programs of both the City of Bristol and Washington County are in substantial compliance with these currently prescribed standards.²¹²

COMMUNITY OF INTEREST

Another of the factors statutorily prescribed for consideration in annexation issues is the strength of the community of interest which joins areas proposed for annexation to the municipality relative to those interests that unites such areas to the remainder of the county. While the undeveloped nature of the area proposed for annexation in this instance removes from consideration many issues generally relevant in an analysis of the community of interest factor, there are facets of interdependence which merit comment in this case.

With respect to the community of interest between Bristol and the area proposed for annexation, several considerations should be noted. First, any future development of the properties proposed for annexation will depend on the availability of sewer services from the City of Bristol.²¹³ Further, the residential project proposed for the Crown Point parcel will require water services currently available in that area only from the City. Moreover, given the close proximity of the areas proposed for annexation to Bristol's current boundaries, the City would be the logical source of certain other urban-type services, such as law enforcement and fire prevention and protection, to those properties as they develop. In sum, the development proposed for the areas under consideration would give those properties an urban character and service needs which more closely parallel those of the City than those of the outlying portions of Washington County.

²¹² Information on compliance with State educational standards is derived from the accreditation of schools based on the overall achievement of students on Standards of Learning tests in English, mathematics, history/social science, and science; performance of students in meeting the achievement objectives of the No Child Left Behind Act of 2001; and other reports of each school division to the Department of Education.

²¹³ With the exception of the Leonard tract, the only source of centralized sewage collection and treatment to the four remaining parcels proposed for annexation is either directly from Bristol, Virginia or through that City's agreement with Bristol, Tennessee.

Second, the contiguity of certain portions of the area proposed for annexation establishes a degree of physical interdependence which contributes to a community of interest. Portions of both the Leonard Farms and Crown Point extend into the City. Further, the only existing vehicular access to the Crown Point property is gained via City streets. Moreover, the R & J Development, Henard, and Spurgeon properties are located adjacent to two of the principal “gateways” to the City, Interstate Highway 81 and U. S. Highways 58 and 421. The quality and nature of the development along those thoroughfares is of considerable significance to Bristol and the future development of those areas will affect the City’s viability.

Third, the development of the area proposed for annexation also will create additional economic and social ties between those properties and Bristol. The City is a major focal point in the economic life of southwestern Washington County, and businesses located within Bristol provide wholesale and retail services to the general area.²¹⁴ Further, Bristol is the location of certain public facilities (e.g., library and parks) which will be utilized by prospective residents of the area proposed for annexation.²¹⁵ It is reasonable to conclude that as those areas develop, the residents and businesses of those properties will utilize the commercial, public, religious, and social facilities within Bristol. In brief, geographic considerations, municipal facilities, and growing economic and social ties can be expected to establish a significant community of interest between the City and the area proposed for annexation.

ARBITRARY REFUSAL TO COOPERATE

Another factor prescribed for consideration in annexation cases is the issue of whether a locality has arbitrarily refused to cooperate in the joint provision of public services. The intent of this provision is to promote interlocal cooperation where such can

²¹⁴Major retail operations within the City include the Bristol Mall and the businesses located at Exit 7 of Interstate Highway 81.

²¹⁵The Commission notes that the City’s library and parks and recreation facilities are currently open to all residents of the general area.

be of mutual benefit to jurisdictions and residents. Having recognized that the Commonwealth's annexation laws have in the past inadvertently impeded interlocal cooperation, the incorporation of this provision into the law in 1979 manifests the legislature's intent to remove such barriers and to give strong impetus to collaboration among units of local government.

In this case the Commission has no knowledge of any action by either party which it would consider to be an arbitrary refusal to cooperate. Indeed, the Commission notes an extraordinary degree of cooperation between the City of Bristol and Washington County in the provision of services to their residents. This cooperation extends into such general areas of public responsibility as water supply, sewage treatment, regional planning, youth detention facilities, libraries, parks and recreation, and mutual aid agreements for law enforcement and fire protection. Such cooperation should be nurtured and expanded and not jeopardized by boundary change issues.

IMPACT ON AGRICULTURAL OPERATIONS

In 1999 the General Assembly amended the State's boundary change laws to require consideration of the impact of annexation on agricultural operations in the areas proposed to be incorporated into a municipality. In the issue currently before this Commission, however, any agricultural operations in the areas proposed for annexation to the City are being conducted on property that will experience development in the near future. Further, the five landowners have declared their intention to develop their respective properties for residential, commercial, or industrial purposes as soon as central water and sewerage are available. Moreover, as noted previously, all but one of the tracts have been zoned by the County for non-agricultural purposes. Thus, the development plans for those areas will result in the termination of any farming activities and will give those properties an urban character similar to that of Bristol. In our judgment, there will be minimal impact on agricultural operations in the territory proposed for incorporation into the City of Bristol.

INTEREST OF THE STATE

Another of the factors prescribed by the Code of Virginia for consideration in annexation issues is the prospective impact of the proposed annexation on the “best interest of the Commonwealth in promoting strong and viable units of government.”²¹⁶ In the judgment of this Commission, the preservation and promotion of the viability of Virginia’s local governments is the State’s paramount concern in such issues. As previous sections of this report have indicated, Bristol is one of the Commonwealth’s most fiscally stressed cities. Further, the territory proposed for annexation into Bristol by the five property owners will be the location of future residential, commercial, or industrial development which will ultimately provide the City with additional local tax resources, land for growth, and sources of civic leadership. Moreover, the proposed annexation will not have any major adverse effect upon the revenue receipts of Washington County, and in no way threatens the future viability of the County. In sum, the Commission finds that the proposed annexation is consistent with the interests of the Commonwealth in promoting strong and viable units of local government.

FINDINGS AND RECOMMENDATIONS

AREAS RECOMMENDED FOR ANNEXATION

The Leonard L. P., Henard Enterprises, Inc., J. H. Spurgeon, R & J Development Co., LLC, and Crown Point Developments, Inc. have initiated these proceedings for the collective annexation of 695.8 acres (1.1 square miles) of essentially uninhabited territory in Washington County to the City of Bristol. Based upon our extensive analysis of the numerous considerations reviewed in the previous sections of this report and the factors statutorily prescribed for review in annexation issues, the Commission recommends that the court approve the annexations proposed by Henard Enterprises, Inc., J. H. Spurgeon, R & J Development Co., LLC, and Crown Point Developments, Inc. The recommended annexation would transfer to the City of Bristol 0.09% of the County’s total land area and 0.04% of its total real property assessable. In our judgment, the annexation would protect the long-term viability of the City and extend to those properties needed public services, while resulting in only a minimal impact on Washington County.

²¹⁶ Sec. 15.2-3209, Code of Va.

Although the Commission's recommendation regarding the award rests upon the aggregate of the analysis presented previously, there are several summary statements that merit inclusion here. First, although the areas recommended for annexation are vacant and without need for any municipal services at the present time, each of properties will be subjected to development in the near future. As noted in a previous section of this report, Washington County's comprehensive plan identifies all of the properties as areas in which future residential, commercial, or industrial growth should occur, and the County has zoned all but the R & J Development parcel for intensive development. Second, the areas recommended for annexation will need centralized sewerage service which could be more appropriately provided by City facilities or by agreement between Bristol Virginia and Bristol, Tennessee. Third, the development of the areas recommended for annexation will substantially urbanize those properties and give them a greater affinity with Bristol. Fourth, as noted in a previous section of this report the Commission has concluded that the City does have a need for additional property for future industrial development. Portions of the areas recommended for annexation will provide Bristol with vacant land suitable for light industrial development which will enable the City to share fully in the growth of its general area. Finally, the data reveal that the residents of Bristol currently bear a comparatively heavy local tax burden. While the annexation recommended herein does not carry with it fiscal assets that will immediately ameliorate Bristol's current fiscal condition, the prospective development of those properties lying adjacent to the City will, doubtless, have an influence on the future viability of that jurisdiction.

With respect to specific properties in the areas recommended for annexation, it is our judgment that the residential, commercial, and industrial development proposed for the R & J Development, Henard, and Spurgeon properties should occur with public water and sewer service. Although there are water mains owned by the WCSA adjacent to each of the three parcels, the closest WCSA sewage collection lines are located several miles away, and there is no evidence to indicate that the County or the WCSA plan to extend

sewerage to areas west of the City for the foreseeable future.²¹⁷ Since the needed service cannot be provided by the County, the only source for centralized sewerage to those properties is through the extension of lines owned by Bristol, Virginia or from facilities located adjacent to the Henard tract and owned by Bristol, Tennessee. Although the WCSA had previously authorized representatives for the Henard property to negotiate directly with Bristol, Tennessee for sewer service, that municipality has declined to serve directly property owners located in Virginia for legal and administrative reasons. The City of Bristol, Virginia, however, currently has a contractual arrangement with the Bristol, Tennessee for the joint use of certain sewage collection lines, and, if the annexation is granted, it would seek to amend that contract to enable wastewater emanating from the R & J Development, Henard, and Spurgeon properties to be treated by the regional treatment facility.

In terms of the Crown Point property recommended for annexation, the nature of residential development proposed for that tract will also require central water and sewer services. We note that the WCSA has a water main approximately 2,000 feet from Crown Point, but the closest WCSA sewage collection line that is available to serve the property is located over a mile away. While the owner and developer of the Crown Point tract has received permission to connect to the WCSA facilities at his own expense, the most economic and efficient way to furnish the needed service to the Crown Point parcel is from water and sewer lines owned by the City that are located immediately adjacent to the property. Despite Bristol's willingness to provide water and sewer service to the proposed Crown Point development, the WCSA has officially decline to authorize such. In our judgment, Bristol is the appropriate entity to address these public utility concerns and recommend the annexation of the Crown Point property to the City.²¹⁸

²¹⁷Testimony of Martin, **Transcript**, p. 151.

²¹⁸ The Commission has noted the contention by Washington County that the annexation of the Crown Point tract would result in all or part of five residential lots being surrounded by the enlarged City and isolated from the remainder of the County. (Testimony of Garland Page, Consultant, County of Washington, **Transcript**, pp. 605, 629-630.) The data indicate, however, that at the present time access to those lots is only available through the City. Further, the jurisdiction of four of the five parcels is currently divided between Bristol and the County, and any public services provided to the

To be sure, this proposed annexation differs from most others reviewed by this Commission during the preceding decade in two major aspects. First, five property owners have requested to be annexed into the City of Bristol, and each has indicated their intention to commence the development of their respective parcels if central water and sewer service is available. Second, the properties that were proposed for annexation to the City are virtually devoid of development and without current need for urban services. Accordingly, it is necessary for this Commission and the reviewing court to take cognizance not only of the wishes of the property owners and current conditions, but to give reasonable consideration to prospective events. In this instance, there is evidence to indicate that the properties in the area recommended for annexation will be focal points of development in the near future. In these circumstances, the recommended annexation is, in our view, appropriate, and we recommend the court's approval.

In regard to the omission of the Leonard property from the recommended award, this Commission is aware that the mixed use development proposed for that parcel would also require central water and sewer service. The evidence indicates, however, that the WCSA owns a water main and a collector that are capable of serving the Leonard tract. Further, the incorporation of the Leonard property, and its subsequent development for residential and neighborhood commercial purposes, is not likely to address the City's need for additional fiscal resources. Therefore, we find no compelling basis for proposing the incorporation of the Leonard parcel into the City of Bristol at this time.

FINANCIAL SETTLEMENT PROVISIONS

The special court is given broad authority in balancing the equities in an annexation case. Based upon the size and nature of the area awarded to a city, the court is empowered to require equitable adjustments (1) relative to a county's indebtedness, (2)

properties would have to be provided by the City. (**Property Owners' Reply**, Tab 7.) Moreover, the special court has previously approved annexations by the Town of Farmville in Prince Edward County and the Town of Hillsville in Carroll County that resulted in unincorporated county territory being completely surrounded by the expanded boundaries of the two towns.

relative to county-owned improvements affected by the annexation, and (3) with respect to a county's prospective loss of net tax revenue during the years immediately following an annexation. In anticipation of the court's addressing these issues, the City of Bristol and Washington County have submitted a limited amount of financial data relative to these concerns for the Commission's review and comment. The following sections of this report address these issues to the extent possible based upon the available information.

Assumption of Debt by the City

The Code of Virginia authorizes an annexation court to require a city to assume "a just proportion of any existing debt of the county" at the time of the annexation in recognition of the fact that annexation may impair the county's ability to retire such indebtedness.²¹⁹ Over the years annexation courts have generally required a city to assume a portion of the county's outstanding indebtedness equal to the percentage of the county's total property assessments which were to be annexed or, with lesser frequency, the percentage of its real estate assessments to be annexed. In prior annexation issues reviewed by this Commission, we have recommended that the court direct a city's assumption of a portion of a county's indebtedness equal to the percentage of the county's total tax collections derived from within an area recommended for annexation. The basis for our recommendation was in recognition of the growing significance of non-property taxes (e.g., sales taxes) to counties. In this instance, however, the areas recommended for annexation to Bristol are vacant and undeveloped at the present time. Therefore, almost all of the local tax revenue received by the County is derived from property taxes, principally real estate.

With regard to the five parcels requesting to be annexed into Bristol, the City has proposed to assume a portion of the County's long-term debt based on a percentage of the County's total assessed property values within the area proposed for annexation, using the most recent property assessment data at the time of the proceedings before the special

²¹⁹Sec. 15.2-3211, Code of Va.

court.²²⁰ The City, however, does not propose a percentage of the County's indebtedness that it would assume. Washington County also has proposed that Bristol be required to assume a percentage of the County's debt equivalent to the percentage of the assessed real estate values annexed by the City.²²¹ While the Commission does not have available data which would permit it to propose a specific debt assumption percentage based upon our recommendation in the annexation matter under review, in this instance we concur with the methodology suggested herein by the City and County.

Compensation for County-Owned Public Improvements

To our knowledge, there are no County-owned and maintained facilities in any of the areas recommended for annexation. Nor would the proposed annexation affect any of the utility lines or appurtenances owned by the WCSA. This issue, therefore, is not relevant in this case.

Compensation for the Prospective Loss of Net Tax Revenue

The third component of the financial settlement provisions applicable to city annexation issues is that authorizing compensation to a county for its prospective loss of net tax revenue (LNTR) stemming from the annexation of its taxable values. The Virginia Supreme Court has ruled that a county's LNTR for a particular year is the difference between its loss of local tax revenue and "the amount of budgetary expenditures annexation saves" that locality.²²² At the discretion of the court, the city in question may be required to compensate a county for its LNTR for a period of up to five

²²⁰**City Response**, Vol. I, Tab 8, p. 80.

²²¹**County Response**, Tab 6, p.1. According to the County's calculations, and based upon the areas proposed for annexation by the five landowners, that percentage would be 0.0778%. [**County Supplemental Tabular Response**, Table 4-A (Revised).] Based on the County's projected long-term indebtedness as of December 31, 2004 (\$16.0 million) and its estimate of locally assessed value of real estate that would be lost as a consequence of the proposed annexation of the five properties, the County asserts that the City be required to assume responsibility for the retirement of \$12,435 in County debt.

²²²**County of Rockingham v. City of Harrisonburg**, 224 Va. 62, 89.

years after annexation by means of either a single payment or in annual installments over the specified time period.²²³

As this Commission has noted in previous reports, there are inherent difficulties in any attempt to measure with precision a county's prospective loss of net tax revenue for a five-year period. We are cognizant, however, of the General Assembly's intent to grant the reviewing court latitude in assisting a county during a period of transition. With that latitude in mind, this Commission has generally recommended that the court require the city to compensate the affected county for its prospective LNTR by a payment of a sum equivalent to the base-year revenue loss multiplied by a factor of "5" on or before June 30 following the effective date of annexation or, alternatively, by an annual payment adjusted yearly by changes in the implicit price deflator for state and local government purchases of goods and services, as that statistic is reported by the Bureau of Economic Analysis of the U. S. Department of Commerce.²²⁴

Washington County has estimated that its loss of local tax revenue as a result of the annexation of the five properties by the City of Bristol would collectively be \$4,700.²²⁵ That amount would be reduced, however, by our recommendation that the Leonard property not be incorporated into Bristol, as well as by the portion of the County's outstanding debt that the City would assume. Given the current nature and size of the properties involved, there would be no expenditure savings to the County as a result of annexation. While the data are not presently available for this Commission to recommend a base-year LNTR, we concur with Washington County's request that the

²²³Sec. 15.2-3211, Code of Va.

²²⁴The implicit price deflator reflects changes in the cost of goods and services to state and local governments throughout the nation. The cost of such goods and services is both a major determinant of expenditure levels and a factor which conditions revenue needs and tax rates. The implicit price deflator series is published annually and extended in the Survey of Current Business, a monthly bulletin published by the Bureau of Economic Analysis of the U. S. Department of Commerce. (See <http://www.bea.gov/bea/pubs.htm>.)

²²⁵**County Supplemental Response**, Table 4-B (Revised).

City compensate the County for its five-year LNTR in a single payment rather than in annual payments.

CONCLUDING COMMENT

In the previous sections of this report the Commission has reviewed, based upon the statutorily prescribed criteria, an annexation proposed by five landowners seeking to have their property located in Washington County annexed into the City of Bristol. As a consequence of that review, we have recommended that the City be awarded an area which includes four of the five properties. We consider it important, however, to observe that Bristol and Washington County have collaborated in recent years on a number of public concerns, including the provision of water and sewerage, industrial and commercial development, and the expansion of the City's boundaries. Similarly, we believe that the issues raised by the current annexation proposal can also be addressed through negotiation. Accordingly, this Commission strongly encourages the City of Bristol and Washington County to explore vigorously solutions to their intergovernmental concerns, thus enabling their continued cooperation. To that end, the Commission is prepared to assist the two jurisdictions in every way possible.

Respectfully submitted,

Harold H. Bannister, Jr., Vice Chairman

James J. Heston

Geline B. Williams

DISSENTING STATEMENT

JOHN G. KINES, Jr.

The issue before the Commission on Local Government, known as the Leonard L. P., Henard Enterprises, Inc., J. H. Spurgeon, R & J Development Co., LLC, and Crown Point Developments, Inc. vs. the City of Bristol and the County of Washington, is unlike any other case that has come before this body in over a decade. Also, it differs from most of the city and county annexation actions that have been reviewed by Virginia's courts. While city-initiated annexations have been barred since 1987, voters or property owners are authorized to seek to have their property annexed to an adjacent city. Even though landowners can initiate such actions, this Commission and the special court are required to review the requests in accordance with the statutory standards found in Section 15.2-3209 of the Code of Virginia. After a careful review of the evidence presented to this Commission, I find that the landowner-initiated action filed by the five property owners in Washington County does not meet the statutory standard for annexation to the City of Bristol.

As noted in a previous section of this report, the majority concurred in the finding that the Leonard property did not meet the standard for annexation. It is my opinion, however, that the same finding should be made with respect to the remaining four properties and that annexation should be denied for those parcels. The following sections set forth the reasons why I believe the other properties do not qualify for annexation when judged according to the statutory requirements.

First, there is no data to indicate that the areas proposed for annexation have a need for urban services as described in Section 15.2-3209(1) of the Code of Virginia. In my judgment, it is not appropriate to base the need for annexation on unknown levels of urban services. Beyond this fact, the hearings have amply documented that none of the landowners have ever submitted an official request for development with Washington County. If, after presenting such plans, the landowners had been rejected by the County, then a need for urban services could have been established. Further, absent a request for

public services from the property owners, it is not known if the County had the capacity to have met those service needs.

Section 15.2-3209 of the Code of Virginia also requires an examination of the "...current relative level of services provided by the county and the city or town." While the evidence demonstrates that the City provides a higher level of most services, the parcels proposed for annexation are mostly vacant and require few, if any, public services. In addition, if development should occur on any of the parcels in the future, the County can presumably provide the needed water and sewer services. Moreover, the residents of Washington County generally do not require the level of other urban services that the City currently provides its citizens because the County is much less densely developed.

The statutory standards for annexation in the Code of Virginia addresses the efforts by local governments to carry out State policies with respect to environmental protection, public planning, education, and other public policies promulgated by the General Assembly. The evidence clearly indicates that the City and County have both carried out those policies. Further, the annexation statutes also require consideration of the community of interest between the area proposed for annexation and the city as compared with the county. In this instance, all parcels proposed for annexation into Bristol are vacant and no community of interest with the City can be identified for consideration.

I can also find no evidence to indicate that the five properties would qualify for annexation to the City based on the remaining statutory criteria for consideration in the review of such issues. First, neither the City nor the County has arbitrarily refused to cooperate in agreements providing for joint activities. Second, since the current fiscal condition of the City is excellent, it clearly does not need to expand its tax base. Further, due to the undeveloped nature of the areas proposed for annexation, the City would realize little in the way of additional revenue should those properties be annexed. In addition, the residential development proposed for two of the properties seeking

annexation to Bristol could have a negative revenue impact on the City. Third, while the additional revenue from the areas proposed for annexation would not significantly assist the City, the loss of such revenue would also not harm the County. This fact by itself, however, is not sufficient grounds for the approval of the annexation request of the property owners. Fourth, the data indicate that the City has abundant vacant land for future commercial and industrial development. Finally, if the areas proposed for annexation are developed, existing agricultural operations on those tracts will be harmed. Annexation, however, does not mean that development would occur any faster than market conditions will allow. Moreover, the agricultural nature of several of the properties proposed for annexation make them more compatible with the County's planning and zoning than with that of the City.

While a review of the statutory standards does not support any of the proposed annexation requests, there is an added reason to reject the annexation of the Crown Point property. If that property was to be annexed into Bristol, five separate parcels of unincorporated Washington County territory contiguous to Crown Point would be surrounded by the enlarged municipal boundaries. This, in my judgment, would establish an unwise precedent. Existing State and local statutes would prevent Washington County from serving those isolated tracts. In addition, the development of the five parcels would be hampered, and their property values would be significantly reduced since each would be isolated from the jurisdiction of record. Such a situation clearly cannot be ignored when the annexation of the Crown Point property is considered.

In summary, the five parcels proposed for annexation to Bristol, in my view, do not meet the statutory standards to justify a recommendation for incorporation into the City of Bristol. Those vacant parcels do not need urban services, and if they remain within the County's jurisdiction, there is no evidence to indicate that Washington County could not provide the services that would be needed for their future development.

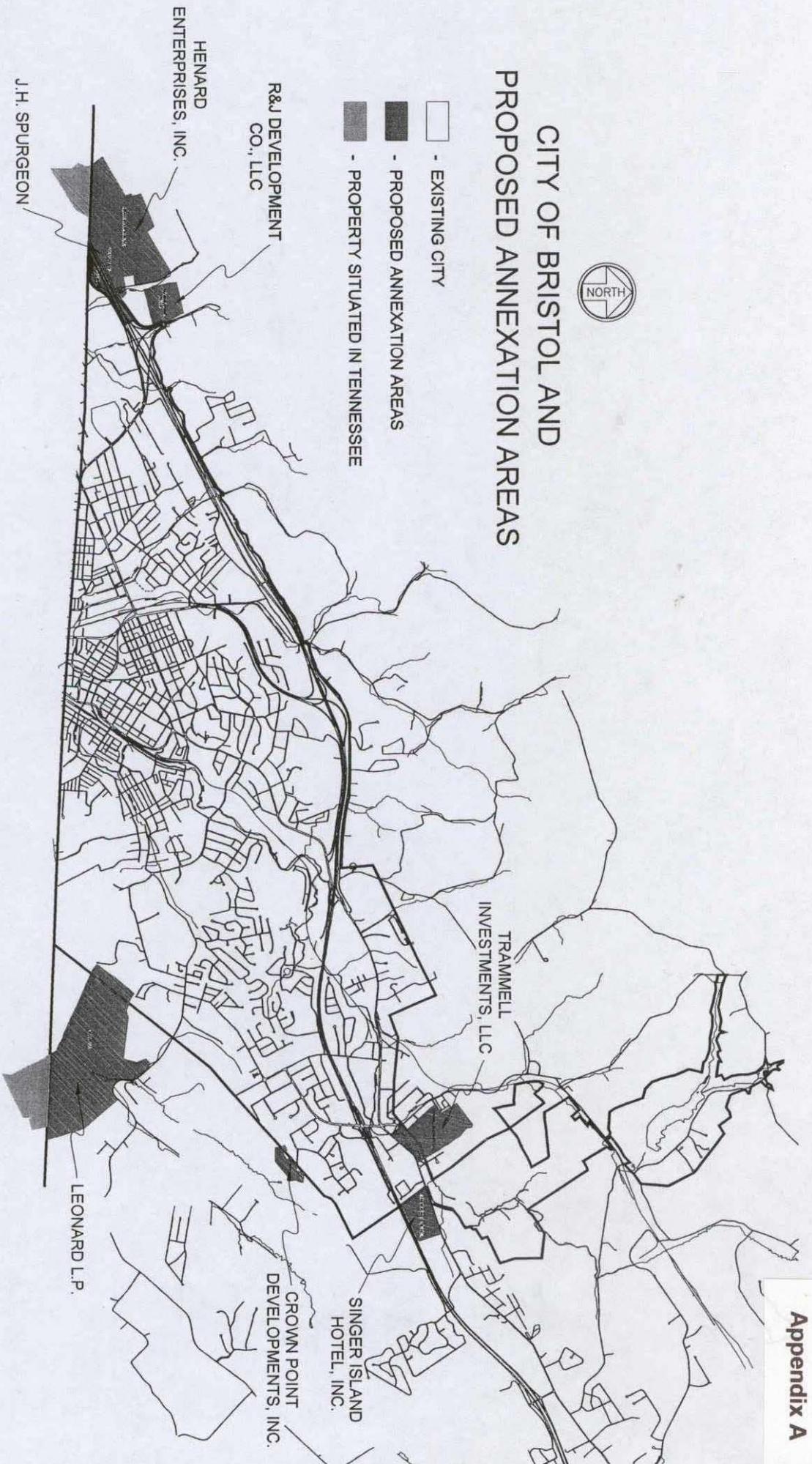
Respectfully submitted,

John G. Kines, Jr., Chairman



CITY OF BRISTOL AND PROPOSED ANNEXATION AREAS

-  - EXISTING CITY
-  - PROPOSED ANNEXATION AREAS
-  - PROPERTY SITUATED IN TENNESSEE



STATISTICAL PROFILE OF THE CITY OF BRISTOL, COUNTY OF WASHINGTON, AND THE AREAS PROPOSED FOR ANNEXATION

| | Areas Proposed for Annexation | | | | | | | |
|-------------------------------|-------------------------------|-------------------------|---------------|-----------------------------------|-----------------------------------|---------------|-----------------------------|-------------|
| | City of Bristol | County of Washington | Leonard, L.P. | Crown Point Developments, Inc. | R & J Development Company, LLC | J.H. Spurgeon | Henard Enterprises, Inc. | Total |
| Population (2000) | 17,367 | 51,103 | 6 | - | - | 2 | - | 8 |
| Land Area (Sq. Mi.) | 13.0 | 563 | 0.55 | 0.02 | 0.07 | 0.06 | 0.32 | 1.08 * |
| Assessed Property Values | \$657,770,301 | \$2,376,454,220 | \$1,180,800 | \$80,400 | \$116,800 | \$176,600 | \$379,400 | \$1,934,000 |
| Real Estate | \$590,454,560 | \$1,776,693,700 | \$1,180,800 | \$80,400 | \$116,800 | \$176,600 | \$379,400 | \$1,934,000 |
| Personal Property | \$36,021,529 | \$344,937,707 | - | - | - | - | - | - |
| Machinery and Tools | \$18,991,826 | \$157,207,670 | - | - | - | - | - | - |
| Public Service Corporation | \$12,302,386 | \$97,615,143 | - | - | - | - | - | - |
| Land Use (Acres) | | | | | | | | |
| Residential | 2,303 | N/A | - | - | - | - | - | - |
| Commercial | 532 | N/A | - | - | - | - | - | - |
| Industrial | 416 | N/A | - | - | - | - | - | - |
| Public and Semi-Public | 1,007 | N/A | - | - | - | - | - | - |
| Vacant, Wooded, Agricultural | 2,872 | N/A | 352.21 | 15.49 | 45.61 | 39.37 | 202.61 | 692.70 * |
| Transportation / Right-of-Way | 1,208 | N/A | - | - | - | - | - | - |

NOTES:

* Total includes 37.41 acres of Interstate Highway 81 right-of-way.

Assessed Property Values for the City of Bristol and Washington County are reported for FY2001; values for the areas proposed for annexation are reported for FY2002.

N/A is Not Available.

SOURCES:

Notice of Property Owners Pursuant to Va Code Ann. §§ 15.2-2907(A) and 15.2-3203(A) of their Intent to Petition for the Annexation of their Properties in Washington County to the City of Bristol. January 13, 2003

City of Bristol's Response to the Property Owners' Notice of Intention to Petition for Annexation. May 10, 2004

Appendix C

Analysis of Tax Exportation

City of Bristol and Washington County

Exhibit A: Unadjusted and Adjusted Revenue Capacity Per Capita Scores for Washington County and Bristol City [1]

Table 1
Revenue Capacity Per Capita by Locality, 2001/2002: Unadjusted Profile [2]

| Locality | Total Potential Revenue, 2001/2002 | Population, 7/1/01 [3] | Unadjusted Revenue Capacity Per Capita, 2001/2002 |
|-------------------|------------------------------------|------------------------|---|
| Washington County | \$51,925,091.82 | 51,100 | \$1,016.15 |
| Bristol City | \$16,822,926.66 | 17,500 | \$961.31 |

Table 2
Revenue Capacity Per Capita by Locality, 2001/2002: Adjusted Profile [4]

| Locality | Total Potential Revenue, 2001/2002 | Population, 7/1/01 [3] | Adjusted Revenue Capacity Per Capita, 2001/2002 |
|-------------------|------------------------------------|------------------------|---|
| Washington County | \$50,627,400.23 | 51,100 | \$990.75 |
| Bristol City | \$15,215,888.55 | 17,500 | \$869.48 |

1

The per capita level of revenue capacity for a specified jurisdiction is the quotient of (a) the locality's total potential revenue (or fiscal capacity) divided by (b) its estimated population on the first day of FY 2002.

2

The unadjusted per capita values can be found in Table 1.2 of Commission on Local Government, Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities: 2001/2002 (April, 2004). These amounts have been generated from potential revenue statistics that reflect an average yield rate of \$0.03017 per dollar of resident income across the 95 counties and 39 cities with respect to their actual tax and non-tax collections from "other local-source instruments." See Exhibit A, as well as the accompanying notes, in the cited report.

3

The population data utilized by the Commission's staff have been drawn from Weldon Cooper Center for Public Service, University of Virginia, "2003 Provisional, 2002 & 2001 Final Estimates" (electronic dataset), February 2, 2004.

4

With regard to the adjusted per capita scores, each locality's potential revenue from "other local-source instruments" has been computed with a slightly reduced statewide average yield rate for actual tax and non-tax receipts per dollar of resident income (i.e., \$0.02866). The latter statistic is based upon audited revenue data that have been modified to exclude the estimated restaurant food and lodging tax payments of non-residents to county and city governments across Virginia. It should also be noted that the potential sales and use tax revenues of Washington County and Bristol City, as reflected in this table, are confined to the estimated proceeds actually derived by the two localities from their respective jurisdictional populations during FY 2002. See Exhibit C for the revenue exportation methodology employed by the Commission's staff.

Exhibit B: Unadjusted and Adjusted Revenue Effort Scores for Washington County and Bristol City [1]

Table 1
Revenue Effort by Locality, 2001/2002: Unadjusted Profile [2]

| Locality | Total Actual Revenue, 2001/2002 | Total Potential Revenue, 2001/2002 | Unadjusted Revenue Effort, 2001/2002 |
|-------------------|---------------------------------|------------------------------------|--------------------------------------|
| Washington County | \$34,300,669.00 | \$51,925,091.82 | 0.6606 |
| Bristol City | \$27,230,684.00 | \$16,822,926.66 | 1.6187 |

Table 2
Revenue Effort by Locality, 2001/2002: Adjusted Profile [3]

| Locality | Total Actual Revenue, 2001/2002 | Total Potential Revenue, 2001/2002 | Adjusted Revenue Effort, 2001/2002 |
|-------------------|---------------------------------|------------------------------------|------------------------------------|
| Washington County | \$34,045,315.00 | \$50,627,400.23 | 0.6725 |
| Bristol City | \$23,717,668.00 | \$15,215,888.55 | 1.5587 |

1

The fiscal effort of a given locality can be obtained through the division of its total actual revenue by the total potential revenue (or fiscal capacity) of that jurisdiction relative to the funding instruments promulgated under its own authority.

2

The unadjusted revenue effort scores are displayed in Table 3.2 of Commission on Local Government, Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities: 2001/2002 (April, 2004).

3

The adjusted fiscal effort statistic for each locality is based upon official revenue data that have been modified to exclude tax collections from non-residents, as estimated in Exhibit C, with respect to general retail sales, restaurant food, and lodging.

Staff, Commission on Local Government

Exhibit C: Revenue Profiles on Selected Tax Dimensions for Washington County and Bristol City

Table 1
Sales and Use Tax Revenue Profile by Locality, FY 2002

| Locality | Total Sales and Use Tax Revenue, FY 2002 [A]/1 | Tax Revenue Exportation Factor [B]/2 | Estimated Sales and Use Tax Revenue from Non-Residents, FY 2002 [A] X [B] | Estimated Sales and Use Tax Revenue from Residents, FY 2002 |
|-------------------|--|--------------------------------------|---|---|
| Washington County | \$4,365,631 | 0.05107613866848 | \$222,980 | \$4,142,651 |
| Bristol City | \$3,282,622 | 0.39161227634218 | \$1,285,515 | \$1,997,107 |

Table 2
Restaurant Food Tax Revenue Profile by Locality, FY 2002

| Locality | Total Restaurant Food Tax Revenue, FY 2002 [A]/1 | Tax Revenue Exportation Factor [B]/3 | Estimated Restaurant Food Tax Revenue from Non-Residents, FY 2002 [A] X [B] | Estimated Restaurant Food Tax Revenue from Residents, FY 2002 |
|-------------------|--|--------------------------------------|---|---|
| Washington County | \$0 | ----- | ----- | ----- |
| Bristol City | \$2,539,838 | 0.73939002743263 | \$1,877,931 | \$661,907 |

Table 3
Transient Occupancy Tax Revenue Profile by Locality, FY 2002

| Locality | Total Transient Occupancy Tax Revenue, FY 2002 [A]/1 | Tax Revenue Exportation Factor [B]/4 | Estimated Transient Occupancy Tax Revenue from Non-Residents, FY 2002 [A] X [B] | Estimated Transient Occupancy Tax Revenue from Residents, FY 2002 |
|-------------------|--|--------------------------------------|---|---|
| Washington County | \$32,374 | 1.00000000000000 | \$32,374 | \$0 |
| Bristol City | \$349,570 | 1.00000000000000 | \$349,570 | \$0 |

1

See Auditor of Public Accounts, [Comparative Report of Local Government Revenues and Expenditures](#), Year Ended June 30, 2002, Exhibit B-2. (It should be noted that the State Auditor reports a consolidated revenue total for the sales and use taxes collected by any given locality. Although the use tax is paid exclusively by the residents of a designated county or city, jurisdictional sales tax receipts cannot be separated from local use tax proceeds within the framework of a revenue exportation exercise.)

2

On the sales and use tax dimension, the revenue exportation rate covering each locality is defined in terms of the non-resident percentage of the total adjusted gross income assigned to the specified jurisdiction by the VA Department of Taxation for calendar year 2001. [Data Source: VA Department of Taxation, "2001 Virginia Adjusted Gross Income and Number of Returns: All Returns and Excluding Nonresidents" (electronic dataset), October 24, 2003.]

3

In the Bristol City case, restaurant food tax revenue from "external" sources has been estimated on the basis of the non-resident percentage of all persons working in the municipality at the time of the 2000 Census. [Data Source: Weldon Cooper Center for Public Service, University of Virginia, "2000 Census of Population & Housing: Journey to Work Flows for Virginia Localities" (electronic dataset), May, 2003.]

4

For estimation purposes, it has been assumed that both localities generated all of their transient occupancy tax revenue from non-residents during FY 2002.