

**Report on the
Carriage Hill of Virginia, Ltd.
and
Otterburn Homes, Inc.
Annexation Actions**



**Commission on Local Government
Commonwealth of Virginia**

September 1991

TABLE OF CONTENTS

PROCEEDINGS OF THE COMMISSION 1

SCOPE OF REVIEW 3

**GENERAL CHARACTERISTICS OF THE CITY, THE COUNTY,
AND THE AREAS PROPOSED FOR ANNEXATION 4**

 City of Bedford 4

 County of Bedford 7

 Areas Proposed for Annexation 9

STANDARDS AND FACTORS FOR ANNEXATION 11

 Need of the City to Expand Tax Resources 11

 Need of the City for Land for Development 13

 Impact on the County 13

 Urban Service Considerations 14

 Compliance with Applicable State Policies 19

 Community of Interest 21

 Arbitrary Refusal to Cooperate 22

FINDINGS AND RECOMMENDATIONS 27

 Area Recommended for Annexation 27

 Financial Settlement Provisions 28

**APPENDIX A Statistical Profile of the City of Bedford, Bedford
 County, and the Areas Proposed for Annexation**

APPENDIX B Bedford City Council Resolution, June 13, 1989

**REPORT ON THE
CARRIAGE HILL OF VIRGINIA, LTD.
AND
OTTERBURN HOMES, INC.
ANNEXATION ACTIONS**

PROCEEDINGS OF THE COMMISSION

On January 17, 1990 the Commission on Local Government received notice from Carriage Hill of Virginia, Ltd., of its intent to file a petition, pursuant to Section 15.1-1034 of the Code of Virginia, for the annexation of 22.75 acres of territory which it owned in Bedford County to the City of Bedford.¹ In accordance with statutory requirements, the petitioner concurrently gave notice of the proposed annexation action to Bedford County and the City of Bedford.² The Commission's initial meeting with representatives of Carriage Hill of Virginia, Ltd. (Carriage Hill) and the affected jurisdictions did not occur until May 7, 1990 due to the legislative responsibilities of counsel for Bedford County.³ Further, the Commission's review of the proposed annexation, scheduled at that meeting for July 1990, was further delayed as a result of a motion filed by the County with the Circuit Court of Bedford County, and subsequently with a special three-judge court appointed pursuant to Section 15.1-1168 of the Code of Virginia, challenging the legality of the annexation action and seeking to enjoin the Commission's

¹"In Re: The Petition by Carriage Hill of Virginia, Ltd., a Virginia corporation for the annexation of 22.75 acres of territory of Bedford County to the City of Bedford, a municipal corporation surrounded by Bedford County, Virginia, pursuant to Section 15.1-1034, Code of Virginia" (hereafter cited as Carriage Hill Notice). Section 15.1-1034 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. Carriage Hill of Virginia, Ltd. (hereinafter cited as Carriage Hill) is the sole owner of real estate in this annexation petition.

²Sec. 15.1-945.7(A), Code of Va.

³In preparation of the pending review, Carriage Hill submitted a supplemental set of materials (hereinafter cited as Carriage Hill Supplemental Exhibits) to the Commission on May 31, 1990. On June 25, 1990, the City of Bedford filed with the Commission its Motion to Intervene and Answer by the City of Bedford and Supporting Data (hereinafter cited as City Annexation Exhibits).

proceedings.⁴ In June 1990 the special three-judge court granted a temporary injunction to stay the Commission's proceedings pending a hearing on the County's pleadings. That temporary injunction was vacated by the court in late November 1990.⁵

On January 14, 1991 the Commission met with representatives of the parties and established a new schedule to review the proposed annexation. The Commission was advised at that meeting that it would receive in the immediate future notice of a second property owner-initiated action proposing the annexation of another parcel of property to the City of Bedford and was requested to undertake a consolidated review of the two proposals. Consistent with that request, and in accordance with the Commission's Rules of Procedure, a consolidated review of the two annexation actions was scheduled to be held following the adjournment of the 1991 legislative session.

As anticipated, on February 18, 1991 the Commission received notice from Otterburn Homes, Inc., advising of the intention of that firm to seek the annexation of 3.998 acres of territory in Bedford County owned by that corporation to the City of Bedford. Copies of that notice were concurrently provided by the property owner to the City of Bedford and Bedford County.⁶

⁴On April 27, 1990, Bedford County filed a bill of complaint and motion for declaratory judgment with the Circuit Court of Bedford County. On June 20, 1990, the Circuit Court determined that it lacked jurisdiction to hear the annexation-related issue, and the County subsequently presented its pleadings to the special three-judge court which granted a temporary injunction on June 29, 1990 staying the Commission's proceedings.

⁵The special court held hearings on the merits of the County's complaint on October 12, 1990, and subsequently terminated the stay on the Commission's proceedings by a decree entered on November 28, 1990.

⁶"In re: The petition by Otterburn Homes, Inc., a Virginia Corporation, for the annexation of 3.998 acres of territory of Bedford County to the City of Bedford, a municipal corporation surrounded by Bedford County, Virginia, pursuant to Section 15.1-1034, Code of Virginia" (hereinafter cited as Otterburn Notice). Consistent with the Commission's Rules of Procedure, the notice was accompanied by data and materials in support of the proposed annexation.

Adhering to the schedule adopted in January, the Commission toured the properties proposed for annexation and other relevant areas and facilities in the City and County on May 29, 1991 and received oral presentations from Carriage Hill, Otterburn Homes, and the City of Bedford on May 30, 1991. Bedford County, however, had previously advised the Commission that in view of the legal issues which it had raised regarding the Carriage Hill annexation initiative it would not participate in the Commission's proceedings.⁷ In addition to the receipt of testimony from the property owners and the City of Bedford, the Commission held a public hearing, advertised in accordance with Section 15.1-945.7(B) of the Code of Virginia, on the evening of May 30, 1991 in the City of Bedford for the receipt of citizen comment. The public hearing was attended by approximately 15 persons but produced testimony from only one individual. In order to permit the receipt of additional public comment, the Commission agreed to keep open its record for written submissions from the public through June 30, 1991.

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 to the affected parties and local governments regarding the issue.⁸ The Commission's report on each proposed action must be based upon, as required by Section 15.1-945.7 (B) of the Code of Virginia, "the criteria and standards established by law" for consideration in such actions.

The criteria and standards prescribed for consideration in annexation issues are set forth in Chapter 25 of Title 15.1 of the Code of Virginia, principally in Section 15.1-1041. That statute directs the

⁷C. Richard Cranwell, Special Counsel, County of Bedford, letter to staff of Commission on Local Government, Apr. 23, 1991.

⁸Sec. 15.1-945.7(A), Code of Va.

reviewing court, and thus the Commission, to determine "the necessity for and expediency of annexation." As a guide in determining such "necessity and expediency," Section 15.1-1041 requires the reviewing entity to consider the "best interests" of the people of the area and the affected jurisdictions 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 operations. 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, THE COUNTY, AND THE AREAS PROPOSED FOR ANNEXATION

CITY OF BEDFORD

The City of Bedford was incorporated as a town in 1912 and became a city of the second class on August 31, 1968.⁹ The City of Bedford, which has experienced no annexations since it became an independent municipality, is one of the Commonwealth's smallest cities, having a land area of only 6.77 square miles.¹⁰ As of 1990, the City of Bedford had a population of 6,073 persons, reflecting a growth in its populace of only

⁹J. Devereux Weeks, Dates of Origin of Virginia Counties and Municipalities (Charlottesville: Institute of Government, University of Virginia, 1967); and Secretary of the Commonwealth, 1990-91 Report of the Secretary of the Commonwealth.

¹⁰Virginia Department of Highways and Transportation, "Area in Square Miles of Virginia's Independent Cities as of December 31, 1980." See Appendix A for a statistical profile of the City of Bedford, the County of Bedford, and the areas proposed for annexation.

1.4% since the 1980 Census, substantially less than that of the State as a whole (15.7%).¹¹ Based upon its decennial census count and its land area, the City currently has a population density of 897 persons per square mile.

With respect to the nature of its populace, various statistical indices indicate that residents of the City are older and have lower incomes than those of the State generally. The median age of residents in the City in 1990 was 39.9 years, significantly higher than the comparable statistic for the State generally (32.6 years).¹² As of that year, the percentage of the City's population aged 65 or older was 24.8%, or more than double that for the State overall (10.7%).¹³ In terms of income, as of 1989 (the latest year for which such data are available) the per capita adjusted gross income (AGI) for the City, based upon all resident returns, was \$9,065, or only 72.6% of the comparable statistic for the State generally (\$12,489).¹⁴

With respect to the City's fiscal condition, data indicate that between 1980 and 1989 the true value of real estate and public service corporation property in the City of Bedford increased from \$129.4 million to \$174.8 million, or by 35.0%, less than one-fourth the rate in the

¹¹U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, Number of Inhabitants, Virginia, Table 2; and 1990 Census of Population, Summary Tape File 1A, Virginia. Bedford's population in 1980 was 5,991 persons.

¹²1990 Census of Population, Summary Tape File 1A, Virginia.

¹³Ibid.

¹⁴Gerard W. Ward, 1989 Virginia AGI: Distribution of Virginia Adjusted Gross Income by Income Class and Locality (Charlottesville: Center for Public Service, University of Virginia, May 1991), Table A2. These per capita AGI statistics have been calculated using unpublished population tables supplied by Dr. Julia H. Martin, Research Director for Demographics, Center for Public Service, University of Virginia, on March 19, 1991. The data supplied by Dr. Martin provided interpolated population data for 1989.

State generally (148.7%).¹⁵ Further, between 1980 and 1990 the City's taxable retail sales increased by 86.8%, appreciably less than that of the State overall (117.9%).¹⁶ Consistent with these data, statistical analysis conducted by this Commission reveals that for the 1988/89 fiscal period, the City could be characterized as an "above average stress" locality.¹⁷

In regard to the City of Bedford's present physical development and prospects for future growth, the data indicate that approximately 41.1% of the municipality's area is devoted to residential usage, 10.1% is utilized for manufacturing activity, 7.8% is engaged in commercial enterprise, 10.7% is committed to public and semi-public purposes, with 30.2% (1,308 acres) remaining vacant.¹⁸ Of this vacant property, however, 79.1% is restricted in its development potential by slopes exceeding 15% or by exposure to flood hazard. Based on these data, the City retains only 273 acres of property (6.3% of its total area) which are vacant and generally suited for development.

In brief, the City of Bedford is a small municipality which has experienced extremely modest demographic and fiscal growth during the past decade, which has a population significantly older and poorer than that of the State generally, and which has only a restricted potential for further development.

¹⁵Virginia Department of Taxation, Virginia Assessment/Sales Ratio Study 1980, Mar. 1982; and 1989 Virginia Assessment/Sales Ratio Study, Mar. 1991. On a per capita basis, true values for real estate and public service corporation property in the City increased during the nine-year period by 33.1%, while those in the State generally grew by 114.9%. (Ibid.)

¹⁶Virginia Department of Taxation, Taxable Sales Annual Report, 1980 and 1990. On a per capita basis, taxable retail sales in Bedford City increased by 83.6% over the decade, compared to an increase of 88.3% for Virginia as a whole.

¹⁷Commission on Local Government, Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, 1988/89, forthcoming.

¹⁸The land use percentages have been calculated from data presented in City of Bedford, Engineering Department, "Comparative Zoning and Vacant Land Analysis - August 1991."

COUNTY OF BEDFORD

The County of Bedford was established in 1754 from territory formerly part of Albemarle and Lunenburg Counties.¹⁹ Between 1980 and 1990 the County's population increased from 34,927 to 45,656 persons, or 30.7%, a rate surpassing that of the City (1.4%) and almost twice that of the State overall (15.7%).²⁰ Based on its 1990 population and its current land area of 763.91 square miles, the County has a population density of 59.8 persons per square mile.²¹

With regard to the nature of the County's populace, data indicate that County residents are, as in the case of the adjoining municipality, older and less affluent than those of the State generally. In 1990 the median age of County residents was 35.7 years, less than that of the City of Bedford (39.9 years) but exceeding that of the State as a whole (32.6 years).²² Further, as of 1990 the percentage of the County's population aged 65 and older was 12.2%, less than half that of the City (24.8%) but somewhat greater than the comparable statistic for the Commonwealth overall (10.7%).²³ In terms of income, the per capita AGI for Bedford County in 1989, based upon all resident returns, was \$11,954, a statistic greater than that of the City (\$9,065) but only 95.7% that of the State as a whole (\$12,489).²⁴

¹⁹Dates of Origin of Virginia Counties and Municipalities.

²⁰1980 Census of Population, Number of Inhabitants, Virginia, Table 2; and 1990 Census of Population, Summary Tape File 1A, Virginia.

²¹Virginia Department of Highways and Transportation, "Area in Square Miles of Virginia's Counties and Incorporated Towns as of December 31, 1980." We note that the area of 763.91 square miles cited in the State publication differs from the area of 770.98 square miles cited in submittals from the City of Bedford. (Carter Glass, IV, Special Counsel, City of Bedford, letter to staff of Commission on Local Government, July 1, 1991.)

²²1990 Census of Population, Summary Tape File 1A, Virginia.

²³Ibid.

²⁴See Supra, Note 14.

With respect to Bedford County's overall fiscal condition, data indicate that between 1980 and 1989 the true value of real estate and public service corporation properties in the County increased from \$839.2 million to \$1,835.6 million, or 118.7%. The County's growth in this principal revenue source was more than three times that of the City (35.0%) but less than that in the State generally (148.7%).²⁵ Further, taxable retail sales in the County between 1980 and 1990 increased by 143.9%, a figure significantly greater than the comparable statistic for the City (86.8%) and even exceeding that for the State overall (117.9%).²⁶ Consistent with the above-cited data, statistical analysis conducted by this Commission on the comparative fiscal condition of Virginia's localities disclose that Bedford County experienced "below average stress" for the 1988/89 fiscal period.²⁷

With respect to the nature of the County's physical development, agricultural and forestal uses occupy approximately 85.0% of Bedford County's land area. Approximately 42.0% of County territory is devoted to farming purposes, 39.0% is forested (exclusive of timberland owned by farmers), 4.0% is held in public land preserves, 4.0% is committed to residential or commercial usage, with an estimated 11.0% of the County's land remaining vacant and not categorized as "farm" and "forest."²⁸ Only

²⁵Virginia Assessment/Sales Ratio Study 1980 and 1989 Virginia Assessment/Sales Ratio Study. Over the same span of time, the County's increase in true values in per capita terms was 74.0%, compared to a Statewide increase of 114.9%.

²⁶Taxable Sales Annual Report, 1980 and 1990. In per capita terms, the County experienced an 86.6% increase in taxable retail sales between 1980-1990, a figure somewhat less than the comparable statistic of 88.3% for the State as a whole. We observe, however, that the County experienced population growth almost double that of the State during the decade, a factor which would tend to deflate the per capita comparison.

²⁷Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, 1988/89, forthcoming.

²⁸Dennis Jones, Peaks of Otter Soil and Water Conservation District, communication with staff of Commission on Local Government, Sep. 5, 1991; and U. S. Department of Commerce, Bureau of the Census, 1987 Census of Agriculture, July 1989, Table 5. Of the land in public preserves, 18,012 acres are located in the Thomas Jefferson National Forest, and 1,978 acres are State or local government-owned. [See Bedford County Planning

a small percentage of the County's land is affected by flood hazard, while its property affected by steep slopes is generally confined to the Jefferson National Forest.²⁹ While definitive data regarding the extent of vacant property suitable for development are not available, Bedford County appears to this Commission to have expansive growth opportunities.

AREAS PROPOSED FOR ANNEXATION

The Carriage Hill property proposed for annexation embraces 22.76 acres of territory adjoining the southwestern boundary of the City of Bedford.³⁰ As of 1990, this property contained 105 persons and an estimated \$1.4 million in real property values subject to local taxation.³¹ Accordingly, the Carriage Hill property encompasses only 0.005% of the County's total area, 0.23% of its current population, and 0.11% of its 1990 assessed real property values. In terms of its current development, the property contains two buildings, both residential facilities for elderly residents, which occupy 1.19 acres.³² The

Commission, Bedford County Comprehensive Plan, 1988, pp. 32-33; and Mark J. Brown, Forest Statistics for Virginia, 1986 (Asheville, NC: Southeastern Forest Experiment Station, Forest Service, U. S. Department of Agriculture).] This Commission observes that, in addition to vacant land, farm and privately-held forest land may be considered potentially available for development.

²⁹Jeff Burdett, Director of Planning and Zoning Administration, County of Bedford, communication with staff of Commission on Local Government, Aug. 28, 1991. Land use statistics for discrete categories of development are not available. The information regarding the location of property affected by steep slopes is found in Bedford County Comprehensive Plan, p. 16.

³⁰Carriage Hill Supplemental Exhibits, Exh. A, indicates that the Carriage Hill property under consideration actually encompasses 22.759 acres of territory in Bedford County.

³¹Glass, letter to staff of Commission on Local Government, July 1, 1991. The entire population of the Carriage Hill tract resides in a retirement facility on the property.

³²The Carriage Hill retirement facility consists of two buildings. The first building is a 35,000 square foot facility which was constructed in two phases. The first phase opened in October 1987 and the second in October 1988. This initial building provides assisted living services to both ambulatory and non-ambulatory residents. A second building, which

Carriage Hill property, which contains no County-owned facilities, has been estimated by the City to generate \$15,841 annually in total revenue for the County.³³

The Otterburn property proposed for annexation constitutes approximately 4.0 acres located adjacent to the westernmost boundary of the City of Bedford.³⁴ Although the owners of the property propose development of a 40-unit apartment complex for low-income elderly persons, the tract is currently undeveloped with an assessed value of \$40,000.³⁵ There are no County-owned improvements on the tract, which is estimated to contribute slightly less than \$250 in tax revenues to the County.³⁶ The Otterburn property represents 0.0008% of the County's land area and approximately 0.003% of total County assessed real property values.³⁷

was opened in September 1990, is a 17,000 square foot facility serving ambulatory residents. [Carriage Hill Supplemental Exhibits, Exh. C; and Testimony of Thomas E. Reynolds, President, Carriage Hill of Virginia, Ltd., Transcript of Proceedings, May 30, 1991, Bedford, Virginia (hereinafter cited as Transcript), p. 62.] Under consideration for future development at Carriage Hill are a small medical facility and independent living facilities. (Ibid., pp. 41-42.)

³³City Annexation Exhibits, p. 67.

³⁴In addition to the area proposed for annexation, a portion of the Otterburn parcel (approximately 0.20 acres) lies within the current boundaries of the City. (Otterburn Notice, Exh. A.)

³⁵Donald M. Rowe, Special Counsel, Otterburn Homes, Inc., letter to staff of Commission on Local Government, Aug. 8, 1991. The assessed value represents the value of the land only.

³⁶The tax liability on the Otterburn property was derived from the application of the County's 1990 effective tax rate of \$0.62/\$100 to the assessed value of \$40,000. Based upon 1990 tax revenues, the Otterburn property contributed an estimated 0.003% of the County's real property tax revenue. [Virginia Auditor of Public Accounts, Comparative Report of Local Government Revenues and Expenditures Year Ended June 30, 1990, Exh. B.; and Albert W. Spengler, 1990 Tax Rates in Virginia's Cities, Counties, and Selected Towns (Charlottesville: Center for Public Service, University of Virginia, Dec. 1990), Appendix A.]

³⁷The County's total real property assessed values of \$1,341 million was provided by the City. (Glass, letter to staff of Commission on Local Government, July 1, 1991.)

Collectively, the two areas proposed for annexation comprise 26.76 acres of land which, as of 1990, encompassed 105 persons and approximately \$1.46 million in assessed property values. Those areas, then, as of 1990 represented 0.006% of the County's total area, 0.23% of its population, and 0.11% of its real property assessables. Further, there are no County facilities located in either of the two areas proposed for annexation to the City of Bedford.

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 interests 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

As noted previously, the City of Bedford did not experience growth in its fiscal resources during the past decade commensurate with that of Bedford County. Between 1980 and 1989 the true value of real estate and public service corporation property in the City increased only 35.0%, while that in the County (118.7%) more than tripled the City's rate.³⁸ In terms of commercial activity, between 1980 and 1990 total taxable retail sales in the City increased by 86.8%, a rate of growth

³⁸Virginia Assessment/Sales Ratio Study 1980; and 1989 Virginia Assessment/Sales Ratio Study. In per capita terms, true values for real estate and public service corporation property in the City increased 33.1%, compared to an increase of 74.0% for the County. (Ibid.)

substantially less than that in the County (143.9%).³⁹ These statistics, coupled with the relatively low income level of City residents, resulted, as previously noted, in the municipality being classified as an "above average stress" locality during the 1988/89 fiscal period.⁴⁰

The City has estimated that the annexation of the Carriage Hill property would yield approximately \$21,782 in additional local revenue during the first year after the annexation.⁴¹ It is difficult to predict with much accuracy the revenue gain during the first year after the annexation of the Otterburn property since it is unknown when the proposed development will be complete. Local revenue derived from the unimproved Otterburn tract, based on the City's 1990 nominal tax rate of \$0.71/\$100 applied to the assessed value of \$40,000, would be \$284. The City has estimated a gain of \$9,526 upon completion of the Otterburn project, based upon a projected assessment of \$1 million for the 40-unit development and including \$2,000 in personal property receipts.⁴² Although the anticipated revenue gains from the areas proposed for annexation are relatively modest, such additional funds would be of aid to a municipality which, from our perspective, does have a need to augment its tax base.

³⁹Taxable Sales in Virginia Counties and Cities, Annual Report, 1980 and 1990. On a per capita basis, the City experienced an 83.6% rate of growth between 1980 and 1990, compared to an increase of 86.6% for the County. (Ibid.)

⁴⁰Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, 1988/89, forthcoming. We observe that in recent years the City has utilized transfers from its Electric Utility Fund, as well as fund balances, in order to subsidize its General Fund expenditures. (City of Bedford, Financial Statements, Years Ending June 30, 1988, June 30, 1989, and June 30, 1990.) During the fiscal period 1988-1990, transfers from the Electric Fund to the General Fund have increased from approximately \$750,000 to \$1.7 million.

⁴¹Glass, letter to staff of Commission on Local Government, July 1, 1991.

⁴²Ibid.

NEED OF THE CITY FOR LAND FOR DEVELOPMENT

As indicated previously, the City of Bedford currently has within its boundaries approximately 1,308 acres of undeveloped land, with that acreage constituting 30.2% of the City's total land area.⁴³ A significant portion (79.1%) of the undeveloped land, however, is restricted for potential development due to slopes exceeding 15% or exposure to flooding.⁴⁴ Therefore, the City has less than 275 acres of vacant land (6.3% of its total land area) generally suitable for development. In our judgment, the City of Bedford does have a need for additional land for future development. Although the areas proposed for annexation would increase the City's land area only slightly, the parcels would, nevertheless, add to the supply of land suitable for development within the City.

IMPACT ON THE COUNTY

The impact of the proposed annexation on Bedford County would be minimal. The proposed transfer of territory to the City of Bedford will result in the County's loss of only 0.006% of its land area, only 0.23% of its population, and only 0.11% of its total 1990 assessed 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 those areas.⁴⁵ In sum, the areas proposed for annexation, in the aggregate, constitute only a small proportion of County land, population, and tax revenue. Moreover, the expansion of elderly housing opportunities in the

⁴³"Comparative Zoning and Vacant Land Analysis - August 1991."

⁴⁴Ibid.

⁴⁵We note that the proposed annexation areas are included in one of Bedford County's growth areas identified in the County's comprehensive plan. (Bedford County Comprehensive Plan, p. 126.) The plan also indicates recognition of the need for a long-term plan for provision of water and sewer service to County territory surrounding the City of Bedford. (Ibid., p. 143.)

region will, in our judgment, be of benefit to the County as well as to the City.

URBAN SERVICE CONSIDERATIONS

The annexation statutes require that consideration be given to the urban service needs of the areas proposed for annexation, the level of services currently provided by the affected municipality and county, and the relative ability of the two jurisdictions to serve the areas in question. The following sections of this report address briefly the relevant urban service considerations.

Water Supply and Distribution

Neither the County nor the Bedford County Public Service Authority (BCPSA) owns or operates any water facilities in the vicinity of the areas proposed for annexation.⁴⁶ Accordingly, any need for central water service in areas adjacent to the City of Bedford must be met by that municipality.

The City of Bedford owns and operates a 3.0 million gallons per day (MGD) water treatment plant, which obtains its raw water principally from the Stony Creek Reservoir with a 156 million gallons (MG) capacity and a safe yield of 1.8 MGD.⁴⁷ The City's water distribution system consists of approximately 78 miles of water lines, both within and beyond the

⁴⁶The only central water system owned by the County or the BCPSA in the vicinity of the City of Bedford is that operated by the BCPSA in the Hillcrest subdivision approximately two miles from the Carriage Hill property. [Anderson and Associates, Inc., Bedford County Comprehensive Water Study - Phase I (rev. ed., Aug. 1991), pp. 2, 6.]

⁴⁷City Annexation Exhibits, p. 25. In addition, the City owns and operates a well system that supplies 200,000 gallons per day directly to the distribution system. The City also has an emergency intake on the Big Otter River with a potential yield of 1.0 MGD. (City of Bedford Planning Commission, City of Bedford Comprehensive Plan, Jan. 1989, p. 21.)

municipal boundaries.⁴⁸ As of May 1990, the City of Bedford served approximately 2,805 connections, which then consumed an average of 1.05 MGD.⁴⁹ Thus, approximately 41.7% of the capacity of the City's water treatment plant was uncommitted. Since the City is presently serving the Carriage Hill property, and since the projected demand of the 40-unit apartment complex planned for development on the Otterburn tract is less than 10,000 gallons per day (GPD), the municipality should be able to serve readily the current and prospective need for potable water in the two properties proposed for annexation.⁵⁰

Sewerage

As in the case of water, the City of Bedford provides the only public sewerage service in the vicinity of both the Carriage Hill and the Otterburn properties. The City owns and operates a sewage treatment plant that has a rated capacity of 1.5 MGD. Since the plant currently treats an average daily flow of 1.2 MGD, it retains an average excess capacity of approximately 0.3 MGD, or 20% of its current capacity.⁵¹

We note that the City is currently undertaking modifications to its wastewater treatment plant and addressing problems of the inflow of stormwater and infiltration of groundwater to comply with a Consent Special Order issued by the State Water Control Board (SWCB). Those projects, which are scheduled for completion by December 31, 1992, will have the effect of increasing the treatment capacity of the City's plant.

⁴⁸City Annexation Exhibits, p. 26. In terms of storage facilities, the City has three storage tanks which collectively hold 3.0 million gallons of treated water.

⁴⁹Ibid., pp. 25-26. As of May 1990, approximately 18% (505 connections) of the City's total water customer base was located in the County.

⁵⁰Documents Relating to Water Requests (hereinafter cited as Otterburn Supplemental Exhibits), Exh. A. There is already a water line in place along the southern boundary of the Otterburn property. (See Otterburn Notice, Exh. A.)

⁵¹City Annexation Exhibits, p. 23.

The SWCB order imposes a moratorium on new sewer connections, but allows the City a number of equivalent residential connections (ERC's) sufficient to meet the needs of the areas proposed for annexation.⁵² The City has already extended sewerage service to the Carriage Hill property and can accommodate the 40 residential units proposed for development on the Otterburn tract within the terms of the SWCB order.⁵³

Solid Waste Collection and Disposal

City residents are provided with curbside refuse collection twice weekly, and commercial customers are extended a schedule of solid waste collection service on the basis of need. In addition, seasonal collection of leaves and yard debris is offered at no additional charge. Data provided by the City of Bedford indicates that Bedford County does not provide solid waste collection service to individual residences.⁵⁴ The County does, however, offer bulk container service at many locations throughout the County, although there are no such containers located in the vicinity of the areas proposed for annexation.⁵⁵ The residents and facilities in the areas proposed for annexation should benefit from the availability of the City's solid waste collection services.

⁵²State Water Control Board Enforcement Action: A Consent Special Order Issued to the City of Bedford, March 21, 1991. The Order stipulates that the City limit to 4,509 ERC's the number of sewer connections until April 30, 1992. Thereafter, no more than 28 additional ERC's are to be added annually to the baseline of 4,509 until the order is vacated. An ERC is defined as a connection generating 192 gallons of sewage per day. (Ibid.) As of May 1990, the City's sewage system served 2,258 customers, with 238 being located in Bedford County. (City Annexation Exhibits, p. 23.)

⁵³A six-inch sewer line owned by the City is located approximately 70 feet southwest of the Otterburn property line. (Jack A. Gross, City Manager, City of Bedford, communication with staff of Commission on Local Government, Sep. 4, 1991.)

⁵⁴City Annexation Exhibits, p. 33.

⁵⁵Ibid. As of 1988, there were 25 container sites located throughout the County. (Bedford County Comprehensive Plan, p. 67.)

Crime Prevention and Detection

Law enforcement services within the City of Bedford are provided by the City's Police Department, which includes 19 full-time sworn law enforcement personnel.⁵⁶ Of that law enforcement staff, 14 officers are assigned patrol duties, which provides the City with one patrol officer for every 434 persons. As of 1989 City patrol officers maintained an average response time of less than three minutes to calls for service.⁵⁷ Although there is no formal mutual aid agreement between the City and the County, between August 1988 and mid-June 1991 the City received and responded to 13 requests from the County Sheriff's Department and one request from the Virginia State Police for assistance in Bedford County.⁵⁸

The County's Sheriff's Department has a personnel complement consisting of 45 positions, including 16 patrol officers.⁵⁹ This level of staffing provides Bedford County with one patrol officer for every 2,854 County residents.⁶⁰ In our judgment, the areas proposed for annexation would benefit from the general availability of the more intensified law enforcement services offered by the City.⁶¹

⁵⁶Ibid., p. 35.

⁵⁷Ibid. The City's Police Department patrols the municipality 24 hours a day. The law enforcement contingent is supported by five civilian dispatchers, an animal control warden, and a secretary.

⁵⁸Glass, letter to staff of Commission on Local Government, July 1, 1991.

⁵⁹Bedford County Comprehensive Plan, p. iv, 87.

⁶⁰Ibid. The services provided by the County's Sheriff's Department are augmented, however, by Virginia State Police, who maintain nine troopers and three sergeants in Bedford County.

⁶¹City Annexation Exhibits, p. 36. Carriage Hill representatives have reported that the County Sheriff's office has required 15-30 minutes to respond to calls for service in several instances of trespassing. (Testimony of Reynolds, Transcript, p. 44.) It is relevant to note that the only road access to the Carriage Hill property at the present time is through the City.

Public Recreational Facilities

The City of Bedford offers a relatively broad and varied public recreational program for a jurisdiction of its size. In addition to the multi-purpose 37-acre Liberty Lake Park, the City operates four neighborhood parks and financially contributes to the operation of the Bedford YMCA facility.⁶² Of particular relevance in this review is the range of activities that are offered by the City for the benefit of elderly residents, including operation of a senior citizen center.⁶³ While Bedford County maintains an athletic field in the City and operates recreational facilities associated with County schools, the public recreational efforts of the City of Bedford are of more immediate significance to the current and prospective residents of the areas proposed for annexation.⁶⁴

Fire Prevention and Protection

With respect to fire protection, the proposed annexation would result in no change in the nature and type of fire suppression units serving the areas. The Bedford Fire Department, which serves both the City and County territory within a radius of approximately ten miles of the municipality, consists of a paid chief and approximately 30 volunteer members. The City and the County share capital and operational expenses of the Bedford Fire Department on the basis of the proportion of calls

⁶²City of Bedford Comprehensive Plan, p. 24; and Gross, communication with staff of Commission on Local Government, Aug. 21, 1991. The City provides an annual grant to the Bedford YMCA since the City does not have a swimming pool. Among the YMCA's offerings is an arthritis exercise program which is conducted in its heated swimming pool. (Testimony of Gross, Transcript, pp. 134-37.)

⁶³Ibid. The City's recreation director is experienced in managing senior citizens' facilities, and Bedford City extends to elderly residents regular van trips for shopping; a golden olympics program, arts and crafts classes, and Elderfest (jointly sponsored with Bedford County), as well as other activities.

⁶⁴Bedford County Comprehensive Plan, p. 90.

from each locality.⁶⁵ It is relevant to note, however, that the extension of City water line lines and hydrants into the areas proposed for annexation will enhance the fire suppression capabilities within those areas.

Street Maintenance

The City of Bedford, unlike Bedford County, is responsible for the construction and maintenance of its public thoroughfares. While the City receives State assistance to support that activity, it regularly appropriates local funds to augment the State's contribution. The City has reported expending in excess of \$1.4 million in local funds during the previous decade for various street maintenance and improvements.⁶⁶ In our judgment, the City's ability to schedule and undertake, through its own initiative, the maintenance of its public thoroughfares and its willingness to invest local funds in that endeavor will be of benefit to the properties proposed for annexation. Similarly, the City of Bedford's ability to provide snow removal services through its own staff and equipment should benefit the residents of the Carriage Hill and Otterburn properties.

COMPLIANCE WITH APPLICABLE STATE POLICIES

Another factor 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 two policy areas of relevance in these annexation issues, public planning and housing. The following sections review efforts by the City of Bedford and Bedford County to comply with those State policies.

⁶⁵City Annexation Exhibits, p. 38.

⁶⁶Ibid., p. 45.

Public Planning

Both jurisdictions have planning commissions and have adopted comprehensive plans and land development regulations that encompass subdivision regulations as well as zoning. While the City of Bedford utilizes traditional zoning practices, Bedford County has adopted a Land Use Guidance System (LUGS) as a flexible tool to manage growth within its jurisdiction in an orderly fashion and to accomplish the statutory land-use objectives stated in the Code of Virginia.⁶⁷ It is our judgment that both jurisdictions have made suitable efforts to comply with the State's policies regarding proper public planning.

Housing

By statutory provision the General Assembly has recognized that proper housing for the State's residents is a matter of "grave concern to the Commonwealth."⁶⁸ The Commission notes that, consistent with this fundamental State concern, the City of Bedford has undertaken a variety of actions to improve its housing stock, including adoption of the State Fire Prevention Code and the State Building Maintenance Code and has utilized federal funds (Community Development Block Grants and Farmers Home Administration monies) to rehabilitate substandard structures and to

⁶⁷County of Bedford, Bedford County Land Use Guidance System, October 1, 1989. The statutory objectives are set forth in Chapter 11 of Title 15.1 of the Code of Virginia. Under the County's land use system uses are permitted based upon a "Growth Guidance Assessment" process which is designed to determine whether proposed development is consistent with goals and objectives in the County's comprehensive plan. Generally, amenities and site characteristics are assigned points, and scores are weighted prior to consideration of proposals by affected property owners in a "Compatibility Assessment" process. The process is designed to produce consensus among developers and affected property owners. (Bedford County Land Use Guidance System, Articles VII and VIII.) It has been contended, however, that the absence of uses by right creates an element of unpredictability with respect to development proposals for County territory. (Testimony of Reynolds, Transcript, p. 45.) No evidence has been submitted to this Commission, however, to indicate that this claim is valid.

⁶⁸Sec. 36-1, Code of Va.

facilitate the provision of low-cost housing.⁶⁹

Bedford County has also adopted a fire prevention code and a building maintenance code to protect its housing stock.⁷⁰ The evidence, however, indicates that the City has generally assumed a more active role in responding to the State's concern for housing for low and moderate income persons, including the elderly and handicapped, and may be attracting residents from other jurisdictions as a result of its efforts.

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 in relation to that which unites such areas to the remainder of the county. Among the issues generally relevant to this analysis are geographic considerations such as contiguity and accessibility. Both the Carriage Hill and Otterburn sites are contiguous to the City's boundaries and constitute a component of larger parcels which extend into the City of Bedford. Moreover, the only existing vehicular access to the Carriage Hill property is gained via City streets. This physical interdependence, in our view, clearly contributes to a community of interest.

Another facet of community of interest is the similarity of service needs in the areas under consideration. The existing Carriage Hill

⁶⁹City of Bedford Comprehensive Plan, p. 30. As of Jan. 1989 there were 395 assisted housing units in the City. (Ibid., p. 31) Moreover, the City manages a U. S. Department of Housing and Urban Development Section 8 rental assistance program. Since there is no comparable program in the County, some County residents are required to look to the City for this type of assisted housing. (Ibid., p. 32) While the Virginia Department of Housing and Community Development has produced a building maintenance code as Vol. II of the Uniform Statewide Building Code, its adoption by local governments is voluntary. (Curtis McIver, Code Enforcement Office, Division of Building Regulations, Department of Housing and Community Development, communication with staff of Commission on Local Government, Sep. 9, 1991.)

⁷⁰Bedford County Comprehensive Plan, p. 75.

facility receives water and sewer service from the City at this time, and any future development on that site will depend upon the availability of City utilities. Similarly, the residential project proposed for the Otterburn parcel will require water and sewer services currently available in that area only from the City of Bedford. Further, the intense development proposed for those properties gives them an urban character and service needs more similar to the City than Bedford County. Again, the service requirements of the areas proposed for annexation point to an interdependence between those areas and the municipality.

With respect to the issue of economic and social bonds between the areas proposed for annexation and the municipality, residents of the Carriage Hill community currently utilize the retail facilities, medical and other professional services, religious facilities, and City-sponsored recreational programs available in the City of Bedford.⁷¹ It is reasonable to assume that future elderly residents of the proposed Otterburn development will establish a similar relationship with the City.

In sum, geographic considerations, urban service needs, and social and economic bonds contribute to a community of interest between the properties proposed for annexation and the City which, in our judgment, clearly exceeds that which exists between those properties and outlying portions of the County.

ARBITRARY REFUSAL TO COOPERATE

A further factor prescribed for consideration in annexation issues, and a fundamental issue in the matter under review, is whether either of the affected localities has arbitrarily refused to cooperate in the provision of "joint activities" which are intended to benefit citizens of both jurisdictions.⁷² The intent of the General Assembly in directing

⁷¹Testimony of Reynolds, Transcript, pp. 39-41.

⁷²Sec. 15.1-1041(b)(1)(v), Code of Va.

consideration of this issue is to promote interlocal cooperation where such can be of mutual benefit to local governments and their residents. While the Commission notes that there are significant areas of cooperation between the two jurisdictions, the County has contended in its filings with the special three-judge court that the City of Bedford arbitrarily and in contravention of an interjurisdictional agreement refused to extend utility services to the Carriage Hill property.⁷³

Bedford County has asserted that the City violated a "commitment" for the extension of water and sewer service to the Carriage Hill tract and that the City's refusal to extend utility service to that property in 1989 induced its owners subsequently to seek annexation to that municipality.⁷⁴ While not endeavoring to address the legal nature of the City's "commitment" for the extension of utility service to the Carriage Hill property, the Commission is obliged to consider in this report whether the City's action constituted an arbitrary refusal to cooperate. Whatever the answer to the legal issue, the facts do not permit this Commission to conclude that the City acted in an arbitrary fashion in refusing to extend utilities to the Carriage Hill property in 1989.

With respect to the County's assertion, we note that in August 1985 the City had agreed to extend water and sewer service to a proposed 550-unit residential development on the property in question (which subsequently was acquired by Carriage Hill of Virginia, Ltd.) subject to approval by the Bedford County Public Service Authority.⁷⁵ In February

⁷³The record discloses that the City and County have agreements relating to the provision of health services, social and welfare services, library services, fire protection, recycling efforts, and public education. (City Annexation Exhibits, p. 59.)

⁷⁴The County's contention regarding the City of Bedford's violation of a contract and consequent inducement of an annexation initiative appears to be applicable only to the Carriage Hill property and not the Otterburn tract.

⁷⁵City of Bedford, "Chronology by the City of Bedford of Requests for Utility Service by Carriage Hill and Requests by Landowners Listed in February 1986 Letter" (hereinafter cited as Chronology of Requests for Utility Service, p. 2.

1986 the Bedford County Administrator by letter authorized and requested the City to extend service to that property "according to the City of Bedford's established policy."⁷⁶ The proposed residential development, however, did not materialize, and the property owners sold a portion of their tract to Carriage Hill of Virginia, Ltd.

On June 13, 1989 the City of Bedford imposed a moratorium on new non-resident water and sewer connections. The facts submitted to this Commission indicate that the City's decision was a reasonable and appropriate exercise of authority. Data provided by the City disclose that at the time the moratorium was imposed, there were pending requests for 530 water connections, 527 of which were for properties in the County. At that same time, there were pending requests for 380 sewer connections, 379 of which were from residents or commercial interests located in Bedford County.⁷⁷ The aggregate demand of these pending applications was approximately equivalent to the entire excess capacity in the City's sewerage system and to approximately one-quarter of the remaining capacity of the municipal water system.⁷⁸ Based upon this pending demand and several other factors, the Bedford City Council authorized a planning and engineering study of its current resources and future needs and imposed a temporary moratorium on both water and sewer connections outside the City's corporate limits until such time as the

⁷⁶Ibid., pp. 6-7. Following City approval of the request by Thomas Reynolds and Oscar Padgett, then owners of the Carriage Hill property, correspondence ensued between the City and County regarding terms of the extension to that and other properties located within the County. One of the matters at issue concerned the user fees to be charged to customers in these areas. (See Ibid., Exh. 5A, 5B, 5C.) An agreement entered into by the City and County on April 13, 1982 had authorized the City to install, operate, and maintain five deep wells and the necessary pipes and pumps to transport water to the City filtration plant. The agreement had also established that County customers of the City water system would be charged no more than 115% of the rate paid by City customers. (Glass, letter to staff of Commission on Local Government, July 1, 1991.)

⁷⁷"Water and Sewer Connection Requests - Bedford County and City of Bedford", Aug. 14, 1991.

⁷⁸Testimony of Gross, Transcript, pp. 120-121.

findings and recommendations of that study were received and evaluated.⁷⁹ The resolution establishing the moratorium also provided for exceptions to this policy on a case-by-case basis.

In August 1989 Carriage Hill submitted a request to the City for the extension of water and sewerage service to meet the needs of the new development which it proposed on the property it had acquired. Under circumstances prevailing at that time, the City denied the request. Moreover, in August 1989 the State Water Control Board (SWCB) placed the City under a consent order which required an upgrading of the municipality's sewage treatment facility. That order was subsequently amended in April 1990 and again in March 1991 to include a moratorium on new sewer connections until the City completed the modifications of its treatment plant and addressed its problems associated with the inflow of stormwater and infiltration of groundwater.⁸⁰ The actions by the SWCB confirm, in our view, the propriety of the City's previous decision to suspend the establishment of new utility connections outside its corporate limits.

⁷⁹Chronology of Requests for Utility Service, Exh. 23 (see Appendix B.) The resolution establishing the moratorium noted that adjacent areas in the County were experiencing rapid growth, that the City had been required in preceding years to subsidize its Water and Sewer Fund with transfers from the General Fund, and that the City was limited by its agreement with the County in its ability to generate adequate levels of revenue for operation of water and sewer facilities. (See also Glass, letter to staff of Commission on Local Government, July 1, 1991.) Data provided by the City reflects that, between 1987 and May 1991, water and sewer capital expenditures were subsidized by General Fund transfers by as much as 51.7%. (Ibid.) Following Council's authorization of a study of future water needs, City officials approached Bedford County officials regarding the prospect of a joint study, but the County declined since it had plans for the conduct of a study of the County's existing and future needs and resources. Information provided to this Commission by the City indicates that the City's study effort has not proceeded beyond preliminary discussions with consulting engineering firms. (H. D. Ballard, Engineering Department, City of Bedford, communication with staff of Commission on Local Government, Sep. 13, 1991.)

⁸⁰The City is upgrading its wastewater treatment plant from secondary to tertiary treatment and constructing a one-million gallon flow basin to address problems with inflow and infiltration in periods of wet weather. The total cost of improvements is approximately \$3.2 million, and the expected date of completion of the various projects is December 1992. (Testimony of Gross, Transcript, p. 110.)

Given these circumstances, this Commission cannot conclude that the City's action in denying additional utility service to the Carriage Hill property in 1989 constituted an arbitrary refusal to cooperate. Whether the City's original commitment to the property owners in 1985 constituted a contract for service is a legal matter appropriately resolved elsewhere. From an administrative perspective, however, this Commission observes that it would be improbable that any utility provider would unconditionally assure water and sewerage service in perpetuity to vacant property for any use to which that land might be put. Rather, it is customary that approval of utility extensions is granted based upon evaluation of specific development proposals in order to assure that sufficient capacity exists to meet the prospective demand. Accordingly, it would be administratively appropriate for a utility provider to reserve the right to reconsider requests for services based upon changed conditions and circumstances.

Finally, Bedford County has asserted that the City's refusal to extend water and sewer service to the Carriage Hill property in August 1989 was an inducement of the owners of that property to seek annexation to the municipality, an act contended to be tantamount to the City's circumvention of the existing moratorium on city-initiated annexation actions.⁸¹ The record discloses that the property owners sought voluntary annexation to the City after Bedford County indicated that neither it nor the Bedford County Public Service Authority had plans to provide utility services in the vicinity of the Carriage Hill property.⁸² Further, the evidence indicates that, based upon this information, the owners of the Carriage Hill property decided to initiate annexation to the City of Bedford in order to obtain utility services which the municipality had determined that it was unable to provide beyond its

⁸¹Sec. 15.1-1032.2, Code of Va. The moratorium on city-initiated annexations was imposed in 1987 and extended to citizen-initiated annexations of property to cities effective July 1, 1991.

⁸²Chronology of Requests for Utility Services, p. 15. See also Testimony of Reynolds, Transcript, pp. 37-38.

corporate limits.⁸³ The need for services which motivated the annexation action by the owners of the Carriage Hill property has been a traditional basis for property owner-initiated annexation in this State and throughout the nation generally. We are unable to conclude that the City's decision, based on its need to limit additional utility commitments in accordance with its temporary moratorium, constituted an unlawful inducement of the property owners to petition for annexation.

FINDINGS AND RECOMMENDATIONS

AREA RECOMMENDED FOR ANNEXATION

Carriage Hill of Virginia, Ltd. and Otterburn Homes, Inc., both Virginia corporations, have initiated these proceedings for the collective annexation of 26.76 acres (0.04 square miles) of territory in Bedford County to the City of Bedford. Based upon our analysis of the evidence submitted and upon our consideration of the criteria prescribed for review in annexation issues, we recommend that the court approve both proposed annexations. The recommended annexations would transfer to the City of Bedford 0.006% of the County's total land area, 0.23% of its total population (105 persons), 0.11% of the County's total real property assessables, and 0.16% of the County's total real property tax revenue.

⁸³Water and sewer service was first provided to Carriage Hill upon the corporation's application in 1987, pursuant to the City's water and sewer extension and connection policy, which, among other conditions, required that water and sewer lines connected to existing City lines be dedicated to the municipality. (Chronology of Requests for Utility Service, p. 7.) When Phase II was constructed as an addition to the initial facility in 1988, no application for utility service was required, since established City policy provided that expansion of an existing building did not require a new permit. (Testimony of Gross, Transcript, p. 178.) The City agreed to extend service to Carriage Hill in January 1990 after the property owner notified City Council that it was pursuing annexation of the property to the City and that favorable financing arrangements would be lost for new construction if it was unable to obtain City water and sewer connections. (Chronology of Requests for Utility Service, Exh. 24.)

FINANCIAL SETTLEMENT PROVISIONS

In balancing the equities in an annexation case a court is given broad authority. 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) regarding any 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 Bedford has submitted financial data relative to these matters to the Commission for review and comment. Bedford County, however, has not provided any pertinent data. The following sections of this report address these issues to the extent possible based upon available information.

Assumption of Debt by Cities

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.⁸⁴ 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. However, the growth in significance of non-property taxes (e. g., sales taxes) to counties is such that this Commission recommends that courts base their debt assumption calculations on a broader measure which is generally more favorable to counties. We recommend that the court direct the City of Bedford's assumption of a portion of Bedford County's indebtedness equal to the percentage of the County's total tax collections derived from within the annexed areas and that this calculation be based upon the most recently audited fiscal year data available at the time of the court's review.⁸⁵

⁸⁴Sec. 15.1-1042 (b), Code of Va.

⁸⁵Local tax revenues have been defined by the Supreme Court as only those "monies a county collects from taxes it levies upon assets, transactions, and privileges within its taxing jurisdiction." (County of Rockingham v. City of Harrisonburg, 224 Va. 62, 89.)

With regard to annexation of the Carriage Hill property, the City has proposed to assume one-tenth of one percent of Bedford County's outstanding indebtedness existing on the effective date of annexation, a percentage equivalent to the portion of the County's total level 1988-89 revenues.⁸⁶ While the City's proposal reflects the methodology recommended by the Commission, adjustments must be made for the Otterburn property and in consideration of more recent revenue data. Based upon the FY1990 data, the City has estimated that the County would experience a loss of revenue as a result of the annexation of both properties equal to approximately 0.11% of its local tax revenue (\$14.6 million).⁸⁷ Based on the County's long-term indebtedness as of June 30, 1990 (\$22,254,653) and the above-cited estimate of local tax revenues lost to the County as a consequence of the proposed annexation of the Carriage Hill and Otterburn properties, we recommend that the City assume responsibility for the retirement of \$24,480 in County debt.⁸⁸

Compensation for County-Owned Public Improvements

There are no County-owned and maintained facilities in either of the areas recommended for annexation. This issue, therefore, is not relevant in this case.

Compensation for the Prospective Loss of Net Tax Revenue

Under the Code of Virginia, an annexation court may mandate that a county be compensated for its prospective loss of net tax revenue (LNTR) stemming from the annexation of its taxable values by a city. 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

⁸⁶City Annexation Exhibits, p. 69.

⁸⁷City Annexation Exhibits, p.67; Rowe, communication with staff of Commission on Local Government, Aug. 8, 1991; and Comparative Report of Local Government Revenues and Expenditures, Year Ended June 30, 1990, Exh. B. The City estimates that the loss of revenue by Bedford County attributable to the Carriage Hill property is \$15,841. The Commission estimates the County's loss of revenue from the Otterburn property to be approximately \$248. See Supra, Note 36.

⁸⁸Glass, letter to staff of Commission on Local Government, July 1, 1991.

amount of budgetary expenditures annexation saves" that locality.⁸⁹ At the discretion of the court, the municipality in question may be required to compensate a county for its LNTR for a period of up to five years after the annexation by means of either a single payment or in annual installments over the specified time period.⁹⁰

Although 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, this Commission is cognizant of the legislative 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 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.⁹¹

Using the methodology previously recommended, and based upon the data presently available in this case, we estimate that Bedford County's loss of local tax revenue as a result of the City of Bedford's annexation of the Carriage Hill and Otterburn properties would collectively be approximately \$16,000. Given the nature and size of the properties involved, we estimate that the County's expenditure savings as a result of annexation would be virtually nil. Accordingly, based on the

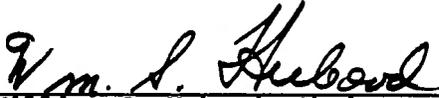
⁸⁹County of Rockingham v. City of Harrisonburg, 224 Va. 62, 89.

⁹⁰Sec. 15.1-1042 (c), Code of Va.

⁹¹The 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 periodically revised 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.

presently available data, we recommend that the base-year LNTR for the County be established at \$16,000 and that the City be afforded the option of compensating the County for its five year LNTR in a single payment of \$80,000 or in annual payments as specified above.

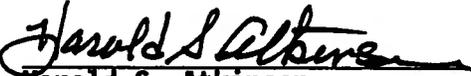
Respectfully submitted,



William S. Hubbard, Chairman



Mary Sherwood Holt, Vice Chairman



Harold S. Atkinson



Layton R. Fairchild, Jr.



Frank Raflo

ADDENDUM STATEMENT

I have no problem taking a positive position concerning the facts in this proposal. The numbers are small and the impact is relatively insignificant on the County. The end result could very well benefit all participating.

It is, however, to the end result that I address my concern. That end result is that the City of Bedford will enjoy, within whatever parameters possible, the fruits from an annexation. It is my further understanding that it is the wish of the General Assembly of Virginia that at this time the cities of Virginia not be allowed to enjoy the fruits of annexation.

I recognize that the City did not initiate the annexation request. What troubles me is that the City nevertheless has achieved a result, by whatever means or method, that seems to be contrary to a position that cities are not supposed to achieve. This is a proper citizen annexation suit, filed within the time allowed and before such filings were specifically made contrary to law, but however initiated or processed, the end result is that the City enjoys annexation.

I question whether this end result violates the intention of the General Assembly. The procedure was not flawed, but it is the end result that stands in possible contradiction.

I will vote to support the annexation request, with the inclusion of this statement, in the final recommendations sent to the court.


Frank Rafla

**STATISTICAL PROFILE OF THE CITY OF BEDFORD, BEDFORD COUNTY,
AND THE AREAS PROPOSED FOR ANNEXATION**

	<u>City of Bedford</u>	<u>County of Bedford</u>	<u>Carriage Hill Tract</u>	<u>Otterburn Tract</u>
Population (1990)	6,073	45,656	105	0
Land Area (Square Miles)	6.77	763.91	0.04	0.006
Total Assessed Values (1990)	\$192,123,155	\$1,570,933,202	\$1,421,400	\$40,000
Real Estate Values	\$137,472,724	\$1,341,515,875	\$1,421,400	\$40,000
Public Service Corporation Values	\$7,692,571	\$141,513,643	\$0	\$0
Personal Property Values	\$20,908,030	\$44,314,926	N/A	\$0
Total Taxable Sales (1990)	\$67,170,278	\$88,764,086	\$0	\$0
Existing Land Use (Acres)*				
Residential	1,781	19,556	1.190	0.000
Commercial	338	N/A	0	0
Industrial	438	N/A	0	0
Public and Semi-Public	464	19,990	0	0
Agricultural, Wooded or Vacant	1,308	449,790	21.569	3.998

NOTES:

N/A=Not available

*Land use data for discrete categories of development in Bedford County are not available.

The total acreage shown in the residential category for the County includes commercial and industrial usage.

Land use statistics for Bedford County and the City of Bedford were collected in 1987 and 1991, respectively.

SOURCES:

U. S. Department of Commerce, Bureau of the Census, 1990 Census of Population, Summary Tape File 1A, Virginia.

U. S. Department of Commerce, Bureau of the Census, 1987 Census of Agriculture.

City of Bedford Planning Commission, City of Bedford Comprehensive Plan, January 1989.

County of Bedford Planning Commission, Bedford County Comprehensive Plan, 1988.

Carter Glass, IV, Special Counsel, City of Bedford, letter to staff of Commission on Local Government, July 1, 1991.

Virginia Department of Taxation, Taxable Sales, Annual Report, 1990.

Dennis Jones, Peaks of Otter Soil and Water Conservation District, communication with staff of Commission on Local Government, Sep. 5, 1991.

U. S. Department of Agriculture, Forest Statistics for Virginia, 1986.

RESOLUTION

WHEREAS, the City of Bedford, Virginia, in the spirit of fostering controlled and orderly regional economic growth and development has, under certain conditions, allowed connections to be made beyond the city limits to its sewer and water system, thereby providing utility service to certain residents and business enterprises in Bedford County; and

WHEREAS, these extensions of service were served from the excess capacity and under sound economic policies and prudent fiscal management; and

WHEREAS, the area is now experiencing rapid commercial, industrial and residential growth; and

WHEREAS, such growth has resulted in increasing the number of such connections outside of the city limits by over five hundred per cent; and

WHEREAS, this growth and expansion requires careful planning and management in the use of the City of Bedford's utility resources; and

WHEREAS, the City Council of the City of Bedford has authorized the City Manager to procure the planning and engineering resources of a competent consultant to assist in this task. The purpose of this study is to establish a wide array of alternatives to handle connections to the City's utility system and to develop methods to fund the growth and forthcoming environmental state and federal mandates and their resulting expenditures; and

WHEREAS, the City of Bedford recognizes that growth in areas adjacent to the city is directly beneficial to the tax base of Bedford County and indirectly beneficial to the City. Such growth must be paid for through the utility rate structure; and

WHEREAS, for a number of years the City has had to subsidize the Water and Sewer Fund with direct transfers from the General Fund; and

WHEREAS, the City's ability to generate adequate yet fair levels of revenue is limited by agreement, the City is nevertheless obligated to assess the impact of such growth on the utility system for all present and future needs and must have the ability to generate the required funds for operation, maintenance and capital improvements.

NOW, THEREFORE, BE IT RESOLVED that the City of Bedford will no longer accept applications from outside the city limits to attach to its sewer and water utility system until such time as the engineering and planning study has been completed and the Bedford City Council has had an opportunity to review and evaluate the recommendations resulting therefrom. Exceptions to this policy based upon equitable considerations must have the approval of the City Council after review by the Planning Commission and recommendation by the City Attorney and City Manager.

As an example, exceptions on a case-by-case basis may be made for applications by owners of lots in a County subdivision where the City previously has agreed to provide water service, the subdivision plat has been

approved by County authorities in reliance on the City's action, and the lot has been purchased in reliance on such facts.

This resolution is to take effect immediately.

I hereby certify that the foregoing is a true and exact copy of a Resolution adopted at a regular meeting of the Council of the City of Bedford, Virginia, held on June 13, 1989, at which said meeting a quorum was present and voted.



Deputy Clerk of the Council