

REPORT
ON THE
COUNTY OF AUGUSTA
PARTIAL IMMUNITY ACTION



COMMISSION ON LOCAL GOVERNMENT
COMMONWEALTH OF VIRGINIA

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REPORT
OF THE
COMMISSION ON LOCAL GOVERNMENT

Augusta County Immunity Action

PROCEEDINGS OF THE COMMISSION

On April 28, 1982 the County of Augusta filed notice with the Commission on Local Government, pursuant to the provisions of Section 15.1-945.7(A) of the Code of Virginia, of its intention to petition for the immunization of approximately 38.2 square miles of territory within its boundaries from city-initiated annexation and from the incorporation of cities therein.¹ In accordance with the Commission's Rules of Procedure the County's notice was accompanied by data and exhibits supportive of the County's action for such immunity. Further, consistent with statutory requirements, the County concurrently gave notice of its immunity action to the Cities of Staunton and Waynesboro, the localities most immediately affected by the County's action, and to fourteen other local governments with which it was contiguous or with which it shared functions, revenue, or tax sources.²

The County's notice to the Commission invoked Section 15.1-945.7(E) of the Code of Virginia and expressed the desire to negotiate a settlement of the immunity action with

¹County of Augusta, Partial Immunity Notice, Volume I (hereinafter cited as Augusta Notice), April 28, 1982.

²Sec. 15.1-945.7(A), Code of Virginia.

the Cities of Staunton and Waynesboro and requested the Commission to designate an independent mediator to assist in the negotiations. On May 11, 1982 the Commission met with representatives of Augusta County and the Cities of Staunton and Waynesboro to respond to the County's request for mediation assistance and to make appropriate arrangements for its formal review of the County's immunity action. The Commission designated Dr. Orion F. White, Jr. of Virginia Polytechnic Institute and State University and Dr. Roger Richman of Old Dominion University as independent mediators to assist in the interlocal negotiations but, upon joint request of the three parties, deferred the activation of the mediators to permit the initial interlocal discussions to proceed directly between the local officials.³

In accordance with the review schedule adopted on May 11, the Commission received submissions in opposition to the County's immunity action from the Cities on August 9. At the request of the Commission, these materials, as well as those submitted initially by the County, were made available for public review in the offices of the City Managers of Staunton and Waynesboro and in the office of the County Administrator of Augusta County. Following its receipt and review of these materials, the Commission toured relevant areas and facilities in the County and the Cities on August 28 and received oral testimony from the parties on August 30, 31 and September 1, 2, 1982.

³Pursuant to a joint request from the County of Augusta and the City of Waynesboro, Drs. White and Richman were requested by the Commission to commence a mediation effort with those two parties on August 26, 1982.

In addition to its receipt and consideration of materials and testimony from Augusta County and the Cities of Waynesboro and Staunton, the Commission solicited comment from other potentially affected local governments which qualified for notice from the County under the provisions of Section 15.1-945.7(A). Further, the Commission held a public hearing, advertised in accordance with the requirements of Section 15.1-945.7(B) of the Code of Virginia, in Augusta County on September 2, 1982. The public hearing was attended by approximately 500 persons and produced testimony from 89 individuals. In order to permit the receipt of additional public comment, the Commission agreed to hold open its record for written submissions from the public through October 1, 1982.

SCOPE OF REVIEW

The law establishing the Commission on Local Government states that the General Assembly's fundamental intent in creating such a body was to provide a mechanism to "help ensure that all of [the Commonwealth's] counties, cities, and towns are maintained as viable communities in which their citizens can live."⁴ Guided by this statement of fundamental legislative intent, the Commission is charged with reviewing a variety of local boundary change and governmental transition issues before such issues are presented to the courts

⁴Sec. 15.1-945.1, Code of Virginia.

for ultimate disposition. Specifically, the Commission is directed to "investigate, analyze, and make findings of fact, as directed by law, as to the probable effect on the people" residing in an area of such proposed actions.⁵ While the Code of Virginia directs that the Commission's findings and recommendations in each case are to be based upon the criteria and standards prescribed by law for the disposition of such issue, the Commission is also cognizant of the fact that its analyses must be guided by the legislatively decreed concern for the viability of all the Commonwealth's localities.⁶

In this instance the Commission is presented with an action for partial immunity instituted by Augusta County seeking the immunization of approximately 38.2 square miles of territory from annexations initiated by the Cities of Staunton and Waynesboro and from the incorporation of new cities. The County seeks the immunization of (1) an area of approximately 17.6 square miles adjoining the City of Staunton (designated as Area A) from annexations initiated by that City, (2) an area of approximately 10.1 square miles adjoining the City of Waynesboro (designated as Area C) from annexations initiated by that City, and (3) an area of approximately 10.5 square miles connecting Areas A and C (designated as Area B-2) from annexations initiated by either City.⁷ It should be noted

⁵Sec. 15.1-945.3, Code of Virginia.

⁶Sec. 15.1-945.7(B), Code of Virginia.

⁷See Appendices A and B respectively for a map and a statistical profile of the areas for which immunity is sought.

that the County's notice to the Commission identifies Area B-2 as a component of a larger area (designated as Area B) which extends from the boundaries of the City of Staunton to the boundaries of the City of Waynesboro. Thus, Area B in its entirety includes a portion of Area A (designated as Area B-1), a portion of Area C (designated as Area B-3), and Area B-2. This intricate designation of sub-areas derives from the County's concern that the immunity laws of the State might be construed to preclude the immunization of territory lying between Staunton and Waynesboro (i.e., Area B-2) unless such territory physically adjoins one of those Cities. Hence, Area B-1 has been designated to provide a connecting link with the City of Staunton, and Area B-3 has been designated to provide a connecting link with the City of Waynesboro.

The action initiated by Augusta County constitutes the first instance in which this Commission, and subsequently the court, is required to apply the partial immunity statute.⁸ As such, this case raises legal concerns which have not previously been subject to judicial analysis and unexplored ramifications for local governments and interlocal relations in the Commonwealth. In the

⁸In September 1981 the County of Spotsylvania gave notice to this Commission of its intent to seek the immunization of a portion of its territory under the new immunity statute. This issue, however, was resolved by agreement between the County and the City of Fredericksburg in a manner which did not require a review of the original immunity action.

report which follows the Commission shall endeavor to apply its collective experience in local governmental affairs and administration and to leave questions of law for appropriate resolution elsewhere. We trust that this report will be of assistance to the citizens and leadership of the affected jurisdictions and to the Commonwealth generally in its endeavor to protect and to preserve the viability of its local governments.

GENERAL CHARACTERISTICS OF LOCALITIES AND RELEVANT AREAS

AUGUSTA COUNTY

General Comments

Having been founded in 1738, Augusta County has roots extending deep into America's colonial history. Augusta County has held and continues to occupy a prominent place among the Commonwealth's political subdivisions. In terms of physical size, Augusta County is the second largest county in the State with an area of approximately 986 square miles.⁹ In terms of population, the data indicate that the County is a growing community having experienced a significant increase in populace during the previous decade. From 1970 to 1980 Augusta County's population grew from 44,220

⁹County of Augusta, Augusta County Exhibits, Volume II (hereinafter cited as Augusta Exhibits, Vol. II), Exh. 1-1.

to 53,732, an increase of approximately 21.5%.¹⁰ These area and population figures reveal, however, that as of 1980 the County's overall population density was only 55 persons per square mile.¹¹ Thus, while the County experienced notable growth during the 1970's, it remains largely a rural and sparsely populated County.

The County's rural but developing nature is also disclosed by its employment and industrial patterns. As of 1980 Augusta County had a total civilian labor force of 26,443, but it provided nonagricultural wage and salary employment to only 13,690 persons.¹² Thus, nearly 50% of the County's labor force was engaged in agricultural production or forced to seek employment beyond the County's boundaries. The prominence of

¹⁰Julia H. Martin and Michael A. Spar, Growth in Virginia, 1970-1980 (Charlottesville: Tayloe Murphy Institute, University of Virginia, 1981), Table 1.

¹¹The exclusion of State and federal lands (359 square miles) and the exclusion of persons residing on such land would alter the population density figure. Due to the uncertain number of persons residing on such properties, a revised density figure based upon such exclusions is not available. It is recognized that the number of persons residing on State and federal lands in Augusta County is not inconsequential, since Western State Hospital and the Woodrow Wilson Rehabilitation Center together housed 1,925 persons at the time of the 1980 Census.

¹²Virginia Employment Commission, Population and Labor Force Data, 1980. The Virginia Employment Commission defines "labor force" as the sum of those persons presently employed plus those individuals registered for unemployment compensation (R. Gary Tate, Research Analyst, Office of Research and Analysis, Virginia Employment Commission, communication with staff of the Commission on Local Government, November 18, 1982).

agricultural production in Augusta County is revealed by the fact that in 1978 the County ranked third among all of Virginia's 95 counties in the value of its agricultural products. As of 1978 there were 1,483 active farms in the County, collectively cultivating 303,370 acres of farmland.¹³ Further, it should be noted that as of 1977, Augusta County had within its boundaries 318,822 acres of commercial forest lands then producing or capable of producing wood for industrial purposes.¹⁴

Employment data since 1975 do suggest a trend of increasing commercial and industrial development in the County. During the 5-year period between 1975 and 1980 there were a total of 2,720 new positions in nonagricultural wage and salary employment created in Augusta County, an increase of 24.8% in such employment opportunity during that span of years.¹⁵ While the prominence of agriculture and related enterprise in the County continues, it is evident that Augusta County is experiencing diversified growth and development.

Areas Proposed for Immunity

As indicated previously, Augusta County is seeking the

¹³U.S. Department of Commerce, Bureau of the Census, 1978 Census of Agriculture--County Summary Data, Number AC78-A-46, May 1981, Table 10.

¹⁴Virginia Division of Forestry, Forestry Resource Data, Central Shenandoah Planning District, 1977, Table 2.

¹⁵Population and Labor Force Data, 1975 and 1980.

immunization of areas adjoining the Cities of Staunton and Waynesboro designated as Areas A, B, and C. Area B has been subdivided into Areas B-1, B-2, and B-3, with Areas B-1 and B-3 included within Areas A and C respectively. Area B-2 lies between and connects Areas A and C. Thus, the total area and population of the territory for which the County seeks immunity is obtained by adding such statistics for Areas A, B-2, and C. Collectively, the three areas include 38.2 square miles and contain 14,461 persons.¹⁶ Accordingly, the overall population density of these combined areas, based on 1980 population data, is 379 persons per square mile.

As will be revealed by the analysis which follows in the succeeding sections of this report, the areas proposed for immunity are those containing the County's most significant concentrations of population, industrial and commercial development, and public facilities. In particular, Area B-2 contains a notable concentration of County facilities including Wilson Elementary School, Woodrow Wilson High School, the Valley Vocational--Technical Center, the Augusta County Library, the Recreational Center, the Central Purchasing Warehouse, the administrative offices of the Augusta County school system, and the Augusta County Service Authority's maintenance facilities. While Area B-2 is more sparsely populated than Areas A or C, having a 1980 population density of only 259 persons

¹⁶Augusta Notice, p. 25.

per square mile, it is clearly a major center of governmental activity in Augusta County.¹⁷

CITY OF STAUNTON

Staunton was founded as a community in 1747 and became one of the focal points of commerce and development in Augusta County during the succeeding century. In 1871 Staunton was granted independent city status and has since grown through a series of annexations to its present area of 8.88 square miles.¹⁸ It is significant to note that during the past three-quarters of a century, Staunton has had only one boundary expansion involving any significant amount of territory, and that annexation, which added 5.51 square miles to the City's area, occurred 35 years previously.¹⁹

Like many other Virginia municipalities, Staunton experienced a population decrease during the previous decade. From 1970 to 1980 Staunton's population declined from 24,504 to 21,857, a decrease slightly in excess of 10%.²⁰ The City's 1980 population and area indicate an overall population density of 2,461 persons per square mile.

¹⁷Data provided by Richard K. Bennett, Special Counsel, County of Augusta, letter to staff of the Commission on Local Government, September 21, 1982.

¹⁸City of Staunton, Response by City of Staunton to Partial Immunity Notice (hereinafter cited as Staunton Response), August 9, 1982, p. 17.

¹⁹Ibid., p. 4.

²⁰Growth in Virginia, 1970-1980.

Having experienced only minor territorial growth during the past three decades, the City has only a modest amount of land within its boundaries which is vacant and amenable to development. According to data produced by the City, there are only 513 acres (0.8 square mile) of vacant land in Staunton which are not constrained in their development potential by steep slopes, flood plains, or other environmental factors.²¹ Further, much of this land will not be suitable for industrial or commercial development due to locational concerns, parcel size, or legitimate zoning restrictions. The evidence suggests significant impediment to Staunton's continued sharing in the economic growth of its general area.

It is important to note that the City of Staunton continues to play a major role in the civic and economic life of its general area. Staunton is the home of King's Daughters Hospital, Mary Baldwin College, and numerous State and federal offices which serve the area's populace. Moreover, the data suggest that Staunton has and continues to play a major role in the commercial activities of the area and to provide significant employment opportunities for persons living beyond its boundaries. While the paucity of developable land within the City will, in time, likely restrict the continued growth of employment opportunities

²¹Staunton Response, p. 108

within Staunton, nonagricultural wage and salary employment positions in the City did increase by 21.3% between 1975 and 1980. By the latter date such employment in Staunton continued to exceed its total civilian work force.²² In sum, while the City of Staunton has not expanded its boundaries in more than 30 years and has experienced a significant population decline during the previous decade, it remains a vital and viable element of its general area.

CITY OF WAYNESBORO

While not having the colonial roots of Augusta County and Staunton, Waynesboro can trace its legal establishment to 1801. The community obtained town status in 1834 and became one of the Commonwealth's independent cities in 1947. As in the case of Staunton, the City of Waynesboro experienced a loss of populace during the previous decade. Between 1970 and 1980 the City's population decreased from 16,707 to 15,329, a loss of 8.2% of its residents.²³ With a land area of 7.5 square miles, the City's population density as of 1980 was 2,044 persons per square mile.²⁴

The City's last annexation, which occurred more than a quarter-century ago, brought into Waynesboro only 0.32 square

²²Between 1975 and 1980 nonagricultural wage and salary employment in the City rose from 9,437 to 11,455 (Population and Labor Force Data, 1975 and 1980).

²³Growth in Virginia, 1970-1980.

²⁴Augusta Exhibits, Exh. 1-1.

mile. With the passage of time the amount of vacant land in Waynesboro suited for development has been largely depleted. City data indicate that only 1.2 square miles of land within Waynesboro's boundaries are vacant and unrestrained by severe slopes for development.²⁵ Further, much of the vacant land in the City is restricted in development potential by parcel size, location, and appropriate zoning constrictions.

The evidence indicates that Waynesboro constitutes a major center in the life of its general area. In 1980, with a total civilian work force of 8,155 persons, the City had within its corporate limits 13,476 positions in non-agricultural wage and salary employment.²⁶ Thus, it is evident that the City of Waynesboro provides employment opportunities to thousands of non-residents. Further, with such community facilities as the Waynesboro Community Hospital, the City plays a major role in other aspects of the general life of its area.

STANDARDS AND FACTORS FOR IMMUNITY

The standards and factors which are to be considered

²⁵City of Waynesboro, City of Waynesboro Annexation Proceeding, Annexation Notice, August 1982, p. 204. Portions of this acreage also lie within the flood plain of the South River. Thus, the amount of vacant land free of environmental constraints is substantially less than 1.2 square miles.

²⁶Population and Labor Force Data, 1980.

by this Commission, and ultimately the court, in the analysis of county actions for partial immunity are set forth in Section 15.1-977.22:1 of the Code of Virginia. That statutory provision provides that a grant of immunity must rest upon a determination that appropriate urban-type services are being provided in the areas for which the county seeks immunity comparable to the type and level of such services furnished in the affected city. In the analysis of appropriate urban-type services this Commission and the court are directed to use as a guide the list of services set forth for consideration in annexation cases by Section 15.1-1041(b1)(i) of the Code of Virginia. The immunity statute states that a county shall be given credit for services provided its residents through "cooperative agreement" with a city, but not for services "provided by a city."

In addition to the analysis of comparability of appropriate urban-type services, the Commission and the court are required to consider (1) whether the county seeking partial immunity has made efforts to comply with applicable State policies with respect to environmental protection, public planning, education, public transportation, housing, and other service policies promulgated by the General Assembly; (2) whether the community of interest which exists between those areas of the county for which immunity is sought and the remainder of the county is greater than that between such areas and the adjoining city; and (3) whether the

county or the affected cities have arbitrarily refused to cooperate in the joint provision of services. If the court concludes that the county has within the areas for which it seeks immunity appropriate urban-type services comparable to the type and level provided by the adjoining city and that the other conditions are met, it is directed to enter an order establishing such immunity. The court is denied, however, the authority to grant partial immunity to any county where such would have the consequence of "substantially foreclosing" the opportunity of a city of less than 100,000 persons to extend its boundaries by annexation. This qualification to the State's partial immunity statute reveals, in our judgment, the intent of the General Assembly that cities of less than 100,000 in population be afforded a significant opportunity for growth.²⁷ The

²⁷With the defeat of the omnibus local boundary change and governmental transition bill (HB855) in 1977, the Virginia Municipal League and the Virginia Association of Counties established a joint task force to develop a series of compromise amendments to the legislation which would facilitate its subsequent passage. One of the proposed amendments emanating from that task force which was added to the legislation and subsequently enacted into law was the provision for partial immunity. It is significant to note that the State's total immunity provision permits a grant of total immunity to densely populated and urbanized counties merely on the basis of their total population and overall population density, while the partial immunity process is available to all counties but carries a significant burden of proof with respect to service provision, community of interest, and the other factors cited in this section.

following sections of this report offer the Commission's analyses and findings with respect to the application of these statutorily prescribed standards and factors to Augusta County's action for partial immunity.

COMPARABILITY OF APPROPRIATE URBAN-TYPE SERVICES

An analysis of the comparability of appropriate urban-type services, as required in partial immunity actions, necessitates at the outset consideration of several basic issues. The resolution of these issues has a fundamental impact upon any findings of fact which are rendered on this standard. First, the partial immunity statute directs the consideration of "appropriate urban-type services." A reviewing agency must determine whether the phrase is intended to denote (1) a pre-determined set of services which are generally required to serve urban areas, or (2) a varying set of services whose composition and nature change with the needs of the people and the physical characteristics of the area in question. The Commission notes that the General Assembly has prescribed a list of services to be used as a guide in partial immunity actions, indicating, in our judgment, an expectation that grants of immunity should be founded upon the general presence or availability of such services. On pragmatic grounds, the Commission considers it consistent with the interest of an area and of the Commonwealth to require that grants of permanent immunity from

annexation rest upon the current availability of an administrative structure and matrix of services suitable for addressing the range of needs of urban communities.

Second, the partial immunity statute requires that for immunity to be granted an area, a determination must be made that appropriate urban-type services are provided in such area "comparable" to the type and level of services provided in the affected city. A reviewing agency is confronted with a question as to whether the term "comparable" means equal, approximately equal, or allows some greater degree of disparity in services. While this term is susceptible to a variety of interpretations, it does, in our judgment, have a distinct meaning within the context of the State's partial immunity statute. Our analysis proceeds on the judgment that, in the context of the partial immunity statute, in order for services in an area of a county to be found "comparable" to those in an adjoining city, they must approximate those within the municipality. A grant of immunity, which is bestowed in perpetuity, should require assurance that the county areas in question have available a range of services of a type and level sufficient to address the broad needs of an urban community.

Finally, a reviewing agency must confront the question as to whether a grant of partial immunity must be founded exclusively upon services provided directly by

the county government, or whether such may be based, at least in part, upon services provided by other public or private entities. Assuming, as we do, that the concern of the Commonwealth is with the level and quality of services and not their origin, we deem it appropriate to include in our analysis consideration of services from all sources. A locality may opt, where such is consistent with law, to provide certain services within its boundaries "by" means of other public or private entities; however, it appears to this Commission that whatever inherent deficiencies or liabilities attend to reliance on non-local or non-public entities for such services require recognition and consideration in partial immunity actions. With these premises in mind, the Commission offers the following analysis.

Water Supply and Distribution

Proposed Immunity Areas. In 1966 the Augusta County Board of Supervisors established the Augusta County Service Authority (ACSA) and began the County's major involvement in the provision of public utility services.²⁸ While the ACSA exists as a separate political subdivision whose management and fiscal affairs are distinct from those of the County's

²⁸The Commission notes that sanitary districts, initiated by citizen petition, had previously existed in the County since 1948 under the authority of Chapter 2, Title 21 of the Code of Virginia.

general government, the County's general funds have been used to support the ACSA's activities. Indeed, during the previous five years the County has provided the ACSA with approximately \$646,000 for the development of specific water projects.²⁹

The ACSA presently has available water sources which are capable of providing 10.85 million gallons per day (MGD) to meet the County's overall needs.³⁰ ACSA-owned water sources include 2 reservoirs, 3 springs, and 7 wells which can produce in the aggregate 8.8 MGD. In addition, the ACSA has contracts permitting the purchase of 2.0 MGD from the City of Staunton and 0.05 MGD from the City of Waynesboro.³¹ Since existing connections to the ACSA's water system account for an average daily consumption of only 1.86 million gallons (MG), only a little over 20% of the system's capacity (10.85 MGD) is presently utilized.

²⁹Bennett, letter to staff of Commission on Local Government, September 24, 1982.

³⁰The Commission has been informed that one reservoir, Mills Creek, is not a State-permitted water source and would require additional testing and filtration in order to be used for public water supply (John H. O'Brien, Special Counsel, County of Augusta, communication with the staff of Commission on Local Government, November 4, 1982).

³¹Augusta Exhibits, Vol. II, Exh. 2-13; and data provided by Sarah H. Finley, Special Counsel, City of Waynesboro, letter to staff of Commission on Local Government, September 15, 1982.

The ACSA has no treatment plant, but it does chlorinate and fluoridate its water prior to distribution for use. No evidence was presented to the Commission indicating water contamination or suggesting the need for more extensive water treatment. The ACSA's water system is considerably enhanced by the interconnection of its various sources. Thus, problems encountered with one source need not threaten the supply to any area.³²

The ACSA owns and operates 211.8 miles of water lines throughout the County, with 79.7 miles of those lines, or approximately 38% of the total, located within the areas sought for immunity. The ACSA's distribution network serves 6,482 connections countywide, with 3,561, or approximately 55% of the total, in the proposed immunity areas.³³ It is significant to note that the ACSA maintains 13 standtanks with an aggregate storage capacity of 6.26 MG, with 7 of those tanks being located in the proposed immunity areas. These tanks provide the County with significant water reserves to meet extraordinary needs and enhance the

³²Testimony by William L. Hart, Engineer-Director, Augusta County Service Authority, Hearings Before the Virginia Commission on Local Government (hereinafter cited as Hearings), Vol. 1, p. 89. See also Kenneth R. Hinkle and R. McChesney Stennett, Groundwater Resources of Augusta County, Virginia, (Richmond: Virginia State Water Control Board, Bureau of Water Control Management, 1978), p. 74.

³³Augusta Exhibits, Exh. 2-15.

pressure in the system.³⁴ Since the ACSA water system is fully interconnected, this reserve water is available for use as needed anywhere in the distribution system.

A major element for consideration in immunity actions, is the extent to which services are provided in the various areas for which immunity is sought. With respect to water service, the evidence indicates that the ACSA presently serves 91% of the residents of Area A, 96% of the residents of Area B-2, and 91% of the residents of Area C.³⁵ While County exhibits reveal that water lines are not presently located in major segments of the proposed immunity areas, the County contends that its distribution system currently serves the percentage of residents cited above.³⁶ Data also suggest that the ACSA has continued to expand its distribution system since its creation. The number of water connections served by the ACSA system has grown from 3,156 in 1970 to 6,482 in mid-1982, an increase of over 105%.³⁷

Several major concerns have been expressed regarding

³⁴Augusta Exhibits, Vol. II, Exh. 2-14; and County of Augusta, Augusta County, Partial Immunity Proceedings, 1982, Volume I, Map Exhibits (hereinafter cited as Augusta Exhibits, Vol. I), Exh. 4.

³⁵County of Augusta, Proposed Findings of Fact Submitted by Augusta County (hereinafter cited as Augusta Proposed Findings), September 30, 1982, p. 13.

³⁶Augusta Exhibits, Vol. I, Exh. 4.

³⁷Augusta Exhibits, Vol. II, Exh. 2-19.

the water service provided by the ACSA. First, evidence discloses that the charges imposed by the ACSA for water service, both in terms of connection fees and user charges, are currently considerably in excess of those levied by either the City of Staunton or the City of Waynesboro and that the ACSA user charges are due for a further increase of approximately 16% as of January 1983.³⁸ This disparity in the cost of water service in the proposed immunity areas and the Cities is a product of the recent development of the ACSA system and the less densely populated nature of the areas served. The cost disparity cannot be attributed, on the basis of information available to us, to deficiencies in management and operation.

Second, the reliability of the ACSA water system has been questioned due to the absence of a treatment system and the potential vulnerability of its water sources to contamination. Concern with the reliability of the system arises from the fact that if contamination is found, the ACSA has no comprehensive treatment facility to address such. Further, the possibility of contamination of the system's groundwater sources is increased by the fact that subterranean features in the general area result in an intricate interconnection of subsurface water which permits

³⁸Bennett, letter to staff of Commission on Local Government, September 24, 1982. Current user charge for water service is \$10 for consumption up to 8,000 gallons.

pollution from a distant site to contaminate sources utilized by the ACSA. Moreover, the intricate interconnection of subsurface water in the area could render the identification of the source of contamination extremely difficult.³⁹ The Commission notes, however, that approximately 75% of the ACSA's water supply comes from surface sources or from purchase from the City of Staunton, and that there have been no recorded incidents to date of pollution affecting the ACSA's groundwater sources. In view of these facts the Commission cannot conclude that the absence of a treatment facility at this time renders the ACSA water system unreliable or inappropriate to serve the proposed immunity areas.

A final concern relative to the ACSA's water services and operations generally must be noted. The ACSA, established as an independent political subdivision of the State, is given considerable autonomy in its provision of utility services in Augusta County. While the members of the ACSA are appointed for fixed terms by the Augusta County Board of Supervisors, once appointed the members may exercise considerable discretion over the direction and pace of utility expansion within the County. The Commission is aware of the inherent problems in the use of independent authorities in the provision of public services but recognizes that such problems can be avoided

³⁹Groundwater Resources of Augusta County, Virginia,
pp. 67-74.

by personal leadership and agreement on utility policies. While reliance on independent authorities fragments local governmental responsibility and the administration of local services, the evidence indicates that the ACSA has worked in harmony with the Board of Supervisors in meeting the needs of the County. Any analysis of local services must note, however, the potential difficulties in the use of independent authorities and the schism in management responsibility.

City of Staunton. The City of Staunton has as raw water sources two dams which together hold in excess of 300 MG. These water sources can be augmented by Gardner Spring and Middle River which can produce 6 MGD and 7 MGD respectively. Despite the magnitude of these sources, Staunton is unable to generate raw water in excess of 8.3 MGD due to gravity flow and pumping limitations.⁴⁰ Staunton, due to its reliance on surface water sources, has a conventional treatment plant which has a treatment capacity of 8.0 MGD. Since the City's current average daily consumption of water is 3.76 MGD, Staunton is presently utilizing only 47% of its treatment capacity.⁴¹

The City has an extensive water distribution system encompassing 165 miles of lines concentrated largely within

⁴⁰Data provided by Matthew J. Calvert, Special Counsel, City of Staunton, letter to staff of the Commission on Local Government, September 16, 1982.

⁴¹Staunton Response, p. 30.

its corporate area of 8.8 square miles.⁴² This network of water lines represents a concentration of distribution facilities within the City far surpassing the ACSA's 79.7 miles of line within the 38.2 square miles of area proposed for immunity. By virtue of this distribution system, Staunton serves 7,818 connections within the City providing public water to 98.4% of its residents.⁴³ The City's water system includes 3 standtanks and 1 ground reservoir having an aggregate storage capacity of 6.95 MG, not quite sufficient to provide a water reserve for two days based on current average daily consumption.⁴⁴

In terms of deficiencies with the Staunton system, two concerns have been noted. First, the distribution system presently includes 26 miles of line, about 16% of the total, less than four inches in diameter. This size pipe has presented water flow problems in selected areas of the City.⁴⁵ Second, there is not an emergency power source at the treatment plant with the consequence that the plant is more vulnerable to service interruption.⁴⁶

⁴²Ibid.

⁴³Ibid. The City serves directly 293 connections in Area A and by contract with the ACSA will provide the County 2 MGD (Augusta Exhibits, Vol. II, Exh. 2-13).

⁴⁴Calvert, letter to staff of the Commission on Local Government, September 16, 1982.

⁴⁵Ibid.; and Staunton Response, p. 30.

⁴⁶City of Staunton, Comprehensive Plan, Background Study, April 1981, p. 194.

While this deficiency is not inconsequential and should be addressed, the Commission is aware that the absence of auxiliary power sources at municipal water treatment plants is not an unusual situation.

City of Waynesboro. The City of Waynesboro has raw water sources which are capable of producing collectively 5.2 MGD. The City's sources, which are all groundwater in nature, include 2 wells and 2 springs, with the latter situated in Area C. Waynesboro has available 2 additional springs which can be developed when the need arises.⁴⁷ As in the case of Augusta County, the City has no treatment plant but chlorinates and fluoridates its water prior to distribution for use. Since Waynesboro's current average daily water consumption is 3.0 MGD, the City's system is presently utilized at less than 58% of capacity.⁴⁸

The City has an extensive distribution system which includes more than 70 miles of water lines within the 7.5 square miles inside its corporate boundaries.⁴⁹ This distribution network serves 5,985 connections within Waynesboro's boundaries and provides municipal water to 98% of

⁴⁷City of Waynesboro, Augusta County Partial Immunity Proceedings, City of Waynesboro Response, Vol. I (hereinafter cited as Waynesboro Response), August 1982, pp. 14-16.

⁴⁸Ibid., p. 24.

⁴⁹Ibid., p. 16. Approximately 6 miles of lines (9% of total) are less than 4 inches in diameter.

the City's residents.⁵⁰

At the present time the City has 2 standtanks and 2 ground reservoirs for the storage of treated water. These facilities hold collectively 3.2 MG, or slightly in excess of a day's average consumption. The City does plan to construct a new 1.0 MG reservoir in the near future. Since the new facility will replace a 0.42 MG reservoir, the City will experience a net increase in water storage capacity of 0.58 MG when the new facility is operational.⁵¹

Since the Waynesboro water system does not utilize a treatment plant and is entirely dependent upon subsurface water, the system is more vulnerable to contamination than that operated by the ACSA. As stated previously, the inter-connection of subsurface water channels in the general area renders water sources vulnerable to contamination from distant and indistinct locations. While the Commission notes that there have been no recorded incidents of ground water pollution affecting the City's water system, evidence has indicated that on one occasion the City's failure to follow State testing procedures did result in the issuance of a

⁵⁰Data provided by Charles T. Yancey, City Manager, City of Waynesboro, communication with staff of Commission on Local Government, October 12, 1982; and City of Waynesboro, Proposed Findings of Fact and Conclusions of Law by the City of Waynesboro, September 30, 1982, p. 28. The distribution network also serves 93 connections in the County, 68 of which are in Area C, and provides the ACSA with 50,000 gallons per day (GPD) for use in the Dooms area (Finley, letter to staff of Commission on Local Government, September 16, 1982).

⁵¹Waynesboro Response, pp. 17-18; and Finley, letter to staff of Commission on Local Government, September 16, 1982.

health alert.⁵²

Comparability of Service. On the basis of our analysis the Commission concludes that the water services extended generally to the areas proposed for immunity by the ACSA are comparable to the services provided by the Cities of Staunton and Waynesboro.

Sewage Collection and Treatment

Proposed Immunity Areas. With the establishment of the ACSA in 1966 Augusta County began to address comprehensively the sewage collection and treatment needs of its residents. Since that date the ACSA has gradually, but consistently, extended its sewage treatment capabilities and presently operates 9 treatment plants in the County with an aggregate treatment capacity of 4.46 MGD.⁵³ Between 1970 and mid-1982 the number of connections served by the ACSA countywide

⁵²Groundwater Resources of Augusta County, Virginia, p. 74; and testimony of Charles T. Yancey, City Manager, City of Waynesboro, Hearings, Vol. III, pp. 236-238. Testing procedures established by the State Health Department require the examination of a minimum number of water samples per month based on daily population served. During the month of April 1981, the City of Waynesboro submitted one less water sample than the minimum required by the regulations. State standards and the Health Department required the City to give public notification to its citizens of the incident in accordance with Section 5.10 of the Waterworks Regulations (Jesse D. Mahew, District Engineer, Virginia Department of Health, letter to Charles T. Yancey, City Manager, City of Waynesboro, June 2, 1982). The Commission notes that there has been no repetition of the problem since that date.

⁵³Augusta Exhibits, Vol. II, Exh. 2-15.

increased from 758 to 3,006, or by 296.6%.⁵⁴ At the present time 2,113 of the ACSA connections, or more than 70% of the total, are located within the areas proposed for immunity.⁵⁵

Three of the ACSA's treatment facilities serve the various areas proposed for immunity. The Verona Sewage Treatment Plant, which was constructed in 1981, serves Verona and the northern portion of Area A. The plant has a design capacity of 0.8 MGD and is currently treating an average flow of 0.342 MGD.⁵⁶ Thus, this plant is presently utilizing less than 43% of its design capacity. It is significant to note that the Verona plant is served by one of the most modern laboratory facilities in the general area. The southern portion of Area A is served by the Plaza Treatment Plant, a small facility built in 1966 with a design capacity of 0.2 MGD. Since this plant currently processes a flow of 0.068 MGD, it is presently utilizing only 34% of its design capacity.⁵⁷ The third ACSA facility serving the proposed immunity areas is the Fishersville Regional Water Treatment Plant. The plant, which is located in Area B-2, serves portions of Area A and segments of Area B-2. This modern facility, built in 1976, has a design capacity of 2.0 MGD

⁵⁴Ibid., Exh. 2-18.

⁵⁵Ibid., Exh, 2-15.

⁵⁶Augusta Notice, pp. 37-38.

⁵⁷Ibid., p. 38.

and is presently treating an average flow of 0.570 MGD. Thus, the data indicate that less than 29% of the plant's treatment capacity is currently utilized. The ACSA is presently constructing force mains and pump stations which will enable it to transport sewage from portions of Area C to the Fishersville plant for treatment.⁵⁸ At the present time all sewage collected by ACSA lines in Area C is treated by the City of Waynesboro by contractual arrangement.

The ACSA owns and operates a total of 125.4 miles of sewerage lines, ranging in diameter from 8 inches to 36 inches, throughout Augusta County. Of that total, 82.4 miles or lines, or approximately 66%, are located within the proposed immunity areas. As stated previously, this sewage collection system serves 2,113 connections in the areas proposed for immunity.⁵⁹ County data indicate that ACSA connections serve 80% of the residents of Area A, 51% of the residents of Area B-2, and 57% of the residents of Area C.⁶⁰ With respect to sewerage services in the areas proposed for immunity, it should be noted that Staunton serves directly through its own facilities 275 connections in Area A and that the entire portion of Area C south of Interstate 64 and east of U.S. 340

⁵⁸Ibid., pp. 35, 38.

⁵⁹Augusta Exhibits, Vol. II., Exh. 2-15.

⁶⁰Augusta Proposed Findings, p. 11. The County has calculated, however, that approximately 88% of the population of Area B-2 resides within 200 feet of an ACSA sewer line (Harold H. Ralston, County Planner, County of Augusta, communication with staff of Commission on Local Government, November 22, 1982).

is without sewerage lines.⁶¹

An additional point with respect to the sewerage facilities and services in the proposed immunity areas merits note. The charge for sewerage service by the ACSA is considerably greater than that levied by either the City of Staunton or the City of Waynesboro. As previously stated, the disparity in rates charged by the ACSA is a product of the newness of its system and the more sparsely populated nature of the area served. While the level of utility rates is clearly a matter of concern to those utilizing the ACSA system, and may indeed impede the rate of new connections, this Commission does not believe that the disparity in rates should bear appreciably on the issue of comparability of services.

City of Staunton. The City of Staunton's wastewater treatment plant was constructed in 1939 with renovations being made in the facility in 1962 and again in 1981. The plant has a treatment capacity of 4.5 MGD and currently handles an average flow of 2.5 MGD, or approximately 56% of capacity.⁶² Staunton owns and maintains 84.7 miles of sewerage lines, ranging in size from 8 inches to 36 inches in diameter, to serve

⁶¹Bennett, letter to staff of Commission on Local Government, September 16, 1982; and Augusta Exhibits, Vol. I, Exh. 3.

⁶²Augusta Notice, p. 38; and Staunton Response, p. 22.

its residents. This sewage collection system serves 98.4% of the City's residents and 5% of the residents of Area A.⁶³

Evidence presented to the Commission indicates that while the laboratory serving Staunton's sewage treatment facility is capable of performing all required tests, it does not have capabilities equal to the laboratories serving the ACSA facilities at Verona and Fishersville.⁶⁴ Further, the Commission is aware that the Staunton sewerage system has experienced major inflow and infiltration problems typical of those experienced by older systems generally.⁶⁵ Finally, testimony has disclosed that the City has experienced repeated difficulty in recent years in meeting the discharge limits imposed upon it.⁶⁶

City of Waynesboro. The City of Waynesboro's treatment plant was constructed in 1955 and expanded in 1968. The facility has a treatment capacity of 4.0 MGD and presently handles an average daily flow of 1.6 MGD, approximately 40% of capacity.⁶⁷ Testimony has disclosed that the City is unable to use fully the reserve capacity at the treatment facility due to the assimilative qualities of the South

⁶³Ibid., p. 24; and Calvert, letter to staff of Commission on Local Government, September 16, 1982.

⁶⁴Augusta Exhibits, Vol. II, Exhs. 2-1, 2-2..

⁶⁵Testimony of Nicholas T. Collins, Director of Public Works, City of Staunton, Hearings, Vol. II, p. 366.

⁶⁶Ibid., pp. 345 ff.

⁶⁷Waynesboro Response, p. 4.

River which receives the plant's discharge.⁶⁸ Waynesboro, however, is currently under requirement to upgrade its plant to provide advanced treatment in view of the limitations of the South River's assimilative capacity. The required improvements to the City's facility will enable it to utilize more fully its reserve capacity. Waynesboro's sewage collection system includes 73.5 miles of lines varying in diameter from 8 inches to 36 inches. The system serves 92% of the residents of Waynesboro and receives for treatment, by contractual agreement with the ACSA, 0.3 MGD of effluent from Area C.⁶⁹

Comparability of Service. The Commission's analysis of the sewage collection and treatment facilities serving the proposed immunity areas discloses that those facilities are modern and of a quality clearly comparable to those owned and operated by the Cities of Staunton and Waynesboro. We note, however, that ACSA services are not uniformly provided throughout the proposed immunity areas. While ACSA connections serve 80% of the population in Area A,

⁶⁸Testimony of Yancey, Hearings, Vol. III, pp. 348-350; and R. Kenneth Weeks, Engineer, Facility Plan and Environmental Assessment for Advanced Wastewater Treatment and Separation of Storm and Sanitary Sewers, City of Waynesboro, September 16, 1976, Appendix I, p. 16.

⁶⁹Finley, letter to staff of Commission on Local Government, September 22, 1982.

approximately half of the residents of Areas B-2 and C are not served by central sewerage systems but continue to rely on septic tanks. Further, the evidence indicates that the ACSA presently has no sewerage lines in Area C south of Interstate 64 and east of U.S. 340. While the ACSA has made significant and commendable progress in extending sewerage services to Augusta County residents, and while its facilities are modern and their operations have been commended by State regulatory officials, this Commission cannot conclude, at this time, that all the areas proposed for immunity are served to a degree which renders ACSA sewerage service comparable to that provided within the Cities of Staunton and Waynesboro. The Commission notes, however, that the proximity of ACSA lines to residences still served by septic tank, and with increased connections to those lines, sewerage service in portions of the areas proposed for immunity are approaching comparability.

Crime Prevention and Detection

Proposed Immunity Areas. One of the fundamental and most important services provided by a local government is crime prevention and detection. The quality of this service can have a pervasive influence on our daily lives. Augusta County relies primarily on its Sheriff's Department for the provision of crime prevention and detection services. The Augusta County Sheriff's Department has a total staff of 61 sworn officers, 20 of whom are regularly and actively engaged in patrol activities. The Sheriff's Department has

available 32 vehicles which are assigned to the deputies on a 24-hour basis.⁷⁰

The Sheriff's Department utilizes 3 shifts a day for the provision of patrol services. Each shift is staffed by 5 deputies, with 1 deputy being assigned to patrol each of the County's 4 patrol areas and the fifth deputy serving as shift supervisor and backup in case of emergency.⁷¹ It is important to note that the County's 4 patrol areas radiate from the City of Staunton and that the dominant portion of the proposed immunity areas is situated within the "East" patrol area.⁷² The Sheriff's Department has asserted that due to patrol patterns and concentration of effort in or near the proposed immunity areas, its deputies can be expected to respond to emergency calls for service within the proposed immunity areas within approximately five minutes.⁷³

While law enforcement indices based upon population and area served do not offer a complete and totally refined measure of the adequacy of law enforcement services, they are factors which are relevant and, in our judgment,

⁷⁰Augusta Exhibits, Vol. II, Exhs. 5-2, 5-4; and Augusta Notice, p. 65. The work of the Sheriff's Department is assisted by the availability of an auxiliary of 17 persons.

⁷¹Testimony of Randall D. Fisher, Lieutenant, Augusta County Sheriff's Department, Hearings, Vol. II, pp. 166-170.

⁷²City of Waynesboro, Augusta County Partial Immunity Proceedings, City of Waynesboro Response, Vol. II, Map Exhibits (hereinafter cited as Waynesboro Map Exhibits), August 1982, Map W-4.

⁷³Testimony of Fisher, Hearings, Vol. II, pp. 169-170.

merit note. Accordingly, the Commission observes that the County's total staff of 20 patrol officers constitutes a staffing level of 1 officer for every 2,687 County residents. Further, with an average of 5 officers on patrol duty at all times, this staffing level provides a constant geographic intensity of service of 1 officer for each 125.3 square miles of County territory, exclusive of State and federal land preserves.

Another and broadly accepted index of the adequacy of law enforcement service is the ratio of patrol officers to the incidence of need for active law enforcement response. The incidence of need cannot be determined merely from the amount of major crime reported and published in State compilations.⁷⁴ Such statistics reveal only a portion of the demands on local law enforcement agencies. A more appropriate measure of law enforcement needs is the total "calls for service" handled by the local agency. Such "calls for service" would include not only incidents of major crime but requests for law enforcement assistance for a wide variety of minor criminal and non-criminal matters (e.g., missing child). Since the Augusta County Sheriff's Department presently logs only criminal calls, the department does not have available a tabulation of the total "calls for service" to which it has responded. Since various State and national

⁷⁴Crime rates in 1981 were reported to be 1,548 in Augusta County, 4,209 in the City of Staunton, and 3,672 in the City of Waynesboro (Virginia Department of State Police, Crime in Virginia, 1981). Crime rates reflect only the number of crimes in seven major categories of criminal activity (murder/nonnegligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny, and motor vehicle theft).

studies have shown that criminal calls constitute approximately 20% of the "calls for service" received by local law enforcement agencies, it is possible to calculate the approximate total "calls for service" in an area based upon the incidence of crime-related calls.⁷⁵ On the basis of the number of crime-related calls from the proposed immunity areas in 1981, as recorded by the Sheriff's Department, it may be estimated that the total number of "calls for service" from those areas during that year was approximately 2,710. Because of patrol patterns and staffing levels, it is reasonable to conclude that these 2,710 "calls for service" were the responsibility of 5 officers.⁷⁶ Thus, if these calculations are correct, each patrol position servicing the proposed immunity areas would have been responsible for 542 "calls for service."

⁷⁵International Association of Chiefs of Police, Allocation and Distribution of Police Manpower, April 1980.

⁷⁶Bennett, letter to staff of Commission on Local Government, September 21, 1982. While the 5 deputies who are assigned to the "East" patrol district are responsible for an area many times larger than the proposed immunity areas, the Commission's calculations are based upon the assumption that these officers can devote their entire time to the needs of the areas proposed for immunity. This allowance is a reasonable adjustment due to the fact that the deputies assigned to the "North" patrol district also serve a portion of the proposed immunity areas. In sum, the Commission would contend that based upon staffing levels and patrol patterns a judgment that a total of 5 deputies serve the proposed immunity areas on a regular and routine basis is reasonable.

It is important to note here that, in our view, it is inappropriate to consider investigators, process servers, and State Police as being available to assist regularly and routinely with the County's patrol responsibilities. Investigators typically devote most of their time to pursuing their investigative responsibilities, and the 3 process servers in the Augusta County Sheriff's Department, who have been responsible in recent years for executing over 15,000 civil processes annually, appear to have little time for patrol duty.⁷⁷ Further, State Police have traffic enforcement and accident investigation as their principal responsibilities and do not normally respond to minor criminal calls and other matters requiring action by local law enforcement agencies.⁷⁸ In addition, a local law enforcement agency has no control over the location of State Police and cannot assign them routine "calls for service" which constitute the bulk of local law enforcement activity.

While patrol activity is considered the most important element in local law enforcement activity, there are other

⁷⁷Ibid.

⁷⁸Augusta Exhibits, Vol. II, Exh. 5-4. The Virginia State Police handled only 44 of the 832 major crimes reported in the County during 1981, or 5.3% of the total (Crime in Virginia, 1981, p. 40). The State Police do relieve the Sheriff's Department of primary responsibility for patrolling the approximate 218 miles of Interstate and primary roads in the County. To a lesser degree the State Police assist with patrolling the approximate 980 miles of secondary roads in Augusta County.

significant features which merit consideration in this analysis. First, the Commission notes that the County operates an excellent communications system and has been active in the utilization of computers in its criminal justice work.⁷⁹ Second, its investigative efforts led to the clearance of 28.2% of its reported major crimes in 1981, a figure considerably better than the statewide clearance rate (23.6%) for that calendar year.⁸⁰ Third, while the Augusta County Sheriff's Department does conduct an organized crime prevention program, this function does not have personnel assigned to it on a regular basis and does not appear to be a vigorous component of the County's law enforcement services.⁸¹ In our judgment, this area of law enforcement activity is one which merits increased attention and devotion of resources. Fourth, the Commission observes that while County deputies appear to receive the required basic and in-service training, evidence suggests that in the aggregate the deputies have had only moderate exposure to specialized training (exclusive of firearms instruction) in relation to that

⁷⁹Testimony of Fisher, Hearings, Vol. II, pp. 173-175.

⁸⁰Augusta Exhibits, Vol. II, Exhs. 5-4, 5-5.

⁸¹Testimony of Fisher, Hearings, Vol. II, pp. 186 ff.

provided law enforcement officers in the adjoining Cities.⁸²

Finally, any analysis of the level and intensity of law enforcement services in a community must include consideration of the fiscal resources devoted to such services. Data indicate that combined State and local expenditures in support of the Augusta County Sheriff's Department in Fiscal Year 1980-81 totaled \$708,260, or \$13.18 per capita.⁸³

City of Staunton. The City of Staunton provides law enforcement services to its residents through the operation of a Police Department headed by a Chief of Police who is responsible to the City Manager. The Staunton Police Department has a staff which includes 44 sworn law enforcement personnel, of whom 32 are assigned to patrol activities.⁸⁴

⁸²The Commission's analysis of the training records of Sheriff's Deputies indicates that these officers have taken collectively during their service approximately 75 courses of specialized instruction, exclusive of firearms training.

⁸³Auditor of Public Accounts, Comparative Report of Local Government Revenues and Expenditures, Year Ending June 30, 1981 (hereinafter cited as Comparative Report of Revenues and Expenditures), Exh. C-3. Since July 1, 1981 the State Compensation Board pays the full cost of the State-approved budget for sheriffs' departments. During Fiscal Year 1980-81, the County supplemented the State funds with \$10,382 in local money, or by \$.19 per capita (Auditor of Public Accounts, County of Augusta, Virginia, Report on Audit for the Fiscal Year Ending June 30, 1981, Schedule 1, p. 3 and Schedule 2, p. 2).

⁸⁴Staunton Response, pp. 44, 48. The City Police Department is augmented by a 25-person volunteer police reserve which assists with patrol duties (Testimony of Philip L. Ash, Jr., Chief of Police, City of Staunton, Hearings, Vol. III, p. 34).

The operations of the Police Department are supported by the availability of 17 police vehicles.⁸⁵

Staunton's patrol staffing levels are sufficient to provide 1 patrol officer for each 683 residents, based on 1980 population statistics. Since the City maintains an average of 4 patrol officers on duty at all times to cover the 8.8 square miles within its corporate boundaries, the resulting geographic coverage is 1 officer for each 2.2 square miles. This level of patrol activity has permitted the Staunton Police Department to respond, on the average, to recent emergency calls in 1.8 minutes and to all calls in 3.4 minutes.⁸⁶ In terms of the demand for services in relation to available staff, the data indicate that the Staunton Police Department can be expected to receive approximately 13,583 "calls for service" in 1982, or 424 for each patrol officer serving the City.⁸⁷

The training and educational levels of officers

⁸⁵ Augusta Exhibits, Vol. II, Exh. 5-4.

⁸⁶ Staunton Response, p. 45. The Commission notes that not all crimes are susceptible to impact from rapid police response, but response time is a factor which cannot be disregarded [National Institute of Law Enforcement and Criminal Justice, Response Time Analysis, Executive Summary (Washington, DC: Law Enforcement Assistance Administration, September 1978)].

⁸⁷ Calvert, letter to staff of Commission on Local Government, September 22, 1982. Calls for service data for Staunton are based on the number of calls handled by the police department during the first 8 months of 1982.

constitute a major consideration in any analysis of a community's law enforcement services. New recruits entering the Staunton Police Department are required to attend an 8-week basic training program conducted at the Central Shenandoah Criminal Justice Training Center (CSCJTC). This training is augmented by a City-established 14-week field training program. Further, the Commission notes that approximately 50% of Staunton's law enforcement personnel hold 2-year associate degrees and that currently 16 of its officers are pursuing either associate or higher degrees from institutions of higher learning.⁸⁸ Such advanced training and education is an important element in the quality of criminal justice services, for few professions require the skill, understanding, sensitivity, and maturity as law enforcement. The educational efforts and achievements of the members of Staunton's Police Department must contribute to the quality of the City's law enforcement activities.

The evidence indicates that the City does support an active crime prevention program. The activity of the program is suggested by the fact that the Staunton Police Department made 45 presentations to citizen groups during 1981, of which 8 were offered to groups in Augusta County.⁸⁹

⁸⁸ Staunton Response, p. 46; and Calvert, letter to staff of Commission on Local Government, November 10, 1982. The Department's training records also indicate that City officers have taken collectively approximately 325 courses of specialized advanced instruction, exclusive of firearms training, during the course of their careers.

⁸⁹ Staunton Response, p. 47.

In our view, an active crime prevention program should be a significant element in the law enforcement activities of each locality.

While the City's Police Department has not incorporated the computer into its activities to the extent that it is utilized by the County Sheriff's Department, the City's Police Department has shown an attentiveness to new and promising criminal justice programs. The Commission is advised that the City's Police Department was the first of its size in Virginia to establish an Integrated Criminal Apprehension Program. This program has shown promising results in areas where it has been implemented.⁹⁰ Further, the City's willingness to explore new means of addressing public safety concerns is evidenced by the Department's establishment of a program to interdict habitual alcohol abusers. While none of these innovations are likely to end the City's public safety concerns, they attest to a willingness to explore new alternatives to persistent social problems. Such efforts and initiatives suggest qualities of leadership which are

⁹⁰Ibid., p. 46. The Integrated Criminal Apprehension Program (ICAP) is designed to increase the effectiveness and efficiency of law enforcement efforts by analyzing both crime and agency operations. By such analyses better deployment strategies are developed to match manpower with workload demands and to increase arrests leading to convictions. The program is currently being used by the police departments in Newport News, Hampton, Virginia Beach, and Portsmouth (Virginia Department of Criminal Justice Services, ICAP Program Introduction, April 30, 1981).

inextricably a part of any evaluation of local law enforcement services.

In terms of financial commitment to meeting its law enforcement needs, the data disclose that during Fiscal Year 1980-81 the City expended \$1,144,213 in support of its Police Department, a per capita expenditure of \$52.35.⁹¹

City of Waynesboro. The City of Waynesboro also provides law enforcement services to its residents through a Police Department directed by a Chief of Police responsible to the City Manager. Waynesboro's Police Department has 38 sworn officers, including 26 who are assigned to patrol activities.⁹² The department has available 9 police vehicles to support its law enforcement efforts.⁹³

The City's patrol staff provides 1 officer for each 590 City residents. Since the City's patrol policies require the presence of 4 officers on duty at all times to patrol the 7.5 square miles within the City's boundaries, the geographic concentration of service is 1 officer for each 1.9 square miles.⁹⁴ In terms of total patrol staff to incidence of need, actual tabulation of "calls for service" in

⁹¹Ibid, p. 48; and Comparative Report of Revenues and Expenditures, Exh. C-3. During Fiscal Year 1980-81, the City received \$252,235 from the State for law enforcement purposes; thus, local law enforcement expenditures for that fiscal year were \$891,978, or \$40.81 per capita.

⁹²Waynesboro Response, p. 38. Law enforcement personnel are supplemented by a 31-member fully trained and equipped auxiliary police unit.

⁹³Augusta Exhibits, Vol. II, Exh. 5-4.

⁹⁴Waynesboro Response, p. 42.

Waynesboro in 1981 reflects the fact that each officer was responsible for 298 such calls.⁹⁵ The intensity of patrol activity in the City has resulted in the Waynesboro Police Department maintaining an average response time of 2.66 minutes for emergency calls and 3.18 minutes for all calls.⁹⁶

The evidence indicates that the City provides an extensive training program for its personnel. Each new recruit is required to attend the 8-week basic training program at the CSJTC and subsequently is given 12 weeks of field training by City personnel.⁹⁷ In addition, data submitted to the Commission reveal that Department personnel have consistently received training far in excess of the hours of in-service training mandated by the State.⁹⁸

There are several additional aspects of Waynesboro's law enforcement services which require comment. First, data submitted by the City indicate that Waynesboro Police Department, as the County Sheriff's Department, makes extensive use of computer facilities in recording and processing various criminal and police-related

⁹⁵Finley, letter to staff of Commission on Local Government, September 22, 1982.

⁹⁶Ibid.

⁹⁷Waynesboro Response, p. 39.

⁹⁸Ibid., p. 40. Departmental training records reveal that Waynesboro officers have taken in the aggregate approximately 240 courses of advanced specialized training, exclusive of firearms instruction, during their careers.

records.⁹⁹ The use of such automated equipment is becoming an essential element in the management and operations of modern law enforcement agencies. Second, the City's Police Department operates an active and highly regarded crime prevention program. This program contains a variety of elements and uses various media in reaching the public.¹⁰⁰ The State's Department of Criminal Justice Services has characterized Waynesboro's crime prevention program as excellent.¹⁰¹ As stated previously, there is growing recognition that crime prevention programs are vital elements of local law enforcement services.

Finally, data reveal that the City expended \$826,386 in support of its Police Department in Fiscal Year 1980-81, or \$53.91 per capita.¹⁰² This level of financial support was more than four times that provided for the Augusta County Sheriff's Department (\$13.18).

Comparability of Service. The Commission's analysis indicates that in terms of communications and criminal investigations the services provided by the Augusta County

⁹⁹Ibid., pp. 45-46.

¹⁰⁰Ibid., pp. 47-49.

¹⁰¹Patrick D. Harris, Crime Prevention Specialist, Department of Criminal Justice Services, communication with staff of Commission on Local Government, November 23, 1982.

¹⁰²Comparative Report of Revenues and Expenditures, Exh. C-3. During Fiscal Year 1980-81 the City received \$199,874 from the State as law enforcement aid. Excluding such, the City provided \$626,512 or \$40.87 per capita in local funds to support its police department.

Sheriff's Department are comparable to those provided by the Cities of Staunton and Waynesboro. In terms of the level of patrol activity, crime prevention services, specialized training, and financial support, however, this Commission cannot conclude that the services provided by the Sheriff's Department within the proposed immunity areas are comparable to those provided by the police departments of Staunton and Waynesboro. While the record suggests that the Sheriff's Department is served by an experienced staff of deputies, the disparity in financial resources expended renders impossible a general level of law enforcement activity comparable to that provided within the neighboring municipalities.

Fire Prevention and Protection

Proposed Immunity Areas. The fire prevention and protection services throughout Augusta County generally are provided by 7 full-time paid firefighters and 414 volunteers who are organized into 12 companies. These companies operate collectively 58 pieces of firefighting equipment.¹⁰³ Five of these companies have first-call responsibility for various segments of the proposed immunity areas.

Area A receives first-call fire protection service from the Verona Volunteer Fire Company (Verona VFC) and

¹⁰³ Augusta Exhibits, Vol. II, Exh. 6-3. The County also employs 4 full-time paid dispatchers who also serve the City of Waynesboro (Augusta Notice, p. 72).

the Augusta County Fire Department (ACFD). The Verona VFC, which is located on U.S. 11 at Verona in the northern portion of Area A, is staffed by 44 volunteers and operates 3 pumpers and 1 tanker. Average response time by the Verona VFC to calls from within Area A during the 12-month period ending in August 1982 was 4.5 minutes.¹⁰⁴ The overall fire-fighting capabilities of this department and the other fire suppression characteristics of the area have been judged by the Insurance Services Office (ISO) sufficient to grade properties within 4 miles of the Verona VFC a "6."¹⁰⁵

The southern portion of Area A is served by the ACFD, which is located on U.S. 250 east of Staunton. This department is staffed by the 7 full-time firefighters, the only paid firefighters employed by the County, and 28 volunteers. The ACFD operates 3 pumpers, 1 tanker, 1 brush truck, 1 foam truck, and a 65-foot snorkel. Because of its unique equipment, the ACFD responds throughout all the proposed immunity areas to calls involving multi-family residences and commercial and industrial properties.¹⁰⁶ During the 12-month period ending in August 1982, the department's average response time

¹⁰⁴Bennett, letter to staff of Commission on Local Government, November 10, 1982.

¹⁰⁵Augusta Exhibits, Vol. II, Exhs. 6-3, 6-4

¹⁰⁶Ibid.; and Bennett, letter to staff of Commission on Local Government, September 24, 1982.

to calls in Area A was 3.7 minutes.¹⁰⁷ The overall fire-fighting capabilities of the ACFD and the area's general fire suppression facilities are such that the ISO has rated properties within 4 miles of the department a "5" in terms of exposure to fire loss.¹⁰⁸

Area B-2 is served by both the ACFD and the Preston Yancey VFC. The latter company, which is housed in a new facility situated on U.S. 250 just west of the boundary line for Area C, is staffed by 28 volunteers and operates 2 pumpers, 1 tanker, and 1 brush truck.¹⁰⁹ Response times to calls from within Area B-2 during the 12-month period ending in August 1982 averaged 3.7 minutes for the ACFD and 6.5 minutes for the Preston Yancey VFC.¹¹⁰ Properties within 4 miles of the Preston Yancey VFC have received a rating of "7" from the ISO.¹¹¹ Approximately one-third of Area B-2 is in the first-call service area of the ACFD, with the result that properties in that area receive a rating of "5" in recognition of that department's fire-fighting capabilities.

¹⁰⁷Bennett, letter to staff of Commission on Local Government, November 10, 1982.

¹⁰⁸Augusta Exhibits, Vol. II, Exh. 6-3.

¹⁰⁹Ibid., Exhs. 6-1, 6-3, 6-4

¹¹⁰Bennett, letter to staff of Commission on Local Government, November 10, 1982.

¹¹¹Augusta Exhibits, Vol. II, Exh. 6-3.

Area C is served on a first-call basis by the Preston Yancey VFC, the Dooms VFC, and to a very limited degree by the Stuarts Draft VFC.¹¹² The Dooms VFC, which is located on U.S. 340 north of Waynesboro, is manned by 28 volunteers and operates 2 pumpers, 1 mini-pumper, 1 tanker, and 1 brush truck.¹¹³ Logs maintained by the Preston Yancey VFC, the Dooms VFC, and the ACFD indicate that for the period from January 1980 through June 1982 the average response time to calls from within Area C by those departments was 9.5, 11.0 and 11.9 minutes respectively.¹¹⁴ Properties within 4 miles of the Dooms VFC are rated "6" by the ISO. With the exception of the northern section of Area C, which is rated "6" by virtue of its proximity to the Dooms VFC, the rest of that proposed immunity area is rated "7" or lower.¹¹⁵

There are a number of other facilities which bear upon the County's firefighting capabilities and which require comment. First, the County has a modern dispatch system staffed by 4 full-time paid dispatchers serving all Augusta County units.¹¹⁶ Second, the ACSA follows a policy of placing fire hydrants every 1,000 feet along its water lines

¹¹²Augusta Exhibits, Vol. I, Exh. 6.

¹¹³Augusta Exhibits, Vol. II, Exhs. 6-3, 6-4.

¹¹⁴"City of Waynesboro Exhibit W-24."

¹¹⁵"City of Waynesboro Exhibit W-47"; and Augusta Exhibits, Vol. II, Exh. 6-3.

¹¹⁶Augusta Notice, p. 72.

with the consequence that all residences and buildings located along such lines are within 500 feet of a hydrant. Data indicate that within the 38.2 square miles of territory proposed for immunity, the ACSA has provided 323 hydrants.¹¹⁷ The County supplements these water sources by the use of tankers, some of which are equipped with the "Jet Dump" system, which facilitates suppression activity in areas remote from hydrants.¹¹⁸ Finally, it should be noted that the ACFD owns and operates the only publicly owned foam truck in the general area for use in controlling volatile chemicals and substances.¹¹⁹

With respect to the County's overall fire prevention and management features, several concerns must be cited. First, it is significant to this Commission that the County has neither adopted a fire protection code, nor has it established a formal fire safety program. The former is, in our judgment, an important element in a community's fire protection services, and the latter is vital to prevent hazardous situations and environments which threaten life and property. Second, this Commission must observe that, while there is an effort at

¹¹⁷Augusta Exhibits, Vol. II, Exh. 2-15.

¹¹⁸Ibid., Exh. 6-4; and testimony of Ronald B. Garber, Fire Chief, Augusta County Fire Department, Hearings, Vol. II, pp. 105-106.

¹¹⁹Testimony of Garber, Hearings, Vol. II, pp. 99-100.

coordination of the County's 12 fire departments through the Fire Chief, the fact that 11 of those departments are totally volunteer units not subject to direction by the County's Fire Chief means that Augusta County's firefighting resources do not benefit from integrated management. With the further growth and development of Augusta County, the lack of centralized management of the County's firefighting resources will become increasingly significant.

Finally, the Commission notes that during Fiscal Year 1980-81 Augusta County expended \$281,946 in public resources in support of the County's firefighting efforts. This aggregate expenditure represented a per capita effort of \$5.25. During Fiscal Year 1981-82 the County's public expenditure for firefighting services was budgeted to increase to \$367,260, or \$6.84 per capita.¹²⁰

City of Staunton. The City of Staunton is served by one fire station centrally located in the downtown area. The station is staffed by 16 full-time paid firefighters and 38 volunteers. The City owns and operates 4 pumpers, 1 brush truck, and a 100-foot aerial ladder truck.¹²¹ Fire suppression

¹²⁰County of Augusta, Budget, Fiscal Year, Ending June 30, 1982, pp. 8-9; and Budget, Fiscal Year Ending June 30, 1983, pp. 7-8.

¹²¹Staunton Response, pp. 51, 58. Staunton's firefighters and firefighting equipment are soon to be housed in a new 13,200 square feet fire station now nearing completion.

efforts within the 8.8 square miles of the City are assisted by the presence of 480 hydrants.¹²² While the record discloses that areas of the City are affected by water flow problems, sufficient water for fire suppression purposes can be obtained by connecting hose to hydrants where the water supply is sufficient.¹²³ The ISO has graded properties within the City a "5" based upon Staunton's overall firefighting capabilities, a rating equal to that within the service area of the ACSA and superior to that of all other portions of the proposed immunity areas. City data indicate that the Staunton Fire Department can respond to all fires in the City limits in 4 minutes or less.¹²⁴

Several additional points should be made relative to Staunton's firefighting capabilities and services. First, the City has committed land and resources to the development of a fire services training center which will

¹²²Calvert, letter to staff of Commission on Local Government, September 16, 1982.

¹²³Patton, Harris, Rust and Associates, Water System Study for the City of Staunton, October 1981, pp. 1-3. The Commission notes, however, that the City has recognized the problem and has included funds for the needed improvements in its current capital improvement plan (Calvert, letter to staff of Commission on Local Government, September 16, 1982; and Testimony by Nicholas T. Collins, Director of Public Works, City of Staunton, Hearings, Vol. II, pp. 354, 363-364).

¹²⁴Staunton Response, p. 54

be available to serve all units in the general area.¹²⁵ Second, the City has officially adopted a fire prevention code which is actively enforced for the protection of City residents and their property.¹²⁶ Third, the City's fire suppression and prevention activities benefit from the central direction and management of the City's Fire Chief. Finally, data indicate that during Fiscal Year 1980-81 the City expended \$277,116 for fire protection services, or \$12.68 per capita.¹²⁷ This per capita rate of public support was more than twice that for Augusta County (\$5.25) during the same fiscal year.

City of Waynesboro. The City of Waynesboro operates one fire station centrally located within the corporate limits. This facility is operated by 16 full-time paid firefighters and 31 volunteers.¹²⁸ From this facility the City's Fire Department operates 4 pumpers, 2 utility vans, and a 100-foot

¹²⁵ Ibid., p. 52; and Calvert, letter to staff of Commission on Local Government, September 16, 1982.

¹²⁶ Staunton Response, pp. 53-54.

¹²⁷ R. L. Persinger and Company, City of Staunton, Commonwealth of Virginia, Financial Statement, June 30, 1981, Schedule 2, p. 2.

¹²⁸ Waynesboro Response, pp. 59-60. The City maintains 5 full-time professional firefighters at the fire station at all times.

aerial ladder.¹²⁹ The City's facilities and staffing level have permitted a response to calls during 1982 in an average 2.29 minutes, considerably under the response times recorded by the departments serving Area C.¹³⁰

The City's 7.5 square mile area is served by approximately 375 fire hydrants. Every residence, commercial establishment, and industry in the City are stated to be within 1,000 feet of a hydrant.¹³¹ The City's firefighting capabilities and facilities are such that the ISO has graded properties within Waynesboro's corporate limit a "6."¹³² This rating is superior to that of all portions of Area C, except the northern segment which is served by the Dooms VFC and located within 4 miles of that company.

In addition to the above cited factors, it is significant to note that the City maintains its own fire training center to facilitate the training of its

¹²⁹Ibid., p. 62. The City's aerial ladder is reported to have structural defects which severely discounts its utility. (Professional Testing Systems, Fire Equipment, Aerial Ladder Inspection Report, October 6, 1980). The Commission notes that the City's aggregate fire engine pumping capacity (5,500 GPM) is considerably in excess of the Preston Yancey VFC (1,750 GPM) and the Dooms VFC (2,250 GPM). (Waynesboro Response, p. 62; and Augusta Exhibits, Vol. II, Exh. 6-4).

¹³⁰Waynesboro Response. p. 70.

¹³¹Ibid., p. 69.

¹³²Ibid., p. 71.

personnel. Further, the City has an officially adopted fire prevention code and a formal and active fire prevention program. The latter program has received State-wide recognition, and elements of the program have been given national awards for their quality.¹³³ Interest in the Waynesboro fire prevention program has been such that during the year ended June 1, 1982, the City's Fire Department gave a total of 89 presentations to interested associations and groups, including 7 in Augusta County.¹³⁴ Finally, State fiscal records indicate that during Fiscal Year 1980-81 the City expended \$379,398 for fire protection services, or \$24.75 per capita.¹³⁵ This rate of expenditure was more than four and one-half times that of the County (\$5.25) during the same fiscal year.

Comparability of Service. While the evidence presented to this Commission indicates that the County is served by an able, well-trained, and dedicated staff of volunteers, and that the County's leadership has been foresightful in providing a modern dispatch system and

¹³³Ibid., p. 68; and interviews with Joe F. Thomas, Jr., Deputy Director, Virginia Department of Fire Programs.

¹³⁴Waynesboro Response, p. 67.

¹³⁵Auditor of Public Accounts, City of Waynesboro, Virginia, Report on Audit for the Fiscal Year Ended June 30, 1981, November 16, 1981, p. 37.

advanced equipment to the ACFD, we cannot conclude that the firefighting services throughout the areas proposed for immunity are generally comparable to those provided by the Cities of Staunton and Waynesboro. With the exception of portions of Area A, served principally by the ACFD, we must conclude that based on organizational structure, full-time staffing levels, ISO ratings, response times, adopted fire protection codes, and active fire prevention programs, the County does not have generally in the areas proposed for immunity fire protection services comparable to those of the Cities of Staunton and Waynesboro.

Public Recreation

Proposed Immunity Areas. Augusta County does not own nor operate any public park facilities. There are, however, 84.7 acres of land on school properties located in the areas proposed for immunity which are available for recreational purposes.¹³⁶ Further, the County has developed the Augusta Recreation Center at Fishersville which has a large gymnasium and several activity rooms for public recreational use. Moreover, the County is a member of the Upper Valley Regional Park Authority, and by its financial support of that entity, has supported the establishment of

¹³⁶Data provided by R. E. Huff, County Administrator, County of Augusta, letter to staff of Commission on Local Government, September 24, 1982.

the Natural Chimneys Regional Park and the Grand Caverns Regional Park.¹³⁷

In order to develop an active public recreational program in the County, the Board of Supervisors established a Parks and Recreation Commission in 1973 and in ensuing years provided a recreation staff which now numbers 8 full-time employees, including a Director, Assistant Director, and Recreation Specialist.¹³⁸ Through this staff and by the use of school facilities and the Augusta Recreation Center, the public was offered 140 athletic programs, 25 recreational classes, and 10 special events during the 10-month period ending August 1982.¹³⁹

In terms of facilities located within the three proposed immunity areas and programs immediately available to their

¹³⁷ Augusta Notice, pp. 76-77. The City of Staunton is also a member of the Upper Valley Regional Park Authority.

¹³⁸ Ibid., p. 76; and Augusta County Parks and Recreation Commission, Director's Report, August 18, 1982. Three of the full-time positions are secretarial, and maintenance or custodial. The County also employs approximately 45 part-time personnel to assist with its recreational program.

¹³⁹ Augusta County Parks and Recreation Commission, Director's Report, September 16, 1981--August 18, 1982. The Commission notes that of the 140 athletic programs offered by the County, there are actually only 20 separate activities. Furthermore, the adult programs are primarily dance- and sport-oriented. Augusta County states that a sampling of programs offered by the Parks and Recreation Department reveals that 26% of the participants were residents of the two Cities. City resident participation was concentrated in adult athletic leagues and aerobic classes (Augusta Exhibits, Vol. II, Exh. 7-2).

residents, data reveal that Area A has available only the grounds (18 acres) and facilities (gym, ballfields, basketball court) of the Verona Elementary School. These publicly owned facilities are supplemented by the use of a pool at a commercial establishment for summer swimming classes and 2 privately owned golf courses in Area A.¹⁴⁰ A total of 28 recreational programs were offered through the County's recreational efforts within Area A during the 10-month period ending in August 1982.¹⁴¹

Residents of Area B-2 are served by the grounds and facilities of the Wilson Elementary School (gym, basketball courts), Wilson High School (gym, tennis courts, track), Fishersville Elementary School (gym, basketball courts, lighted ballfields), and the Augusta Recreation Center. These properties offer in the aggregate some 54.2 acres of land which are available for various recreational purposes.¹⁴² These County owned properties are supplemented by the availability of several non-County owned facilities, including

¹⁴⁰Huff, letter to staff of Commission on Local Government, September 24, 1982; and Bennett, letter to staff of Commission on Local Government, September 21, 1982. The Verona Kiwanis Community Park, of approximately 36 acres, is being developed in the Verona community and is scheduled to be opened in the near future. Although not publicly owned, it will be available for public use (Testimony of Sites, Hearings, Vol. II, pp. 9-11; and Augusta Proposed Findings, p. 41 and Appendix, p. iv).

¹⁴¹Calculated from data in Augusta County Park and Recreation Commission, Director's Report, September 16, 1981--August 18, 1982.

¹⁴²Huff, letter to staff of Commission on Local Government, September 24, 1982.

the Augusta County Expo property and the pool and tennis courts of the Woodrow Wilson Rehabilitation Center.¹⁴³ Reports by the County's Director of Recreation and Parks indicate that between November 1981 and August 1982 there were approximately 77 programs offered through facilities located in Area B-2.¹⁴⁴

The only County owned facility in Area C which used for public recreational purposes is the Ladd Elementary School. This school contains a gymnasium and provides 12.5 acres of grounds, including a ballfield.¹⁴⁵ Various private facilities, such as pools at 2 motels and the ballfields at the Ladd Ruritan Park, are cited by the County as facilities available to meet the recreational needs of Area C residents.¹⁴⁶ Data indicate that approximately 11 programs were provided under the auspices of the County through facilities located in Area C during the 10-month period ending in August 1982.¹⁴⁷

¹⁴³Bennett, letter to staff of Commission on Local Government, September 21, 1982. The County has advised that it uses the swimming pool at the Woodrow Wilson Rehabilitation Center approximately 2 hours per week and that the Center's tennis courts are only available for County sponsored tennis tournaments 2 or 3 weekends in the summer (Bennett, letter to staff of Commission on Local Government, September 21, 1982; and Testimony of Sites, Hearings, Vol. II, pp. 32-34).

¹⁴⁴Calculated from data in Augusta County Park and Recreation Commission, Director's Report, September 16, 1981--August 18, 1982.

¹⁴⁵Huff, letter to staff of Commission on Local Government, September 24, 1982.

¹⁴⁶Bennett, letter to staff of Commission on Local Government, September 21, 1982.

¹⁴⁷Calculated from data in Augusta County Park and Recreation Commission, Director's Report, September 16, 1981--August 18, 1982.

In addition to the facilities and programs cited above, Augusta County has shown attentiveness to the special recreational needs of its handicapped residents. The County has recently expended approximately \$25,000 for site preparation and initial construction work for an outdoor athletic facility for the handicapped at Woodrow Wilson High School. Other funds for construction of the facility are being provided by federal grant and local private contributions.¹⁴⁸ Further, the County is currently seeking additional grant assistance for the development of a broad therapeutic recreational program using both County and State facilities at Woodrow Wilson Rehabilitation Center. This program, if established, will serve both State patients at the rehabilitation center and local handicapped residents.¹⁴⁹ The County's investment of resources for the provision of therapeutic recreational opportunities for its handicapped residents constitutes a significant service to the general community and merits note in this review.

The data indicate that the County has a total of 84.7 acres of school-related property as its entire publicly owned recreational acreage within the proposed immunity areas. Thus, based on 1982 estimated population, the County has available approximately 5.7 acres of recreational property

¹⁴⁸Bennett, letter to staff of Commission on Local Government, September 24, 1982.

¹⁴⁹Augusta Proposed Findings, pp. 41-42.

for every thousand residents within those areas. This allocation of recreational land is well under the standard of 10 acres of local parkland per thousand residents as recommended by the State's Commission on Outdoor Recreation and endorsed nationally.¹⁵⁰ Moreover, recreation authorities agree, and this Commission concurs, that school properties do not replace the need for local parks, particularly in more developed areas. Further, it is unlikely that all of the recreational facilities found in schools or on school grounds are generally available and open to public use. The Commission also notes that the County offers no facility for general public swimming. The use of non-County owned facilities for classes and instruction is recognized, but such clearly does not meet the need for general swimming opportunity. Finally, the data disclose that County expenditures for public recreational purposes during Fiscal Year 1980-81 totaled \$168,732, or \$3.14 per capita.¹⁵¹

City of Staunton. The City of Staunton owns and maintains 416 acres of parkland for the recreational benefit of its residents. There are, in addition, approximately 27 acres of school property which add to the public recreational opportunities within the City of Staunton.¹⁵² Included in the park acreage is the Gypsy Hill Park, a 214-acre facility containing a recreation

¹⁵⁰Virginia Commission on Outdoor Recreation, Outdoor Recreation Planning Standards for Virginia, 1980.

¹⁵¹Comparative Report on Revenues and Expenditures, Exh. C-7.

¹⁵²Staunton Response, pp. 61-62.

center, fine arts center, bandstand, gymnasium, golf course, ballfields, football stadium, and a small zoo. A second major recreational facility in the City is Montgomery Hall Park, a 148-acre complex containing a swimming pool, tennis courts, ballfield, and a community center. The combined park and school properties provide Staunton residents with more than 20 acres of recreational land per thousand residents, a figure well in excess of State recommended standards and nearly three times the statistic for Area A (7.5 acres per thousand residents).¹⁵³ In addition to the City's park related facilities, Staunton's recreational program also utilizes the National Guard Armory and 5 schools.¹⁵⁴

The City's parks and recreational programs are managed by a staff of 23 full-time employees.¹⁵⁵ Its recreational staff was responsible for 102 programs offered through City facilities during the year ended June 30, 1982. Attesting to the attractiveness and appeal of Staunton's recreational programs is the fact that 1,726 program participants were County residents, or more than 25% of

¹⁵³Exclusive of school properties, Staunton has almost 19 acres per thousand residents.

¹⁵⁴City of Staunton, Comprehensive Plan, Background Study, April 1981, Table 61, p. 219.

¹⁵⁵City of Staunton, Annual Budget, 1981-1982, pp. 51, 59-60. Eighteen of the full-time positions are maintenance or custodial staff. The City supplements its full-time recreational staff with 50 part-time seasonal personnel (Staunton Response, p. 60).

the total (6,787).¹⁵⁶ Evidence of the appeal of Staunton's recreational facilities, and probably evidence of unmet needs in Augusta County, is the fact that surveys have indicated that a significant percentage of the persons using Gypsy Hill Park are County residents.¹⁵⁷

Finally, data disclose that during Fiscal Year 1980-81 the City expended \$147,989 in support of its public recreational services, or \$6.77 per capita. This per capita level of support for public recreation in Staunton was more than double that in Augusta County during the same fiscal year.¹⁵⁸

City of Waynesboro. The City of Waynesboro presently has 159.9 acres of parkland developed for recreational purposes. In addition, approximately 49 acres of school property is considered to be land available and actively used for recreational activities.¹⁵⁹ Further, the City has an additional 71.7 acres of undeveloped parkland and plans to convert its present 49-acre landfill to recreational use when it is

¹⁵⁶Staunton Response, p. 65.

¹⁵⁷A week-long survey conducted in 1977 indicated that 32% of the automobiles at Gypsy Hill Park had County registration decals (Ibid, p. 62). Further, on August 28, 1982, a check of the automobiles in the park revealed that 35% were registered in Augusta County ("City of Staunton Exhibit 1").

¹⁵⁸Comparative Report on Revenues and Expenditures, Exh. C-7.

¹⁵⁹Waynesboro Response, pp. 83-84. Approximately 30 acres of parkland are located at the City owned Coyner Springs property in Area C.

closed in the near future. Considering only developed parkland and school related property, the City presently offers its residents 13.6 acres of recreational land per thousand people, a figure in excess of the State recommended standard and considerably above the current availability of such property in Area C (2.6 acres per thousand people).¹⁶⁰

Waynesboro provides its residents with 12 parks (exclusive of school related properties), with its major facility being the Ridgeview Park. This 58-acre facility contains an amphitheater, pavilion, an olympic size swimming pool, a tot swimming area, a bathhouse, 6 tennis courts, 4 baseball fields, a softball field, a basketball court, a frisbee golf course, restrooms, and over 50 picnic tables.¹⁶¹ A second facility in the City which merits comment is the Rosenwald Community Center located in downtown Waynesboro. This recreational center has 2 public meeting rooms, a dance room, a game room, a greenhouse, a darkroom for photography, a weight room, and other facilities. The Rosenwald Center, which is open 70 hours per week, is an unusual recreational resource available to the area's residents.¹⁶²

¹⁶⁰In Area B-2 there are approximately 19.4 acres of school property per thousand people.

¹⁶¹Waynesboro Response, p. 84.

¹⁶²Ibid., pp. 81-82. The City charges an annual membership fee of \$5 per person or \$15 per family for the Rosenwald Community Center. Nearly 70% of the community center's Fiscal Year 1982-83 budget will be provided by City appropriations (Finley, letter to staff of Commission on Local Government, November 8, 1982).

In terms of staff, the City's Department of Parks and Recreation employs 7 full-time personnel and a varying number of seasonal part-time employees.¹⁶³ The Waynesboro department has shown an aggressive interest in program development, having offered 310 programs in 1980, 515 in 1981, and an anticipated total of over 600 in 1982.¹⁶⁴ The 1981 total of 515 programs was more than three and one-half times the number offered in the County generally that year, and many times in excess of the 11 programs offered in Area C. Further, it should be noted that the Waynesboro department has established a Special Populations Division to develop programs to meet the recreational needs of special programs for the elderly, the physically impaired, and the mentally retarded.¹⁶⁵

The City points to the extensive use of its facilities and programs by County residents as evidence of the quality of its services and of unmet needs in Augusta County. A City survey of users of the swimming pool at Ridgeview Park between May 29 and July 9, 1982, which indicated that 41.3%

¹⁶³Ibid., p. 79. Two of the full-time positions are secretarial and custodial. The City also employs 40 part-time employees during the fall, winter, and spring months and 75 during the summer to assist with various programs.

¹⁶⁴Ibid., p. 92.

¹⁶⁵Ibid., pp. 89-90.

of those using the facility were County residents, was cited to support those contentions.¹⁶⁶ Further, City statistics indicate that the percentage of participants in Waynesboro recreational programs during the summer of 1982 who were residents of Augusta County ranged from 16.6% to 64.2%.¹⁶⁷

With respect to the quality of Waynesboro's public recreational services, the Commission notes that the City's Department of Parks and Recreation received recognition in 1980 and again in 1981 as one of the top four departments in the nation serving localities of less than 20,000 in population. These awards, which were made by the National Sports Foundation in conjunction with the National Recreation and Parks Associations, were based on the quality of management and on the number, type, and innovativeness of programs.¹⁶⁸

Waynesboro's commitment to public recreational services is manifested by the City's expenditures for their support. During Fiscal Year 1980-81 the City expended a total of \$371,241 to support its recreational services, or \$24.22 per capita.¹⁶⁹ This level of per capita expenditure was nearly eight times that in Augusta County (\$3.14)

¹⁶⁶ Ibid., p. 83.

¹⁶⁷ Ibid., pp. 87-88.

¹⁶⁸ Ibid., pp. 79-80.

¹⁶⁹ Comparative Report on Revenues and Expenditures, Exh. C-7.

during the same year.

Comparability of Service. This Commission notes with great respect Augusta County's decision to accept as a public responsibility the provision of recreational facilities and services to its residents. The establishment of a Parks and Recreation Commission, the provision of professional staff, the development of the Augusta Recreation Center, the participation in a regional park authority, and the continuing investment of public funds in recreational programs attest to the County's recognition of the need for public recreational services. This Commission is unable to conclude, however, that the recreational facilities and services provided residents of the proposed immunity areas in Augusta County are, at this time, comparable in type and level to those provided within the Cities of Staunton and Waynesboro. On the basis of parkland, diversity of facilities, variety of programs, and level of expenditures, this Commission is required to conclude that the public recreational services in the proposed immunity areas are not comparable to those in the adjoining Cities.

Library Facilities

Proposed Immunity Areas. Only within the last decade has Augusta County become involved in the provision of public library services. In 1976 the County established a library board, and the following year it opened the central library facility which it now operates at Fishersville. While Augusta

County was developing its library resources, it arranged by contract with the Cities of Staunton and Waynesboro for its residents to use the public library facilities of those municipalities. These interlocal contracts were initiated in 1976 and were continued through June 30, 1982. During the course of that period the County expended in excess of \$500,000 for its residents' use of the Cities' facilities.¹⁷⁰

The County's central library facility at Fishersville has a floor space of approximately 4,500 square feet and a seating capacity of 24.¹⁷¹ In 1981 the library's book holdings totaled 39,322 volumes, its annual book circulation was 130,041, and the number of registered borrowers was 4,924.¹⁷² State published data indicate that as of July 1981 the County library was staffed by 7 full-time and 3 part-time employees.¹⁷³

In addition to its central library facility, which is open to the public 64 hours per week, the County maintains a station at Deerfield and operates a bookmobile which

¹⁷⁰Testimony of Huff, Hearings, Vol. II, pp. 222-223; and Augusta Proposed Findings, p. 45.

¹⁷¹Staunton Response, p. 67.

¹⁷²Virginia State Library, Library Development Branch, Statistics of Virginia Public Libraries and Institutional Libraries (hereinafter cited as Statistics of Virginia Libraries), 1980-1981, Tables II, III, and IV. The statistics reflect significant growth in holdings, circulation, and registered borrowers since the library's founding in 1977.

¹⁷³Ibid., Table IV.

serves 40 stops throughout the County. Of the bookmobile's stops, a total of 6 are in the areas proposed for immunity, with 5 located in Area A and 1 in Area C.¹⁷⁴

While plans for future facilities deal with prospective services as opposed to existing ones, and are subject to many contingencies, the Commission notes that the County does have plans to convert the former Fishersville Elementary School, located in Area B-2, into a new central library. If completed according to present plans, the new facility will have approximately 25,000 square feet of floor space, with 16,000 square feet reserved for books and other library holdings, and with 4,000 square feet designed to provide a public meeting room capable of accommodating in excess of 150 people.¹⁷⁵ Clearly, completion of these plans will considerably expand and enhance the County's library services.

The Commission notes, however, that present library facilities in the County fall beneath minimum standards recommended by the Virginia State Library on several indices. Based on population served, the Augusta County Library is presently 95,000 books short of meeting minimum State standards for book holdings and 25,000 square feet under the minimum floor space.

¹⁷⁴Augusta Notice, p. 82; and Bennett, letter to staff of Commission on Local Government, September 24, 1982. Each of the 6 stops in the proposed immunity area is visited once weekly with the bookmobile remaining at each location between 1 and 2 hours during each visit.

¹⁷⁵Augusta Exhibits, Vol. II, Exh. 8-2; and Augusta Proposed Findings, Appendix, pp. ix-x.

required for its central facility by those standards. Further, the data indicate that the Augusta County Library does not have sufficient personnel for the number of books circulated, the services performed (e.g., reference, children's area, bookmobile, technical processing), and administration.¹⁷⁶ The Commission also notes that during Fiscal Year 1980-81 the County expended \$244,481 in local funds in support of library services, a per capita investment of \$4.55.¹⁷⁷

City of Staunton. The City of Staunton, which has operated a public library system since the 1930's, currently maintains a central library facility in its downtown area. This facility has a floor space of 14,800 square feet and a seating capacity of 118.¹⁷⁸ As of 1981, the Staunton library had a book collection of 69,284 volumes, an annual book circulation of 171,560, and 13,695 registered borrowers.¹⁷⁹ The Staunton library, as of

¹⁷⁶Virginia State Library, Recommended Minimum Standards for Virginia Public Libraries, January 30, 1978.

¹⁷⁷Statistics of Virginia Libraries, 1980-1981, Table I.

¹⁷⁸Staunton Response, p. 67.

¹⁷⁹Statistics of Virginia Libraries, 1980-1981, Tables II, III, and IV. Since June 30, 1982 when the joint City-County library contract expired, 117 County residents have paid the \$20 non-resident fee to continue to use the Staunton facility (Testimony of Richardia Johnson, City Librarian, City of Staunton, Hearings, Vol. III, p. 55).

July 1981, was staffed by 6 full-time and 10 part-time personnel and was open to the public 60 hours per week.¹⁸⁰ The City's library, based on 1981 data, surpasses State standards for book holdings and floor area of the central facility, but was under the recommended minimum staffing level. In terms of financial commitment to the provision of library service, data for Fiscal Year 1980-81 reflect a total local expenditure of \$118,093 (exclusive of funds received from Augusta County), or a local per capita investment of \$5.40.¹⁸¹

City of Waynesboro. The City of Waynesboro's library services are provided through a central library facility built in 1969 and expanded in 1979. This library facility has a total floor space of 28,479 square feet with a seating capacity of 163.¹⁸² The Waynesboro library in 1981 reported book holdings of 92,133 volumes, an annual book circulation of 216,000 volumes, and 15,019 registered borrowers. In terms of staff, the library reported that, as of July 1981, it was served by 14 full-time and 12 part-time employees who operated the facility 68 hours per week.¹⁸³ The City's library has a floor area and book holdings which far exceed

¹⁸⁰Ibid., Tables II and IV.

¹⁸¹Data calculated from Statistics of Virginia Libraries, 1980-1981, Table I; and Virginia Public Library, Certified Financial Statement for Fiscal Year Ending June 30, 1981.

¹⁸²Waynesboro Response, pp. 96-97.

¹⁸³Ibid., Tables II and IV.

State established minimum standards. Its staffing levels, however, did not meet the minimum standard recommended by the State as of July 1981. Finally, the Commission observes that during Fiscal Year 1980-81 the City expended a total of \$80,366 in local funds (exclusive of monies received from Augusta County), or \$5.24 per capita in support of its library services.

Comparability of Service. The Commission notes that since 1977 Augusta County has made a significant commitment to the provision of public library services. The establishment and development of new urban-type services is not a simple proposition in largely rural and sparsely populated communities, but the data disclose a continuing and growing commitment on the part of Augusta County's leadership to providing public library services to County residents. However, again in this instance, the Commission cannot conclude that, at this time, the County affords the residents in the areas proposed for immunity library services of a type and level comparable to those provided within the Cities of Staunton and Waynesboro. The data with respect to the floor area of facilities, book holdings, circulations, registered borrowers, and level of financial commitment, dictate a finding by this Commission that the services provided in the proposed immunity areas are not presently comparable to those provided in the Cities. This finding is reinforced for Area A and C by the fact that library services in those areas are immediately available

only a few hours each week by virtue of several bookmobile stops.

Solid Waste Collection and Disposal

Proposed Immunity Areas. The County does not offer public solid waste collection service. Such service in the County is available, however, through private contractors. Fees for residential service in the proposed immunity areas vary between \$5 and \$6 per month for once-a-week curbside collection. Contractors serving the proposed immunity areas generally offer as part of their regular residential service the pickup of leaves and other special items.¹⁸⁴ While the County asserts that residential collection is available to all in the proposed immunity areas desiring it, and that the vast majority of such residents do subscribe to the service, County exhibits indicate that significant portions of Areas A and B-2 do not have the service available.¹⁸⁵ The County has advised that it monitors the work of the private collectors closely, but there does not appear to be any legal framework or standards by which the County can regulate the activities of the private haulers.¹⁸⁶

With respect to solid waste disposal services, the ACSA operates a landfill near the Jolivue community east of

¹⁸⁴Augusta Exhibits, Vol. II, Exh. 4-3.

¹⁸⁵Augusta Proposed Findings, p. 19; and Augusta Exhibits, Vol. I, Exh. 5.

¹⁸⁶Augusta Notice, p. 48; and Bennett, letter to staff of Commission on Local Government, September 24, 1982.

Interstate 81. This facility is jointly used and financially supported by the ACSA and the City of Staunton. The ACSA-operated landfill is free for the use of all County residents and businesses, as well as for residents of Staunton.¹⁸⁷ While the present landfill has a current life expectancy of only 3 to 5 years, Augusta County has already appointed a committee to find a new site and has appropriated funds for that purpose.¹⁸⁸ The County's solid waste disposal facilities include 10 "greenboxes" situated throughout the County. Only 1 of these "greenboxes" is located within the proposed immunity areas, and that facility (with a compactor) is near Verona. The County's "greenboxes" are serviced by private contractors.¹⁸⁹

City of Staunton. The City of Staunton provides public solid waste collection service. Residential service, which is provided at a charge of \$5 per month, includes twice-a-week collections, leaf removal, and an annual pickup of large items. Staunton also collects four times per week from commercial and industrial firms

¹⁸⁷Augusta Exhibits, Vol. II, Exh. 4-1.

¹⁸⁸Bennett, letter to staff of Commission on Local Government, September 24, 1982.

¹⁸⁹Bennett, Special Counsel, County of Augusta, response to Carter Glass, IV, Special Counsel, City of Waynesboro, request for documents and maps, July 6, 1982, Item 25.

located in the downtown area for a fee of \$10 per month. The City, however, does not collect waste from "greenboxes," and if these facilities are needed by commercial or industrial concerns, they must be served by private collectors.¹⁹⁰

With respect to solid waste disposal, the City utilizes and financially supports the operation of the ACSA landfill. While City residents may privately use this facility without charge, Staunton businesses are required to pay for its use.¹⁹¹

City of Waynesboro. The City of Waynesboro also provides public solid waste collection service within its boundaries. Residential services, for which the City charges \$4.50 per month, provides once-a-week pickup and special collections, including those for Christmas trees and leaves. As part of its solid waste collection service, the City provides its residents with a 90-gallon roll-out container which is emptied at curbside. Where special conditions warrant, City staff will enter private property to make collections. The City will also collect solid waste from businesses and industrial firms which will utilize the 90-gallon containers, and rates for such service vary depending upon the volume of refuse involved.¹⁹²

¹⁹⁰Staunton Response, p. 35.

¹⁹¹Augusta Exhibits, Vol. II, Exh. 4-3.

¹⁹²Waynesboro Response, pp. 27-28.

With respect to disposal services, Waynesboro presently owns and operates a landfill on its northeastern boundary. This facility is due to be closed in the fall of 1982, and a new landfill is currently being prepared within the City. The new facility, which is expected to meet the City's needs for 25 years, has already been granted the necessary permit for operation by the State Department of Health. Charges are made for all private use of the landfill, with rates reaching \$8 for compactor trucks.¹⁹³ It is significant to note that all commercial firms collecting in Area C pay for the use of the Waynesboro landfill rather than travel to the ACSA facility at Jolivue for free disposal service.¹⁹⁴ This fact suggests the lack of convenience of the ACSA facility to Area C residents and the probable infrequency with which it is used by them.

Comparability of Service. This Commission considers the use of private contractors for solid waste collection service as an entirely appropriate means for meeting a community's solid waste collection needs in proper circumstances. The salient considerations are the cost, accessibility, and quality of the service offered. The evidence

¹⁹³Ibid., pp. 29-30; and Finley, letter to staff of Commission on Local Government, September 15, 1982.

¹⁹⁴Waynesboro Response, p. 30.

submitted to this Commission indicates that the privately provided collection services in the areas proposed for immunity in Augusta County have been found acceptable and have produced little public complaint.¹⁹⁵ We observe, however, that the use of private contractors can serve to remove a number of important concerns from public control. Unless private haulers are controlled by ordinance, contract, or other legal framework, issues such as the routes and schedules for collection, standards for equipment and its utilization, the training of equipment operators, safety, rate structure, disposal of collections, performance standards, and the like are free of public control. While the County contends that it closely monitors the work of private haulers, there appears to be no legally prescribed standards requiring adherence. It is primarily the absence of legally established standards facilitating the regulation of the private contractors which requires this Commission to conclude that the solid waste collection and disposal services in the areas proposed for immunity are not comparable to those provided within the adjoining municipalities.

¹⁹⁵Testimony of Ralston, Hearings, Vol. I, pp. 238-239, 291-292.

Street Maintenance

Proposed Immunity Areas. Road construction and maintenance in Augusta County are the responsibility of the Virginia Department of Highways and Transportation. While County officials work in conjunction with the Virginia Department of Highways and Transportation in the development and annual revision of the Six-Year Secondary Road Improvements Plan and confer regularly with the Department's local resident engineer regarding road issues, it is the State which has ultimate responsibility for the construction and maintenance of all public roads in Augusta County.¹⁹⁶

While the County does contribute financially to road improvements within its boundaries, the State bears the predominant share of the cost of this activity. During

¹⁹⁶Sec. 33.1-70.01, Code of Virginia. The Attorney General of the Commonwealth of Virginia has stated that if either the board of supervisors or the Virginia Department of Highways and Transportation (VDH&T) fails to adopt the six-year secondary road plan or the annual construction priority list, the State "...would be free legally to carry forward its own plans for the secondary system within that county without regard to the policy direction of the board. Likewise, to the extent that an officially adopted priority list does not require use of all available funds...the Department (VDH&T) is free to use those funds in its own unfettered discretion." Once the six-year plan and the annual priority list are adopted, however, they are binding on both the board of supervisors and VDH&T (Opinions of the Attorney General and Report to the Governor of Virginia, from July 1, 1978 to June 30, 1979, pp. 132-135).

Fiscal Year 1980-81 a total of \$7,231,311 was expended for construction and maintenance work on primary and secondary roads in the County.¹⁹⁷ Of those funds, \$150,000, or 2.1% of the total, was provided by the County.¹⁹⁸ In terms of maintenance expenditures alone, a total of \$2,992,691 was expended on the County's primary and secondary roads during Fiscal Year 1980-81.¹⁹⁹ Since Augusta County has a total of 123.3 miles of primary roads and 980.4 miles of secondary roads, this level of expenditure provided \$2,594 per linear mile of roadway.²⁰⁰

The evidence indicates that a significant amount of the secondary roads in the areas proposed for immunity is classified as "nontolerable" by the State on the basis of road width, nature of surface, intensity of traffic, and various safety factors. Based upon the Commission's research, approximately 10.67 linear miles of secondary roads in Area A and 10.47 linear miles of secondary roads in Area B-2 would be classified "nontolerable"; and according to data submitted by the City of Waynesboro, approximately 7.7 linear miles of secondary roads in Area C are similarly classified as

¹⁹⁷R. L. Moore, Resident Engineer, Staunton Residency, Virginia Department of Highways and Transportation, communication with staff of Commission on Local Government, November 15, 1982.

¹⁹⁸Testimony of Ralston, Hearings, Vol. I, pp. 232-233.

¹⁹⁹Moore, communication with staff of Commission on Local Government, November 15, 1982.

²⁰⁰Ibid.

"nontolerable." Thus, if these calculations are correct, nearly 28% of the total secondary road mileage in the proposed immunity areas (103.32 linear miles) is considered "nontolerable" by State standards. Further, the evidence indicates that at least 8 bridges in the areas proposed for immunity are considered substandard by the State and in need of replacement.²⁰¹ Furthermore, with respect to the standards applicable to the development and incorporation of new roads in the County's road network, the Commission notes that the County's subdivision ordinance establishes in most of Augusta County a minimum right-of-way requirement of 50 feet and a minimum pavement width of 24 feet.²⁰² While these standards of construction are identical to those utilized by the State's Department of Highways and Transportation, they do not provide the broader thoroughfares as required by the subdivision ordinances in Staunton and Waynesboro.

City of Staunton. The City of Staunton bears total responsibility for the construction and maintenance of

²⁰¹Virginia Department of Highways and Transportation, Road Inventory, Mileage Records, System Nontolerable, December 31, 1982; and Bridge Replacement Priority List, Staunton District, October 1, 1982. While these road inventory records deal only with secondary roads, the Commission is cognizant that there are also problems with some primary road segments in the proposed immunity areas (Waynesboro Response, p. 112).

²⁰²Sec. 21-17, Code of Augusta County; and Waynesboro Response, p. 123.

its streets and roads. Such work in Staunton is performed largely through the personnel and equipment of the City's Department of Public Works. Thus, the scheduling and administration of all road-related work in the City is directed by local officials.

During Fiscal Year 1980-81 the City expended \$887,028 for maintenance of its streets and roads, and of that total, \$310,911, or 35%, was local funds.²⁰³ Total expenditures during that fiscal year for the maintenance of the City's 110 linear miles of thoroughfares provided \$8,064 per linear mile.²⁰⁴

Of the City's 110 miles of thoroughfares, all but 11.79 linear miles, or 10.5% of the total, is 30 feet or more in width qualifies for State financial aid.²⁰⁵ In terms of the creation of new streets and roads in Staunton, the Commission notes that the City's subdivision ordinance requires that all thoroughfares in such developments have a minimum right-of-way of 50-60 feet and a minimum pavement width of 30-40 feet.²⁰⁶ Further, with respect to the nature and quality of

²⁰³Calvert, letter to staff of Commission on Local Government, August 20, 1982. The City had no expenditure for road construction projects during Fiscal Year 1980-81.

²⁰⁴Data provided by R. Gene McCombs, City Manager, City of Staunton, communication with staff of Commission on Local Government, November 12, 1982.

²⁰⁵Ibid.; and Sec. 33.1-43, Code of Virginia.

²⁰⁶McCombs, communication with staff of Commission on Local Government, November 15, 1982.

bridges within the City, the evidence indicates that none of these structures are considered substandard and require replacement.²⁰⁷

City of Waynesboro. As in the case of Staunton, the City of Waynesboro bears full responsibility for the construction and maintenance of its streets and roads. Most of this work is performed by the City's Department of Public Works which has a complement of 45 persons and a considerable amount of equipment assigned to such activity.²⁰⁸ Thus, the improvement and maintenance of Waynesboro's streets and roads is a matter of local determination and discretion.

During Fiscal Year 1980-81 a total of \$1,179,853 was expended for the construction and maintenance of City thoroughfares, and of this amount \$768,539, or 65% of the total, was locally raised revenue.²⁰⁹ With respect to maintenance expenditures alone during that fiscal year, a total of \$554,056 was provided for that activity.²¹⁰ Based upon the City's total of 78 miles of publicly owned streets and roads, these maintenance funds provided \$7,013 per linear mile of road.²¹¹

²⁰⁷Ibid.

²⁰⁸Finley, letter to staff of Commission on Local Government, September 15, 1982.

²⁰⁹Waynesboro Response, p. 111.

²¹⁰Ibid., p. 124.

²¹¹Ibid., p. 111.

The Commission is advised that with the exception of 0.4 mile of roadway, all of the City's streets and roads equal or exceed 30 feet in width and qualify for State financial assistance.²¹² The Commission also observes that the City's subdivision ordinance requires a minimum right-of-way of 60 feet and minimum pavement width of 30 feet for public roads in new developments.²¹³ Thus, new thoroughfares entering the City's system by means of subdivision development will be constructed to meet standards qualifying for State financial support. Finally, with respect to the nature and quality of its bridges, the Commission is advised that 13 of the 14 bridge structures within the City's limits are considered adequate for their purposes. The City's one bridge which is currently considered substandard is scheduled for replacement during 1982.²¹⁴

Comparability of Service. In terms of the mileage of roads considered substandard for their usage, the number of substandard bridge structures, and the resources devoted to the maintenance of roads, the Commission cannot conclude that the maintenance of public thoroughfares in the areas proposed for immunity is

²¹²Ibid.

²¹³Ibid., p. 117. Depending on the character of the road, the right-of-way requirements may be greater.

²¹⁴Ibid., p. 119.

comparable to that provided in the Cities of Staunton and Waynesboro. Further, the continued development and urbanization of the areas proposed for immunity will render increasingly inappropriate the existing road network in those areas.

Snow Removal

Proposed Immunity Areas. Augusta County is dependent upon the Virginia Department of Highways and Transportation for the provision of snow removal services on its public thoroughfares. This State agency has depots at Fishersville and Verona which have primary responsibility for snow removal service on the 121.2 miles of public roads within the proposed immunity areas. These 2 facilities have collectively 13 standard trucks with plows, 2 heavy trucks with plows, 14 chemical or abrasive spreaders, 2 front end loaders, and other equipment needed for snow removal efforts. In addition, the State maintains a list of 12 private contractors who are available to assist with the snow removal needs of the County generally.²¹⁵ Based upon data provided by the Department of Highways and Transportation, it is estimated that \$725,799 was spent for snow removal purposes within the County during Fiscal Year 1981-82, or

²¹⁵Moore, letter to staff of Commission on Local Government, November 9, 1982. These private contractors have 21 trucks available for snow removal purposes. The Commission is cognizant of the fact that the State's snow removal efforts are focused first and foremost on the 62 miles of interstate highway in the County.

\$594 per linear mile of road.²¹⁶

The Commission has received testimony indicating that County schools were closed 9 days during the 1981-82 school year, and that such frequency of closing was significantly in excess of that recorded by the Cities of Staunton and Waynesboro. In our view, school closings rest upon judgments and concerns which should not be permitted to enter an analysis of this or any other immunity action. The safety of school children must take primacy, in our judgment, over the resolution of immunity actions.

City of Staunton. Snow removal services in the City of Staunton are provided by the City's Department of Public Works. This department has available 20 snow plows, 1 snow blower, 6 salt spreaders, and 7 loaders to attend to the snow removal needs of the City's 110 miles of streets and roads. The City has advised that it plows all public thoroughfares and spreads salt and abrasives on all major roads, bus routes, steep hills, and in its central business district. Data indicate that during Fiscal Year 1981-82 the City expended \$70,000 for snow and ice removal, or \$636 per mile of public road.²¹⁷

City of Waynesboro. The City of Waynesboro also relies

²¹⁶Moore, communication with staff of Commission on Local Government, November 15, 1982. The expenditure per linear road mile is based upon a total of 1,221.43 interstate, primary, and secondary roads in the County.

²¹⁷Staunton Response, pp. 77-78.

on its Department of Public Works for snow removal services. This department has 40 employees available to meet the City's snow removal needs as conditions require. The department has available 7 dump trucks with mounted snow plows, 7 other pieces of equipment suitable for plowing purposes, 2 spreaders, 2 snow blowers, 3 loaders, and related equipment to serve the City's 78 miles of public streets and roads. Waynesboro also makes arrangements for the use of private contractors to augment the City's snow removal efforts when weather conditions require such. The City advises that its snow removal plans call for the removal of snow from all public thoroughfares in the order of their intensity of use. Further, the City also endeavors to clear all municipal parking lots and parking spaces in the downtown area. Data disclose that during Fiscal Year 1981-82 the City expended a total of \$42,034 for snow removal purposes, or \$538.91 per mile of thoroughfare.²¹⁸

Comparability of Service. On the basis of available equipment and the financial resources devoted to the service, this Commission concludes that the level of snow removal services in the areas proposed for immunity is comparable to that provided in the Cities of Staunton and Waynesboro.

Street Lighting.

Proposed Immunity Areas. Augusta County receives for

²¹⁸Waynesboro Response, pp. 132-136.

consideration twice yearly requests for the installation of street lights. If a request is favorably reviewed by the Board of Supervisors, the applicant is charged a \$75 processing fee and, in addition, is required to bear any installation charge imposed by the electric company. The County does, however, bear the operating costs of electric lights which it approves. Data indicate that throughout Augusta County there are now approximately 566 street lights with an unspecified percentage of them being in the proposed immunity areas. The data also disclose that during Fiscal Year 1980-81 the County expended \$55,513 (exclusive of expenditures offset by revenue from application fees), or \$1.03 per capita for street lighting services.²¹⁹

City of Staunton. The City of Staunton receives and processes throughout the year applications from residents for street lights. Where these applications are approved and lights are installed on public property, the City bears the entire cost of their installation and operation. Data indicate that the City presently maintains 1,816 street lights and expended during Fiscal Year 1980-81 a total of over \$200,000 for street lighting services. This level of expenditure represented a per capita commitment of \$9.19.²²⁰

City of Waynesboro. As in the case of Staunton, the

²¹⁹ Ibid., pp. 129-130. Area C is said to have 88 street lights.

²²⁰ Staunton Response, pp. 74-76.

the City of Waynesboro will receive and process at any time throughout the year requests for the installation of street lights. Where the lights are approved and installed on public property, the City bears the full cost of their installation and operation. A recent inventory indicated that the City currently maintains 982 street lights. Data disclose that the City expended \$113,806 during Fiscal Year 1980-81 for street lighting services, or \$7.42 per capita.²²¹

Comparability of Services. Based upon local administrative policy, the incidence of street lights, and public expenditure for the provision of street lighting services, this Commission cannot find that such services in the areas proposed for immunity are comparable to those provided by the Cities of Staunton and Waynesboro. We consider street lighting to be an important and appropriate service for urbanizing communities as in the areas of Augusta County proposed for immunity.

Public Transportation

City of Staunton. The City of Staunton is the only one of the three parties to this issue which provides a system of general public transportation. Staunton's present public transportation system was initiated in 1947 and currently operates 6 fixed bus routes which serve the public from Monday through Friday from 7:00 a.m. until 5:30 p.m.²²²

²²¹Waynesboro Response, pp. 128-131.

²²²Comprehensive Plan, Background Study, p. 185; and SG Associates, Inc. and Transportation Behavior Consultants, Marketing Routes and Schedules Study for Staunton, Virginia, Draft Report, (hereinafter cited as Marketing Study), March 8, 1982. p. 5.

These various routes serve major transportation points, connecting the downtown area with Staunton Plaza, Western State Hospital, Kings' Daughters Hospital, various multi-family residential complexes, and other public facilities. During the year ended June 30, 1981, the system transported, exclusive of students traveling to and from public schools, nearly 84,000 persons.²²³

While fares for use of the City's system range from \$.50 to \$.85 (the higher fare is charged for transportation to certain points in the County), these collections are not sufficient to make the system self-supporting. During Fiscal Year 1980-81 fares totaled \$48,200, or only 30% of the \$159,690 expended to administer and operate the system during that fiscal year.²²⁴ While part of this deficiency was covered by State and federal subsidy, the City was required to appropriate \$47,300 from its general fund to support its public transit system.²²⁵ With the termination of federal assistance for the operating deficits of public transportation systems at the end of September 1982, the cost to the City to continue its public transit service through the end of the current

²²³Marketing Study, pp. 8-10. The Commission notes that total ridership on the system during Fiscal Year 1980-81 was 128,700, of which 35% were school students. The fare charged for such students is \$.35 one way.

²²⁴Ibid., pp. 15, 17.

²²⁵Ibid.

fiscal year is expected to rise to nearly \$60,000. The Staunton City Council has elected to continue this system despite the projected increase in cost.²²⁶ With respect to public transit systems, it is appropriate to observe here that such systems often enhance and promote the use of other public facilities such as central city libraries and parks.

Comparability of Service. In the judgment of this Commission public transportation is a vital service to a significant segment of our population and contributes to the viability and economic life of a community. Since the City of Staunton is the only jurisdiction which offers this public service in the general area, the issue of comparability requires no comment.

Public Planning, Zoning, and Subdivision Regulation

Proposed Immunity Areas. Augusta County established its planning commission in 1941 and has provided full-time staff support for its public planning process since 1969. The County currently has a full-time professional staff of 6 persons who are engaged in various aspects of the County's planning effort.²²⁷

Despite State law requiring such, Augusta County has

²²⁶City of Staunton, Annual Budget, 1982-1983, p. 81.

²²⁷Augusta Notice, p. 51.

never adopted a comprehensive plan governing its development, placement of thoroughfares and public facilities, and related public concerns.²²⁸ The County commissioned a consulting firm in 1969 to develop a comprehensive plan, but the resulting document was never adopted by the Board of Supervisors.²²⁹ In March 1973 the County did adopt a future land use plan, but this document, which does not appear to have been developed on the basis of the background research which supported the proposed comprehensive plan, does not supplant the need for a comprehensive planning instrument. This future land use plan constitutes only one element of an overall planning framework and does not specify the location of a system of community facilities (e.g., parks, schools, waterworks, etc.) nor contain other significant elements of a comprehensive planning document. Further, Virginia law requires that comprehensive plans "shall recommend methods of implementation"; the County's land use plan does not include any such recommended methods of implementation.²³⁰ Furthermore, the County's planning effort does

²²⁸Sec. 15.1-446.1, Code of Virginia, required all jurisdictions to adopt a comprehensive plan by July 1, 1980.

²²⁹Howard, Needles, Tammen and Bergendoff, Augusta County, Virginia, Comprehensive Plan, Part 1, May 1980, and Part 2, October 1980. The County states that although this plan was presented to the public for review and comment, it was never adopted (Testimony of Ralston, Hearings, Vol. I, p. 268).

²³⁰Sec. 15.1-447, Code of Virginia. The County's land use plan consists of approximately 22 map sheets that are not machine-reproducible for public distribution (Testimony of Ralston, Hearings, Vol. I, pp. 268-269).

not include a capital improvement, a public facilities, nor a housing plan.

Augusta County was, we note, one of the first counties in Virginia to adopt a zoning ordinance. This ordinance, which was first adopted in 1947, experienced its last major revision in 1971. The ordinance presently includes 13 separate zoning districts, with 9 of them being residential in nature. Two staff members are currently assigned to administer the zoning ordinance.²³¹ With respect to the County's zoning ordinance, the Commission does observe that agricultural districts are apparently open to a wide variety of development and the zoning does not effectively protect agricultural properties from intrusion and conversion.

Augusta County also utilizes a subdivision ordinance which was originally adopted in 1956 and significantly revised in October 1980. Responsibility for the administration of this ordinance is assigned principally to the county planner.²³² The Commission notes that this ordinance has a less restrictive definition of "subdivision" than that proposed by the Code of Virginia, and this less stringent definition has had the result of exempting more land development from subdivision control than

²³¹Augusta Notice, p. 60; and Augusta Exhibits, Vol. II, Exhs. 3-1, 3-2.

²³²Augusta Notice, p. 59.

would the definition proposed by State law.²³³

City of Staunton. The City of Staunton has had a planning commission since 1927 and supported the work of that commission with full-time planning staff through June 1982. The City has asserted that its modest need for planning assistance permitted it to eliminate its full-time planning staff at the conclusion of the last fiscal year.²³⁴ Staunton does have a comprehensive plan which was prepared by City staff between 1978 and 1980 and formally adopted in November 1981. This plan, which appears to be clearly based upon appropriate background studies and surveys as required by law, is well written and offers good analyses of existing conditions and future trends affecting the City.²³⁵ Further, this document contains as required by law, recommendations for implementation and meets all other criteria prescribed by law for comprehensive plans.²³⁶ In addition, the City's planning efforts include a capital improvement plan, a thoroughfare plan, and a housing element.

The City of Staunton has had a zoning ordinance since

²³³Sec. 15.1-450(1); and Sec. 21-1, Code of Augusta County. The Code of Virginia defines a subdivision as the division of a parcel of land into 3 or more lots. The County considers a subdivision to mean the division of a parcel of land into 4 or more parts at one time or within one year, or a total of 6 lots in two successive years. Parcels of land of 5 acres or more are exempt in both definitions.

²³⁴Testimony of McCombs, Hearings, Vol. II, pp. 298-299.

²³⁵Staunton Response, p. 38.

²³⁶Secs. 15.1-446.1 and 15.1-447, Code of Virginia

1927, with the last major revision being completed in 1979. This ordinance allows 10 separate districts, 4 of which are residential.²³⁷ The Commission's review of this ordinance indicates that it is a suitable instrument having an appropriate range of zoning districts, provisions for conditional zoning and planned unit development, and good administrative procedures. The City of Staunton also administers a subdivision ordinance which was originally adopted in 1950 with the last major revision being made in 1963.²³⁸

With respect to Staunton's elimination of its planning staff in June 1982, the City contends that at that time all necessary plans and required revisions to its regulatory ordinances had been completed. Further, the record does indicate the incidence of need for staff activity had become quite modest by that date. Data indicate that between 1977 and 1982 the City had handled only 30 rezoning proposals and that only 2 lots had been subdivided in the City since January 1981. Furthermore, the unlikely prospect for more extensive subdivision review work is indicated by the fact that the City currently has only 513 acres of vacant land suitable for development.²³⁹

City of Waynesboro. The City of Waynesboro has had a

²³⁷City of Staunton, Zoning Code, September 1979.

²³⁸Staunton Response, p. 40.

²³⁹Ibid., pp. 41-42; and Calvert, letter to staff of Commission on Local Government, September 22, 1982.

planning commission since 1948. Most of the City's major planning efforts have been undertaken by outside specialists, with the last revision of the City's comprehensive plan being completed in 1979 by the staff of the Central Shenandoah Planning District Commission. With respect to the City's comprehensive plan, the Commission notes that the plan is based upon appropriate background studies and meets all other prescribed statutory criteria. Moreover, the Commission also notes that the City's long-range planning instruments include a capital improvement plan, a community facilities plan, a housing element, a thoroughfare plan, and an official map.²⁴⁰

In terms of the regulation of private development, the City has had a zoning ordinance since 1948, with the latest revision being made in 1981. This ordinance allows 12 different districts, 6 of which are residential. The City has also utilized a subdivision ordinance since 1962.²⁴¹ Both of these ordinances are administered principally by the assistant city manager with assistance from the director of public works and the City's engineering department.²⁴²

Comparability of Service. On the basis of the absence of an official comprehensive plan and other significant long-range planning instruments, this Commission is unable to

²⁴⁰Waynesboro Response, p. 33; and Testimony of Yancey, Hearings, Vol. III, pp. 248-249.

²⁴¹Ibid.

²⁴²Testimony of Yancey, Hearings, Vol. III, p. 245.

conclude that Augusta County's public planning and regulatory efforts are comparable to those of the Cities of Staunton and Waynesboro. While the County does have a future land use plan, this instrument does not supplant the need for a comprehensive plan and is not sufficient to address the issues raised by proposed land development. Further, the County does not have a capital improvement, a public facilities, or a housing plan to address the needs of its residents. The presence of all these planning instruments in the Cities of Staunton and Waynesboro provides a framework for future growth and development surpassing that presently provided in the County. While the Commission has noted the more permissive nature of facets of the County's zoning and subdivision ordinances and is concerned about the effectiveness of those regulatory controls, it is the absence of a general long-range planning structure in Augusta County which is of paramount significance.

Curbs, Gutters, Sidewalks, and Storm Drains

Proposed Immunity Areas. The Virginia Department of Highways and Transportation standards which apply to roads in Augusta County do not generally require curbs, gutters, and sidewalks. Further, the County's subdivision ordinance does not require their installation. Where such facilities exist, they have been installed by virtue of choice of the property owner or ad hoc decision of the County. The Commission is advised that most residential subdivisions in

the areas proposed for immunity do not have curbs, gutters, or sidewalks, but that most business and multi-family housing projects do have such facilities.²⁴³ Augusta County does not have a policy of financially assisting property owners for installation of these facilities if they are desired.²⁴⁴

The County's zoning ordinance does require all business, industrial, multi-family, and similar public facility development to provide for adequate disposition of storm water. Pursuant to such requirement the County has adopted a Storm Drainage Policy which establishes design criteria to be followed by developers in addressing their storm water management problems.²⁴⁵ The Commission notes that Augusta County has adopted both flood plain management and sedimentation and erosion control ordinances. The Commission also observes that the County has made significant efforts to address drainage concerns within its boundaries which could adversely affect the Cities of Staunton and Waynesboro.²⁴⁶

City of Staunton. The City of Staunton requires developers to install curbs, gutters, and storm drains in conjunction with their development projects. In addition, the City has

²⁴³Augusta Notice, p. 85.

²⁴⁴Huff, communication with staff of Commission on Local Government, November 23, 1982.

²⁴⁵Augusta Notice, p. 85; and Bennett, letters to staff of Commission on Local Government, September 21 and 24, 1982.

²⁴⁶Ibid., p. 86.

generally required the installation of sidewalks in business districts and adjacent to schools, hospitals, and similar public facilities.²⁴⁷ While data are not available indicating the extent of these facilities in Staunton, it is evident to the Commission that they are found extensively throughout the City.

City of Waynesboro. The City of Waynesboro's subdivision ordinance requires the installation of curbs and gutters. In addition, the City will install these facilities in older neighborhoods upon request of property owners and will bear most of the expense of their installation.²⁴⁸ During the last 5 years the City has installed 14,137 linear feet of curbs and gutters at the request of property owners.²⁴⁹

Waynesboro's subdivision ordinance also requires the installation of sidewalks by developers, but this requirement may be waived by City Council. As with curbs and gutters, the City will provide sidewalks in older developments upon request of residents and will bear half the cost of their provision.²⁵⁰ During the past 5 years the City has on its own initiative laid 11,219 linear feet of sidewalk

²⁴⁷Staunton Response, pp. 72-73.

²⁴⁸Waynesboro Response, p. 125. Property owners pay \$2 per linear foot for curbs and gutters installed at their request.

²⁴⁹Testimony of Yancey, Hearings, Vol. III, pp. 295-296.

²⁵⁰Waynesboro Response, pp. 125-126.

in older sections.²⁵¹

Storm drains are also required by Waynesboro's subdivision ordinance in all new development. Drainage problems in older sections of the City are addressed on an individual basis. Some drainage facilities in older areas are provided entirely at City expense, while in other instances the cost of these facilities is shared with the property owners.²⁵²

As an integral part of its storm water management program, the City adopted in 1982 an ordinance requiring that storm water detention facilities be designed to control the 100-year storm event. These facilities, the Commission is advised, exceed the specifications for Augusta County storm water detention facilities, which are designed to accommodate the 50-year floor event.²⁵³

Comparability of Service. The requirements for the installation of curbs, gutters, sidewalks, and storm drains in the Cities of Staunton and Waynesboro are clearly more stringent than those applicable in the areas of Augusta County proposed for immunity. Further, it is evident that these facilities are currently far more prevalent in the Cities than in the proposed immunity areas. While the Commission would conclude, on the basis of the information available to it that the curbs, gutters, sidewalks, and storm drains in the areas

²⁵¹Testimony of Yancey, Hearings, Vol. III, pp. 297, 351.

²⁵²Waynesboro Response, pp. 126-127.

²⁵³Ibid., p. 126.

proposed for immunity are presently adequate, it holds that the extent of such facilities in those areas and the County's policies which govern their installation are not comparable to those of the Cities of Staunton and Waynesboro. The continued urbanization and development of the areas proposed for immunity will require more stringent policies for the installation of these facilities.

General Comparability of Appropriate Urban-Type Services

In the preceding sections of this report the Commission has endeavored to determine whether there existed in the various areas of Augusta County proposed for immunity appropriate urban-type services comparable to the type and level of services furnished within the Cities of Staunton and Waynesboro. While the Commission has determined that certain services in the areas proposed for immunity are comparable to those provided in the Cities, it is unable to conclude that such comparability exists generally across the spectrum of appropriate urban-type services.

The Commission cannot find that the areas proposed for immunity receive crime prevention and detection, fire prevention and protection, public planning, recreation, library, solid waste collection, and street maintenance and lighting services of a type and level comparable to those provided within the Cities.

The Commission recognizes that there are no indices which measure with unfailing precision all attributes and

qualities of public services. At issue here are phenomena which are not fully amenable to quantitative analysis. We do conclude, however, on the basis of the indices which are available and on the basis of our collective experience in local government, that the areas proposed for immunity are not presently served generally by the array of services appropriate for urbanizing areas comparable in type and level to the services offered within the adjoining municipalities.

COMMUNITY OF INTEREST

The statute governing the disposition of partial immunity actions directs this Commission and the court to consider, inter alia, whether the community of interest which exists between the areas for which immunity is sought and the remaining portions of the County is greater than that which links those areas to the adjoining Cities. Analyses of the relative strengths of such communities of interest should consider such intangible factors as historical bonds and emotional attachment, but they must also give full recognition to the tangible and abiding economic, commercial, professional, public service, and other factors which create interdependency. While not all the factors which bear on the issue of community of interest are susceptible to precise measurement and quantification, there are measures which are available to assist in these analyses. These various measures give clear indication of the relative strength of the various communities of interest at issue in the Augusta County immunity action.

Proposed Immunity Areas and Augusta County

It was evident from the Commission's public hearing conducted on September 2, 1982 that there exists strong public sentiment linking the areas proposed for immunity to the rest of Augusta County. Further, there are a number of concrete factors which establish and maintain a community of interest between those areas and Augusta County generally. Clearly, the County's public schools and school attendance zones create interactions between both the students and their families in the proposed immunity areas and those beyond. This Commission agrees that schools, particularly in less urban areas, constitute more than educational facilities--they become centers of social interaction. In this instance there are 4 schools in the proposed immunity areas and 9 outside which draw their students from both within and without the areas which the County seeks to immunize. In addition, the Valley Vocational Technical Center at Fishersville, with 80% of its students being Augusta County residents, creates further social and educational interaction involving County residents generally.²⁵⁴

Employment patterns also suggest an economic interrelationship between the proposed immunity areas

²⁵⁴Augusta Exhibits, Vol. I, Exhs. 9, 10, 11; and Augusta Exhibits, Vol. II, Exh. 10-9.

and the County generally. Data disclose that in 1981 approximately 55% of all wage and salary employment in the County was located within the proposed immunity areas, with approximately 41% concentrated in Area A.²⁵⁵ Thus, with only 27% of the County's total population, the proposed immunity areas contained over half the County's wage and salary employment. It is reasonable to conclude that significant numbers of residents living outside the proposed immunity areas commute to those areas for employment.

In terms of commercial relationships, evidence indicates that the areas proposed for immunity contain a concentration of agriculture-related businesses which serve the outlying portions of Augusta County. Located within the proposed immunity areas are such entities as the Farm Bureau Cooperative, Federal Land Bank, Augusta Frozen Foods Locker, several farm implement dealers, and the Augusta County Expo.²⁵⁶ Further, Area A contains the only major shopping center (Staunton Plaza) in the general area, exclusive of the downtown business districts of the two Cities. This shopping center with its 30 stores and businesses constitutes a significant commercial

²⁵⁵Virginia Employment Commission, Special Area by Industry Listing for Quarter 1-81, Area 015--Augusta County. The Commission notes that even with the large number of employment opportunities in the proposed immunity areas and elsewhere in the County (13,690 jobs in 1980), approximately 45.8% of the 25,245-person labor force was required to seek employment outside of the County's boundaries (Population and Labor Force Data, 1980).

²⁵⁶Testimony of Ralston, Hearings, Vol. I, pp. 180-181.

link between Area A and County residents generally.²⁵⁷ Furthermore, the 1977 Census of Wholesale Trade revealed that, at that time, the County was the center of wholesale trade activity for the general area. The 43 wholesale firms located in Augusta County reported a greater volume of trade activity (\$92.4 million) than that for Staunton and Waynesboro combined (\$83.5 million). The Commission's research indicates that most of the wholesale operations in the County were then, and remain, located within the proposed immunity areas.²⁵⁸

The Commission also notes that there are a number of public facilities and activities which create bonds and interaction between the proposed immunity areas and the rest of Augusta County. The Augusta Recreation Center, the Augusta County library, and the County's school administrative offices, all of which are located in Area B-2, promote contact and interaction among all County residents. Further, the ACSA's utility operations, while concentrated within the proposed immunity areas, do create a public service link among County residents generally. In addition, the 4 volunteer fire departments in or adjacent to the proposed immunity areas constitute other service activities promoting ties and interdependency between the

²⁵⁷Bennett, letter to staff of Commission on Local Government, September 24, 1982.

²⁵⁸U.S. Department of Commerce, Bureau of the Census, 1977 Census of Wholesale Trade, Virginia, Number WC77-A-47, May 1980, Table 7.

areas of Augusta County proposed for immunity and those beyond.

Finally, the Commission notes that the 4 Ruritan clubs and other fraternal, social, and religious groups create varying degrees of social interaction among County residents generally.²⁵⁹ The Commission recognizes the significance of such groups in the daily lives of people.

Proposed Immunity Areas and the City of Staunton

The evidence indicates that there are a number of tangible and significant bonds which create a strong community of interest between the proposed immunity areas and the City of Staunton. First, the City of Staunton is the site of numerous State and federal offices which serve not only residents of the City, but those of Augusta County as well. The Virginia Employment Commission, the Division of Forestry, the Department of Labor and Industry, the Division of War Veterans Claims, the National Guard, and other State agencies have facilities in the City which serve the residents of the general area. Moreover, federal agencies such as the Soil Conservation Service, the Farmers Home Administration, the Social Security Administration, the Agricultural Stabilization and Conservation County Committee, and others maintain operations in Staunton which serve directly Augusta County residents.²⁶⁰

²⁵⁹Augusta Notice, pp. 131-138.

²⁶⁰Calvert, letter to staff of Commission on Local Government, September 16, 1982. State and federal agencies which do not directly serve local residents, but are areawide facilities, may not bear heavily on community of interest (e.g. Woodrow Wilson Rehabilitation Center).

In terms of economic ties, the evidence reveals that financial institutions in the City play a dominant role in the economic life of the general area. Five area banks have their headquarters in Staunton, and 5 branch bank facilities operate within that municipality.²⁶¹ Indicative of the significance to the area of Staunton's banking institutions is the fact that for Fiscal Year 1980-81 the City's bank stock tax receipts, which reflect the magnitude of the City's bank operations, was 2.3 times higher than that of the County as a whole.²⁶² In addition, Staunton's role in the financial life of the general area is further revealed by the presence of 2 savings and loan associations, 5 loan companies, and 1 stock brokerage firm within its corporate limits.²⁶³

With respect to Staunton's role in the professional and general commercial life of its area, there are numerous statistics of note. With offices for 52 attorneys

²⁶¹Ibid.

²⁶²Auditor of Public Accounts, County of Augusta, Virginia, Report on Audit for the Fiscal Year Ending June 30, 1981, Schedule 1, p 1; and City of Staunton, Commonwealth of Virginia, Financial Statements, June 30, 1981, Schedule 1, p. 1.

²⁶³Chesapeake and Potomac Telephone Company, Staunton, Craigsville, Greenwood and Stuarts Draft Telephone Directory, August 1982. While there are no banks headquartered in Area A, there are 4 branch bank facilities and 1 savings and loan institution functioning there. In addition, there is 1 bank headquartered and a branch bank facility in Area B-2. Locations were determined by the listings in the telephone directory.

and 18 accountants, it is evident that the City is a center for such professional services.²⁶⁴ In terms of retail trade, the data disclose that as of 1979 Staunton had nearly twice the number of jobs (2,546) in the retail sector as did Augusta County in its entirety (1,405).²⁶⁵ Attesting further to the City's significance as the area's retail trade center is data revealing that in 1980 retail sales in Staunton totaled \$36.2 million, or 57.4% more than the \$23 million reported for Augusta County as a whole.²⁶⁶ According to other sales data, Staunton was the area's center for department stores, furniture and appliance shops, eating and drinking establishments, and grocery stores in 1981.²⁶⁷ The City's commercial significance is also manifested by data regarding service industries. Statistics indicate that during the third quarter of 1981, employment in service industries in Staunton (2,288) was 3.5 times greater than that in Augusta County as a whole (908).²⁶⁸ The evidence is strong that the City of Staunton

²⁶⁴Ibid. The directory indicates that only 1 attorney and no accountants are currently maintaining offices in Area A and that there are no attorneys or accountants maintaining professional offices in Area B-2.

²⁶⁵U.S. Department of Commerce, Bureau of the Census, County Business Patterns, 1979, Virginia, Number CBP-79-48, March 1981, Table 2.

²⁶⁶Eleanor G. May, Retail Sales in Virginia, 1980 (Charlottesville: Tayloe Murphy Institute, University of Virginia, 1981), p. 39.

²⁶⁷Survey of Buying Power, 1982, July 26, 1982 edition of Sales and Marketing Management, pp. C-199, C-201.

²⁶⁸Virginia Employment Commission, Covered Employment and Wages--Third Quarter, 1981. Gross wages were three times greater for service section employees in Staunton as opposed to Augusta County.

plays a dominant role in the economic and commercial life of its general area.

Of further significance to the issue of community of interest are data indicating that Staunton is a major medical center serving the region. Survey data reveal that as of 1978, nearly 43% of all County residents requiring hospital facilities used King's Daughters Hospital in Staunton. The same survey indicated that 5.7% of all persons using the facility at that time were residents of the Verona area.²⁶⁹ Evidence also indicates that 43 physicians and surgeons, as well as 21 dentists, have offices in Staunton and serve patients throughout the area.²⁷⁰ In terms of other medically related facilities, the Commission notes that the City has within its boundaries 6 pharmacies which serve its residents and those of adjacent areas.²⁷¹ Further, statistics reveal that in 1981 the volume of sales from drugstore facilities in Staunton totaled \$8.5 million, or more than five times that generated by similar facilities in Augusta County as a whole (\$1.7 million).²⁷²

²⁶⁹Data provided by T. R. Bernier, Executive Director, Northwest Virginia Health Systems Agency, letter to staff of Commission on Local Government, November 11, 1982.

²⁷⁰Staunton, Craigsville, Greenwood, and Stuarts Draft Telephone Directory. The directory indicates that there are no physicians and only 1 dentist maintaining offices in Area A, and 2 physicians and 1 dentist with offices in Area B-2.

²⁷¹Calvert, letter to staff of Commission on Local Government, September 16, 1982.

²⁷²Survey of Buying Power, 1982.

The Commission notes that there are additional factors which add to the community of interest between Staunton and the proposed immunity areas. First, surveys have indicated that County residents use with considerable frequency the recreational facilities in Staunton.²⁷³ Second, as in Augusta County, there are numerous religious congregations, associations, and social groups with members from both jurisdictions. Finally, it should be noted that the density and urbanizing nature of the areas proposed for immunity create service needs which are more similar to those of the City of Staunton than those of the outlying portions of Augusta County.²⁷⁴

Proposed Immunity Areas and City of Waynesboro

There are a number of relationships and interactions which reveal a strong community of interest between the proposed immunity areas and the City of Waynesboro. Foremost of these bonds is that of employment opportunity. Statistics indicate that in 1980 the City of Waynesboro had within its corporate limits 13,476 positions of wage and salary employment. This number of employment positions was more than 80%

²⁷³Staunton Response, p. 65; and City of Staunton Exhibit I.

²⁷⁴The 1982 densities of Areas A and B-2 are 410 and 263 persons per square mile respectively, while the density of Augusta County is 66 persons per square mile, exclusive of State and federal lands and the proposed immunity areas (Augusta Exhibits, Vol. II, Exh. 1-1).

greater than the total civilian labor force residing within the municipal boundaries.²⁷⁵ This statistic, coupled with data indicating that as of 1981 only 55% of the County's total labor force was employed within Augusta County, suggests a considerable dependency on the part of County residents for employment opportunities within the City.²⁷⁶

The evidence also supports the conclusion that Waynesboro constitutes a medical center serving its general area, including portions of eastern Augusta County. Survey data indicate that in 1978 approximately 36% of all County residents using hospital facilities were treated at the Waynesboro Community Hospital. The same survey revealed that residents of Lyndhurst and Fishersville accounted for over 8% of all persons using that facility in 1978.²⁷⁷ Further, the evidence indicates that 47 physicians and surgeons and 17 dentists maintained offices in the City.²⁷⁸ Furthermore, the City had 6 pharmacies which served residents in the general area.²⁷⁹ Also, it should be noted that State tax

²⁷⁵Population and Labor Force Data, 1980.

²⁷⁶Special Area by Industry Listing for Quarter 1-81. 1970 census data did indicate that 27.2% of Augusta County workers were employed in Waynesboro (Augusta Exhibits, Vol. II, Exh. 10-10).

²⁷⁷Bernier, letter to staff of Commission on Local Government, November 22, 1982.

²⁷⁸"City of Waynesboro Exhibit W-26." The telephone directory indicates that 1 physician and 3 dentists maintain offices in Area C (Clifton Forge--Waynesboro Telephone Company, Waynesboro Telephone Directory, June 1982).

²⁷⁹"City of Waynesboro Exhibit W-27."

records indicate that during 1981 drugstore outlets in the City reported gross sales of approximately \$4.9 million, or 3.5 times that reported by all similar outlets in Augusta County (\$1.7 million).²⁸⁰

There are several additional factors which serve to strengthen the community of interest between the areas proposed for immunity and the City of Waynesboro. First, evidence indicates that there are 25 attorneys and 4 accountants who maintain offices in Waynesboro and offer their services to clients throughout the area.²⁸¹ Second, surveys have revealed that a significant number of County residents utilize the recreational facilities and programs provided by the City.²⁸² Third, 37 churches, numerous associations and groups in the City draw their membership both from Waynesboro and Augusta County areas. Depending upon the size and activities of each group, those entities contribute to the bonds linking the City to adjacent areas of the County.²⁸³ Finally, and significantly, the density and urbanizing nature of the areas adjacent to Waynesboro create lifestyles and service needs which are far more similar to those in the City than

²⁸⁰Survey of Buying Power, 1982.

²⁸¹Waynesboro Response, Exh. W-26. The telephone directory lists 1 attorney but no accountants as maintaining offices in Area C (Waynesboro Telephone Directory).

²⁸²Ibid., pp. 83, 87-90, 162. A survey conducted during the period May 29-July 9, 1982 revealed that 41.3% of the persons using the City's War Memorial Pool were residents of Augusta County.

²⁸³Ibid., pp. 157-159.

those in outlying areas of the County.²⁸⁴

Relative Strengths of Community of Interest

The Commission notes that there are strong educational, social, and religious ties which bind the areas proposed for immunity with Augusta County generally. Further, the Commission's public hearing at Fishersville on September 2, 1982 revealed strong emotional ties and public sentiment linking those areas to the rest of Augusta County. In addition, the Commission notes that the concentration of agriculture related business and wholesale trade in the proposed immunity areas creates commercial bonds with outlying portions of the County. However, the Commission observes that, with respect to finance, retail trade, service industries, professional services, medical facilities, employment, and similarity of service needs, there are fundamental bonds which create a tangible and strong community of interest between the Cities of Staunton and Waynesboro and the areas proposed for immunity. The Code of Virginia states that the Commission and the court will consider in the resolution of partial immunity actions whether the community of interest between the areas proposed for immunity and the remaining portion of a county

²⁸⁴The current densities of Area B-2 and C are 263 and 473 persons per square mile respectively, while the density of Augusta County, exclusive of State and federal lands and the proposed immunity area, is 66 persons per square mile (Augusta Exhibits, Vol. II, Exh. 1-1).

is "greater" than that between such areas and the adjoining cities. With respect to Augusta County's partial immunity action, this Commission is unable to conclude that Areas A, B-2 or C have a community of interest with the outlying portions of Augusta County which exceeds that with the Cities of Staunton and Waynesboro.

COMPLIANCE WITH APPLICABLE STATE POLICIES

An additional factor prescribed for consideration in partial immunity actions is the extent to which a county has made efforts to comply with applicable State policies. It appears to this Commission that there are several applicable State policies which merit attention in this review. The paragraphs which follow address these policies.

Public Planning

As noted previously, Augusta County has never adopted a comprehensive plan despite statutory requirements that it do so prior to July 1, 1980.²⁸⁵ While the County did develop and officially adopt in 1973 a future land use plan, that document does not constitute a comprehensive plan and was not founded upon the background studies and surveys which are statutorily prescribed bases for comprehensive plans. Further, the County's future land use plan does not provide the "methods of implementation" for achieving the identified long-range goals of the community as is required in comprehensive plans.²⁸⁶ The Commission would assert that comprehensive plans

²⁸⁵Sec. 15.1-446-1, Code of Virginia.

²⁸⁶Sec. 15.1-447, Code of Virginia.

are essential if zoning ordinances and other regulatory instruments are to provide coherent and rational development of an area. Further, where a locality elects to place its utility operations in the hands of an independent authority, the need for a comprehensive plan to assist the elected leadership in guiding future land development is of greater magnitude. Clearly, the County has failed to meet this fundamental requirement for public planning.

Agricultural Land Preservation

Various sections of the Code of Virginia indicate that it is the policy of the General Assembly to protect and preserve the Commonwealth's agricultural lands.²⁸⁷ The Commission notes that consistent with this State policy, Augusta County adopted a system of land-use taxation in 1976 which has had the effect of lessening the financial burden on the agricultural community and reducing pressures for the conversion of farm lands. Data indicate that for tax year 1980, the application of land-use taxation in the County reduced the value of properties covered by the program for tax purposes by over \$89 million.²⁸⁸ This waiver of tax resources does constitute a significant effort by the County to protect the State's agricultural properties.

Housing

One of the fundamental human needs is for adequate housing, and the absence of such facilities can have a

²⁸⁷Sec. 15.1-1507, Code of Virginia.

²⁸⁸Virginia Department of Taxation, Annual Report, 1980-1981, Table 5.4.

pervasive adverse influence on the quality of a community's corporate life. In recognition of this reality, the General Assembly has declared that housing for all its residents is a matter "of grave concern to the Commonwealth."²⁸⁹ The Commission notes that the County has not taken active measures to increase the stock of housing for its low- and moderate-income residents. While State data sources indicate that as of 1981 there were 534 multi-family units and 1,210 single-family units of assisted housing in the County, these units were present due to private initiative.²⁹⁰ It is significant to note that the data disclose that the County residents do have major housing needs. One survey has estimated that by 1980 there would be 4,949 households in Augusta County which would have housing assistance needs.²⁹¹

With respect to the housing needs and concerns of the general area, the Commission wishes to note that both the City of Staunton and the City of Waynesboro have had for nearly two decades housing authorities which were established to address actively the housing needs of low- and moderate-income families. The Staunton authority operates 150 multi-family units of conventional public housing and is responsible for determining eligibility of residence in 175 other units of privately owned

²⁸⁹Sec. 36-2, Code of Virginia. See also Sec. 36-120, Code of Virginia.

²⁹⁰Working Committee on Housing of the Virginia Rural Development and Capacity Building Advisory Council, Characteristics of Households and Housing in Virginia, Part II, Selected Data for Virginia Counties and Cities, December 1981, Table 7.

²⁹¹Central Shenandoah Planning District Commission, District Comprehensive Plan, Housing Element (draft), September 1980, Table 17. The elements of calculation were housing condition, tenure, head of household income level, and size of household.

assisted housing in the City.²⁹² State data indicate that considering all sources, there were, as of 1981, 593 units of multi-family and 484 units of single-family assisted housing in the City.²⁹³ The Waynesboro housing authority currently operates 61 units of conventional public housing with 32 additional units nearing completion.²⁹⁴ State housing records indicate that Waynesboro had within its boundaries as of 1981, considering all sources, 463 units of multi-family and 453 units of single-family assisted housing.²⁹⁵ While the data indicate that Staunton and Waynesboro continue to have housing concerns and problems, both Cities have actively addressed the housing needs of their residents.²⁹⁶

Education

Both by constitutional provision and by general law, the State of Virginia has declared that public education is a fundamental concern of the Commonwealth.²⁹⁷ The evidence

²⁹² Calvert, letter to staff of Commission on Local Government, September 16, 1982 and November 11, 1982.

²⁹³ Characteristics of Households and Housing in Virginia, Table 7.

²⁹⁴ Waynesboro Response, p. 137.

²⁹⁵ Characteristics of Households and Housing in Virginia, Table 7.

²⁹⁶ A 1980 survey of the housing situation in the two Cities determined there were 2,621 and 1,370 households respectively in Staunton and Waynesboro in need of housing assistance (District Comprehensive Plan, Housing Element, Table 17).

²⁹⁷ Article VIII, Section 1, Constitution of Virginia; and Chapter 578, Acts of the Assembly, 1982.

available to this Commission indicates that Augusta County has made commendable efforts to address this basic State concern. Data reveal that the County operates 21 public schools, exclusive of the Valley Vocational Technical Center, and that during the 1980-81 school year those facilities had an average daily membership (ADM) of 10,802 students.²⁹⁸ While during school year 1980-81 the County expended less in local funds per student in ADM (\$656) than did the City of Staunton (\$878) or the City of Waynesboro (\$1,097), and while the County had slightly higher pupil/teacher ratios and less instructional staff per thousand students, Augusta County met all State standards on these indices.²⁹⁹ The Commission notes that the County has operated both a full-day kindergarten and an elementary school guidance program for a decade.³⁰⁰ Further, the County provides free textbooks to all students who qualify for the free lunch program, and it offers free bus transportation to all students, including the provision of late afternoon activity buses serving the high schools and middle schools.³⁰¹ Finally, the Commission is advised that all County schools

²⁹⁸State Department of Education, Facing-Up-16, Statistical Data on Virginia's Public Schools, March 1982, Table 3.

²⁹⁹Ibid., Tables 2, 3, and 9.

³⁰⁰Augusta Notice, p. 99.

³⁰¹Testimony of Edward G. Clymore, Division Superintendent, Augusta County Schools, Hearings, Vol. II, pp. 56, 69-70, and 92. During the 1981-82 school year approximately 1,048 County students received free textbooks.

have been accredited by the State and that all its high schools have been accredited by the Southern Association of Colleges and Schools.³⁰² In sum, the evidence indicates that Augusta County has endeavored to meet fully the State's concern with public education.

ARBITRARY REFUSAL TO COOPERATE

A fourth factor prescribed for consideration in actions for partial immunity is whether a locality has arbitrarily refused to cooperate in the joint provision of public services. The intent of this provision, and a similar one in the annexation statute, is to promote interlocal cooperation where such can be of mutual benefit to local governments and their residents. Recognizing that the State's boundary change laws have inadvertently in the past created barriers to mutually beneficial interlocal cooperation, the General Assembly, by means of this provision, has endeavored to remove such barriers and to give impetus to collaboration among units of local government.

In this specific case, the Commission notes a significant degree of interlocal cooperation which, from our perspective, reflects favorably on all three jurisdictions. While not contending that our list is all inclusive, we count no less than fifteen major activities in which all

³⁰²Augusta Notice, p. 123.

three jurisdictions jointly participate. These activities include such general areas of public concern as education, mental health, emergency medical services, regional planning, criminal justice training, airport operations, youth and adult detention facilities, economic development, and storm water drainage. In addition to the above, this Commission recognizes that there are yet other areas of public concern where bilateral cooperation exists. Such bilateral cooperation is in effect with respect to utility services, fire training, health and social services, emergency dispatch operations, and animal protection. These cooperative efforts and programs should not be jeopardized by any prospective boundary change or immunity actions.

The County's termination in June 1982 of its contracts with the Cities of Staunton and Waynesboro for the provision of library services to County residents has been cited as an instance in which the County arbitrarily refused to cooperate for the provision of a public service. This Commission fails to find a basis for such a conclusion. The record indicates that in 1977 the County contracted with both Cities for the provision of library services to County residents and concurrently began development of its own library facilities. The contracts with the Cities continued in effect for six years during which time the County paid over \$500,000 for the services extended its residents.³⁰³ With a continued increase in

³⁰³County of Augusta, A Study of the Augusta County Library and its Community with Recommendations for Extending Public Library Services, August 1978, pp. 67-68; and testimony of Huff, Hearings, Vol. II, pp. 222-223.

investment in its own library facilities, the cancellation of the contracts with the Cities would appear to be a reasonable act. The Commission finds no basis for concluding that the County's action constituted an arbitrary refusal to cooperate but considers such action as a justifiable means of freeing resources for the further development of its own library facilities.

SUBSTANTIAL FORECLOSURE OF ANNEXATION

The Code of Virginia states that partial immunity shall not be granted in any instance where such would substantially foreclose the annexation options of cities of less than 100,000 persons. Since the Cities of Staunton and Waynesboro currently have populations which are only a fraction of that figure, the issue of substantial foreclosure could be raised in this case. However, in view of the fact that the Commission will not be able to recommend a grant of immunity to any of the areas proposed, we do not deem it necessary to consider in detail the issue of substantial foreclosure. The Commission does consider it appropriate to offer brief and general comment on the issue.

It might be contended that because Augusta County's action for partial immunity, if granted in its entirety, would leave 45% of Staunton's boundary and 73% of Waynesboro's boundary open to expansion, such action could not be construed to constitute the substantial foreclosure of

the annexation authority of either City.³⁰⁴ In our judgment, however, the percentage of a city's boundary open to expansion, while a significant statistic, does not constitute by itself a definitive answer to the question of substantial foreclosure. It appears to us that a full analysis of this issue requires consideration of a variety of factors. First, we deem it important to consider the legal and pragmatic impediments which would restrain the annexation of the territory which would remain eligible for incorporation into the city. We note that by law an annexing city must show that the property it seeks to annex is "adapted to city improvements," is needed for development in the "reasonably near future," and forms "a reasonably compact body of land."³⁰⁵ Further, an annexing city must be prepared to extend facilities and services into an annexed area in a prompt and equitable manner.³⁰⁶ The cost of annexation requires that the property annexed carry with it assets as well as service liabilities. Second, we would observe that the General Assembly's protection of the annexation authority of cities less than 100,000 in population was intended to facilitate the meaningful growth of those municipalities. To accomplish this end, cities must be permitted an opportunity to extend

³⁰⁴A portion of Waynesboro's boundary not affected by the County's immunity petition is a narrow corridor ranging from 500 feet to approximately 3,000 feet in width. Excluding this strip of land, only 59% of Waynesboro's boundary is open for expansion by annexation. The area in question is between the City's southern boundary and Area C adjacent to Interstate 64.

³⁰⁵Sec. 15.1-1042(a), Code of Virginia.

³⁰⁶Sec. 15.1-1042(f), Code of Virginia.

their boundaries in a manner which permits them to share reasonably in the population and economic growth of their general areas.

In this case we note that the areas adjacent to Staunton which the County does not seek to immunize contain large segments with slope gradients between 7% and 15% and other portions which are in the 100-year flood plain. We note also that the entire area is generally agricultural, wooded, or vacant, with only scattered residential and commercial development.³⁰⁷ Of equal significance is the fact that areas adjacent to Staunton which the County does not seek to immunize are predominantly zoned for agricultural use and that the County's future land use plan designates almost the entire body of land "agricultural conservancy."³⁰⁸ In terms of the area's development prospects, we note that the extension of water and sewerage into the area will be costly and require considerable pumping, that the area does not have convenient access to the interstate highway system, and it is clearly outside the path of past and prospective development. Finally, it is significant to observe that of 3,100 acres of potential industrial sites recently identified in a survey

³⁰⁷ City of Staunton, Map Exhibits, Exh. M-9. There is one parcel of industrial land located outside the proposed immunity area and adjacent to Staunton. That parcel is located on U.S. 250 west of the City.

³⁰⁸ Ibid., Exh. M-11. The County defines "agricultural conservancy" land use as "...areas of the better soils of the county and where the higher yields and productivity of farming and agriculture usually occur. This will normally be R-Rural zoned area. Like the area designated agricultural, scattered single-family homes and isolated businesses are expected. However, subdivisions containing small lots will not generally be permitted." (Sec. 14-6, Code of Augusta County).

conducted by the Augusta County, Staunton and Waynesboro Economic Development Council, none were within the areas adjacent to Staunton which would remain available for annexation if the County's immunity action were granted. If Augusta County were granted immunity for all of Area A, the City of Staunton would be, in our judgment, substantially foreclosed from annexation.

With respect to the areas adjacent to the City of Waynesboro for which the County does not seek immunity, we note a similar set of conditions. The evidence indicates that over half of the City's boundary which would remain eligible for expansion following a grant of immunity to Area C abuts steep slopes or national forest lands. The areas left available for annexation are predominantly agricultural, wooded, or vacant with only limited development. The areas to the south and east of the City are severely restricted in their development potential by slopes in excess of 15%, while a portion of the area to the north and paralleling the Norfolk & Western Railway Company's lines is located in the 50-year flood plain. As in the case of Staunton, those areas which would remain eligible for annexation by Waynesboro are now predominantly zoned for agricultural use, with the County's future land use plan designating virtually the entire area for "agricultural conservancy." The Commission also observes that the areas which would remain eligible for annexation have had little utility development, do not have immediate access to the interstate road network, and are

outside the path of current and potential development. Further, it is significant to note that the recent survey conducted by the Augusta County, Staunton and Waynesboro Economic Development Council which identified 3,100 acres of potential industrial sites failed to specify a single site in the areas adjacent to Waynesboro outside of the proposed immunity areas. The data strongly support the view that in terms of development potential the areas left eligible for annexation by Waynesboro have a poor competitive position relative to those in areas proposed for immunity. In our judgment, if Augusta County were granted immunity for all of Area C, the City of Waynesboro would be substantially foreclosed from annexation.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

For reasons set forth previously in this report, the Commission is unable to recommend a grant of immunity to the areas of Augusta County for which such has been proposed. The Commission is unable to conclude that the areas proposed for immunity are presently served by appropriate urban-type services of a type and level comparable to services provided within the Cities of Staunton and Waynesboro, nor is it able to find that those areas have a community of interest with the outlying portions of Augusta County greater than that which they share with the adjoining municipalities. Further, we are required to note that

Augusta County has not fully complied with State policies with respect to public planning and has, indeed, failed to respond to the statutory requirement for the adoption of a comprehensive plan prior to July 1, 1980. The aggregate of these findings precludes the Commission from recommending a grant of partial immunity under the provisions of Sec. 15.1-977.22:1 of the Code of Virginia.

It is important to note in this report that at issue here is the question of eligibility for a grant of permanent immunity, not a question of the legal propriety of an annexation which would rest upon a distinct and separate set of standards and factors. The resolution of an immunity action, from our perspective, cannot be construed to prejudge the resolution of annexations affecting the same or similar territory. Not present for consideration in immunity actions are such factors as the adverse effect on a county of the loss of industrial and commercial properties or the impact of the loss of public facilities on the ability of a county to serve its residents. These factors, as well as other considerations, make annexation actions distinct from those of immunity.

With respect to the distinctions mentioned above, the Commission wishes, as part of its report to the parties in this case, to indicate its full awareness of (1) the County's increasing attention to the urban service needs of its residents, (2) the significance to Augusta County of the industrial and commercial development in the northern portion of

Area A, and (3) the notable concentration of public facilities in Area B-2. We consider it appropriate to observe that these areas constitute significant foundations which support both the economic viability and the public service structure of Augusta County. These facts would, in our judgment, bear prominently on the resolution of relevant annexation issues.

In conclusion, we hold that there exist reasonable and equitable means of reconciling the presently contending actions in the Augusta County area. Such reconciliation must address the interests of all parties and assure the Commonwealth of the continued general viability of its political subdivisions.

Respectfully submitted,

A. George Cook III

A. George Cook, III, Chairman

Wm S. Hubbard

William S. Hubbard, Vice Chairman

Ben L. Susman III

Benjamin L. Susman, III

DISSENTING STATEMENT

EDWARD A. BECK

In substance, I can agree with the general tone of the Commission's report. I reject, however, the conclusion of the majority that immunity cannot be recommended for any portion of the proposed areas because the County fails to provide the type and level of services required. In my judgment, the majority has applied too rigid a standard for a determination of whether there do exist appropriate urban-type services in the areas proposed for immunity comparable to the type and level of services provided by the Cities of Staunton and Waynesboro. Based upon a more flexible standard--one which recognizes the varying needs and characteristics of different areas--there appear to be portions of the areas proposed for immunity which do have services of a type and level which qualify them for partial immunity under the provisions of Section 15.1-977.22:1 of the Code of Virginia.

The majority holds that Augusta County must provide services of a type and level which approximate those provided within the adjoining Cities. I contend, however, that this is not what was intended by the General Assembly when the statute governing partial immunity was enacted. Within any typical city in the Commonwealth, there are areas where particular services are not, in fact, equal. As expressed in the Supreme Court's opinion in the City of

Harrisonburg--County of Rockingham annexation case (Record No. 812007):

Different people in different communities have a different need for different reasons. Government seldom has sufficient resources to provide all it would like to give its citizens and never all they would like to receive.

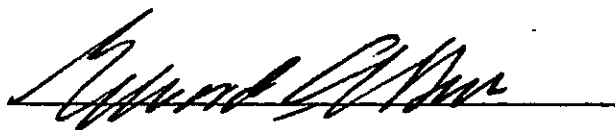
Such varying needs and conditions should render flexible the standard to be applied in partial immunity issues.

The provisions of Section 15.1-977.22:1 of the Code of Virginia state that no county shall be granted partial immunity which would substantially foreclose the opportunity of a city of 100,000 or less in population from extending its boundaries by annexation. In my view, a grant of immunity to the areas proposed by Augusta County would indeed substantially foreclose the annexation options of the Cities of Staunton and Waynesboro. The social and economic health of the general region require, in my judgment, that the Cities be afforded a more meaningful opportunity for growth than would be available if the County's immunity action were approved as presented.

Given the absence of express authority for the court to modify the boundaries of the areas to be granted immunity, such as is expressly given in annexation proceedings (Section 15.1-1042), I do not feel it necessary to delineate here the portions of the proposed areas for which I would recommend immunity. Rather, it would appear more appropriate for the County to withdraw its current proposed petition and redraw the boundaries of the immunity areas on the basis of the aggregate of the comments

offered by Commission members. Such a modified immunity action should recognize both the need of the Cities to share in the economic growth of their areas as well as the strong community of interest which unites the Verona and Fishersville areas to Augusta County generally.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Edward A. Beck", is written over a solid horizontal line.

Edward A. Beck

DISSENTING STATEMENT

WENDELL D. HENSLEY

Unquestionably the members of the Commission unanimously agree on many major points regarding this partial immunity action. However, there are very important differences of opinion dealing with the question of comparability of urban-type services and community of interest. These differences are being addressed here for the edification of all, highlighting the extreme difficulty in utilizing the partial immunity statutes, as presently constructed, to provide county governments and their citizens with immunity from annexation and the incorporation of new cities in the urbanizing sectors of the county.

It is my opinion that evidence presented and testimony given support the conclusion that Augusta County is presently providing, as required by Section 15.1-977.22:1, "...appropriate urban-type services, comparable to the type and level of services furnished in the city..." in various parts of the areas requested to be declared immune from annexation. Specifically, the County provides such services in Areas A, B-2 and the northern and western portions of B-3; urban-type services are not being provided in Area C south of Interstate 64.

The majority report makes reference to the fact that the Commission is required by law to consider the viability of all the Commonwealth's localities; furthermore, we note the requirement that "...the court shall not grant partial immunity to a

county which would result in substantially foreclosing... a city [not exceeding 100,000 in population] from expanding its boundaries by annexation." Applying these tests to the areas for which I have determined that the County is providing appropriate urban-type services, I conclude that Area B-1, part of Area A south of B-1 and all of Area B-3 must be deleted from the requested immunity area. In my judgment, it has been shown that in order to remain viable communities, the Cities of Staunton and Waynesboro will need land in the future for growth and expansion. The County's argument that land to the north of Waynesboro and to the west of Staunton will be adequate for the growth of the two Cities has not been clearly established. In fact, review of the study of available industrial sites dictates that the portion of Area A south of a line that is collinear with State Route 275 extended from Interstate 81 to the western boundary of Area A and north of Area B-1 should also be deleted from the area to be granted immunity.

To reiterate, the test for partial immunity fails in all of Area A, except in that part north of State Route 275, and in Area B-3, not on the question of level of services, but on the condition that jurisdictions be "...maintained as viable communities..." and on the consideration of substantial foreclosure.

The Commission has considered the question of immunizing an area that does not physically abut the boundary of a city, as would result from this recommendation with respect to

Area A north of State Route 275 as described above. The Commission has concluded that it is appropriate to recommend to the court a redrawing of immunity boundaries so as to promote the fundamental intent of the State's interlocal processes-- in this case to help maintain the viability of the City of Staunton by not granting immunity in a contiguous area recognized as desirable for industrial growth.

The pivotal point on which the members of the Commission tend to disagree is the interpretation of that provision in Section 15.1-977.22:1 of the Code of Virginia which states that immunity shall be granted in those areas for which the county seeks immunity provided that "...the county has appropriate urban-type services, comparable to the type and level of services furnished in the city..." Of particular concern is how to apply the word "comparable" in the analysis of partial immunity issues. My view is that the term "appropriate urban-type services" means that only those services that are necessary to meet the needs of the people being served are appropriate for consideration. Furthermore, I do not construe the term "comparable" to mean "equal." I submit that no area that is developing from a rural to an urban condition can be expected to provide a level of service equal to those of an existing city which has provided, possibly for a very long time, urban-type services to a far greater (five to ten times more) population density. The Commission unanimously agrees that the level of service need not be interpreted to be equal in order to be

"comparable." What then is meant by "comparable" level of service? Suggestions range from "approximate" and "approximately equal" to percentages of equality, such as 66% or 85%, of the city's level of service. I would observe that no county is likely to succeed in qualifying for partial immunity if it first must develop services which are approximately equal to those of adjacent cities. Periodic annexations are likely to remove urbanizing areas from counties before service needs and development reach the point of approximate equality.

My minority viewpoint is that any attempt to quantify the meaning of the word "comparable" becomes illogical and unwieldy in practice. Therefore, some judgment must be exercised in a way that will give the word substance in terms of what it means to the consumer of the service. I submit that the only meaningful way to do this is to consider the needs of the citizens. For a jurisdiction to provide a level of service seriously out of phase with the needs of its citizens is irresponsible and economically unsound. For example, for Augusta County to try to duplicate the Cities' response time and per capita expenditure for crime prevention and detection would require overspending by the County far in excess of demonstrated need. (The County has a crime rate less than one-half of the Cities' average rate and a clearance rate that is equal.) Consequently, the majority opinion that concludes that the County's law enforcement

services are not comparable to those of the two Cities is, in my opinion, erroneous. The majority opinion is too heavily weighted toward an "equal" level of services, with too little attention to the needs of the specific areas in question. In his concluding argument (page 31) counsel for the City of Staunton states, "The inquiry here, as in an annexation case, is not whether the individual County resident desires urban services. It is instead whether the urban areas need proper services." I agree; the comparability of services must be tempered by the need for services.

Guided by the above philosophy with respect to levels of services, I disagree with the majority conclusions in regard to sewer; crime prevention and detection; fire; solid waste services; street lights; curbs, gutters, sidewalks and storm drains; and street maintenance. I think that these services are comparable. Furthermore, I contend that there exists no need for a system of public transportation in the areas proposed for immunity which could justify the cost of providing such.

In regard to public planning, zoning and subdivision regulation, the County provides a superior day-to-day service with a full-time professional staff of six. This type of service, provided by neither City, far better serves the needs of existing residents, businesses and developers, both residential and industrial. Augusta County adopted the tools (Planning Commission, Zoning Ordinance, Land Use Plan and Subdivision Ordinance) for implementing a comprehensive plan long before the Commonwealth

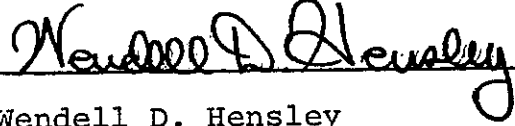
dictated any of these instruments by law. Adopting a Comprehensive Plan in the late 1970's was a perfunctory measure for many jurisdictions already operating under effective planning-related ordinances with a professional staff. The mere adoption of a Comprehensive Plan does not supplant, nor does it necessarily improve, the planning function. The County should adopt a Comprehensive Plan, but more importantly, it must continue to provide the services of full-time staff.

While I agree that recreation and library services in the County are not comparable, I applaud what the County has accomplished in these areas in a short time. Furthermore, any jurisdiction, city or county, that only recently instituted a recreational program finds that the cost of land and capital equipment is substantially greater than in previous years. Fiscal responsibility favors a program-oriented recreation endeavor using existing facilities at schools which are appropriately spread throughout a county, reaching more people than a central park facility is able to serve.

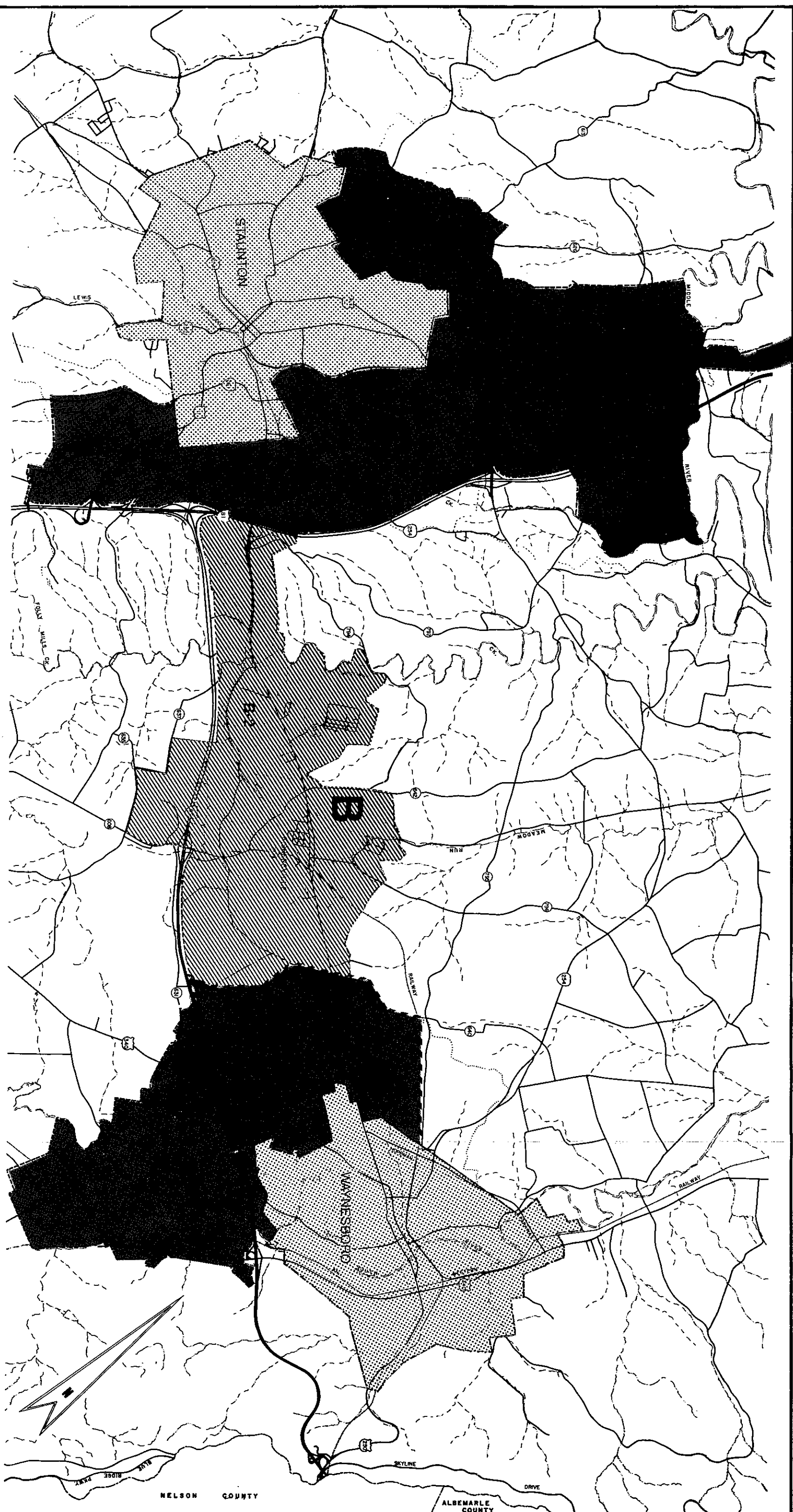
The community of interest factor certainly favors the County in Area A north of State Route 275, as described previously, and in Area B-2. These are the areas that, in my opinion, should be determined to be immune from annexation and the incorporation of new cities. The citizens in and around the communities of Verona and Fishersville have demonstrated

patterns of social, educational, and industrial activity that relate to the County. Both areas have a concentration of cultural and recreational facilities as well as civic and church groups, all of which are a focus of activity for County residents.

Respectfully submitted,


Wendell D. Hensley

APPENDICES



- LEGEND**
- HIGHWAY ROUTE SIGN
 - INTERSTATE HIGHWAY
 - U.S. HIGHWAY
 - VA. STATE HIGHWAY
 - VA. STATE ROUTE
 - FEDERAL ROUTE
 - STATE ROUTE
 - COUNTY ROUTE
 - RAILROAD
 - RIVER
 - STREAM
 - CREEK
 - FLOOD PLAIN
 - WETLANDS
 - UNINCORPORATED TOWN OR CITY

- LEGEND**
- INCORPORATED CITIES
 - IMMUNITY AREAS A AND C
 - IMMUNITY AREA B-2

PROPOSED IMMUNITY AREAS

MAP OF A PORTION OF AUGUSTA COUNTY
 PREPARED BY
 COUNTY OF AUGUSTA

SOURCE:
 Virginia Department of Highways and Transportation
 General Reference Map, Revised 11/1981

Appendix A

APPENDIX B

Statistical Profile of the County of Augusta, the Cities of Staunton and Waynesboro, and the Areas Proposed for Immunity

	<u>Augusta County</u>	<u>Staunton</u>	<u>Waynesboro</u>	<u>Proposed Immunity Area</u>
Population (1980)	53,732	21,857	15,329	A: 7,122 B-2: 2,712 C: 4,627 Total: 14,461
Land Area (Square Miles)	985.65	8.9	7.5	A: 17.6 B-2: 10.5 C: 10.1 Total: 38.2
School Age Population (1981)	11,422	4,034	3,467	N/A
School Average Daily Membership (1981)	10,802	3,416	2,894	N/A
Total Taxable Values (1981)	929,943,649	390,976,509	363,373,265	N/A
Real Estate Values (1981)	806,188,629	350,279,895	314,940,230	N/A
Public Service Corporation Values (1981)	56,878,700	21,758,466	16,859,335	N/A
Personal Property Values (1981)	59,981,830	18,140,303	13,945,160	N/A
Machinery & Tools Values (1981)	6,894,490	797,845	16,628,540	N/A
Sales Tax Receipts (1981)	1,288,312	1,142,241	912,591	N/A
Existing Land Use (Acres) (1982)				
Residential	N/A	3,463	2,131	N/A
Commercial	N/A	1,407	346	N/A
Industrial	N/A	106	614	N/A
Public & Semi-Public	N/A	N/A	621	N/A
Vacant, Agricultural & Wooded	N/A	748	1,069	N/A

NOTE: N/A = Not Available

SOURCES:

- County of Augusta, Augusta County Exhibits, Vol. II, Exh. 1-1.
- Virginia Department of Education, Virginia School Census-1980, February 1981.
- Virginia Department of Education, Facing-UP-16, Statistical Data on Virginia Public Schools, March 1982.
- Richard K. Bennett, Special Counsel, County of Augusta, letter to staff of Commission on Local Government, September 21, 1982.
- Sarah H. Finley, Special Counsel, City of Waynesboro, letter to staff of Commission on Local Government, September 22, 1982.
- Matthew J. Calvert, Special Counsel, City of Staunton, letter to staff of Commission on Local Government, September 22, 1982.