

REPORT
ON THE
CITY OF RADFORD—COUNTY OF MONTGOMERY
SETTLEMENT AGREEMENT



COMMISSION ON LOCAL GOVERNMENT
COMMONWEALTH OF VIRGINIA

CITY OF RADFORD - COUNTY OF MONTGOMERY
SETTLEMENT AGREEMENT

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CITY OF RADFORD - COUNTY OF MONTGOMERY
SETTLEMENT AGREEMENT

PROCEEDINGS OF THE COMMISSION

On December 20, 1985 the Commission on Local Government received notice from six landowners, pursuant to the provisions of Section 15.1-945.7(A) of the Code of Virginia, of their intent to petition for the annexation to the City of Radford of six unpopulated parcels of property located in Montgomery County encompassing 1.62 square miles of territory.¹ The six landowners, which included five individuals and the City of Radford, represented more than 51% of the landowners in the area and held ownership to more than 51% of the property in that area.² Consistent with the Commission's Rules of Procedure, the petitioners' notice was accompanied by data and materials supportive of the proposed annexation.³ Further, in accordance with statutory requirements, the petitioners' concurrently gave notice of the proposed annexation action to Montgomery County and 28 other

¹See Petition of Ola S. Bowling, Simuel O. Lewis, Alice E. Lewis, Patricia H. Lewis, Simuel O. Lewis, Jr., and City of Radford, Virginia for annexation of land in Montgomery County, Virginia into the City of Radford, Dec. 19, 1985.

²Sec. 15.1-1034 of the Code of Va. permits voters or owners of real estate to petition the circuit court for the annexation of property to adjacent municipalities. Such petitions must contain the signatures of 51% of the qualified voters or 51% of the owners of real estate in number and land area in the area to be annexed. Annexation actions instituted in this manner are to be reviewed as though initiated by a municipal governing body. Prior to 1985 such citizen petition annexations were not required to be reviewed by the Commission on Local Government. The area petitioned to be annexed to the City of Radford included two parcels of approximately 76 acres and two acres, respectively, whose owners did not join in the request for annexation.

³See Annexation Proceedings, Ola S. Bowling, et. al. vs. County of Montgomery, Virginia, 1985, filed with the Commission on Local Government on Dec. 24, 1985.

potentially affected local governments.⁴

Due to the County's motion, filed in the Circuit Court of Montgomery County, challenging the legality of the City of Radford's use of provisions of Section 15.1-1034 of the Code of Virginia to annex City-owned property, at its meeting with representatives of the petitioners and the County on January 14, 1986 the Commission deferred the scheduling of its review of the annexation issue until the court addressed the legal issue.⁵ At that meeting, however, the Commission delegated to its Chairman the authority to designate an independent mediator upon request of the parties to assist in seeking a settlement of the annexation issue.⁶

On February 3 and February 24, 1986 the Commission received two additional notices from landowners, filed pursuant to Section 15.1-945.7(A) of the Code of Virginia, seeking the annexation to the City of Radford of two unpopulated parcels of land located in

⁴Sec. 15.1-945.7(A).

⁵The motion filed by Montgomery County argued that Sec. 15.1-1034 of the Code of Va. does not permit a municipality to petition for the annexation of property as a landowner. The County notes that in annexations initiated under Sec. 15.1-1034 the municipality to which the property would be annexed is treated as a defendant in the proceedings. Thus, if a municipality was permitted to petition for the annexation of municipally-owned property as a landowner, it would be both a plaintiff and defendant in the same case. Accompanying the County's motion to bar Radford from proceeding with the annexation of City-owned property under the provisions of Sec. 15.1-1034 of the Code of Va. was a request to the Circuit Court for the appointment of a special three-judge court to rule on the County's motion to dismiss. The Circuit Court of Montgomery County denied the County's motion to dismiss and its request for the appointment of a special three-judge court on January 31, 1986. On February 12, 1986 the County requested that the denial of its motions be set aside and action on that request by the Circuit Court of Montgomery County was pending at the time the intergovernmental agreement was concluded between the City and County.

⁶On January 22, 1986 the Chairman designated, with concurrence of the City and County, Dr. James F. Wolf of Virginia Polytechnic Institute and State University as independent mediator.

Montgomery County.⁷ The notices, filed by a total of six individuals, requested that the Commission's review of their respective annexation proposals be consolidated with the review of the petition previously filed by the City of Radford and five other property owners. With the consolidation of the three separate notices filed with the Commission, the area petitioned to be annexed to the City of Radford included eight unpopulated parcels of land comprising 2.06 square miles of territory in the County.

Following negotiations by representatives of the petitioners and the County, aided by the Commission-designated mediator, an agreement was negotiated and presented to the Commission on March 3, 1986.⁸ This proposed agreement contained provisions which (a) granted the City an annexation of 1.45 square miles of territory in Montgomery County, (b) established a moratorium on further City-initiated annexation for a period of 15 years subsequent to the effective date of the agreed annexation, (c) called for the City to develop its proposed Ingles Mountain landfill in the area sought for annexation only for the disposal of inert materials, (d) waived claims by the County for

⁷See Petition of Bruce H. Davis and Hucy N. Davis (hereinafter cited as Davis petition) for annexation of land in Montgomery County, Virginia to the City of Radford, Virginia filed with the Commission on Local Government on Feb. 3, 1986; and Petition of James L. Wiley, Jr., Lewis S. Wiley, Camille D. Sullivan, and Hugh X. Sullivan (hereinafter cited as Wiley petition) for annexation of land in Montgomery County to City of Radford filed with the Commission on Local Government on Feb. 24, 1986. Both petitions were filed pursuant to the provisions of Sec. 15.1-1034 of the Code of Va. The area described in the Davis petition contained 79.3 acres and was located south of Interstate Highway 81 adjacent to property owned by the City of Radford. The property included in the Wiley petition contained approximately 589 acres and was contiguous to the northeastern boundary of the City of Radford. Representatives of both of the petitioners were included in the ongoing negotiations between the City and County.

⁸The proposed agreement was submitted for review by the Commission pursuant to Sec. 15.1-1167.1 of the Code of Va.

the City's assumption of a portion of its debt and for compensation for the loss of net tax revenue, and (e) committed the City to receive and treat sewage from certain portions of the County.⁹ On April 1, 1986, consistent with a request from the Commission, the petitioners filed revised materials and exhibits in support of the negotiated settlement.¹⁰

On April 21, 1986 members of the Commission toured the area proposed for annexation and other relevant areas and facilities in the City and County and received oral presentations from the parties in support of the settlement agreement.¹¹ In addition to its receipt

⁹With respect to the Ingles Mountain site, Montgomery County had previously denied the City's request for a special use zoning permit for the utilization of a portion of the property for a sanitary landfill. The City of Radford appealed the denial of that permit to the Circuit Court of Montgomery County and ultimately to the Supreme Court of Virginia. In addition, Montgomery County had opposed the City's application to the Virginia Department of Health for a permit to operate a sanitary landfill at the Ingles Mountain site. See Appendix A for the complete text of the Settlement Agreement. See Appendix B for a map of the area proposed for annexation.

¹⁰The area to be annexed under the terms of the proposed agreement excludes the property owned by one of the original petitioners (Ola S. Bowling) as well as that in the Davis petition. By separate letters filed with the Commission on Local Government on April 21, 1986, Mrs. Bowling and the Davis petitioners formally withdrew their request to be annexed to the City of Radford. On that date the Commission also received a request from a property owner (Mrs. Irene Noell Turner) whose property was included in the original petition without her concurrence, and which is in the area proposed for annexation under the terms of the agreement, supporting the incorporation of her land into the City. Previously, the Commission had received a letter from a representative of the Wiley petitioners, whose property is included in the proposed annexation, indicating concurrence with the annexation of that property to the City of Radford. (Robert A. Lowman, Attorney for James L. Wiley, Jr., et al, letter to staff of Commission on Local Government, Mar. 26, 1986.) The revised exhibits and materials filed by the City of Radford are contained in a document entitled Part IV, Information, Data, and Factors Relative to Mandatory Commission Reviews, City of Radford (hereinafter cited as City Annexation Exhibits).

¹¹Due to a death in his family Chairman Harold S. Atkinson was

and consideration of materials and testimony from petitioners and Montgomery County, the Commission solicited comment from other potentially affected local governments and from the public. Each locality qualifying for notice of the proposed annexation under the provisions of Section 15.1-945.7(A) of the Code of Virginia was invited by the Commission to submit testimony on the proposed annexation for its consideration. Further, the Commission held a public hearing, which was advertised in accordance with Section 15.1-945.7(B) of the Code of Virginia, on the evening of April 21, 1986 in Radford. The public hearing was attended by approximately 25 persons and produced testimony from two individuals. In order to permit the receipt of additional public comment, the Commission agreed to keep open its record for written submissions from the public through May 21, 1986.

SCOPE OF REVIEW

The Commission on Local Government is directed by law to review proposed annexations, petitions for partial county immunity, other local boundary change and transition issues, as well as negotiated agreements settling such matters prior to their presentations to the courts for ultimate disposition. Upon receipt of notice of such a proposed action or agreement, the Commission is directed "to hold hearings, make investigations, analyze local needs" and to submit a report containing findings of fact and recommendations to the affected local governments regarding the issue.¹² With respect to a proposed agreement negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia, the Commission is required to determine in its review "whether the proposed settlement is in the best interest of the

not present for the oral presentations and public hearing on April 21, 1986. In view of this fact, Mr. Atkinson is not a signatory of this report.

¹²See 15.1-945.7(A), Code of Va.

Commonwealth."

It is evident that the General Assembly encourages local governments to attempt to negotiate settlements of interlocal boundary change and transition issues. Indeed, one of the foremost responsibilities of this Commission is to assist local governments, upon appropriate request, in such efforts. In view of this apparent legislative intent, the Commission believes that interlocal agreements, such as those negotiated by the City of Radford and Montgomery County should be approached with respect and with a presumption of their compatibility with applicable statutory standards.

As we have noted in other reports, however, the General Assembly has decreed that interlocal agreements negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia must be reviewed by this Commission prior to their final adoption by local governing bodies. We are required to conclude, therefore, that while interlocal agreements negotiated for purposes of resolving boundary change issues are due respect and should be approached with a presumption of their consistency with statutory standards, such respect and presumption cannot be permitted to render our review a pro forma endorsement of any proposed settlement. Our responsibility to the Commonwealth and to the affected localities mandates more.

GENERAL CHARACTERISTICS OF THE CITY, THE COUNTY,
AND
THE AREA PROPOSED FOR ANNEXATION

CITY OF RADFORD

The City of Radford was granted independent city status in 1892, five years after its initial incorporation as a town.¹³ Since that date the City has experienced three boundary expansions, the most recent occurring in 1980.¹⁴ As of 1980, the City of Radford had a

¹³Chester W. Bain, "A Body Incorporate": The Evolution of City-County Separation in Virginia (Charlottesville, Va.: The University Press of Virginia, 1967), Appendix A.

¹⁴Annexation Proceedings, Ola S. Bowling, et. al. vs. County

population of 13,456 persons, reflecting a population growth of 12.7% since the 1970 Census.¹⁵ Demographic estimates for 1984 placed the City's population at 13,400 persons, a decrease of 0.4% since the preceding decennial Census.¹⁶ Based on its estimated 1984 population and its current land area of 8.18 square miles, the City has a population density of 1,638 persons per square mile.¹⁷

In terms of its real estate and public service corporation properties, the data indicate that between 1970 and 1980 the total true value of such property in the City of Radford increased from \$61.4 million to \$181.9 million, or by 196.3%.¹⁸ As of 1983, the total true value of real estate and public service corporation property in Radford was \$231.4 million, an increase of 27.2% since 1980.¹⁹

of Montgomery, Virginia, Exh. RM-3. All of the territory added to the City of Radford occurred by citizen-initiated petition. The 1980 annexation added approximately 538 acres and 272 persons to the City.

¹⁵U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, Number of Inhabitants, Virginia, Table 2. The City's population growth is affected by the presence of Radford University within its corporate boundaries. The Commission notes that between 1970 and 1980 the City's nondormitory population grew by 9.8%. (U. S. Department of Commerce, Bureau of the Census, 1970 Census of Population, Characteristics of The Population, Virginia, Table 120; and 1980 Census of Population, General Social and Economic Characteristics, Virginia, Table 172.)

¹⁶Julia H. Martin and David W. Sheatsley, Estimates of The Population of Virginia Counties and Cities: 1983 (Final) and 1984 (Provisional) (Charlottesville: Tayloe Murphy Institute, University of Virginia, 1985).

¹⁷City Annexation Exhibits, Sec. C.

¹⁸Virginia Department of Taxation, Estimated True (Full) Value of Locally Taxed Property in The Several Counties and Cities in Virginia - 1970, June 1971; and Virginia Department of Taxation, Virginia Assessment/Sales Ratio Study, 1980, Mar. 1982.

¹⁹Virginia Assessment/Sales Ratio Study, 1983, Mar. 1985. Between 1980 and 1983 the true value of real estate and public service corporation properties subject to local taxation in all Virginia localities increased by 24.0%.

These data indicate that the City has experienced significant development in recent years.

With respect to Radford's current physical development, 1982 land use data reveal that of the City's total area (8.18 square miles), 23.9% is utilized for residential purposes, 1.9% is committed to commercial enterprise, 4.1% is engaged in industrial activity, 7.7% is devoted to public or semi-public usage, with 43.7% (2,328 acres) remaining vacant.²⁰ Thus, the City still contains a significant amount of vacant land, some of which, however, is restricted in its development potential by environmental constraints.

COUNTY OF MONTGOMERY

Montgomery County was created by the General Assembly in 1777 from territory formerly a part of Botetourt, Pulaski, and Fincastle Counties, with the latter jurisdiction being terminated in the process.²¹ Between 1970 and 1980 the County's population increased from 46,813 to 63,285 persons, or by 35.2%.²² The County's 1984 population was estimated to be 64,900 persons, an increase of 2.6% since the 1980 Census.²³ Based on its 1984 population and a land

²⁰City of Radford, Radford Comprehensive Plan, 1984, p. 36. Approximately 14.3% of the land within the City is used for road or railroad rights-of-way, and 4.4% of the City's area is covered by water. The Commission notes that the land occupied by Radford University increased from 51.45 acres in 1973 to 124.56 acres in 1982, or by approximately 142%.

²¹J. Devereux Weeks, Dates of Origin, Virginia Counties and Municipalities (Charlottesville: Institute of Government, University of Virginia, 1967.)

²²1980 Census of Population, Number of Inhabitants, Virginia, Table 2. Within the County's borders are two incorporated towns with a total 1980 population of 40,983 persons, representing 64.8% of the County's residents.

²³Estimates of The Population of Virginia Counties and Cities: 1983 (Final) and 1984 (Provisional).

area of 391.16 square miles, the County has an overall population density of 166 persons per square mile.²⁴

In terms of its real and public service corporation properties, the data indicate that between 1970 and 1980 the total true value of such properties increased from \$226.0 million to \$1,048.0 million, or by 363.7%.²⁵ By 1983, the true value of the County's real estate and public service corporation property had increased to \$1,227.8 million, a growth of 17.2% since 1980.²⁶ These data reflect a developing locality.

Despite the County's population growth since 1970, the statistics suggest that Montgomery County remains largely rural, with agricultural and forestal activities continuing as major components of the County's economic base. According to a 1982 land use survey, only 4.2% of the County's land area was devoted to residential, commercial or industrial uses. Public or semi-public uses, consisting mainly of the properties of Virginia Polytechnic Institute and State University (3,800 acres), the U. S. Army's Radford Arsenal (3,000 acres), and the Jefferson National Forest (19,500 acres), comprise an additional 12% of the County's land uses.²⁷

AREA PROPOSED FOR ANNEXATION

Although the area proposed for annexation under the terms of the agreement between the City and the County comprises six unpopulated tracts of land, it does contain 1.45 square miles of territory and \$605,000 in total assessed property values subject to local

²⁴City Annexation Exhibits, Sec. C.

²⁵Estimated True (Full) Value of Locally Taxed Property in The Several Counties and Cities in Virginia - 1970; and Virginia Assessment/Sales Ratio Study, 1980.

²⁶Virginia Assessment/Sales Ratio Study, 1983.

²⁷County of Montgomery, Comprehensive Plan for Montgomery County, 1983. Approximately 2.2% of the County's land area is occupied by road and railroad rights-of-way.

taxation.²⁸ Thus, the area includes 0.4% of the County's land area and 0.05% of its 1985 total assessed property values. With the exception of a riding stable and a vacant single-family dwelling unit, which occupy collectively only 2% of the land in the area proposed for annexation, that area is undeveloped or in agricultural and forestal uses.²⁹ Further, there are no County-owned facilities situated in the area proposed for annexation. There is in the area, however, a 196-acre parcel of property owned by Radford which is the site of the proposed Ingles Mountain inert waste landfill.³⁰ With respect to the remaining parcels in the area proposed for annexation, the City has advised the Commission that the property, including the agricultural lands which surround the riding stables, have potential for future residential or commercial development based on location, development trends, and availability of public utilities.³¹ In sum, while vacant, the area proposed for annexation contains a site which would serve the City's solid waste disposal needs and includes other property with development potential.

²⁸Frederick L. Hilliard, Planning and Grants Coordinator, City of Radford, communication with staff of Commission on Local Government, May 20, 1986.

²⁹Ibid.

³⁰The site for the proposed landfill is located on City-owned property north of Interstate Highway 81 in the area proposed for annexation and consists of approximately 20 acres. Inert solid waste is defined by the Virginia Department of Health to include materials such as refrigerators, concrete, brick, ash, rubble, tires, and machinery. (Virginia Department of Health, Rules and Regulations of the Virginia Department of Health, Ch. XXVIII, Disposal of Solid Waste.)

³¹The portion of the property owned by the City of Radford which will not be utilized for the Ingles Mountain landfill adjoins land in the City which is currently being considered for development as an industrial park. Further, the Turner tract is located at the intersection of Rock Road, an east-west thoroughfare, and State Route 177 and is adjacent to existing City water and sewer lines. The 589 acre Wiley tract is located along U. S. Highway 11 and is situated in part by a Montgomery County Public Service Authority sewage

STANDARDS FOR REVIEW

INTERESTS OF THE CITY

Although the annexation authorized under the terms of the proposed agreement will not result immediately in the addition of any new residents to the City, it will, however, provide Radford with 1.45 square miles (928 acres) of territory and \$605,000 in assessed property values subject to local taxation. Notwithstanding the fact that almost all of the territory to be annexed is vacant or remains in agricultural or forestal uses, City officials have indicated that portions of the proposed area have significant potential for future residential or commercial development by virtue of their location along major arterials leading to Radford. In addition, all of the parcels in the area proposed for annexation are located in close proximity to public utility lines which further enhances their development potential.³² Thus, while the area proposed for annexation currently contains only modest fiscal resources and service liabilities, the benefits which may accrue to the City as well as the responsibility for the provision of urban services can be expected to increase with the development of the area.

In addition to the annexation authorized by the settlement, the proposed agreement contains other provisions which the Commission deems important to the City of Radford. First, in conjunction with Radford's acceptance of an extended moratorium on future annexation proceedings, Montgomery County has waived any claim for compensation from the City for loss of net tax revenue or for Radford's assumption

collection line. [Testimony of Robert P. Asbury, Jr., City Manager, City of Radford, Transcript of The Oral Presentations Before The Commission on Local Government, City of Radford - Montgomery County Interlocal Agreement (hereinafter cited as Transcript), Apr. 21, 1986, pp. 18, 20, 23-25, and 52.]

³²City water and sewer lines are contiguous to or are within 300 feet of four of the parcels in the area proposed for annexation. The Wiley property has direct access to a sewage collection line owned by the Montgomery County Public Service Authority. The parcel owned

of a portion of its debt.³³ Second, under the terms of the proposed agreement, Montgomery County, which had previously opposed the City's application to the Virginia Department of Health for a permit to establish a sanitary landfill at the Ingles Mountain site, has agreed to withdraw its opposition to Radford's revised plans which would restrict the use of the landfill to the disposal of inert materials.³⁴ Thus, this provision allows the City to secure a location for the disposal of a portion of the solid wastes and eliminates a source of prolonged controversy with its neighboring jurisdiction.³⁵

Finally, the agreement contains provisions whereby Montgomery County will "proceed in good faith" to consider Radford's forthcoming application to have approximately 268 acres of City-owned property located on the southern side of Interstate Highway 81 in the County

by the City of Radford is located within 1,800 feet of an existing City water main and a planned City sewer line in the right-of-way of State Route 232. The construction of the State Route 232 sewer line, which is contained in the proposed 1986-1991 City of Radford Capital Improvement Program, is to be completed by July 1987. (Hilliard, communications with staff of Commission on Local Government, May 6 and May 20, 1986.)

³³Settlement Agreement, Sec. 2.05(c). In addition, no County-owned facilities which the City could be required to purchase are located in the area proposed for annexation.

³⁴Settlement Agreement, Sec. 3.01. The City had originally sought to locate a sanitary landfill at the Ingles Mountain site to replace its existing facility which is nearing its capacity. As a result of an agreement signed with Pulaski County on February 21, 1986, the City will dispose of approximately 80% of the solid waste generated within its borders at that County's Cloyd's Mountain landfill. In addition, the agreement between the City and Pulaski County calls for the parties to develop jointly plans to construct a facility which will convert the solid waste from both jurisdictions into fuel for industrial consumption. (Testimony of Asbury, Transcript, pp. 28-29.) Approximately 20% of the City's solid waste is inert material and will be disposed of at the proposed Ingles Mountain landfill. (Testimony of Asbury, Transcript, pp. 34 ff.)

³⁵In January 1985 Montgomery County denied the City's application for a special use zoning permit to locate a sanitary landfill on a portion of the Ingles Mountain site. The City of Radford

rezoned from A-1 Agricultural to M-1 Industrial to facilitate its future industrial development.³⁶ This property, which was originally included in the area sought for annexation by the City, has frontage along Interstate Highway 81 and access to an interchange on that major interstate thoroughfare. The proposed rezoning of that property to permit industrial uses could significantly enhance its development potential. In our judgment, the proposed agreement is in the interest of the City of Radford.

INTERESTS OF THE COUNTY

The proposed annexation sanctioned by the agreement between the City and County will have minimal impact on Montgomery County. The proposed transfer of territory to Radford will result in the County's loss of no population, only 0.4% of its land area, ^{AND} only 0.05% of its total 1985 assessed property values subject to local taxation.³⁷ Further, the agreement contains provisions by which the City of Radford agrees not to initiate further annexation proceedings for a period of 15 years following the effective date of the proposed annexation, or five years longer than the usual interval imposed by State law.³⁸

There are two additional elements in the proposed interlocal settlement which are of significance to Montgomery County. First, the agreement contains provisions whereby Radford agrees to amend its

appealed the denial of that permit to the Circuit Court of Montgomery County and ultimately to the Virginia Supreme Court, but provisions of the Settlement Agreement call for the City to withdraw that appeal.

³⁶Settlement Agreement, Sec. 4.00. The uses permitted in the County's M-1 Industrial district include truck terminals, assembly of electrical appliances, automobile or mobile home assembly, laboratories, and the manufacture of a variety of items.

³⁷Hilliard, communication with staff of Commission on Local Government, May 20, 1986.

³⁸Settlement Agreement, Sec. 2.05(a). The agreement also contains a provision by which the City agrees neither to encourage,

pending application to the Virginia Department of Health for the establishment of a sanitary landfill on a portion of City-owned property in the area proposed for annexation such that only inert materials might be disposed at the site.³⁹ The County has previously opposed, for environmental reasons, the issuance of a permit by the State for the development of a sanitary landfill on that property.⁴⁰ Second, under the terms of the proposed agreement the City will receive and treat effluent emanating from sewer lines owned by the Montgomery County Public Service Authority (MCPSA) serving an area east of Radford until the completion of the Pepper's Ferry Regional Wastewater Treatment Facility (PFRWTF).⁴¹ Once the regional treatment plant is operational, however, sewage from the MCPSA line and from the City will be pumped to the PFRWTF under the terms of a previous interlocal agreement which governs the operation of the regional facility.⁴² These various provisions in the interlocal settlement between the City and County, coupled with the

solicit or support third parties in annexations initiated within 15 years of the effective date of the agreement. Further, the City pledges to oppose such third party annexation petitions if filed. The statutory provisions governing the interval between annexations are set forth in Sec. 15.1-1055, Code of Va.

³⁹Ibid., Sec. 3.01. The site of the proposed Ingles Mountain landfill contains approximately 20 acres.

⁴⁰See Mary R. Fessler, Chairman, Montgomery County Board of Supervisors, letter to Theodore W. Bess, Mayor, City of Radford, Jan. 14, 1985.

⁴¹Settlement Agreement, Sec. 5.00. The MCPSA line is part of the Plum Creek sewer system which was constructed using a Community Development Block Grant to solve an existing health hazard problem. A portion of that line, which terminates at the City's sewage treatment plant, and a pump station are located within the City's current boundaries. In addition, the sewer line crosses a part of the Wiley tract in the area proposed for annexation.

⁴²Testimony of Asbury, Transcript, pp. 21-23. In addition to the MCPSA and the City of Radford, other members of the PFRWTF include the Pulaski County Sewage Authority, the Pulaski County Public Service

modest impact of the proposed annexation, are features of the settlement which are, in the Commission's judgment, in the interest of Montgomery County.

INTERESTS OF THE AREA PROPOSED FOR ANNEXATION

The proposed agreement, as noted before, allows the City of Radford to annex 1.45 square miles (928 acres) of land in six parcels which are essentially undeveloped, contain no residents, and have no immediate service needs or concerns. As indicated previously, however, portions of the proposed area are enhanced in their development potential due to access to major thoroughfares and public utility lines.⁴³ Although the future development of the areas proposed for annexation will depend upon various factors, not all of which can be controlled by either the City or County, the ability of Radford to meet the urban service needs of the area, especially the provision of public water and sewerage facilities, will increase the growth potential of that territory. Thus, in the Commission's judgment, the area proposed for annexation is subject to future development and will increasingly need and benefit from additional urban services.

With respect to these services, the Commission observes that the City of Radford provides the only public sewage treatment system presently available to the area proposed for annexation. Although none of the parcels to be annexed to the City are now directly served by Radford, there are existing and planned public sewage collection lines in close proximity to that area.⁴⁴

The City's sewage treatment plant, which was constructed as a primary treatment facility in 1959, has a rated capacity of 2.5 million

Authority, and the Towns of Dublin and Pulaski.

⁴³The City has identified three parcels totaling approximately 888 acres (95.7% of the area to be annexed) as having significant potential for future commercial or residential development.

⁴⁴Of the six parcels of land in the area proposed for annexation, only the property owned by the City of Radford does not have

gallons per day (MGD).⁴⁵ Since the plant currently treats an average daily flow of 1.73 MGD, it has an excess capacity of 0.77 MGD.⁴⁶ The City, however, is a member of the Pepper's Ferry Regional Wastewater Treatment Authority which is financing the construction of a 9.0 MGD regional secondary treatment facility located in Pulaski County.⁴⁷ By virtue of its membership in the PFRWTA, Radford will be allowed to transmit 2.117 MGD of sewage to the new plant for treatment.⁴⁸ Once the plant is fully operational in early 1987, Radford will phase out its existing treatment facility, and sewage from the City will be pumped to the regional wastewater treatment plant. Thus, as the area proposed for annexation develops the City's sewerage system should meet the needs of the enlarged municipality.

In addition to being the sole provider of sewage treatment services to the area proposed for annexation, the City of Radford offers

direct access to a public sewer line. The City, however, anticipates the completion of a 12-inch sewer line in close proximity to its property by July 1987.

⁴⁵City Annexation Exhibit, p. 2.

⁴⁶Testimony of Asbury, Transcript, p. 55. Under the terms of the proposed agreement the City will also receive and treat sewage from MCPSA lines until the completion and operation of the Pepper's Ferry Regional Wastewater Treatment Facility. The average daily flow to the City's sewage treatment plant includes the infiltration of ground water and inflow of storm water." The Commission notes, however, that in May 1983 the City issued general obligation bonds to correct infiltration and inflow problems in its sewer system. (City Annexation Exhibits, p. 2.) Removal of excess water from the City's lines will have the effect of increasing the treatment capacity of the Radford plant.

⁴⁷The PFRWTF is designed to treat wastewater generated from residential, commercial and industrial sources within the City of Radford, Towns of Pulaski and Dublin, and portions of the Counties of Pulaski and Montgomery.

⁴⁸City Annexation Exhibits, p. 4. Sewage from the MCPSA's Plum Creek sewer system will also be pumped to the PFRWTF from the City's treatment plant, but the quantity will not be counted against

the only public water service in close proximity to the area.⁴⁹ In terms of the production of potable water, the City's water filtration plant has a rated capacity of 8.0 MGD. Since the City's water distribution system presently consumes 2.3 MGD, the system currently retains an unused reserve of approximately 5.7 MGD, or nearly 71.3% of its authorized capacity.⁵⁰ Storage for the distribution system is provided by eight tanks at various locations throughout the City, with an aggregate capacity of 4.78 million gallons.⁵¹ Although the area proposed for annexation has no immediate need for central water service, the City of Radford has, from our perspective, facilities available to meet such needs as they arise.

With respect to other urban services, the evidence indicates that the City of Radford currently offers a broad array of public services to its existing residents and, in our judgment, has the capacity to extend those services to the areas annexed as the need arises. In this regard, the Commission notes that the City provides its residents with weekly solid waste collection service and extends to its business concerns a schedule of collection dependent upon their needs.⁵² Further, the planning and land development control activities of

Radford's allocation in the regional facility.

⁴⁹Only the Turner tract in the area proposed for annexation has a City water line immediately adjacent to its borders. The distance between the remaining tracts and existing City water lines varies between 300 and 2,400 feet. Connection to City water lines by the owners of the other property in the area proposed for annexation would be at their expense. The closest MCPSA water lines to the area proposed for annexation are located in the Plum Creek area, approximately one-half mile from the Wiley tract.

⁵⁰City Annexation Exhibits, p. 6.

⁵¹Ibid., p. 7.

⁵²Ibid., p. 8. Residential solid waste customers are charged \$10 a month for municipal collection service.

Radford are administered by a planning commission assisted by a professional staff of two individuals and guided by a recently adopted comprehensive plan and zoning and subdivision ordinances.⁵³ Crime prevention and protection services in the City are provided by its police department consisting of 20 full-time sworn law enforcement officers.⁵⁴ Fire services within the City are the responsibility of the Radford Fire Department, which is staffed by 12 full-time paid personnel and 30 volunteers and has available three pumpers, one aerial ladder truck, and other equipment.⁵⁵ In terms of public recreational facilities and programs, the City owns eight parks, collectively comprising approximately 90 acres, a recreational center and, in addition, utilizes an armory and facilities owned by the School Board for its recreational activities. Through these facilities, and through the efforts of seven full-time and 49 seasonal employees, the City's Recreation Department sponsors a variety of

⁵³Ibid., pp. 8-9. The City revised its zoning and subdivision ordinances in 1982 and adopted its most recent comprehensive plan in 1984.

⁵⁴Ibid., pp. 9-10. The City's law enforcement efforts are assisted by the presence of 14 persons employed by the Radford College security force. (Virginia State Police, Crime in Virginia, 1984.)

⁵⁵Ibid., pp. 10-11. In addition, the City anticipates the delivery of a 95-foot aerial fire platform in June 1986. Based upon the capabilities of the City's fire department and its water distribution system, the Insurance Services Organization of Virginia has assigned a fire protection classification of "6" to the City of Radford. The ISO rating is based on a scale of "1" to "10" for comparison with other municipal fire protection systems and represents an indication of a system's ability to defend against a major fire which may be expected in any given community. Where protection class "10" is assigned, there is usually no or minimal protection. Protection class "1" represents a fire protection system of extreme capability. The principal features used by ISO in grading a community's fire system are water supply, fire department, fire communication and fire safety control. [John L. Bryan and Raymond C. Picard, Managing Fire Services (Washington D. C.: International City Management Association, 1979), p. 102.]

programs and athletic leagues for its residents.⁵⁶ Finally, the City supports a full-service library and during FY1983-84 provided locally 81.8% of the funds required for the operation of that facility.⁵⁷

With respect to other urban services, Radford's development control instruments require the installation of curbs, gutters, sidewalks and storm drains in all new subdivisions, and, moreover, the City has established policies for the provision of these facilities in existing developments at citizen request.⁵⁸ In addition, streetlighting in the City is provided by either the Municipal Electrical Department or the Appalachian Power Company. Streetlights will be installed, maintained, and operated at municipal expense at all street intersections upon citizen request.⁵⁹ Further, data indicate that the City has invested substantial amounts of local funds in recent years for the maintenance of the 138.74 linear-miles of public streets within its current boundaries.⁶⁰ In sum, the City offers its residents a broad array of urban services and, in our view, can properly serve the area proposed for annexation.

Finally, the Commission wishes to acknowledge the City's efforts to address the housing needs of its residents. Through its acquisition

⁵⁶City Annexation Exhibits, pp. 11-12. City recreational facilities include a swimming pool, 5 softball fields, 11 tennis courts, 3 soccer fields, 1 football field and 7 outdoor basketball courts.

⁵⁷Virginia State Library, Statistics of Virginia Public Libraries and Institutional Libraries, 1983-1984.

⁵⁸City Annexation Exhibits, pp. 12-12a. The City will bear 50% of the cost for the installation of citizen-requested curbs, gutters and sidewalks.

⁵⁹Ibid., pp. 12a-13. The City bears the total cost for the installation, maintenance and operation of streetlights serving areas within the service area of Appalachian Power Company.

⁶⁰Ibid., pp. 13-13a. Between FY1982-83 and FY1984-85 a total of \$3.6 million was expended for the maintenance of Radford's road

of a Community Development Block Grant, 17 housing units have been rehabilitated and 33 sites have been developed and sold in Radford for the construction of housing for low and moderate income persons. In addition, a variety of other assisted housing programs are being operated within the City.⁶¹ In our judgment, housing is a fundamental concern of local government.

Based upon our review of services currently available to the residents of Radford, the Commission concludes that the City can and will respond properly to the needs of the areas annexed as they emerge. Such services, especially the provision of public water and sewer, should be of benefit to the area as it develops.

CITY'S COMPLIANCE WITH PREVIOUS COURT DECREE

The Commission has noted the issues presented by two City residents at the public hearing held on the evening of April 21, 1986.⁶² The concerns expressed by those citizens related to the provision of water and sewer services to two areas (the Cumberland - Quail Ridge area and the Ingles Mountain area adjacent to State Route 232 and near the intersection with Interstate Highway 81) annexed by the City in 1977.⁶³ In both instances, the citizens contended that the City has

system. Of this amount, approximately \$2.0 million, or 54.3% of the total, was from local sources.

⁶¹Ibid., p. 29. Currently operating within the City are the U. S. Department of Housing and Urban Development's (HUD), Section 8 New Construction Program (construction of 113 units, rehabilitation of 27 units, and moderate rehabilitation program), HUD's Section 8 Rental Assistance Program for existing housing units (100 units), and housing programs of the Farmers' Home Administration (48 multi-family units and Rural Rental Housing program).

⁶²The persons appearing before the Commission were Dr. Kenneth Gray, who lives on Charmont Drive in the Cumberland subdivision and Mrs. Gay Decker, who lives on Fairway Drive but owns property in the Ingles Mountain area.

⁶³The adequacy of fire protection services was also cited as a concern of residents in the Cumberland - Quail Ridge area. Adequacy of this service in that area, however, is essentially a function of the

not complied with the annexation decree of October 1976 in terms of the extension of services as required by the court order.⁶⁴ Specifically, speakers asserted that the City has not provided water and sewer services in accordance with City Exhibit 28 as approved by the court in its 1976 order.⁶⁵

The Cumberlea subdivision, part of the Cumberlea - Quail Ridge area referenced above, is currently served by a four-inch public water line, but it does not have available public sewer. The homes in this subdivision are served by private septic systems.⁶⁶ The Quail Ridge community is served by City water, but through a private line. As with the other development in the areas, residents in the Quail Ridge community rely on septic tanks for sewage disposal. The Ingles Mountain area off Route 232 does not have available public water or sewer. Water is provided in that area, however, by a private well and a spring. The Commission has been advised that the principal concern of residents in the Route 232 - Ingles Mountain area is the avail-

availability of water and water pressure.

⁶⁴See testimony of Dr. Gray and Mrs. Decker, Transcript of Public Hearing Before the Commission on Local Government, City of Radford - Montgomery County Interlocal Agreement (hereinafter cited as Public Hearing Transcript), Apr. 21, 1986, pp. 10, 11, 16, 18, and 19. Sec. 15.1-1041(e), Code of Va. states that no annexation shall be decreed by the special three-judge court unless the municipality "has substantially complied with the conditions of the last preceding annexation" It is relevant to note that the 1977 annexation was not the last experienced by the City.

⁶⁵City Exhibit 28 stated that the City will install larger water lines and a new sewer line to the Cumberlea subdivision and a new water line to the State Route 232 and Interstate Highway 81 intersection.

⁶⁶There have been at least five septic tank failures in Cumberlea since 1977. In addition, two lots have been rejected for septic tanks. (Lowell Hartley, Chief Sanitarian, New River Health District, communication with staff, Commission on Local Government, May 6, 1986.)

ability of public water.⁶⁷

The fundamental issue in regard to the provision of services in the Quail Ridge and the Route 232 - Ingles Mountain areas is, it appears, the status of those two developments as subdivisions. Since the 1977 annexation the City has contended that neither of the areas is a legally dedicated subdivision and that until such time as the residents take steps to bring the areas into compliance with the City's subdivision ordinance, or unless they accept the terms of the City's utilities ordinance, Radford cannot provide them with public water and sewer.⁶⁸ Alternatively, the residents of those areas believe that the 1976 court order represents an absolute obligation of the City to provide these services at public expense, irrespective of City Code requirements.

In terms of the City's future extension of service to the areas in question, this Commission has been advised by the City that the Cumberland subdivision will, in the near future, be served by a new eight-inch water line and by public sewerage. These facilities are expected to be available to residents of that subdivision by May 1987.⁶⁹ When these projects are completed, the City will, in our view, have met the requirements set forth in the annexation order of 1976 for water and sewer services to the Cumberland subdivision.

With respect to the Quail Ridge community and the Ingles Mountain

⁶⁷Testimony of Mrs. Gay Decker, Public Hearing Transcript, p. 19.

⁶⁸An examination of land transfer records indicates that the Quail Ridge and Ingles Mountain developments are not dedicated subdivisions. (Hilliard, communication with staff, Commission on Local Government, May 20, 1986.) See also Radford City Code, Chapter 21, Articles III and V. Compliance with the utilities ordinance may require the granting of easements from property owners, rights-of-way for undedicated streets, and the expenditure of private funds by the citizens.

⁶⁹Hilliard, communication with staff, Commission on Local Government, May 20, 1986. Included in the planned utility improvements is a new storage facility to serve the Cumberland - Quail Ridge

area, this Commission has noted the concerns raised by the City regarding the extension of utility services. First, both the Quail Ridge and Ingles Mountain development are, apparently, undedicated subdivisions devoted to residential use.⁷⁰ Further, there are no dedicated roadways or utility easements sufficient to serve the areas in question. This Commission fails to see a means by which utility services can be extended to the Quail Ridge and Ingles Mountain communities other than through the dedication of those areas as subdivisions or through the residents' compliance with the City's utilities ordinance.

In this regard, we have reviewed the provisions of the 1976 court order relative to the extension of utility services to the annexed areas. With respect to such services, the court order decreed:

Water Facilities: . . .As the need therefor arises, the City will furnish improvements to and extensions of water service to all parts of the annexation area consistent with the policy now existing or hereinafter established within the City, subject to the same terms and conditions applicable to others similarly situated within the present corporate limits of the City of Radford, without discrimination or special favor to either residents of the present city or residents of the annexation area.

Sewer Facilities: The City of Radford shall extend and provide sanitary sewer services to the annexation area . . . on the same basis as is now provided to the citizens of the present City.⁷¹

area. The various water improvement should enhance the fire suppression capabilities of the City in the area.

⁷⁰We note that the issue of "implied acceptance" by the City of undedicated roadway and subdivision streets has been raised with respect to the extension of service to these areas. While this issue presents legal questions which must be resolved in another forum, we do observe that the "implied acceptance" of offers to dedicate have been disfavored under Virginia law. [See Brown v. Tazewell County Authority, 226 Va. 125, 129-31 (1983).]

⁷¹Allen E. Cloyd, et al. v. County of Montgomery and City of Radford, Decree of Annexation, Circuit Court of Montgomery County (1976).

It does not appear to this Commission that the above-cited provisions are intended to override the City's general policies with respect to the provision of water and sewerage. The court decree, in our judgment, is intended to assure residents of the annexed areas that they will be accorded nondiscriminatory treatment in the receipt of utility services. In adhering to its subdivision regulations and utilities ordinance relative to the extension of services to the Quail Ridge and Ingles Mountain areas, the City has been nondiscriminatory. Indeed, to waive the terms of those local enactments to extend services to those areas would constitute preferential treatment contrary to the court's decree. Based on our experience in local government, we believe the City has properly discharged its responsibilities with respect to this issue.


Finally, the Commission notes that the City has constructed a ten-inch water line along State Route 232 and that water from that facility can be made available to the residents of Ingles Mountain area under the terms of the City's utilities ordinance.⁷² For the Quail Ridge development, the Commission observes that public water is and will continue to be available to residents of that area and that compliance with the City's subdivision ordinance could facilitate the eventual provision of sewer service. Residents of both areas also have available the option of receiving sewer service under the provisions set forth in the City's utilities ordinance. We encourage the residents of these areas to explore those alternatives.

⁷²The City has a utility ordinance which makes two methods available to citizens for obtaining utility service when the properties to be served are not contiguous to the public lines.

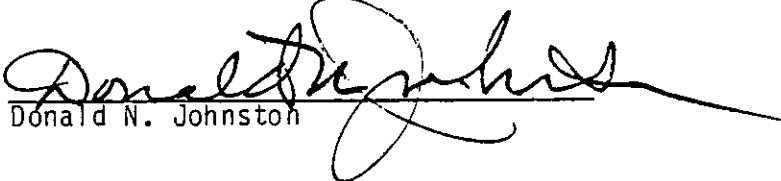
FINDINGS AND RECOMMENDATIONS

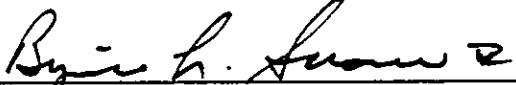
The interest of the State in this and similar interlocal issues is, in our judgment, the development of an equitable resolution which is protective and promotive of the viability of the affected jurisdictions. The proposed settlement agreement in this instance meets that standard. Accordingly, we find the proposed agreement consistent with the best interest of the Commonwealth and recommend the court's approval.

Respectfully submitted,


Mary Sherwood Holt, Vice Chairman


William S. Hubbard


Donald N. Johnston


Benjamin L. Susman, III

ADDENDUM STATEMENT

As an addendum to the preceding report the Commission desires to express its concern regarding the future extension of services to the small island of property on U. S. Highway 11 and embraced within the Wiley petition which would remain in Montgomery County. While this island of property does not create any immediate service concerns, the provision of services to the property is an issue of significance. In particular, the extension of utilities and the provision of emergency services are potential sources of concern which merit attention. Accordingly, the Commission recommends that the City of Radford and Montgomery County address the issue of the provision of services to this island of property by modification of the proposed settlement agreement or by a separate instrument. Such modification of the proposed settlement agreement or the separate instrument should establish clear responsibility for the provision of services to that property.

APPENDIX A

PROPOSED SETTLEMENT AGREEMENT
CITY OF RADFORD - MONTGOMERY COUNTY

THIS AGREEMENT, executed this 12th day of March, 1986, by and between the City of Radford, Virginia, a Virginia Municipal Corporation, hereinafter referred to as the "City"; and the BOARD OF SUPERVISORS OF MONTGOMERY COUNTY, VIRGINIA, hereinafter referred to as the "County."

ARTICLE I

BACKGROUND

1.00. The City made application to the County, in August 1984, for a special use permit for the establishment and operation of a sanitary landfill for the disposition of solid waste on a tract of land containing 195.59 acres, more or less, land, located on the northerly side of Interstate Route I-81 in Montgomery County but owned by the City. The County denied the permit, as a result of which the City initiated a Declaratory Judgment action in the Circuit Court of Montgomery County to determine the validity of the denial of such permit. After a protracted trial, the Circuit Court of Montgomery County, Virginia entered a Final Order denying the relief requested by the City and sustaining the action of the County in denying the special use permit. The City has filed a Petition for Writ of Error in the case with the Supreme Court of Virginia, action on which is pending in said Court at the time of the execution of this instrument.

1.01. The City has also filed an application with the Virginia Department of Health for a permit for the use of the

land referred to in Section 1.00 above for a sanitary landfill, which application is currently pending before that State agency and on which final action has not been taken.

1.02. The City is, in addition, the owner of a tract or parcel of land which is inside the corporate limits of the City, containing 20.749 acres of land, which was acquired from Robert N. Alderman, et ux by deed dated April 18, 1985, recorded in the Clerk's Office of the Circuit Court of the City of Radford, Virginia in Deed Book 116, page 17. The City made application to the Virginia Department of Health for a permit for the establishment of a sanitary landfill for which Virginia Solid Waste Management Permit #479 has been issued by the Virginia Department of Health. The City has applied to the County for a land disturbance permit and for a special use permit for certain uses on the real estate mentioned in Section 1.00 and Section 1.01 of this instrument, which are related to the development and use of the land mentioned in this Section 1.02 for the purposes for which Virginia Solid Waste Management Permit #479 was issued. Action on both applications to the County is pending on the date of execution of this instrument.

1.03. On or about December 20, 1985, pursuant to the requirements of Section 15.1-945(7) of the Code of Virginia, 1950, as amended, there was filed with the Commission on Local Government of the Commonwealth of Virginia (hereinafter "C.L.G."), by Ola S. Bowling, Simuel O. Lewis, Alice E. Lewis, Patricia H. Lewis, Simuel O. Lewis, Jr. and the City of Radford,

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Virginia a notice of their intent to seek designation of certain areas of Montgomery County owned by the Petitioners and also parcels owned by Irene Noell Turner and Ada S. Forrester, (Foster), to the City of Radford, Virginia under the provisions of Section 15.1-1034 of the Code of Virginia, 1950, as amended, with which said notice were filed various documents, exhibits, maps and other material specified in an annotated listing thereof appended to the Notice. The County subsequently filed in the Circuit Court of Montgomery County a Motion to Dismiss the proceedings thus initiated before the C.L.G. and requesting that the Court certify to the Supreme Court of Virginia the necessity for the designation of a Three Judge Court to rule on the Motion to Dismiss the proceedings, in which Section 15.1-116B of the Code of Virginia, 1950, as amended was cited as the basis for said Motion. The Motion was overruled after a hearing on January 31, 1986, and the Court's ruling was reduced to a written Order entered on March 7, 1986. Although the County filed with the Chief Judge of the Twenty-Seventh Judicial Circuit a Motion for Reconsideration of the Court's ruling, the Motion has been withdrawn by letter dated March 8, 1986 to the Judge of the Court. The County has also filed with the C.L.G. a similar Motion to Dismiss the proceedings before the C.L.G. on the same basic grounds alleged before the Chief Judge of the Twenty-Seventh Judicial Circuit, action on which Motion is still pending before the C.L.G. However, notice of withdrawal of said request has been given to the C.L.G. by written letter of this date.

1.04. Subsequent to the filing of the Notice to the C.L.G. mentioned in Section 1.03 of this instrument, on or about the 2nd day of February, 1986, Bruce H. Davis and Hucy N. Davis filed with the C.L.G., as required by Section 15.1-945(7) of the Code of Virginia, 1950, as amended, a Notice of their intent to seek annexation of certain land owned by them in Montgomery County to the City of Radford under the provisions of Section 15.1-1034 of the Code of Virginia, 1950, as amended, containing a total of 79.2470 acres, with which notice were also filed certain maps and exhibits reflected in an annotated list thereof attached in the Notice. Also subsequent to the filing of the Notice mentioned in Section 1.03 of this instrument, on or about February 28, 1986, James L. Wiley, Jr., Lewis S. Wiley, Camille D. Sullivan and Hugh X. Sullivan filed with the C.L.G., as required by Section 15.1-945(7) of the Code of Virginia, 1950, as amended a notice of their intent to seek annexation of 598 ± acres of land owned by them in Montgomery County to the City of Radford under the provisions of Section 15.1-1034 of the Code of Virginia, 1950, as amended, with which Notice was also filed a description of the land involved. Subsequently a map of said real estate, dated October 3, 1969, made by Wiley & Wilson, Consulting Engineers and Architects, entitled "Plat of a Tract of Land Surveyed for Radford College, located on U. S. Route 11 East of the City of Radford in Riner Magisterial District of Montgomery County, Virginia" was also filed with the C.L.G.

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In the Notices filed by Davis et ux and Wiley et al, the Petitioners referred to the Petition described in Section 1.03 of this instrument, and requested that proceedings relative to their respective Notices be combined and considered with the proceedings which would result from the filing of the Notice by Ola S. Bowling, et al.

1.05. With the assistance of the C.L.G. the City and the County have engaged in mediation of their various areas of disagreement and dispute, as a result of which certain understandings have been reached relative to certain areas of their disagreements, which understandings have been approved by the Joint Resolution adopted and approved by the Council of the City of Radford, Virginia and the Board of Supervisors of Montgomery County, Virginia, adopted on February 28, 1986, which resolution recognized that a formal agreement of understanding incorporating the terms and conditions approved in the Resolution, and other provisions the parties consider necessary, submitted to and approved by the governing bodies of the parties hereto, is required before proceedings before the C.L.G. and the Court can go forward and be made final and binding on the parties. The parties further recognize and agree that the provisions of Section 15.1-1167.1 of the Code of Virginia, 1950, as amended, apply to and govern the application, approval and effectiveness of the Joint Resolution adopted February 28, 1986 and this instrument. The Code provisions to which reference is made require submission of this Agreement to the C.L.G. for

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review and study, and also requires a public hearing thereon by the C.L.G. pursuant to Section 15.1-945.7.A of the Virginia Code, as well as a written report by the C.L.G. of its findings and recommendations relative to the proposed Agreement. In addition, said Code provisions require that upon receipt of the C.L.G.'s report, both parties hereto must conduct public hearings relative to any proposed Agreement, after publication of notice thereof as required by statute, following which ordinances must be adopted by both governing bodies approving such Agreement, which must thereafter be submitted to the appropriate Court for approval or disapproval. Based upon the recognition of the foregoing requirements and procedures, both parties understand and agree that neither the Joint Resolution adopted February 28, 1986, nor this instrument, can be deemed to constitute the approval of the final Agreement and understanding between the parties until the appropriate ordinances are adopted by the respective governing bodies approving the Agreement, and such agreement has been submitted to the appropriate Court and approved by a final Court Order.

ARTICLE II

ANNEXATION - EFFECTIVE DATE - WAIVER OF REVENUE LOSS - ANNEXATION MORATORIUM - CERTAIN PROPERTY EXCLUDED - PROCEEDINGS BEFORE C.L.G. AND COURT

2.00. The Notice of Intention to File Annexation Proceedings filed by Ola S. Bowling, Simuel O. Lewis, Alice E. Lewis, Patricia H. Lewis, Simuel O. Lewis, Jr. and the City of Radford, Virginia incorporated certain exhibits, documents, maps

and other material which, among other things, described six parcels of real estate for which annexation to the City of Radford was being sought. These parcels were described by metes and bounds in a book of exhibits entitled "Annexation Proceedings - Ola S. Bowling et al vs. County of Montgomery, Virginia" (hereinafter called "Annexation Book") on pages A-4 through A-6. The parcels were also shown on a map of the petition area which is designated as Exhibit RM-4. In addition, subsequent to the filing of the original Notice by Ola S. Bowling et al, the Additional Notices specified in Section 1.04 of this instrument were also filed by the landowners identified in said Section 1.04, with which notices property descriptions and maps showing the affected properties were also filed. It is understood and agreed between the parties that, subject to the further proceedings before the C.L.G. and the final Court Order, there shall be annexed to the City the following property.

- (a) Parcels Nos. 1, 2, 3 and 4 as described on Pages A-4 and A-5 in the above mentioned Annexation Book and also as shown on Exhibit RM-4 filed with the C.L.G., these parcels being land identified as being the property of Irene Noell Turner, S. O. Lewis, Ada Foster and City of Radford. Parcel No. 4 is real estate owned by the City of Radford which is on the north side of Interstate Route 81 and contains a total of 195.59 acres in Montgomery County.

(b) The entire parcel, supposed to contain 598± acres, described on the map provided in connection with the Notice of Intent to Seek Annexation filed by James L. Wiley, Jr., et al, plus any portion of U.S. Route 11 along which the property fronts.

The real estate to be annexed to the City as to which this Agreement applies is also generally shown on a map attached to the Joint Resolution adopted by the parties on February 28, 1986 and signed and initialled that date by the Mayor of the City and the Chairman of the Board of Supervisors of Montgomery County and identified as Parcels A, B, C North, 1 and 2, plus an area outlined in purple and identified as "Radford Horse Farm (Wiley)".

2.01. The City agrees to exclude from its annexation proposal that portion of the real estate to which it has title, described as Parcel #5 on Pages A-5 and A-6 in the Annexation Book, and the real estate described as Parcel #6 on Page A-6 of said Annexation Book, also designated and shown on Exhibit RM-4. In the proceedings before the C.L.G. and in the Circuit Court, the City agrees to advise the C.L.G. and the Court that annexation of said parcels is not sought or desired by the City and to move that the same be excluded from any recommendation of the C.L.G. and from any Decree of Annexation entered by the Court. The area to be excluded and to which this Section 2.01 applies is property owned by the City located on the south side

of Interstate Route 81, and is shown on the map above mentioned which is annexed to the Joint Resolution adopted February 28, 1986 and identified as Parcel C South.

2.02. The parties recognize that the owners of Parcels D and E as shown on the map annexed to the Joint Resolution of February 28, 1986, ie: Ola S. Bowling, and Bruce H. Davis et ux are seeking to have those parcels annexed to the City of Radford, and are not and cannot be bound by this understanding between the parties, and said property owners have a right to pursue their request for annexation, to appear and present evidence before the C.L.G. and the Court, and to otherwise take such action as they deem appropriate to effect annexation of their property to the City. The City is unable to and does not assume any obligation with respect to the desires and requests of those property owners. Should any additional landowners' petitions be filed between the date of this agreement and the effective date of annexation, the City agrees that it will not encourage or support the same, and will oppose such landowners' petitions, if filed.

2.03. It is agreed that metes and bounds descriptions of the real estate as to which the parties agree annexation shall occur, as drafted by Olver, Incorporated, and shown on a detailed map thereof, at the City's expense, is attached to this Agreement as Exhibit "A". Said descriptions and map shall also be provided to the C.L.G. and to the Court which considers the agreement and annexation.

2.04. The parties agree that an effective date for annexation of the various areas to the City is contemplated to be July 1, 1986, and both parties shall exercise diligence in appearances before the C.L.G. and the appropriate Court, in presentation of such evidence as may be required, and in taking all reasonable steps to the end that a final Court Order may be entered prior to July 1, 1986 to make the annexation effective as of that date. If delays occur which are beyond the control of the parties by virtue of which the July 1, 1986 effective date for annexation cannot be achieved, then the same efforts will continue to seek an effective date as early as can be achieved in the year 1986, both parties recognizing that such date is subject to judicial determination. Both parties will urge and recommend to the C.L.G. and to the Court that their Agreement be approved and that the annexation of said land to the City be in full force and effect at the earliest practicable date.

2.05. The parties recognize that under the statutes of the Commonwealth of Virginia in the usual or normal case in which a city seeks annexation of land from a county, such a city may not again seek to annex territory of such county within ten years next succeeding the effective date of such annexation unless the parties mutually agree otherwise. They are also aware that an annexation court in such circumstances could require assumption by the City of a proportion of County debt, require payment by the City of sums for the value of public improvements, and determine and require the payment of up to five years of lost tax

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revenues to such County by the City. While the City maintains that the present annexation efforts are not the "usual" or "normal" proceedings contemplated by such statute, but should be governed by the provisions of Section 15.1-1034 of the Virginia Code, the County maintains a contrary position. Notwithstanding this conflict in positions, and taking into account the policy of the Commonwealth to promote voluntary settlements between governmental jurisdictions, the parties agree as follows:

- (a) Beginning with the effective date of annexation of the parcels of real estate to the City as to which the parties have agreed as set forth and described in Section 2.01 and Section 2.03 of this instrument, the City will not seek annexation of land from Montgomery County within fifteen (15) years next succeeding such effective date, and during such period will not initiate or procure the initiation of annexation proceedings or Petitions for Annexation of land from Montgomery County to the City by landowners and will oppose such petitions. The parties recognize that the City cannot guarantee that Petitions for Annexation will not be filed by Montgomery County residents, but the City agrees not to encourage, solicit or support the same, and will oppose such landowners' Petitions if filed.

(b) The parties agree that there are no public improvements or County owned improvements in the area to be affected by annexation for which the County would be entitled to compensation under Section 15.1-1042 of the Virginia Code.

(c) In consideration of the annexation moratorium to which the City has agreed in Subparagraph (a) of this Section 2.05, the County waives any claim for compensation from the City for any loss of net tax revenues, and for any other payments, debt assumption, compensation or any other benefit which it might otherwise claim under Section 15.1-1042 of the Virginia Code or any other applicable statute.

(d) Each party shall bear its own costs and expenses, including those already incurred or which may be incurred, for any purpose related to this Agreement, proceedings before the C.L.G., court appearances, legal and experts' consultation and other fees, or for any other purpose. (The parties have previously committed to equally bear the cost and expenses of mediation.)

2.06. For purposes of this Agreement, the parties hereto do consent to the jurisdiction of the C.L.G. to proceed with the consideration of all issues involved in the Notices of Intent to seek Annexation described in Section 1.03 and Section

1.04 of this instrument as provided in Chapter 19.1 and Chapter 26.1:1 of the Code of Virginia, 1950, as amended, as embraced in this Agreement, and do further consent and agree to the jurisdiction and power of the proper court to consider and finally rule upon all substantive issues relative to the annexation of land, adjustment of boundaries, waiver of monetary adjustments or compensation, annexation moratorium and all other issues presented by the Joint Resolution, this Agreement, the proceedings before the C.L.G., consideration of the report of the C.L.G. and ordinances enacted by the parties, and/or the difference between the parties which might or could arise by virtue of any or all of the foregoing. Neither party shall raise or insist upon any objection to the jurisdiction of the CLG or the Court to hear and act upon the Agreement and issues presented thereby, or to the form, content or regularity of documents heretofore filed or proceedings heretofore had, before the C.L.G. or the Court.

2.07. The C.L.G. has, by its letter dated March 6, 1986, notified all interested parties of its schedule of review and other proceedings, which requires that all materials which the parties desire to file relative to the annexation and the proposed settlement be filed by April 1, 1986, and that on April 21, 1986 the C.L.G. will tour the relevant area and conduct hearings. The parties hereto agree that the schedule is reasonable and is acceptable to both.

ARTICLE III

"INGLES MOUNTAIN LANDFILL" PERMIT APPLICATION -
PENDING PETITION FOR WRIT OF ERROR

3.00. As noted in Section 1.00 of this Agreement, the City has pending in the Supreme Court of Virginia a Petition for a Writ of Error to the judgment of the Circuit Court of Montgomery County, Virginia denying the City's Motion for Declaratory Judgment reversing the County's denial of a special use permit for the use of 195.59 acres of City owned land on the North side of Interstate Route I-81 for a sanitary landfill, ie: the so-called "Ingles Mountain Landfill" site. On or before the effective date of annexation of the land described in Section 2.00 of this instrument to the City, the City agrees to withdraw the Petition for Writ of Error or, if a Writ has been granted, then to dismiss its appeal. Neither party shall claim any reimbursement for costs or expenses resulting from said litigation.

3.01. The City has currently pending with the Virginia Department of Health an application for a solid waste management permit for placement and operation of a sanitary landfill on the same parcel of land, ie: the "Ingles Mountain Landfill" site, as specified in Section 1.01 of this Agreement, which application has been actively opposed by the County. On or before the effective date of annexation to the City of the land described in Section 2.00 of this instrument, the City agrees to amend its current application with the Virginia Department of Health for

the Ingles Mountain Sanitary Landfill site to request a permit for disposal of inert solid waste only as defined in and contemplated by the Virginia Solid Waste Regulations, ie: Rules and Regulations of the Virginia Department of Health, Chapter XVIII, Disposal of Solid Waste, effective April 1, 1971, Part III, Article 1, Subsection D, a copy of which is attached to and made a part of the Joint Resolution adopted February 28, 1986 and which shall be attached to this Agreement as Exhibit B. The County covenants not to oppose the amended application.

3.02. With respect to the amended application and the use of the "Ingles Mountain Landfill" site for disposal of inert solid waste, screening of the site will comply with the requirements of the Virginia Department of Highways and Transportation.

3.03. The City has entered into an Agreement with Pulaski County, dated February 21, 1986, and anticipates that it will implement that cooperative Agreement and dispose of certain of its solid waste as therein contemplated. Nothing herein is intended to imply that the City binds itself or Pulaski County to dispose of solid waste exclusively pursuant to the terms of that Agreement.

ARTICLE IV

ZONING OF CITY OWNED LAND SOUTH OF INTERSTATE 81

4.00. The City owns approximately 268.214 acres of land adjoining the southerly side of Interstate Route I-81 which

it acquired from Alan D. Gillis, Substitute Trustee, (recorded in Deed Book 492, Page 412, Clerk's Office, Montgomery County Circuit Court), which is a portion of Parcel #5 on Pages A-5 and A-6 of the Annexation Book, and also a portion of Parcel #5 as shown on the map marked Exhibit RM-4. This property is currently zoned A-1 Agricultural under the Montgomery County Zoning Ordinance. The City will immediately proceed to file an application to rezone said parcel to M-1 Industrial under said Zoning Ordinance, and the County will immediately consider said application and proceed in good faith to consider such rezoning of the land M-1 Industrial.

ARTICLE V

THE COUNTY'S PLUM CREEK SEWER PUMP STATION

5.00. Consistent with its obligation as a member of the Pepper's Ferry Regional Wastewater Treatment Authority, the County has undertaken the construction of a sewer system in the Plum Creek area of Montgomery County (Contract 11). In pursuit of the plans for said system, the County was granted a special use permit by the City for the construction within the City of the Plum Creek Pump Station, and, in addition, was granted certain easements by the City as well as permission to install sewer mains within the City which will ultimately transport sewage to the Pepper's Ferry Regional Wastewater Treatment Facility in Pulaski County. However, since the Regional Facility has not been completed, the County has caused its mains to be

connected with the City's treatment facility. Due to disagreements between the parties, no contract has yet been executed to permit the delivery of waste by the County to the City treatment facility for treatment.

A proposed Contract has heretofore been approved by Montgomery County P.S.A. on December 15, 1985, and the parties agree that upon execution and delivery of this Agreement the said Contract relating to the transportation of city waste by the County, and the reception of waste from the County by the City for treatment shall be approved and executed and shall become operative. The County has provided to the City written assurances sufficient to the City's City Manager that the gasoline spill adjacent to the County's sewer line will not adversely affect or damage the City's sewer system and/or treatment facilities, and a copy of said assurances, together with a copy of Montgomery County P.S.A.'s Sewer Regulations, is attached hereto as Exhibit "C".

ARTICLE VI

AMENDMENTS; OTHER MATTERS

6.00. The terms and provisions of this Agreement may be modified, altered, amended, waived or supplemented only by the mutual consent of the parties as agreed to by a majority vote of full membership of each of the governing bodies, reduced to writing and signed on behalf of the City and the County.

6.01. The parties agree that no term, condition or provision of this Agreement is exclusive to itself, but that each term, condition and provision is dependent upon and in consideration of each and every other term, condition and provision, and if either party violates one or more of said terms, conditions and provisions, or if for any reason all are not approved and given full force and effect without modification (including without limitation, rejection or invalidation by a Court of competent jurisdiction), then the entire Agreement and all of its terms, conditions and provisions shall be null, void and of no effect, ab initio, except to the extent the parties may agree and consent otherwise as provided in Section 6.00 of this instrument.

6.02. This Agreement shall be enforceable by an appropriate Court of competent jurisdiction as the circumstances may require.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective authorized officers, by action of their respective governing bodies, all as of the day and year first above written.

CITY OF RADFORD,
a Virginia Municipal Corporation

By Therese W. Bess
Mayor

(SEAL)

Attest: Ray I. Bloyd
Clerk of the City of Radford

Rev. 3/12/86

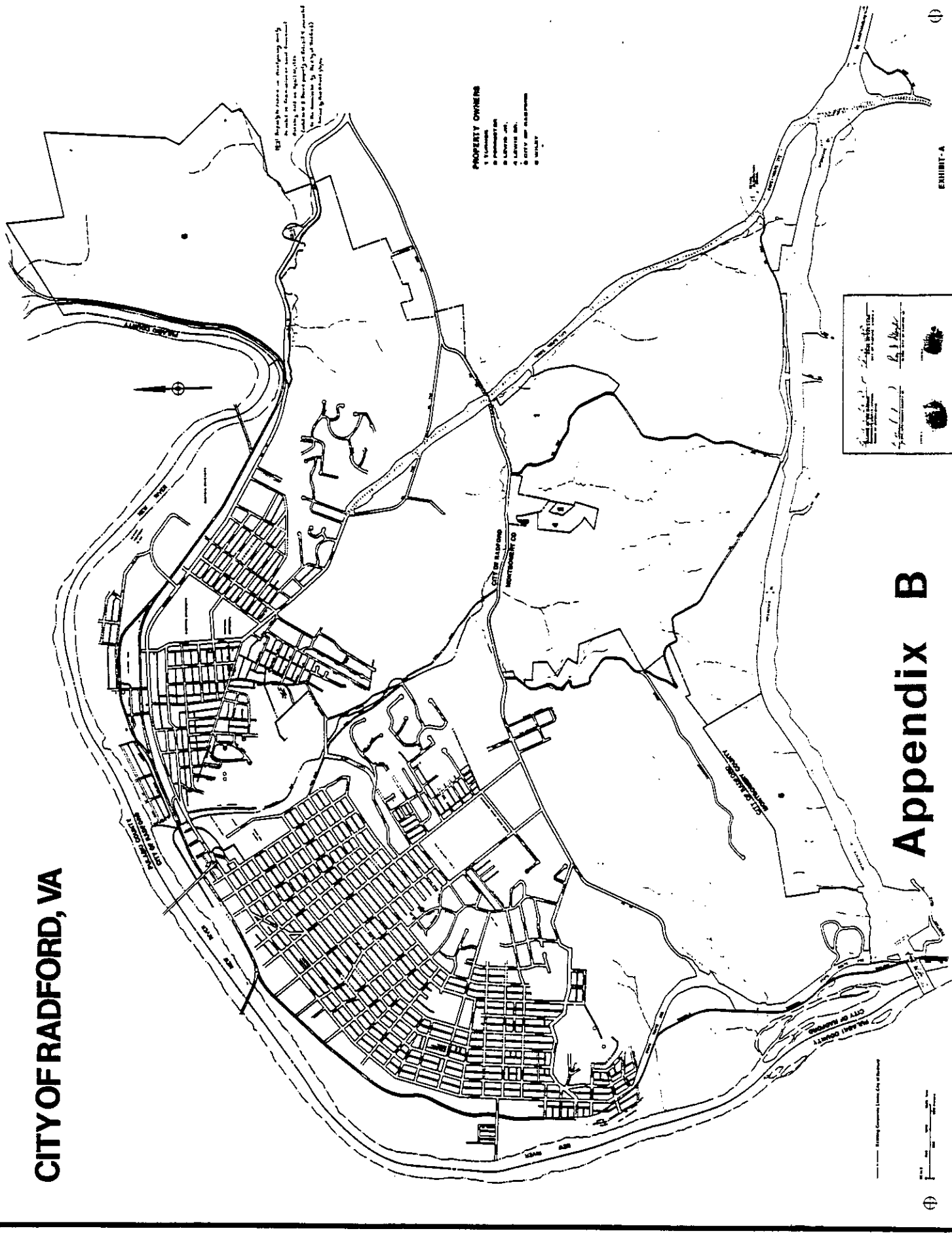
BOARD OF SUPERVISORS OF MONTGOMERY
COUNTY, VIRGINIA

By *[Signature]*
Chairman

(SEAL)

Attest: *[Signature]*
Clerk of the Board of
Supervisors of Montgomery County

CITY OF RADFORD, VA



Appendix B

EXHIBIT A