

**Report on the
City of Radford - County of Montgomery
Voluntary Settlement Agreement**



**Commission on Local Government
Commonwealth of Virginia**

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**REPORT ON THE
CITY OF RADFORD - COUNTY OF MONTGOMERY
VOLUNTARY SETTLEMENT AGREEMENT**

PROCEEDINGS OF THE COMMISSION

On October 1, 1992 the City of Radford, acting in concert with Montgomery County and the Montgomery County Public Service Authority, formally submitted to the Commission on Local Government for review a proposed voluntary settlement agreement which had been negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia.¹ Consistent with the Commission's Rules of Procedure, the notice was accompanied by data and materials supporting the proposed agreement. Further, in accordance with statutory requirements, the localities concurrently gave notice of the proposed agreement to 15 other political subdivisions with which the City and the County were contiguous or with which they shared functions, revenues, or tax sources.² The proposed agreement contains provisions which would (1) require the City's renunciation of its authority to annex within a portion of the County known as the Route 177 Corridor, (2) require the County to share with the City certain local tax revenues it derives from the area proposed for immunity from annexation by Radford, (3) commit the City to providing potable water and capacity in municipal sewer lines to the Montgomery County Public Service Authority to serve the proposed immunity area, and (4) establish a City-County collaborative effort to oversee development in a second area encompassing a portion of both jurisdictions.³

¹City of Radford, County of Montgomery, and Montgomery County Public Service Authority, Route 177 Corridor Agreement, 1992. The Montgomery County Public Service Authority, while not a general purpose unit of local government, was a party to the proposed agreement for the limited purpose of implementing the utility provisions of the settlement within the affected areas of the County.

²Sec. 15.1-945.7(A), Code of Va.

³The proposed agreement distinguishes between two separate but overlapping tracts of land Montgomery County which are traversed by State Route 177. The provisions in the proposed agreement concerning immunity, revenue sharing and utilities are applicable only to a portion of the County, referred to in this report as the "Route 177 Corridor." The boundaries of the Corridor defines water and sewerage service areas

On November 10, 1992 the Commission initiated its review process by touring relevant areas and facilities in the Radford area and, on the following day, receiving oral presentations from City and County representatives in support of the proposed agreement.⁴ In addition to its receipt and consideration of materials and testimony from the City of Radford 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 agreement under the provisions of Section 15.1-945.7(A) of the Code of Virginia was invited by the Commission to submit testimony for consideration. Further, the Commission held a public hearing in Radford on the evening of November 11, 1992, which had been advertised in accordance with Section 15.1-945.7(B) of the Code of Virginia.⁵ In order to provide additional opportunity for public comment, the Commission agreed to keep open its record for written submissions from the public through December 4, 1992.

and embrace territory located totally within the County. The provisions in the agreement concerning the City-County collaborative planning effort, however, apply to a sector of territory in both Radford and Montgomery County, referred to in the settlement as the VA. 177/Tyler Avenue Corridor Area. The portion of the VA. 177/Tyler Avenue Corridor Area in Montgomery County does not coincide with the Route 177 Corridor. The portion of the VA. 177/Tyler Avenue Corridor Area in Montgomery encompasses territory both within and beyond the Route 177 Corridor. See Appendix A for a full text of the proposed agreement and Appendix B for a map of the area proposed for immunity (Route 177 Corridor).

⁴Due to personal commitments, Commissioner William S. Hubard did not attend the tour or sit with the Commission during the oral presentations and public hearing. In view of this fact, Mr. Hubard is not a signatory of this report.

⁵At the request of the Commission all materials which had been submitted to it by the parties relative to the proposed voluntary settlement agreement were made available for public review in the offices of the City Manager of Radford and the County Administrator of Montgomery County.

SCOPE OF REVIEW

The Commission on Local Government is directed by statute to review proposed annexations, petitions for partial county immunity, and 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 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" regarding the issue to the affected local governments.⁶ 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 Commonwealth."

As we have stated in previous reports, it is evident that the General Assembly encourages local governments to attempt to negotiate settlements of their interlocal concerns. Indeed, one of the statutory responsibilities of this Commission is to assist local governments in such efforts. In view of this legislative intent, the Commission believes that proposed interlocal agreements, such as that negotiated by the City of Radford and Montgomery County, should be approached with respect and a presumption of their compatibility with applicable statutory standards.

The Commission notes, however, that the General Assembly has decreed that interlocal agreements negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia be reviewed by this body prior to their final adoption by the local governing bodies. We are obliged to conclude, therefore, that while interlocal agreements are due respect and should be approached with a presumption of their consistency with statutory standards, such respect and presumption cannot be

⁶Sec. 15.1-945.7(A), Code of Va.

permitted to render our review a pro forma endorsement of any proposed settlement. Our responsibility to the Commonwealth and to the affected localities requires more.

**GENERAL CHARACTERISTICS OF THE CITY, THE COUNTY,
AND THE AREA PROPOSED FOR IMMUNITY**

CITY OF RADFORD

Radford obtained independent city status in 1892, five years after its initial incorporation as a town.⁷ Since that date the City has experienced four boundary expansions, the most recent occurring in 1986.⁸ As of 1990, the City of Radford had a population of 15,940 persons, reflecting a population growth of 20.5% since the 1980 Census.⁹ Based on its land area of 9.6 square miles and its 1990 population, the City has a population density of 1,655 persons per square mile.

⁷Chester W. Bain, "A Body Incorporate": The Evolution of City-County Separation in Virginia (Charlottesville, Va.: The University of Virginia Press, 1967), Appendix A.

⁸The 1986 annexation, which added approximately 1.5 square miles of unpopulated territory to the City, was effected by agreement with Montgomery County. The three previous City boundary expansions occurred by citizen-initiated petitions.

⁹U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, General Population Characteristics, Virginia, Table 2; and U. S. Department of Commerce, Bureau of the Census, 1990 Census of Population and Housing, Summary Population and Housing Characteristics, Virginia, Table 16. Radford University is located within the City's boundaries, and the students of that institution living within the municipality are included in the City's population count. The Commission notes that during the decade of the 1980's the number of students residing in college dormitories within the municipality decreased by 8.9%. U. S. Department of Commerce, Bureau of the Census, 1980 Census of Population, General Social and Economic Characteristics, Virginia, Table 173; and U. S. Department of Commerce, Bureau of the Census, unpublished data from the 1990 Census of Population and Housing, Summary Tape File 3A. See Appendix C for a statistical profile of the City, the County, and the area proposed for immunity.

With respect to the City's fiscal condition, the data indicate that between 1980 and 1990 the total true value of real estate and public service corporation property in Radford increased from \$181.9 million to \$367.1 million, or by 101.8%, a figure approximately two-thirds that for the Commonwealth overall (148.7%).¹⁰ Similarly, the City's taxable retail sales, a significant measure of the strength of the locality's commercial base, rose by 72.3% from 1980 to 1990, again a growth rate approximately two-thirds that of the State as a whole (117.9%).¹¹

Further evidence of Radford's overall fiscal condition is presented by annual statistical analyses conducted by this Commission. These analyses have been based upon a Virginia-adapted "representative tax system" (RTS) methodology which establishes a theoretical level of revenue capacity for each county and city derived from six local revenue generating "sources" and a statewide average "yield rate" for each. Our calculations reveal that, in relation to all Virginia counties and cities, the City of Radford experienced a decline in revenue-generating potential between the 1985/86 and 1989/90 fiscal periods, with its per capita theoretical revenue capacity decreasing during that five-year period from 70.2% to 59.5% of the statewide figure.¹² Due in part to that trend, the Commission's most recent comparative fiscal stress analysis found that relative to all Virginia counties and cities in

¹⁰Virginia Department of Taxation, Virginia Assessment/Sales Ratio Study, 1980, Mar. 1982; and Virginia Assessment/Sales Ratio Study, 1990, Mar. 1992. On a per capita basis, the increases in the true value of real estate and public service corporations property in Radford and the State generally were 67.2% and 114.9%, respectively.

¹¹Virginia Department of Taxation, Taxable Sales in Virginia Counties and Cities, Annual Report, 1980 and 1990. The per capita increase in the City of Radford (43.0%) during the previous decade was less than one-half that in the State overall (88.3%).

¹²Commission on Local Government, Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, 1989/90, June 1992, Tables 2.1, 2.3.

1989/90, Radford experienced "high stress," with only 17 of those 136 jurisdictions recording a higher measure of fiscal duress.¹³

With respect to Radford's prospects for future growth, 1992 land use data indicate that only 17.1% (1,051 acres) of the City's total land area remains vacant and undeveloped.¹⁴ Moreover, of this total vacant land, 926 acres are located on slopes exceeding 10%, situated within the 100-year floodplain, or restricted in their development potential due to limited accessibility, adjacent land use, or the absence of public utilities. Consequently, only 125 acres, or 2.0% of the City's total area, are located on vacant land ideally suited for commercial or industrial development.¹⁵

In terms of projections of Radford's economic growth future and its fiscal condition, the City has calculated that it will confront continuous revenue shortfalls during the period immediately ahead. These shortfalls are projected to increase from \$3.3 million in

¹³Ibid., Table 6.3. In establishing the level of "fiscal stress" of Virginia's counties and cities, the Commission considers the theoretical revenue capacity, revenue effort, and resident income (as reported on State tax returns) of each jurisdiction.

¹⁴John B. Spiers, Jr., City Attorney, City of Radford, letter to staff of Commission on Local Government, Oct. 20, 1992. The Commission notes, however, that those statistics do not include the 1.5 square miles of County territory annexed by the City in 1986. City officials have indicated that while most of the recently incorporated territory is vacant and undeveloped, that land is restricted in its development potential by steep slopes and other appropriate environmental and land use considerations. (David C. Ridpath, Community Development Director, City of Radford, communication with staff of Commission on Local Government, Oct. 29, 1992.) A comparison of land use statistics contained in the City's 1984 comprehensive plan with recent data reveal that the total acreage devoted to commercial and industrial land uses in the City increased from 332 acres in 1982 to 585 acres in 1992. (Spiers, letter to staff of Commission on Local Government, Oct. 20, 1992; and City of Radford, Comprehensive Plan, 1984, p. 36.)

¹⁵Ibid. Most of the vacant land suitable for industrial development is located in the City's industrial park adjacent to Interstate Highway 81. The undeveloped areas most suitable for commercial enterprise are located adjacent to Tyler Avenue.

FY1992-93 to \$4.1 million in FY1997-98.¹⁶ Further, Radford's current capital improvements program identifies the need for approximately \$8.9 million through FY1997-98 for various facilities, with the City anticipating the necessity of raising virtually all that amount from local sources.¹⁷ The City estimates that approximately \$6.4 million of its anticipated capital expenditures will be financed through the issuance of general obligation bonds, with general or enterprise fund reserve balances being used to fund the remaining amount.¹⁸ The reserve balances in the latter fund, which stood at \$19.3 million at the end of FY1990-91, represent a notable supplemental source of fiscal resources for the City.¹⁹

COUNTY OF MONTGOMERY

Montgomery County was created by the General Assembly in 1777 from territory formerly a part of Botetourt, Pulaski, and Fincastle Counties,

¹⁶Spiers, letter to staff of Commission on Local Government, Oct. 20, 1992. The City's projections of revenues assume an annual average growth rate of 2.5% for each revenue category throughout the period. In addition, the projections include general, school, and enterprise fund receipts, but do not encompass expected revenue sharing payments or increased utility receipts from the proposed agreement with Montgomery County. Projections of future City expenditures assume a constant annual growth rate of 2.5% in general operating expenses and an average yearly increase in school operating expenses of 3.25%. (Ibid.) While the City calculated future expenditures for all City funds, it excluded debt service payments for the period in question.

¹⁷City of Radford, Capital Improvement Program, 1992/93 to 1997/98. The non-local share of future capital projects is expected to be approximately \$500,000 over the six-year period.

¹⁸Ibid. As of June 30, 1991 the City had an aggregate unexpended balance in its general, special revenue, capital projects, and expendable trust funds of \$2.5 million. (City of Radford, Comprehensive Annual Financial Report for the Fiscal Year Ending June 30, 1991.)

¹⁹Ibid.

with the latter jurisdiction being terminated in the process.²⁰ The County's population increased from 63,516 to 73,913 persons between 1980 and 1990, or by 16.4%.²¹ On the basis of its 1990 population and a land area of 390 square miles, the County has an overall population density of 190 persons per square mile.

In regard to Montgomery County's overall fiscal condition, statistics indicate that between 1980 and 1990 the true value of real estate and public service corporation property in the County increased from \$1,048.0 million to \$2,026.0 million, or by 93.3%. That percentage growth in the County's principal revenue source was slightly less than that of Radford and approximately three-fifths of the comparable figure for the State as a whole (148.7%).²² During the same period, taxable retail sales in the County increased from \$181.1 million to \$424.9 million, or by 134.6%.²³ That growth rate was significantly greater

²⁰J. Devereux Weeks, Dates of Origin, Virginia Counties and Municipalities (Charlottesville: Institute of Government, University of Virginia, 1967).

²¹1980 Census of Population, General Population Characteristics, Virginia, Table 2; and 1990 Census of Population and Housing, Summary Population and Housing Characteristics, Virginia, Table 16. Within the County's borders are two incorporated towns with a total 1990 population of 49,594 persons, representing 67.1% of the County's residents. Between 1980 and 1990, the population of the unincorporated portion of Montgomery County increased by only 7.9%, primarily due to the annexation of approximately 2,800 persons by the Town of Christiansburg effected in 1988.

²²Virginia Assessment/Sales Ratio Study, 1980; and Virginia Assessment/Sales Ratio Study, 1990. The per capita increase in the true value of real estate and public service corporation properties in Montgomery County and the Commonwealth generally during the decade was 74.3% and 114.9%, respectively.

²³Taxable Sales in Virginia Counties and Cities, Annual Report, 1980 and 1990. During the previous decade, the per capita increase in taxable sales in the County and the State generally was 101.6% and 88.3%, respectively. A major component of the increase in the taxable retail sales in Montgomery County during the decade of the 1980's was the result of the opening of a regional shopping center in the Town of Christiansburg.

than that of Radford (72.3%) and of that of the State as a whole (117.9%).

Despite the increases in both true property values and retail sales in Montgomery County during the 1980s, data developed by this Commission disclose that the County experienced a decline in its comparative revenue generating potential between the 1985/86 and 1989/90 fiscal periods, with its per capita theoretical revenue capacity decreasing as a percentage of the statewide figure during that period from 74.0% to 70.0%.²⁴ Further, our calculations indicate that for the 1989/90 fiscal period Montgomery County was an "above average stress" locality.²⁵

In terms of its physical development, Montgomery County has within its jurisdiction two of the largest towns in the Commonwealth, but it remains largely rural, with agricultural and forestal activities continuing as major components of its economic base. As of 1987, there were 544 farms in the County occupying a total of 97,319 acres (approximately 152 square miles), with the average value of agricultural products sold by its farms being \$25,053.²⁶ Further, 1992 data disclose that 145,464 acres (approximately 227 square miles) in Montgomery County were considered forest land.²⁷ Thus, while the

²⁴Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities, 1989/90, Tables 2.1, 2.3.

²⁵Ibid., Table 6.3.

²⁶U. S. Department of Agriculture, Bureau of the Census, 1987 Census of Agriculture, Virginia, Table 1, p. 148. In 1987 the average market value of agriculture of products sold by farms in the State collectively was \$35,464. Dairy and livestock operations are the dominant type of farm in Montgomery County, and much of the farmland is devoted to pasture, hay, or feed grains. (County of Montgomery, Comprehensive Plan, 1990, Appendix.)

²⁷U. S. Department of Agriculture, Forest Service, Forest Statistics for the Southern Mountains of Virginia, 1992, Table 1. A 1992 survey revealed that properties located in that portion of the

County's population is concentrated within its incorporated towns, its territory is principally rural in nature.

AREA PROPOSED FOR IMMUNITY

Under the terms of the proposed agreement with the City of Radford, a portion of Montgomery County, identified as the Route 177 Corridor, would be granted permanent immunity from annexation actions initiated by that City. This territory proposed for such annexation immunity adjoins the southern boundary of the City of Radford and extends southeast along State Route 177 embracing properties adjacent to the southern right-of-way of Interstate Highway 81.²⁸ Route 177 Corridor, which is proposed for immunity, contains approximately 6.2 square miles of territory, 250 persons, and, based on FY1991-92 assessment data, \$19.4 million in assessed property values subject to local taxation.²⁹

In terms of current development, the area contains two residential concentrations, a mobile home park, a C&P Telephone Company regional service center, a lumber mill, several other businesses, the County's Bethel Elementary School, and a Virginia Department of Transportation (VDOT) rest area. According to the most recent land use data, 8.1% of the area is devoted to residential development, 1.3% to commercial

Jefferson National Forest in Montgomery County encompassed almost 19,000 acres (Ibid., Table 2.) The Forest Service defines "forest" land as property being at least 16.7% stocked by forest trees of any size or formerly having had such tree cover and not currently developed for nonforest use. Such property may also be included in the Census Bureau's definition of "farm land."

²⁸The proposed agreement further divides the area proposed for immunity into four sub-areas for the purpose of phasing the revenue sharing and utility components of the settlement.

²⁹Roy B. Thorpe, Jr., County Attorney, County of Montgomery, letter to staff of Commission on Local Government, Oct. 9, 1992; and T. C. Powers, Planning Director, County of Montgomery, communication with staff of Commission on Local Government, Nov. 16, 1992. The assessed value statistic includes data only for real estate and public service corporation real property.

activity, 0.7% to public or semi-public uses, with 89.9% remaining vacant or in agricultural production.³⁰

The development in the area proposed for immunity has been restricted by the limited availability of public water and sewerage which is provided principally, by the Montgomery County Public Service Authority (MCPSA). Water service is available at the State Route 177-Interstate Highway 81 interchange through a system owned by the MCPSA, which relies on wells and a 100,000 gallon storage tank. In addition, a private community water system serves a subdivision of 30 homes located on the south side of the interstate highway.³¹ Sewer service is provided along State Route 177 to the interstate highway interchange. That line, which is owned and operated by the MCPSA, was extended through a cooperative financial arrangement between the Virginia Department of Transportation (VDOT), the MCPSA, and private landowners. The MCPSA sewer line connects to the City's collection system, and all wastewater emanating from the area proposed for immunity is transported through lines owned by Radford to the Pepper's Ferry Regional Wastewater Treatment Facility (PFRWTF).³²

³⁰Ibid. A significant majority of the development in the area proposed for immunity is located within one-half mile of the State Route 177/Interstate Highway 81 interchange. The businesses in that area include an antiques warehouse and store, an automobile repair facility, and a convenience store and trucking service station.

³¹City of Radford and County of Montgomery, Virginia 177/Tyler Avenue Corridor Study (hereinafter cited as Corridor Study), July 1992, p. 51. The MCPSA water system currently serves approximately 71 commercial and residential connections in the proposed immunity area. (Gary Gibson, Director, Montgomery County Public Service Authority, communication with staff of Commission on Local Government, Nov. 9, 1992.)

³²Corridor Study, p. 55. There are approximately ten residential and business connections served by the MCPSA sewer lines in the area proposed for immunity. Those connections include the Bethel Elementary School, the VDOT rest area, and the several businesses located at the interchange. (Gibson, communication with staff of Commission on Local Government, Nov. 9, 1992.)

With respect to the prospect for growth in the Route 177 Corridor, the Commission notes that Montgomery County has identified that area as a major focal point for future development in the County.³³ The development potential of the corridor area is enhanced by the fact that State Route 177 constitutes the principal "gateway" to the City of Radford and Radford University from Interstate Highway 81, that a significant portion of it possesses favorable natural features (e.g., soil suitability, slope, flood hazard, and the absence of sinkholes), and that public utilities are accessible. With regard to the latter factor, the proposed agreement between the City and Montgomery County calls for Radford to sell escalating volumes of potable water to the MCPSA to serve the corridor area, and to provide the MCPSA capacity in municipal sewer lines to transport wastewater from the Route 177 Corridor to the PFRWTF. The Commission has been advised that the prospect of the availability of increased public water and sewer service in the Route 177 Corridor was a factor in the decision by the Radford Community Hospital to relocate its acute care facility from its current site in the City to that location.³⁴ In sum, although the area proposed for immunity is now predominantly vacant, it has a significant potential for future development.

STANDARDS FOR REVIEW

As indicated previously, the Commission on Local Government is charged with reviewing proposed interlocal settlements negotiated under

³³Both the 1986 Countywide water and wastewater study and the 1990 Montgomery County comprehensive plan delineate the Route 177 Corridor as a future growth area. (Corridor Study, p. xi; and Comprehensive Plan, 1990, pp. 45-48.)

³⁴Lester L. Lamb, President/Chief Executive Officer, Radford Community Hospital, letter to Robert P. Asbury, Jr., City Manager, City of Radford, Oct. 15, 1992. The hospital recently purchased a 160-acre parcel adjacent to the southwestern right-of-way of State Route 177 approximately one mile from the Interstate Highway 81 interchange. Tentative plans call for the phased construction of both a hospital and medical offices on the new site between 1993 and 1998.

the authority of Section 15.1-1167.1 of the Code of Virginia for the purpose of determining whether such settlements are "in the best interest of the Commonwealth." In our judgment, the State's interest in this and other proposed interlocal agreements is fundamentally the preservation and promotion of the general viability of the affected localities. In this instance the Commission is required to review a proposed voluntary settlement which provides for (1) an interlocal revenue sharing arrangement, (2) collaboration for the extension of utilities into a specified area of the County, (3) the City's permanent relinquishment of its authority to annex property within that specified area, and (4) cooperation between the two jurisdictions with respect to the planning and regulation of growth in the principal avenue of entrance into the municipality. A proper analysis of the proposed Radford - Montgomery County agreement requires not merely consideration of its immediate ramifications, but an effort to determine its future consequences as well. With full recognition of the difficulty of this undertaking, we offer the following comments.

IMPACT OF THE AGREEMENT ON THE CITY OF RADFORD

The proposed City of Radford - Montgomery County agreement has four principle provisions which will, if the agreement is implemented, have an impact on the City's future viability. First, the agreement establishes a revenue sharing arrangement through which the County will annually transfer to the City a portion of certain tax receipts from the Route 177 Corridor.³⁵ Second, the agreement calls for Radford to sell to the MCPSA specified quantities of potable water for distribution in

³⁵The revenue sharing plan of any voluntary settlement agreement which requires future county payments to a municipality has been determined by previous opinions of the State's Attorney General to be a long-term debt of the county, and to require that the question of contracting such debt must be submitted to the voters in the affected county for approval pursuant to Article VII, Section 10(b) of the Constitution of Virginia and Section 15.1-1167.2 of the Code of Virginia. On August 18, 1992 the voters in Montgomery County gave approval to the revenue sharing component of the proposed Radford - Montgomery County agreement.

the Route 177 Corridor and to transport through City sewerage lines effluent from that area to the regional sewage treatment plant. Third, the agreement calls for the City to relinquish in perpetuity its authority to initiate annexations actions with respect to all property within the Route 177 Corridor. Fourth, the proposed settlement establishes procedures by which the City and County will cooperate in planning and controlling development in the corridor area. Clearly, these provisions in the proposed agreement will have major consequences for the City of Radford.

Revenue Sharing Provisions

The interlocal agreement calls for the incremental implementation of a plan for the sharing of the County's local tax revenues generated by existing and future development in the Route 177 Corridor. Under the terms of this plan, Montgomery County will transfer to the City, annually and in perpetuity, 27.5% of local real estate, public service corporation, personal property, and local option retail sales tax revenues collected from within that area.³⁶ The revenue sharing provisions will be established sequentially in four portions of the Route 177 Corridor (identified as Phase I, II, III, and IV) as City water becomes available to those areas, or by specified dates. The revenue sharing arrangement will cover all property within the Route 177 Corridor no later than January 1, 2005.³⁷ The City has calculated that

³⁶The City of Radford and Montgomery County construe the term "personal property" to include machinery and tools and merchants capital. (Thorpe, communication with staff of Commission on Local Government, Oct. 30, 1992.) The agreement also provides that at such time as the County imposes a business and professional license tax, revenues from that source included in the sharing arrangement.

³⁷Under the terms of the proposed agreement the economic growth sharing plan will commence on January 1, 1993, provided the interlocal settlement becomes effective on or prior to that date. The Commission notes, however, that the County is required to share initially only those real estate, personal property, and local option sales tax revenues it derives from that portion of the area proposed for immunity known as Phase I. The revenue sharing component of the agreement will

the proposed economic growth sharing plan will provide Radford approximately \$3,626 in 1993, if the agreement is in effect by then.³⁸ Based on specified assumptions, Radford's receipts from the revenue sharing arrangement will increase to \$31,771 by 1997.³⁹ The 1997 payment would represent less than one percent of the City's projected general property tax receipts in FY1996-97.⁴⁰

In regard to the prospective impact of the revenue sharing component of the proposed agreement, the Route 177 Corridor has been designated by Montgomery County as a future growth center. The increased availability of public water service in the Route 177 Corridor which would result from the proposed agreement will enhance the growth potential of that area.⁴¹ Indeed, the announced intentions of the Radford Community Hospital to construct a hospital and medical office complex in the area proposed for immunity will spur additional development in that area.⁴² While the initial benefit to the City from

be extended to the Phase II, III, and IV portions of the Route 177 Corridor no later than 1994, 2000, and 2005, respectively.

³⁸Spiers, letter to staff of Commission on Local Government, Oct. 20, 1992. The City's estimate is for calendar year 1993 and is based on tax collections from the Phase I area.

³⁹Ibid. The 1997 estimate includes revenues from both the Phase I and II areas and assumes a 2.5% annual increase in the County's tax collections for the period 1995 through 1997.

⁴⁰Ibid.

⁴¹While the proposed agreement calls for Radford's water and sewage transportation commitments to grow incrementally between the effective date of the agreement and the Year 2005, the largest expansion in the volume of potable water to be sold by the City to the MCPSA, as well as the greatest increase in Radford's obligation to accept wastewater from the corridor area, will occur on January 1, 1994. (See Agreement, Secs. 4.1, 5.1.)

⁴²Radford Community Hospital is a not-for-profit institution and most of its operations and facilities are exempt from taxation. While the relocation of the hospital to the corridor area will not result directly in an increase in assessed property values subject to local taxation in that area, other medical office buildings constructed in the

the revenue sharing arrangement is extremely modest, the development potential of the Route 177 Corridor may increase significantly its long-term significance to the City.

Utility Provisions

The utility provisions included in the proposed agreement will also provide the City of Radford with additional financial resources which, to some degree, might be available to address the City's future general needs. Those provisions call for the City to sell to the MCPSA increasing quantities of potable water for distribution in the Route 177 Corridor⁴³ and for Radford to receive escalating volumes of wastewater from MCPSA lines in that area for transportation through City sewer interceptors to the Peppers Ferry Regional Waste Treatment Plant.⁴⁴ Based on the City's current utility rates and assuming the County's full utilization of its total first-year water and wastewater transportation allocations, Radford could receive approximately \$70,000 in additional

corridor will not be tax exempt. (Lamb, letter to Asbury, Oct. 15, 1992.)

⁴³See Agreement, Sec. 4. Beginning 60 days after the effective date of the proposed agreement, the MCPSA is entitled to purchase 0.08 million gallons per day (MGD) from the City. On January 1, 1994, the MCPSA is eligible to purchase an additional 0.195 MGD, with other increases scheduled for January 1, 2000 (0.075 MGD) and January 1, 2005 (0.05 MGD). The total volume the City is required to make available for purchase by MCPSA is 0.40 MGD.

⁴⁴Ibid., Sec. 5. Under the terms of a 1989 agreement among Radford, Montgomery County, and the MCPSA, the City is committed to receive and transport 0.07 MGD of wastewater from the Route 177 Corridor. The agreement currently before this Commission supersedes the 1989 settlement and extends the City's current wastewater transportation obligation until January 1, 1994. The City has agreed to accept, as of that date, an additional 0.16 MGD of wastewater from the affected area, with that volume increasing by 0.02 MGD on January 1, 2005. The total amount of wastewater the City is required to accept from the MCPSA is 0.25 MGD.

utility revenues from the MCPSA in 1993.⁴⁵ The City's initial utility receipts from the MCPSA will not, however, reach that amount immediately due to the current paucity of development in the corridor area and the fact that the MCPSA presently has no direct connection to the City's water distribution system. As the area develops, however, MCPSA utility payments to the City will increase accordingly.⁴⁶

Radford's utility obligations to the MCPSA under the proposed agreement will place additional service burdens on the City's water and sewerage operations. In terms of water, since the City's water filtration plant has a rated capacity of 8.0 million gallons per day (MGD) and since the municipality's distribution system presently consumes approximately 3.5 MGD, Radford's system currently retains an

⁴⁵The estimate of the potential utility revenues was calculated using the utility rates and the initial water and wastewater volumes stipulated in the proposed agreement. The City's wholesale water rate of \$1.15 per thousand gallons of potable water enumerated in the agreement, however, was increased to \$1.30 per thousand gallons effective July 1, 1992. (Asbury, testimony before the Commission on Local Government, Nov. 11, 1992.) The agreement also specifies that the City's initial wastewater transportation charge will be \$1.27 per thousand gallons. The proposed agreement indicates that the rate Radford will charge the MCPSA for water availability and wastewater transportation services shall include the City's costs for operation and maintenance, debt service, and capital reserves for the affected utility systems. The agreement permits the City to review those costs annually and to modify its rates as needed. (See Agreement, Secs. 4.4 and 5.4) The agreement also provides that the cost of future capital improvements to the City's water treatment and distribution system or to its sewage collection system which are necessary to serve the Route 177 Corridor will be the primary responsibility of the County and the MCPSA, but those costs also may be shared by the parties on a negotiated basis. (See Agreement, Secs. 4.5 and 5.5.)

⁴⁶The Commission notes that the City of Radford's water and wastewater utility services are operated as enterprise funds which are designed to be self-supporting operations. In the past the City has transferred monies from those funds to support general governmental or other special municipal services. In addition, in FY1990-91 approximately \$107,000 was transferred from City's water and wastewater funds to the general fund as an annual payment in lieu of taxes. (Comprehensive Annual Financial Report for the Fiscal Year Ending June 30, 1991, Schedule 14.)

unused reserve of approximately 4.5 MGD.⁴⁷ Thus, if the MCPSA purchases from the City the full amount of potable water permitted under the terms of the agreement (0.40 MGD), Radford's system will have sufficient capacity to meet future needs. In addition, the City's water lines and storage capacity are sufficient to provide appropriate pressure and fire flow in the corridor area.⁴⁸

With respect to sewerage, the additional volume of wastewater that the City will receive from MCPSA connections in the Route 177 Corridor will not be counted against Radford's treatment allocation in the Pepper's Ferry regional treatment facility.⁴⁹ Further, Radford's collection system, which is already connected to MCPSA lines serving the Route 177 Corridor as a result of a previous agreement, has sufficient capacity to transport the initial 0.07 MGD of wastewater from that area as called for in the proposed agreement. Radford officials have acknowledged, however, that the City's sewer interceptor serving the corridor area will require upgrading in the future in order to accept the additional increases in effluent from that area as specified in the

⁴⁷Asbury, communication with staff of Commission on Local Government, Nov. 3, 1992. The amount of water currently distributed by the City's system also includes purchases by the Pulaski County Public Service Authority.

⁴⁸Ibid., Nov. 11, 1992. The City has a 5.25 million gallons of storage capability, including 400,000 gallon water storage tank located in the vicinity of the proposed connection between the City's distribution system and the planned MCPSA water line which initially will serve the Route 177 Corridor. During the 1994-1998 period the MCPSA plans to construct a 400,000 gallon water storage tank to provide additional fire flow to that area.

⁴⁹See Agreement, Sec. 5.6. The Pepper's Ferry regional treatment plant, which is located in Pulaski County, has a capacity of 9.0 MGD and an average daily flow of 4.5 MGD. (Charles Maus, Director, Pepper's Ferry Regional Wastewater Treatment Authority, communication with staff of Commission on Local Government, Nov. 16, 1992.) The members of the Pepper's Ferry Authority are the City of Radford, Montgomery and Pulaski Counties, and the Town of Pulaski and Dublin.

agreement.⁵⁰ The proposed agreement calls for the County or the MCPSA to be responsible for any costs associated with increasing the capacity of the City's interceptor system to accommodate the additional wastewater flows from the corridor area.⁵¹ Thus, the City's sewage transportation obligations in the proposed interlocal settlement should not impose upon Radford any major operational or fiscal concern.

Immunity Provisions

The third major component of the proposed agreement requires the City of Radford to renounce, in perpetuity, its authority to pursue the annexation of any part of the Route 177 Corridor (i. e., the proposed immunity area). The City has pledged, specifically, to refrain from initiating any annexation actions involving property within that area and from encouraging or soliciting petitions from voter or landowners seeking to have property within the area annexed to Radford. Further, the accord also provides that the City will "oppose" and reject any

⁵⁰Asbury, testimony before the Commission on Local Government, Nov. 11, 1992. The City is obligated to receive an additional 0.16 MGD of wastewater from the area on January 1, 1994, and an additional 0.02 MGD on January 1, 2005. Under the terms of the proposed agreement the total volume of wastewater the City will be required to transport through its lines to the regional treatment plant is 0.25 MGD. (See Agreement, Sec. 5.1.) Engineering studies conducted for the City prior to the signing of the 1989 agreement with the County and the MCPSA revealed that the portion of the City's sewer interceptor system which would be used to serve the Route 177 Corridor had sufficient excess capacity to accommodate the 0.07 MGD of wastewater from the corridor called for in that agreement. That study also found, however, that certain portions of Radford's sewage interceptor system would have to be enlarged as the wastewater flows through that system increased in the future. (William W. King, Project Manager, Olver, Incorporated, letter to Asbury, Sep. 12, 1988 filed as Exhibit C to the proposed agreement.)

⁵¹See Agreement, Sec. 5.5. The proposed settlement also specifies that any improvements to the City's interceptor system to accommodate additional wastewater from the proposed immunity area shall be sufficient to handle the projected 0.25 MGD of wastewater allocated to the MCPSA in the agreement.

annexation petitions which may be filed by other parties.⁵² A representative of the City has advised that this provision should be construed to mean that Radford is committed to rejecting a voter or property owner petition pursuant to its statutory authority.⁵³ Under the terms of the proposed agreement, these provisions are binding not only on future governing bodies of the City of Radford but also on any successor entity to the City.⁵⁴

This provision of the proposed agreement, which bars permanently any future annexations by Radford within the Route 177 Corridor, must be viewed in the context of two existing interlocal settlements currently in force between the City and its adjoining counties. In this regard, the Commission notes that the 1978 Radford - Pulaski County Tax Sharing Agreement gives permanent immunity to the Fairlawn portion of that County.⁵⁵ Since Radford's only direct physical link to Pulaski County is provided by the U. S. Route 11 bridge across the New River through Fairlawn, that agreement essentially eliminates (under current conditions) the City's boundary expansion opportunities along its

⁵²See Agreement, Sec. 2.

⁵³Polly Corn, Member, Radford City Council, testimony before the Commission on Local Government, Nov. 11, 1992. Section 15.1-1034(B), Code of Va. authorizes municipal governing bodies to adopt an ordinance rejecting voter or property owner petitions for annexation.

⁵⁴See Agreement, Sec. 11.2.

⁵⁵In return for its agreement not to seek the annexation of the Fairlawn portion of Pulaski County, the City annually receives from the County a payment equal to 28% of the local option sales taxes generated by the commercial operations located in that area. (John L. Knapp and Philip J. Grossman, Virginia Issues: Tax Sharing Among Localities (Charlottesville: Tayloe Murphy Institute, University of Virginia, Oct. 1980.) The Fairlawn area, which is adjacent to a portion of the City's western boundary, contains approximately 300 acres and is an important commercial center in Pulaski County. The Commission notes that in FY1990-91 the City of Radford received approximately \$87,000 in revenue sharing payments from Pulaski County. (Comprehensive Annual Financial Report for the Fiscal Year Ending June 30, 1991, Schedule 14.)

boundary with Pulaski County.⁵⁶ Similarly, Radford's annexation authority with respect to Montgomery County is also constrained at the present time as a result of its 1986 interlocal agreement with that jurisdiction. In that agreement, the City renounced its authority to pursue the annexation of any territory within Montgomery County until July 1, 2001.⁵⁷ Thus, these two interlocal agreements essentially bar any annexation by Radford into the next century.

With respect to the prospect for growth within Radford's current boundaries, previously cited data reveal that there are approximately 1,051 acres of land (17.1% of the City's total land area) within the municipality that are vacant and undeveloped.⁵⁸ Of that land, however, the City has identified only 125 acres of property which are zoned for commercial or industrial uses and unfettered in their development potential by the presence of steep slopes, location in the floodplain, limited accessibility, the absence of public utilities, or by their incompatibility with adjacent land uses.⁵⁹

⁵⁶While the Commission recognizes that the New River is not an absolute barrier restricting commerce, public service relationship, and social interactions, its presence does impede Radford's growth to the west.

⁵⁷Commission on Local Government, Report on the City of Radford - County of Montgomery Settlement Agreement, June 1986. The agreement, which was effective on July 1, 1986, granted the City an annexation of approximately 1.5 square miles of territory in Montgomery County.

⁵⁸Spiers, letter to staff of Commission on Local Government, Oct. 20, 1992. The City's analysis of its land use does not include the 1.5 square miles of territory annexed from Montgomery County in 1986. While most of that land is vacant and undeveloped, it has limited development potential due to steep slopes and access to transportation thoroughfares. (Ridpath, communication with staff of Commission on Local Government, Oct. 29, 1992.)

⁵⁹Spiers, letter to staff of Commission on Local Government, Oct. 20, 1992. In its analysis of vacant land, the City excluded any properties where the slope gradient was greater than 10%. While this Commission recognizes that the presence of steep slopes is not an absolute barrier to development in the western portion of the State, it is an impediment which renders vacant property less attractive to potential developers.

With respect to Radford's prospects for industrial development, the data reveal that the City has approximately 36 acres of vacant property located in three tracts within its boundaries which are zoned for industrial purposes, free from major environmental constraints, and readily available for development.⁶⁰ The attractiveness of these sites, however, has not been sufficient to provide the City with any notable development in recent years. The data indicate that between 1987 and 1991 the City issued only one building permit for the construction of an industrial facility, with that project valued at approximately \$100,000.⁶¹ During the same period of time, Montgomery County issued eight permits for the construction of industrial properties valued collectively at more than \$7.7 million.⁶² Further, while both Radford and Montgomery County experienced a decrease in manufacturing employment between 1986 and 1990, the decline in the City

⁶⁰Ibid. One of those sites is a 20-acre parcel within the City-owned Interstate Industrial Center. That park, which has attracted three new businesses to the City in recent years, is the primary area for future industrial growth by virtue of its location adjacent to an interstate highway interchange at the southwestern boundary of Radford. The businesses currently located within the City's industrial park collectively employ approximately 150 full-time and 250 seasonal employees. The City has an option to purchase an additional 12 acres adjacent to the Interstate Industrial Center if needed for future expansion. (Asbury, presentation to Commission on Local Government, Nov. 10, 1992.) Radford also owns a 45-acre industrial park in the southern portion of the City along its border with Montgomery County, but that facility cannot accommodate additional tenants.

⁶¹Michael A. Spar, Housing Units Authorized in Virginia's Counties and Cities, Annual Reports for 1987-1991 (Charlottesville: Center for Public Service, University of Virginia), Table 4. Statistics for the City and County were taken from the Bureau of the Census' annual survey of nonresidential building permits issued, and cost data represents a builder-supplied estimate which normally excludes land acquisition costs and profit margin. (Ibid., p. 1; and Spar, communication with staff of Commission on Local Government, Dec. 7, 1992.) Information for Montgomery County includes building permits for construction within the Towns of Blacksburg and Christiansburg.

⁶²Housing Units Authorized in Virginia's Counties and Cities, Annual Reports for 1987-1991, Table 4.

(5.7%) was somewhat greater than that in the County (0.8%).⁶³ Thus, it appears to us, that the sites and facilities in Radford have not been sufficiently attractive to protect the City's industrial base.

In terms of commercial development, the evidence reveals that the City retains approximately 89 acres of vacant property (in six separate tracts) which are zoned for commercial use and which are free of major environmental and other development constraints. The predominant portion of this property (85 acres) is situated adjacent to the Route 177 Corridor.⁶⁴ Again, data concerning commercial activity in the City indicate that Radford has not witnessed growth in recent years commensurate with that experienced by Montgomery County. Between 1980 and 1990 taxable retail sales in the City increased by 72.3%, a rate approximately one-half that experienced by commercial enterprises in the County (134.6%).⁶⁵ Further between 1987 and 1991, the City issued 17 building permits for the construction of commercial properties valued collectively at \$2.0 million, while during the same period the County issued 144 permits for the construction of such properties valued at \$39.0 million.⁶⁶ In sum, although Radford does possess an inventory of vacant sites within its corporate limits which are suitable for industrial and commercial development, the evidence indicates that the City's economic development has languished in relation to that of Montgomery County.

⁶³Virginia Employment Commission, "Covered Employment and Wages, Average Annual Employment."

⁶⁴Spiers, letter to staff of Commission on Local Government, Oct. 20, 1992. The two largest vacant commercial properties located within the City's portion of the Route 177 Corridor contain approximately 50 acres and 20 acres, respectively.

⁶⁵Taxable Sales in Virginia Counties and Cities, Annual Report, 1980 and 1990.

⁶⁶Housing Units Authorized in Virginia's Counties and Cities, Annual Reports for 1987-1991, Table 4. Statistics for commercial building permits include those issued for office, bank, and professional buildings as well as those for stores and mercantile buildings. See also footnote 61, infra.

Immediately related to the issue of the future fiscal viability of Radford are the announced plans of the Radford Community Hospital (RCH) to relocate its facilities from its present site in the City to the area proposed for immunity. The hospital recently purchased a 160-acre tract of land located on the west side of State Route 177 approximately one mile from the interstate highway interchange. The RCH proposes to construct a facility on that site which will include an acute care hospital and approximately 50,000 square feet of medical office space between late 1993 and 1998.⁶⁷ According to estimates by hospital officials, the new facility will have approximately 600 full-time employees, with an additional 150 persons working at the adjacent medical office complex.⁶⁸

With respect to this issue, we note that the Radford Community Hospital is a non-profit institution and that a significant portion of its operations are tax exempt. Thus, the relocation of the hospital facility itself from Radford will not have a major direct impact on the tax receipts of that jurisdiction.⁶⁹ There will be, however, indirect fiscal impacts on the City associated with a reduction in its service sector and as a consequence of the number of physicians who move their offices from within Radford to the new facility.⁷⁰ Since the RCH is

⁶⁷Lamb, letter to Asbury, Oct. 15, 1992. The Commission acknowledges that a number of factors, some of which are not subject to control by RCH, will influence the hospital's construction plans. One of those include the installation of the planned MCPSA water line along State Route 177.

⁶⁸Ibid. The hospital projects that between 35 and 40 physicians currently located in the City would move to the new facility.

⁶⁹Two of the hospital's facilities presently in the City, the Community Pharmacy and the Community Medical Center, are subject to local taxation, and the hospital estimates that it paid approximately \$13,000 in real estate and personal property taxes to the City in 1992. (Ibid.) In addition, the City receives a portion of the sales taxes generated by both facilities.

⁷⁰The City estimates that it could lose approximately \$48,500 in business license and personal property tax receipts if one-half of the physicians with offices in the City relocate to the hospital's new site.

studying the feasibility of converting its existing medical complex in Radford to a senior citizens' facility after the new hospital is opened, the negative fiscal impact of the proposed relocation could be reduced to some degree.

Again, the proposed agreement currently under review would totally bar in perpetuity the authority of the City of Radford to annex property in the Route 177 Corridor. That corridor possesses the most significant potential for development of any property in the Radford area. In terms of the City's prospective annexation opportunities in Montgomery County, following the immunization of the Route 177 Corridor, approximately 90% of the City's joint boundary with the County would be left open for expansion. The overwhelming portion of that territory, however, is restricted in its development potential by environmental concerns (e.g., slope gradients, floodplain areas, etc.), access to transportation corridors, the cost of utility extension, and the historical growth patterns of the area. Excluding property in the Route 177 Corridor, the areas which offer Radford the best opportunity to share in the growth of its region through annexation are those (1) south of Interstate Highway 81 adjacent to interchange 105 and (2) east of the City along U. S. Highway 11. While the area south of the interstate highway has direct access to that major thoroughfare, the presence of steep slopes on most of that property and the absence of public utilities limits its development potential.⁷¹ With respect to the area east of Radford, although portions of that property are served by public water and sewerage, the land immediately adjacent to U. S. Highway 11 is characterized by steep slopes which can be expected to restrict future

(Spiers, letter to staff of Commission on Local Government, Oct. 20, 1992.)

⁷¹Located in close proximity to the northern right-of-way of interchange 105 is the City's industrial park, which is served by municipal water and sewer lines.

development.⁷² Regarding that area, the County's current comprehensive plan notes:

There is the potential for small industry and commercial development to locate in the designated Plum Creek Expansion Area [i. e., the U. S. Highway 11 corridor] although existing uses and floodplains limit the amount of available land. The gradual upgrading of the area may see existing parcels combined and structures demolished and replaced.⁷³

While the Commission acknowledges the difficulty of predicting the scope and nature of the development which will occur in the future in the various areas adjacent to the City, it is our judgment that the proposed immunization of the Route 177 Corridor would leave the City of Radford with extremely reduced prospects for sharing in the economic growth of its region through annexation. Since the State has statutorily expressed its concern with substantially foreclosing the annexation opportunity of cities less than 100,000 persons in population, this issue merits careful consideration in the context of the proposed agreement.⁷⁴

Planning and Growth Management Provisions

Another component of the proposed agreement with major implications for Radford is the set of provisions which call for the City and County to collaborate on the planning and regulation of development in a sector encompassing portions of the two jurisdictions identified in the

⁷²The Plum Creek portion of the U. S. Highway 11 corridor is served by MCPSA water and sewer lines that are interconnected with the City's utility system. (Comprehensive Plan, 1990, p. 46.)

⁷³Ibid, p. 48.

⁷⁴See Sec. 15.1-977.22:1, Code of Va.

settlement as the "VA. 177/Tyler Avenue Corridor Area."⁷⁵ That area, whose boundaries in the County are not coterminous with the area proposed for immunity, is defined primarily by the upper Connelly's Run watershed and encompasses more than 2,780 acres (4.2 square miles).⁷⁶ In June 1992 the City and County, with the assistance of the New River Valley Planning District Commission, completed a joint plan for the VA. 177/Tyler Avenue Corridor Area which was based on an analysis of current land use and environmental conditions in the area. The plan proposed standards for the area's future development and recommendations for their implementation.

In the proposed settlement the City and the County have agreed to incorporate the elements of the VA. 177/Tyler Avenue Corridor planning study in their respective comprehensive plans and to make appropriate changes to their land development control ordinances in order to implement its provisions. While the proposed agreement does not restrict the authority of the City and County to amend and enforce their respective zoning and other land use control instruments, the agreement does provide that any future comprehensive plan amendments affecting the VA. 177/Tyler Avenue Corridor Area will require approval of both jurisdictions.⁷⁷ Further, the agreement calls for the City and County planning commissions to consult with each other on land use decisions relative to the VA. 177/Tyler Avenue Corridor Area.⁷⁸

⁷⁵See Agreement, Sec. 6.

⁷⁶Corridor Study, p. xii. A significant portion of the area proposed for immunity, however, is within the VA. 177/Tyler Avenue Corridor Area. Approximately 500 acres of the VA. 177/Tyler Avenue Corridor Area are located within the boundaries of the City of Radford.

⁷⁷See Agreement, Sec. 6.3(a). In addition, provisions in the proposed agreement give the City and the County legal standing in the circuit court of the other's jurisdiction to seek enforcement and compliance with the provisions of their respective comprehensive plans as they relate to the VA. 177/Tyler Avenue Corridor Area.

⁷⁸See Agreement, Sec. 6.4. The agreement also provides that the Site Review Committee of the City's planning commission and the Development Committee of the County's planning commission will review

The joint planning and land use regulatory provisions of the proposed agreement will enable the City to influence the scope and nature of the development that will occur in the specified corridor. That corridor is the principal entrance to Radford from the east, and the quality of development in that approach to the City will have significant implications for the municipality. The planning provisions will be especially important to Radford in terms of the control of signage, the restricting of access to State Route 177, the protection of the corridor's natural features, and the management of stormwater.⁷⁹ The joint commitment by the City and County to collaborate in addressing the development concerns of the Route 177 Corridor are, to our knowledge, without precedent in the Commonwealth and will be of increasing benefit to the City as the corridor develops.

IMPACT OF THE AGREEMENT ON THE COUNTY OF MONTGOMERY

Immunity and Revenue Sharing Provisions

As noted previously, the proposed agreement calls for the City to renounce permanently its authority to initiate annexation actions with respect to all property within the Route 177 Corridor.⁸⁰ While this

jointly all requests for rezonings, special use permits, variances and appeals thereto, as well as all site plans for proposed development, within the VA. 177/Tyler Avenue Corridor Area. Further, recognizing that conditions may change in the future, the proposed agreement permits that ad hoc joint committee to initiate comprehensive plan amendments and zoning ordinance text and map amendments within their respective jurisdictions.

⁷⁹The Commission notes that the drainage area of the Connelly's Run waterway, which comprises approximately 75% of the VA 177/Tyler Avenue Corridor area, flows into a section of the City that presently is subject to flooding.

⁸⁰The proposed agreement also calls for the City to refrain from encouraging or soliciting citizen-initiated annexations and to oppose any annexation petitions filed by voters or property owners in the area proposed for immunity if such are subsequently granted by any court. (See Agreement, Sec. 2.1.)

proposed immunity area encompasses only 6.2 square miles, and currently contains only 250 persons and \$19.4 million in total assessed property values (based on FY1991-92 assessment data), it has significant potential for future growth due to its access to a major interstate highway, existing and planned water and sewerage lines, and a general absence of environmental constraints. Thus, the immunity provision in the proposed agreement is an element of fundamental importance to Montgomery County.

In return for Radford's commitment not to annex property within the designated area, the proposed agreement calls for the County to pay the City annually 27.5% of its property, local option sales, and, if subsequently adopted by the County, business and professional license tax collections from within that area. The County's obligation to share its local tax collections from within the area with the City, however, will be implemented incrementally. The revenue sharing arrangement will begin on January 1, 1993, if the agreement is in effect by that date, but will not apply to collections from within the entire corridor area until the year 2005.

Projections indicate that the fiscal impact of the proposed revenue sharing plan on Montgomery County will be extremely modest. By 1997, according to the City's projections, the plan will generate only \$31,771 in revenue for Radford.⁸¹ The projected payment to the City in 1997

⁸¹Spiers, letter to staff of Commission on Local Government, Oct. 20, 1992. The City's projection is based on data provided by the County concerning 1992 estimated local tax revenues from the area proposed for immunity. The 1997 estimates include revenues from both Phase I and II of the proposed immunity area, and assumes a 2.5% annual increase in those revenues for the period 1995 through 1997. Although Montgomery County provided documents to this Commission which projected the fiscal impact of the proposed revenue sharing plan, the County's calculations did not include the incremental implementation of that plan as called for in the proposed agreement. Further, the County's projections used two separate rates of growth for total revenues from the area proposed for immunity and its anticipated share of those revenues after the annual tax sharing payment to the City. (J. Jeffery Lunsford, Director of Fiscal Management, County of Montgomery, communication with staff of

would represent only 0.1% of the County's total local-source revenues for FY1990-91.⁸² While these projections are subject to change with future events and circumstances, they clearly do not suggest that the proposed revenue sharing plan will place any extraordinary fiscal burden on the County.

Urban Service Responsibilities

Since the proposed agreement will bar future City annexation of property within the Route 177 Corridor and will insure that the area proposed for annexation will remain part of Montgomery County in perpetuity, it places upon the County the responsibility for meeting the future urban service needs of that area. While predominantly vacant or in agricultural use at the current time, the area proposed for immunity does contain a number of residential concentrations, several commercial establishments, and a County elementary school. Moreover, County planning studies call for development to occur in the Route 177 Corridor in the coming years, as public utility services become generally available. Thus, the evidence indicates that the area proposed for immunity will experience future development and will increasingly need urban services.

Utilities. With respect to public water service, previous sections of this report have noted that the proposed agreement calls for the City to sell to the MCPSA increasing volumes of potable water for distribution in the area proposed for immunity. In order to serve that area, the Authority plans to construct in the near future a water distribution line along State Route 177 from the current City limits to

Commission on Local Government, Oct. 30, 1992.) That methodology resulted in a decline in the City's anticipated revenue sharing payments during the period 1998-2005.

⁸²County of Montgomery, Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 1991, Schedule 1. For the 1990-91 fiscal period Montgomery County's total local source revenues were \$25.0 million.

the Interstate Highway 81 interchange.⁸³ The MCPSA proposes to finance the majority of the cost for the construction of the water line through developer and property-owner contributions and does not anticipate the need to seek additional funds from the County nor to issue revenue bonds for the project.⁸⁴ The commitment in the proposed agreement which enables the MCPSA to make bulk water purchases from the City, as well as the Authority's plans to install water mains and other appurtenances in the area proposed for immunity, are feasible and should give the County and the MCPSA the ability to meet the area's need for central water service as it develops.

In terms of sewerage, the MCPSA presently owns a gravity sewer line which extends along State Route 177 from the City boundaries to Interstate Highway 81 and which serves approximately nine residential and commercial connections at the interstate intersection.⁸⁵ Under the terms of a 1989 agreement between Radford, the County, and the MCPSA, the City has previously agreed to accept and transport up to 0.07 MGD of

⁸³According to County officials, the capacity of the proposed water line is sufficient to serve the anticipated growth in the area proposed for immunity. (Gibson, testimony before the Commission on Local Government, Nov. 11, 1992.) Upon completion of the new distribution line, the MCPSA proposes to connect its existing water lines located in the southern portion of the area proposed for immunity to the new water main and abandon the wells which now serve as the raw water source for the current system. In addition, the MCPSA has plans to construct a 400,000 gallon water storage tank in the Route 177 Corridor during the 1995-1998 period to improve fire flow to the new Radford Community Hospital.

⁸⁴Gibson, communication with staff of Commission on Local Government, Nov. 9, 1992. The increased availability of potable water in the proposed immunity area also may induce the State to contribute funds for the construction of the MCPSA water main in order to connect VDOT's rest areas to a public water system.

⁸⁵The majority of the costs for the MCPSA sewer lines were borne by property owners and the State, and no County funds or proceeds from bonded indebtedness were involved in the construction of those facilities. (Gibson, communication with staff of Commission on Local Government, Nov. 9, 1992.)

wastewater from the Route 177 Corridor to the Pepper's Ferry regional wastewater treatment plant.

The agreement currently under review by this Commission will supersede that earlier contractual arrangement and will obligate the City to accept and transport to the regional facility escalating amounts of wastewater emanating from the proposed immunity area. When Radford's sewer utility commitments to the MCPSA under the proposed agreement reach maturity in the year 2005, the Authority will be able to send 0.25 MGD of wastewater through City interceptor lines to the regional treatment plant.⁸⁶ Since Montgomery County is presently utilizing only 0.05 MGD of its allocated treatment capacity at the Pepper's Ferry facility (0.32 MGD), the County has sufficient capacity to meet the sewage treatment needs of the area proposed for immunity.⁸⁷ Thus, the proposed agreement with the City, coupled with the County's existing reserve capacity at the regional treatment facility, should enable Montgomery County to meet the sewerage needs of the Route 177 Corridor for the foreseeable future.

⁸⁶As noted earlier, both City and County officials have acknowledged that a portion of the City's sewer interceptor system does not have sufficient capacity to transport the ultimate total of 0.25 MGD of wastewater allocated to the MCPSA in the proposed agreement. Further provisions in that agreement state that at such time as the City is required to make improvements to its sewer lines to accommodate the increasing volumes of wastewater from MCPSA connections in the area proposed for immunity, the costs for such improvements are the responsibility of the County and the MCPSA. (See Agreement, Sec. 5.5.)

⁸⁷Gibson, communication with staff of Commission on Local Government, Nov. 9, 1992; and Maus, communication with staff of Commission on Local Government, Nov. 16, 1992. The County recently increased its allocation in the regional facility from 0.073 MGD to 0.32 MGD. In addition to the 1989 agreement concerning State Route 177 sewerage, the MCPSA and the County also have a contract with the City to accept and transport wastewater from the Plum Creek area east of Radford to the regional treatment plant. According to MCPSA officials, approximately 50% of the wastewater which is currently carried by City interceptors to the Pepper's Ferry plant comes from the State Route 177 sewage collection system.

Other Urban Services. With regard to solid waste, the Commission notes that while Montgomery County does not presently provide door-to-door residential solid waste collection services, small business firms can contract with the County for waste collection and disposal services.⁸⁸ Residents and businesses also can dispose of their wastes directly at the County landfill.⁸⁹ In addition, the County does offer a bulk container service, with "green boxes" being located throughout its territory for solid waste disposal.⁹⁰ Moreover, County residents and businesses, including those in the area proposed for immunity, also have the option of contracting directly with private entities for collection services, with the cost of such services being determined by the frequency of collection. Although the additional volume of refuse which will be generated by future development in the Route 177 Corridor is expected to be significant, Montgomery County has, in our judgment, the capacity to respond adequately to the solid waste disposal needs of that area.

Law enforcement services in the area proposed for immunity and the County generally are provided through the County Sheriff's Department. The personnel complement of the Sheriff's Department consists of 29 full-time sworn law enforcement officers, 20 of whom are assigned

⁸⁸Randall Bowling, Director of Public Facilities and County Engineer, County of Montgomery, communication with staff of Commission on Local Government, Nov. 2, 1992. Two of the County's commercial accounts are located within the area proposed for immunity.

⁸⁹The Mid-County Landfill is located east of U. S. Highway 460 between the Towns of Christiansburg and Blacksburg. The County estimates that this landfill will reach its capacity within the next seven years. (Thorpe, letter to staff of the Commission on Local Government, Nov. 19, 1992.) The County is currently researching alternative means of solid waste disposal and evaluating several tracts of land as future landfill sites.

⁹⁰Bowling, communication with staff of Commission on Local Government, Nov. 2, 1992. Six bulk containers for general use by County residents are located in the area proposed for immunity.

regular patrol responsibility.⁹¹ For purposes of patrol activity, the County is divided into four patrol districts, each approximately 100 square miles in area, with the boundaries of the patrol areas radiating from the Montgomery County Sheriff's Department offices in Christiansburg. Patrol service in the County is provided on a 24-hour basis by three shifts, with an average of four patrol deputies and a supervisory sergeant on duty during each shift. Although the Commission is unaware of any current major crime problems in the Route 177 Corridor, the anticipated growth of that area can be expected to result in a need for intensified law enforcement services in the years ahead.

In terms of fire protection services, the Route 177 Corridor is located within the first-run coverage sector of the Christiansburg Fire Department (CFD), which is approximately eight miles east of the Route 177 Corridor.⁹² The CFD utilizes in its operations equipment owned by both Montgomery County and Christiansburg. The apparatus which it utilizes initially in each fire run is determined by the site of the call for service.⁹³ If back-up assistance is needed in any instance, the equipment owned by the other jurisdiction is utilized.⁹⁴ Due to

⁹¹D. L. Haga, Chief Deputy, Montgomery County Sheriff Department, communication with staff of Commission on Local Government, Nov. 18, 1992. In addition, the Department has seven investigators. The County's law enforcement efforts are aided by officers employed by the Towns of Christiansburg and Blacksburg and the VPI&SU Police Department.

⁹²The CFD has a personnel complement of 1 full-time and 29 volunteer firefighters.

⁹³Four pieces of County-owned firefighting apparatus are housed at the CFD station and are operated by the Department when answering fire calls outside Christiansburg's corporate limits, including the Route 177 Corridor. The County-owned equipment includes three pumpers and a water tank truck, which will accompany the pumpers to areas in the County without central water service. (Thorpe, letter to staff of Commission on Local Government, Nov. 19, 1992; and John E. Lemley, Town Manager, Town of Christiansburg, communication with staff of Commission on Local Government, Nov. 23, 1992.)

⁹⁴The Town of Christiansburg owns four pieces of firefighting apparatus, including a 100-foot aerial platform, which is available to respond to fire calls from other jurisdictions if needed. (Lemley,

the distances involved, the average time required for placing a single piece of equipment at the site of a call from within the Route 177 Corridor is approximately 10 minutes, with additional equipment necessitating a significantly greater response time.⁹⁵ Fire protection services within the southern portion of the corridor area are enhanced by the presence of a central water system owned by the MCPSA.⁹⁶ Although that system presently has insufficient capacity to provide adequate fire flow for the future development anticipated in that area, the MCPSA plans to connect its existing distribution system to City water lines and to make other improvements which will significantly increase fire suppression capabilities available in the Route 177 Corridor.⁹⁷

communication with staff of Commission on Local Government, Nov. 23, 1992.)

⁹⁵James W. Epperly, Fire Chief, Christiansburg Fire Department, communication with staff of Commission on Local Government, Nov. 30, 1992. The CFD responds initially to fire calls from its service area, including the Route 177 Corridor, with one pumper, but response by other pieces of fire suppression apparatus would require approximately 20 minutes. (*Ibid.*) County officials have acknowledged that Radford's Fire Department occasionally will respond initially to fire calls from areas adjacent to the City, including the Route 177 Corridor, until equipment from the CFD arrives on scene. There is, however, no formal agreement which extends the City's fire suppression services to adjacent County areas. (Thorpe, letter to staff of Commission on Local Government, Nov. 19, 1992.) The City's Fire Department has a personnel complement of 8 full-time and 35 volunteer firefighters. The Radford Fire Department maintains five pieces of firefighting apparatus, including a 95-foot aerial platform. The City does not own, however, a water tank truck.

⁹⁶The existing MCPSA water distribution system consists of 6-inch water lines and a 100,000 gallon storage tank which serves the area adjacent to the State Route 177/Interstate Highway 81 interchange. There are, however, only two fire hydrants connected to that system. (Gibson, communication with staff of Commission on Local Government, Nov. 23, 1992.)

⁹⁷The MCPSA plans to connect its existing water distribution system with the City's by installing a 12-inch water line along State Route 177 following the effective date of the proposed agreement. In addition, the MCPSA proposes to install additional fire hydrants to serve the Route 177 Corridor. Further plans call for the construction of a new

In terms of solid waste collection and disposal and public safety services, the prospective development of the Route 177 Corridor will place a significantly greater burden on Montgomery County. This increased service responsibility must be recognized and addressed vigorously by the County.

Planning and Growth Management Provisions

Another element of the proposed agreement which will have a significant impact on Montgomery County is the set of provisions which commits the County and Radford to a coordinated and cooperative planning and land use regulatory program for managing future growth in the VA. 177/Tyler Avenue Corridor Area.⁹⁸ This cooperative planning and regulatory effort, which was initiated prior to submission of the proposed agreement to this Commission for review, calls for the adoption by both jurisdictions of amendments to their comprehensive plans which are consistent with the "VA. 177/Tyler Avenue Corridor Study, July 1992." Further, under the terms of the proposed agreement all future land use changes proposed for the VA. 177/Tyler Avenue Corridor Area will be subject to joint review by the City and County planning commissions.

The joint planning efforts of the City of Radford and Montgomery County will be of increasing benefit to the County in the future by protecting the VA. 177/Tyler Avenue Corridor Area from uncoordinated

water storage tank in the area proposed for immunity to provide sufficient fire flow for the new hospital. Those improvements, however, are not expected to be completed until approximately five years following the effective date of the proposed agreement. (Ibid.)

⁹⁸The boundaries of the VA. 177/Tyler Avenue Corridor Area, which were defined primarily to address stormwater management concerns in the County and the City, encompass approximately 500 acres of territory located within Radford. (Corridor Study, p. xii.) The boundaries of area proposed for immunity, which were drawn to address water and sewerage service areas, embrace County property both within and without the Va. 177/Tyler Avenue Corridor Area.

development. To the extent that the cooperative planning and management of the area leads to rational and aesthetically pleasing development, it will foster community pride and the prosperity of both jurisdictions. As indicated previously, the efforts by the County and the City to plan in a collaborative manner for managing future development of the corridor area are unique in the Commonwealth and may serve as a model for avoiding the tawdriness and strip development which surrounds the outskirts of many of the State's municipalities.

FINDINGS AND RECOMMENDATIONS

In the preceding sections of this report the Commission has reviewed a proposed agreement which has been negotiated by the City of Radford and Montgomery County relative to the Route 177 Corridor and the adjacent joint planning area and has considered the ramifications of that agreement for the two jurisdictions. The proposed agreement constitutes a notable effort by the two localities to collaborate in the extension of utility services in the Route 177 Corridor and in the planning and regulation of development in that general area. Those general purposes of the proposed agreement are significant and merit our support and endorsement. There are, however, other aspects of the agreement which necessitate, from our perspective, further comment.

EMERGENCY SERVICES

The proposed agreement commits the City of Radford to the provision of significant utility services for the Route 177 Corridor and will facilitate substantial development in the western section of Montgomery County. It is currently contemplated that the development in the Route 177 Corridor will include a major hospital, ancillary medical facilities, and significant residential concentrations. As that portion of Montgomery County develops, there will be an increasing need for emergency services beyond the present capacity of the County. Accordingly, the Commission recommends that the County endeavor to negotiate a formal arrangement with the City of Radford whereby the

Route 177 Corridor can be assured of the availability of the fire suppression capabilities of that adjacent municipality. The proximity of the City to the contemplated development would appear to make it the optimal choice for the provision of such services to the area in question. Similarly, we recommend that the County negotiate an arrangement with Radford for the purpose of coordinating their emergency response systems relative to Route 177 Corridor area.⁹⁹

REVENUE SHARING PROVISIONS

Section 3 of the proposed agreement calls for Montgomery County to share with the City of Radford, subject to certain prescribed dates and conditions, 27.5% of its annual collections within the Route 177 Corridor from real estate taxes, personal property taxes, business and professional licenses (when and if such are subsequently imposed by the County), and the local option sales tax. The City has estimated that by 1997 the revenue sharing provisions of the proposed agreement will provide Radford with approximately \$32,000 in additional resources. The City's projected receipts for that year would constitute only 0.36% of the total local-source revenue actually collected by Radford during fiscal year 1990-91.

The precise revenues which the City of Radford will receive from the Route 177 Corridor pursuant to the proposed agreement will be contingent not only upon the nature and intensity of future development in that area, but also upon future tax rates which will be applied by the County to the specified revenue sources. If future conditions in Montgomery County result in higher real estate and personal property tax rates, for instance, the revenue sharing provisions in the agreement will grow in significance to the City. If, on the other hand, future conditions result in a lowering of the County's real estate and personal property tax rates, receipts by the City of Radford from the revenue

⁹⁹Presently both the City and County have enhanced 911 emergency service systems within their respective jurisdictions.

sharing program will be subject to reduction. The latter circumstances could occur if the State of Virginia ultimately authorizes its political subdivisions to establish new revenue-generating instruments, such as a local option income tax. If such a new revenue-generating instrument was subsequently adopted by Montgomery County, it could have the effect of reducing the County's reliance on property taxes. If this occurred, one of the principal beneficial provisions in the proposed agreement for the City of Radford would be diminished in significance. Accordingly, the Commission recommends that Section 3 of the proposed agreement be amended by the parties to provide for a sharing of all local tax revenues collected by Montgomery County from within the Route 177 Corridor. This proposed amendment would have the effect of allowing Montgomery County to adjust its local tax structure in accordance with future options without detriment to the City of Radford.

ALLOCATION OF LOCAL OPTION SALES TAX RECEIPTS

During the course of the Commission's review of the proposed Radford - Montgomery County agreement, an issue was raised by the Towns of Blacksburg and Christiansburg concerning the impact of the settlement on the County's distribution of local option sales tax revenues to those municipalities.¹⁰⁰ Specifically, both Towns noted that Section 3.1 of the proposed agreement, which calls for the County to share with Radford 27.5% of its local sales tax receipts from within the Route 177 Corridor, could be interpreted and implemented in a manner which would reduce the amount of such revenues available for Blacksburg and Christiansburg. Further, the two municipalities requested that the Commission recommend to the City and County that the proposed agreement

¹⁰⁰Roger E. Hedgepeth, Mayor, Town of Blacksburg, letter to Commission on Local Government, Oct. 26, 1992; and Carter Glass, IV, Special Counsel, Town of Christiansburg, letter to staff of Commission on Local Government, Nov. 13, 1992. Under the provisions of Sec. 15.1-945.7(A), Code of Va. the Commission solicited comment on the potential impact of the proposed Radford - Montgomery County agreement from those localities with which the City and the County were contiguous or with which they shared functions, revenues, or tax sources.

be modified so as not to affect future County sales tax distributions to Blacksburg and Christiansburg.

In regard to these concerns, the Commission notes that Section 58.1-605(H) of the Code of Virginia requires a county to distribute to each town within its jurisdiction a proportionate share of one-half of its local option sales tax revenues based on the residence of the county's schoolage population. Both Towns contend, however, that the revenue sharing provisions of the proposed agreement could be construed by the City or the County as requiring the payment to Radford of its share of the sales tax revenues derived from the area proposed for immunity prior to the application of the statutory distribution formula. If such should occur, the amount of the County's local sales tax revenue available for distribution to the Towns would be reduced.

While this Commission proceeds on the assumption that the proposed agreement between Montgomery County and the City of Radford cannot reduce entitlements bestowed by statute on third party jurisdictions, the Towns of Blacksburg and Christiansburg have raised an issue which should be addressed. In terms of the legal issue, the Town of Christiansburg has expressed concern that if the agreement is approved in its present form by the special three-judge court, the judicial decree might be interpreted as overriding the statutorily prescribed distributional formula regarding the local option sales tax to the detriment of the Towns.¹⁰¹ In recognition of this legal concern, we

¹⁰¹The Town of Christiansburg observes that following approval of the proposed agreement by the special three-judge court, Montgomery County could contend that it would have a judicially enforceable obligation to make its sales tax revenue sharing payments to Radford prior to determining the portions of those revenues that the two Towns would receive. (Glass, letter to staff of Commission on Local Government, Nov. 13, 1992.) Such an interpretation would have increased significance if the current statute is changed to provide for towns to receive a higher share of a county's local option sales tax receipts, or if the number of schoolage children in Blacksburg and Christiansburg should increase significantly. In either of those instances, the Towns would be entitled to a much higher share of local sales tax receipts.

recommend that the proposed agreement be amended by the parties to clarify their understanding of the arrangements which will prevail regarding the distribution of the local option sales tax revenue. To that end, the Towns of Blacksburg and Christiansburg have proposed that the following provision be added to Section 3 of the agreement:

Nothing herein shall affect or limit the County's obligation to pay the Towns of Christiansburg and Blacksburg a proportionate share of local sales tax revenues pursuant to Sec. 58.1-605 of the Code of Virginia, or any successor provision.¹⁰²

Such an amendment would lessen the likelihood of future legal controversy regarding the revenue sharing arrangement and would appear to have the general support of the City of Radford.¹⁰³

APPLICATION OF AGREEMENT TO SUCCESSOR ENTITIES

Section 11.2 of the proposed agreement specifies that the instrument will be binding upon "any successor of the city, the county and/or the P.S.A." In our judgment, this provision should be amended so that if the City of Radford at some time in the future reverts to town status (or to another form of government similarly structured as a constituent element of Montgomery County), its authority to annex within the Route 177 Corridor would be restored.

¹⁰²Hedgepeth, letter to Commission on Local Government, Oct. 26, 1992; and Glass, letter to Commission on Local Government, Nov. 13, 1992.

¹⁰³The Commission notes that a representative of Radford has indicated that the City ". . . has no particular objection to inclusion of language [in the agreement] which will make clear the rights of the (T)owns to share in sales tax revenues." (Spiers, letter to staff of Commission on Local Government, Nov. 24, 1992.)

The restrictions imposed by the proposed agreement on the authority of the City of Radford to annex within the Route 177 Corridor was intended to protect Montgomery County from a potential loss of significant property assessables. However, annexations by towns do not remove any property assessables from a county's tax rolls, nor reduce its property tax receipts. Hence, restoration of the authority of Radford to annex subsequent to its reversion to town or other dependent municipal status would not threaten the fiscal integrity of Montgomery County.

Of further relevance to this issue is the fact that considerable legislative interest has been expressed in Virginia in recent years in the establishment of a policy to encourage the Commonwealth's smaller cities to revert to town status and to reintegrate themselves into the governmental fabric of the adjacent county. For example, one recent major legislative proposal, which would have established a permanent bar on annexations by independent cities, would have authorized cities to revert to town or other dependent status and would have facilitated their growth by a simplified annexation process. While future action by the General Assembly on this or similar legislative proposals is uncertain, it appears to us to be eminently wise and in the interest of the Commonwealth for the City of Radford to retain the authority to revert to town status with a restoration of its authority to pursue annexation within the Route 177 Corridor.

The provision in the currently proposed agreement which would bar in perpetuity the authority of the City of Radford to annex within the Route 177 Corridor coupled with the 1978 City of Radford - Pulaski County agreement, totally precludes any growth opportunity for that municipality along the two principal avenues of development in the area. While the two referenced agreements would permit Radford to annex in other areas (following the termination of other currently existing legal constraints), the aggregate impact of those agreements may well constitute a substantial foreclosure of the annexation authority of the City contrary to the State policy implications of Section 15.1-977.22:1

of the Code of Virginia.¹⁰⁴ Given the fact that, according to our calculations, only two of Virginia's 136 counties and cities currently have a weaker revenue base than the City of Radford, the substantial foreclosure of the City's annexation authority is of added significance. If the City of Radford retained the authority to revert to town/dependent status with a restoration of the option of pursuing annexation, it would possess a significant implement for the protection of its future viability.

Accordingly, the Commission recommends that Section 11.2 of the proposed agreement be amended to permit the City of Radford to revert to town (or other dependent status in Montgomery County) with a restoration of its authority to annex within the Route 177 Corridor, pursuant to the statutorily prescribed process. Further, we recommend that Section 11.2 be amended to state that if Radford is able to prosecute successfully an annexation action subsequent to its reversion, the revenue sharing provisions of the agreement shall be terminated. The reversion of the City of Radford to town or other dependent status should not affect nor require any modification in the utility or joint development control procedures which are proposed in the agreement.

CONCLUSION


Again, the Commission on Local Government views the proposed agreement which has been developed by the City of Radford and Montgomery County as a significant collaborative effort with respect to the provision of utilities and the regulation of development in that area. However, the interest of the Commonwealth requires, in our judgment, that Sections 3 and 11.2 of the proposed agreement be modified in accordance with the recommendations made above. Contingent upon the acceptance by the parties of the proposed amendments broadening the

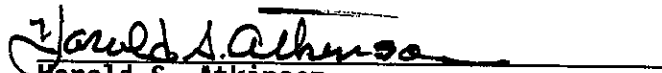
¹⁰⁴The statute states that a grant of immunity to a county shall not result in the substantial foreclosure of the annexation options of a city of less than 100,000 persons.

scope of the revenue sharing arrangement and maintaining the authority of the City to revert to town/dependent status with a full restoration of its annexation option, we find the agreement "in the best interest of the Commonwealth" and recommend approval by the court.

Respectfully submitted,


Mary Sherwood Holt, Chairman


Layton R. Fairchild, Jr., Vice Chairman


Harold S. Atkinson

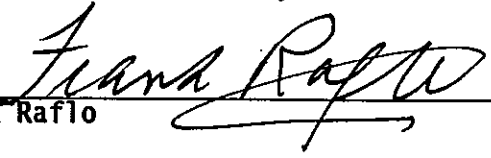
MINORITY STATEMENT BY FRANK RAFLO

One alternative for the continuing fiscal viability of a city may be securing additional land for tax base through annexation. For the City of Radford, the Route 177 Corridor represents the major - although not totally exclusive - land area for the City to expand and increase its tax base. The area in question is now, however, a portion of Montgomery County.

Montgomery County has offered Radford the opportunity to share in growth benefits of the Route 177 Corridor now. This proposal is a positive alternative both for the present and the future. In return for this revenue sharing arrangement, the City would agree to forego any future annexation effort in the corridor. This agreement is a trade-off of present certain benefits against some uncertain future City growth. There are other areas surrounding Radford that might at some future time be the subject of annexations by the City, which on the surface offer little potential revenue growth. This trade-off of certain present versus uncertain future benefits is a cost effective one for the City of Radford and, in my judgment, should be seized.

I feel the interests of the County, the City, and the State are best served by realization of the proposals offered. I am in agreement with all of the Commission's findings and recommendations except the demand that court approval of the settlement be "contingent upon modification of Section 11.2." While I understand that the effect of this recommendation could offer the City some future, although at best uncertain, benefit, I am not willing to have it placed as a possible stumbling block that would unsettle the agreement. In my judgment "the best interest of the Commonwealth" is served by removing the requirement that Section 11.2 be amended prior to approval by the special three-judge court so that the agreement can move forward unimpeded.

Respectfully submitted,


Frank Rafio

APPENDIX A

ROUTE 177 CORRIDOR AGREEMENT
BETWEEN
CITY OF RADFORD, VIRGINIA
MONTGOMERY COUNTY, VIRGINIA
AND
MONTGOMERY COUNTY PUBLIC SERVICE AUTHORITY
DATED AS OF _____, 1992

BACKGROUND

1. The governing bodies of the COUNTY OF MONTGOMERY, VIRGINIA (hereinafter called "the County") and the CITY OF RADFORD, VIRGINIA (hereinafter called "the City") are sensible of a mutual interest in the economic growth and orderly development of an area in Montgomery County adjacent to or adjoining Route 177 (Tyler Avenue) between Interstate Highway 81 and State Route 611 (Rock Road) at or near the southern corporate limits of the City of Radford, Virginia, hereinafter defined as the "Corridor Area".

2. Pursuant to that mutual interest, and also pursuant to the provisions of Chapter 26.1:1 (Sec. 1167.1 and 1167.2) of Title 15.1 of the Code of Virginia, 1950, as amended, the County and the City have undertaken to negotiate a voluntary agreement for the resolution of certain mutual concerns as related to said area, recognizing that such a resolution can be beneficial to the orderly growth and continued viability of the area, the County and the City.

3. The parties have negotiated with respect to land use arrangements, zoning arrangements, certain fiscal arrangements, revenue and economic growth sharing, the joint

exercise or delegation of powers, the modification or waiver of specific annexation or immunity rights (including opposition to petitions filed pursuant to Section 15.1-1034, Code of Virginia, 1950, as amended), the provision of access to a water supply by the City and arrangements for sanitary sewer transportation services or facilities through the City, both to serve the peoples and properties in the geographical area of the County as herein defined, and with respect to other matters and other provisions as the parties have deemed to be in their best interests.

4. As a result of such negotiations, the parties have reached agreement, subject to such approvals as may be required, (if any) by the electorate, the judiciary and/or agencies of the Commonwealth of Virginia.

5. The Montgomery County Public Service Authority (the P.S.A.) joins in this Agreement for the limited purpose of agreeing to and being bound by the terms hereof relating to provision of water and wastewater services to the corridor area as set forth in Section 4 and Section 5 of this Agreement, as well as agreeing to the provisions of Section 7, "Resolution of Disputes" as hereinafter set out.

THE AGREEMENT

The County of Montgomery, Virginia, (the "County"), the City of Radford, Virginia, (the "City"), and to the extent mentioned in Paragraph 5 of the Preamble, the Montgomery County

Public Service Authority, (the "P.S.A."), hereby agree as follows:

Section 1. Geographical Area of the Corridor

1.1 The geographic limits of the area to which this agreement applies is that area shown in heavy, continuous black lines on a map thereof entitled "Montgomery County Public Service Authority, Route 177 Service Area Boundary", dated October 30, 1991, with "Development Concept Table", dated May 6, 1992, marked as Exhibit A, attached to this Agreement. Said map also reflects various "Phases", separated by broken black lines, as to which provisions are hereinafter made for certain services (including water and sewer availability) under terms and conditions, and on or before the dates, more specifically delineated herein. The various "Phases" are also relevant to the dates, degrees and extent of revenue sharing as herein provided.

Section 2. Agreement Relative to Annexation

2.1 In consideration of the terms and provisions of this Agreement, the City agrees not to initiate or procure the initiation of annexation proceedings or Petitions for Annexation, and will oppose such petitions, as to any of the area of the County within the heavy black lines shown on the map attached hereto as Exhibit A. While the City cannot guarantee that petitions will not be filed by residents or landowners within the area, it does agree not to encourage solicit or support the same, and will oppose such petitions in any forum in which such Petitions are considered.

Section 3. Revenue Sharing

3.1 Also in consideration of the terms, conditions and provisions of this Agreement, the County agrees to share with the City 27.5% of the annual revenue derived by the County from real estate taxes, personal property taxes, business and professional licenses (if such taxes are imposed by the County), and sales and use tax revenues generated and received by the County within the area referred to in Section 1 of this Agreement and shown on Exhibit A, the obligation for such sharing of revenues to be implemented on the schedules and based upon the Phases and happening of events as follows:

- (a) The County's obligation for sharing the tax revenues stated above generated in the area delineated on Exhibit A as Phase I shall commence with January 1, 1993, provided this Agreement becomes effective on or prior to that date.
- (b) The County's obligation for sharing the tax revenues stated above generated in the area delineated on Exhibit A as Phase II shall commence on the date water is available for distribution to the area in accordance with Section 4 of this Agreement, or on January 1, 1994, whichever first occurs.
- (c) The County's obligation for sharing the tax revenues stated above which are generated in the area delineated on Exhibit A as Phase III (which

is inclusive of the areas designated as Phase III-A, Phase III-B and Phase III-C) on the date water is available for distribution to any portion of the area in accordance with Section 4 of this Agreement, or on January 1, 2000, whichever first occurs.

- (d) The County's obligation for sharing the tax revenues stated above which are generated in the area delineated on Exhibit A as Phase IV (which is inclusive of the areas designated as Phase IV-A and Phase IV-B) on the date water is available for distribution to any portion of the area in accordance with Section 4 of this Agreement, or on January 1, 2005, whichever first occurs.

3.2 The sales and use tax revenues contemplated above are only those revenues collected by and/or returned to the County for general governmental purposes. It is agreed that revenue returned to the County specifically designated by the Commonwealth of Virginia for special purposes, such as school and/or educational purposes, and which are not available to the County to expend from its general fund free of State designation shall be excluded from revenue sharing. At present, however, one (1%) per cent of the total State and Local sales and use taxes are returned to the County by the Commonwealth of Virginia for general governmental purposes.

The percentage of such taxes to be shared with the City shall apply to undesignated sums returned to the County by the Commonwealth for the foregoing purposes whether the percentage is greater or lesser than one (1%) per cent. Should the County, pursuant to legislative authority, impose local sales and use taxes in the area or areas involved, the percentage of tax revenues to be shared with the City shall include or take into account such local sales and use taxes so imposed and collected. If, at any time, legislation is enacted by virtue of which a percentage of motor, vehicle sales or licensing taxes authorized or imposed by the Commonwealth of Virginia is made available or distributed to local governments for general governmental purposes and not designated for specific programs or purposes, such undesignated amounts as are available or returned to the County by the Commonwealth shall be included in the amount of sales and use taxes which are subject to sharing under this Agreement.

3.3 The real estate and personal property taxes, and the business and professional license taxes (if imposed) in which the City is entitled to share hereunder shall be determined based on the accepted definition of those terms as contained in the laws or regulations of the Commonwealth of Virginia.

3.4 The County will provide to the Treasurer of the City of Radford semi-annual statements or reports of the total taxable sales, the sales and use taxes received by the County

during the preceding six months, plus the real estate, personal property and business and professional license taxes collected by the County during the same period as to the area shown on Exhibit A which is the subject of this Agreement as stated in Section 3.1, which will identify parcels of land, businesses and ownership of each. Such statement or report shall be provided within sixty (60) days after January 1 and July 1 of each year, and shall separately reflect sales and use taxes, the real estate taxes, the personal property taxes, and business and professional license taxes. With such reports or statements, each six (6) months the County will pay to the City the percentage of taxes to which the City is entitled. The date by which the reports are due, and the times and amounts of payments herein provided, may be varied by agreement between the governing bodies of the City and the County.

Section 4. Water Availability

The P.S.A. joins with the County and the City with respect to this Section 4, and the three parties agree as follows:

4.1 Agreement to Sell Water. The City agrees to sell to the County's Public Service Authority (hereinafter sometimes called the P.S.A.) potable water in the quantities, for distribution in the areas, and beginning at the dates as follows:

- (a) Beginning within sixty (60) days after the execution of this Agreement, the P.S.A. shall be

entitled to purchase, and the City shall be obligated to make available for such purchase, eighty thousand (80,000 G.P.D.) gallons per day of potable water for distribution by the P.S.A. in the area delineated as Phase I on Exhibit A.

(b) Beginning January 1, 1994, the P.S.A. shall be entitled to purchase, and the City shall be obligated to make available for such purchase, an additional quantity of potable water amounting to one hundred ninety-five thousand (195,000 G.P.D.) gallons per day for distribution in the area delineated as Phase II on Exhibit A.

(c) Beginning January 1, 2000, the P.S.A. shall be entitled to purchase, and the City shall be obligated to make available for such purchase, an additional quantity of potable water amounting to seventy-five thousand (75,000 G.P.D.) gallons per day for distribution in the areas delineated as Phase III (inclusive of Phase III-A, Phase III-B and Phase III-C) on Exhibit A.

(d) Beginning January 1, 2005, the P.S.A. shall be entitled to purchase, and the City shall be obligated to make available for such purchase, an additional quantity of potable water

amounting to fifty thousand (50,000 G.P.D.) gallons per day for distribution in the areas delineated as Phase IV (inclusive of Phase IV-A and Phase IV-B) on Exhibit A.

- (e) It is understood and agreed that when water becomes available for any Phase as provided in this Section, the P.S.A. may not only distribute such water in the area of the Phase for which such service is specified under Subsections (a), (b), (c) and (d) of this Section, but may distribute the same in any area within the corridor area herein specified and shown on Exhibit A, provided, however, that if water service made available for distribution in the area of a particular "Phase" is distributed in the area of another "Phase", the revenue sharing provisions provided for in Section 3.1 of this Agreement shall also apply to the additional Phase area receiving such service; and provided further that in no event shall the total quantity of water which the City is obligated to make available for the whole of the corridor area under this Agreement exceed 400,000 gallons per day.

The effect of subparagraphs (a), (b), (c), (d) and (e) of this Section 4.1 of this

Agreement is to grant to the County and its P.S.A. the ultimate right to purchase from the City, and to obligate the City to make available for such purchase, a total of four hundred thousand gallons of potable water per day (400,000 G.P.D.) on the schedule and for use in the areas specified. This Agreement shall not be deemed to take the place of, modify or affect the terms and provisions of the Water Agreement between the City and the P.S.A. dated July 20, 1988 (the Plum Creek Water Agreement).

The City represents that it is capable of producing the volumes of potable water for sale to the P.S.A. as herein provided.

It is further understood and agreed that on the date or dates on which the supply of potable water contemplated herein is commenced to the respective areas specified, the existing P.S.A. sources of water from wells then providing potable water to the respective areas will be disconnected from any P.S.A. distribution lines or mains through which the water supplied by the City is distributed in that area.

While it is contemplated that the P.S.A. shall have the right to purchase, and the City the obligation to make available, the quantities of potable water on the dates specified above (ultimately amounting to a total of 400,000 G.P.D. as of January 1, 2005) for distribution in the areas

contemplated by this Agreement, it is further agreed that future increases in the quantity of water which the P.S.A. may purchase may be negotiated between the City and the P.S.A. In addition, nothing herein shall be construed to inhibit the P.S.A. and the City from negotiating for enlargement or modification of the boundaries of the areas herein defined as those in which the distribution of potable water is to take place.

The parties further covenant and agree that should an increase in the gallons per day which the P.S.A. is entitled to purchase be negotiated at any time in the future, then the volume so agreed upon shall then become the volume the P.S.A. is entitled to purchase and shall thereafter supersede the gallons per day volume herein mentioned as the maximum volume the P.S.A. is entitled to purchase. Each change shall be noted in an addendum to this Agreement.

4.2 Point of Connection. The City agrees that the point at which the P.S.A. is to make connection with the City's waterline shall be located generally at or near the corporate limit line of the City at the intersection of Route 177 (Tyler Avenue) and State Route 611 (Rock Road). The cost of connection shall be borne by the P.S.A.

4.3 Measurement of Flow. A water meter shall be installed at the point of connection of any P.S.A. water line to the City water line at the cost of, and to be maintained and owned by the P.S.A. Meter readings shall be made monthly, and

sale charges for water supplied to the P.S.A. shall be thus ascertained. The City shall be permitted to inspect the meter and to inspect readings for accuracy at all reasonable times. The P.S.A. shall annually inspect the meter for accuracy and certify its findings to the City. Any remedial action necessary shall be promptly undertaken. Upon request, the P.S.A. shall make available to the City the water meter readings of individual customers of the P.S.A. receiving water from lines to which water from the City is provided.

4.4 Wholesale Water Rate. The initial rate payable by P.S.A. for water provided by the City shall be One Dollar and fifteen cents (\$1.15) per thousand gallons of potable water, which shall be evaluated annually by March 1 of each year, and any adjustment or modification shall become effective the next succeeding July 1. Notice of any such adjustment shall be given to the P.S.A. by the City at least 45 days prior to the date the same is to become effective. The wholesale rate to be paid by the P.S.A. shall take into account the City's operation and maintenance costs for its water system (costs of administration and operation; maintenance of plant, lines, pump stations and other facilities; insurance, etc.), debt service and reserves. It is understood and agreed that any rate modification implemented by the City which modifies the rate per gallon to be paid by the P.S.A. shall in no event be different from or greater than the wholesale rate for all other customers in the wholesale class

of customers, and such modification in rate shall be imposed only upon the basis of a review of the City's rate structure as applied to all classes of customers; provided, however, that nothing herein shall be deemed to affect the discretionary right of the City to consider the effect of such review on each class of water customer and apply modifications selectively as the City deems appropriate as between classes of customers.

4.5 Capital Improvement Costs. The parties hereto understand that the wholesale water rate contemplated in Section 4.4 does not take into account capital improvement costs which may become necessary or proper to increase the capability of the City's plant and facilities for the production of potable water. The parties understand and agree that the costs of such capital improvements, if required, become a factor taken into account in the rate making process for all classes of customers. If the P.S.A. at any future time requests the City to sell to it quantities of water exceeding the quantities it is entitled to purchase under the terms of this Section of this Agreement, and the City's obligation to provide such water for its customers of all classes is such that the City is unable or unwilling to provide to the P.S.A. the increased volume it requests except upon the basis of capital improvements to increase the capability of its plant and facilities to produce such water in order to meet the P.S.A. request, then the parties will negotiate for a reasonable sharing of the costs of such capital improvements,

to be reflected in the water rate or on some other acceptable basis, and if agreement is reached, the City will undertake such capital improvements for the purposes requested and intended.

4.6 Leakage. The City agrees that should a water leak or leaks develop within P.S.A. lines and the same is or are repaired within ten (10) days after notice from the City of the possibility of a leak or leaks or within ten (10) days after the P.S.A. becomes aware of a leak (whichever shall sooner occur), and if water consumption of the P.S.A. exceeds twenty-five (25%) per cent of its twelve (12) month average normal purchases for the four (4) next preceding billing intervals, an adjustment based upon average billings plus costs incurred by the City, if any, shall be made. In the event such leak or leaks are not repaired within ten (10) days after the above mentioned notice by the City or within ten (10) days after the P.S.A. becomes aware of the same (whichever is the sooner), no adjustment to billings will be made.

4.7 Billing of Charges to the P.S.A. Water purchase charges shall be billed to the P.S.A. by the City on or about the first day of each month, due and payable within thirty (30) days after the billing date, with a ten (10%) per cent penalty to be added to such billing if received more than thirty (30) days after the billing date.

4.8 Laws, Rules, Regulations and Ordinances.
It is agreed that performance of this Section 4 of this

Agreement shall be subject to and in conformity with generally applicable present and future laws, ordinances, rules and regulations, including the applicable present and future ordinances of the City of Radford not inconsistent with the provisions of this Agreement, as well as the present and future laws, rules and regulations of the United States and the Commonwealth of Virginia, and those governmental agencies exercising lawful authority. All of the foregoing shall be construed in implementation of and not in derogation or impairment of the purposes of this Agreement. The provisions of Section 21-25.2 of the Code of the City of Radford, and/or any amendment or replacement thereof, shall apply to this Agreement as they relate to interruption of service, the right to interrupt service, restrictions on use and the City's lack of liability for temporary interruption of water supply.

Section 5. Wastewater Transportation (Sanitary Sewer)

The P.S.A. joins with the County and the City with respect to this Section 5, and the three parties agree as follows:

5.1 Wastewater Collection and Transportation. The City agrees to accept for transporting all normal and acceptable wastewater originating from those portions of the County embraced in the heavy continuous lines shown on Exhibit A in the quantities from the corridor area shown on Exhibit A, beginning on the dates specified below:

- (a) In accordance with the terms and provisions of a contract dated July 10, 1989, entered into between the City and the P.S.A., the City agrees to continue to accept up to seventy thousand gallons per day (70,000 G.P.D.) of such wastewater originating from the corridor area delineated on Exhibit A, including the P.S.A. customers being served at the time of the execution of this Agreement under or by virtue of the terms of the July 10, 1989 Agreement, utilizing the 70,000 g.p.d. capacity specified in that Agreement. Nothing herein shall be deemed to change or modify the City's obligation to transport not more than 70,000 G.P.D. until January 1, 1994 as hereinafter stated. While the City's obligation to accept 70,000 G.P.D. of wastewater as specified in the Agreement of July 10, 1989 still exists, that Agreement becomes a part of this Agreement to the extent necessary to make it consistent with the terms hereof.
- (b) Beginning January 1, 1994, the City agrees to accept an additional one hundred sixty thousand (160,000 G.P.D.) gallons per day of such wastewater originating from the area delineated as the corridor area on Exhibit A.

(c) Beginning January 1, 2005, the City agrees to accept an additional twenty thousand (20,000 G.P.D.) gallons per day of such wastewater originating from the area delineated as the entire corridor area as shown on Exhibit A.

The effect of subparagraphs (a), (b) and (c) of this Section 5.1 of this Agreement is to obligate the City to accept for transport from the P.S.A. an ultimate total of not exceeding two hundred fifty thousand gallons per day (250,000 G.P.D.) from the entire corridor area, including the quantities specified in the Sewer Agreement dated July 10, 1989, on the schedule herein specified.

The parties do agree, however, that nothing herein shall affect, alter or modify the obligations or rights of the parties established and set forth in an Agreement dated March 12, 1986 between the City and the P.S.A. and a Sewer Agreement dated July 20, 1988 between the City and the P.S.A. (the Plum Creek Sewer Agreement) except in the case of the former as the same may have been affected or modified by the Plum Creek Sewer Agreement dated July 20, 1988).

It is further agreed that future increases or modifications in the quantity of wastewater which the City will accept for transporting may be negotiated between the City and the P.S.A. on terms and conditions then acceptable to each. In

addition, nothing herein shall be construed as inhibiting the P.S.A. and the City from negotiating for enlargement or modification of the boundaries of the area to be served for wastewater transportation.

5.2 Point of Connection. The point of connection of any wastewater collection lines or mains constructed by the County or the P.S.A. with the City's sewer mains shall be at or near the intersection of Route 177 (Tyler Avenue) and State Route 611 (Rock Road) at the City's corporate limits line. Such a connection point already exists pursuant to an Agreement dated July 10, 1989, between the City and the P.S.A. and shall be utilized for connection unless the parties mutually agree to a different point of connection. Reference to that Agreement is expressly made for a more particular definition of such point of connection.

5.3. Metering or Flow Measurement. Unless a master meter has been installed at the point of connection of the P.S.A.'s wastewater line or main with the City's wastewater line or main which is adequate for the purpose pursuant to the Agreement of July 10, 1989, between the P.S.A. and the City, such a master meter shall be installed at the cost of, and shall be owned and maintained by the P.S.A. at the point of connection of the P.S.A. wastewater line or main with that of the City in order that an accurate measurement of the flows from the P.S.A. wastewater line or main into the City's wastewater system can be made. The City shall have unlimited

access to the meter for the purposes of billing, inspection, ascertainment of accuracy, and the performance of all necessary acts to determine the need for repair or replacements. Necessary repairs or replacements shall be promptly undertaken and effected by the P.S.A.

The construction, installation, maintenance, repair, replacement and operation of lines or mains from the point of connection to points in the County and of collector lines or facilities within the corridor area shown on Exhibit A shall be the sole responsibility of the County or the County's P.S.A.

Charges for services provided to the P.S.A. under this Section 5 of this Agreement shall be determined, billed and collected by the City.

Upon request, the P.S.A. shall make available to the City the water meter readings of all individual connections flowing into the wastewater system installed by the County or the P.S.A. in the area shown as the corridor area on Exhibit A.

5.4 Transportation Charges. The initial rate payable by the P.S.A. for wastewater transportation provided by the City shall be at the rate of \$1.27 per thousand gallons per day for the first seventy thousand gallons per day. The rate for any volume transported over seventy thousand gallons per day (70,000 g.p.d.) shall be negotiated between the P.S.A. and the City based on the same factors as are specified below for annual evaluation of rates.

The rate or rates shall be evaluated annually by March 1 of each year, and any adjustment or modification shall be effective the succeeding July 1. Notice of any such adjustment shall be given to the P.S.A. by the City at least forty-five (45) days prior to the date the same is to become effective. The rate to be paid by the P.S.A. shall take into account the costs of the City such as operation and maintenance costs for its transport system (costs of administration and operation; maintenance of plant, lines, pump stations and other facilities; insurance, etc.), debt service and reserves.

All transportation charges pursuant to this Agreement shall be billed to the P.S.A. by the City on or about the first day of each month, due and payable within thirty (30) days after the billing date, with a ten (10%) per cent penalty to be added to such billing if received more than thirty (30) days after the billing date.

5.5 Capital Improvements. To the extent that the City finds it necessary to undertake costs to increase the capacity of any wastewater pump station and/or to enlarge line sizes (such as any forced main enlargement or enlargement of mains or lines for transporting wastewater to the Pepper's Ferry Wastewater Treatment Facility) in order for the City to provide wastewater transport services to the citizens of the City at the level of its present capability, any costs thereof shall be borne by the County or the P.S.A. The City's costs in

providing such increased capacity shall include the cost of services and any capital costs.

The capital improvements so made by the City shall be owned by the City without any claim or right by or of the County or the P.S.A.

The determination of the need for capital improvements to increase line transportation and/or pumping capacity shall be made by the City, which shall provide to the P.S.A. information which justifies the City's determination prior to the time construction of improvements for increasing the pump station capacity and/or enlargement of lines or mains is initiated.

The parties understand that the need for such capital improvements, as well as the nature and extent of the same, is dependent upon and subject to the requirements, review and approval of the Virginia Health Department. The City, at its expense, will have a downstream analysis performed by a competent engineering firm, which will take into account the Preliminary Report dated September 12, 1988, made by Olver, Incorporated relative to "City of Radford/Montgomery County Public Service Authority, Sewer Rate Analysis/Route 177 Corridor", attached hereto as Exhibit C, the "Preliminary Engineering Report, Route 177, Wastewater Collection System, prepared for Montgomery County Public Service Authority", dated June 30, 1989, prepared by Olver, Incorporated, which is attached hereto as Exhibit D, and the letter from the Virginia

Department of Health, Department of Water Programs to Gary Gibson, dated January 9, 1992, relative to "Montgomery County Sewerage - 177 Gravity Sewer" and attachments thereto, which is attached hereto as Exhibit E. When, based on such analysis, the Virginia Health Department requires improvements to the City's facilities in order to provide capacity for transporting wastewater from the P.S.A. generated in the Corridor Area exceeding 70,000 g.p.d., such improvements shall be made at the cost and charge of the P.S.A. Should such improvements be required to the City's mains or interceptor lines, the improvements shall be sufficient to provide capacity to handle the P.S.A.'s projected maximum flow of 250,000 g.p.d. from the Corridor Area. Should the City desire, at that time, to make improvements to create additional capacity in the mains or interceptor lines above that necessary to handle the P.S.A.'s projected flow of 250,000 g.p.d., the additional cost shall be borne by the City.

Pump station improvements which may be required as the quantity of wastewater from the Corridor Area increases shall also be made at the expense and charge of the P.S.A. based upon similar engineering analysis and the requirements of the Virginia Health Department.

5.6 Treatment Capacity Allocation. The volume of wastewater from the P.S.A. which is introduced to the City facilities pursuant to this Agreement shall be applied against the P.S.A.'s "allocated capacity" in the Pepper's Ferry

Regional Wastewater Treatment Authority Plant. The volume of Wastewater transported through the City's wastewater system shall not, in any event, exceed the P.S.A.'s allocated capacity in the Pepper's Ferry Treatment Facility. Should it be necessary to seek adjustment in the Pepper's Ferry "service area" authorization to include the corridor area, the City will cooperate with the PSA in seeking such adjustment.

5.7 Rules, Regulations and Contracts. The parties agree that performance of this Section 5 of this Agreement shall be subject to and in conformity with the generally applicable present and future ordinances, rules and regulations, as well as the present and future laws, rules and regulations of the United States and the Commonwealth of Virginia, and those agencies thereof exercising lawful authority. The parties also agree in the performance of this contract to abide by all agreements heretofore made with the Pepper's Ferry Regional Wastewater Treatment Authority and its present and futures rules and regulations.

Section 6. Planning, Zoning, Subdivision, Development

6.1 Defined Corridor: The County and the City agree that the territory subject to this planning agreement shall be referred to as the VA. 177/Tyler Avenue Corridor Area, (the "corridor"), and includes territory in both the County and the City. It is more particularly defined as being all that certain area or territory described upon the attached map

marked Exhibit B, and is the area which is the subject of a report entitled "VA 177/Tyler Avenue Corridor Study", dated July 1992, marked Exhibit F, both of which by this reference are made a part thereof.

6.2 Corridor Study: The corridor study mentioned above, which is Exhibit F to this Agreement, has been prepared with staff assistance provided by the New River Valley Planning District Commission under the supervision of a steering committee whose membership included representatives of the County and the City, and corridor landowners.

The study, entitled "VA 177/Tyler Avenue Corridor Study, July 1992" has been presented to and received by the governing bodies of both the City and the County.

6.3 Corridor Study Implementation: The County and the City have each enacted a Comprehensive Plan as defined within Title 15.1 of the Code of Virginia, 1950, as amended. The Comprehensive Plan of each jurisdiction serves as a guide in land use planning and as a basis for land use ordinances and regulations, including zoning ordinances and subdivision ordinances.

The parties agree that the VA 177/Tyler Avenue corridor study will serve as a basis for Comprehensive Plan amendments and appropriate text and map amendments to zoning ordinances of both the City and the County as such plans and ordinances apply to the "corridor" area.

6.3(a) Corridor Area Comprehensive Plans: Within one hundred twenty days from the date this Agreement is approved by a court pursuant to Section 15.1-1167.1, Virginia Code, 1950, the County and the City shall each amend their respective Comprehensive Plans to include land use planning elements for the "corridor" area that are consistent with the study. The Comprehensive Plans of the County and the City as they apply to the "corridor" area shall be deemed to be a joint Comprehensive Plan for that area. Any amendments to the Comprehensive Plans within the "corridor" area shall require the approval of both the County and the City. The County and City shall each have legal standing in the circuit court of the other's jurisdiction to seek legal enforcement and compliance with the Comprehensive Plans by means of suits for declaratory judgment, injunction, or such other similar legal remedy.

6.3(b) Land Use Ordinances: The parties agree that each jurisdiction retains its independent sovereignty, and enforcement of zoning and subdivision ordinances that may have application within the "corridor" area. It is understood, therefore, that so long as the Comprehensive Plans for that area are complied with as a foundation for other land use ordinances and regulations, the County and the City shall each be free to enact and administer independently their own zoning, subdivision, and similar land use laws and regulations. In order not to unnecessarily interfere with the orderly development of land within the "corridor" area, it is the intention of the parties that property owners within the

"corridor" area shall apply only to the jurisdiction in which their property lies to obtain land use permits and approvals that would not require amendments to the Comprehensive Plan.

The County and the City agree to amend their respective Comprehensive Plans to include the same planning element for the defined "corridor" area. In this manner, both jurisdictions will share a common commitment as to the future land use and development of the defined "corridor" area. Moreover, future amendments to this planning element in the Comprehensive Plan must be made by both jurisdictions.

The County and the City will independently amend the appropriate text and map portions of their respective Zoning Ordinances in order to implement the recommendations of the Study referred to in Section 6.3.

6.4 Advisory Role: The City of Radford Planning Commission shall be accorded an advisory role with respect to certain land use decisions within the defined "corridor" area of Montgomery County. Similarly, the Montgomery County Planning Commission shall be accorded an advisory role with respect to certain land use decisions within the defined "corridor" area of the City of Radford.

To facilitate advisory review and comment, the Site Review Committee of the City of Radford Planning Commission and the Development Committee of the Montgomery County Planning Commission shall schedule joint field trips to view land use requests within the defined "corridor" area. The Site Review

Committee includes a member of the City Council and the Development Committee includes a member of the Board of Supervisors. Staff support for the Site Review Committee/ Development Committee shall be provided by the staffs of the respective jurisdictions subject to budget limitations.

When requests for rezonings, special use permits, variances and appeals are reviewed, the joint Site Review Committee/Development Committee shall strive to arrive at a mutual recommendation to be made to their respective Planning Commissions.

When site plan review is required for proposed development, the site plan shall be jointly reviewed by the Site Review Committee/Development Committee in order to be able to jointly negotiate with the developer and to resolve issues of mutual concern such as points of access density of development, dedication of open space, soil and erosion control protection, stormwater management measures, etc.

When appropriate the Site Review Committee/ Development Committee shall initiate Comprehensive Plan amendments, text and map amendments to Zoning Ordinances or other activities necessary for the future growth and development of the defined "corridor" area.

Section 7. Resolution of Disputes

The P.S.A. joins with the County and the City with respect to this Section 7, and the three parties agree as follows:

7.1 Arbitration; Selection of Panel; Procedure.

It is the desire and intent of the parties to provide a mechanism for the Resolution of Disputes which may arise relative to the terms and provisions of this Agreement as set forth below. It is understood that the mechanism so provided contemplates that such disputes (should any arise) will involve two parties, or issues or an issue which involve two sides, but does not contemplate a three party or three sided arbitration. For example, disputes could arise between the County and the City, the P.S.A. and the City,, and between the P.S.A. and the County. Should any two contend for the same position in opposition to that of the third, the two contending for the same position shall be deemed, for the purpose of this Section 7, to be one party. Based upon this predicate, in the event of any disagreement, dispute, controversy or difference between the parties with respect to the provisions of this Agreement, or related to the performance, observation or breach of any provision of said Agreement which the parties hereto are unable to resolve by the exertion of reasonable efforts to agree, the same shall be submitted to arbitration by a three member Board of Arbitration composed of impartial members, one chosen by each party, the two so selected to choose the third who shall be Chairman of the Arbitration Board. If the first two are unable to agree on the third member, then the Chief Judge of the 27th Judicial Circuit shall be petitioned to name the third. The arbitrators shall meet with the parties and/or

their representatives, and the parties shall exchange information relative to the dispute under the supervision of the arbitrators. Each party will be permitted to present their perception of the dispute and their judgment about its resolution, and may also present such evidence and testimony as is relevant. Costs and expenses for the arbitrators and for court reporting, transcribing and similar expenses incurred as required by the arbitration panel, or those to which the parties agree, shall be divided equally between the parties. Each party shall defray any expense of presentation of its side of the issue, including the fees of any witnesses it uses to present evidence.

The arbitrators shall render a written report to the parties with their decision as to disposition of the dispute, and a majority determination of the three shall be binding on the parties. If the decision is not unanimous, a dissenting or minority report may be filed but no such report is required.

Such award or determination by the arbitrators shall be enforceable under the Virginia Uniform Arbitration Act.

(Chapter 21, Title 8.01, Code of Virginia, 1950, as amended.)

Section 8. Submitting to the Commission on Local Government

8.1 Commission on Local Government (C.O.L.G) In accordance with the provisions of Section 15.1-1167.1, Subsection 3, of the Code of Virginia, 1950, as amended, the governing bodies of the County and the City shall jointly present this Agreement to the C.O.L.G. for the purpose of

hearing, report and recommendations, with the joint request that the same be approved. Any cost or expense imposed by the C.O.L.G. with respect to the proceedings shall be equally borne by the parties. Each party will, however, pay its own expenses incurred in presentation of the Agreement to the C.O.L.G., including counsel fees, expenses for travel and/or lodging, etc.

8.2 Action by Parties on Receipt of C.O.L.G. Report.

Upon receipt of the report of the C.O.L.G., the governing bodies of the County and the City shall consider for adoption an ordinance approving or adopting the original or a modified agreement acceptable to all parties. The parties agree to either meet and confer, or designate representatives to meet and confer, relative to the terms, provisions and language of the proposed ordinance, and the identical ordinance shall be considered by both governing bodies.

Each party shall hold at least one (1) public hearing on the Agreement, which shall be advertised as required by Section 15.1-1167.1, Subparagraph 4, of the Code of Virginia, 1950, as amended before adoption of such proposed ordinance. Adoption of the ordinance by the County shall be expressly subject to the provisions of Section 10 of this Agreement and the referendum requirements of Section 15.1-1167.2 of the Code of Virginia, 1950, as amended as it applies to the contracting of debt by the County.

Section 9. Court Approval

9.1 Petition for Court Approval. As soon as reasonably practicable after adoption of the ordinances provided for in Section 8 of this Agreement, pursuant to the provisions of Section 15.1-1167.1, Subparagraph 5 of the Code of Virginia, 1950, as amended, the parties shall jointly file a Petition in the Circuit Court of Montgomery County, Virginia, presenting the Agreement, asking for approval thereof, and requesting that the Chief Judge of the Circuit of which Montgomery County is a part certify the filing of the Petition to the Supreme Court of Virginia and request the appointment of a Three Judge Special Court to hear the matter, pursuant to Chapter 26.2, Title 15.1, Code of Virginia, 1950, as amended.

9.2 Cooperation in Seeking Court Affirmation of Agreement. The parties agree to take all necessary actions and to cooperate in presentation of necessary evidence and to participate in any proceedings before such Court which may be appropriate or necessary in enabling the Court to make its determination.

9.3 Costs of Proceedings before Court. The parties agree to share equally in court costs involved in the proceedings, including initial cost, any court reporter expenses (if required), and any sums allowed by the Court for witness fees, experts, etc. Each party shall bear expenses incurred by a party on its own account.

9.4 Affirmation Subject to Referendum.

Notwithstanding the provisions of Section 15.1-1167.1, Subparagraph 6, Code of Virginia, 1950, as amended, should the Court affirm the Agreement, if a referendum is necessary as to all or any portion of the Agreement under the provisions of Section 15.1-1167.2, Code of Virginia, 1950, as amended and if the same has not then been conducted, the binding nature of the Agreement shall nevertheless be subject to the requirements for such referendum. (See Section 10 of this Agreement).

9.5 Failure of Special Court to Affirm Without Modification. Should the special court fail to affirm the Agreement without modification, this Agreement shall terminate unless the parties mutually agree to accept the Agreement as modified. In the event of such termination, if any connections have been theretofore made to the City's water or sewer facilities by the County pursuant to this Agreement, the same shall be forthwith disconnected and the City shall be under no obligation to provide water to or accept wastewater from the County or the P.S.A.

Section 10. County Voter Approval

10.1 Necessity for Referendum. The City and the County agree that to validate this Agreement and specifically to authorize the sharing, and annual transfer of the revenues by the County to the City as provided in Section 3 of this Agreement, a referendum on the question of contracting an indebtedness must be held by the County. The parties agree

that such referendum must comply with the provisions of Article VII, Section 10, of the Constitution of Virginia (1971) and Sections 15.1-1167.2 and 24.1-165 of the Virginia Code Annotated. The question on contracting for the annual transfer payments must be (i) submitted to the qualified voters of the County, in an election, (ii) for approval or rejection by a majority of the qualified voters voting in the election on the question of contracting such debt, and (iii) such approval is a prerequisite to contracting such annual transfer payments.

10.2 Special Election. The County agrees that it will take the necessary steps, at its expense and charge, to petition the appropriate Court to order a special election on the appropriate question or questions as soon as practicable after approval of this Agreement by the C.O.L.G. as provided in Section 6 of this Agreement.

10.3 Termination if Referendum not Favorable. Notwithstanding any other provision of this Agreement, if the majority of the voters voting in the Referendum fail to vote "yes" on the question of contracting the debt required under Section 3 of this Agreement, this Agreement shall become null, void and of no effect.

10.4 Reversion to Former Status upon Voter Disapproval. Upon the happening of the event specified in Section 10.3 above, the parties shall revert to the status occupied by the parties prior to the execution or implementation of this Agreement. Any water or sewer

connections which may have been made to the City's water and sewer facilities pursuant to this Agreement shall be immediately disconnected and no obligation shall rest upon the City to further provide water to or accept wastewater from the County or the P.S.A.

Section 11. Other Provisions

11.1 Effective Date. This Agreement shall become effective on the last of (1) the date the referendum required under Section 10 of this Agreement has received a favorable vote and been so certified; or (2) affirmation by the Special Court as provided in Section 9 of this Agreement by final Order not subject to appeal, provided that at that time it has been fully executed by the City and the County and all other procedural steps have been completed.

11.2 Binding on the Parties. This Agreement shall be binding upon and inure to the benefit of the City of Radford, Virginia, and the County of Montgomery, Virginia, the future governing bodies of each, the P.S.A., and upon any successor of the City, the County and/or the P.S.A.

11.3 Amendment or Modification. This Agreement may be amended, modified or supplemented, in whole or in part, by mutual consent of the City and County, by a written document of equal formality and dignity, duly executed by the authorized representatives of the City and County.

11.4 Enforcement. This Agreement shall be enforceable in any Court of competent and appropriate

jurisdiction, by any of the parties hereto, by any appropriate action at law, or in equity to secure the performance of the covenants herein contained.

Pursuant to the authority granted by Section 15.1-1167.1, Code of Virginia, 1950, as amended, the governing body of the City of Radford and of the County of Montgomery execute this Agreement pursuant to resolution duly adopted on _____, 1992 by the City Council of the City of Radford and on _____, 1992 by the Board of Supervisors of Montgomery County, copies of which resolutions are attached hereto as Exhibits F and G.

THE CITY OF RADFORD, VIRGINIA

(SEAL)

By _____
Mayor

Attest:

Its Clerk

THE COUNTY OF MONTGOMERY

(SEAL)

Chairman, Board of Supervisors

Attest:

Its Clerk

MONTGOMERY COUNTY PUBLIC
SERVICE AUTHORITY

(SEAL)

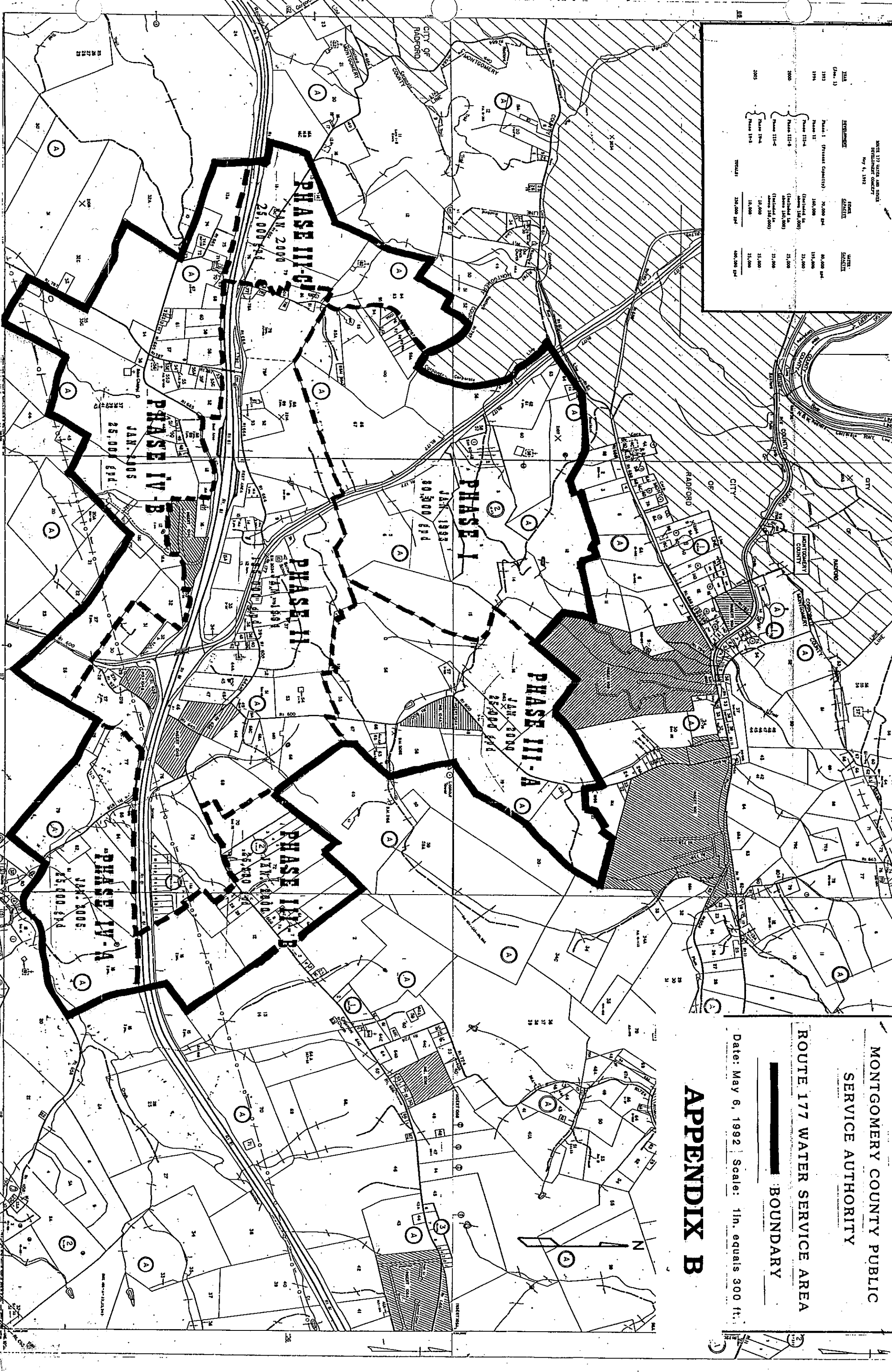
By _____
Chairman

Attest:

Secretary

ROUTE 177 WATER MAIN SERVICE
 SERVICE AUTHORITY
 MAY 6, 1992

DATE	ESTIMATED	ACTUAL	ACTUAL
(Class. 1)			
1993	Phase I (Present Capacity)	70,000 gpd	46,000 gpd
1994	Phase II	140,000	125,000
	Phase II-A	(Included in above 140,000)	25,000
	Phase II-B	(Included in above 140,000)	25,000
	Phase II-C	(Included in above 140,000)	25,000
	Phase II-A	10,000	25,000
	Phase II-B	10,000	25,000
	Phase II-C	10,000	25,000
	TOTAL	200,000 gpd	400,000 gpd



MONTGOMERY COUNTY PUBLIC SERVICE AUTHORITY

ROUTE 177 WATER SERVICE AREA

BOUNDARY

Date: May 6, 1992 Scale: 1in. equals 300 ft.

APPENDIX B

APPENDIX C

STATISTICAL PROFILE OF THE CITY OF RADFORD, COUNTY OF MONTGOMERY AND THE AREA PROPOSED FOR IMMUNITY

	<u>City of Radford</u>	<u>County of Montgomery</u>	<u>Area Proposed for Immunity</u>
Population (1990)	15,940	73,913	250
Land Area (Square Miles)	9.60	390.00	6.20
Total Assessed Values	\$382,764,356	\$1,807,468,175	\$19,386,731
Real Estate	\$306,395,810	\$1,483,701,812	\$17,923,700
Public Service Corporation Values	\$16,569,086	\$74,209,405	\$1,463,031
Personal Property Values	\$43,680,700	\$203,040,942	N/A
Machinery and Tools Values	\$16,118,760	\$33,783,062	N/A
Merchants' Capital Values	N/A	\$12,732,954	N/A

NOTES:

N/A=Not Available

All data concerning the area proposed for immunity were estimated by Montgomery County

Assessed property value statistics for the City of Radford are for Fiscal Year 1990-91, while similar statistics for Montgomery County and the area proposed for immunity are for Calendar Year 1991 and 1992, respectively.

SOURCES:

Roy B. Thorpe, Jr., County Attorney, County of Montgomery, letters to staff of Commission on Local Government, Oct. 9, 1992 and Nov. 19, 1992.

City of Radford, Comprehensive Annual Financial Report for the Year Ending June 30, 1991.

County of Montgomery, Comprehensive Annual Financial Report as of June 30, 1991.