

REPORT
ON THE
CITY OF WAYNESBORO-COUNTY OF AUGUSTA
SETTLEMENT AGREEMENT



COMMISSION ON LOCAL GOVERNMENT
COMMONWEALTH OF VIRGINIA

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REPORT
ON THE
CITY OF WAYNESBORO - COUNTY OF AUGUSTA

SETTLEMENT AGREEMENT

PROCEEDINGS OF THE COMMISSION

By order entered on May 9, 1984 the Special Court designated to review Augusta County's petition for partial immunity directed this Commission to file a report relative to certain provisions in the Settlement Agreement which had been negotiated by the County and the City of Waynesboro. Specifically, the Court directed the Commission to review "those provisions of the agreement respecting permanent immunity for the Stuarts Draft area of Augusta County" in accordance with applicable provisions of law.

Pursuant to the Court's order, the Commission met with representatives of the two jurisdictions on May 31, 1984 and scheduled its review of the issue referred to it. Consistent with the adopted schedule, the Commission held a public hearing, advertised in accordance with the requirements of Section 15.1-945.7(B) of the Code of Virginia, on the evening of July 26, 1984 at the Stuarts Draft High School. This hearing was attended by approximately 40 persons and provided testimony from 11 individuals. In order to receive additional public comment, the Commission kept open its record for the receipt of written submissions from the public through August 27, 1984.

Also, as part of its review the Commission toured relevant areas and facilities in the County and received oral presentations from representatives of the County and the City of Waynesboro on July 27, 1984. Further, the Commission solicited comment from 16 other local governments in the region which were potentially affected by the City of Waynesboro - Augusta County Settlement Agreement.

SCOPE OF REVIEW

As noted above, the order of the Special Court entered on May 9, 1984 only directed the Commission to review "those provisions of the agreement [between the City of Waynesboro and Augusta County] respecting permanent immunity for the Stuarts Draft area." The provision in the Settlement Agreement which prompted the Court order stated merely that the Stuarts Draft area, as delineated on an attached map, "shall be granted permanent immunity."¹ On June 29, 1984, however, Augusta County filed with the Commission a submission advising that the issue before this body was not merely the provision in the settlement with the City of Waynesboro by which that municipality agreed in perpetuity not to annex the Stuarts Draft area, but that it was also an action which sought a grant of statutory immunity for that area as authorized by Section 15.1-977.22:1 of the Code of Virginia. The County's submission on June 29 asserted that the issue before the Commission was:

. . . essentially a hybrid proceeding consisting, in part, of a review of a settlement agreement as contemplated by Section 15.1-1167.1 of the Code, and in part, of a review of a petition seeking partial immunity from the incorporation of new cities as well as from annexation initiated by the City [of Waynesboro], as contemplated by Section 15.1-945.7 of the Code.²

Indeed, the County's submission of June 29 stated that "the agreement [with the City of Waynesboro] is conditioned upon the grant of statutory partial immunity to the Stuarts Draft area of Augusta County, . . ."³

¹"Agreement between City of Waynesboro and Augusta County" (hereinafter cited as "Settlement Agreement"), May 6, 1984, Sec. 2. See Appendix A for the full text of the Settlement Agreement. See Appendix B for a map of the proposed Stuarts Draft immunity area.

²County of Augusta, Partial Immunity Notice (hereinafter cited as Notice), Vol. I, May 1984, p. ii. This document was filed with the Commission on June 29, 1984.

³Ibid., pp. i, 3. The City has asserted that the Settlement

The "hybrid" nature of the issue before the Commission requires, according to the County's perspective, that the various components be considered on the basis of different standards. The County has asserted that those elements concerning (a) the annexation by the City of Waynesboro, (b) the City's permanent relinquishment of its authority to annex the Stuarts Draft and Fishersville areas, and (c) the moratoria on succeeding annexation initiatives by the City and on certain immunity actions by the County prior to January 1, 2001, are part of an interlocal agreement negotiated under the authority of Section 15.1-1167.1 of the Code of Virginia and requires only a Commission finding that the various provisions of the agreement, considered collectively, constitute a settlement which is "in the best interest of the Commonwealth."⁴

With respect to the proposed grant of statutory immunity for the Stuarts Draft area, the County has contended that the standard which must be met for such immunization has been substantially altered as a result of its agreement with the City of Waynesboro. The County has asserted that, as a result of the agreement, annexation of the Stuarts Draft area by the City of Waynesboro is precluded and that such preclusion renders "irrelevant" those aspects of the partial immunity standard which involve a comparison of services and relationships with

Agreement is not conditioned upon a grant of immunity from city incorporation for the Stuarts Draft and Fishersville areas. ("Statement of the City of Waynesboro in Response to Notice filed by the County of Augusta," filed with the Commission on July 25, 1984). The City and County agree, however, that the issue of the immunization of the Stuarts Draft area from city incorporation is properly before the Commission but that the question as to whether such a grant of immunity from city incorporation is a precondition to the effectiveness and implementation of the Settlement Agreement should be left to the Special Court for determination. ("Joint Request of the County of Augusta and City of Waynesboro," filed with the Commission on July 27, 1984.)

⁴The moratorium set forth in the Settlement Agreement with respect to succeeding County immunity actions applies only to territory lying between the enlarged boundaries of the City of Waynesboro and the proposed Stuarts Draft and Fishersville immunity areas.

that municipality. Augusta County has argued that the only elements of the standard for partial immunity which remain relevant in this instance are those concerning:

(1) whether appropriate urban-type services are being provided in the [proposed] Immunity Area, (2) whether the County has made efforts to comply with applicable State service policies, (3) whether the community of interest between the Immunity Area and the remainder of the County is such as to justify permanent immunity from the incorporation of new cities and (4) whether the proposed immunity will help ensure that the involved counties, cities and towns are maintained as viable communities in which their citizens can live.⁵

Clearly, Augusta County has raised a number of fundamental legal questions concerning the issue before the Commission and the appropriate scope and nature of our review. While the Commission fully recognizes the significance and ramifications of the questions raised by the County, they appear to require judicial resolution. In the report which follows the Commission has endeavored to address the local governmental and public service consequences of the proposed grant of "permanent immunity" for the Stuarts Draft area and to leave questions of law for a more appropriate forum.

CHARACTERISTICS OF THE STUARTS DRAFT AREA

The Stuarts Draft area has been and remains one of the focal points of development in Augusta County. The area grew as a distinct community and has been served by its own post office since 1837. The area's development was facilitated by the Howardsville Turnpike (now State Route 610) which traversed the Stuarts Draft community and by the Shenandoah Valley Railroad (later to become the Norfolk and Western Railway) which began service in the area in 1882. Not surprisi-

⁵Notice, Vol. I, pp. iii-iv (emphasis in original).

singly, the area's early economy was predominantly agricultural in nature. Early in this century apple production was a major component of the area's agricultural activity, but this crop has diminished in significance while cattle and other livestock have grown in importance. Early industrial activity in the area focused on wood products, with barrel, stave, and chair manufacturing being notable.⁶

The proposed Stuarts Draft immunity area embraces, according to County data, 13.44 square miles containing 4,619 persons, 911 students in average daily membership (ADM), and \$125.3 million in assessed property values subject to local taxation. Thus, while the proposed Stuarts Draft immunity area represents only 1.4% of the County's total geographic area, it contains approximately 8.6% of the County's total population (based on 1980 Census data), 9.0% of its 1983-84 public school ADM, and 8.9% of its total current assessed property values subject to local taxation.⁷ The data reveal, therefore, that the Stuarts Draft area contains a significant concentration of the County's population and tax resources.

In terms of development, County land use data indicate that, as of 1983, 0.7% (57 acres) of the area was engaged in commercial enterprise, 6.3% (541 acres) was committed to industrial activity, 15.6% (1,342 acres) was devoted to residential usage, while 71.6% (6,162 acres) was in agricultural production or remained vacant and wooded.⁸ Although the area remains predominantly agricultural or vacant, it does have a density of population (344 persons per square

⁶C. Gordon Patterson, "Stuarts Draft, Virginia," Augusta Historical Bulletin, Fall 1984 (to be published); and Clay Catlett and Elliott G. Fishburne, An Economic and Social Survey of Augusta County (Charlottesville: Extension Division, University of Virginia, 1928).

⁷Notice, Vol. III, pp. 2a, 2b. Real estate assessed values are from the 1985 reassessment. (Ibid., p. 3.) This document was submitted to the Commission on July 22, 1984. See Appendix C for a brief statistical profile of the proposed Stuarts Draft immunity area.

⁸Ibid., p. 4. The remaining portion of the Stuarts Draft area (504 acres) was utilized for various transportation, utility, public,

mile) more than six times that of the County overall (54.5 persons per square mile).⁹ Moreover, development in the Stuarts Draft area contains six major manufacturing firms which employ approximately 1,000 persons, thereby accounting for 23% of the County's total manufacturing employment as of 1983.¹⁰ The degree of concentration of County industry in the Stuarts Draft area is revealed by the fact that 60% of Augusta County's current machinery and tool assessables is located within the boundaries of the proposed immunity area.¹¹

Finally, it should be noted that the proposed Stuarts Draft immunity area has developed, not as a result of growth overflowing adjacent municipalities, but, rather, it has developed from its own discrete origins and with its own community resources. Further, the major industries in the Stuarts Draft area have not emigrated from the adjacent municipalities; they have been attracted to the area from distant locations by the County's industrial development initiatives.¹² Furthermore, the extent of the County's investment in the development of the Stuarts Draft area is reflected in the fact that over 28% of the total assets of the Augusta County Service Authority (ACSA) are located within the boundaries of that proposed immunity area.¹³ In sum, the Stuarts Draft area is a product of distinct

and semi-public purposes.

⁹Ibid., Vol. I, p. 29. The density figure for the County is based upon pre-annexation data.

¹⁰Virginia Employment Commission, Special Area by Industry Listing for Quarter 1-83, Area 015 -- Augusta County.

¹¹Notice, Vol. III, p. 2a.

¹²Memorandum from H. H. Ralston, County Planner, County of Augusta, to E. A. Plunkett, Jr., County Attorney, County of Augusta, August 21, 1982. This memorandum states that all but one of the major industries in the Stuarts Draft area are plants constructed by out-of-state firms. One industry (Precision Fabricators, Inc.) began its initial operations in the Stuarts Draft area.

¹³Notice, Vol. III, pp. 2a, 2b.

development which has been supported by significant County investment.

FACTORS FOR CONSIDERATION

An analysis of the proposed grant of permanent immunity for the Stuarts Draft area can only be properly undertaken when that proposal is considered in relation to other provisions in the Settlement Agreement. Thus, while this report, consistent with the order of the Special Court, deals principally with the issue of permanent immunity for the Stuarts Draft area, it must address briefly the other components of the agreement which are intended to give the settlement appropriate equity.¹⁴

ANNEXATION BY CITY OF WAYNESBORO

The Commission has previously addressed the issue of an annexation by the City of Waynesboro. After an extended analysis in 1983 of the City's need to augment its tax base and to acquire additional land for development, as well as other factors relevant to the issue, the Commission recommended that Waynesboro be granted an annexation encompassing approximately 6.3 square miles and containing approximately \$70 million in assessed property values (according to 1983 assessment data) and 2,600 acres of vacant or agricultural property which would provide the City with an appropriate opportunity for future residential, commercial, and industrial growth.¹⁵ The Settlement Agreement negotiated by the two jurisdictions calls for the City of Waynesboro to annex the area recommended by the Commission. The Commission continues to consider this annexation important to the future health and viability of the City of Waynesboro and consistent with the interest of the general area and the State.

¹⁴The County and the City agree that the Commission's review of the proposed grant of immunity for the Stuarts Draft area must be done "in the context of the entire settlement agreement." (Ibid., Vol. I, p. i.)

¹⁵Commission on Local Government, Report on the City of

MORATORIA ON FUTURE ANNEXATION AND IMMUNITY ACTIONS

The Settlement Agreement between the two jurisdictions contains provisions by which (a) the City of Waynesboro agrees not to institute any succeeding annexation action against the County prior to January 1, 2001 and by which (b) the County agrees not to initiate any subsequent immunity action against the City with respect to that territory lying between the new City boundaries and the Stuarts Draft and Fishersville immunity areas prior to the same date.¹⁶ The annexation moratorium would bar the City's initiation of any subsequent annexation for a period of 16 years. Given the fact that Waynesboro will nearly double its geographical size as a result of the annexation specified in the agreement, and given the fact that the proposed annexation represents the City's first significant use of the State's annexation process in more than 35 years, the moratorium does not, in our judgment, pose an unreasonable restraint on the City's potential for growth nor threaten its viability. Further, the County's agreement not to seek the immunization of that portion of its territory between the expanded City boundaries and the proposed Stuarts Draft and Fishersville immunity areas will preserve the City's legal authority to pursue annexation in the year 2001 or thereafter, if it deems such to be warranted and appropriate. Any annexation or immunity action by either jurisdiction after January 1, 2001, would require full review on the basis of statutory criteria. In our view, the annexation and immunity moratoria are reasonable components of the Settlement Agreement and, considered in conjunction with the other provisions of the accord, are consistent with the interest of the general area and the State.

PERMANENT IMMUNIZATION OF STUARTS DRAFT AND FISHERSVILLE AREAS

The Settlement Agreement between the two jurisdictions contains a

Waynesboro - County of Augusta Annexation Action (hereinafter cited as Waynesboro Annexation Report), July 1983.

¹⁶The City and the County have stipulated that the area which

provision which would grant "permanent immunity" to the Stuarts Draft and Fishersville areas of Augusta County. As a result of an action initiated by Augusta County in April 1982, the Commission has previously reviewed a proposal which sought a grant of statutory immunity, as authorized by Section 15.1-977.22:1 of the Code of Virginia, for the Fishersville area.¹⁷ While the Commission was unable to recommend a grant of statutory immunity for the Fishersville area on the basis of the standards which applied in that adversarial proceeding, we did observe in the report issued in December 1982 that the Fishersville area is one of the "significant foundations which support both the economic viability and public service structure of Augusta County."¹⁸ The Commission considered then, and now, the Fishersville area to be vital to the integrity of Augusta County. Similarly, it is evident to the Commission that the Stuarts Draft area, with its concentration of people and industry, provides the County an important measure of social cohesion and economic strength. From our perspective, the Stuarts Draft area also provides Augusta County with a vital foundation for its future viability. Since the Commission has dealt extensively with the Fishersville community in the above-mentioned report, the sections which follow will focus upon relevant factors with respect to the proposed grant of permanent immunity to the Stuarts Draft area.

the County will not seek to immunize prior to the year 2001 is bounded in the north by the Chesapeake and Ohio Railroad line, in the west by the boundaries of the Fishersville and Stuarts Draft immunity areas and State Route 635, and in the south and east by the George Washington National Forest. [Transcript of Hearings Held Before the Commission on Local Government (hereinafter cited as Transcript), July 27, 1984, pp. 207-211.]

¹⁷Commission on Local Government, Report on the County of Augusta Partial Immunity Action (hereinafter cited as Augusta County Immunity Report), Dec. 1982.

¹⁸Ibid., p. 127.

Community of Interest

One of the statutorily prescribed considerations in annexation and immunity issues in Virginia is the strength of the community of interest which binds the area in question to its parent county in relation to that which exists between such area and the adjacent municipality. In this instance the Commission has little difficulty in concluding that the Stuarts Draft area shares a community of interest with Augusta County greater than that which exists between that area and the City of Waynesboro.

To be sure, the Stuarts Draft area does have a degree of interdependence with the City of Waynesboro, but the strength of that relationship is reduced by distance and by the nature of the Stuarts Draft community. While the Commission has previously noted that the City of Waynesboro provides significant employment opportunities to County residents and that it is the site of medical, professional, retail and other community facilities which serve residents of its general environs, it is reasonable to conclude that these ties are substantially less for residents of the Stuarts Draft area.¹⁹ Even after the expansion of the City's boundaries as proposed in the Settlement Agreement, the corporate limits of the enlarged City would still remain, at the closest point, approximately 2.25 miles from the eastern boundary of the Stuarts Draft immunity area. Further, the Stuarts Draft area contains an array of professional, commercial, and recreational facilities which provide the area a degree of self-sufficiency atypical of most unincorporated county areas. We note that the Stuarts Draft area also contains the offices of a number of physicians, dentists, and attorneys, four banking facilities, and a variety of retail shops at the Broadmoor Plaza Shopping Center and along State Route 608 through the center of the Stuarts Draft

¹⁹See Waynesboro Annexation Report, pp. 25-32.

community.²⁰ Moreover, the area is also served by a movie theater complex and the Shenandoah Acres Resort which provide local recreational opportunity. Again, this variety of development lessens the area's economic and social ties with the adjacent City of Waynesboro and strengthens the area's relations with nearby County residents.

The public service facilities in the Stuarts Draft area also suggest the relative detachment of that area from the City of Waynesboro and reveal the breadth of its ties with the County generally. The County operates three public schools and one small park within the boundaries of the proposed immunity area. Moreover, the ACSA maintains one of its sewage treatment plants within the area and operates approximately 37 miles of water and sewerage lines in the area to serve its residents.²¹ In sum, the County's educational and utility operations, as well as its other public service activities, create significant bonds between the Stuarts Draft area and Augusta County generally.

Finally, it should be noted that the industries in the Stuarts Draft area provide significant employment opportunity to residents of other portions of Augusta County, thereby creating a bond of economic interdependence. The evidence indicates that the six major industries in the Stuarts Draft area provided, as of 1983, approximately 1,000 employment positions, or 23% of the County's total manufacturing employment.²² According to 1982 survey data relative to four of those firms (Hollister, FMC, Hershey, and Mastic), approximately 24% of their employees lived within the proposed Stuarts Draft immunity

²⁰Testimony of Richard E. Huff, County Administrator, County of Augusta, Transcript, pp. 41-43.

²¹Notice, Vol. III, p. 11.

²²Special Area by Industry Listing for Quarter 1-83, Area 015 -- Augusta County.

area, while another 47% lived within other areas of Augusta County.²³ In our judgment, the community of interest between the Stuarts Draft area and Augusta County far surpasses that which exists between that area and the City of Waynesboro.

Arbitrary Refusal To Cooperate

Another factor statutorily prescribed for consideration in annexation and immunity issues in Virginia is whether a party has arbitrarily refused to cooperate in the joint provision of public services. The Commission is aware of no action by either the City of Waynesboro or Augusta County which it would consider to be an instance of an arbitrary refusal to cooperate for the mutual advantage of their residents. Indeed, the Commission has previously noted an extraordinary degree of cooperation between the two local governments.²⁴ The evidence clearly reveals, in our judgment, a willingness of both local governments to pursue opportunities for collaborative action.

Compliance with State Policies

Both the State's annexation and immunity statutes require consideration of the efforts made by local governments to comply with applicable State policies with respect to education and other basic public service concerns of the Commonwealth. While the Commission has addressed extensively this issue with respect to Augusta County and the City of Waynesboro in two previous reports, brief additional comment regarding several of those fundamental State concerns is appropriate here.

Education. It is generally recognized that public education is

²³Notice, Vol. III, p. 5. Approximately 13.5% of the employees serving these plants were residents of the City of Waynesboro.

²⁴See Waynesboro Annexation Report, pp. 95-96; and Notice, Vol. I, pp. 59-60.

one of the foremost service concerns of this Commonwealth. By constitutional provision the State of Virginia has asserted its recognition of the importance of public education, and by general law the General Assembly establishes each biennium standards which are expected to be met by each local school division in Virginia.²⁵ The evidence indicates that Augusta County has constantly met and surpassed these legislatively established standards.²⁶ Further, all County schools (21) are accredited by the State's educational authorities, and all its high schools (5) are accredited by the Southern Association of Colleges and Schools.²⁷ Based on these facts, Augusta County appears to be fully responsive to the State's concern with public education.

Public Planning. Through numerous statutory provisions the General Assembly has indicated its desire that local governments in Virginia establish and maintain an effective public planning process.²⁸ In its December 1982 report on Augusta County's immunity action, the Commission noted that the County had established a planning commission as early as 1941, had been one of the first counties in Virginia to adopt a zoning ordinance (1947), and had enacted subdivision regulations in 1956.²⁹ Those actions attest to an early

²⁵Art. VIII, Sec. 1, Constitution of Virginia; and Ch. 578, Acts of Assembly, 1982.

²⁶S. Barry Morris, Administrative Director, Planning and Evaluation, Virginia Department of Education, communication with staff of Commission on Local Government, Oct. 1, 1984. Augusta County schools have operated a full-day kindergarten program for over a decade.

²⁷Notice, Vol. I, p. 44.

²⁸Secs. 15.1-427, 15.1-427.1, 15.1-465, and 15.1-446.1, Code of Virginia.

²⁹Augusta County Immunity Report, pp. 91-94. See also Notice, Vol. III, p. 25.

and significant commitment by the County to public planning, a commitment which preceded State requirement for two of those actions by several decades.³⁰ The Commission did note, however, in its December 1982 report that Augusta County had not adopted a comprehensive plan which it considered to be an important implement to integrate and guide the application of all other public planning instruments. The Commission wishes to reaffirm its judgment that an adopted comprehensive plan is a significant element for guiding and regulating the development of a locality.

It is quite significant for purposes of this report to note that Augusta County has responded positively to its public planning needs since December 1982. Since that date the County has (a) amended its subdivision ordinance for purposes of extending its provisions to apply to additional development; (b) completed and published a land use survey providing current data on development trends and service needs throughout its jurisdiction, (c) completed and prepared for public distribution sets of maps depicting the 1973 land use plan, current land use patterns, and zoning districts, (d) integrated and formally adopted as the "Planning Documents of the County of Augusta, Virginia" various separate planning instruments to provide a comprehensive reference file, and (e) contracted with the Virginia Polytechnic Institute and State University (VPI&SU) for professional assistance in strengthening its comprehensive planning efforts and capabilities.³¹ These various actions constitute, in the aggregate, a significant effort by the County to improve its planning instruments and process consistent with the State's concern for effective public planning.

³⁰State law did not require the establishment of local planning commissions until July 1, 1976 nor the adoption of subdivision regulations until July 1, 1977. (Secs. 15.1-427.1 and 15.1-465, Code of Virginia.)

³¹Notice, Vol. IV, pp. 57-66. This document was filed with the Commission on Aug. 22, 1984.

The County's letter requesting professional planning assistance from VPI&SU contained the following paragraphs of relevance to the Commission's review:

Our commitment to undertake these [planning] efforts is occasioned by the fact that Augusta County is currently in the process of completing rather extensive negotiations relating to annexation and alternative governmental arrangements which would enable cities and counties to consolidate their efforts to provide services for urban areas in and adjacent to cities. Augusta County has also committed itself to a strategic role as the primary provider of urban and rural services for the dispersed settlement pattern which has been developing in our County over the past half century.

In response to these emerging roles, Augusta County has decided to undertake a thorough review and update of its comprehensive plan for land use and public services as well as its current planning and growth management procedures³²

These passages reflect both an awareness of the County's contemporary planning needs and a commitment to addressing those needs through the development of a comprehensive planning instrument. The County has advised, however, that the development of this new comprehensive planning instrument must await the final implementation of its interlocal agreements with the Cities of Waynesboro and Staunton.³³ The Commission concurs with that judgment.

Housing. The General Assembly has stated that proper housing for all State residents is a matter "of grave concern to the Commonwealth."³⁴ From our perspective, the General Assembly's concern for adequate housing for residents of the State is well-founded,

³²Letter from R. E. Huff, County Administrator, County of Augusta, to Dr. Norris Bell, Director of Continuing Education, VPI&SU, Aug. 6, 1984; in Notice, Vol. IV, Appendix Exh. A.

³³Notice, Vol. IV, pp. 62-63.

³⁴Secs. 36-2 and 36-120, Code of Virginia.

for the absence of such housing can have a pervasive and adverse effect on a community. Moreover, in our judgment, the opportunity and responsibility of local government for the promotion and facilitation of the provision of suitable housing have grown in recent years and will continue to grow in the future. Local governments must, in our view, recognize this larger role and opportunity and be responsive to the State's pronounced concern for appropriate housing for all its residents.

While Augusta County has not established a public housing authority for purposes of addressing its housing needs, it has administratively assisted and facilitated the construction of a significant number of dwelling units which receive various forms of governmental assistance.³⁵ The governmental assistance which these units receive is intended to make such units available to low and moderate income families. According to data recently compiled by the Central Shenandoah Planning District staff, as of 1983 Augusta County had within its boundaries 1,673 units of assisted housing.³⁶ The assistance which Augusta County provided in the development of these units clearly represents an effort consistent with the State's concern for adequate housing for its residents.

Agricultural Land Preservation. The General Assembly has declared that it is the policy of the Commonwealth to endeavor to preserve the

³⁵The Commission notes that as a result of action by the General Assembly in 1938 all counties and cities in the Commonwealth technically have a housing authority. Such authorities, however, do not function until approved by a referendum. Augusta County has not approved the establishment of a housing authority by referendum.

³⁶Notice, Vol. III, p. 40. Sixty (60) of those assisted housing units (Augusta Farms Apartments) are located within the proposed Stuarts Draft immunity area. (See County of Augusta, Augusta County Housing, no date.) It must be noted here that the tabulation of the number of assisted housing units situated within the City of Waynesboro, as of 1983, as reported by the staff of the Central Shenandoah Planning District and as cited in Notice, Vol. III, p. 40, is incorrect. The Central Shenandoah Planning District data omit over 500 units of assisted housing developed privately in the City. (See

State's agricultural properties.³⁷ The need to pursue vigorously such a policy, both within the Commonwealth and in the nation, will grow in intensity as the years progress. In this regard, the Commission considers it significant to note that Augusta County adopted in 1976 a program of use value assessment, as authorized by State law, in order to reduce the tax burden on its agricultural properties. The implementation of this program in tax year 1982 resulted in reducing the taxable value of lands qualifying for use value assessment by approximately \$133.3 million.³⁸ While no study of use value assessment programs has concluded that such programs constitute a perfect instrument for the protection of agricultural lands, it is an instrument which has been authorized by the General Assembly and implemented by Augusta County. In our judgment, Augusta County's acceptance of use value assessment constitutes an effort to comply with the State's concern for the protection and preservation of the Commonwealth's agricultural properties.

Urban Services

The State's annexation and immunity laws require consideration of urban service factors. Annexation and immunity issues involve a determination as to which local jurisdiction will govern an area. The State is concerned that the areas affected by such issues will be assured of having their current and prospective public service needs properly met. In this instance the proposed grant of permanent immunity as set forth in the Settlement Agreement would leave to Augusta County the governance of the Stuarts Draft area. The following sections of this report consider the public service consequence of such a

Waynesboro Annexation Report, p. 95.)

³⁷Sec. 15.1-1507, Code of Virginia.

³⁸Virginia Department of Taxation, Annual Report - 1982-1983, Table 5.4.

grant of immunity.

Water. As early as 1948 Augusta County established sanitary districts for the provision of public water to its residents. In 1966 the Board of Supervisors created the Augusta County Service Authority (ACSA) for purposes of consolidating and expanding its utility operations. In order to hasten the extension of water service to County residents, between 1977 and 1982 the Board of Supervisors supplemented ACSA revenues by \$646,000 for the construction of specific water projects.³⁹ These actions manifest an early and continuing commitment by the County Board of Supervisors to provide appropriate public water service to County residents.

With respect to the proposed Stuarts Draft immunity area, the ACSA has three raw water sources presently available to meet the needs of that area. Those three water sources are capable of supplying up to 3.44 million gallons per day (MGD). Since water from those sources is currently utilized at a rate of only 1.1 MGD, approximately 68% of their capacity is available to meet future needs.⁴⁰ The ACSA chlorinates and fluoridates the raw water serving the Stuarts Draft area, but no need has been found for more extensive water treatment.⁴¹

The ACSA maintains 19.7 miles of water mains, ranging from 6 to 14 inches in diameter, within the Stuarts Draft area. As of December 31, 1983, the ACSA's water distribution system served 1,460 separate connections within the Stuarts Draft area, providing water to all concentrated residential development as well as to the area's major industrial and commercial firms.⁴² As part of the water system

³⁹Waynesboro Annexation Report, pp. 33-36.

⁴⁰Notice, Vol. III, pp. 13-14.

⁴¹Augusta County Immunity Report, pp. 22-23.

⁴²Notice, Vol. III, p. 11. See also County of Augusta, Map Exhibits (filed with the Commission on June 29, 1984 as Vol. II of Augusta County submissions), Exh. 4, for location of water lines and

servicing the Stuarts Draft area, the ACSA maintains 3 pumping stations, 3 standtanks (with a combined storage capacity of 2.75 million gallons), and 106 fire hydrants.⁴³ These facilities provide appropriate pressure in the distribution system and enhance the community's fire suppression capabilities.

Given the number of connections servicing the proposed Stuarts Draft immunity area, the unused water capacity available to serve the area's future needs, the size of the water mains comprising the distribution system, and the absence of any known water problems in the area, the Commission has no difficulty concluding that the public water services in the Stuarts Draft area fully meet the community's present needs and can be expanded to meet its prospective requirements.

Sewage Collection and Treatment. The ACSA owns and maintains 16.9 miles of sewerage lines within the proposed Stuarts Draft immunity area. These lines vary in size from 8 to 36 inches in diameter.⁴⁴ As of December 31, 1983, the ACSA's sewage collection system within the Stuarts Draft area served 497 different connections, providing public sewerage service to the predominant portion of the area's residents and to the industry and business congregated near the center of the Stuarts Draft community.⁴⁵ Portions of the immunity area, particularly the outlying properties, remain dependent upon private systems.⁴⁶ The sewage collected by the ACSA lines is, with the assistance of several pumping stations, transported to the Stuarts Draft wastewater treatment facility. That plant, which was completed

water service areas within the proposed Stuarts Draft immunity area.

⁴³Notice, Vol. III, pp. 11-12.

⁴⁴Ibid., p. 11.

⁴⁵Ibid., p. 16.

⁴⁶See Map Exhibits, Exh. 3.

in 1969 and enlarged in 1983, has a treatment capacity of 0.70 MGD.⁴⁷ Since the plant currently receives an average daily flow of 0.56 MGD, it retains approximately 20% of its capacity to meet future needs.⁴⁸ The Commission is unaware of any existing health hazard in the proposed immunity area nor of any portion of that area which requires an immediate extension of public sewerage service.⁴⁹

Based upon the number of connections and population served by ACSA sewerage facilities within the proposed immunity area, the size and condition of the collection lines, the quality and capacity of the wastewater treatment facility serving the area, and the absence of any known health problems in the area stemming from sewage concerns, the Commission finds that the sewage collection and treatment services in the Stuarts Draft area are of high quality and fully meet the area's needs. Further, the evidence indicates that the prospective sewerage needs of the area can be addressed through the extension and adaptation of existing facilities.

Solid Waste Collection and Disposal. Augusta County does not provide solid waste collection service with its own personnel and equipment, but relies on private contractors for the provision of such services to County residents and businesses. Such an arrangement, it should be noted, is not atypical of the means by which such service is provided to many county residents in Virginia. In terms of the availability of solid waste collection service within the Stuarts Draft immunity area, the County has submitted evidence to the Commission indicating that private collectors serve the major portion of the proposed immunity area, including those sections which contain the pre-

⁴⁷Notice, Vol. III, p. 11.

⁴⁸Memorandum from William L. Hart, Engineer - Director, Augusta County Service Authority, to Harold Ralston, County Engineer, County of Augusta, Oct. 2, 1984.

⁴⁹State Health Department officials have advised the Commission that they are aware of no septic tank problems or similar sewage concerns in the Stuarts Draft area. (Richard Neff, Sanitarian,

dominant share of the area's population.⁵⁰

As a result of previous consideration of the solid waste collection function and the nature of the service available in other sections of Augusta County, the Commission stated:

The salient considerations are the cost, accessibility, and quality of the service offered. The evidence submitted to this Commission indicates that the privately provided collection services in the areas proposed for immunity in Augusta County have been found acceptable and have produced little public complaint.⁵¹

The Commission would apply that same statement to the solid waste collection services available to residents of the Stuarts Draft area.

While recognizing the propriety and suitability of a locality's provision of solid waste collection services through the use of private contractors, the Commission has previously expressed the view that it was important for local governments to maintain reasonable public oversight of this service. The Commission reaffirms that view. With respect to this concern, it is significant to us that the County has indicated its willingness to exercise its regulatory authority in the future to assure a proper and equitable performance by private contractors in the provision of solid waste collection services.⁵²

In terms of solid waste disposal, the Commission notes that the ACSA operates a landfill near the Jolivue community east of Interstate 81 which is available for use by County residents without charge. According to State authorities, this facility has been operated in accordance with all legally established standards.⁵³ The Jolivue

Staunton - Augusta Health Department, communication with staff of Commission on Local Government, Oct. 3, 1984.)

⁵⁰Map Exhibits, Exh. 5.

⁵¹Augusta County Immunity Report, pp. 77-78.

⁵²Notice, Vol. IV, p. 35.

⁵³L. Rexrode, Regional Consultant, Lexington Regional Office, Virginia Department of Health, communication with staff of Commission

facility is now reported to have the capacity of meeting the County's needs for the next decade assuming no extraordinary increase in the tonnage of refuse.⁵⁴

On the basis of the general availability of private collection service, the absence of public complaint with those services, and the County's provision of landfill facilities meeting State requirements, the Commission finds the solid waste collection and disposal services in the Stuarts Draft area properly address that area's current needs.

Crime Prevention and Detection. Crime prevention and detection services in Augusta County are principally the responsibility of the County's Sheriff's Department. This department has a staff of more than 60 sworn officers, 20 of whom are regularly and routinely assigned to patrol activities.⁵⁵ While the Department of State Police has assigned a number of officers to duty within the boundaries of Augusta County, those officers are not free to assist with the day-to-day responsibilities of the Sheriff's Department.

According to information presented to the Commission previously, the Sheriff's Department divides the County into four patrol districts, with each district radiating from the City of Staunton. Previous data indicated that one officer was regularly on patrol in each district, with a fifth officer serving as shift supervisor and available for back-up assistance.⁵⁶ Assuming the general availability of five deputies throughout the day, this level of patrol activity would provide the County a geographic intensity of service equal to one deputy for each 125.3 square miles of territory, exclusive of land in federal and State preserves.

on Local Government, Oct. 15, 1984.

⁵⁴Memorandum from Hart to Ralston, Oct. 2, 1984.

⁵⁵Augusta County Immunity Report, pp. 34-35.

⁵⁶Ibid., p. 39.

While this level of patrol activity is far from intensive, there are other factors which bear upon the adequacy of law enforcement services in the Stuarts Draft area. First, experience has shown that in practice county law enforcement officers in Virginia tend, and reasonably so, to patrol developed areas more frequently than the rural segments of their assigned districts. Thus, in the absence of calls to outlying areas, the deputy serving the patrol district encompassing the Stuarts Draft area may well concentrate his efforts on that area. Second, the Stuarts Draft area does not have the concentration of commercial and related activity which is often an attraction to crime. Third, while data has not been presented to the Commission on the subject, it is reasonable to conclude that the major industries in the Stuarts Draft area maintain appropriate security complements, thereby reducing demands on the County Sheriff's Department. These various considerations would lessen the need for more intensive patrol activity in the Stuarts Draft area.

Unfortunately, the County's Sheriff's Department does not maintain a complete record of all calls for service which it receives. Such record keeping should be performed and would provide an excellent measure of law enforcement needs in the County. While the State's published crime rates and the record of crime-related calls which is maintained by the Sheriff's Department provide some index of need for law enforcement service, neither is a complete and suitable measure.

In terms of crime prevention efforts, the Commission notes that the Augusta County Sheriff's Department does conduct an organized program. This program is conducted by deputies on a periodic basis.⁵⁷

The Commission has no basis for concluding that the present level of crime prevention and detection services in the proposed Stuarts Draft immunity area is inadequate or inappropriate for the area's

⁵⁷Ibid., p. 39.

needs.

Fire Prevention and Protection. The fire prevention and protection services in the proposed Stuarts Draft immunity area are performed by the Stuarts Draft Volunteer Fire Department (VFD). This department is served by 50 volunteers who have available two engines and vehicles designed for brush fires. These three pieces of equipment are capable of transporting collectively approximately 1,750 gallons of water to fire locations. The latest Insurance Service Office (ISO) rating given to the Stuarts Draft VFD was a "6," thereby qualifying properties within five road-miles of that facility with such a rating in terms of their exposure to fire loss.⁵⁸ According to County map exhibits virtually all property within the boundaries of the Stuarts Draft immunity area are within this five-mile distance and eligible for the "6" rating.⁵⁹ The fire suppression capabilities of the Stuarts Draft VFD are enhanced by the County's modern dispatch system served by four full-time paid dispatchers.⁶⁰ Further, with respect to the training provided the volunteers serving the Stuarts Draft VFD,

⁵⁸Notice, Vol. III, p. 27. ISO ratings are given on a scale from "1" to "10" and are intended to reflect a system's ability to defend against a major fire. A classification of "10" indicates that there is little or no protection against a major fire, while a classification of "1" reflects a system of extreme capability. The principal features measured by the ISO in grading a community's fire system are the fire department, fire communications, fire safety control, and water supply. [John L. Bryan and Raymond C. Picard, Managing Fire Services (Washington, D. C.: International City Management Association, 1979), p. 102.] Residential properties located more than five road-miles from a fire station are automatically assigned a classification of "10" by the ISO.

⁵⁹Map Exhibits, Exh. 8. Even if properties are located within five-road miles of the Stuarts Draft VFD, they will be classified as a "9" unless fire hydrants are available to serve them. Some portions of the proposed Stuarts Draft immunity area do experience that situation. (See Map Exhibits, Exh. 4.)

⁶⁰See Augusta County Immunity Report, pp. 47-52.

State training records for the years 1977-1982 indicate that those volunteers have received during that period 4,690 hours of State-certified training or only a fraction of that compiled by the personnel of the Augusta County Fire Department (14,755 man-hours) during the same period.⁶¹

There are several aspects of the fire prevention and protection services in the Stuarts Draft area, however, which are of concern to the Commission. First, while the proposed immunity area is served by 106 fire hydrants, located along the principal thoroughfares and in areas of concentrated development, the Commission is concerned that the area does have need of an additional tanker. Second, given the industrial growth of the area and the development of multi-story apartment buildings in the community, the Commission believes that there is a present and growing need for an aerial ladder to be stationed in the area. Third, the Commission is concerned about the absence of a fire prevention code in the County which, in our judgment, facilitates fire prevention measures far more comprehensive and effective than those which can be undertaken under the general law authority provided by Section 27-61 of the Code of Virginia. Finally, the Commission is required to state that Augusta County's fire prevention and protection services would be strengthened if the Stuarts Draft VFD and other volunteer units in the County were brought fully under the control of a fire chief or a fire administrator. Such an integrated system would facilitate the County's overall planning for fire protection services, the scheduling of apparatus replacement, the location of fire stations, and fireground management. While the evidence available to the Commission indicates that the County has to this point endeavored to meet the fire suppression needs of the Stuarts Draft area, the growth and development of that area now requires attention to the concerns mentioned above. The provision of

⁶¹The calculations are based upon records provided by E. S. Roby, III, Northern Area Supervisor, Fire Services Training, Virginia Department of Fire Programs. The training records cover the period

appropriate fire services in the Stuarts Draft area requires some effort to address these concerns.

Public Recreation. In 1973 the Augusta County Board of Supervisors established a Parks and Recreation Commission to identify and address the County's needs for public recreation. Since that date the County has developed a full-time recreation staff of approximately eight positions, led by a professionally trained director. In recent years the County has developed the Augusta Recreation Center at Fishersville which offers facilities and programs to residents throughout the general area. The County has also invested local resources and obtained grant funds for development recreational facilities and programs for the handicapped at the Woodrow Wilson High School. Further, the County is a member of the Upper Valley Regional Park Authority, and by its support of that entity has assisted in the development of the Natural Chimneys and Grand Caverns Regional Parks. These various actions reflect on the part of the Augusta County Board of Supervisors a willingness to respond to the recreational needs of County residents.⁶²

In terms of recreational facilities and programs immediately within the Stuarts Draft area, the Commission notes that the area is served by a County-owned ball field, by the grounds and recreational facilities at three public schools, and by the Sherando Lake recreational facility located on adjacent federal property. Further, the area is also served by the intensively used Shenandoah Acres resort, a commercial facility which offers swimming, horseback riding, and other outdoor activities.⁶³ In addition to the availability of

from April 28, 1977 to October 2, 1982. The totals do not include noncertified "in-station" training nor formal instruction which may have been taken at institutions outside the Augusta County area.

⁶²Augusta County Immunity Report, pp. 57-62.

⁶³Map Exhibits, Exh. 9.

these various facilities, the County offers a number of adult recreation programs throughout the year at schools in the area and provides an expanded program for youth and adults during summer months, including the operation of a five-day per week playground program for children 5-12 years of age at the Stuarts Draft Elementary School.⁶⁴

Augusta County has recognized and responded to the public recreational needs of its residents. In our judgment, given the nature of the Stuarts Draft area, the public recreational facilities serving the area appropriately address the community's needs.

Library Facilities. In 1976 Augusta County established a library board and during the following year opened its first public library facility near the Woodrow Wilson High School in Fishersville. While this facility was being developed, the County contracted with the Cities of Waynesboro and Staunton to allow Augusta County residents to use the library resources of those municipalities. Between 1976 and 1982, the period of time those contracts were in effect, Augusta County paid in excess of \$500,000 to those Cities for library services to County residents. Further, in addition to those efforts to extend library services to County residents, Augusta County operates a book-mobile which serves approximately 40 stops throughout Augusta County.⁶⁵

As of June 30, 1984, the County's public library services were being provided by a staff of 12 full-time personnel, led by a certified professional director, and 2 part-time student aides.⁶⁶ As of that date the County's central library facility had been relocated to a completely renovated former elementary school located on U. S. Highway 250 in the Fishersville community. This new facility vastly

⁶⁴Notice, Vol. III, pp. 28-31.

⁶⁵Augusta County Immunity Report, pp. 68-71.

⁶⁶"Virginia Public Library Statistical Report for Fiscal Year Ending June 30, 1984," an annual statistical report submitted to the

expanded the space available for County library purposes, providing approximately 27,000 square feet of floor space for various functions.⁶⁷ At the end of June 1984 the County's total book and periodical holdings had risen to over 57,000 volumes. As a result of the growth and improvement in the County's library facilities, statistics indicate that as of June 30, 1984, the number of registered borrowers using the County's system had risen to 9,548 and that the book circulation during the preceding 12-month period had totaled 210,792 volumes.⁶⁸ These statistics reflect increases in the number of registered borrowers and annual book circulation of 94% and 61% respectively over comparable figures for the year ending June 30, 1981.⁶⁹

The County's new central library facility is located only approximately six miles from the center of the proposed Stuarts Draft immunity area and can be reached conveniently by that area's residents. Further, library services are also extended to the Stuarts Draft area by four bookmobile stops.⁷⁰ In our view, the public library services provided in the Stuarts Draft area are reasonable and

Library Development Branch, Virginia State Library by the Augusta County Library.

⁶⁷Edward A. Plunkett, Jr., County Attorney, County of Augusta, communication with staff of Commission on Local Government, Oct. 3, 1984. The cost of renovating the former school for public library usage was \$485,000. The entire cost of the renovation was borne by the County.

⁶⁸"Virginia Public Library Statistical Report for Fiscal Year Ending June 30, 1984," submitted by Augusta County Library.

⁶⁹Data for Augusta County Library for Fiscal Year 1980-81 are presented in Virginia State Library, Library Development Branch, Statistics of Virginia Public Libraries and Institutional Libraries, 1980-81.

⁷⁰Notice, Vol. I, p. 37.

appropriate. Augusta County has made a commendable effort to address the public library needs of its residents.

Public Planning, Zoning and Subdivision Regulation. In its December 1982 report the Commission expressed a number of concerns regarding Augusta County's public planning and development control policies.⁷¹ However, as noted in a previous section of this report, the Commission is aware of the significant steps taken by Augusta County since late 1982 to strengthen its planning and development control program. The Commission considers it appropriate to repeat here that since December 1982 the County has (1) completed and published a survey of land usage within its jurisdiction, (2) completed and published a set of zoning maps, (3) adopted revised subdivision and zoning ordinances, (4) compiled and officially adopted as the "Planning Documents of the County of Augusta, Virginia" various separate instruments which relate to the County's planning and regulatory policies, and (5) retained professional assistance in preparation for the subsequent adoption of a comprehensive plan.⁷² The Commission considers these actions as beneficial and appropriately addressing the concerns we previously cited. Augusta County has indicated that it will not endeavor to adopt a comprehensive plan until the current interlocal issues with the Cities of Waynesboro and Staunton are resolved. We agree that the County's final adoption of a comprehensive plan should now await the resolution of the issues with the adjoining municipalities. In view of the circumstances mentioned above, the Commission considers the public planning, zoning, and subdivision and regulation efforts of the County to be addressing appropriately the needs of the Stuarts Draft area.

Street Maintenance. The maintenance of all public thoroughfares

⁷¹Augusta County Immunity Report, pp. 91-97.

⁷²Notice, Vol. III, p. 75.

in Augusta County is the responsibility of the Virginia Department of Highways and Transportation (VDH&T). The conditions of County roads, thus, is dependent upon the work of that State agency and, in the main, upon the resources provided by the General Assembly. It is significant to the Commission, however, that Augusta County has followed a policy in recent years of appropriating local funds to augment State aid to improve the quality of public roads in the County.⁷³ Further, the County's subdivision ordinance does require the construction of subdivision streets to standards specified by the VDH&T, thereby assuring the acceptance of those streets into the State system for future State maintenance. Based upon the Commission's visual inspection of the public thoroughfares in the proposed Stuarts Draft immunity area and upon the data presently available to us, we find the level of road and street maintenance in that area appropriate for its needs. While the Commission's research indicates that a significant percentage (47.3%) of the total Secondary roadway in the proposed immunity area is classified by the State as nontolerable, the resolution of the issue presently before the Commission and the Court will not affect the ownership of that roadway nor the time within which its deficiencies will be addressed.⁷⁴

Snow Removal. As with all other road-related activities, snow removal services in Augusta County are the responsibility of the VDH&T. The Commission's previous research led it to conclude that the snow removal services provided by the State within the County were com-

⁷³See Augusta County Immunity Report, pp. 79-80. The County has continued to contribute local funds for road improvements since the issuance of the immunity report. (Harold Ralston, County Engineer, County of Augusta, communication with staff of Commission on Local Government, Oct. 4, 1984.)

⁷⁴The amount of nontolerable roadway in the proposed Stuarts Draft area was calculated from data presented in Virginia Department of Highways and Transportation, Road Inventory, Mileage Records, System Nontolerable, December 31, 1981.

parable to those offered by adjoining municipalities.⁷⁵ Based upon that level of service and the nature of the roads in the Stuarts Draft area, the Commission concludes that the current level of snow removal services in the proposed Stuarts Draft immunity area is appropriate for its needs.

Curbs, Gutters, Sidewalks, and Storm Drains. Virginia Department of Highways and Transportation standards do not generally require curbs, gutters, and sidewalks along thoroughfares which are part of the State's Primary or Secondary road systems. Further, the County's subdivision ordinance does not require the installation of such facilities in development subject to its provisions. Nevertheless, the Commission found in its December 1982 report on the County's immunity action that those areas of the County for which immunity was then being sought contained curbs, gutters, and sidewalks which were adequate for present needs.⁷⁶ As a result of our visual tour and knowledge of the Stuarts Draft area, we conclude that the extent of such facilities in that area is adequate.⁷⁷

In terms of storm drainage, the Commission notes that the County's zoning ordinance does require all business, industrial, multi-family, and public facility development to make arrangements for the proper disposition of storm water. In pursuance of that end the County has adopted a Storm Drainage Policy which establishes criteria which must be met by developers in constructing their storm water management plans. Moreover, the County has adopted a flood plain management ordinance to protect against storm water damage in areas vulnerable to

⁷⁵Augusta County Immunity Report, pp. 85-86.

⁷⁶Ibid., pp. 97-98.

⁷⁷The County has advised that most development in the Stuarts Draft area has curbs and gutters. (Notice, Vol. I, p. 37.) The Commission has observed that sidewalks also exist in areas of commercial concentration, adjacent to schools, and in some residential subdivisions.

flooding.⁷⁸ From our perspective, the County's storm drainage and storm water management program is adequate for the needs of the Stuarts Draft area.

Street Lighting. Augusta County has a policy of reviewing requests from citizens for the installation of street lights twice per year. If the County's review of a request for a street light indicates that the light is warranted, the applicant is charged a processing fee by the County as well as the cost for the installation of the light. The operating cost of all lights installed is borne by the County. In 1982 the County advised that 566 street lights were then functioning within its boundaries at County expense.⁷⁹ While the Commission's visual inspection of the proposed Stuarts Draft immunity area disclosed a number of street lights, principally along the major thoroughfares, the exact number of street lights in the area is unknown. The Commission fully agrees with the view that the intensity and number of street lights required in an area will vary with the area's characteristics. Less developed and less traveled areas will require less street lighting than areas of greater development and activity. The needs of the Stuarts Draft area are significantly different from areas of concentrated residential and commercial development. The Commission has no evidence indicating that the present extent of street lighting in the proposed Stuarts Draft immunity area is inadequate or inappropriate for the area's needs.

Summary of Urban Service Considerations. In the preceding sections of this report the Commission has considered the level of urban services available to residents of the proposed Stuarts Draft immunity area. As those sections have indicated, with the exception of fire prevention and protection services, the Commission has concluded that

⁷⁸Notice, Vol. I, p. 37.

⁷⁹Augusta County Immunity Report, pp. 87-88.

the area proposed for immunity does have available generally an array of basic urban services which address appropriately the area's current needs.

In terms of the County's provision of urban services to its residents, it is appropriate, we believe, to offer an additional comment at this point. The Commission's several recent reviews of interlocal issues involving Augusta County have revealed numerous instances in which the County has been in the forefront of efforts to address public concerns and an early respondent to emerging public needs. We note, for example, that Augusta County employed paid firefighters as early as 1941 and, despite being at the time a sparsely populated and largely rural county, adopted a comprehensive zoning ordinance in 1947. We note also the significant strides and investment the County has made in recent years in response to the public recreation and library needs of its residents. Perhaps most significant, however, is the County's extension of public utility services to its residents. From the founding of the ACSA in 1966 to the current date the number of public water connections served by that entity increased from 2,287 to 6,769, while the number of sewerage connections served grew from 347 to 3,200. In terms of geographic area, from 1966 to 1984 the portion of the County with public water available increased from 20 to 90 square miles, while the portion of the County served by public sewerage grew from 1 to 57 square miles.⁸⁰ The extension of utilities by the ACSA has been assisted by over \$8 million in contributions from the Augusta County Board of Supervisors.⁸¹ Augusta County has

⁸⁰Notice, Vol. III, p. 16. The Commission has been advised that as of August 1984 approximately 95.7% of the population in the proposed Stuarts Draft immunity area was served by ACSA water or sewer connections. (Memorandum from Curtis L. Poe, Assistant Engineer - Director, ACSA, to Edward A. Plunkett, Jr., County Attorney, County of Augusta, Aug. 21, 1984.)

⁸¹Notice, Vol. III, p. 24.

responded with considerable vigor in recent decades to the urban service needs of its residents. In our judgment, this fact is relevant to the issue of the proposed grant of permanent immunity to the Stuarts Draft area.

Non-Foreclosure of Annexation

The General Assembly of Virginia has indicated its concern that cities of less than 100,000 persons retain a meaningful opportunity to grow by annexation.⁸² If this concern is to be addressed properly, such cities must retain an opportunity to add property by annexation which has a reasonable prospect of contributing substantially to their general viability. The mere retention of an option to annex property with little or no development potential is inconsequential. In our judgment, the General Assembly desired for the State's smaller municipalities to retain an opportunity to share meaningfully in the growth of their area.

In this instance, the proposed grant of permanent immunity to the Stuarts Draft and Fishersville areas would leave the entire City's circumference open to growth by annexation. Not all of this area, however, offers a realistic prospect for significant development. The area east and southeast of the City's boundaries abuts federal land preserves or other property with slopes of 15% or more. Further, the area to the north of the City along U. S. Highway 340 and adjacent to the Norfolk and Western Railway is located in the 50-year floodplain and, consequently, is restricted in its development potential. If the City is to retain a meaningful opportunity for growth, it appears at this time that other avenues of development must be contemplated.

In terms of potential future growth, the Commission notes the southwestern boundary of the enlarged City of Waynesboro would be approximately 2.25 miles from the northeastern boundary of the Stuarts Draft immunity area. The Commission also notes that the northwestern

⁸²Sec. 15.1-977.22:1, Code of Virginia.

boundary of the enlarged City would be approximately one mile from the southwestern boundary of the Fishersville immunity area. The areas in those general directions do appear to offer Waynesboro a meaningful opportunity for future growth and thus avoid the substantial foreclosure of that City's annexation option. With respect to the preservation of the City's option to grow by annexation, we are compelled to express our judgment that the future economic and social health of Waynesboro is important not only to the residents of that municipality, it is equally important to the viability of the general area and to the well-being of the Commonwealth.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Commission has previously recommended that the City of Waynesboro be granted the annexation now set forth in the Settlement Agreement. That proposed annexation will appropriately augment the City's current tax base and will provide it reasonable land for future development. In terms of the proposed grant of permanent immunity for the Stuarts Draft and Fishersville areas, the Commission considers those areas as providing Augusta County with an essential foundation upon which to build and to serve the needs of its residents. Virginia's boundary change laws were intended, we believe, not only to preserve the viability of the State's municipalities, but also to afford the Commonwealth's counties an opportunity to preserve their social and fiscal integrity. The members of this Commission have long accepted the view expressed by Augusta County:


Counties faced with governing dispersed settlement patterns have a real need to preserve their "fiscal assets" so that the public service needs in other areas can be met efficiently and economically.⁸³

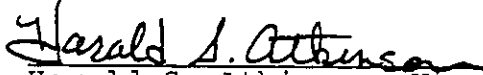
⁸³Notice, Vol. IV, p. 53.

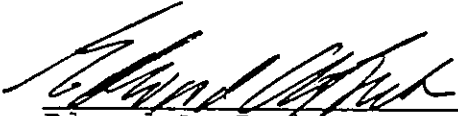
If Virginia's counties are to continue to serve as independent, full-service units of government, they will require, and are entitled to, fiscal assets sufficient to address their public service needs.

In sum, the Commission finds the principal provisions of the Settlement Agreement between the City of Waynesboro and Augusta County - (1) the annexation by the City, (2) the grant of permanent immunity for the Stuarts Draft and Fishersville areas, and (3) the moratoria affecting future annexation and immunity actions as constituting collectively an equitable reconciliation of the interest of the City and County, promotive of the future viability of both jurisdictions, and consistent with the interest of the State.

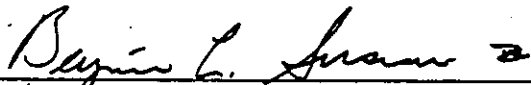
Respectfully submitted,


Wendell D. Hensley, Chairman


Harold S. Atkinson, Vice-Chairman


Edward A. Beck


William S. Hubbard


Benjamin L. Susman, III

AGREEMENT BETWEEN THE CITY OF WAYNESBORO
AND AUGUSTA COUNTY

In consideration of the mutual promises contained herein and for other good and valuable consideration, the City of Waynesboro ("City") and the County of Augusta ("County"), do hereby covenant and agree as follows:

1. Waynesboro shall annex the territory recommended for annexation by the Commission on Local Government.
2. Fishersville and Stuarts Draft areas as shown on the attached map shall be granted permanent immunity.
3. The City and the County agree to negotiate financial adjustments for 90 days, and if agreement is not reached, the three judge court will decide all matters of finance.
4. The Augusta County Service Authority will negotiate with Waynesboro on the sale to Waynesboro of service lines within the annexation area for 90 days, and if agreement is not reached, Authority agrees to convey such lines to County and County to transfer them to Waynesboro at a price to be determined by the same court making the financial adjustments between City and County under paragraph 3 above, subject to approval of bond counsel which approval shall not be unreasonably withheld.
5. Future City Annexation Proceedings. The City will not institute any annexation proceedings against the County for any area of the County not agreed to be permanently immune from annexation by the City on or before December 31, 2000, and the County agrees not to institute any immunity proceedings on or before December 31, 2000, against the City for areas lying between the City limits and the Fishersville and/or Stuarts Draft immunity areas hereby established.

6. Sponsoring of Legislation. The City agrees to request its legislative delegation in the General Assembly to sponsor and support legislation assuring the validity and binding effect of the provisions of paragraph 5 above.
7. Assumption of Debt and Compensation for Lost Revenues. The City agrees to assume a just proportion of any County debt existing on the effective date of annexation, as provided in Section 15.1-1042(b) of the Code of Virginia, 1950, as amended, and to compensate the County for its prospective loss of net tax revenues during the five years following the effective date of annexation because of the annexation of taxable values to the City, as provided in Section 15.1-1042(c) of the Code of Virginia, 1950, as amended.
8. Submission to the Court. The City and the County shall make every effort to agree upon the amount of debt to be assumed and the amount of compensation to be paid for lost revenues under paragraph 7, as well as all other terms and conditions concerning such payments, within a period of 90 days after the execution of this agreement. If the City and County have not reached a final decision concerning financial adjustments by 90 days following the date of this agreement, the City and County agree to submit such unresolved issues regarding said payments to the Court to be determined pursuant to Section 15.1-1042 of the Code of Virginia, 1950, as amended, and to be bound by the final determination of the Annexation Court as to such matters.
9. Ladd Elementary School. The parties will undertake to agree to the disposition of the Ladd School. If the parties are unable to agree, the annexation court shall resolve what disposition is to be made of the school. If the court requires the City to acquire the school, the court shall fix the compensation therefor.
10. Land Use Tax Program. City will enact the same program as County's to the extent the law allows.

11. Redistricting Cost. The cost of any redistricting required by law to be undertaken by the County because of this agreement shall be reimbursed to the County by the City in an amount not to exceed \$25,000.
12. Reduction In Force. Augusta Teachers affected by reduction in force due to Waynesboro's annexation will be given first preference in additional hirings in their related fields by Waynesboro School System to the extent this policy does not conflict with state or federally mandated hiring practices.
13. Transfer of Pupils. During the remainder of the school year in which annexation becomes effective, all pupils residing in the annexation area shall remain in the Augusta County school system. During the first full school year after the effective date of annexation seniors residing in the annexation area shall be entitled to remain in the Augusta County school system tuition free if they desire. Transportation of annexation area pupils who so choose to remain in the County school system after the school year in which annexation becomes effective shall be the responsibility of the pupils or their families. Those annexation area pupils so remaining in the County school system shall be counted as County students for purposes of state and federal funding. The City shall pay to the County a tuition for all pupils who as described above remain in the County school system beyond the school year in which annexation becomes effective. Said tuition shall equal the prorated local costs per pupil, excluding expenditures for capital outlay and debt service and excluding all state and federal funding.
14. Miscellaneous. The rights and obligations of this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
15. Parties Agree to Oppose Changes by Commission or Court. County and City recognize that if a Court approval of this agreement must be obtained pursuant to statutes governing annexation, immunity from annexation, and the Commission on Local

Government, then it is possible that the Commission on Local Government will recommend changes to the proposed settlement. County and City covenant that in such event, each of them will oppose such changes before the Commission and the Courts.

16. Sponsoring of Legislation. The City and County agree to request their legislative delegations in the General Assembly to sponsor and support legislation assuring the validity and binding effect of every portion of this agreement and effecting a legislative reversal of any substantial judicial modification.

17. Option to Terminate. In the event the Court orders any substantial modification of this agreement and either the County or the City believes that remedial legislation is not a reasonably practical solution, then at the option of the County or City this agreement shall be null, void and of no binding effect. The parties agree, however, to make a diligent effort to renegotiate to the end that a new agreement can be reached which embodies the substantial modification ordered by the Court.

18. Breach of Agreement. If either party deems the other to have breached any provision, it shall so notify the other in writing, and the party deemed to have breached the agreement shall have sixty days to remedy the breach. In the event remedial action has not been taken within the sixty day period, the aggrieved party shall be entitled to seek specific performance of the agreement in the Circuit Court of the City or County.

IN WITNESS WHEREOF the governing bodies of the parties have each by ordinance

or resolution caused this agreement to be duly executed by their respective mayor
or chairman and attested by their respective clerks as agreed this 6 day of May, 1984.

COUNTY OF AUGUSTA, VIRGINIA

By: *B. L. Spurr*
Chairman
Board of Supervisors

ATTEST:

R. E. Huff
Clerk of Board

CITY OF WAYNESBORO, VIRGINIA

By: *Louis C. Brooks, Jr.*
Mayor

ATTEST:

Margaret C. Melmore
City Clerk



LEGEND

IMMUNITY AREA
 GENERALIZED LAND USE

LAND USE CATEGORIES

R RESIDENTIAL
 C COMMERCIAL
 I INDUSTRIAL
 T TRANSPORTATION FACILITY ** UTILITY
 P PUBLIC / SEMI-PUBLIC
 A AGRICULTURAL ** FOREST
 V VACANT

AREA PROPOSED FOR IMMUNITY

API 1011 X B

MAP OF
 A PORTION OF
 AUGUSTA COUNTY

IN RE
 A PETITION FOR
 PARTIAL IMMUNITY FROM ANNEXATION
 BY
 AUGUSTA COUNTY, VIRGINIA

APPENDIX C
 STATISTICAL PROFILE OF THE COUNTY OF AUGUSTA
 AND THE PROPOSED STUARTS DRAFT IMMUNITY AREA

	<u>County of Augusta</u>	<u>Proposed Stuarts Draft Immunity Area</u> ¹	<u>Percent of Total County</u>
Population (1980)	53,732	4,619	8.6%
Land Area (Square Miles)	985.65	13.44	1.4%
School Average Daily Membership (1983-84)	10,104	911	9.0%
Total Taxable Values (1984-85)	\$1,409,240,530	\$125,266,070	8.9%
Real Estate Values (1984-85)	\$1,245,840,530	\$107,296,500	8.6%
Public Service Corporation Values	\$81,500,000	\$2,909,850	3.6%
Personal Property Values (1984-85)	\$58,500,000	\$7,360,173	12.6%
Machinery and Tools Values (1984-85)	\$11,400,000	\$6,848,880	60.1%
Mobile Homes Values (1984-85)	\$12,000,000	\$850,667	7.1%
Existing Land Use (Acres)			
Residential	13,302	1,342	10.1%
Commercial	3,771	57	1.5%
Industrial	2,099	935 ^a	44.6%
Public and semi-public	220,441	109	0.05%
Agricultural, Wooded and Vacant	604,305	6,162	1.0%

NOTES:

N/A - Not Available

1 - As estimated by Augusta County

a - Includes transportation and utility uses

SOURCES

County of Augusta, Partial Immunity Notice, Vol. III, May 1984.