

# **Report on the Incorporation of Prices Fork as a Town in Montgomery County**



**Commission on Local Government  
Commonwealth of Virginia**

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**REPORT ON THE  
INCORPORATION OF PRICES FORK  
AS A TOWN IN THE COUNTY OF MONTGOMERY**

**PROCEEDINGS OF THE COMMISSION**

By order entered on March 26, 1999 the special court designated to review the petition for the incorporation of the Prices Fork Community as a town in Montgomery County directed the Commission on Local Government to analyze and to submit a report on the proposed action. Specifically, the court directed the Commission "to determine whether the Petition to Incorporate the Community of Prices Fork has met the criteria set forth in Virginia Code section 15.2-3602."<sup>1</sup> Further, the Court requested that the Commission consider during the course of its review 18 specified elements relevant to the issue.<sup>2</sup>

Following its receipt of the above-mentioned court order, the Commission met with representatives of the Committee for the Incorporation of the Prices Fork Community (Committee) and Montgomery County on May 25, 1999 for purposes of scheduling a review of the issue. Consistent with the adopted schedule, the Commission toured relevant areas

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<sup>1</sup>*Virginia: In the Annexation Court of Montgomery County, In RE: Petition for Incorporation of Prices Fork, Law No. 98-13664 and V-13664. On October 14, 1998 the special court issued a letter opinion granting the request of Montgomery County to refer the petition for the incorporation of Prices Fork to the Commission on Local Government for review. That letter also directed the General Registrar of Montgomery County to verify that at least 100 voters residing in the Prices Fork Community had signed the petition as required by Section 15.2-3600, Code of Virginia. Further, the court requested that the County Attorney prepare an appropriate order directing such for the court to enter and for endorsement by the representative for the Committee for the Incorporation of Prices Fork. The final entry of the referral order was delayed until March 1999, however, by the refusal by the Committee's representative to sign the court document and other legal issues. See **Appendix A** for the complete text of the order of the special court.*

<sup>2</sup>These elements are listed and addressed in **Appendix B**. Included in the issues specified by the court are the location of water, sewer, and storm water facilities; sidewalks; and parks and open areas in the proposed town.

of the Prices Fork Community and Montgomery County and received oral testimony from the parties on July 21 and July 22, 1999. In addition, the Commission held a public hearing, advertised in accordance with Section 15.2- 2907(B) of the Code of Virginia, on the evening of July 21, 1999 at the Prices Fork Grange Hall for the purpose of receiving citizen comment.<sup>3</sup> In order to permit receipt of additional citizen comment, the Commission agreed to keep open its record for written submissions from the public through August 4, 1999. Further, the Commission solicited comment from 14 other local governments in the region which were potentially affected by the proposed incorporation.

### **SCOPE OF REVIEW**

The Commission on Local Government was directed by the special court to determine if the proposed incorporation of the Prices Fork Community met the criteria for town incorporation set forth in Section 15.2-3602 of the Code of Virginia. That statute requires the reviewing entity to determine if:

1. the incorporation will be in the interest of the residents of the proposed town;
2. the prayer of the petition for incorporation is reasonable;
3. the general good of the community will be promoted by the incorporation;
4. the number of inhabitants of the proposed town exceeds 1,000 persons;
5. the land area within the proposed town is not excessive;
6. the population density of the county in which the proposed town is located does not exceed 200 persons per square mile; and if

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<sup>3</sup>The public hearing was attended by approximately 125 persons and produced testimony from 18 individuals.

7. the public services required by the residents of the proposed town cannot be provided by the affected county by the establishment of a sanitary district or by other means authorized by law.

The action initiated by the Committee for the Incorporation of the Prices Fork Community constitutes the first instance in nearly 40 years in which the Commonwealth's general law governing town incorporation has been invoked and the first instance in which those statutes have been subject to consideration by a special three-judge court and this Commission.<sup>4</sup> In the report which follows, the Commission has endeavored to apply its collective experience in local government affairs and administration to the issue under consideration and to leave questions of law for appropriate resolution elsewhere. We trust that this report will be of assistance to the court, to the citizens and leadership of Montgomery County, and to the Commonwealth generally.

## **GENERAL CHARACTERISTICS OF THE COUNTY OF MONTGOMERY AND THE PROPOSED TOWN OF PRICES FORK**

### **COUNTY OF MONTGOMERY**

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

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<sup>4</sup>The last town to be incorporated under the State's general law provisions (Town of Craigsville in Augusta County) occurred in 1960. At that time, the local circuit court, rather than a special three-judge panel, reviewed the petition for incorporation. Subsequent to that date, those statutes were amended to add additional standards for incorporation and to require review by the special court. The Commission notes, however, that two towns, Clinchco in Dickenson County and Castlewood in Russell County, were incorporated by special act of the General Assembly pursuant to Article VII, Section 2 of the Constitution of Virginia in 1990 and 1991, respectively. The residents of the Town of Castlewood, however, subsequently annulled that municipality's charter in 1998.

with the latter jurisdiction being terminated in the process.<sup>5</sup> In terms of population, between 1980 and 1990 the County's populace increased from 63,516 to 73,913 persons, or by 16.4%.<sup>6</sup> On the basis of its area of 388.2 square miles, the County had a population density of 190.4 persons per square mile at the time of the 1990 decennial census. The official population estimate for 1998 placed the County's populace at 77,500 persons, a further increase of 5.1% since the last decennial census.<sup>7</sup> On the basis of its 1998 population, the County had an overall population density of 199.6 persons per square mile.<sup>8</sup>

Although Montgomery County has experienced population growth in recent years, it remains, in terms of its general development, largely rural,

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<sup>5</sup>J. Devereux Weeks, **Dates of Origin, Virginia Counties and Municipalities** (Charlottesville: Institute of Government, University of Virginia, 1967.)

<sup>6</sup>U. 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. Within the County's borders are the Towns of Blacksburg and Christiansburg with a combined 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. See **Appendix C** for a statistical profile of Montgomery County and the proposed town of Prices Fork.

<sup>7</sup>Weldon Cooper Center for Public Service, "Population Estimates for Virginia's Counties and Independent Cities" (electronic dataset), January 1999. Between 1990 and 1998 the population growth in the unincorporated portion of the County was estimated to be 3,377 persons, or 13.9%. By 1998 the population residing in the two towns located within Montgomery County comprised only 64.1% of the County's residents.

<sup>8</sup>Exclusive of the population and land area of the two incorporated towns, the County had, as of 1998, an overall population density of 77 persons per square mile.

with agricultural and forestal activities continuing as significant components of its economic base. As of 1997, there were 517 farms in the County occupying a total of 93,074 acres (approximately 145 square miles), with the average value of agricultural products sold by its farms being \$28,610.<sup>9</sup> Further, 1992 data (the most recent available) disclose that 145,464 acres (approximately 227 square miles) in Montgomery County were considered forest land.<sup>10</sup>

While the above data attest to the extensive rural component of the County, recent employment statistics do indicate that the County has developed a diversified economy. Employment statistics for the quarter ending March 31, 1998 disclose that there were 30,909 positions of nonagricultural wage and salary employment in the County.<sup>11</sup> More than half (52.8%) of those position were in the nonmanufacturing sector, principally in retail trade (7,505) and services (5,260). Much of this nonagricultural wage and salary employment is concentrated, however, within the boundaries of the County's two incorporated towns.

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<sup>9</sup>U. S. Department of Agriculture and Virginia Agricultural Statistics Service, "1997 Census of Agriculture, County Profile, Montgomery County," (electronic dataset). In 1997 the average market value of agricultural products sold by farms in the State collectively was \$57,027, or almost twice the value of products sold by farms in Montgomery County. (*Ibid.*)

<sup>10</sup>U. S. Department of Agriculture, Forest Service, **Forest Statistics for the Southern Mountains of Virginia, 1992**, Table 1. A 1992 survey revealed that properties in that portion of the 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 such tree cover and not currently developed for nonforest use. Such property may also be included in the Department of Agriculture's definition of "farm land."

<sup>11</sup>Virginia Employment Commission, "Covered Employment and Wages in Virginia By 2-Digit SIC Industry for Quarter Ending March 31, 1998 - Montgomery County."

## **PROPOSED TOWN OF PRICES FORK**

The area proposed for incorporation as the Town of Prices Fork embraces a historic community that was first settled in 1740 and surrounding territory that is located generally between the Town of Blacksburg and the New River.<sup>12</sup> That area contains 7.8 square miles of territory, approximately 1,614 persons according to County estimates, and, based on 1997 data, \$73.9 million in assessed property values.<sup>13</sup> Thus, the proposed municipality contains 0.02% of the County's total land area, 2.1% of its population, and 2.7% of its 1997 assessed property values. Based on its area and the County's recent population estimate, the proposed town would have a population density of 206.9 persons per square mile.

In terms of current development, Prices Fork contains two residential subdivisions, approximately 17 commercial establishments, a County elementary school and solid waste transfer station, a research facility owned by Virginia Polytechnic Institute and State University, and water and sewer lines and appurtenances owned by the Montgomery County Public Service

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<sup>12</sup>Prices Fork is defined by the Committee in their petition for incorporation to embrace that portion of Montgomery County bounded by Toms Creek and Brush Mountain in the north, Stroubles Creek and Price Mountain in the south, the Town of Blacksburg in the east, and the New River and property owned by the Radford Army Ammunition Plant in the west. Unless otherwise indicated, the term Prices Fork, as used in this report, refers to the area sought for incorporation by the petitioners.

<sup>13</sup>Committee for the Incorporation of Prices Fork, **Submissions from the Committee for the Incorporation of Prices Fork to the Commission on Local Government** (hereinafter referred to as **Committee Submissions**), Tabs 2, 3; and County of Montgomery, **Submission in Opposition to the Proposed Incorporation of Prices Fork** (hereinafter referred to as **County Submissions**), Tab B "Statistical Profile," p. 6. The Commission notes that the Committee estimates the population of the area proposed for incorporation to be 2,160 persons, or substantially more than that calculated by the County (1,614 persons). The County's methodology, in our judgment, produces a more accurate estimate, but the variation in population estimates is not critical to the disposition of the incorporation issue.



Authority.<sup>14</sup> Most of the property within Prices Fork, however, is zoned for agricultural activity. The limited development that has occurred within the proposed town has been adjacent to that segment of the Prices Fork Road (State Route 685) extending eastward from McCoy Road (State Route 652) to the Blacksburg corporate limits.<sup>15</sup>

## **STANDARDS AND FACTORS FOR INCORPORATION**

### **INTEREST OF THE RESIDENTS OF THE PROPOSED TOWN**

The Code of Virginia directs this Commission and the court to consider the "interest of the inhabitants within the proposed town" when reviewing petitions for incorporation. The following section of this report constitutes the Commission's effort to address this criterion relative to the proposed incorporation of Prices Fork.

In its submittals and testimony to the Commission, the Committee has stated that town incorporation would address two principal interests of the Prices Fork community. First, the Committee contends that the proposed incorporation would facilitate a long-standing need to extend public water to areas having well contamination problems. Second, the Committee asserts that incorporation would enable the Prices Fork community to preserve and

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<sup>14</sup>**Committee Submissions**, Tabs 14 - 17. The MCPSA serves 291 water customers and 164 sewer customers in the central portion of Prices Fork. (County of Montgomery, **Proposed Findings and Conclusions by the County of Montgomery, Virginia** (hereinafter cited as **County Proposed Findings**), p. 12; and **County Submissions**, Tab "Urban Services in the County and in the Proposed Prices Fork Town Area," p. 8.)

<sup>15</sup>**County Submissions**, Map "Proposed Incorporation of the Community of Prices Fork, Zoning."; and testimony of Joe Powers, Planning Director, County of Montgomery, **Transcript, in RE: Petition for Incorporation of Prices Fork** (hereinafter referred to as **Transcript**), Vol. I, pp. 262 - 264.

protect its unique character from increasing development pressures and from possible annexation by the Town of Blacksburg.

In terms of the need for improved water in the Prices Fork community, the Montgomery County Public Service Authority (MCPSA) currently operates two separate water systems, identified as the Prices Fork and the Phillips Acres systems, which serve the central portion of the proposed town.<sup>16</sup> Residents of Prices Fork not served by the MCPSA rely on individual water wells. Water from some of the private wells located along the northern boundary of the proposed town contains high concentrations of iron, manganese, or sulfur, which cause turbidity and odor problems.<sup>17</sup> According to the Montgomery County Health Department, however, while the presence of those minerals constitutes an aesthetic concern, it does not pose a threat to public health.<sup>18</sup> The department has also stated that the wells in the area that were constructed since 1982 meet State standards for

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<sup>16</sup>The Prices Fork water system serves a portion of Prices Fork Road, Thomas Lane (State Route 737), and the Montgomery Farms Subdivision, while the Phillips Acres water system serves connections in the subdivision of the same name. The Commission notes that the MCPSA was created in 1969 and that the County Board of Supervisors serves as the governing body of the Authority. (Testimony of Ira D. Long, Chairman, Montgomery County Public Service Authority and member, Montgomery County Board of Supervisors, **Transcript**, Vol. I, p. 229.)

<sup>17</sup>**Committee Submissions**, Tabs 1, 5. See also, for example, Testimony of Mr. Robert Simonds, **Transcript**, Vol. I, pp. 45 - 47. The residences that are experiencing well water quality problems are located along Old Creek Road (State Route 684) and Mount Zion Road (State Route 655).

<sup>18</sup>Victor Marcussen, Environmental Health Manager, New River Health District, communication with staff of Commission on Local Government, Sep. 20, 1999. The Commission notes that, pursuant to Virginia Department of Health regulations, private water wells are only tested for coliform bacteria. (**Ibid.**)

private water systems.<sup>19</sup>

With respect to the Committee's assertion that the need for public water in the proposed town necessitates the proposed incorporation, several additional points are of relevance. First, testimony by residents of the community indicates that the availability of public water to their property will not necessarily result in their connection to such a system. Thus, a presumed benefit of incorporation may not be realized.<sup>20</sup> Second, the evidence suggests that the County has only recently received formal and explicit requests to address the water concerns of the area, and that the County is now actively seeking to alleviate the problem.<sup>21</sup> While there may be reasons which may hinder the County's ability in the immediate future to address the water concerns in portions of the Prices Fork community, we do not see such obstacles as a permanent bar to action. Based on these considerations, it is not clear to this Commission that the proposed incorporation is a prerequisite to addressing the water concerns of the community.

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<sup>19</sup>**Ibid.** According to a representative for the Montgomery County Health Department, the minerals in the affected wells can be removed by installing and maintaining an individual water filtration system.

<sup>20</sup>Some residents who testified before the Commission concerning the quality of their well water indicated that connection fees, monthly user charges and other financial considerations would be significant factors for consideration in the decision to abandon their individual wells and to connect to public water lines. (Testimony of Simonds, **Transcript**, Vol. I, p. 50; and testimony of Erman Saville, **Transcript**, Vol. I, p. 56-57.) In addition, a representative for the Committee has stated that the proposed town would not adopt a mandatory utility connection ordinance. (Testimony of James V. Noonkester, Chairman, Committee for the Incorporation of Prices Fork, **Transcript**, Vol. I, p. 167.)

<sup>21</sup>Testimony of Joseph E. Gorman, Jr., Chairman, Montgomery County Board of Supervisors and Second Vice Chairman, Montgomery County Public Service Authority, **Transcript**, Vol. I, p. 187. See also testimony of Simonds, **Transcript**, Vol. I, p. 50; and testimony of Jimmy Graham, **Transcript**, Vol. I, p. 78.

The Committee has also contended that incorporation would serve one of the fundamental interests of the residents of Prices Fork by preserving and protecting the unique character of that community. In this regard, we note that the community of Prices Fork can trace its roots to the 1740s, making it one of the oldest European settlements in Southwestern Virginia.<sup>22</sup> Throughout its history Prices Fork has retained its predominantly rural character with the core of the community located in the immediate vicinity of the intersection of Prices Fork Road and McCoy Road, an area identified as the "Forks."<sup>23</sup> Most of the residential development that has occurred in the community in recent years has been concentrated in the Montgomery Farms subdivision immediately south and east of the "Forks."<sup>24</sup>

Following incorporation, the proposed town intends to assume from Montgomery County responsibility for planning and land development control within its jurisdiction.<sup>25</sup> Such authority, if properly implemented, would give Prices Fork the necessary important elements for the management of its physical growth. A representative for the Committee has

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<sup>22</sup>U. S. A. Heavener, **German New River Settlement**, 1961. When the Lutheran Church in the Prices Fork community was established in 1750, it was the first such church west of the Alleghany Mountains and only the third church of that denomination in Virginia.

<sup>23</sup>Located in that portion of the proposed town is a County elementary school, the Grange Hall, two stores, and the Lutheran Church.

<sup>24</sup>Approximately 384 dwelling units are located in the immediate vicinity of the "Forks." (Testimony of Powers, **Transcript**, Vol. I, p. 257.)

<sup>25</sup>William L. Heartwell, III, Special Counsel, Committee for the Incorporation of Prices Fork, letter to staff of Commission on Local Government, July 20, 1999; and testimony of Noonkester, **Transcript**, Vol. I, p. 132. State statutes require that all local governments create a planning commission, adopt a comprehensive plan, and ordinances regulating the subdivision of land.

stated, however, that the proposed town would rely on "volunteers" and part-time personnel for administration and application of its zoning and subdivision ordinances and building codes.<sup>26</sup> The absence of a professional staff to administer and implement the municipality's planning and development control instruments may render difficult, in our judgment, the proposed town's capability of consistently and effectively managing the growth which is likely to be experienced.

In terms of the current instruments guiding the growth of the community, the County's comprehensive plan designates the central portion of Prices Fork as a rural expansion area, signifying that, although the community may be an appropriate location for small scale development, its primary ties are with the surrounding agricultural community and not with the nearby municipalities.<sup>27</sup> The County's plan designates the remaining portion of the proposed town for rural, agricultural, or conservation

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<sup>26</sup>Testimony of Noonkester, **Transcript**, Vol. I, p. 145. The "volunteers" who will serve the proposed town as building inspectors, however, will be compensated on a per inspection basis from the proceeds of the sale of building permits. (*Ibid.*, p. 133; and communication with staff of Commission on Local Government, Sep. 23, 1999.)

<sup>27</sup>County of Montgomery, "1990 Comprehensive Plan Map"; and County of Montgomery, **Comprehensive Plan, 1990** (hereinafter cited as **County Comprehensive Plan**), pp. 63-65. The County's comprehensive plan designates Rural Expansion Areas for low density residential communities which will require less in the way of public utilities. (**County Comprehensive Plan**, p. 63.) Although Section 15.2-2230 of the Code of Virginia requires comprehensive plans to be reviewed at least once every five years by the local planning commission, there is no evidence that Montgomery County has formally reviewed its plan since its adoption in 1990. The Commission notes, however, that the County has amended its comprehensive plan since its adoption, the last such change occurring in April 1999. Moreover, the County is in the process of revising its current plan. (Powers, communication with staff of Commission on Local Government, Sep. 29, 1999.)

purposes.<sup>28</sup> Consistent with its comprehensive plan, Montgomery County has zoned virtually all of the Prices Fork area exclusively for agricultural use, thus applying an additional instrument to preserve the rural character of the community.<sup>29</sup> Further, the County has adopted a program of use value assessment which is designed to reduce the fiscal pressures on agricultural and other qualifying properties which would hasten their conversion to other usage.<sup>30</sup> Moreover, located in the northeastern portion of the proposed town is a significant segment of the first agricultural and forestal district created by the County.<sup>31</sup> Collectively, these measures indicate that Montgomery County is committed to protecting the rural nature and distinctive qualities of the Prices Fork community.

In brief, it is not clear to this Commission that the proposed town and its reliance on volunteers and per diem employees would address more

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<sup>28</sup>"1990 Comprehensive Plan Map."

<sup>29</sup>**County Submissions**, Map "Proposed Incorporation of the Community of Prices Fork, Zoning"; and testimony of Powers, **Transcript**, Vol. I, pp. 262-264.

<sup>30</sup>Montgomery County's use value assessment program, which was adopted in 1979, applies only to qualifying agricultural, horticultural, and forestal properties. [John L. Knapp, **1998 Tax Rates, Virginia's Cities, Counties, and Selected Towns, 17th Annual Edition** (Charlottesville: Weldon Cooper Center for Public Service, University of Virginia, 1998), p. 55.]

<sup>31</sup>Chapter 43 of Title 15.2 of the Code of Virginia authorizes local governments to create agricultural and forestal districts at the request of the owners of qualifying properties. In general, land contained within such a district is protected from the activities of water and sewer authorities and from the authority of local governments to enact laws or ordinances which would unreasonably restrict or regulate agricultural operations within a district. Further, a locality's land use decision or ordinances must recognize each district and take into account the use of land within it. Finally, properties within a district are granted certain protection from eminent domain exercised by local and State governments and public service corporations. (See 15.2-4313, Code of Va.)]

effectively than Montgomery County the protection and preservation of the character of Prices Fork. Moreover, it is appropriate to note that there exists a fundamental tension between the Committee's interest in the extension of public water into outlying areas of the proposed town and its expressed desire to preserve the rural character of the community. The latter, it appears to us, necessitates a deliberate and measured approach in responding to the water concerns of the area.

Related to its concern for the preservation of the distinctiveness for Prices Fork, the Committee also contended that incorporation would serve the interests of residents of the proposed town by protecting the community from annexation by the Town of Blacksburg. A representative for the Committee noted that Blacksburg is constrained from annexation on its northern, eastern, and southern boundaries by steep slopes, and that the only avenue for future expansion by that municipality would be in the direction of Prices Fork.<sup>32</sup> The recent annexation by Blacksburg of 408 acres of unincorporated territory by agreement with the County was cited as evidence of the Town's "aggressive" intent.<sup>33</sup> We fail to see, however, any legal or practical basis for the inclusion of such hypothetical considerations in the resolution of this incorporation issue. The prospect of such annexation is speculative, and if such an option is eventually pursued by Blacksburg, it must be addressed within the context of the annexation statutes and based upon the circumstances and conditions which prevail at

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<sup>32</sup>Heartwell, **Petitioners' Proposed Findings for the Commission on Local Government** (hereinafter cited as **Committee Proposed Findings**), p. 13

<sup>33</sup>Testimony of Noonkester, **Transcript**, Vol. I, pp. 125-126. Pursuant to a boundary line adjustment agreement with Montgomery County, the Town of Blacksburg incorporated within its borders approximately 94 persons and 410 acres of County territory on July 1, 1998. The annexed property was located adjacent to the southern boundaries of the Town.

that time.<sup>34</sup>

In sum, on the basis of our consideration of the principal goals and concerns specified by the Committee, we are unable to conclude that the incorporation of Prices Fork is in the best interest of the residents of that community.

### **THE PETITION FOR INCORPORATION IS REASONABLE**

A second criterion prescribed for consideration in town incorporation issues in Virginia requires the Commission and the court to determine if the "... prayer of the petition for incorporation is reasonable." While that criterion appears to afford considerable latitude to the reviewing entity, as was the apparent intent of the legislature, it properly encompasses, in our view, consideration of the public services to be borne by the proposed town, the revenues available to that entity, and the level of expenditures required to provide essential and desired services.

With respect to the issue of service provision, the Committee for the Incorporation of Prices Fork has stated that the proposed town will assume full responsibility for the provision of water, sewage, solid waste disposal, planning/land development control, and building inspection services for its

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<sup>34</sup>Municipal annexation petitions require review by the Commission and a special three-judge court to determine "the necessity for and expediency of annexation." In determining such "necessity" and "expediency," the reviewing entity is required to consider "the best interests of the people of the county and the town..., services to be rendered and needs of the people of the area proposed to be annexed, the best interests of the people in the remaining portion of the county and the best interests of the State in promoting strong and viable units of government." (Sec. 15.2-3209, Code of Va.)



residents.<sup>35</sup> The Committee anticipates that other urban services, such as law enforcement, fire protection, parks and recreation, libraries, and animal control, would continue to be provided to the residents of Prices Fork by Montgomery County following incorporation without any direct expenditure by the town.<sup>36</sup> The construction and maintenance of public thoroughfares within Prices Fork would remain the responsibility of the Virginia Department of Transportation.<sup>37</sup>

While the proposed town would have access to real estate, public service corporation, and tangible personal property assessables within its jurisdictional boundaries to support the performance of its governmental responsibilities, the Committee has stated that urban services would be provided to the residents of the new municipality without utilizing those tax sources.<sup>38</sup> Following incorporation Prices Fork expects to receive approximately \$281,000 in non-property taxes, fees, and intergovernmental

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<sup>35</sup>Heartwell, letter to staff of Commission on Local Government, July 20, 1999.

<sup>36</sup>**Ibid**. Fire protection services within the Prices Fork area are currently provided by the Blacksburg and Longshop/McCoy volunteer fire companies which receive financial support from Montgomery County and the Town of Blacksburg.

<sup>37</sup>Until the proposed town reaches a population of 3,500 or more, the Virginia Department of Transportation (VDOT) is required to maintain all State thoroughfares within Prices Fork. (See Sec. 33.1-41.1, Code of Va.) According to VDOT officials, there are approximately 21 lane miles of State maintained roadways within the boundaries of the proposed municipality. (J. D. Brugh, Resident Engineer, Christiansburg Residency, Virginia Department of Transportation, communication with staff of Commission on Local Government, Sep. 8, 1999.)

<sup>38</sup>Heartwell, letter to staff of Commission on Local Government, July 20, 1999; and testimony of Noonkester, **Transcript**, Vol. 1, pp. 144-145.

aid.<sup>39</sup> The Committee has estimated that the proposed town would be required to expend \$86,300 annually from its general fund and water and sewer enterprise accounts for operational purposes, a statistic \$194,700 less than Prices Fork's anticipated receipts.<sup>40</sup>

With respect to the fiscal impact of the proposed incorporation on the residents of Prices Fork, several points should be noted. First, almost 80% of the annual revenue that the Committee estimates that the proposed town will receive would be derived from only two sources: local-option sales taxes (\$100,000) and water and sewer user fees (\$120,000).<sup>41</sup> Montgomery County has asserted, however, that under State statutes Prices Fork may not be immediately eligible to receive sales tax distributions.<sup>42</sup> While the

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<sup>39</sup>Heartwell, letter to staff of Commission on Local Government, July 20, 1999; and Noonkester, communication with staff of Commission on Local Government, Sep. 23, 1999. According to the Committee, the revenues that the proposed town would receive following incorporation include sales, automobile license, and utility license taxes; and building permit, cable television franchise, and water and sewer user fees; as well as ABC profits and rolling stock tax distributions from the Commonwealth.

<sup>40</sup>Ibid.

<sup>41</sup>Heartwell, letter to staff of Commission on Local Government, July 20, 1999.

<sup>42</sup>McMahon, letter to staff of Commission on Local Government, Aug. 10, 1999; and **County Proposed Findings**, p. 7. All local option sales taxes collected within Montgomery County, including its incorporated towns, are returned by the State to the County. One-half of such receipts are subject to distribution to the towns located within Montgomery County based on each town's percentage of the County's overall school-age population. [See Sec. 58.1-605(H), Code of Va.] Montgomery County has contended that State statutes require the County to withhold the distribution of Prices Fork's share of the sales tax receipts if the municipality has not complied with its charter provisions for the election of its mayor and council members for a period of four years immediately prior to the town's adoption of a sales tax ordinance. The Commission is not satisfied, however, that the County's interpretation of that statute is correct.

County's interpretation of the relevant statute is subject to question, it is an issue which shall require resolution. Second, the receipt of water and sewer user fees is predicated upon the proposed town's assumption of control of the MCPSA's water and sewer facilities in the Prices Fork area.<sup>43</sup>

Montgomery County has contended, however, that the incorporation statutes do not give the special court the authority to order the MCPSA to convey those facilities to Prices Fork and, absent such a judicial decree, that the Authority may not consent to selling those assets to the proposed town.<sup>44</sup>

In terms of its fiscal capacity to operate and expand the MCPSA utility lines in the Prices Fork community, the Committee has acknowledged that, even if the MCPSA transfers its water and sewer facilities to the proposed town, Prices Fork would not institute a mandatory connection policy for water service.<sup>45</sup> Such a mandatory connection policy, in our judgment, would be required to ensure the fiscal viability of the town's proposed water system. Further, the absence of a mandatory connection ordinance may preclude the town's receipt of grants and loans for the expansion of water service to the areas of need.<sup>46</sup> In brief, the proposed town would have to reconcile its opposition to a mandatory connection policy to its need for

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<sup>43</sup>Heartwell, letter to staff of Commission on Local Government, July 20, 1999.

<sup>44</sup>Martin M. McMahon, County Attorney, County of Montgomery, letter to staff of Commission on Local Government, Aug. 10, 1999; and **County Proposed Findings**, pp. 3, 6.

<sup>45</sup>Testimony of Noonkester, **Transcript**, Vol. 1, p. 167.

<sup>46</sup>Most State and federal agencies that provide grants or loans for water and sewer improvements require that successful applicants either obtain connection agreements from a substantial number of potential utility customers in the affected area or adopt a mandatory connection ordinance. (Todd M. Christensen, Associate Director, Virginia Department of Housing and Community Development, communication with staff of Commission on Local Government, Sep. 22, 1999.)

adequate revenue. Thus, as a consequence of the concerns specified above, for the years immediately following the proposed incorporation the town will have a limited and uncertain revenue base to address the urban service needs of its citizens.

In terms of initially financing services in the Prices Fork community, the Committee has stated that the municipality will not employ any full-time paid personnel but, instead, rely on volunteers and part-time employees to provide municipal services.<sup>47</sup> While we commend the civic-minded residents of Price Fork who have indicated a willingness to serve their community following incorporation, it is unrealistic, in our judgment, for the proposed town to anticipate having volunteers serving in principal staff positions.<sup>48</sup> Further, the Committee's estimate of the town's expenditures during the initial year of incorporation (\$149,000) does not include any outlays for potentially significant obligations, such as fire services and capital cost associated with solid waste disposal.<sup>49</sup> From our perspective, the fiscal obligations of the proposed town are likely to exceed the Committee's estimate.

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<sup>47</sup>Testimony of Noonkester, **Transcript**, Vol. 1, pp. 145-146.

<sup>48</sup>A representative for the Committee has acknowledged that the proposed town may be required to employ full-time personnel in the near future. (Testimony of Noonkester, **Transcript**, Vol. 1, p. 172.)

<sup>49</sup>Noonkester, communication with staff of Commission on Local Government, Sep. 23, 1999. The volunteer fire companies that currently provide fire protection to Prices Fork receive annual operating and capital contributions from the County and the Town of Blacksburg, and the Committee's expenditure estimates do not address those costs. In addition, the capital cost for Prices Fork to join the Montgomery County Regional Solid Waste Authority, which currently provides refuse disposal services to the residents of the proposed town, has not been included in the Committee's estimates.

Based on the data and observations cited above, we are unable to conclude that the Committee's plan for establishing the municipality and funding its services is "reasonable." While the use of volunteers and volunteer services is a proud component of American political life, we cannot recommend that the State sanction the establishment of a new municipality which proposes to offer essential services based predominantly upon volunteers and their pro bono contributions of time and energy.

#### **GENERAL GOOD OF THE COMMUNITY**

Among the factors to be considered in the disposition of town incorporation issues is whether the creation of the proposed town would promote the "general good of the community." The principal intent of this provision, from our perspective, is to require consideration of the prospective impact that the creation of a new town would have on the affected county.

In this instance, the incorporation of Prices Fork in Montgomery County would establish a new municipality which would be subject to the traditional Virginia town-county relationship. Consistent with that relationship, all real estate and tangible personal property within Prices Fork would remain subject to County taxation, and the residents of the newly incorporated municipality would remain part of the civic and social life of Montgomery County. Moreover, the County would continue its responsibility to provide public education; health; social services; mental health, mental retardation, and substance abuse services, and to support the judicial system, the jail, and the constitutional officers to the residents of the proposed town.

In terms of other public services, the plan put forth by the Committee also calls for the County to continue to provide law enforcement, fire

protection, parks and recreation, library, and animal control services within the Prices Fork community.<sup>50</sup> The proposed town would assume responsibility only for the provision of such basic urban services as water, sewerage, solid waste disposal, planning and land development control, and building inspection services within its jurisdiction.<sup>51</sup> While Montgomery County has indicated general concurrence with the Committee's anticipated service arrangements, it has expressed qualifications concerning the town's acquisition and ownership of the MCPSA's utility facilities in that area. As noted previously, the County has stated that the MCPSA has not expressed any interest in selling the utility systems in question to the proposed town, and it has contended that the special court does not have the authority to order the transfer of the MCPSA's systems to the proposed town.<sup>52</sup>

The proposed incorporation would have minimal adverse fiscal impact on Montgomery County. Although the creation of the new municipality will reduce the County's collections from some of its secondary revenues sources, such as utility license taxes and building permit fees, and while it will constrict slightly its receipt of intergovernmental aid from the Commonwealth, it will not affect the County's receipts from any of its property taxes. Moreover, since Prices Fork would assume responsibility for providing certain municipal services, such as planning and zoning regulation and solid waste disposal to its residents, the proposed town would reduce to some degree County expenditures. In our judgment, the incorporation of Prices Fork would have limited fiscal impact on the County.

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<sup>50</sup>Heartwell, letter to staff of Commission on Local Government, July 20, 1999.

<sup>51</sup>Ibid.

<sup>52</sup>McMahon, letter to staff of Commission on Local Government, Aug. 10, 1993.

Beyond the immediate service and fiscal considerations, however, it is not clear to this Commission that the proposed incorporation is promotive of the "general good of the community." At issue here is a proposal to establish a third town in Montgomery County, with the new entity being of a rural nature and with limited fiscal resources, modest service aspirations, and a fragile administrative structure. In contrast, Montgomery County is a sophisticated jurisdiction served by professional staff experienced in a broad array of service provision. The proposed incorporation would, in effect, transfer the land management and public service responsibilities for a significant segment of Montgomery County from a major political entity with a cadre of professional administrators to a new and uncertain source of oversight and responsibility. Given these conditions, we cannot conclude that the proposed incorporation will promote the "general good of the community."<sup>53</sup>

#### **POPULATION STANDARD**

The Code of Virginia establishes a population standard which must be met by communities proposing to incorporate as a town. That standard requires the incorporating community to have a resident population of at least 1,000 persons. As noted in a previous section of this report, Montgomery County has estimated that the 1998 population of the proposed town was 1,614 persons. Using a different methodology, however, the Committee has estimated that the resident population within the same area was 2,160 persons. Based on either estimate, the population of Prices Fork meets the statutory requirement for incorporation.

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<sup>53</sup>The preponderance of speakers at the public hearing held by the Commission on July 21 expressed opposition to the proposed incorporation.

### **LAND AREA STANDARD**

Among the factors to be considered in the disposition of town incorporation actions is whether the land area embraced within the proposed municipality is "excessive." Analysis of this statutory standard requires, in our judgment, consideration not only of the land area and population density of the proposed town, but the scope and nature of development within the proposed incorporation as well.

With respect to the Prices Fork incorporation issue, the parties have estimated that the proposed municipality contains 7.8 square miles of territory. Only 11 of Virginia's 189 towns (or less than 6%) embrace a land area equaling or exceeding that of Prices Fork.<sup>54</sup> Further, in comparison to 51 towns of similar population size (i. e., 1,100 to 3,100 persons), only one such jurisdiction equals or exceeds in geographic size the proposed town.<sup>55</sup> In terms of population density, based on the Committee's population estimate (the most favorable to the incorporating proposal) the proposed Town of Prices Fork would have a density of 277 persons per square mile, a population density exceed by more than 90% of Virginia's 189 towns. Moreover, Prices Fork's density would be less than that of all but one of the 51 towns of comparable size. Thus, the land area and population density of the proposed Town of Prices Fork, while not unprecedented, is clearly distinct from the norm.

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<sup>54</sup>**1990 Census of Population and Housing. Summary Population and Housing Characteristics, Virginia**, Table 16. The 1990 land area of Virginia's towns was adjusted to reflect any boundary changes that have occurred between 1990 and 1998. The Commission notes that the estimated land area of Prices Fork would also exceed that of 12 of the Commonwealth's 40 independent cities.

<sup>55</sup>The set of towns for this analysis was selected on the basis of their 1998 population estimate.



The Committee has asserted that the area sought for incorporation is not "excessive," because the boundaries of the proposed town define the historic community of Prices Fork, generally follow natural or man-made features embracing an area with a common interest, and extend to include residences which require utility service which the proposed town can provide.<sup>56</sup> Any change to the boundaries of Prices Fork, the Committee contends, would exclude those outlying areas needing improved water.<sup>57</sup>

In contrast to the Committee's perspective, Montgomery County has contended that the land area encompassed by the proposed town is unreasonable. The County has noted that land use within Prices Fork is predominantly rural in character and consists principally of large tracts devoted to agricultural and forestal uses. Development in the area proposed for incorporation is almost exclusively residential, containing only 17 small businesses and no manufacturing concerns. Moreover, County records reveal that most of the residential development in the area sought for incorporation is concentrated in a 0.64 square mile tract encompassing the vicinity of the intersection of Prices Fork Road and McCoy Road and the Montgomery Farms subdivision.<sup>58</sup> This concentration of development is due, in large part, to the availability of public water and, to some extent, sewerage provided by the MCPSA in that area and the absence of such utilities elsewhere. The County has estimated that approximately 1,000

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<sup>56</sup>Committee Submissions, Tab 3; and testimony of Noonkester, Transcript, Vol. I, pp. 120-123.

<sup>57</sup>Ibid.

<sup>58</sup>Testimony of Powers, Transcript, Vol. I, pp. 257-258. Montgomery Farms Subdivision is located south of Prices Fork Road and is comprised of medium-density residential development on lots of one acre or less. More than one-quarter of the residential units within the proposed Town of Prices Fork are located within that subdivision. (County Response, Tab "Number of Inhabitants of the Proposed Town and the Area of Land Designated to be Embraced within the Town," p. 2.)

persons, or more than 60% of the total population of the Prices Fork community, reside within that segment of the proposed town.<sup>59</sup> Based on the County's population estimate, the remaining 7.16 square miles of the area proposed for incorporation contain only 614 persons, or 85.8 persons per square mile, a statistic only slightly exceeding the density of the unincorporated portion of Montgomery County (77 persons square mile).

In sum, the incorporation of Prices Fork would create one of the largest and most sparsely populated towns in the Commonwealth, whose geographic size and dispersed populace would render difficult the efficient provision of services to its residents. In addition, the evidence suggests that nature and character of development in the area sought for incorporation is overwhelmingly rural, with little in the way of need for a general overlay of municipal services. In view of these conditions, the Commission concludes that the land area embraced within the boundaries of the proposed town is "excessive."

#### **POPULATION DENSITY STANDARD**

The law governing town incorporation in Virginia states that no new town can be created in a county that has a population density exceeding 200 persons per square mile according to the most recent U. S. Census or based upon a census prescribed by a special court. Since a special enumeration of Montgomery County has not been ordered, the Commission, and ultimately the reviewing court, is obliged to use the population count from the 1990 census to determine if the County's population density constitutes a bar to the incorporation of Prices Fork.

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<sup>59</sup>Testimony of Powers, **Transcript**, Vol. I, pp. 257-258. If the Committee's population estimate for Prices Fork is used, almost one-half of the total populace of the proposed town would reside within that area.

On the basis of its 1990 population (73,913) and a land area of 388.2 square miles, the County had a population density of 190.4 persons per square mile, a statistic below the statutory bar.<sup>60</sup> While the census to be conducted in the spring of 2000 may well alter the fact, the population density of Montgomery County based on the preceding decennial census is not a barrier to the incorporation of Prices Fork.<sup>61</sup>

### **URBAN SERVICE CONSIDERATIONS**

A fifth factor prescribed for consideration in the analysis of town incorporation actions is whether the urban services "...required by the community [for which incorporation is proposed] cannot be provided by the establishment of a sanitary district, or under other arrangements provided by law, or through extension of existing services provided by the county in which the community is located." In this instance, the Committee has contended that the expansion of the water system serving Prices Fork is the only additional urban service "required" by the residents of the proposed

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**<sup>60</sup>1990 Census of Population and Housing, Summary Population and Housing Characteristics, Virginia, Table 15.**

<sup>61</sup>In order to attain the population density threshold of 200 persons per square mile, the County would have to experience a net population increase of only approximately 150 persons beyond the 1998 estimate. Between 1990 and 1998 the County experienced an annual average population growth rate of 0.6%. [Julia H. Martin and Donna J. Tolson, "1998 Virginia Population Estimates," **Spotlight on Virginia**, Vol. 3, No. 2 (Charlottesville: Weldon Cooper Center for Public Service, University of Virginia, Feb. 1999.)] That rate of growth would result in the County having a 1999 population of 77,965 persons and an overall population density of 200.84 persons per square mile. Further, official State population projections placed the County's 2000 population at 78,797 persons, which would give Montgomery County a population density of 203.0 persons per square mile. (Weldon Cooper Center for Public Service, University of Virginia, Population Projections by the Virginia Employment Commission: Cities, Counties, MSAs, and Planning Districts by Age, Race and Sex. Available <ftp://ftp.virginia.edu/pub/cps/population/proj2000.xls>, Oct. 15, 1999.)

town.<sup>62</sup>

With respect to the Committee's concern for water, previous sections of this report have indicated that residents located along the northern boundary of the proposed town rely on individual wells for potable water. Evidence has been presented that water from those private water systems is often discolored and turbid and that it contains high concentrations of varying mixtures of iron, manganese, and sulfur. The Montgomery County Health Department has stated, however, that while such conditions may not be desirable, they do not constitute a threat to public health.

In addition, however, the Committee has asserted that the existing MCPSA water system serving the central portion of the Prices Fork community does not provide appropriate fire protection to that area due to low water pressure, undersized distribution lines, and an insufficient number of fire hydrants.<sup>63</sup> Montgomery County has acknowledged such conditions but contends that utility improvements under consideration for the Prices Fork area will address the problems and enhance fire suppression capabilities in the community.

In terms of the current availability of public water in the Prices Fork area, the MCPSA currently operates two separate water systems (the Prices Fork and Phillips Acres systems), which collectively serve 291 customers, or approximately 75% of the residences in the central portion of the proposed

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<sup>62</sup>A representative for the Committee has stated that the extension of public water lines to northern Prices Fork was the "cornerstone" of the incorporation action. (Presentation by Heartwell, **Transcript**, Vol. II, p. 105.)

<sup>63</sup>According to a County representative, the Virginia Department of Health will not approve the installation of any additional fire hydrants to the Prices Fork water system. (Testimony of Long, **Transcript**, Vol. 1, p. 242.)

town.<sup>64</sup> The Prices Fork water system serves 264 customers in the area encompassing the commercial development at the intersection of Prices Fork Road and McCoy Road and the Montgomery Farms subdivision.<sup>65</sup> The MCPSA obtains all of its water for this system from two wells, which collectively have a rated capacity of 0.09 million gallons per day (MGD).<sup>66</sup> The Phillips Acres water system serves 21 customers in the subdivision which bears that name. Water for that system is obtained from one well, which has a rated capacity of 0.06 MGD.<sup>67</sup>

Although the MCPSA has made no final commitment to extend utility lines to other portions of the proposed town, it developed a plan in 1995 to improve the water supply and distribution system in the central portion of Prices Fork which will address future service requirements of that community.<sup>68</sup> Because of the uncertain availability of ground water in the Prices Fork area, the County's plan recommended that a reliable surface

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<sup>64</sup>**County Proposed Findings**, p. 12.

<sup>65</sup>The Prices Fork water system also serves the County elementary school and several commercial establishments and semi-public facilities along Prices Fork Road.

<sup>66</sup>John I. Capito, District Engineer, Abingdon Field Office, Virginia Department of Health, letter to Gary Gibson, Utilities Director, Montgomery County Public Service Authority, Feb. 24, 1998. Water from the two MCPSA wells is chlorinated prior to distribution. The Prices Fork system includes a 100,000 gallon storage tank. (**Ibid.**)

<sup>67</sup>Capito, letter to Gary Gibson, Utilities Director, Montgomery County Public Service Authority, Nov. 21, 1990. The Phillips Acres system includes a 5,400 gallon storage tank. (**Ibid.**)

<sup>68</sup>Anderson and Associates, Inc., **Preliminary Engineering Report, Prices Fork/Longshop/McCoy Water System Improvements, Montgomery County, Virginia**, Nov. 10, 1995.

water source be secured before any improvements were undertaken.<sup>69</sup> Consistent with that plan, the MCPSA has pursued two alternatives to improve the water supply for Prices Fork.<sup>70</sup> Under the first option, in 1998 the Authority entered into a contract with the private concern that operates the water treatment plant at the Radford Army Ammunition Plant (RAAP) to purchase up to 510,000 gallons per day from that facility for use in the Prices Fork area.<sup>71</sup> Further, the MCPSA also proposes to install a water distribution line to connect the Prices Fork water system to the RAAP treatment facility.<sup>72</sup> The MCPSA estimates that approximately \$1.7 million will be required for the construction of the new water lines and appurtenances.<sup>73</sup> Alternatively, the MCPSA is negotiating with Blacksburg to

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<sup>69</sup>Ibid.

<sup>70</sup>The 1995 preliminary engineering report initially recommended that the MCPSA purchase water from the Town of Blacksburg to supply the Prices Fork water system. That report was amended in March 1999 to recommend that the Radford Army Ammunition Plant waterworks be utilized as the source of supply for the Prices Fork area.

<sup>71</sup>County Submissions, Tab "Can the Services Requested By the Community Be Provided By the Establishment of a Sanitary District or Under Other Arrangements Provided BY Law," p. 3. Although the RAAP treatment facility does not currently meet the standards of the Virginia Department of Health as a public drinking water source, improvements to correct the deficiencies are scheduled to be completed in 2000. The improvements required to bring the RAAP water treatment plant into compliance with State regulations will be funded entirely by the private operator of that facility. (Ibid.; and testimony of Ronald A. Worley, Consultant, Montgomery County Public Service Authority, Transcript, Vol. II, pp. 30-31.)

<sup>72</sup>The MCPSA will be required to construct a water pumping station to connect the Prices Fork system to the RAAP water treatment plant because of terrain features.

<sup>73</sup>Plans also call for the construction of a 200,000 gallon storage tank in the Montgomery Farms Subdivision as well as the installation of additional fire hydrants in the area to improve fire protection. (Testimony Worley, Transcript, Vol. II, p. 33.)

purchase potable water from the Town to serve the Prices Fork community. Under this option, the MCPSA estimates that it will be required to expend approximately \$1.1 million to construct a new water main from the western border of the Town to the existing Prices Fork water system and make other needed improvements.<sup>74</sup> A representative of the MCPSA has indicated that the Authority is seeking loans and grants from the Rural Development Office of the U. S. Department of Agriculture to fund the improvements, and that, if the County's application is approved in a timely manner, the construction of the new facilities could be completed by July 2001.<sup>75</sup> The MCPSA has not, however, made a definitive commitment to proceed with either of the alternatives.<sup>76</sup>

While the improvements to the existing Prices Fork water system will not immediately address the concerns of the residents in the northern portion of the proposed town, the Authority has also developed plans for the

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<sup>74</sup>Ibid., pp. 33-34. The connection to Blacksburg's water distribution lines would also require the construction of a storage tank in the Montgomery Farms Subdivision as well as the installation of additional fire hydrants in that area. In addition, the MCPSA will connect the residents of the Phillips Acres subdivision to central water and eliminate the well system which currently serves that subdivision.

<sup>75</sup>Ibid. pp. 35-37; and pp. 53-54. Subsequent to the oral component of its review, the Commission was advised that MCPSA submitted an application to Rural Development to fund the connection to the RAAP treatment facility. That request, however, was denied for FY1999/00 because it was determined that the RAAP facility may not be able to meet its contractual obligations to the Authority in times of national emergency. However, the Rural Development Office recommended that the MCPSA reexamine alternative sources of water for Prices Fork, including connection to Blacksburg' system, and resubmit a funding application in the near future. (Travis Jackson, Rural Development Manager, Rural Development, U. S. Department of Agriculture, communication with staff of Commission on Local Government, Nov. 12, 1999.)

<sup>76</sup>Testimony of Long, Transcript, Vol. I, pp. 242-244; and testimony of Worley, Transcript, Vol. II, p. 67.

future extension of central water to those outlying areas.<sup>77</sup> That extension, however, is contingent upon the completion of the project to improve the existing Prices Fork water system. Thus, even under the best circumstances, public water from the MCPSA would not be available in the northern portion of Prices Fork until after July 2001.<sup>78</sup>

The cost of the several projects under consideration by the MCPSA to extend water service in the Prices Fork community is estimated at up to \$3.8 million. The Committee has contended that the current financial condition of the MCPSA limits its ability to bear the additional cost of addressing the water needs of the Prices Fork community. As the evidence indicates, however, the MCPSA currently provides potable water to most of the developed portions of the proposed town and has plans to improve and expand that service in the Prices Fork area. While the current fiscal condition of the MCPSA and the existing rate structure are clearly factors which will affect the MCPSA's activities, they need not be an enduring and insurmountable bar to its extension of service in the Prices Fork community.

In contrast to the expansion plans of the MCPSA, the Committee has developed a conceptual proposal to extend public water lines to the northern portion of Prices Fork in the immediate future. Under that plan, the proposed town would acquire the existing MCPSA water system and drill two or three new wells to provide the volume of water necessary to serve

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<sup>77</sup>The MCPSA's preliminary engineering report also developed alternatives which would extend water lines to the Longshop/McCoy communities located beyond the northwestern boundary of the proposed town. (**Preliminary Engineering Report, Prices Fork/Longshop/McCoy Water System Improvements, Montgomery County, Virginia.**)

<sup>78</sup>A representative for the MCPSA estimates that it would cost approximately \$2.1 million to extend water lines to the northern portion of the Prices Fork community. (Testimony of Worley, **Transcript**, Vol. II, pp. 41-44.) Those new lines would serve approximately 194 new customers.



approximately 200 additional customers.<sup>79</sup> Water from those wells would be pumped through new distribution lines to a storage tank which would be constructed in the portion of Prices Fork with problem wells.<sup>80</sup> A representative for the Committee has estimated that its plan could be implemented at a cost between \$500,000 and \$1.0 million and that the necessary funds could be obtained through a combination of intergovernmental grants and loans.<sup>81</sup>

With respect to the proposal put forth by the Committee, several factors should be noted. First, as indicated in previous sections of this report, the Committee's plan to acquire the existing MCPSA water facilities in Prices Fork may confront legal and administrative barriers which could delay or prevent its realization.<sup>82</sup> Second, if the MCPSA consents or is compelled to sell its utility systems in Prices Fork, there is significant

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<sup>79</sup>Testimony of Roger Sturgill, Consultant, Committee for the Incorporation of Prices Fork, **Transcript**, Vol. I, pp. 98-99. The location of the new wells have not been determined.

<sup>80</sup>**Ibid.**, p. 99-101. In addition, new fire hydrants will be installed in the Montgomery Farms subdivision to improve fire protection in that area.

<sup>81</sup>**Ibid.**, pp. 104-105. The Committee's estimate does not include the expense for engineering design, land acquisition, and administration, nor the cost to acquire the MCPSA water system.

<sup>82</sup>Montgomery County has contended that the special court lacks the statutory authority to direct the transfer of the MCPSA assets to the proposed town and, further, that the Authority has not expressed a willingness to sell the Prices Fork and Phillips Acres water systems. In addition, the State Corporation Commission must approve the transfer of any waterworks. Moreover, waterworks operating permits issued by the Virginia Department of Health (VDH) are not transferrable, and if the proposed town is able to acquire the MCPSA water systems, it will be required to file a comprehensive business plan with that agency before a new permit is issued. The VDH will review any plan submitted by Prices Fork to determine if the town has the financial, technical, managerial, and operational capabilities to operate a public water system. (Virginia Department of Health, Office of Water Programs, "Waterworks Permit Application Process," Feb. 1997.)

disagreement between the Committee and the County concerning the value of those assets, with the cost of acquisition potentially imposing a fiscal burden on the town beyond its expectations.<sup>83</sup> Finally, before any extension of water lines to the northern portion of Prices Fork could begin, the proposed town would be required to undertake a detailed analysis of its service plan in order (1) to apply for funding and (2) to receive the necessary operating approvals from State regulatory agencies. These factors bring into question the timing, cost, and general feasibility of the Committee's plan to address the water concerns of the Prices Fork community.

In sum, we find that the individual water systems in the northern portion of Prices Fork, while less than desirable, do not pose a threat to public health constituting a condition mandating an immediate extension of public water to the area in question. Further, it is our judgment that the MCPSA can extend water service in the Prices Fork area in a reasonably deliberate manner for both domestic use and fire suppression purposes.<sup>84</sup> On the basis of these various considerations, we conclude that the services required by the Prices Fork community can and should be provided by an extension of the MCPSA lines.

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<sup>83</sup>A representative for the MCPSA has calculated the value of the water systems in Prices Fork to be approximately \$1.0 million using a replacement cost minus depreciation method. (Testimony of Worley, **Transcript**, Vol. II, pp. 18-19.) The Committee contends, however, that the value of the MCPSA water systems should be calculated using an original cost minus depreciation method, which would yield a purchase price between \$250,000 and \$400,000. (Presentation of Heartwell, **Transcript**, Vol. II, pp. 89, 90; and **Committee Proposed Findings**, p. 10.)

<sup>84</sup>While Montgomery County has other mechanisms (e.g., sanitary district) which could be utilized for the extension of public water in the Prices Fork area, it has committed itself to use of a public service authority for that purpose. The choice of that mechanism was and remains an appropriate selection.

### **SUMMARY OF DETERMINATIONS**

With due respect to the concerns which motivated the petition seeking the incorporation of the community of Prices Fork, this Commission does not find that the proposed incorporation meets the standards prescribed by law for the establishment of a new town. The proposed town, if established, would constitute one of Virginia's most sparsely populated municipalities – one with an expressed need for only a narrow range of urban services, with an uncertain capacity to address its principal need for public water, with an avowed intent to fund its operations through exclusive reliance on non-property taxes and intergovernmental assistance, and with a proposal to administer its affairs through volunteers and part-time employees. These conditions do not constitute a basis upon which this Commission can conclude that the standards of incorporation have been met and upon which we can recommend to the court that the petition be granted.

Respectfully submitted,

  
Frank Raflo, Chairman

  
Peter T. Way, Vice Chairman

  
James J. Heston

  
James E. Kickler

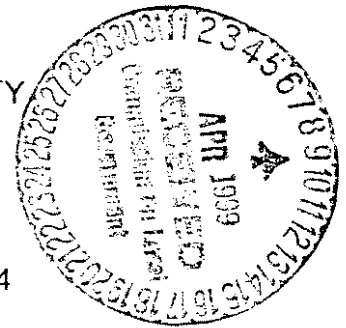
  
Geline B. Williams

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VIRGINIA: IN THE ANNEXATION COURT OF MONTGOMERY COUNTY

IN RE: PETITION FOR INCORPORATION OF PRICES FORK

Law No. V - 13664

ORDER


On Thursday, September 17, 1998, the Special Three Judge Court convened by telephonic conference to consider Montgomery County's request that the Commission on Local Government conduct a hearing to determine whether the criteria in Virginia Code section 15.2-3600 have been met, and the Three Judge Special Court also considered the County's request that the Montgomery County Registrar verify that the Petition for Incorporation has been signed by at least 100 voters as required by law.


Upon consideration whereof, it is ADJUDGED AND ORDERED that:

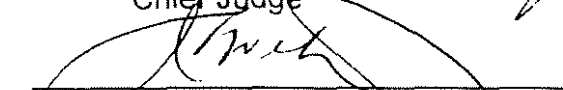
1. The General Registrar of Montgomery County shall determine whether the Petition has been signed by 100 voters of the Community requesting the incorporation and report its findings to the Court; and whether the signatures opposing the incorporation filed by the County are voters of the Community.
2. The Commission on Local Government shall conduct a hearing as soon as reasonably practical to determine whether the Petition to Incorporate the Community of Prices Forks has met the criteria set forth in Virginia Code section 15.2-3602.

The Clerk is directed to send a copy of this order to counsel of record and to any unrepresented party, who shall file such objections hereto as deemed advisable within ten days of their receipt of a copy of this order. Endorsement is dispensed with pursuant to Supreme Court Rule 1:13.

Entered March 26, 1999.

  
Donald A. McGlothlin  
Chief Judge

  
Oliver A. Pollard, Jr.  
Judge

  
John E. Wetsel, Jr.  
Judge

C/S  
12/24/99  
C.C. Atty  
C. C. Atty  
C. C. Atty  
C. C. Atty

## VIRGINIA: IN THE ANNEXATION COURT OF MONTGOMERY COUNTY

IN RE: PETITION FOR INCORPORATION OF PRICES FORK

Law No. 98 -13664

ORDER

This case came before the Special Three Judge Court on March 26, 1999, on the Petition for Incorporation of the community of Prices Fork, in Montgomery County, Virginia, filed pursuant to Virginia Code § 15.2-3600. James V. Noonkester, Chairman of the Committee for the Incorporation of the Prices Fork Community, appeared without counsel; and Martin M. McMahon, County Attorney of Montgomery County, appeared for the Board of Supervisors of Montgomery County.

THEREUPON, the Court considered the parties' comments on the Court's order reflecting the events of September, 17, 1998, which order was then entered.

THEREUPON, the Court considered the Motion by the Board of Supervisors of Montgomery County for a determination as to the parties responsible for filing the petition for incorporation and the County's objection to Mr. Noonkester's representing the committee, because he is not an attorney.

Upon consideration whereof, it appears to the Court that:

1. UPR 1-101(A) provides that: "A non-lawyer, with or without compensation, shall not represent the interest of another before a tribunal, otherwise than in the preparation of facts, figures or factual conclusions, as distinguished from legal conclusions ...."
2. Mr. Noonkester is not an attorney, and he purports to represent the interests of the Committee for the incorporation of Prices Fork Community.

Therefore, it is ADJUDGED AND ORDERED that

1. James V. Noonkester is the only party petitioner to this proceeding.
2. Any other person who wishes to become a party petitioner to this

proceeding must file a petition to intervene as a party petitioner with the Clerk of the Circuit Court of Montgomery County. Any such petition shall state the full name, address, and daytime telephone number of the petitioner.

THEREUPON, the Court considered the need for additional issues to be determined by the Commission on Local Government, which it reviewed with the parties. Upon consideration whereof, it is ADJUDGED AND ORDERED that the Commission on Local Government shall also consider in its hearing and report to this Court as soon as reasonably practical, as to the following with respect to the proposed town:

1. Tax Maps showing the boundary of the proposed town.
2. Total value of the real estate assessments.
3. Location of all public water lines, pump stations and water treatment facilities.
4. Location of all public sewer lines, pump stations, and waste water treatment facilities.
5. Location of all storm water facilities.
6. Map showing all the roads. The character of all the roads shall be specified as to whether they are hard surface and build to state specification. All roads not hard surfaced and build to state specifications shall be designated, and the mileage of the non-state standard roads shall be stated.
7. The total population, population density per square mile, and how that population was determined.
8. The location of all sidewalks.
9. The location of all parks or open areas.
10. The location of all developed property, that is property improved by buildings or platted for subdivision or development.
11. The number and location of all churches and schools.
12. The location, general description, and gross sales of all commercial businesses.

13. The location and general description of all professional offices.
14. The location and general description of all manufacturing facilities within the proposed town.
15. The location of any public facilities, to include but not limited to public water and sewer facilities, of Montgomery County, of any town, or of any sanitary district or authority within one mile of the proposed town.
16. Whether the desired public facilities and services can be provided by the creation of a sanitary district or under other arrangements provided by law or through the extension of existing services provided by the county with a reasonable.
17. Whether the good of the inhabitants of the proposed town and those of county at large will be promoted by the creation of the proposed town.
18. Any other information requested by the parties or deemed pertinent by the Commission to the decision ruling on the petition to incorporate, to include any of the criteria set forth in Virginia Code section 15.2-3602, not previously covered.

Within twenty-one days of receipt of the Report of the Commission on Local Government, the parties shall file such response thereto as deemed advisable to include any proposed findings of fact and conclusions of law for the Court to consider in lieu of or in addition to those found by the Commission.

The Court shall set this case for trial on a date within forty-five days of the receipt of the Report of the Commission on Local Government. The following provisions shall apply to the trial of this case:

1. Expert Witnesses. One month before trial, the petitioner shall provide to the County in writing the name of any expert witness upon which the petitioner intends to rely in its case in chief. Fifteen days before trial, the county shall provide to the petitioner in writing the name of any expert witness upon which the defendant intends to rely in its case in chief. If not already provided pursuant to discovery, for each expert identified, the parties shall state the subject matter upon which the expert will testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion. Additionally, for each expert who will testify, the following will also be provided: a list of all publications within the last ten years.
2. Exhibits and Witnesses. The Petitioner shall file its exhibits and a list of witnesses thirty days before trial. Ten days after receipt of the Petitioner's list of



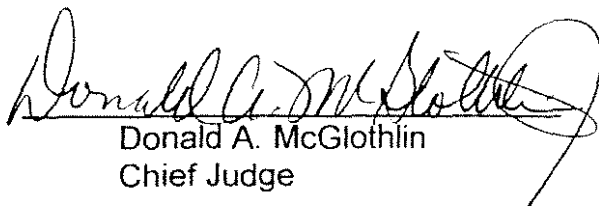
witnesses and exhibits, the County will file its exhibits and list of witnesses. Any objections to exhibits submitted by any party must be filed with the Clerk of the Court and with the opposing party within ten days of submission, or they will be deemed waived. Any exhibits filed and not objected to in writing will be admitted at trial. All exhibits submitted must be pre-marked with labels. NOTICE: If a party has more than ten exhibits, the exhibits are to be indexed, tabbed, and fastened together. Stapling of the exhibits is sufficient fastening.


3. Motions. All Motions shall be accompanied by a written brief setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. The opposing party shall file a response, including a like brief and such supporting documents as are then available within fifteen days after service. The moving party may file a rebuttal brief within five days after the service of the opposing party's reply brief. Counsel shall send copies of their briefs to the presiding judges.

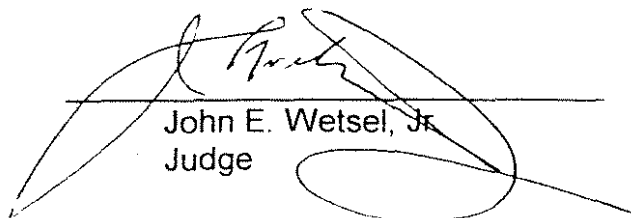
THEREUPON, the Court heard the introductory statement of Mr. Noonkester to the Community of Prices Forks and its concerns.

The Clerk is directed to send a copy of this order to counsel of record, and to any unrepresented party, who shall file such objections hereto as deemed advisable within ten days of their receipt of a copy of this order. Endorsement is dispensed with pursuant to Supreme Court Rule 1:13. The Clerk of the Circuit Court of Montgomery County is directed to forthwith send the Commission of Local Government a copy of this order, all other orders and papers filed in this case.

Entered March 26, 1999.

  
Donald A. McGlothlin  
Chief Judge

  
Oliver A. Pollard, Jr.  
Judge

  
John E. Wetsel, Jr.  
Judge

CC's  
3/26/99  
cc Atty. +  
P. Noonkester

## APPENDIX B

### **ADDITIONAL ELEMENTS CONCERNING THE PROPOSED INCORPORATION OF PRICES FORK**

The special three-judge court empaneled to review the petition to incorporate the Community of Prices Fork directed the Commission to consider a series of specific elements with respect to the proposed town. Accordingly, based on a review of the information and data submitted by the Committee for the Incorporation of Prices Fork (Committee) and the County of Montgomery and as a consequence of additional research by the Commission, the following responses are provided pursuant to the court's request.

**1. Tax Maps showing the boundary of the proposed town.**

Montgomery County Map Exhibit "Tax Parcels" portrays the boundaries of the proposed town of Prices Fork and the tax parcels contained therein.

**2. Total value of the real estate assessments.**

Based on records of the Montgomery County Commissioner of the Revenue, the 1997 total assessed value of real estate in the proposed town of Prices Fork was \$70,075,600.<sup>1</sup>

**3. Location of all public water lines, pump stations, and water treatment facilities.**

Montgomery County Map Exhibit "Prices Fork Proposed and Existing Water - USGS Base Map" portrays the existing water lines, storage tanks, and wells located within the proposed town of Prices Fork. Currently,

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<sup>1</sup>County of Montgomery, **Submission in Opposition to the Proposed Incorporation of Prices Fork** (hereinafter cited as **County Submissions**), Tab B "Statistical Profile," p. 6.

there are no water treatment facilities or pump stations within the boundaries of the area proposed for incorporation.

**4. Location of all public sewer lines, pump stations, and waste water treatment facilities.**

Montgomery County Map Exhibit "Prices Fork Proposed and Existing Sewer - USGS Base Map" portrays the existing sewer line and pump stations within the proposed town. The existing Stroubles Creek Wastewater Treatment Plant, which is owned by the Blacksburg-VPI Sanitation Authority and located south of the proposed town, is shown on the maps.

**5. Location of all storm water facilities.**

According to the Virginia Department of Transportation, there are no storm water detention facilities maintained by that agency within the proposed town.<sup>2</sup> An official for Montgomery County has noted that the County's subdivision ordinance requires that storm water drainage from streets be directed into an established watercourse or into a storm water detention facility. According to that official while most of the subdivisions within Prices Fork discharge into established watercourses via road side ditches or culverts, storm water detention facilities are located in the Phillips Acres Subdivision.<sup>3</sup> [See Montgomery County Map Exhibit "Land Density" (attached).]

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<sup>2</sup>J. D. Brugh, Resident Engineer, Christiansburg Residency, Virginia Department of Transportation, letter to staff of Commission on Local Government, Sep. 8, 1999.

<sup>3</sup>Joe Powers, Planning Director, County of Montgomery, letter to staff of Commission on Local Government, Sep. 3, 1999.

6. **Map showing all the roads. The character of all the roads shall be specified as to whether they are hard surface and built to state specification. All roads not hard surfaced and built to state specifications shall be designated, and the mileage of the non-state standard roads shall be stated.**

Montgomery County Map Exhibit "Road System" portrays the mileage and character of the road system located within the proposed town of Prices Fork.

7. **The total population, population density per square mile, and how that population was determined.**

The Committee estimates that the population of Prices Fork is 2,160 persons, while Montgomery County has calculated that the population of the proposed town is 1,614 persons. Based on a land area of 7.8 square miles, the Committee's estimate and that of Montgomery County give the area proposed for incorporation a population density of 276.9 and 206.9 persons per square mile, respectively.

In its estimation procedure, the Committee used E-911 maps of the Prices Fork area and calculated that there were 720 households within the boundaries of the proposed town. Using an average number of three persons per household, the Committee estimated that the total number of inhabitants of Prices Fork would be 2,160.<sup>4</sup>

Montgomery County utilized a database of the street addresses for the unincorporated portion of its territory to calculate that as of May 31, 1997

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<sup>4</sup>720 households x 3 persons per household = 2,160 persons. The Committee did not give a source for their persons per household statistic. According to the 1990 Census, there were 2.48 persons per household in Montgomery County. (U. S. Department of Commerce, Bureau of the Census, **1990 Census of Population and Housing, Summary Population and Housing Characteristics, Virginia**, Table 5.)

there were 637 residential units located within the proposed town limits. Using 1990 Census data for the census tract which encompasses the Prices Fork community, the County determined that the occupancy rate for residential dwelling units in that area was 95.6% and that the number of persons per occupied housing unit was 2.65. The resulting calculation yields the County's population estimate for Prices Fork of 1,614 persons.<sup>5</sup>

The Commission observes that the reconciliation of the different population estimates is not critical to our recommendations and the special court's ultimate determination. The resulting population figures generated by either methodology qualify the community of Prices Fork for incorporation. It is the Commission's judgment, however, that Montgomery County's approach is consistent with sound demographic practices and is more appropriate for the estimation exercise.

**8. The location of all sidewalks.**

According to the Virginia Department of Transportation, there are no sidewalks maintained by that agency within the Prices Fork community. The only public sidewalk within the proposed town is located at the Prices Fork Elementary School, which is maintained by the Montgomery County School Board. [See Montgomery County Map Exhibit "Public Facilities" (attached).]

**9. The location of all parks or open spaces.**

According to information provided by Montgomery County and the Committee, there are no developed recreational areas that are open to the public located within the boundaries of the proposed town. Some

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<sup>5</sup>637 housing units x 95.6% occupancy rate x 2.65 persons per occupied unit = 1,614 persons.

recreational programs sponsored by the County's Department of Recreation and Parks, however, utilize the facilities located at the Prices Fork Elementary School. [See Montgomery County Map Exhibit "Public Facilities" (attached).]

**10. The location of all developed property, that is, property improved by buildings or platted for subdivision or development.**

Montgomery County Map Exhibit "Land Density" portrays the developed property and platted subdivisions located within the proposed town of Prices Fork.

**11. The number and location of all churches and schools.**

Montgomery County Map Exhibit "Public Facilities" shows the location of two churches, the Prices Fork Elementary School, and the Virginia Tech Research Center within the proposed town.

**12. The location, general description, and gross sales of all commercial businesses.**

Montgomery County Map Exhibit "Commercial Facilities" portrays the location of the 14 commercial businesses within the proposed town of Prices Fork. The general description of those businesses is as follows:

Prices Fork Auto Repair  
Snuffy's General Store  
Riverway Convenience Store  
M&M Tire Company  
Seamless Guttering  
Crow's Nest Nursery  
Anchor Construction  
Dryman Construction

David Carter Excavating Contractor  
Prices Fork Self-Storage  
Cox's Driving Range and Putt Putt  
Collision Repair  
UHL Construction  
Rudisill Garage

The businesses located in the proposed town appear to cater principally to the needs of the Prices Fork community or local commuter traffic.

Information with respect to the gross sales of the above listed businesses is available only from the State Tax Commissioner. While Section 58.1-3 of the Code of Virginia prohibits the disclosure of that information for individual firms, the Virginia Department of Taxation was able to provide aggregate data concerning the gross sales information for nine of the fourteen businesses in the proposed town. According to State records, in tax year 1998 those nine businesses collectively had approximately \$1.65 million in gross sales. Further, for the first six months of tax year 1999, those same businesses collectively had approximately of \$1.23 million.<sup>6</sup>

**13. The location and general description of all professional offices.**

Montgomery County Map Exhibit "Commercial Facilities" portrays the location of the 3 professional offices within the proposed town of Prices Fork. The general description of those offices is as follows:

Charles Jones Architectural Service  
Bold Springs Veterinary Service  
Larry J. Linkous Auctioneer.

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<sup>6</sup>Robert T. Benton, Assistant Commissioner, Office of Fiscal Research, Virginia Department of Taxation, letter to staff of Commission on Local Government, Nov. 8, 1999.

**14. The location and general description of all manufacturing facilities within the proposed town.**

According to information provided by the Committee and Montgomery County, there are no manufacturing facilities located within the proposed town of Prices Fork.<sup>7</sup>

**15. The location of any public facilities, to include but not limited to public water and sewer facilities, of Montgomery County, of any town, or of any sanitary district or authority within one mile of the proposed town.**

Montgomery County Map Exhibit "Public Facilities" portrays the location of any public facilities located within one mile of the proposed town.

**16. Whether the desired public facilities and services can be provided by the creation of a sanitary district or under other arrangements provided by law or through the extension of existing services provided by the county.**

Pages 25-32 of the preceding report address this factor with respect to the proposed incorporation of Prices Fork.

**17. Whether the good of the inhabitants of the proposed town and those of the county at large will be promoted by the creation of the proposed town.**

Pages 7-21 of the preceding report address this factor with respect to the proposed incorporation of Prices Fork.

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<sup>7</sup>County Submissions, Tab "Urban Services," p. 27; and Committee for the Incorporation of Prices Fork, Submissions from the Committee for the Incorporation of Prices Fork to the Commission on Local Government, Submission Number 17.



18. Any other information requested by the parties or deemed pertinent by the Commission to the decision ruling on the petition to incorporate, to include any of the criteria set forth in Virginia Code section 15.2-3602, not previously covered.

As indicated in the preceding report, the Commission on Local Government held a public hearing on the evening of July 21, 1999 at the Prices Fork Grange Hall for the purpose of receiving citizen comment in the proposed incorporation. That public hearing was attended by approximately 125 persons and produced testimony from 18 individuals, including the Mayor of Blacksburg. Only one person testifying at the Commission's public hearing favored the incorporation of Prices Fork as a town. It should be noted, however, that seven residents favoring incorporation appeared as witnesses for the Committee for the Incorporation of Prices Fork at the Commission's oral proceedings held earlier on July 21.

MAP EXHIBITS TOO VOLUMINOUS TO BE INCLUDED WITH THIS COPY  
OF THE COMMISSION'S REPORT ON THE INCORPORATION OF PRICES  
FORK

**STATISTICAL PROFILE OF THE COUNTY OF MONTGOMERY  
AND THE PROPOSED TOWN OF PRICES FORK**

	<u>County of Montgomery</u>	<u>Proposed Town of Prices Fork</u>
Population(1)	77,500	2,160
Land Area (Square Miles)	388.2	7.8
Population Density	199.6	276.9
Total Assessed Values(2)	\$2,758,374,365	\$73,881,005
Real Estate(3)	\$2,224,792,185	\$70,419,510
Public Service Corporation	\$111,547,133	N/A
Personal Property	\$326,442,882	\$3,461,495
Machinery and Tools	\$71,809,119	\$0
Merchants Capital	\$23,783,046	N/A

NOTES:

- (1) Population estimates for the County and the proposed town are for 1998.
  - (2) Assessed Values for the County and the proposed town are for 1997.
  - (3) Real Estate values for the proposed town include those for mobile homes.
- N/A = Not Available.

SOURCES:

County of Montgomery, Submission in Opposition to the  
Proposed Incorporation of Prices Fork.

Committee for the Incorporation of Prices Fork, Submissions from  
the Committee for the Incorporation of Prices Fork to the  
Commission on Local Government.