

The Charlottesville/Albemarle Revenue-Sharing Agreement and the Local Composite Index for State Funding of Schools

By Ned Michie (Charlottesville School Board Chair) – January, 2012
e-mail: NedMichie@aol.com

The County is seeking to spot-change the main statewide school funding formula (i.e., the Local Composite Index) in its favor, to “take into account” the revenue-sharing agreement between the City and County. This change will net the County school system – and cost the City school system – \$2 to \$2.5 million a year in state funding. The issue surrounding the County’s attempt to make this spot change in a statewide funding formula is therefore inextricably linked together with the revenue-sharing agreement.

The revenue-sharing agreement was reached 30 years ago, when the vast majority of the current community residents and leaders (both City and County) were not around. Even for those of us that were here – well, it was 30 years ago, and memories fade. So in writing this memo, my hope is to try to bring back a better understanding of why we ended up with a revenue-sharing agreement between Charlottesville and Albemarle, but more importantly, my goal is to show why the arguments the County leaders have put forth (in support of spot-changing the statewide school funding formula in its favor) do not hold up when put into their proper context.

I have clearly gotten carried away with writing this memo, but I rather enjoyed the research that has gone into it and wanted to try to get my thoughts down in a coherent manner that could be shared easily with others. I am sure there is still a lot more research that could be done with records from that time period, and perhaps this memo will spur such further reflection – but of course we can never truly put ourselves in the shoes of the City and County leaders or the voters of 30 years ago, anyway.

In any event, the thoughts, opinions, and any errors expressed herein are my own.

SUMMARY

I ask that you, the reader, at least give your full consideration to this summary. Then, go back, as time and interest allow, to see if you agree that the references and other information provided below support the points I make in the summary. I think the quotes from leaders and citizens from back in the early 1980s are particularly interesting (including a quote from Lindsay Dorrier). Below the supporting information is list of “Fast Facts” regarding the City and County; below that is a sports analogy which is rather light-hearted for such a serious subject, but I think if nothing else it does illustrate the City perspective on the County’s attempt to spot-change the state's school funding formula to the County's benefit and to the City’s detriment. I suggest reading all the way through the summary and analogy first, without distracting yourself with all the reference material.

The argument I hear the County leaders use for changing the Local Composite Index (hereinafter “LCI”) formula is that the formula is simply “flawed” and, for “fairness' sake,” it needs spot-adjusting because it does not “take into account” the money the County pays the City under the revenue-sharing agreement that was reached between the City and County way back in January of

1982 and approved overwhelmingly by County voters in May of 1982 (63 percent voted in favor). There has been further suggestion that state funding for the schools was not considered by the negotiators of the revenue-sharing agreement, and therefore this “oversight” should be corrected now, 30 years later.

For those who do not know or remember the details: The revenue-sharing agreement was reached after two years of hard bargaining between City and County and averted what was certain to become a courtroom annexation battle as a result of the City's intention in 1980 to try to acquire up to 32 square miles of County land surrounding the City.^{13, 17} The land that would have been sought for annexation was virtually all the County's commercially developed and developing land.^{13, 17} The City had successfully expanded through annexation multiple times before – including nearly doubling in size in 1963.¹¹ The City had also filed an annexation suit in court in 1971 and 1972, seeking about 11 square miles of the County, but the suits had been dismissed on technicalities.¹¹ Leading up to the vote on the revenue-sharing agreement by the County voters, a May 9, 1982 *Daily Progress* editorial warned those in the County community who did not think annexation was likely to happen:

Believe it. It *would* happen. Doubters have only to look at the record: Virginia cities have won 87 percent of all annexation suits – 106 out of 121.

Editorial, “Albemarle’s Opportunity,” *The Daily Progress*, May 9, 1982 (emphasis in original).

A successful annexation of land by the City in the early 1980s – and the stream of income that would have come with it – would have been permanent, forever, never ending, always present, without termination. Therefore, it is perfectly logical that the revenue-sharing agreement is set up that way, as well.¹⁷ Indeed, the City negotiators insisted that the revenue stream be permanent because everybody recognized there might be other changes in the annexation law or another moratorium (there had been moratoria before the negotiations, including one in the 1970s that had not even ended when the negotiations began).¹⁸ The moratorium then did end on July 1, 1980 under a new set of annexation laws adopted in 1979.¹² The new set of laws allowed localities to work out revenue-sharing agreements instead of going through annexation battles in court, if the localities desired to reach such agreements. The laws also set up new court procedures for annexation suits and provided new funding to localities to help ease financial stresses that lead to annexation disputes.¹²

The permanent land addition to the City that an annexation would have brought and the associated permanent revenue stream it would have provided the City would not have been affected in any way by the statewide moratorium on annexation that was put in place in 1987. (I note that this moratorium had been due to expire most recently in 2010 but was extended until 2018. Va Code Ann. §15.2-3201.)¹² There is, of course, no way to know exactly what would have happened in the annexation suit, but the County leaders at the time were worried enough that they had consultants prepare a comparison of the projected costs to the County, over ten years, of the revenue-sharing agreement versus both a 10-mile annexation of land by the City and a 32-square mile annexation.¹⁷

This comparison was just between the potential cost of the land targeted by the City for annexation in 1980 and the revenue-sharing agreement; the comparison did NOT factor in the cost of potential future annexations.¹⁷ The comparison which was publicized during the lead-up to the referendum showed that even the ten-square-mile annexation would cost the County more over just ten years than the revenue-sharing agreement would cost.¹⁷ It is also worth noting that the benefit to

the City from an annexation would actually have been greater than the cost of the annexation to the County, because the City would have been taxing the land at a higher rate all this time. The permanent immunity from annexation that came with the revenue-sharing agreement was just an important bonus that may yet come in handy for the County if/when the legislature acts to help cities out by letting the moratorium lapse in the future.^{9, 12}

If our current community, looking back from our position 30 years later, really wants to know, out of curiosity, whether the City or the County got the better end of the agreement, I would suggest the localities choose and share the cost of a consultant to make some reasonable estimates given a few possible scenarios. Such an exercise would, of course, be limited by what cannot be known: e.g., what land would have been awarded in an annexation, the amount awarded to the County as payment, and whether the land acquired would have developed differently or at a different rate if it had been in the City for the last 30 years. Such a calculation would also just be a snapshot at the time it is completed; the “answer” may well change in another 10, 20, 30 years and on into the future. Such an estimate, however, might help citizens and leaders better understand and appreciate the agreement for some years to come – or at least better recognize the unknowable variables the negotiators themselves faced.

I think it also worth noting that the City/County revenue-sharing agreement formula (like the LCI at issue) looks at the relative wealth of the two localities (land value, population, and tax rate) – and, under the agreement, **whichever locality is doing better in that regard pays money to the other. The agreement specifically states:**

Both bodies believe that the revenue and economic growth sharing plan described in this agreement is an equitable solution, which permits both jurisdictions to share fairly in the property tax revenues created by future economic growth in the community regardless of whether that growth occurs in the City or the County.

(Emphasis added)

Of course, the formula has resulted in the County paying the City every year, because of its vastly greater wealth and land available for development. The payment actually does not even meet the full value of the wealth differential calculation, because it has been hitting the specified and essentially arbitrary payment **cap** in the agreement, which is mere **one tenth of one percent (.1%)** of the total value of the County’s taxable real estate.^{13, 16} Moreover, it was clearly understood at the time that the County would never have a say in how the City spent the money.¹⁹

If the County is sure it is unhappy with and wants to renegotiate the revenue-sharing agreement, there is No Moratorium on Voluntary Annexations. So I would suggest you just bring some land when you want to talk.

Points Regarding the Proposed Spot Change to the LCI

I describe the LCI in more detail below,^{4,5} but briefly, it is the part of the state's main school funding formula that is used to gauge the wealth of a community relative to other localities. The formula does not consider the local government's revenue or expenditures at all, because these budget numbers are subject to local decisions (e.g., how much to tax the citizens and how to spend the money that is raised). Instead, the LCI gauges a locality's wealth essentially by measuring the wealth that is **potentially** available to the locality's government through its power to tax and charge fees. So the factors considered are the value of the land in the locality, the adjusted gross income of the citizens, the total annual taxable sales from the locality (i.e., the sales amount that could be subject to local taxes), and the size of the population.

- 1) Ignoring for the moment the merits/lack of merits of the County's argument regarding the LCI, it is important to note that the **LCI was a grand – and, I'm sure, hard-fought –statewide bargain adopted in 1974 to try to divide up state funding for school districts fairly. It would be horrible state policy to make a spot change for two localities when most localities can point to some way they think the LCI formula treats them unfairly.** (I think perhaps the biggest flaw in the LCI is that it does not reflect the percentage of free and reduced-lunch students that a school division serves.⁷ This unfairly hurts higher poverty districts like Charlottesville, which has **twice the percentage of students eligible for free or reduced-price lunch** that Albemarle's school division has). Moreover, there are about a dozen other revenue-sharing agreements out there between localities, and although they are much smaller in scope than ours, the exact same argument that Albemarle is making could be made in those localities.⁶

In addition, the payments Albemarle and other counties make under revenue-sharing agreements are essentially like any local long-term debt decision that a government body makes (e.g., buying land or paying for expensive infrastructure such as roads and water supply needs). **None of these decisions by localities on how to spend their money (long term or short term) is taken into account by the LCI, despite the fact that the spending – which might be for an extremely critical need – takes money away from the localities' abilities to fund their school districts.**⁵ Creating a precedent for taking local spending decisions into account in the LCI could open a Pandora's box and, in any event, certainly should not be done without a well-thought-out policy that is applicable statewide.

- 2) By spot-changing the LCI, the legislature **would in fact be directly interfering with and changing a local agreement (i.e., the revenue-sharing agreement).** The **LCI school funding formula was adopted eight years before the revenue-sharing agreement** was reached, and at the time of the revenue-sharing negotiations, members of the Albemarle Board of Supervisors knew about, thought about, and understood the state school funding formula that uses the LCI.^{1,2,3} Indeed, they understood it so well that, at one point during the negotiations, the Board of Supervisors actually offered to intentionally manipulate the LCI **in the City's favor** by offering to give the City the UVa grounds – and thereby the UVa student population, which looks poor on paper.¹ The County Board of Supervisors contended this would result in hundreds of thousands of extra school dollars coming to the City from the State.¹ The County also offered to give the City one of the state funding streams worth an additional few hundred thousand dollars a year that was going to be coming to the County under the new annexation laws.¹

These offers were, however, later retracted by the County even though the City continued to push the idea of City acquisition of the UVa grounds until virtually the end of the negotiations.¹ So the County leaders certainly understood that trading land would result in a change in the state school funding and that not trading land would result in no change in the application of the state school funding formula. Nevertheless, there were lots of other downsides to trading land; consequently, instead of doing that or just directly trading state or federal funding streams, the negotiations ended up focusing on – and agreeing on – dividing up local tax revenue (i.e., **not** the revenue that they, and we, all know comes to localities and to school districts from both the state and the federal government through various funding formulas).¹ Everybody clearly expected to get to keep all that was not specifically bargained away in the written agreement (i.e., including the revenues they get from other sources); indeed, it is a universal bargaining truth that you get to keep what you came to the table with, unless you trade it away.¹ Moreover, numerous articles in the paper indicated that the revenue-sharing money would be used, in part, to help the City schools – and this would be true only if the school system was getting to keep what it was already getting from the state.² To now – 30 years after the agreement – take away streams of revenue that were not bargained away in the agreement would be, in fact, changing the agreement.

- 3) County leaders like to talk about the change being a matter of “fairness,” but not only would changing our LCI formula be unfairly interfering with a local County voter-approved contract, it would also **essentially be taking from the poor (or at least significantly poorer) and giving to the rich**. Albemarle County is one of the wealthiest in the state and is rated by the Virginia Commission on Local Governments²⁴ as one of the least financially stressed, as well: it ranks as the 121st least fiscally stressed Virginia locality, out of 134 in the Commission’s latest index. The City, on the other hand, is rated as having “above average” fiscal stress and is ranked 34th highest out of 134 localities in fiscal stress.²⁴ The City’s 2010 US Census median household income is \$23,000 less than that of the County (\$66,000 versus \$43,000), and the percentage of citizens below the poverty line is three times as high in the City as it is in the County (27 percent versus 9 percent). In the two school districts, poverty plays out so that the City has about twice the percentage of students eligible for free and reduced-price meals. Also, just think of all the commercial development that has happened and is happening in the County: Forest Lakes area; Pantops Mountain area; the enormous and in-progress mixed-use development, “Stonefield,” around the Sperry Marine property off of Hydraulic Road. The County has 720 square miles of land to develop and tax; the City has 10 square miles.

Furthermore, on top of having much greater current wealth to tap into and 70 times as much land to develop and tax, the County has a tax rate that is 21 cents less per \$100 of assessed land value than does the City (74 cents per \$100 of assessed land value versus 95 cents in the City). It was understood at the time of the vote that the revenue-sharing agreement would add ten cents to the County’s tax rate.^{13, 20} Interestingly, the County’s tax rate at the time was 67 cents per \$100, and adding ten cents would be 77 cents per \$100.²³ **So the current County tax rate is LESS than what was planned even 30 years ago, when the County offered much less in the way of government services.**

Keep in mind also that the approximately \$2.5 million a year that the County schools seek is a much bigger slice of the City school division’s budget than it is of the County school division’s budget (1/17th versus 1/56th). We are already going to have to make very difficult decisions in our upcoming budget, due to significant declines in state and federal funding. An

additional permanent annual loss of \$2 to \$2.5 million of income to the City could be the trigger, in these tough economic times, that leads the City school division to have to seriously consider closing an elementary school. At a minimum, such an annual loss would be **a devastating blow to our division's operating budget** and would make it hard to even think about incurring the costs associated with revamping our middle school building into a more modern learning environment, as we have been planning to do.

THE KEY TO ANY FUNDING ISSUES ALBEMARLE HAS WITH ITS SCHOOLS OR GOVERNMENT SERVICES LIES IN ITS OWN HANDS, NOT IN ITS NEIGHBOR'S!

I imagine some of you are thinking, "Can't raise taxes in a recession" (or any other time, apparently). We are in the same recession the County is in, we live right next to you, and our tax rate is 21 cents per \$100 higher than yours. Please explain how it is not possible for you to move even ever so slightly closer to your neighbor's tax rate if you want to have more funding for your schools or other government services. It seems as if the counties surrounding Richmond and Fredericksburg are as comparable to Albemarle as any (they surround fairly vibrant cities; the counties have upscale urban development, some wealthy residents, a similar cost of living to ours, and also rural areas). Henrico has an 87-cent tax rate. Chesterfield has a 95-cent tax rate. Spotsylvania (outside of Fredericksburg) has an 86-cent rate, and Stafford has a \$1.10 tax rate. Those counties' citizens are living in the same financial times as the rest of us.²⁵

- 4) If this spot change to the LCI should pass the legislature, **it will hurt the excellent relationship the school divisions have had and lead to even less cooperation and good will between the City and County, when what we need is more collaboration and recognition that we are one community.**

TOPIC DETAILS **AND REFERENCE MATERIALS**

(Numbers correlate with superscripts in Summary and Analogy)

1. Did the County Negotiators Know About and Consider the Main State School Funding Formula (i.e. the LCI) During the Negotiations?

Yes.

As pointed out in the analogy, however, short of fraud, don't the parties to a negotiation get to keep what is not specifically bargained away, even if the other side does not consider or even know about all the assets the other party to the negotiation has? If you would answer "yes" to this question, then you can skip down to the next subject heading. Please read on, however, if you believe that the parties to a negotiation only get to keep what they brought to the table if (1) it wasn't bargained away; **and** (2) the other side knew you had the asset and yet did not include it in the final bargain.

We know the answer to this heading's question, thanks in part to an excellent master's thesis written by Timothy Lindstrom, who became a County Supervisor and one of its two lead negotiators on January 1, 1982 – right at the end of the two years of negotiations between the City and the County. (He also started sitting in on the negotiations as soon as he was elected, in November of 1981). His well-researched and -written 1992 thesis is entitled "The Charlottesville/Albemarle Revenue-Sharing Agreement: An Informal History of Negotiations 1979-1982," and it is a good read for those of you wanting a detailed account of the negotiations. From this thesis, written from a County negotiator's perspective, we know for certain that the County negotiators not only considered the state's main funding for schools that uses the LCI formula, but that they understood it well enough to know how to manipulate it and offered to do so in the City's favor. This happened when the County put forth their first formal settlement offer to the City during the negotiations leading up to the ultimate revenue-sharing agreement (adopted by the County voters in May of 1982).

In the thesis, Lindstrom wrote:

The County's own consultant's studies complete, and numerous closed-door strategy sessions having been held by the County Board, the Board made its formal counter proposal to the City on **July 9, 1981**.

Id. at 29 (emphasis added).

The first part of the counter-offer was two square miles of essentially undeveloped land south of town; there were three additional separate financial components to the offer. One component would have given the City the new state funding which the County would be due under the new set of

annexation laws taking effect. The County believed this would be worth several hundred thousand dollars a year to the City.

The second part of the financial package consisted of, in effect, an additional land transfer. The County proposed transferring the territory containing the main grounds of the University of Virginia to the City's jurisdiction. The effect of this transfer would be to shift to the City much of the University's student population. These students were considered County residents by the State. Because these students had little earned income, by including them in its population base, the City's **per capita income would decline** (statistically speaking, anyway) which would entitle the City to receive significantly more **State aid for education**. The anticipated increase from this transfer was estimated by the County to [be] an additional **several hundred thousand dollars**.

Id. at 31 (emphasis added).

The third part of the financial part of the counter offer was to pool all sales tax revenue from the City and County and redistribute to each locality per capita. (*Id.*)

As you would expect, the County's counter offer was big news.

[Headline] "**County's Counterproposal: Less Land, Share Sales Tax**"

The County would give the city the UVa Central Grounds and housing in the Copely and Alderman Road areas, state properties that are under Albemarle's jurisdiction. . . . An advantage of the UVa deal, they maintained, is that under population formulas for state and federal funding, more money would come to the city from the UVa property than the county would lose by giving it up.

Albemarle would also transfer to the city "most of the county's share" of approximately \$300,000 special state funding it receives under H. B. 599.

Both localities would enter into a tax-pooling agreement in which their total local sales tax revenues would be shared on a per capita basis.

Brickhouse, Robert, "County's Counterproposal: Less Land, Share Sales Tax," *The Daily Progress*, July 10, 1981. (H. B. 599 would be a House Bill number.)

There is some state school funding that comes to schools from sales tax revenue, and it is paid to school divisions based on a head count of children under age 19 who live in the district. The transfer of the UVa grounds and student population also would have helped this stream of state funding to the Charlottesville schools, but this is a much smaller stream of funding than the basic aid controlled by the LCI – and it does not use income as a factor. It is not clear from the information I have whether the County negotiators figured this sales tax funding stream into their calculation of the potential increase in state school funding to Charlottesville under their settlement offer, but in any event the **only state funding that comes to schools that takes income and population into account is the basic aid controlled by the LCI**.

The City negotiators liked the idea of gaining the UVa grounds as part of the City (after all, the City surrounds the grounds) and the City negotiators continued to push for that to happen during the negotiations, but the County was never again willing to go along with the idea. (Lindstrom at 39, 42, 43, 46)

In any event, there can be no doubt that the County negotiators considered state school funding during the negotiations, and we can even be confident that it was the LCI controlled funding that they considered. Obviously, the County negotiators were trying to increase the City school funding, which without a shadow of a doubt presumes the City schools would be keeping the funding they already get from the state. Increasing City school funding was the plan behind this part of the County's offer even though another part of the offer was to split up local sales tax – i.e., revenue sharing.

We also know from this settlement offer that the County considered directly diverting another state funding stream to the City: the so-called H.B. 599 funds. So we know that not only did the County negotiators consider state school funding and how to alter it indirectly (in the City's favor), but they also (of course) knew they could directly bargain for state funding streams during the negotiations.

In the end, the negotiators decided to focus only on the third aspect of the County's offer – sharing of local tax revenues. Since the issue was the disparity in wealth between the localities, it made sense to just focus on how to share that wealth. Indeed, the revenue-sharing agreement itself specifically states that its purpose was to permit **"both jurisdictions to share fairly in the property tax revenues created by future economic growth in the community regardless of whether that growth occurs in the City or the County."**

It is clear as day that they knew (just as you and I know, on a more basic level) that the local government and schools were getting state and federal funding under various formulas **in addition** to the local revenue they would be sharing. **If it is now, after 30 years, fair game to go after state funding streams that were not bargained away in the actual agreement, perhaps the City should be asking the legislature to give us the bulk of the County's H.B. 599 funds!!**

2. Apart from a County Negotiator's Statement, in his Thesis Paper, That The County Considered the School LCI Funding During Negotiations, Is There Any Other Evidence That the City Was Supposed To Keep Its Same Share of the School Funding From the State?

Yes.

The fact that no one complained or brought up the “error” for almost 30 years is pretty indicative that it wasn’t an error at all. Also, there were multiple articles in *The Daily Progress* about how the proposed revenue-sharing money would go to help City schools. **Using the revenue-sharing money to help the City schools would not have been such a focus of the agreement if everybody didn’t understand that this money would be on top of what the schools were already getting from state and federal funding formula.**

[Headline] **“City Increases School Revenue”**

The Charlottesville school system can expect an additional \$900,000 in city revenue for next year’s operating budget – \$150,000 of that from an anticipated cash settlement with Albemarle County as part of the as-yet incomplete annexation negotiations.

Jones, Chip, “City Increases School Revenue,” *The Daily Progress*, December 18, 1981.

[Headline] **“Fate of School Money Uncertain, Board Told”**

The \$150,000 in question would come from an annexation settlement with Albemarle County, an agreement school planners cannot count on. State and federal funding are uncertain also.

Jones, Chip, “Fate of School Money Uncertain, Board Told,” *The Daily Progress*, January 22, 1982.

[Headline] **“If Revenue-Sharing Passes, City Teachers May Get Raise”**

Charlottesville Mayor Frank Buck Thursday suggested using money from the proposed revenue-sharing agreement with Albemarle County to give city teachers an additional 2 percent pay increase.

...

Buck said the city school system’s current budget “is one of the best cases of the need for revenue-sharing.” The budget calls for one of the lowest raises for teachers in years, program cutbacks and staff reductions.

Jones, Chip, “If Revenue-Sharing Passes, City Teachers May Get Raise,” *The Daily Progress*, February 26, 1982.

Excerpt from Letter to the Editor by an ALBEMARLE SCHOOL BOARD MEMBER supporting revenue sharing:

I’ve heard it said that the revenue-sharing agreement is a form of blackmail by the city of Charlottesville over Albemarle County. I disagree. In reality, it is an excellent investment for the county.

The right of annexation of county land by cities is part of Virginia law and has been for a long time. It has only been suspended for brief periods in the history of the

state. That means that Charlottesville would simply be exercising its privilege under the state constitution to proceed with annexation of parts of the county.

Rather than blackmailing the county, Charlottesville is using its full legal rights and is probably wise to do so. On the other hand, the potential of annexation creates serious problems for the county.

As a member of the school board, I am very aware of the problems that the threat of annexation holds for the school system. The superintendent is currently reviewing the entire system to recommend to the board a major redistricting of students and schools. Clearly this redistricting depends on what happens with regard to annexation.

...

Even more critical on a short-term basis is the potential that the city will annex a major portion of the revenue base of the county without, at the same time, taking a commensurate part of the population. If that were to be the case, the school system would be the one to suffer the most. We would have a choice of either raising taxes to provide the same level of service to our student population or keeping the tax rate the same and decreasing our level of service.

...

The revenue-sharing agreement is a good investment. We have an opportunity, for a modest price, to buy independence from the city of Charlottesville forever. Some people have a problem with the fact that this agreement doesn't have a termination date. I think this is one of the best parts of the agreement. It is an excellent agreement precisely because it buys our freedom forever.

It will cost us no more than 10 cents per hundred dollars of valuation of county property. It can never be more than 10 cents per hundred dollars. For this investment, the county is purchasing permanent control of its entire tax base. It will never again have to fear that the city can remove some of the county's tax base by annexation.

...

I urge all county citizens to turn out and vote for revenue sharing.

Tolbert, Charles, "Revenue Agreement Would Help Planning," *The Daily Progress*, May 8, 1982.

I can't help but notice that this long, well-informed, and well-reasoned letter from an Albemarle School Board member did not argue that the revenue sharing would be a good deal for county schools because not only will the school system have access to the wealth of the county, and its normal state and federal funding, but that also the Albemarle schools will get some of the City's share of state school funding. Why didn't he argue that?? – because, as in all agreements, everyone assumed the parties were keeping what they didn't specifically trade away!

3. **Were the Early 1980s a time of Easy Money for the State or for Local Schools, Leading to No One Paying Much Attention to the Issues of Schools and Their Funding?**

No.

Declining state funding, school issues, and budgets were very much in the news.

[Front Page Headline] **“City Schools Face Staff, Program Cuts”**

Only \$360,000 in new revenue is expected from the state, said Cibarelli [City schools’ superintendent]. A projected five-percent reduction in state aid, which the state has said is likely to occur, would further reduce revenue by \$80,000.

Young, Julie, “City Schools Face Staff, Program Cuts,” *The Daily Progress*, **December 3, 1982**, page A1. (The article goes on to quote Cibarelli indicating that \$630,000 in increased costs were needed to be added to the budget; he notes declining enrollment and the desire for decent pay raises for teachers.)

[Headline] **“School Closings Possible”**

Citing primarily low enrollment but also operating costs and the condition of buildings, the Albemarle Superintendent discusses possible future need to close Stony Point, Murray, Greenwood, and Meriwether Lewis schools. (Jones, Chip, “School Closings Possible,” *The Daily Progress*, **December 9, 1981**)

Last July it was announced that the [Albemarle School] system had accumulated a deficit over the past three years of approximately \$1 million . . . This year’s budget preparation “is going to be the most difficult one the school board has ever faced,” he [James W. Walker, School Board Vice Chairman] said.

Jones, Chip, “Walker To Be Reappointed To County School Board,” *The Daily Progress*, **December 16, 1981**.

[Headline] **“State Funds Plunge”**

John N. Dalton [Governor] said Wednesday that tax cuts [federal] and an economic slowdown will force Virginia to do with \$176.3 million less in general fund revenues through the end of the next two-year period.

A.P., “State Funds Plunge,” *The Daily Progress*, **December 17, 1981**.

4. **What is the Statewide Local Composite Index that Albemarle is Asking to Change Just for its Benefit?**

Va. Constitution Va. Con. Art. 8 § 2 (1971) provides as follows:

The General Assembly shall determine the manner in which funds are to be provided for the cost of maintaining an educational program meeting the prescribed standards of quality, and shall provide for the apportionment of the cost of such program between the Commonwealth and the local units of government comprising such school divisions. Each unit of local government shall provide its portion of such cost by local taxes or from other available funds. (Emphasis added)

In order to meet this Constitutional mandate, the state developed a complicated formula to determine its share of funding for basic aid to school systems and to dole that out to public school divisions throughout the state, based on each locality's wealth. Part of the basic aid formula involves the state looking at what, on average, school divisions are actually spending on education – coupled with what the state thinks the localities should be providing. (Most localities provide more staffing than is required by the state; school divisions basically view the state requirements as minimums and, in some instances, view the requirements as well below realistic staffing levels.) After the size of the overall minimum state funding pie is established in this way, the Local Composite Index (LCI) is used to carve up the pie between local and state shares. The purpose of the LCI, as I understand it, is to have a uniform statewide method to judge the relative wealth of a locality (i.e., its ability to pay its own way for the public education of its citizens in relation to other localities), and no doubt it was the result of a huge negotiating struggle among the different localities' interests in getting “their fair share” of the state's funding portion of this sizable pie.

The LCI part of the funding formula was put into place in 1974 and has not changed since that time. (Of course, the amount of state funding has certainly increased since 1974, as have state mandates – many of which are considered unfunded). The LCI formula completely ignores a locality's budgetary numbers (revenues; expenditures) because those numbers are controlled by local decisions. Instead, the formula “determines” local wealth by calculating each locality's **adjusted gross income**, the local real estate values, the local taxable retail sales (i.e. taxable sales not actual tax receipts), the total local population, and the school population. The formula then essentially pits these numbers against the state averages for these numbers, to come out with a local wealth indicator versus the state as a whole. The calculation is redone every two years.

5. Does the LCI Calculation Take Into Account Any Local Spending Decisions?

No.

The LCI calculation does not attempt to account for individual communities' financial liabilities or needs (or actual revenues, or savings, or assets - other than land value). **So, for instance, it does not take into account that a community might decide to spend millions of dollars on a new dam, firehouse, school, library, bridge, roads – or, say, a county buying from a neighboring city an old high school to use as an office building, or a city buying parkland in an adjoining county. The LCI does not take these local decisions into account, no matter how critical the need to spend the money was – and even though these spending decisions and the resulting debt service/payment agreements will take years or decades to pay off.**

Albemarle County, for example, like many counties, has made a decision to have a land tax credit program to try to preserve rural land (a laudable goal, to be sure). **This program cuts the tax rate for undeveloped land and, as I understand it, the program costs the County some \$18 million a year** (about the same amount it has recently been paying the City under the revenue-sharing agreement). It apparently is questionable whether the program does anything much to deter development, because the penalty for developing is just the payment of five years of the back tax differential to the County, while the development still happens and the property owner still makes good money. So, recently the County has advocated for the legislature to allow it to increase the penalty to ten years of back taxes. This land tax credit program is a decision by the County that may be wise or unwise, but in any event it costs the County revenue but is not taken into account by the LCI.

Likewise, the LCI does not take into account the fact that many localities have decided to pay money to their neighboring cities/counties under a variety of long-term agreements. (See listing below.) Some of these agreements are for the provision of services between localities, but others were put into place to prevent annexations. (Yes, there are several jurisdictions with annexation prevention revenue-sharing agreements). **Note that Albemarle (unlike the City) decided it had to put the revenue-sharing agreement to a vote because it was, in fact, like any other long-term debt which state law requires county residents to approve.** Some may argue that the other revenue-sharing deals which involve the exchange of goods or services are simply not the same as the ones that were the result of boundary disputes, because the paying locality is in fact getting something in exchange for paying the money (i.e., a good or service). This argument ignores the fact **Albemarle and other counties that made such boundary deals are continuing to get to keep the property that wasn't annexed and continuing to get to keep the revenue that land produces (i.e., Albemarle and these other counties are very much still getting something in return for their payments!).**

Local decisions on money expenditures, whether short term or long term, are simply not taken into account by the LCI even though the money spent under all these types of local decisions will no

longer be available to spend on local school divisions' operational budgets. Should the statewide school funding formula take into account local spending needs and decisions or a locality's revenues? If so, should some state agency or other judging panel be called upon to determine that the locality had some overwhelming financial need or obligation that is unfairly siphoning off its ability to pay for schools? Regardless of anyone's answer to these questions, it seems as if we should all be able to agree that whatever change is made should be applicable statewide to all school divisions and not be a spot change to benefit or harm a specific school division or two.

6. Other Cities/Counties with Revenue Sharing

Although Charlottesville and Albemarle have by far the largest revenue-sharing agreement, many other Virginia localities have various types of revenue-sharing agreements –some of which resulted from annexation boundary disputes. According to the Commission on Local Government, in addition to Charlottesville/Albemarle, the localities listed below have revenue-sharing agreements with each other. (Note that the payments may go in either direction, depending on the individual agreements; apparently in some cases payments flow in both directions. Please also read section 5 above if you haven't already.)

City-County

Bedford City and Bedford County
Bristol City and Washington County
Buena Vista City and Rockbridge County
Danville City and Pittsylvania County
Franklin City and Southampton County and Isle of Wight County
Lexington City and Rockbridge County
Lynchburg City and Campbell County
Radford City and Montgomery County and Pulaski County

Town-County

Smithfield Town and Isle of Wight County
Vinton Town and Roanoke County
Windsor Town and Isle of Wight County
Wytheville Town and Bland County and Wythe County

County-County

Bland County and Wythe County
Botetourt County and Roanoke County
Washington County and Smyth County

7. Problems with the LCI Calculations?

To me, the glaring problem with the LCI formula, however, is that the LCI is a school funding formula, and yet it does not directly take into account any of the demographic challenges actually faced within the school divisions. For example, the LCI **does** take into account the adjusted gross income of a locality's population, but since this is a school funding formula, why not also take into account the direct measure of the number of children in a school district that qualify for free and reduced lunch? Income measures can be thrown off by the unequal distribution of wealth; in addition, the number of children in poverty in a school district is affected by the age of the population in the locality, the birth rates of different demographics, and the strength of the private school system. As a result, the poverty rates in both the City and County are significantly less than the percentages of children who are eligible for free and reduced-price meals.

Likewise, some school districts have a high number of students who are English Language Learners (ELL). The needs of this group, like the needs of children in poverty, create challenges for a school division along with the great blessing of diversity. Both Charlottesville and Albemarle school divisions have students speaking some 50 different native languages. Some ELL students, particularly refugees such as those brought to our locality by the International Rescue Committee, have not even been educated in their own language, much less in English. Yet the LCI does not take this growing phenomenon into account. The ELL population makes up about 10 percent of students in Charlottesville schools, with 50 percent of these students at the lowest levels of English language acquisition. Albemarle's division is about 6 percent ELL, with about 35 percent of those students at the lowest levels of English proficiency. The number of students qualifying for special ed is also not taken into account by the LCI, even though special ed services can be an area of high expenditures for school divisions. About 13 percent of Charlottesville's students qualify for special ed services; the number for Albemarle is about 10 percent.

It seems as if taking these kind of division-specific challenges into account should be the starting point for any discussion concerning changes in the LCI formula. Further, any changes should be implemented statewide and not to benefit or harm individual districts. Unlike a locality's spending and taxing decisions (which are purely local decisions), **public school divisions do not have decision-making roles regarding which children arrive on their doorsteps**. Our school division's budget director tells me that he sees bigger flaws than the ones I describe in the school funding formula, but in any event, we should all be able to agree that any changes that are ever made should be applicable statewide, to all school divisions.

8. History of Albemarle's Attempt to Change the LCI

As far as I know, the first attempt by the County to spot-change the state's school funding formula occurred during the 2009 legislature session. This attempt was not publicized, and as I understand it, it would have increased Albemarle's funding to "reflect the revenue-sharing money" but would not have decreased Charlottesville's funding. The additional funds for Albemarle would instead have just been supported by increased state funding or a minute decrease in state school funding, spread across all divisions. Apparently this attempt to change the LCI for Albemarle's benefit ended at the committee level. The Albemarle School Board was advised that the bill would have had a much better chance of success if it was revenue neutral to the rest of the state – i.e., that the money to increase Albemarle's LCI should come from Charlottesville's share.

The following fall of 2009, the County school board's chair at the time (much to his credit) wanted to make sure that any decision to try again to change the LCI would be the result of a public "above board" discussion, particularly given that any such decision was likely to include a request that the money be taken out of Charlottesville's share. The Albemarle School Board chair also gave the Charlottesville board a heads-up about the discussion, and a representative of the Charlottesville board sat in on the Albemarle discussion – which resulted in a split vote, with a bare majority in favor of requesting that an adjustment be made to both the Charlottesville and the Albemarle LCI funding.

The Charlottesville School Board members, in order to try to preserve the close working relationship between the school divisions and school boards, made a deliberate effort to avoid escalating the situation through a local war of words. Instead, with the help of the City government, the City school board hired a lobbyist to fight the proposed change in the legislature. Representatives of City Council and the City school board also went to Richmond to lobby against the change. The proposed LCI change passed the House but was defeated in the Senate, and the change was not included in the conference committee's compromise budget.

Following the legislative session in 2010, Delegate Toscano then made an effort to bring the governing bodies together to talk about not only the LCI issue but also the revenue-sharing agreement – and, more generally, to talk about ways the City and County might better collaborate and share services. The meeting between the four bodies (the two school boards, City Council, and the Board of Supervisors) was largely cordial and primarily resulted in a decision to form working groups to talk about the issues. As I understand it, the working group(s) which looked into the possibility of consolidating some government services decided that there would not really be any savings and that consolidation would result in the need for a complex funding formula and the loss of local control over the services in question.

The working group which discussed the revenue-sharing agreement and the LCI had a spirited meeting, during which county representatives suggested that a potential resolution to the dispute might be for the City to agree to spend some or all of the revenue-sharing money on shared City/County projects; in the alternative, the schools could agree to spend the disputed LCI money on shared projects. The City representatives made clear that they did not believe the County had the right to any of the City schools' LCI money – and no right to dictate how the City spent the money the County gives it under the revenue-sharing agreement – but the City representatives agreed to have the school boards continue discussing possible ways to join resources between the school divisions on

joint projects. It was understood, however, that the discussion would be about joining resources, not just the City using its money to help County schools. County representatives acknowledged this principle and suggested that maybe there would be projects where the County would be able to provide valuable in-kind assets while the City provided more of the liquid assets. No agreements or commitment were made by anyone, other than to have continued dialogue on the idea.

In the fall of 2010, school board representatives and senior staff did meet and again discussed the possibility joining resources on a joint project. They identified the creation of virtual classes/courses as a viable choice.* Senior staff was asked to begin meetings on the idea to see if such a collaboration effort would work out. Staff later reported back that the City and County teams had decided to move forward with the creation of a couple virtual classes, and I gather that the reason the County school board did not seek a spot change in the LCI with the legislature last year is that some discussions and potential progress had taken place. Indeed, some progress was made on the collaborative virtual classes; the staff working on the project from both divisions even met with Darden School experts on designing such a joint project. Ultimately, however, the Albemarle team seemed to lose interest in carrying this forward as a joint project, at least from the City's perspective. As a result, the City is just moving ahead with its own plans, and I assume the County is doing the same.

Creating joint virtual classes continues to make sense to me, but such an undertaking should just be a mutually-funded collaborative project. The County school board has not suggested any follow-up meetings to talk further about the virtual class idea (or any other idea), nor has it proposed any type of "settlement" of this issue; the next thing we heard was the County board's recent passing of its resolution to request again that the legislature spot-change the LCI in its favor and to the City schools' detriment.

9. Why Did Cities Ever Get to Annex County Land, Anyway?

Virginia may be the only state in the union that still has independent cities and counties that have completely separate and governing bodies and taxing authority. Since they are completely independent, they each have the obligation to provide whatever services are needed and/or desired within their jurisdictional boundaries (schools, parks, non-VDOT roads, police, firemen, social services . . .) and each governing body has the power and means to raise revenue. The primary sources of revenue are, however, real estate taxes and sales taxes.

*Virtual classes are already a hot commodity in education, with many private companies, and other educational institutes having a large list of offering for a price. The benefit to such classes is that they can provide interactive learning (the best ones have live teachers interacting with the students) where students can work at their individual pace and at times that are more flexible than a traditional class offering. Such classes can also provide courses of study that a school system may not be able to offer otherwise. Some other countries and states are diving in deep on this educational trend and several Virginia school divisions are way out in front creating virtual courses.

City Financial Burdens

Cities generally face greater financial challenges than do counties, because cities typically have a greater concentration of residents living in poverty. For instance, Charlottesville has over three times the number of residents living in poverty as Albemarle (27.6 percent versus 8.8 percent). **Charlottesville ends up spending about \$1,200 per capita on health and welfare budget items, while Albemarle spends about \$350 per capita on the same services.** It is worth noting, for instance, that Charlottesville has **376 public housing units** that are in need of renovations/redevelopment to the tune of tens of millions of dollars; **Albemarle has 0** public housing units. (Both localities offer housing vouchers.) Moreover, unlike Albemarle, the City is the home of Salvation Army housing for the homeless, and the City is building an apartment with, 60 single rooms to help people out of homelessness. **On public works, Charlottesville spends \$300 per capita and Albemarle spends about \$50. On public safety, Charlottesville spends about \$900 per capita and Albemarle spends about \$400.** (The spending numbers cited in this paragraph are from the annual Auditor of Public Accounts Comparative Report.²⁷)

The Virginia Commission on Local Government²⁴ found, in its most recent full report on the fiscal health of localities (using 2007-2008 data), that **84.6 percent of Virginia cities were determined to be in either the “above average” fiscal stress category** (e.g., Charlottesville) or the “high stress” category, while only 44 percent of counties fell within one of those two categories (Albemarle is in the “low stress” category). In fact, of the 23 localities identified as highly stressed fiscally, only five were counties and the rest were cities. **Indeed, of the top 18 most fiscally stressed localities, only one was a county.** (Report on the Comparative Revenue Capacity, Revenue Effort, and Fiscal Stress of Virginia's Counties and Cities 2007/2008 – dated March, 2010.)²⁴

Cities: Little Land for Development

Not only are cities faced with higher expenses than counties, they also are landlocked by their surrounding counties. Counties have plenty of room to grow their populations and to add to businesses and commercial areas that can produce large streams of revenue, while cities are very limited in this regard. **(The City of Charlottesville occupies 10 square miles; Albemarle County encompasses 720 square miles and includes, for example, the Forest Lakes area, Pantops, and the enormous “Stonefield” development occurring around Sperry off Hydraulic Road.)** Compounding these two major problems (higher expenses and being land locked) has been the longstanding trend of many upper and middle class families and individuals moving out of city limits into the suburbs. Consequently, to keep cities from dying under the weight of these problems due to the essentially arbitrary community jurisdictional borders, the legislature has traditionally allowed cities a way to expand their borders which can potentially simultaneously solve all these problems. In addition, it has not been uncommon at times for county residents surrounding cities to actually want to be included inside city borders, in order to take advantage of enhanced services.

10. Annexation History in Virginia and Rate of Success

Virginia's program of annexation by judicial decision-making began under the Constitution of 1902. Before that time, municipalities had expanded their boundaries through special acts of the General Assembly. To comply with the new constitution's

prohibition of such special acts, the assembly passed legislation in 1904 that established the annexation procedure used until 1987. Beginning in the 1950s, **five Virginia cities expanded their boundaries to subsume the now-extinct counties in which they were geographically situated:** Hampton (subsuming Elizabeth City County) in 1952, Newport News (extinguishing Warwick County) in 1958, Virginia Beach (subsuming Princess Anne County) and Chesapeake (subsuming Norfolk County) in 1963, and Suffolk (extinguishing what until 1972 had been Nansemond County) in 1974.

Hornbook of Virginia History at the Library of Virginia. (2011, January 31). Cities of Virginia. READ_DATE - 12/9/11, from *Encyclopedia Virginia*: (emphasis added)
http://www.EncyclopediaVirginia.org/Cities_of_Virginia.

According to a *Daily Progress* editorial leading up to the revenue-sharing agreement vote, Virginia cities had won 87 percent of all annexation suits (106 of 121). Editorial, “Albemarle’s Opportunity,” *The Daily Progress*, May 9, 1982.

In just the decade between 1960 and 1970, there were 27 successful annexations by cities in Virginia, taking 79 square miles of county land and 86,000 county residents. This was true despite the fact that a moratorium was put in place by the legislature from 1962 to 1964 (the moratorium did not affect pending annexation lawsuits). **Petersburg had the second largest annexation during this time period, gaining 14 square miles and 9,000 residents** from its surrounding counties. Again, it is worth noting that some of these annexations were initiated by county residents, developers, or the county government wanting the city to provide services to its urban ring residents. The Petersburg annexation, however, was initiated by the city. **Moreover, it is important to recognize that, whether through settlement or court-awarded annexation, the cities getting the land were required to pay an agreed-upon or awarded amount as compensation based on the value of the land, improvements to the land, and the lost tax revenue.** In addition, cities were only allowed to initiate annexations once every five years. [At some point later this was changed to 10 years.] (“Municipal Annexation in Virginia, 1960-1970,” E. Morton, *University of Virginia News Letter*, vol. 48, No. 9, pages 33-36).

Of course, cities and counties are really just single communities. Indeed, I imagine most county residents who live near a city tell other people, when asked, that they are from that city. Moreover, a county's growth tends to be driven by the “success” of the city/cities it surrounds; as a result, the growth is generally centered around its city/cities. Obviously, city success is also dependent on the counties’ overall attractiveness. In any event, because of the above realities, cities were given the ability to annex land from their surrounding counties, to ensure the cities' survival – and I again note that a thriving city also helps its surrounding county.

11. Charlottesville’s History of Expansion and Annexation

Charlottesville is currently 10.4 square miles (6,656 acres), but it had more modest beginnings when it was established by the General Assembly in 1762 as a town of 50 acres (less than 1/10th of one square mile). (*Charlottesville: A Brief Urban History*, <http://www2.iath.virginia.edu/schwartz/cville/cville.history.html>) In 1888, it became an incorporated independent city. (Website for City of Charlottesville: <http://www.charlottesville.org/Index.aspx?page=154>)

Two of the successful annexations in Virginia in the 1960s were done by Charlottesville. In 1963, Charlottesville almost doubled in size, taking 3.9 square miles of county land and almost 4,700 county residents. Charlottesville's last annexation came in 1967 *[sic]* *[correct date is 1968]* when either the county or county residents petitioned the court to be annexed. This resulted in the City acquiring another 44 acres and 94 county residents. ("Municipal Annexation in Virginia, 1960-1970," E. Morton, *University of Virginia News Letter*, vol. 48, No. 9, pages 33-36). Over time, there were a total of eight expansions by the City. (The information below is taken from the City's 1972 annexation filings in the Albemarle Circuit Court and from the annexation map in the City Circuit Court.)

- 1762 Original town – essentially central downtown: Water Street, Main Street, Market Street, and High Street.
- 1818 Added .032 square miles – extending the City a couple more blocks into the downtown neighborhood beyond High Street. The City line on the east side ended at Park Street.
- 1860 Added .184 square miles (5.7 times larger than before that expansion) – adding several blocks all around the existing town.
- 1873 Added .069 square miles – adding a few blocks to the east: 10th, 11th Streets and E. High Street.
- 1888 Added .88 square miles, making it four times larger (total 1.221 square miles) and becoming an incorporated city. Added land included Preston Road area and Cherry Ave.
- 1916 Added 2.6 square miles, doubling the size of the city; adding land circling the existing city, including much of the university area over to about Emmet Street and the Rose Hill Drive area, up to about Rugby Road.
- 1939 Added another 2.6 square miles, circling the existing city (total city size after the annexation: 6.4 square miles), including the neighborhoods behind Walker School; on the west side stopping at Emmet Street up to about Bodo's; also taking most of Belmont and part of McIntire Park into the City boundary.
- 1963 Added 3.9 square miles, including all of the Greenbrier neighborhood, the rest of the McIntire Park land, Barracks Road shopping area, Johnson Village, and the Cleveland Avenue area.
- 1968 Added .08 square miles in the Greenbrier neighborhood: the extension of Brandywine Drive up to Glenn Court.

Failed 1971-1972 annexation by The City - Except as noted, the information below is taken from court documents.

Apparently, around 1970 there were serious talks about consolidating the City and County governments that again ended with maintaining the status quo. (Lindstrom at 15.)

January 8, 1971 The City filed a petition in the Albemarle Circuit Court to annex almost 12 square miles of Albemarle County surrounding the City. The land the City

sought to annex included all of Pantops Mountain, all the way to the I-64 interchange. On the south side, the proposed annexation would have gone all the way out to I-64 and, in many spots, beyond I-64, from the easternmost interchange to the westernmost interchange. On the north, it would have followed outside the northern edge of Rio Road all the way from Greenbrier past the Rock Store and continuing along Hydraulic past Albemarle High School. The line, however, was drawn to the outside of Rio Road so that the City would get all the business and properties along Rio Road – including Albemarle Square and Albemarle High School. On the west side, the proposed boundary would have included all of the Georgetown Road area and the Belair subdivision before connecting up, around the I-64 interchange, with Route 29.

- January 10, 1972 A year later, the Circuit Court agreed with an argument by County attorneys that the City annexation ordinance (which the City had initially passed in order to start the annexation), was technically deficient because it did not include a detailed metes-and-bounds description of the land sought in the annexation. As a result of the City’s failure to follow the statutory requirements, the suit was dismissed.
- February 3, 1972 The City passed a corrected annexation ordinance and re-filed in court.
- October 26, 1972 The Circuit Court dismissed the second lawsuit because the annexation laws stated that a City must wait at least five years after its last annexation attempt before trying again. (At some point after the City’s annexation suit was filed, the law was apparently changed to make the waiting period ten years.) The City appealed, arguing that the prior dismissal due to the flawed annexation ordinance should not prevent the City from correcting the technical failure and proceeding with the corrected filing. The Supreme Court disagreed with this argument and upheld the dismissal by opinion dated November 26, 1973. *Charlottesville v. Albemarle*, 214 Va. 365, 200 S.E.2d 551 (1973). By this time, the state legislature had imposed an annexation moratorium. (See below.)

12. Annexation Moratoriums and 1979 Adoption of New Laws

The ones I know about are: the one lasting from 1962 to 1964 (referenced above) and another one starting on March 1, 1972. This later moratorium, like the 1962 moratorium, did not, however, affect annexation proceedings that had already been initiated – including one filed by Charlottesville. The moratorium included the creation of a legislative study commission which was to report back by the time the moratorium was scheduled to end on January 1, 1976.

In May of 1972, one local researcher at UVA’s Institute of Government wrote that “[b]y 1976, when the Commission makes its report, most of the cities in the State will likely plan to extend their boundaries . . .” (*Id.* at 36) Charlottesville was one of the cities with such plans, particularly after its failed 1971 and 1972 attempted annexation. This moratorium, however, was apparently extended beyond 1976 **until July 1, 1980** (Virginia Code § 15.1-1032.1), while the annexation laws were being completely re-written in a contentious battle between county and city interests in the legislature. Of local note: the legislation was being spearheaded by our local House of Representatives member

(and later our state senator), a certain Thomas J. Michie, who represented both City and County voters. Moreover, the chair of the Albemarle Board of Supervisors, Gerald Fisher (who was also a future key negotiator for the County in the revenue-sharing agreement), was an extremely vocal and effective lobbyist in Richmond on behalf of county interests.

As described in *The Daily Progress*, "[i]n the 1970s, with court battles becoming increasingly costly and divisive for localities, the General Assembly imposed a temporary moratorium on annexation so that the whole procedure could be reviewed." Brickhouse, Robert, "Negotiators Hoping to Avoid Costly Court Battle," *The Daily Progress*, May 11, 1982. Lindstrom describes this period as follows:

For a ten-year period during the 1970's Virginia cities were prevented from the annexation of adjoining county territory by a moratorium imposed by the Virginia General Assembly. On July 1, 1981, a complex package of annexation related legislation went into effect. . . . The legislation was authored by Delegate (and later State Senator) Thomas J. Michie, Jr. . . . A most important part of the legislation is the termination of the moratorium on annexation. The legislation also contains provisions for a more orderly and, arguably, fairer annexation process. The legislation for the first time offers localities the option of entering into agreements for tax base transfer in lieu of protracted annexation litigation. Counties are also authorized to seek partial immunity from annexation. To make the legislation more palatable it increases funding to both cities and counties for such things as law enforcement, street maintenance, and other basic services.

Lindstrom at 3.

The Charlottesville City Council first approached the County Board of Supervisors about starting an "amicable" negotiation over the issue of annexation/revenue sharing at a joint executive session on **December 12, 1979**. (Lindstrom at 8). The new annexation laws seem to have been passed in the 1979 legislative session, and I would have thought they went into effect in July of that year, but perhaps Lindstrom's 1981 date for the laws going into full effect is correct. In any event, **the moratorium was for sure in effect until July 1, 1980 (i.e., for six more months after the start of the negotiations)**. (Virginia Code § 15.1-1032.1)

The 1987 moratorium, like those before it, did not affect annexation petitions filed before the date of the moratorium – which began January 1, **1987**. (So, the City would have had plenty of opportunity to follow through with its planned annexation in the early 1980s, had the revenue-sharing agreement not been reached. See Virginia Code § 15.2-3201.) I further note that **the moratorium does not apply to voluntary annexations initiated by counties** or to a petition by 51 percent of the voters or landowners in the locality seeking to be annexed. (Virginia Code §§ 15.2-3201, 15.2-3203)

13. Time Line of Charlottesville-Albemarle Negotiations

April 1979 – Governor John Dalton signs into law a new package of laws dealing with annexation/boundary dispute issues between localities. (“Chronology of Negotiations;” *The Daily Progress*, February 2, 1982)

December 12, 1979 – Actual negotiations begin in a closed-door meeting between City Council members and the Board of Supervisors in the County Office Building (i.e., the former City High School, “Lane”). The City Council suggested three areas for consideration: boundary adjustments, increasing shared government services, and revenue sharing. (Lindstrom at 8, 9).

July 1, 1980 – State-imposed annexation moratorium lifted. (“Chronology of Negotiations;” *The Daily Progress*, February 2, 1982; see also Virginia Code § 15.1-1032.1)

January, February, 1980 – The Board and Council choose lead negotiators and decide to proceed with public negotiations, which continue with no proposal on the table. (Lindstrom at 13, 14).

March 17, 1980 – County demands that the City submit a formal proposal for consideration. (*Id.* at 18, 19)

November 18, 1980 – **City announces its first proposal.** It calls for immediately **creating a committee to study consolidating** the City and County governments, because the City leaders believed a consolidated government would provide the best long-term solution to both the City’s financial situation and the County’s worries over annexation. In addition, to solve its short-term financial problems, the City proposed **taking about 10 square miles** of land in voluntary annexation or pooling and **sharing the tax revenue from the 32-square-mile urbanized area** of the County. Part of the second option would include the County increasing public housing and housing assistance programs in the County and increasing its financial support for transportation. In exchange, under either of these options the **County would get 20 years of annexation immunity.** (*Id.* at 18, 19)

December, 1980 - February 25, 1981 – Several meetings are held where the County indicates it wants to do an internal study of consolidation to see if it makes any sense, before agreeing to a joint study committee. (The County Board was quite cool to the idea of consolidation all along and worried that an independent committee’s plans and recommendations would take on a life of their own and potentially result in a loss of control by the Board). The County also indicates it can only study the consolidation idea and cannot also study the City’s other proposals simultaneously, as the City was proposing. The City was not willing to delay annexation negotiations but gave the County until July 15, 1980 to come up with a counter-proposal – or, presumably, the City might go ahead to file for annexation in court. (*Id.* at 21-28)

July 9, 1981 – **County announces its counter-proposal**, offering the following: (1) giving the City two square miles of essentially undeveloped and unpopulated land south of town (the City folks contended it consisted of largely undevelopable steep slopes); (2) transferring the County’s share of a new state line item of funding to the City, in addition to the City keeping its own share; (3) giving the City the UVa grounds, noting it would increase state funding to the City schools through the LCI; (4) pooling all sales tax from anywhere in the City or County and then redistributing it to the localities per capita. (*Id.* at 29-32)

September - December, 1981 – The City rejects the County's offer but is in favor of getting the UVa grounds. Both sides agree to hold all future negotiations in private and meet much more often. During this time, negotiations narrow down to a purely financial settlement. (*Id.* at 37-69)

January 21, 1982 – Negotiators and their boards reach a verbal deal for the revenue-sharing agreement. (*Id.* at 68, 69)

January 27, 1982 – Final draft of written agreement considered and agreed to by Council and the Board of Supervisors in the last closed session. (*Id.* at 69)

February 1, 1982 – The agreement is publically announced (“Chronology of Negotiations,” *The Daily Progress*, February 2, 1982)

May 18, 1982 – By 63 percent, County voters approve revenue-sharing agreement:

. . . [I]n the end it was approved by **five of the County's six magisterial districts**. Only in the Whitehall District, the County's only district with no boundary contiguous to the City, and whose Supervisor, Joseph T. Henley, Jr., was the only Supervisor who did not support the revenue-sharing proposal, did the agreement fail to receive majority support. . . . Suffice it to say that the Whitehall District most likely represented the attitude shared by many rural opponents of the agreement: an annexation might purge the County of some of the suburbanites whose demand for costly urban services and support of land use regulations were anathema to many rural folks.

Lindstrom at 70, 71.

14. Did the County Leaders and Voters Fear and Have Good Reason to Fear that a Significant Annexation Might Take Place if No Agreement Was Reached?

Yes.

“The entire Board felt extremely disadvantaged and threatened by the possibility of annexation. This, coupled with bitter memories of the 1972 annexation attempt by the city, put the Board on the defensive.” (Lindstrom at 9) In addition to the Board of Supervisors' awareness of the City annexations in the past and the general success rate of cities in annexation suits (87 percent), there were a couple city/county boundary events that took place even while the two years of negotiations were going on, that the negotiators and citizens took note of. The biggest event was when the newly established Commission on Local Government published its first annexation dispute report on **February 20, 1981**, in response to an annexation suit filed by the City of Harrisonburg against Rockingham County.

The Commission's report on Harrisonburg/Rockingham was a shock to the County Board. The Commission's recommendation appeared to give the City of

Harrisonburg much of what it had asked for, despite the report's finding that the City of Harrisonburg was one of the most financially sound cities in the Commonwealth. Harrisonburg had requested a land transfer of **14.14 square miles of Rockingham County**. The report recommended a transfer of nearly all of this territory – an area **comprising over 14 percent of the County's total taxable property value and generating more than 60 percent of its sales tax revenues**.

The report acknowledged that although the annexation of Rockingham land would be a severe blow to that County's tax base, Rockingham had much room for expansion and, in time, it could recover.

Lindstrom at 34, 35 (emphasis added).

Pursuant to the new procedure, the Commission's report was reviewed and ruled upon by a three-judge panel, and the court's opinion was rendered on **July 16, 1981**.

That decision **essentially confirmed the Commission's report**.

. . .

The outcome of the Harrisonburg/Rockingham dispute had a very sobering effect upon those members of the County staff who were actively working with the Board, as well as upon the Board itself. Much anger and frustration resulted from these surprisingly harsh decisions.

Id. at 35 (emphasis added). The court's decision was appealed by Rockingham County to the Virginia Supreme Court and **Albemarle actually filed a petition with the court seeking permission to file a friend-of-the-court brief and asking that ". . .the annexation court's award to the city of Harrisonburg be reversed."** Brickhouse, Robert, "Reverse Annex Decision, Suit Says," *The Daily Progress*, December 5, 1981. (The Supreme Court ultimately did uphold the annexation court's decision, but this occurred in September of 1982, after the Charlottesville-Albemarle revenue-sharing agreement was reached and approved. *Rockingham v. Harrisonburg*, 224 Va. 62, 294 S.E.2d 825 (1982).

In **December of 1981**, *The Daily Progress* reported that:

The Fredericksburg City Council and the Spotsylvania County Board of Supervisors last week signed an agreement in which the city will annex **4.6 square miles** of the county and begin a large-scale sharing of water and sewer services.

. . .

"We've been at war with each other for the past two years and this is essentially a peace treaty," Fredericksburg City Manager Peter Kolakowski said. . .

About 50 percent of the land Fredericksburg will receive is vacant, the rest contains stores, homes, businesses and motels.

The annexed area will add 2,800 residents to Fredericksburg's current population of 15,322 and will increase the city's land mass by 77 percent.

. . .

Spotsylvania gets immunity from annexation for the next 25 years.

Giametta, Charles, "Officials React To Annex Pact," *The Daily Progress*, December 26, 1981 at B1,2.

At this point in the Charlottesville-Albemarle negotiations, those involved had already decided that there would not be a land swap as part of the agreement. Instead, they were working out the details of the revenue sharing. The paper quoted City Councilman Tom Albro as saying:

If I were to walk into the next negotiation session and say “Spotsylvania gave Fredericksburg 4.6 square miles, why not do the same for me?” I’d be laughed out of the room.

Id. at B1.

Then, on January 21, 1982 – the same day the negotiators reached agreement behind closed doors on the revenue-sharing agreement – the newspaper reported:

Giving up on attempts for a negotiated settlement, the [Williamsburg] City Council has passed an annexation resolution that seeks more than **12 square miles of James City County**.

The boundary outlined in Wednesday’s resolution is greater than an original “study area” council first told the board of supervisors it was considering in January 1980.

A.P., “Williamsburg Sues James City County Over Annexation,” *The Daily Progress*, January 21, 1982 (emphasis added). (The localities **had reached a preliminary agreement** the previous May involving **four to five square miles** and county access to water, but the two parties could not reach agreement on the details.)

15. Did the County Board Appoint Soft Negotiators?

No.

At the time the negotiations began, “[f]our members [of the Board], although willing to concede nothing to the City, were hopeful that litigation could be avoided and were willing to act and speak moderately to accomplish that end.” (Lindstrom at 11) The Board decided, however, to pick as its lead negotiators the two Board members that “were much more outspoken and unyielding both publicly and privately in their opposition to annexation.” (*Id.* at 11). Gerald E. Fisher, Chairman of the Board, was one of the two members chosen. Lindstrom described Fisher as:

[o]ne of the more outspoken members [who] had been through the 1972 annexation attempt by the city and was probably the most mistrustful of the city’s motives of all of the Board’s members. He had repeatedly taken a very tough and adamant approach toward the possibility of annexation and negotiations.

Id. at 11, 12.

I know (from being around at the time) that Fisher was an extremely strong and effective advocate for the County who frequently lobbied in Richmond on behalf of the County. I also remember that, around this time period, he was chosen by *The Daily Progress* as the most influential person in the community.

Lindstrom also mentions that, even during the negotiations, Fisher “had been making appearances before the General Assembly, attempting to alter the still pending Michie annexation package to make it more favorable to counties.” (*Id.* at 27, 28)

The second lead negotiator chosen was Anthony “Tony” Iachetta. He was “[t]he other Board member most outspoken against the city [and] represented a district which had experienced the highest rate of commercial and residential development of all of the County’s six magisterial districts.” (*Id.* at 12) “. . . Iachetta was viewed, accurately, as a ‘hard-liner’ where the City was concerned . . .” (*Id.* at 80)

The other members of the Board of Supervisors also remained very involved in the negotiations. “. . . [N]early all of the negotiating sessions were attended by three of the other four Supervisors.” (*Id.* at 13)

Tony Iachetta did not run for re-election in 1981, and Timothy Lindstrom took over both his seat on the Board and his role as the second County negotiator on January 1, 1982. The agreement was reached just a few meetings later, on January 21, 1982. (*Id.* at 58)

16. Did the County Feel Sympathetic to the City’s Financial Plight and Take a Soft Stance During the Negotiations?

No.

"The City of Charlottesville and County of Albemarle had been bitter antagonists prior to the annexation moratorium." (Lindstrom at 2)

For several years prior to the December 12 [1979] meeting, it was apparent that annexation was not very far from the minds of Board members. In repeated small jokes and side-comments, members showed a genial animosity towards the City and a constant wariness in all of their dealing with the City.

Lindstrom at 9.

The proposed revenue-sharing agreement between Charlottesville and Albemarle County did not come about because either side was feeling generous.

Only after long negotiations did the city council and the county board of supervisors forge the agreement that Albemarle residents will vote on a week from today. Both sides had to make educated guesses about how much they thought the city could win in court under the state’s annexation legislation.

The legislation, which has been on the books since 1904, gives cities the right to go to court every ten years to try to annex territory to expand their tax bases. In the overwhelming majority of cases, cities have been able to convince the courts of their need to grow.

Brickhouse, Robert, “Negotiators Hoping to Avoid Costly Court Battle,” *The Daily Progress*, May 11, 1982.

The complex counter-proposal [by the County on July 9, 1981], really a series of separate proposals, represented a change in attitude by several members of the Board [of Supervisors]. Although these Board members had been initially sympathetic to the City's financial plight, their perceptions had been changed by the results of a County consultant's study of the City's needs.

The County had hired (in addition to Robert Fitzgerald as legal counsel) the accounting firm of Robinson, Farmer & Cox as financial consultants specializing in public finance and annexation matters. **The results of their studies of City government operations succeeded in convincing the Board that whatever financial plight the City had was primarily due to the kinds of choices the City had voluntarily made about the nature of its services and the kind of compensation it was willing to pay its employees for providing those services. Board members professed shock at the degree to which City salaries exceeded those offered by the County.**

Lindstrom at 29 (emphasis added).

In announcing the July 9, 1981 counter-offer, Gerald Fisher, the Chairman of the Board of Supervisors, was quoted in *The Daily Progress*:

Any city financial problems could be “solved by belt-tightening of the kind other localities, including Albemarle County, are already practicing.” . . .

“We are willing to work with council to assure that the city has the means to live, but we are not willing to help it to live beyond its means at the expense of county taxpayers.”

Brickhouse, Robert, “County's Counterproposal: Less Land, Share Sales Tax,” *The Daily Progress*, July 10, 1981 at A1 (emphasis added).

Even late in the negotiations, hard-nosed bargaining nearly caused the talks to break down. In October of 1981, a County board member had come up with the basic “ingenious formula that balanced various factors” that were important to both sides, but the County was stuck at 28 cents of the tax rate as the pool contribution amount under the formula, and the City was pushing for a 38-cent contribution. The County negotiators then met privately to discuss their next move.

In private caucus it was apparent that the County Board was increasingly inclined to end the negotiations.

In fact, it was difficult to be very aggressive in arguing for the continuation of negotiations in that private caucus without feeling like an “appeaser.” Board members were in a “hard-line” mood and were feeling antagonistic toward the City.

Lindstrom at 46.

The negotiators did, however, continue the talks and eventually settled at a 33-cent contribution amount to the pool.

Other major road blocks were then hit, even in the closing two months of negotiations – particularly over the issue of whether there should be a time limit on the agreement. (*Id.* at 56) The **City team at the December 17, 1981 negotiation session stated flatly that the agreement must have no time limit and “. . . that this point was ‘nonnegotiable’ – the first time any subject considered in the negotiations had been so characterized by either side.”** (*Id.* at 54) The impasse continued into the next meeting, on December 22, 1981, until a City negotiator suggested that perhaps there could be a cap on the payments made based on a percentage of the tax base. **The negotiating teams then met in private caucus, and one Board of Supervisors member suggested one-tenth of one percent as a potential cap which would work out to about ten cents of each jurisdiction’s real estate tax rate.** (*Id.* at 57) Note that there was no science or calculations that had gone into this suggestion, but when the boards came out of caucus, the one-tenth-of-one-percent cap was the County position, and the City offered a cap of one quarter of one percent (25 cents of each jurisdiction's tax rate). (*Id.* at 58)

Even though it was essentially a number pulled out of the hat during a brief board caucus, the County stuck to its guns on the one-tenth-of-one-percent tax rate as a cap for payments. The only concession the City negotiators were able to get were a two-cent rise in the rather meaningless pool contribution amount and the County agreeing to have no cap on the first year of the payment. (*Id.* at 63, 64, 66, 68) (As I understand it, the pool contribution has become meaningless because, as a result of the County’s great wealth, it has hit the payment cap every year except the first year.)

Of course, the hard-nosed resolve that the County demonstrated during the negotiations to protect its interests is also shown by the fact that it **did not give up any land as part** of the agreement – not even the University grounds that the County originally offered and that are, in fact, surrounded by the City.

Mr. Lindstrom noted, near the end of his thesis:

Frequently people ask whether the agreement will last or be challenged. It appears that some believe that either the City or County will someday realize that they struck a bad bargain and will try to back out of the agreement. It must be remembered in assessing the future of the agreement that it was the product of the coincidence of interests of two parties motivated by pragmatic self-interest rather than goodwill.

Id. at 72 (emphasis added).

17. Did the County Leaders Really, Truly Believe the Planned 1980s Annexation Alone Would Cost the County More Than the Revenue-Sharing Agreement?

Yes.

An original city proposal to annex **10 square miles** of county land would actually result in a smaller Albemarle tax increase at first, officials disclosed, but they said that within five years such an annexation would wind up costing the county **much more** than the revenue-sharing proposal.

City officials have said that if they took an annexation bid to court they would try for an even larger area, and they have made studies of a **32-square-mile** section of the county. An annexation that large would **immediately cost the county taxpayers twice as much** as the revenue-sharing proposal . . .

Brickhouse, Robert, "Revenue-Sharing Agreement To Boost County Property Tax," *The Daily Progress*, February 2, 1982 (emphasis added).

Statement of [County] Negotiation Team:

We have asked our staff and consultants to make objective estimates for a 10-year period of the comparative costs of the settlement we are proposing today, of the annexation of the 10-square-mile area initially requested by the city, and finally, the costs to county residents remaining if annexation of the 32-square-mile area were to occur. In calculating the costs of annexation, the consultants have taken into consideration the money which the county might expect to receive during the first five years after annexation as part of a court order of annexation. Our estimates of this compensation might be high or low, but they are based upon our consultant's understanding of recent court decisions on the subject.

We recommend this settlement proposal to the board of supervisors and citizens of Albemarle County, believing it to be the best settlement achievable. We recognize that it is a costly solution to a problem the county has neither created, nor can control. It is a solution which we believe offers the county the opportunity to lay to rest permanently one of the most persistent threats to the welfare of its citizens at a reasonable, predictable cost, **a cost which may very well be far below the potential cost of annexation.**

"Statement to County," *The Daily Progress*, February 2, 1982 (emphasis added).

Albemarle officials have said **an** annexation would cost county taxpayers much more than the agreement in the long run because of the revenue bite that annexations can take from the county's tax base.

Brickhouse, Robert, "Close Vote Seen in Tuesday's Revenue Referendum," *The Daily Progress*, May 16, 1982 (emphasis added).

As described in Lindstrom's thesis paper, "[t]he consultants' study concluded that even the loss of the ten-square-mile area would be **by far more costly** than any of the various settlement proposals then being considered by the Board. . . ." (Lindstrom at 48) Note that this study by the County, and its conclusions, were developed **before the cap** – that has been limiting all payments by the County – had even been thought of by the negotiators. The cap idea was thrown out by a City negotiator at the December 17, 1981 meeting, and the cost calculations by the County's consultant had been done earlier that month. (*Id.*)

The chart of estimated costs of annexation over ten years, as published in the paper, showed that after ten years the revenue-sharing agreement would have cost the County a total of \$18.59 million; by that point in time the proposed 10-square-mile annexation would have cost the County a total of \$34.37 million and a 32-square-mile annexation would have cost the County \$106.67 million. "Revenue Sharing vs. Annexation: Comparison of County's Net Costs," *The Daily Progress*, February 2, 1982.

The actual ten-year cost of the revenue-sharing agreement wasn't too far off from what was predicted. By the end of the 1991-1992 fiscal year, the actual payments to the City had totaled \$23.8 million (Lindstrom at 71) – which is still much lower than the estimated ten-year cost to the County of just the ten-mile annexation. I think it is also worth noting that the cost to the County of an annexation would be less than the gain to the City, because **the City would have been applying its own higher tax rates to the land and the businesses this whole time.**

To the extent the payments under the revenue-sharing agreement have exceeded expectations, there is but one explanation: the County is wealthier than expected and wealthier in relation to the City than expected. So, again, the keys to unlocking any financial strains the County leaders are feeling are in their own hands.

18. Forever is a Really Long Time; Did the County Negotiators and Voters Understand That?

Absolutely.

. . . [A]s the negotiations turned to the more fundamental issue of duration of the agreement itself, a chasm of difference opened between the two sides which threatened a complete breakdown in the negotiations.

One of the County's negotiators suggested a five-year limit on the duration of the agreement. The City responded by stating emphatically that there could be no time limit whatsoever. Annexation legislation, the City argued, could be amended **or rescinded leaving the City with no benefit except a few years of revenue-sharing payments.** Furthermore, if state annexation legislation was amended to be more favorable to counties, any incentive for Albemarle to respond to the City's needs in the future would be gone.

Lindstrom at 52 (emphasis added).

The negotiations continued, and County leaders discussed whether there could be some defined trigger for a re-negotiation, but City negotiators pointed out that, while no one could know the

future, the revenue formula itself was, by design, self-correcting for changed circumstances. (*Id.* at 54, 55) In response to this assertion, one County negotiator asked rhetorically, "For a thousand years?" (*Id.* at 56)

The two teams of negotiators explored time limits. City Council members feared that a revenue-sharing agreement involving a moratorium on annexation which might terminate after some legislative amendment **had eliminated the option of annexation** would be detrimental to the City.

Id. at 56 (emphasis added).

The County negotiators suggested having automatic renewal for a fix period of time if the laws had changed to the City's detriment, but the City negotiators thought this just put off the ultimate problem. (*Id.*) "The City's position appeared so absolute that discussion of extending the initially proposed five-year term, even to one hundred years, seemed futile." (*Id.*)

In private meetings, some of the County leaders recognized the force of the City's argument:

. . . [O]ne Board member again pointed out to the others that the consequences of an annexation lasted forever. For example, he pointed out, the substantial revenue generated by the Barracks Road Shopping Center had been lost to the County forever when the City annexed the shopping center in 1963 – and there was no ceiling on the amount of that loss.

Id. at 58. At another point, a Board member pointed out that "a City/County agreement with unlimited duration would also provide the County with permanent immunity from annexation regardless of the status of annexation legislation in future years." (*Id.* at 53)

As previously mentioned, the annexation moratorium currently in place is set to expire in 2018. It may be extended again, but at some point during "forever," it may not be extended, and then – as this Board member foresaw – the County will be happy to still have immunity in its pocket, in addition to keeping the land it would have lost in the planned 1980 annexation.

Some Public Responses to the Idea of "Forever"

Letter to the Editor - **"Cost of Annexation Has Been Exaggerated":**

The transfer of funds from the county to the city will be \$1.3 million at first and will likely increase every year until **we will be paying tens of millions or even hundreds of millions of dollars in the years to come.** . . . A 'no' vote is the only logical conclusion to this matter. Remember: *annexation laws can be changed, but revenue-sharing is forever.*

Artrip, Floyd, "Cost of Annexation Has Been Exaggerated," *The Daily Progress*, May 12, 1982 (emphasis added; italics in original).

Editorial Headline - **“Forever Is a Long Time”:**

In 1762 Charlottesville first established itself on 31 acres of prime Albemarle County land. In the 220 years since then, not so much as one clod of red clay has ever been returned to county control.

Seven other times – in 1860, 1873, 1888, 1916, 1939, 1963 and 1968 – the city’s territorial limits have been extended at the expense of Albemarle. A total of 6,683 acres once belonging to the county is now in the hands of the city. **Never has one shovelful been returned to county control. This lesson from history makes laughable the notion that the city-county revenue-sharing agreement should be feared because it lasts forever.**

Annexation, dear reader, lasts forever.

“Forever Is a Long Time,” *The Daily Progress*, May 13, 1982 (emphasis added).

Letter to the Editor - **“Compromise Product of Much Thought”**

There is simply no getting around the fact that the city is going to obtain money from the county either by revenue sharing or by annexation. So, we have to decide what’s best for us. At least we have *that* choice!

My choice is revenue sharing. It is a known quantity. It is a fixed amount on our tax rate which cannot be increased but may decrease. **If we allow our land to be annexed, we lose forever the tax dollars that it provides. The revenue lost because Barracks Road Shopping Center was annexed has been tremendous – well over \$1.5 million a year! That was a permanent loss to the county!**

Don’t fool yourselves – annexation is every bit as “in perpetuity” as revenue sharing and much more costly.

Vote “yes” on revenue sharing on May 18.

Stoneburner, Mr. and Mrs Donald, “Compromise Product of Much Thought,” *The Daily Progress*, May 15, 1982 (emphasis added).

19. Did the County Leaders and Voters Think They Would Get Some Say-So in How the Money Was Spent by the City Under the Agreement?

No.

Letter to the Editor - **“County Should Seek Better Sharing Pact”**

The following is why we do not favor the revenue-sharing proposal between the county and city:

The county has no voice in how these funds are spent.

Solution: limit the use of these funds to projects which have some relationship to the joint needs of the city and county, such as parks and recreation, fire protection, police protection, housing, and transportation.

Batchelor, T. M., Jr.; Balley, J. Harvey (Former County Executives), “County Should Seek Better Sharing Pact,” *The Daily Progress*, May 14, 1982 (emphasis added).

Letter to the Editor - **“Voter Not Persuaded to Support Agreement”**

The following factors remain questionable to me:

1. The **city’s insistence on the transfer of hard cash to them from the county with no county representation as to its use.** (Taxation without representation.)

Beard, Roland, III, “Voter Not Persuaded to Support Agreement,” *The Daily Progress*, May 12, 1982.

Editorial Headline - **“Why Pay More For Less?”**

The pencil-pushers at the county office building figure the added burden on the county taxpayers would amount to another 10 cents on the tax rate. **County dwellers can’t ever expect much to show for those extra dimes. The city can spend it however it wishes, possibly on generous pay raises for public employees and social programs that the county doesn’t have. The people who put up the money won’t ever be asked how they would like to see it spent.**

...

The highly developed territory at the edge of the city’s present boundary provides almost as much property tax revenue as all the rest of the county put together. A whopping 84 percent of Albemarle’s sales tax is also collected there.

If there is a “no” vote a week from Tuesday, the city will sue to annex a big chunk of that developed area. The courts will, most assuredly, rule that the city is entitled to most, if not all, of the territory it asks for.

Should that happen, those owning or renting property in the annexed area would pay city taxes – 47 percent higher than their maximum possible contribution under the revenue-sharing arrangement. Those who live in Crozet, Ivy, Scottsville, Earlysville, White Hall and all the rest of the county outside the annexed area would pay, too. Every tax dollar lost to the city through annexation – all the revenue brought in by the shopping centers and factories and housing developments that the county has labored so hard to attract – would have to be replaced by higher taxes.

...

So, in a sense, county taxpayers are getting quite a bargain for their extra dime of tax rate. They are buying protection against even higher tax rates and the satisfaction of knowing that what is theirs can never again be stolen away through annexation.

That’s about as good a way to spend a dime as you’re likely to find these days.

“Why Pay More for Less?” *The Daily Progress*, May 10, 1982 (emphasis added).

20. Voices From the Past

Pre-Referendum Quotes

Lindsay Dorrier (Recent Member of Board of Supervisor) - Supported the Agreement

Albemarle Commonwealth's Attorney Lindsay G. Dorrier announced today he is joining the ranks of those supporting the proposed revenue-sharing agreement between Charlottesville and Albemarle. . . . Dorrier said one of the reasons he supports the agreement is that without it Albemarle would lose as much as 10 square miles in an annexation fight. "This is a risk I don't think the county should take," he said. "I think we would lose more (through annexation) than under the revenue-sharing agreement."

Brickhouse, Robert, "Revenue? Prosecutor Votes Yes," *The Daily Progress*, May 11, 1982.

Charlotte Y. Humphris (former County Supervisor)

An argument being used against the revenue-sharing agreement is that the city government is a spendthrift and Albemarle County taxpayers should not have to donate their tax dollars to support the city's follies.

That argument is completely irrelevant. The fact is that the city already had the right to annex Albemarle County land. If that happens, it would be a taking of our land, our people and our tax dollars *permanently*.

Humphris, Charlotte Y., "Ranting and Raving Doesn't Help County," *The Daily Progress*, May 10, 1982 (italics in original).

Leigh B. Middleditch (a leader of the 5C's: Citizens Committee for City County Cooperation)

"The other alternative [to the proposed revenue-sharing agreement] would be to go to war and not know how the war would turn out. It would be very costly and divisive," says Leigh B. Middleditch, a lawyer who is a **member of a group of civic leaders and former county officials who support the agreement**.

Brickhouse, Robert, "Much at Stake In Upcoming County Vote," *The Daily Progress*, May 9, 1982 (emphasis added).

Letter to the Editor – "Revenue Sharing Cheaper Than Lawsuit"

As a member of the organization that calls itself Citizens for Albemarle, I want to endorse the revenue-sharing plan rather than see annexation.

Miller, Marie T., "Revenue Sharing Cheaper Than Lawsuit," *The Daily Progress*, May 10, 1982 (emphasis added).

Post-Referendum Approval Quotes

City Councilor Elizabeth Gleason: "I'm very excited about it. . . . It goes a long way to assure the health of our community, and it really is one community." Giametta, Charles, "Compromise Is Key to Plan," *The Daily Progress*, February 2, 1982, at A1.

Ellen Nash, Board of Supervisors member: "I'm very thrilled with it because I feel it's a compromise." Giametta, Charles, "Compromise Is Key to Plan," *The Daily Progress*, February 2, 1982, at A1.

Cole Hendrix, City Manager - after the approval by County voters:

"If the city could have annexed a specific area . . . that would have been better. . . . The revenue sharing by itself is not the complete answer to all the city's financial problems. Annexation very may well have produced a better end result 20 or 30 years from now if the city would have been successful in annexing all the territory it wanted to. But nobody knows for sure."

Giametta, Charles, "Hendrix: 'City Gave Up a Lot' to Avoid Annexation," *The Daily Progress*, May 19, 1982.

Charlottesville Mayor, Frank Buck: "If the city were to look at it from strictly the city's own selfish interest, then I think that annexation would be better." Giametta, Charles, "Hendrix: 'City Gave Up a Lot' to Avoid Annexation," *The Daily Progress*, May 19, 1982.

Gerald Fisher, Chairman of the Board of Supervisors: "We will never know how much territory the city would have gotten. Had the referendum failed, **we would have found out.**" Giametta, Charles, "Hendrix: 'City Gave Up a Lot' to Avoid Annexation," *The Daily Progress*, May 19, 1982 (emphasis added).

Timothy Lindstrom, Board of Supervisors member (from his thesis): "The County has avoided costly, and by most expert opinions, ultimately futile litigation. It has averted the almost certain loss of prime commercial tax base to the City and the corresponding increased demand upon its citizens to make up lost revenues." (Lindstrom at 74)

21. In the 1990s, When City Finances Looked Increasingly Bleak, Did County Leaders and Residents Suggest Altering the Agreement in the City's Favor or Encourage the Reversion to Town Status that Was Being Considered?

I don't recall that happening. Does anyone else?

In his 1992 thesis, Lindstrom wrote:

[A]s the negotiations which lead [*sic*] to the agreement recede from memory and as City Council and the Board of Supervisors become dominated by members who did not participate in the creation of the agreement, the reasons

which caused the two jurisdictions to undertake two and one-half years of vigorous effort and expense negotiating the agreement may seem less compelling. Evidence of this may be the increasingly frequent, yet informal, **suggestions by some in the City that the agreement ought to be reexamined.** Such a reexamination, however, would be an empty exercise without the sanction of a County-wide referendum as any revision of the agreement which was approved in the County by referendum, would itself require a referendum. Given that County voters have twice recently overwhelmingly rejected a meals tax, it is highly unlikely that voter sentiment would favor any change in the existing revenue-sharing agreement [in the City's favor].

Id. at 73 (emphasis added).

22. Consolidation: Wouldn't Government be More Efficient (e.g., Fewer Duplicate Positions and Services) if the City and County were to merge?

No doubt this would be true, to some degree – but keep in mind that, to a large extent, the number of positions required and the amount of services needed (including school funding/staffing) are based on the actual number of and condition of the people being served, **and these population numbers and demographics would not change with merger.** Also, it seems bound to be true that, in order to equalize tax rates and services between the County and City after merger, County taxes would need to rise, while City residents would likely see a decrease in their tax rate. Merger would largely end the City-County fighting, standoffs, and bad feelings, because the one government would represent the one community we really are. Of course, the same fights and battle of ideas would take place, but they would occur within one electorate and one governmental body – which could just take a vote on controversial matters and move on, rather being locked in dispute with an equally powerful governing body.

On the other hand, such a merger would also mean a loss of more local control (generally considered a prized commodity by all and particularly cherished by conservatives). The separate City government and County government are in a better position to understand and meet the needs and wants of its electorate; a merged government would mean a loss of that level of local control. City residents have repeatedly shown at the ballot box in the last couple decades that they are willing to pay higher taxes to ensure that the City continues to offer high quality schools and government services and that the City remains well maintained, compassionate, and physically an attractive place to live. The County, on the other hand, has an electorate more evenly divided between those who want to limit government services and expenditures and those who wish the government would do more to fund and maintain, for example, education/schools; local transportation infrastructure; providing mass transit; recreational needs like softball and soccer fields and swimming pools; library support and construction; and helping out the poor with affordable housing and other services.

A merged City-County government would change the dynamics and balance of the debate and, as noted above, would almost certainly lead to a real estate tax rate for everyone

somewhere between the County rate (currently \$.074 per \$100 in assessed value) and the City rate (currently \$0.95 per \$100 of assessed value). Despite gaining some cost efficiencies, there would certainly have to be a corresponding overall drop/increase in government services across the City and County, depending on your perspective.

I think County leaders, over time, have recognized that merging with the City would mean taking on the higher costs associated with running the City – and this is the reason that they have been cool to the idea of consolidating the governments. Indeed, seeking a consolidation of communities under one government was one of the big pushes the City negotiators were making during the two years of annexation/revenue-sharing negotiations. The City negotiators even argued that the payments the County would be making under the revenue-sharing agreement might even "create an incentive for consolidation. If the formula over the years began to cost the County 'too much,' the County could always terminate the agreement by agreeing to consolidate with the City." (Lindstrom at 55)

During the course of the negotiations, the attorney the County had hired as a consultant had postulated to the Board that, while consolidation could be worth studying, “. . .the economies of scale resulting from consolidation might be lost, particularly where the jurisdictions involved were already sharing in the provision of major public services.” (*Id.* at 24)

The County remained cool to the idea of consolidation the whole time. Ultimately, the City settled for having a clause in the revenue-sharing agreement that required the formation of a consolidation study committee, but nothing ever came from the meetings of that committee. (*Id.* at 26, 60, 51, 81)

Some have suggested that the two school systems should consolidate even if the governments do not. I think there are good arguments that could be made for this; however, as with merging the governments, there would by necessity be a loss of local control and a leveling of costs/expenditures across the two division. This would seem almost certainly to mean a rise in overall costs/expenditures for the County and a lowering of costs/expenditures in the City. So, for instance, in Charlottesville we have traditionally been willing to invest more than Albemarle has in small class sizes and enriched school-level resources, including fine arts. If the divisions are merged and finances are leveled, what would happen? As another example, we in the City are also proud of our purely locally-funded preschool program for three year olds, which we would like to expand, but Albemarle does not have such a program.

Moreover, if just our school divisions are consolidated, our City school system would – to one degree or another – be subject to the funding whims of the Albemarle Board of Supervisors, and that would seem to me a pretty dicey proposition. On the whole, if it is the will of the community to become more like one community, then I think it would make more sense to consolidate the governments first, thereby placing funding under the control of one joint governing funding body. The alternative would be to give school boards taxing authority, as they have in other states. The Virginia School Board Association’s standing position is in favor of Virginia school boards getting taxing authority; not surprisingly, the idea has gotten nowhere in the legislature.

Other Citations

23. 1982 Tax Rate Cite

Brickhouse, Robert, "City, County Strike Bargain - Negotiating Teams Reach Unique Revenue-Sharing Agreement," *The Daily Progress*, February 2, 1982 at A1.

24. The Commission on Local Government and Its Fiscal Reports:

<http://www.dhcd.virginia.gov/CommissiononLocalGovernment/>

The Commission was actually created as part of the package of 1997 changes to the annexation laws. The Commission on Local Government, as stated on its website, "promotes and preserves the viability of Virginia's local governments by fostering positive intergovernmental relations." The site goes on to explain that "[t]he Commission is composed of five members appointed by the Governor and confirmed by the Virginia General Assembly. The members are required by statute to have knowledge and experience in local government, and they can hold no other elective or appointive office while on the commission. Commission members are appointed for five-year terms and are eligible for reappointment." The Commission aids localities regarding annexation/boundary changes, town incorporation, and reversion from city to town and advises the legislature on how proposed legislation will affect localities. In addition, it puts out reports regarding localities, including an annual fiscal report.

The latest full report on the fiscal status and stress of Virginia localities came out in March of 2010 and is looking at **2007-2008** data. The full report sort of culminates in the calculation of a Composite Fiscal Stress Index for each of the 134 localities in Virginia. It uses nationally-developed complex formulas that I don't begin to understand, in order to come up with key measures of a locality's fiscal health and wealth. Revenue Effort, one of the components of the overall fiscal stress index, is aimed at determining what the locality is actually doing in the way of raising revenue by the various means available to it – and then essentially comparing those numbers per capita to the state average. The website also has updated individual locality scores for overall Fiscal Stress Indexes and Revenue Efforts, using 2008-2009 data. It is the updated numbers that I cite in this memo, where available.

25. Raising Taxes/Revenues.

The LCI and revenue-sharing agreements are not at all Democratic or Republican issues. I'm confident the majority of the Albemarle School Board would identify themselves as Democrats, and the current chairman ran against the County's Republican House of Delegates member who is carrying the LCI bill for the school board. The Board of Supervisors – which, like the school board, voted unanimously to pursue the LCI change – is fairly evenly split now, politically. It doesn't matter to me if the County chooses to raise, lower, or leave its taxes the same. That is obviously an issue for the Albemarle citizens to work out for themselves based on the level of government services they want. I write about the "keys to any financial difficulties being in your own hands" just to point out that IF you want/need to increase your spending on government services, you should recognize – by looking at your neighbor's tax rate and the tax rate of other comparable counties – that higher rates do not make the sky fall, and you can exempt or give tax credits/subsidies to those who truly can't afford a penny or two more in real estate taxes, as is done in Charlottesville and other localities. (Maybe Albemarle already does it).

Remember that even Ronald Reagan raised taxes in a deep recession, and yet the economy then emerged from the recession. The recession I speak of is the one that lasted from July 1981 to November of 1982, and by November of 1982, unemployment was at 10.8 percent. (Wikipedia.org/wiki/list_of_recessions. The same information is available on other cites; just “Google” something like “US recession history.”) Reagan had pushed through a very big tax cut in 1981 which lowered individual tax rates a lot, but he was a fairly pragmatic conservative and realized that the government needed more revenue to make up for the deficit caused by the tax cuts and for his build-up of the military. So, in 1982 he signed into law the largest peacetime tax increase in history. The fact that he lowered taxes, overall, more in 1981 than he raised them in 1982 does not change the fact that he passed a very large tax increase in the heart of a serious recession, and yet the economy recovered. He went on to sign a total of 11 tax increases into law. These increases still left individual tax rates much lower than they had been but closed “loopholes” and essentially broadened where the tax revenues were coming from, including businesses. See Zajac, Andrew, “Candidates Channeling Reagan Don’t Talk About His Tax Increases,” www.businessweek.com/news/2011-10-18/candidates-channeling-reagan-don-t-talk-about-his-tax-increases.html; Sahadi, Jeanne, “Taxes: What people forget about Reagan,” money.cnn.com/2010/09/08/news/economy/reagan_years_taxes/index.html; Garofalo, Pat, “Memo to House Republicans: Following Reagan’s 1982 Tax Increase, Economy Boomed, Unemployment Fell,” <http://thinkprogress.org/economy/2011/06/24/253569/reagan-1982-flashback-economy-boomed>.

26. US Census State and County Quick Facts: Albemarle & Charlottesville, Virginia
<http://quickfacts.census.gov/qfd/index.html>
27. Virginia Auditor of Public Accounts Comparative Report
<http://www.apa.state.va.us/ComparativeReport.cfm>

CONCLUSION

To my fellow community members who happen to live on the other side of the County line: you should increase funding to your schools or not, as you see fit. All I ask is that, instead of trying to take money from our City schoolchildren by spot-changing the statewide LCI based on an agreement County voters approved 30 years ago, the County just apply the normal principle that the state constitution lays out: that “[e]ach unit of local government shall provide its portion of such cost by local taxes or from other available funds.”(Va. Constitution Va. Con. Art. 8 § 2 (1971))

Also, it would be nice if the minority of you who complain about the revenue-sharing agreement would consider not doing that anymore and realize that: (1) a vibrant City is critical for Albemarle’s success; (2) the money the City gets through the revenue sharing helps pay for community assets that County people use and enjoy, such as the downtown mall, our indoor and outdoor swimming facilities, our ball fields, our parks, our police force that arrests bad guys (who pay no attention to City boundaries), our City roads you drive on, and our snow clearing that gets you to work, City shops, and City restaurants; and (3) in all likelihood, the revenue-sharing agreement is, in fact, “costing” the County less than the annexation that would have happened in the early 1980s if County leaders had not struck the bargain they did – the one that County voters also agreed to.

City/County – Fast Facts

	CHARLOTTESVILLE	ALBEMARLE
US Census Population in 2010 ²⁶	43,475 (down 3.5% since 2000 Census)	98,970 (up 25% just since 2000)
US Census Population in 1980	39,916	55,783
Size - Sq. Miles	10.4	720.7
Retail Sales 2007 ²⁴	\$700 million	\$1.7 billion
Median Individual Adjusted Gross Income (AGI) - 2007 ²⁴	\$28,500 - which ranks 52 nd out of 134 Va. localities	\$43,000 - which ranks 114 th highest out of 134 Va localities
Median Household AGI - 2008 ²⁴	\$43,000 (ranks 57/134)	\$66,600 (ranks 112/134)
Median Household Income 1980 US Census	\$13,900	\$17,800
Most Current Percent of Persons below poverty level ²⁶	27.6% (Charlottesville schools also have twice the percentage of students eligible for free and reduced lunch prices than Albemarle schools)	8.8%
Health and Welfare Spending per capita ²⁷	\$1,200	\$350
Public Works Spending per capita ²⁷	\$300	\$50
Public Safety Spending per capita ²⁷	\$900	\$400
Current Real Estate Tax Rate per \$100 of assessed value	\$ 0.95	\$0.74
1982 Real Estate Tax Rate (Before Rev. Sharing Agreement) ²³	\$1.13 per \$100	\$0.67 per \$100
General Fund Budget - Current Fiscal Year, 2012	\$124 Million	\$218 Million
Latest Fiscal Stress Index Comm. Local Gov. ²⁴	Above Avg. Stress - Ranks 34 th most stressed of 134 Va. localities	Low Stress - Ranks 121 st lowest fiscal stress of 134

Latest Revenue Effort Index Comm. Local Gov. ²⁴	17 th highest effort out of 134	77 th out of 134 in effort
Disparity Between City and County Fiscal Stress - Latest Calculation by Comm. on Local Gov. ²⁴	Ch'ville-Albemarle is tied for 3 rd largest disparity in Fiscal Stress, out of 52 City- County pairings in Va.	
<u>SCHOOL DISTRICT INFO</u>		
School District total enrollment	3,870	12,590
School's General Fund Budget - Current F.Y. 2012	\$42 Million	\$141 Million
\$2.5 million - approx. state LCI money sought by Albemarle as share of respective current budgets.	1/17th of General Fund	1/56th of General Fund
Total State Funding as a percentage of Total School System budget - 2010.	25%	24%

SPORTS ANALOGY

I think the following analogy can be followed even by non-sports fans and even skipping the below equivalencies, but I provide them just to make sure.

Also, for the benefit of non-sports fans: the way professional sports teams choose upcoming players for their individual teams (mostly players coming out of college) is through a "draft." Basically the League gives each team about ten draft choices every year. Then team representatives gather on draft day, and each team gets a turn to pick a player using its number 1 draft choice. The next round (i.e., round two), each team gets to pick a player with its number 2 choice, and they keep going through all ten rounds. As you would expect, the players believed to be best are taken first, so first-round draft choices are valued more than later draft choices. The rights to future years' draft choices are commonly used to barter for players currently on other teams. So for example, in the year 2011, Team X might have traded its 2012 and 2013 number 1 draft choices to Team Y in exchange for one of Team Y's current star players. So then in the 2012 and 2013 drafts, Team Y would have two number 1 draft choices (the one it gets from the League every year and the one it got from Team X), while Team X would not have a number 1 draft pick at all for those years (unless it had acquired some through some other trade.)

Analogy "equivalencies":

Miami Heat (NBA team) = Albemarle and its elected leaders

Cleveland Cavaliers (NBA Team) = Charlottesville

David Stern (NBA Commissioner) = a wise Chairperson on a key legislative committee (hopefully)

LeBron James (NBA Superstar) = the County avoiding the annexation court fight that would have happened in the early 1980s, thereby getting to keep whatever land the City would have permanently annexed and the permanent revenue stream it produces (e.g., Pantops Mountain area, the Fashion Square Mall and 29 North up to the South Rivanna, the Hydraulic Road area including Sperry Marine, Inc. and the land surrounding it which is now being developed, land on the south side of town, or all of the above)

Poaching Players (This NBA has had a rule that allows each team to designate just one player as the "Franchise Player" but all other players on the team are subject to being taken by other teams (note that the "taking" would only occur with payment to the team losing the player) = The possibility of future annexations (note annexations also only happen with payments made to the locality losing the land)

Miami's 5th draft choice = the ongoing annual revenue-sharing payments made by County to the City

Cleveland's 7th round draft choice = the part of state school funding the City gets that the County is seeking through the spot change to the LCI

Summary version of two years of negotiations between Miami and Cleveland

Miami: "We want LeBron James."

Cleveland: "Okay, but you'll have to give us six future number 1 draft choices, four future number 3 draft choices, and all your future number 4 draft choices for the rest of time."

Let me break into my analogy here for a moment because I am sure some people are correctly thinking to themselves, "Wait a minute, the County didn't start the revenue-sharing negotiations, and the County was not bargaining for a prize like LeBron James but instead was stuck in a position of bargaining between negative outcomes – an immediate annexation threat, potential future annexation threats, and paying off the City with some sort of revenue sharing." While that is all true, I do not believe it changes the point of this analogy: that the revenue-sharing agreement was the result of bargaining by two organizations playing with the cards in their hands during hard-fought, arm's-length negotiations and that it resulted in Albemarle getting two things it really, really wanted badly – (1) to avoid the immediate annexation battle it faced and the permanent loss of land (and of the revenue stream that land produces for Albemarle) and (2) to avoid future annexation battles. Now back to the analogy.

Miami: "No way. How about we give you two future number 1 draft choices, one future number 3, five future number 5, and three number 7 draft choices?¹ Also, don't forget you all get draft picks from the NBA every year."

Cleveland: "You're out of your mind, but we will settle for three future number 1s, three future number 3s, and all your number 4s until the end of time – and those number 7 picks you talked about.¹ Regarding the picks the NBA gives us every year: no kidding; they've been doing that the last seven years.⁴ Here's another news flash – like you all, we also get other draft picks and also revenue streams from other teams through other agreements."

Miami: "Well, that offer sounds okay, except we still don't like the part about you all getting all our number 4 picks forever.¹⁸ LeBron could get hurt anytime, and he is going to retire at some point. Also, I hear you all may try to poach Dwyane Wade from us in a few years if the League allows. Since LeBron will be our only designated franchise player, we won't be able to protect ourselves from your poaching. So unless you give up your right to ever poach a player from us again, there is no deal.¹³ Also, we'll only agree to the "number 4 pick forever" thing if there is a cap on the quality of player we are giving up. So if the number 4 pick available each year ends up being a high quality player, then we only have to give you our number 5 pick. Plus, if you ever get better than us, you have to start giving us all your number 4 or 5 picks, depending on the quality."^(Rev. Sharing Agreement Clause.)

Cleveland: "Dang! You all drive a hard bargain, but okay."

Miami: "By the way, this is such a big deal, with all the draft picks and the whole forever part about it, that we are going to put it up for a vote with everybody in Miami to make sure they're okay with it."

Cleveland: "Really!? – Fine; whatever."

Lawyers for both sides draft up a written agreement spelling out the above terms, and it is signed by the Board of Directors for each team. A few months later, after a major voter education campaign, Miami does hold a vote on the agreement and the voters support it by an overwhelming 63 percent.

30 Years later – Miami Board of Directors meeting minutes:

Board member: "I know we've talked about this for years now, but with LeBron long forgotten and with the League's poaching moratorium re-instituted 25 years ago, it doesn't make sense for us to keep giving Cleveland our number 5 draft choice every year, although I suppose we should be thankful for the cap that has saved our number 4 pick every year but the first one."

Second Board member: "Yeah, they don't even consult us on who they pick with it."¹⁹

Third Board member: "On top of that, they have made some real improvements to their team with some of OUR number 5 picks."

Board Attorney: "As you know, there doesn't seem to be any way out of the written agreement, but if we put our heads together maybe we can think up some other way to get around it."

Further discussion was followed by a motion and a vote, whereby the Board voted unanimously to petition NBA Commissioner David Stern to address this unfairness through his control of doling out draft choices.

Miami Petition To the NBA

Every year you keep giving Cleveland all of its draft picks, and this is not fair since Cleveland always gets our number 5 pick also. We think fairness dictates that you start taking into account our annual gift to them and stop sending them at least their number 7 draft picks. Instead, their number 7 pick should be sent to us since we don't get the benefit of our number 5 pick (though we do appreciate all the other picks you send us every year). It is hurting our bottom line not to be able to potentially find a diamond in the rough with a 5 pick or to be able to potentially use it in a trade, and an extra number 7 pick would come in handy in this regard.

Signed, Miami

Later, David Stern is Presented the Petition by a Miami Delegation

Miami Delegation: "Thanks for meeting with us."

David Stern: "No problem. Let me just make sure I understand the facts. Thirty years ago, you entered an arm's-length negotiation with Cleveland that resulted in the trade of LeBron James."

Miami: "That's right."

David: "And I assume you put your best people on the bargaining process."¹⁵

Miami: "You bet. We put our hardest-nosed negotiators to the task, hired consultants as needed, and they hammered out the best deal we could get with Cleveland in the circumstances."^{15, 16}

David: "And in the agreement you all specifically stated that you would give Cleveland some draft picks, including your number 5 pick, for the rest of time – and in exchange they would give you LeBron and stop poaching your players forever."

Miami: "Yes, but the written agreement doesn't say we can't petition you to get their number 7 draft picks before you even give it to them. We are still going to keep up with our written agreement to give them our standard number 5 pick that you give us every year, per the NBA formula. We just want you to take our actions into account and start giving us Cleveland's number 7 draft pick, since they are being given ours every year under the agreement we made with them."

David: "But isn't it an essential part of any agreement that each party gets to keep the stuff they already have, including revenue streams and assets they are scheduled to get from others, unless the agreement specifically states otherwise? In fact, it seems like when you and Cleveland made the agreement, Cleveland undoubtedly was banking on continuing to get the number 7 pick I give them every year as part of their calculation on whether to enter the agreement with you all.^{1,2} So if I take that away from them, then aren't they actually getting less than what they bargained for?"

Miami: "We like to talk about the number 7 draft choices that you continue to give Cleveland as an oversight on the part of the negotiators."

David: "If it was an oversight, it seems like it would have been caught pretty quickly after the fact, and I would have heard from you all before now. Don't you think a 30-year delay might suggest it wasn't an oversight?"²

Miami: "It might suggest that, but not in this case, sir."

David: "But even if one party to a negotiation doesn't know about or forgets about some asset the other party has, doesn't everybody still get to keep all assets they have or are scheduled to get unless it was specifically traded away? Isn't that like a universal rule of agreements: that you keep what you don't trade, unless there is some sort of fraud involved? There wasn't any fraud here, was there?"

Miami: "Not that we've been able to think of yet."

David: "Plus, in any event, at the time you all entered the agreement, you actually knew that every year I distribute a full complement of draft picks to every team, including Cleveland.¹ In fact, the same distribution formula was in place seven years before your agreement. On top of that, I hear you all actually specifically discussed the number 7 picks which I give out every year, during the course of your negotiations, and you all offered to give Cleveland some of your number 7 picks."¹

Miami: "I suppose. But setting aside whether it was an oversight and whatever universal negotiation principles normally apply, we mostly see this as a mistake on your part in not taking the agreement we reached with Cleveland into account."

David: "On my part!? Oh, I see; and even though our draft pick formula existed before your agreement, and even though there are other teams that also give up draft picks every year to League teams under various agreements, you all only want me to make this adjustment to the formula to affect Miami and Cleveland based on the arm's-length agreement you all made with each other."⁶

Miami: "Right. Ours is by far the biggest mistake you made, and in case we didn't point it out – people frankly have forgotten about LeBron at this point, and since you put the poaching

moratorium back in place 25 years ago, it feels like we don't have anything to show for the number 5 pick we keep giving Cleveland every year."

David: "I guess I can see how you might feel that way, but it seems like you all must have recognized at the time that the poaching and drafting rules might come and go or just change in some way, over the years, that might hurt or help either of your teams. In fact, I know that you all actually started your negotiations for LeBron during my previous moratorium.^{12, 13} One reason I know this is that your lead negotiator came down here and lobbied me about the proposed lifting of the moratorium and the new poaching rules that we were considering."

Miami: "Sure we did. To tell you the truth, we discussed that stuff at length, and it's kind of the main reason we ended up with the forever clauses in the deal,^{16, 18} and it's why we got them to agree to a quality cap which is keeping us from having to give them a number 4 draft every year¹⁶ – but none of that changes the way we feel now."

David: "What if I re-allow poaching? Would that make you feel better? I'm probably going to have to do it sometime anyway, because the struggling teams need more ways to get marquee players to survive in their small markets."⁹

Miami: "Well, that would make the other teams with a lot of marquee players, like we have, mad at us for asking for the change, so we wouldn't want you to do that. Again, all we are asking is that, given the situation, you help out our bottom line a tiny bit, by sending us another lowly little number 7 pick every year."

David: "You keep saying that the situation is hurting your bottom line, but isn't it true that Miami is a thriving community full of wealthy people and businesses, with businesses continuing to sprout up everywhere, and yet you have not raised your ticket prices or skybox rates for years?"⁹

Miami: "That's right – because some of our most vocal fans would be unhappy with us if we did that. In fact, we've lowered our rates some over the last few years to keep them happy. Nevertheless, we do want – and indeed our fans expect us – to enhance our team, and again, that's where the extra number 7 draft picks would come in handy."

David: "Uh-huh. Isn't it also true that not only have you not raised your rates for years, but you all are charging significantly less than Cleveland does, and Cleveland is a much smaller and less wealthy community than yours – and they have had significant financial struggles at times?"⁹

Miami: "That's true, but what we need you to focus on is the issue about fairness to us. Like we told you, people have forgotten about LeBron, and the poaching moratorium is still on; plus, remember it's your mistake in not accounting for the agreement we made with Cleveland in your draft pick distribution formula."

David: "But wasn't it your desire to get LeBron and permanent immunity from poaching, and isn't the agreement with the forever clause the way you got him and the immunity?"

Miami: "Right. And it might have started out as a fair deal, but now it's not anymore."

David: "But you all have thrived, and the agreement helped you do that and gave your team critical stability for years, plus Cleveland never got LeBron back and never poached any of your other players."

Miami: "What's your point?"

David: "Well, I guess it just seems like you all got a real benefit from the agreement and you are in good shape to enhance your team without my intervention in your agreement. Also, even just forgetting about how you and the voters of Miami agreed to all this, it seems that Cleveland continues to struggle in its small market with fewer wealthy people and businesses, and therefore they need both the 5 draft pick you give them and the number 7 draft pick I give them every year more than you guys do anyway."

Miami: "None of that changes the fact that altering the formula so that we get their number 7 pick every year from now on would help us enhance our team without having to raise prices. Plus, as you recognize, we are just asking for this change to affect Cleveland and Miami, so you don't have to worry about ruffling anyone else's feathers."

David: "Okay, then. I just wanted to make sure I understood what you are asking for."

Miami: "Good. It sounds like we are on the same page now."

David: "One more question: if I make the change you all are asking for, would you all be willing to trade to Cleveland your current second best player – LeBron's son?"¹²

Miami: "No way; that wouldn't be fair! Us doing that is not in the written agreement."

David: "It's all very clear to me now. Thanks for coming, and I will present it to the NBA Board of Directors. I know they will be happy to take time away from League's overall economic woes to talk about this important local fairness issue that you all have gotten yourselves – I mean found yourselves in."