

AMERICAN COMMUNITY BANCSHARES INC

Form S-4/A

January 15, 2004

Table of Contents

As filed with the Securities and Exchange Commission on January 15, 2004

Registration No. 333-110978

---

# SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

---

## AMENDMENT NO. 1

TO

FORM S-4

## REGISTRATION STATEMENT

*UNDER*

*THE SECURITIES ACT OF 1933*

---

# AMERICAN COMMUNITY BANCSHARES, INC.

(Exact Name of Registrant as Specified in its Charter)

North Carolina  
(State or other jurisdiction of  
incorporation or organization)

6712  
(Primary Standard Industrial  
Classification Code Number)

56-2179531  
(I.R.S. Employer  
Identification No.)

4500 Cameron Valley Parkway

Suite 150

Edgar Filing: AMERICAN COMMUNITY BANCSHARES INC - Form S-4/A

Charlotte, North Carolina 28211

(704) 225-8444

(Address, including ZIP Code, and telephone number, including area code, of registrant's principal executive offices)

**Randy P. Helton**

**President and Chief Executive Officer**

**American Community Bancshares, Inc.**

**4500 Cameron Valley Parkway**

**Suite 150**

**Charlotte, North Carolina 28211**

**(704) 225-8444**

(Name, address, including zip code, and telephone number, including area code of agent for service)

**WITH COPIES TO:**

**Anthony Gaeta, Jr., Esq.**

**Todd H. Eveson, Esq.**

**Gaeta & Associates, P.A.**

**8305 Falls of the Neuse Road**

**Suite 203**

**Raleigh, North Carolina 27615**

**(919) 845-2558**

**Neil E. Grayson, Esq.**

**Nelson, Mullins, Riley &  
Scarborough, L.L.P.**

**Poinsett Plaza, Suite 900**

**104 South Main Street**

**Greenville, South Carolina 29601**

**(864) 250-2235**

**Approximate date of commencement of the proposed sale to the public:** The date of mailing of the enclosed Joint Proxy Statement/Prospectus to the shareholders of American Community Bancshares, Inc. and FNB Bancshares, Inc.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 464(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

---

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission acting pursuant to said Section 8(a) may determine.**

---

**Table of Contents**

**JOINT PROXY STATEMENT/PROSPECTUS**

**AMERICAN COMMUNITY BANCSHARES, INC.**

**SPECIAL MEETING OF SHAREHOLDERS**

**March 4, 2004**

**FNB BANCSHARES, INC.**

**SPECIAL MEETING OF SHAREHOLDERS**

**March 4, 2004**

**January \_\_, 2004**

**Table of Contents**

*This Joint Proxy Statement/Prospectus incorporates important business and financial information that is not included in, or delivered with, this document. This information is available without charge to shareholders upon written or verbal request. Shareholders should contact Dan R. Ellis, Jr., Chief Financial Officer, American Community Bancshares, Inc., 4500 Cameron Valley Parkway, Suite 150, Charlotte, North Carolina 28211 (704-225-8444) or Kimberly D. Barrs, Corporate Secretary, FNB Bancshares, Inc., 217 North Granard Street, Gaffney, South Carolina 29341 (864-488-2265) no later than February 25, 2004, in order to receive copies of such information free of charge.*

**Table of Contents**

**JOINT PROXY STATEMENT / PROSPECTUS**

The Boards of Directors of American Community Bancshares, Inc. and FNB Bancshares, Inc. have agreed to a transaction that will result in FNB being merged with and into American Community and First National Bank of the Carolinas becoming a wholly owned subsidiary of American Community. Some important facts about this transaction are listed below.

**Facts for FNB's Shareholders**

FNB will be merged with and into American Community.

First National Bank of the Carolinas will become a wholly owned subsidiary of American Community. FNB shareholders will exchange all of their FNB shares for an aggregate of 607,558 shares of American Community's common stock and \$6,962,610 in cash.

In exchange for your FNB shares, you will receive, for each share of FNB, cash *or* a number of shares of American Community's common stock *or* a combination of cash and American Community's common stock.

Your Board of Directors unanimously recommends the merger.

The per share consideration will be the sum of \$10.25 plus 0.8944 times the average price of American Community's common stock during a 20-day period of time ending on the date of final regulatory approval of the merger. Using the price of American Community's common stock for the 20 trading days ended as of January \_\_, 2004, the per share consideration would have been \$ \_\_\_\_\_.

After the exchange, FNB's shareholders will own approximately 20.4% of the outstanding shares of common stock of American Community.

Except in special circumstances, the exchange will be tax free to you, other than with respect to cash you receive in exchange for your FNB shares.

**Facts for American Community's Shareholders**

FNB will be merged with and into American Community.

First National Bank of the Carolinas will become a wholly owned subsidiary of American Community.

In the merger, you will keep the American Community common stock you own, and your rights as a shareholder of American Community will not be affected by the acquisition of FNB.

Your Board of Directors unanimously recommends the merger.

After the merger, American Community's shareholders will own approximately 79.6% of the outstanding shares of common stock of American Community.

The merger will be tax-free to you.

American Community plans to hold a special meeting of shareholders on March 4, 2004 to vote on the merger.

We expect the merger to be completed by March 31, 2004.

## Edgar Filing: AMERICAN COMMUNITY BANCSHARES INC - Form S-4/A

FNB plans to hold a special meeting of shareholders on March 4, 2004 to vote on the merger.

We expect the merger to be completed by March 31, 2004.

***This Document.*** This document serves two purposes. It is a Joint Proxy Statement being distributed by FNB and American Community to their shareholders in connection with the special shareholders meeting of FNB and the special shareholders meeting of American Community to consider approval of the merger agreement. It is also the Prospectus of American Community to offer to exchange shares of its common stock for shares of FNB's common stock held by FNB's shareholders. This document is therefore referred to as the Joint Proxy Statement/Prospectus. It contains important information about the merger. You should read it carefully.



**Table of Contents**

**Merger Consideration.** If the merger is approved, FNB's shareholders may elect to receive shares of American Community common stock, cash, or a combination of cash and American Community common stock in exchange for their shares of FNB common stock. In exchange for all of the shares of common stock of FNB, American Community will issue to FNB's shareholders an aggregate of 607,558 shares of American Community common stock and \$6,962,610 in cash, with approximately 50% of FNB's outstanding shares of common stock being exchanged for American Community common stock and approximately 50% being exchanged for cash. Each FNB shareholder may elect to receive all cash *or* all American Community common stock *or* any combination of cash and American Community common stock, subject to proration, if necessary, to ensure that approximately 50% of FNB's common stock is exchanged for American Community common stock and approximately 50% is exchanged for cash. The actual number of shares of common stock or amount of cash that each FNB shareholder will receive will be adjusted based upon the average closing price for American Community's common stock during the 20 consecutive full trading days ending on (and including) the date of final regulatory approval. This calculation will not be known at the time of the special meetings.

American Community's common stock is traded on the Nasdaq SmallCap Market under the symbol ACBA. FNB's common stock is quoted on the OTC Bulletin Board under the symbol FNBC.OB.

**Voting.** Even if you plan to attend your shareholders' meeting, please vote as soon as possible by completing and returning the enclosed appointment of proxy. Not voting at all will have the same effect as voting against the merger.

*Some factors FNB's shareholders should consider before they decide how to vote on the merger are described in this document under the heading Risk Factors which begins on page 10.*

*Neither the Securities and Exchange Commission, the FDIC, the North Carolina Commissioner of Banks, nor any state securities commission has approved of the American Community common stock to be issued in the merger or determined if this document is accurate or complete. It is illegal to tell you otherwise.*

*The shares of American Community common stock to be issued to FNB's shareholders are not deposits or savings accounts and are not obligations of or guaranteed by American Community or its subsidiary American Community Bank. They are not insured by the FDIC or any other government agency and are subject to investment risk, including the possible loss of principal.*

*FNB's shareholders and American Community's shareholders have dissenters' rights under South Carolina law and North Carolina law, respectively. Please see Dissenters' Rights on page of this Joint Proxy Statement/Prospectus for more information.*

**This Joint Proxy Statement/Prospectus is dated January \_\_, 2004, and it is being mailed to FNB's shareholders and American Community's shareholders on or about January\_\_ , 2004.**

---

**Table of Contents**

**TABLE OF CONTENTS**

	<b>Page</b>
<b><u>QUESTIONS AND ANSWERS FOR ALL SHAREHOLDERS ABOUT VOTING PROCEDURES FOR THE SPECIAL MEETINGS</u></b>	1
<b><u>QUESTIONS AND ANSWERS FOR FNB SHAREHOLDERS ABOUT ELECTING THE FORM OF MERGER CONSIDERATION</u></b>	2
<b><u>SUMMARY</u></b>	3
<b><u>RISK FACTORS</u></b>	10
<u>Risks Relating to the Merger</u>	10
<u>Risks Relating to Holding American Community Stock</u>	11
<b><u>FORWARD-LOOKING STATEMENTS</u></b>	13
<b><u>MARKET PRICES AND DIVIDEND POLICIES</u></b>	14
<b><u>AMERICAN COMMUNITY UNAUDITED PRO FORMA CONDENSED COMBINED CONSOLIDATED FINANCIAL INFORMATION</u></b>	16
<b><u>THE SPECIAL MEETINGS OF SHAREHOLDERS</u></b>	22
<b><u>PROPOSAL FOR BOTH THE FNB SPECIAL MEETING AND THE AMERICAN COMMUNITY SPECIAL MEETING - Approval of the Merger of FNB with and into American Community</u></b>	26
<u>General</u>	26
<u>Elections of Merger Consideration</u>	26
<u>Fixed Amount of Cash and Stock</u>	26
<u>Background of the Merger</u>	29
<u>FNB's Reasons for the Merger</u>	31
<u>American Community's Reasons for the Merger</u>	33
<u>Recommendation of FNB's Board</u>	34
<u>Recommendation of American Community's Board</u>	34
<u>Opinion of FNB's Financial Advisor</u>	34
<u>Opinion of American Community's Financial Advisor</u>	38
<u>Effective Time of the Merger</u>	43
<u>Cash or Stock Election</u>	
<u>Election Procedures; Surrender of Stock Certificates</u>	
<u>Conditions to Consummation of the Merger</u>	43
<u>Regulatory Approvals</u>	44
<u>Waiver, Amendment and Termination</u>	44
<u>Management and Operations after the Merger</u>	46
<u>Interests of Certain Persons</u>	46
<u>Effect on Certain Benefit Plans</u>	47
<u>Federal Income Tax Consequences of the Merger</u>	47
<u>Accounting Treatment</u>	49
<u>Expenses and Fees</u>	50
<u>Resales of American Community Common Stock</u>	50
<b><u>DISSENTERS' RIGHTS</u></b>	51
<b><u>INFORMATION ABOUT AMERICAN COMMUNITY</u></b>	55
<b><u>INFORMATION ABOUT FNB</u></b>	60
<b><u>DESCRIPTION OF AMERICAN COMMUNITY'S CAPITAL STOCK</u></b>	109
<b><u>COMPARISON OF THE RIGHTS OF SHAREHOLDERS</u></b>	112
<b><u>INDEMNIFICATION</u></b>	121
<b><u>LEGAL MATTERS</u></b>	122
<b><u>EXPERTS</u></b>	122
<b><u>WHERE YOU CAN GET MORE INFORMATION</u></b>	123
<b><u>ADDITIONAL INFORMATION</u></b>	124
<b><u>INFORMATION INCORPORATED BY REFERENCE</u></b>	124



**Table of Contents**

<b><u>APPENDIX A</u></b> Agreement and Plan of Merger	A-1
<b><u>APPENDIX B</u></b> Chapter 13 of the South Carolina Business Corporation Act of 1988	B-1
<b><u>APPENDIX C</u></b> Article 13 of the North Carolina Business Corporation Act	C-1
<b><u>APPENDIX D</u></b> Fairness Opinion of The Orr Group	D-1
<b><u>APPENDIX E</u></b> Fairness Opinion of McColl Partners, LLC	E-1

**Table of Contents**

**QUESTIONS AND ANSWERS FOR ALL SHAREHOLDERS**

**ABOUT VOTING PROCEDURES FOR THE SPECIAL MEETINGS**

Q: What is the proposed transaction?

A: American Community is proposing to acquire FNB through the merger of FNB into American Community.

Q: What am I being asked to do?

A: After you have carefully read this document, mail your signed and dated proxy card in the enclosed envelope. The instructions on the accompanying proxy card will give you more information on how to vote by mail. This will enable your shares to be represented at the American Community special meeting or the FNB special meeting, as applicable.

Q: If my shares are held in street name by my broker, will my broker vote my shares for me?

A: Your broker will not be able to vote your shares without instructions from you. You should instruct your broker to vote your shares following the directions your broker provides. Your failure to instruct your broker to vote your shares will result in your shares not being voted. If you fail to return a proxy card or abstain from voting, the effect will be the same as a vote against the merger.

Q: Can I change my vote after I have submitted my proxy with voting instructions?

A: Yes. There are three ways you can change your vote. First, you may send a written notice to the Secretary of your company at the address included on page of this document, stating that you would like to revoke your proxy. Second, you may complete and submit a later dated proxy with new voting instructions. The latest vote actually received by American Community or FNB prior to its shareholders meeting will be your vote, and any earlier votes will be revoked. Third, you may attend your company's special meeting and vote in person. Any earlier proxy votes will be revoked. Simply attending the meeting without voting, however, will not revoke your proxy. If you have instructed a broker to vote your shares, you must follow directions you will receive from your broker to change or revoke your proxy.

Q: Whom should I call with questions?

A: FNB shareholders should call V. Stephen Moss, President, at (864) 488-2265 with any questions about the merger and related issues.

American Community's shareholders should call Randy P. Helton, President, at (704) 225-8444.

**Table of Contents**

**QUESTIONS AND ANSWERS FOR FNB SHAREHOLDERS**

**ABOUT ELECTING THE FORM OF MERGER CONSIDERATION**

Q: What will I receive in the merger?

A: FNB's shareholders will receive, in the aggregate, \$6,962,610 in cash and 607,558 shares of common stock of American Community. The per share consideration is expected to be the sum of \$10.25 plus 0.8944 times the average price of American Community common stock over the 20-day trading period ending with the date of regulatory approval. Because the determination period we use for this calculation has not occurred yet, the actual value of the per share consideration cannot be determined yet. However, using the price of American Community common stock during the 20 trading days ended as of \_\_\_\_\_, 2004, the consideration to be paid for each share of FNB common stock would have been \$ \_\_\_\_\_. Because the determination period we use for this calculation will end several weeks prior to closing, the market value of the American Community common stock you receive may change from the market value on the date the calculation is actually made.

Q: How do I elect the form of payment I prefer in the merger?

A: We will mail an election form, together with a return envelope, to you shortly before the proposed closing date of the merger. To elect the form of payment you prefer, you must complete and return the election form. If you do not make an election, you will be allocated American Community common stock or cash or both depending on the elections made by FNB's other shareholders. The ratio of cash and stock to be exchanged in the merger for each FNB shareholder will be determined by the price of American Community's common stock at a date prior to the closing of the merger and, therefore, you might not receive the exact amount of cash or stock that you elect. Furthermore, shareholder elections will be prorated, to the extent necessary, in order to ensure that approximately 50% of FNB's common stock is exchanged for American Community common stock and approximately 50% is exchanged for cash. The fully completed election form must be returned to Registrar and Transfer Company, Cranford, New Jersey, before the election deadline, which we expect to be 25 days following our mailing of the election form.

Q: How do I exchange my FNB stock certificates?

A: Shortly after the merger is completed, a letter of transmittal, together with a return envelope, will be mailed to you. The letter of transmittal will provide instructions on where to surrender your FNB stock certificates. The exchange agent will allocate cash and American Community common stock among FNB's shareholders consistent with the allocation and proration procedures in the merger agreement.

Q: When do you expect to complete the merger?

A: We are working toward completing the merger as quickly as possible and expect to be able to close the merger by March 31, 2004.

Q: Whom should I call with questions?

A: FNB shareholders should call V. Stephen Moss, President, at (864) 488-2265 with any questions about the merger and related issues.

**Table of Contents**

**SUMMARY**

This summary highlights the material terms of the proposed merger between American Community and FNB. For a more complete description of the terms of this transaction, and the parties to it, you should carefully read this entire Joint Proxy Statement/Prospectus, the documents that accompany this Joint Proxy Statement/Prospectus, and the documents to which we refer you. See [Where You Can Get More Information](#) at page

**American Community Special Meeting (Page \_\_)**

American Community will hold its special meeting of shareholders at 10:00 a.m. on March 4, 2004 at 2593 West Roosevelt Boulevard, Monroe, North Carolina. If you owned shares of American Community at the close of business on the record date of January 9, 2004, you may vote at the American Community shareholders' meeting.

On the record date for the American Community special meeting, there were 2,825,709 shares of American Community common stock outstanding. Each American Community shareholder will have one vote at American Community's meeting for each share of stock he or she owned on the record date.

The only matter for consideration at the special meeting is consideration of approval of the merger with FNB.

**The Affirmative Vote of a Majority of American Community's Outstanding Shares of Common Stock is Required to Approve the Merger (Page \_\_)**

Approval of the merger requires the affirmative vote of the holders of a majority of American Community's outstanding shares of common stock. Because an absolute majority vote of all shares is required to approve the merger, your failure to vote will have the same effect as a vote against approval of the merger.

Brokers who hold shares as nominees, or in street name, will not have the authority to vote such shares at the American Community special meeting unless they receive instructions from the shareholder whose account they hold.

Directors and executive officers of American Community currently own 5.66% of the shares that may be voted at American Community's special meeting. We expect all of these shares to be voted in favor of the merger.

If both FNB and American Community receive the approval of their respective shareholders, we currently expect to complete the merger by March 31, 2004, although we cannot be sure of when, or whether, the merger will be completed.

**FNB Special Meeting (Page \_\_)**

FNB will hold its special meeting of shareholders at 2:00 p.m. on March 4, 2004 at 217 North Granard Street, Gaffney, South Carolina. If you owned shares of FNB at the close of business on the record date of January 9, 2004, you may vote at the FNB shareholders meeting.

On the record date for the FNB special meeting, there were 679,279 shares of FNB common stock outstanding. Each FNB shareholder will have one vote at FNB s meeting for each share of stock he or she owned on the record date.

The only matter for consideration at the special meeting is consideration of approval of the merger with American Community.



**Table of Contents**

**The Affirmative Vote of the Holders of Two-Thirds of FNB's Outstanding Shares of Common Stock is Required to Approve the Merger (Page )**

Approval of the merger requires the affirmative vote of the holders of two-thirds of FNB's outstanding shares of common stock. Because a two-thirds vote of all shares is required to approve the merger, your failure to vote will have the same effect as a vote against approval of the merger.

Brokers who hold shares as nominees, or in street name, will not have the authority to vote such shares at the FNB special meeting unless they receive instructions from the shareholder whose account they hold.

Directors and executive officers of FNB own 29.4% of the shares that may be voted at FNB's special meeting. We expect all of these shares to be voted in favor of the merger.

**The Companies (Pages , )**

**American Community Bancshares, Inc.**

4500 Cameron Valley Parkway

Suite 150

Charlotte, North Carolina 28211

(704) 225-8444

American Community is a corporation organized under the laws of the State of North Carolina and is registered as a bank holding company with the Federal Reserve Board. American Community was incorporated on February 16, 2000 to become the owner of all outstanding shares of American Community Bank, Monroe, North Carolina a North Carolina chartered non-member bank which commenced operations in November 1998. American Community's executive office is in Charlotte, North Carolina. American Community Bank operates eight banking offices throughout Union and Mecklenburg Counties, North Carolina.

**FNB Bancshares, Inc.**

217 North Granard Street

Gaffney, South Carolina 29341

(864) 488-2265

## Edgar Filing: AMERICAN COMMUNITY BANCSHARES INC - Form S-4/A

FNB is a corporation organized under the laws of the State of South Carolina and is registered as a bank holding company with the Federal Reserve Board. FNB was incorporated on September 27, 1995 to become the owner of all outstanding shares of First National Bank of the Carolinas, a national banking association which commenced operations in October 1996. FNB's main office is located in Gaffney, South Carolina. First National Bank of the Carolinas operates three banking offices throughout Cherokee County, South Carolina.

### **The Merger (Page )**

Upon completion of the merger, FNB will cease to exist as a separate entity and First National Bank of the Carolinas will become a wholly owned subsidiary of American Community. FNB's shareholders will receive, in the aggregate, \$6,962,610 in cash and 607,558 shares of common stock of American Community. The exact amount of cash and stock to be issued to each FNB shareholder will be based on the elections of all FNB shareholders and the average closing price of American Community's common stock over a 20-day trading period ending with the date of the regulatory approval required to consummate the merger.

The per share consideration is expected to be the sum of \$10.25 plus 0.8944 times the average price of American Community common stock over the 20-day trading period ending with the date of regulatory approval. At time of announcement the per share value for each share of FNB common stock was \$20.50 based on an average price of \$11.46 for American Community's common stock.

## Table of Contents

Because the market price of American Community stock to be used to determine the merger consideration to be paid to each FNB shareholder will not be determined until the 20 day trading period ends, the per share merger consideration to be issued to each FNB shareholder cannot be calculated at this time. However, using the 20-day trading average of American Community's common stock of \$11.46 at the time of announcement of the merger, the value of the merger consideration for each share of FNB common stock would be approximately \$20.50. Using the 20-day trading average of American Community's common stock of \$ at the time this document was printed, the value of the merger consideration for each share of FNB common stock would be approximately \$ .

While we cannot assure you that you will receive the exact allocation of merger consideration you elect, each FNB shareholder may elect to receive: (i) all of his or her merger consideration in shares of American Community common stock; (ii) all of his or her merger consideration in cash; or (iii) any combination of cash and American Community common stock. Shareholder elections will be adjusted pro rata, as necessary, to ensure that all shares of common stock of FNB will be exchanged for exactly 607,558 shares of American Community common stock and exactly \$6,962,610 in cash. If shareholder elections are adjusted, then FNB shareholders may receive a mix of consideration that is different from that which they elected. An election form will be mailed to FNB shareholders shortly before the proposed closing date of the merger. The election form will allow each FNB shareholder to elect the form of merger consideration he or she would like to receive. Upon consummation of the merger, former shareholders of FNB will own approximately 20.4% of the issued and outstanding shares of American Community.

We have attached the merger agreement as Appendix A of this Joint Proxy Statement/Prospectus. We encourage you to read the agreement as it is the legal document that governs the merger.

## **Both Companies' Boards of Directors Unanimously Recommend that Shareholders Vote FOR Approval of the Merger (Pages , )**

The Boards of Directors of both American Community and FNB believe that the merger is in the best interests of their respective shareholders and recommend that shareholders vote FOR approval of the merger.

FNB's Board believes that its shareholders will benefit by gaining a stake in a larger, well capitalized community bank holding company that will have the ability to serve depositors in a wider area of North and South Carolina. Additionally, because American Community's stock is listed on the Nasdaq SmallCap Market, FNB's shareholders will benefit from a more liquid market than they now have. This merger will allow the resulting company to increase its market share and its geographic reach and to more widely diversify its credit risk.

The Boards of Directors of American Community and FNB believe that the merger will help fulfill their mutual long-term goals of:

enhancing shareholder value;

adding financial products and services;

diversifying credit risk;

broadening the markets they serve; and

generating growth in assets and deposits.

**American Community and FNB Shareholders Have Dissenters' Rights in the Merger (Pages 19 and 20)**

If the merger is completed, holders of American Community common stock and FNB common stock will each have the right to dissent and receive the fair value of their shares in cash. American Community shareholders' dissenters' rights are governed by North Carolina law, and FNB shareholders' dissenters' rights are governed by South Carolina law. Copies of the applicable statutes are attached as Appendices B and C to this document. Shareholders who intend to exercise their dissenters' rights must carefully follow the requirements of

## **Table of Contents**

the applicable statute, and they should consult with their own legal counsel. Shareholders who exercise dissenters' rights may have taxable income as a result, so shareholders who intend to dissent should also consult with their own tax advisers.

### **Comparative Per Share Market Price Information (Page \_\_)**

Shares of American Community's common stock are listed on the Nasdaq SmallCap Market under the symbol ACBA. On November 5, 2003, the last full trading day prior to the public announcement of the proposed transaction, American Community's stock closed at \$11.75 per share. On \_\_\_\_\_, 2004, the most recent date prior to the printing of this document, American Community's stock closed at \$\_\_\_\_\_ per share.

Shares of FNB's common stock are quoted on the OTC Bulletin Board under the symbol FNBC.OB. On November 5, 2003, the last full trading day prior to the public announcement of the proposed transaction, FNB's stock closed at \$16.70 per share. On \_\_\_\_\_, 2004, the most recent date prior to the printing of this document, FNB's stock closed at \$\_\_\_\_\_ per share.

### **Material Federal Income Tax Consequences (Page \_\_)**

We will receive an opinion from the accounting firm of Dixon Odom PLLC regarding the federal income tax consequences of the merger. Subject to the limitations and qualifications summarized in the Federal Income Tax Consequences section of this Joint Proxy Statement/Prospectus, neither American Community shareholders nor FNB shareholders will recognize gain or loss for U.S. federal income tax purposes as a result of the merger, except to the extent that cash is received from American Community for shares of FNB common stock. The cash received by FNB shareholders pursuant to the merger either by exchange of shares of FNB common stock or in lieu of fractional share interests should be treated as proceeds of a redemption for federal income tax purposes and should qualify for sale or exchange treatment at applicable capital gains rates. However, because of uncertainty resulting from the fact that more than one provision of the tax law could apply to this transaction, it is possible that the receipt of any cash by FNB shareholders would not qualify for sale or exchange treatment and would therefore be subject to dividend income tax rates.

Since tax matters can be complicated, and tax results may vary among shareholders, we urge you to contact your own tax advisor to understand fully how this transaction will affect you.

### **The Orr Group and McColl Partners, LLC Believe that the Merger is Fair to Each Company's Shareholders (Pages \_\_ - \_\_)**

In deciding to approve the merger of American Community and FNB, our Boards considered opinions from our respective financial advisors as to the fairness of the merger consideration from a financial point of view. FNB has received an opinion from The Orr Group, Winston-Salem, North Carolina that the merger consideration is fair, from a financial point of view, to FNB's shareholders. The Orr Group is an investment banking firm that specializes in providing investment banking advisory services to financial institutions. American Community has received an opinion from McColl Partners, LLC, Charlotte, North Carolina that the merger consideration is fair, from a financial point of view, to American Community's shareholders. McColl Partners is a nationally recognized investment banking firm that specializes in advising on mergers and acquisitions. These opinions are attached as Appendices D and E respectively to this Joint Proxy Statement/Prospectus.

## Edgar Filing: AMERICAN COMMUNITY BANCSHARES INC - Form S-4/A

In delivering these opinions, our financial advisors performed a variety of analyses. The analyses included:

comparing FNB's and American Community's historical stock prices and other financial information to each other and to those of other selected companies;

comparing the financial terms of the merger to those of other publicly announced transactions; and

estimating the relative values and contributions of FNB and American Community based on past and estimated future performances and anticipated benefits of the merger.

## **Table of Contents**

The Orr Group will be paid a fee of \$236,400 for its advisory services in connection with the merger, including the delivery of its fairness opinion. (See disclosure in The Orr Group's fairness opinion, included in this Joint Proxy Statement/Prospectus as Appendix D.) McColl Partners, LLC will receive a fee of \$150,000 for its advisory services in connection with the merger, including the delivery of its fairness opinion. (See disclosure in McColl Partners, LLC's fairness opinion, included in this Joint Proxy Statement/Prospectus as Appendix E.)

## **We Must Obtain Regulatory Approvals to Complete the Merger (Page )**

We have filed an application with the Federal Reserve Board to permit FNB to merge with and into American Community. We cannot complete the merger unless it is first approved by the Federal Reserve and the South Carolina Board of Financial Institutions. If the merger is approved, we will have to wait an additional 15 to 30 days before we can complete it. During that time, the U.S. Department of Justice can challenge the merger.

As of the date of this document, we have not yet received the required regulatory approvals. Although we expect to obtain the necessary approvals in a timely manner, we cannot be certain when, or if, they will be received.

## **Purchase Accounting Treatment to be Used for the Merger (Page )**

Under the purchase method of accounting, the net assets and liabilities of FNB, as the company being acquired in the merger, are generally recorded at their respective fair values as of the closing date of the merger and added to those of American Community. American Community's consolidated financial statements issued after consummation of the merger will reflect these values and will not be restated retroactively to reflect the historical financial position or results of operations of FNB.

## **Our Banking Operations After the Merger (Page )**

Following the completion of the merger, FNB will cease to exist and First National Bank of the Carolinas will become a wholly owned subsidiary of American Community. First National Bank of the Carolinas will continue to operate its current branch offices.

## **Reselling the Stock Received in the Merger (Page )**

The shares of American Community common stock to be issued in the merger will be registered under the Securities Act of 1933. Except as noted below, shareholders may freely transfer those shares after they receive them. FNB has identified certain of its directors, executive officers and others who may be deemed affiliates of FNB, and those persons are expected to enter into agreements with American Community reflecting limitations on the transfer of the shares they will receive in the merger.

## **Differences in Shareholders' Rights (Page )**

Each FNB shareholder who receives American Community common stock will become an American Community shareholder. The rights of FNB's shareholders are currently governed by South Carolina corporate law and FNB's articles of incorporation and bylaws. The rights of American Community's shareholders are currently governed by North Carolina corporate law and American Community's articles of incorporation and bylaws. The rights of FNB's and American Community's shareholders differ with respect to various matters.

**Financial Interests of FNB's Directors and Officers in the Merger (Page )**

Some of FNB's directors and officers have interests in the merger in addition to their interests as shareholders. American Community has agreed that two current FNB directors will be appointed as directors of American Community when the merger is completed. American Community currently pays members of its



## **Table of Contents**

Board of Directors \$400 for each Board meeting attended and \$200 for each committee meeting attended. In addition, in exchange for terminating his current employment agreement, American Community and First National Bank of the Carolinas will enter into a new employment agreement with V. Stephen Moss on the closing date of the merger. The agreement will be for an initial term of three years, with automatic one year extensions. Mr. Moss will serve as President and Chief Executive Officer of First National Bank of the Carolinas and will be paid an annual salary of \$125,000. Mr. Moss will also be granted options to purchase 10,000 shares of common stock of American Community and will be permitted to direct the award of an additional 5,000 options to purchase shares of American Community common stock to employees of First National Bank of the Carolinas.

### **Terminating the Merger Agreement (Page )**

FNB has the right to terminate the merger agreement if the average price of American Community's common stock during the 20 day trading period falls below \$9.17. If FNB exercises its right to terminate due to an average price of American Community stock during the 20-day trading period that is below \$9.17, then American Community can override FNB's termination by increasing the merger consideration as provided in the merger agreement.

American Community also has the right to terminate the merger agreement if the average price of its common stock during the 20 day trading period rises above \$13.75. If American Community exercises its right to terminate due to an average price of its stock during the 20-day trading period that is above \$13.75, then FNB can override American Community's termination by decreasing the merger consideration as provided in the merger agreement.

The merger agreement may be terminated by either FNB or American Community alone by action of their respective Boards of Directors if, among other things:

there is a material adverse change in the financial condition or results of operations of the other party;

any of the conditions to its obligations have not been satisfied in all material respects or effectively waived by it in writing;

the other party has violated or failed to fully perform any of its obligations, covenants or agreements under the merger agreement in any material respect;

any of the other party's representations or warranties were false or misleading in any material respect when made, or there occurs any event or development or there exists any condition or circumstance which has caused or, with the lapse of time or otherwise, might cause any of the other party's representations or warranties to become false or misleading in any material respect;

FNB's shareholders do not approve the merger agreement or American Community's shareholders do not approve the merger agreement; or

the merger has not been completed by June 30, 2004 (unless American Community and FNB mutually agree to extend this deadline to a later date).

**Amending the Merger Agreement (Page )**

The merger agreement may be amended by written consent of American Community and FNB at any time prior to the completion of the merger. However, an amendment to change the consideration payable to FNB shareholders cannot be made following adoption of the merger agreement by the FNB shareholders and American Community shareholders without their approval.

**FNB has Agreed Not to Solicit Alternative Transactions (Page )**

In the merger agreement, FNB has agreed not to encourage, negotiate with, or provide any information to any entity other than American Community concerning an acquisition transaction involving FNB. This

**Table of Contents**

restriction, along with the termination payment described below, may deter other potential parties interested in acquiring control of FNB. However, FNB may take certain of these actions if its Board of Directors determines that it should do so. This determination by the FNB Board must be made after the FNB Board consults with its legal counsel, and must be based on the FNB Board's fiduciary duties. As a condition to American Community entering into the merger agreement, FNB agreed to pay American Community \$650,000 if FNB terminates the merger agreement and, within 18 months, enters into an agreement to, or completes, a transaction with an entity other than American Community which results in FNB being acquired by or coming under the control of a person other than American Community.

**Comparative Per Share Data**

The following table includes per share data for American Community common stock and FNB common stock, including book values, cash dividends declared, and net income, on the dates and for the periods presented:

for American Community and FNB on a historical basis;

for American Community on a *pro forma* combined basis; and

on an equivalent per share of FNB common stock basis.

The *pro forma* combined and equivalent per share information combines the American Community information together with FNB information as though the merger had been consummated on December 31, 2002 and September 30, 2003. The *pro forma* data in the table assumes that the merger is accounted for using the purchase method of accounting. The *pro forma* data is not indicative of the results of future operations or the actual results that would have occurred had the merger been consummated at the beginning of the periods presented. You should read the information below in conjunction with American Community's and FNB's audited financial statements and unaudited interim financial statements, together with the related footnotes, which accompany this Joint Proxy Statement/Prospectus. You should also read the notes and assumptions used to prepare the Unaudited Pro Forma Condensed Combined Consolidated Financial Statements that appear in this Joint Proxy Statement/Prospectus.

	<b>For the Twelve Months Ended December 31, 2002</b>			
	<b>American Community Historical</b>	<b>FNB Historical</b>	<b>Pro Forma Combined</b>	<b>FNB Pro Forma Equivalent</b>
Net Income per share, basic	0.61	0.78	0.54	0.97
Net Income per share, diluted	0.50	0.77	0.52	0.93
Dividends declared per share				
Book Value per share	8.17	10.49	9.20	16.46

  

	<b>For the Nine Months Ended September 30, 2003</b>			
	<b>American Community Historical</b>	<b>FNB Historical</b>	<b>Pro Forma Combined</b>	<b>FNB</b>

Edgar Filing: AMERICAN COMMUNITY BANCSHARES INC - Form S-4/A

				<u>Pro Forma Equivalent</u>
Net Income per share, basic	0.38	0.70	0.43	0.76
Net Income per share, diluted	0.38	0.67	0.41	0.73
Dividends declared per share	0.08		0.08	0.08
Book Value per share	8.42	11.11	9.41	16.83

The following table lists the closing market values of American Community common stock and FNB common stock on November 5, 2003 (the trading day preceding the first public announcement of the merger), and the equivalent per share market value of FNB common stock on that date based on the terms of the merger agreement.

	<u>American Community Stock</u>	<u>FNB Stock</u>	<i>Pro forma equivalent</i> <u>per share of FNB Stock</u>
<b>Market value</b>	\$ 11.75	\$ 16.70	\$ 20.85

**Table of Contents**

**RISK FACTORS**

In addition to the other information contained or incorporated by reference in this Joint Proxy Statement/Prospectus, you should consider the following material risk factors carefully before deciding how to vote at the FNB and American Community special meetings. Please see page under **Forward-Looking Statements** for additional information to bear in mind before casting your vote.

**Risks Related to the Merger**

*Because the market price of American Community common stock may fluctuate, an FNB shareholder cannot be sure of the value of the merger consideration that the shareholder will receive.*

Upon completion of the merger, each share of FNB common stock will be converted into shares of American Community common stock, cash or a combination of American Community common stock and cash pursuant to the terms of the merger agreement. The value of the consideration will be determined based on the average closing price of American Community common stock during a 20 trading day measurement period ending on the date of regulatory approval of the merger. This average price may vary from the price of American Community common stock on the date the merger was announced, on the date that this document is mailed to FNB shareholders, and on the date of the special meeting of FNB's shareholders. Any change in the price of American Community common stock prior to completion of the merger will affect the value of the total consideration that an FNB shareholder will receive upon completion of the merger. Stock price changes may result from a variety of factors, including general market and economic conditions, changes in American Community's business, operations and prospects, and regulatory considerations. Many of these factors are beyond American Community's control. Accordingly, at the time of the FNB special meeting, an FNB shareholder may not necessarily know or be able to calculate the exact amount of cash the shareholder would receive or the number of shares of American Community stock the shareholder would receive upon completion of the merger.

*American Community may encounter integration difficulties or may fail to realize the anticipated benefits of the merger.*

The acquisition of FNB is the first acquisition by American Community. Accordingly, American Community has no experience in integrating another institution's operations with its company. American Community and FNB may not be able to integrate their operations without encountering difficulties including, without limitation, the loss of key employees and customers, the disruption of their respective ongoing businesses or possible inconsistencies in standards, controls, procedures and policies.

*Future results of the combined companies may materially differ from the pro forma historical financial information presented in this document.*

The pro forma financial statements shown below only show a combination of the two company's historical results. Future results of the combined companies may be materially different from these pro forma results. We have estimated that the combined companies will record approximately \$1.1 million of merger-related charges. The charges may be higher or lower than we have estimated, depending upon how costly or difficult it is to integrate the two companies' operations. Furthermore, these charges may decrease the amount of capital of the combined companies that could be used for profitable, income-earning investments in the future.

*The interests of certain management officials of FNB may be different from those of other shareholders.*

FNB's directors and executive officers have interests in the merger other than their interests as FNB shareholders. The Board of Directors of FNB was aware of these interests at the time it approved the merger. These interests may cause FNB's directors and executive officers to view the merger proposal differently than you may view it. For example, in exchange for terminating his current employment agreement upon completion

## **Table of Contents**

of the merger, Mr. Moss, President and Chief Executive Officer of FNB, will enter into a new employment agreement with American Community and First National Bank of the Carolinas on the closing date of the merger that will have an initial term of three years at an annual salary of \$125,000. Mr. Moss will also be granted options to purchase 10,000 shares of American Community common stock and will be permitted to direct the award of an additional 5,000 options to purchase shares of American Community common stock to employees of First National Bank of the Carolinas. In addition, Mr. Moss and one other current member of the Board of Directors of FNB will be appointed to serve on the Board of Directors of American Community upon completion of the merger. See *The Merger Management and Operations after the Merger*.

*FNB shareholders may not receive the form of consideration they elected.*

The merger agreement that American Community and FNB have entered into requires that an aggregate of 607,558 shares of American Community common stock and \$6,962,610 in cash be paid for all of the outstanding shares of FNB common stock. The elections of FNB shareholders will be adjusted on a pro rata basis, if necessary, to maintain this ratio. If the elections of FNB shareholders are adjusted, then FNB shareholders may receive a different mix of cash and stock from that which they elected.

## **Risks Related to Holding American Community Stock**

*A decrease in interest rates could adversely impact American Community's profitability.*

American Community's results of operations are affected by the monetary and fiscal policies of the federal government and the regulatory policies of governmental authorities. American Community's net interest income comprises a significant component of its earnings. Net interest income is the difference between income from interest-earning assets, such as loans, and the expense of interest-bearing liabilities, such as deposits and borrowings. American Community is asset sensitive with approximately 46% of its assets tied to the prime rate or Federal funds rate, the interest rates of which can change immediately. American Community's liabilities, however, are relatively short-term with approximately 65% repricing within one year. This means American Community's one-year interest rate repricing position is approximately 2.3%. At September 30, 2003, if interest rates increased by one percentage point over a one-year time frame, American Community's net interest income could increase by approximately 5.06% or \$489,000. At September 30, 2003, if interest rates decreased by one percentage point over a one-year time frame, American Community's net interest income could decrease by approximately 6.8% or \$662,000.

*American Community may have higher loan losses than it has reserved for.*

American Community's loan losses could exceed the allowance for loan losses it has set aside. American Community's average loan size continues to increase. Reliance on historic loan loss experience may not be indicative of future loan losses. Approximately 69.6% of American Community's loan portfolio is comprised of construction, commercial mortgage and commercial loans. Repayment of these loans is generally considered more subject to market risk than repayment of residential mortgage loans. Industry experience shows that a portion of loans will become delinquent and a portion of the loans will require partial or entire charge-off. Regardless of the underwriting criteria American Community utilizes, losses may be experienced as a result of various factors beyond its control, including, among other things, changes in market conditions affecting the value of its loan collateral and problems affecting the credit of its borrowers.

*American Community's growth strategy may not be successful.*

As a strategy, American Community has sought to increase the size of its franchise by aggressively pursuing business development opportunities, and it has grown rapidly since its incorporation. The acquisition of FNB is American Community's first acquisition and is an expansion of its strategy, which previously relied only on internal growth. American Community can provide no assurance that it will continue to be successful in increasing the volume of loans and deposits at acceptable risk levels and upon acceptable terms, expanding its asset base while managing the costs and implementation risks associated with this growth strategy. There can be



**Table of Contents**

no assurance that any further expansion will be profitable or that American Community will continue to be able to sustain its historical rate of growth, either through internal growth or through other successful expansions of its banking markets, or that it will be able to maintain capital sufficient to support its continued growth.

*American Community does not know if it will pay dividends in the future.*

American Community paid a cash dividend of \$0.08 per share on March 17, 2003. After the merger, the Board of Directors of American Community will decide from time to time whether to pay dividends after evaluating business and financial results and other factors, such as legal restrictions. American Community does not know whether it will declare dividends in the future.

*If American Community loses key employees with significant business contacts in its market area, its business may suffer.*

American Community's success is largely dependent on the personal contacts of its officers and employees in its market area. If American Community lost key employees temporarily or permanently, its business could be hurt. American Community could be particularly hurt if its key employees went to work for competitors. American Community's future success depends on the continued contributions of its existing senior management personnel.

*Government regulations may prevent or impair American Community's ability to pay dividends, engage in additional acquisitions, or operate in other ways.*

Current and future legislation and the policies established by federal and state regulatory authorities will affect American Community's operations. American Community is subject to supervision and periodic examination by the Federal Reserve Board and the North Carolina Commissioner of Banks. American Community's principal subsidiary, American Community Bank, as a state chartered commercial bank, also receives regulatory scrutiny from the North Carolina Commissioner of Banks and the FDIC. Similarly, First National Bank of the Carolinas is regulated by the OCC and the FDIC. Banking regulations are designed primarily for the protection of depositors rather than shareholders, and they may limit American Community's growth and the return to you as an investor in American Community by restricting its activities, such as:

the payment of dividends to shareholders;

possible transactions with or acquisitions by other institutions;

desired investments;

loans and interest rates;

interest rates paid on deposits;

the possible expansion of branch offices; and

the ability to provide securities or trust services.

American Community is registered with the Federal Reserve Board as a bank holding company. American Community cannot predict what changes, if any, will be made to existing federal and state legislation and regulations or the effect that such changes may have on its business. The cost of compliance with regulatory requirements may adversely affect American Community's ability to operate profitably.

*American Community's stock trading volume has been low compared with larger bank holding companies.*

The trading volume in American Community's common stock on the Nasdaq SmallCap Market has been comparable to other similarly sized bank holding companies since trading on the SmallCap Market began in July 2001. Nevertheless, this trading volume does not compare with more seasoned companies listed on other stock exchanges. Thus, the market in American Community's common stock is somewhat limited in scope relative to some other companies. In addition, American Community can provide no assurance that a more active and liquid trading market for its stock will develop after the merger is consummated.

## **Table of Contents**

*American Community Bank and First National Bank of the Carolinas face strong competition in their market areas which may limit their asset growth and profitability.*

American Community Bank's primary market area is the Charlotte Metropolitan Area and First National Bank of the Carolinas primary market area is Gaffney, South Carolina. The banking business in both of these areas is extremely competitive, and the level of competition facing American Community following the merger may increase further, which may limit its asset growth and profitability. Each of American Community Bank and First National Bank of the Carolinas experiences competition in both lending and attracting funds from other banks and non-bank financial institutions located within its market area, many of which are significantly larger institutions. Non-bank competitors for deposits and deposit-type accounts include savings associations, credit unions, securities firms, money market funds, life insurance companies and the mutual funds industry. For loans, American Community encounters competition from other banks, savings associations, finance companies, mortgage bankers and brokers, insurance companies, small loan and credit card companies, credit unions, pension trusts and securities firms.

*American Community's articles of incorporation include anti-takeover provisions that may prevent shareholders from receiving a premium for their shares or effecting a transaction favored by a majority of shareholders.*

American Community's articles of incorporation include anti-takeover provisions, such as a provision allowing its Board of Directors to consider the social and economic effects of a proposed merger, which may have the effect of preventing shareholders from receiving a premium for their shares of common stock and discouraging a change of control of American Community by allowing a minority of its shareholders to prevent a transaction favored by a majority of the shareholders. American Community is also subject to the Shareholder Protection Act and Control Share Acquisition Act under North Carolina law. See Description of American Community's Capital Stock on page .

*The securities of American Community are not FDIC insured.*

The securities of American Community are not savings or deposit accounts or other obligations of any bank, are not insured by the FDIC, the Bank Insurance Fund or any other governmental agency and are subject to investment risk, including the possible loss of principal.

## **FORWARD-LOOKING STATEMENTS**

We have made forward-looking statements in this Joint Proxy Statement/Prospectus about the financial condition, results of operations, and business of American Community following the consummation of the merger. These statements are not historical facts and include expressions concerning the future that are subject to risks and uncertainties. Factors that may cause actual results to differ materially from those contemplated by such forward-looking statements include, among other things, the following possibilities:

deposit attrition, customer loss, or revenue loss following the merger that is greater than expected;

competitive pressure in the banking industry that increases significantly;

## Edgar Filing: AMERICAN COMMUNITY BANCSHARES INC - Form S-4/A

changes in the interest rate environment that reduce margins;

general economic conditions, either nationally or regionally, that are less favorable than expected resulting in, among other things, a deterioration in credit quality and an increase in credit risk-related losses and expenses;

changes that occur in the regulatory environment; and

changes that occur in business conditions and the rate of inflation.

When used in this Joint Proxy Statement/Prospectus, the words believes, estimates, plans, expects, should, may, might, outlook, and as well as similar expressions, as they relate to American Community, FNB, or their management are intended to identify forward-looking statements.

**Table of Contents****MARKET PRICES AND DIVIDEND POLICIES****American Community**

**Market for the Securities of American Community.** American Community's common stock has been listed on the Nasdaq SmallCap Market under the symbol ACBA since July 2001. In addition to American Community's common stock there are 1,000,500 warrants to purchase shares of American Community common stock outstanding. American Community's warrants trade on the Nasdaq SmallCap Market under the symbol ACBAW. The following table sets forth the high and low sales prices per share of American Community's common stock and warrants, based on published financial sources, for the last two years. All information has been adjusted for any stock splits and stock dividends effected during the periods presented.

Year	Quarterly Period	Price			
		ACBA		ACBAW	
		High	Low	High	Low
2002	First Quarter	\$ 8.86	\$ 8.05		
	Second Quarter	9.00	8.05	\$ 1.21	\$ 1.00
	Third Quarter	8.35	7.65	1.12	0.85
	Fourth Quarter	8.44	7.80	1.20	0.85
2003	First Quarter	\$ 8.84	\$ 8.13	\$ 1.21	\$ 1.00
	Second Quarter	10.49	8.25	1.60	0.95
	Third Quarter	11.10	10.16	1.92	1.50
	Fourth Quarter	13.22	10.25	4.25	1.87

As of January 9, 2004, there were approximately 1,286 holders of record of American Community's common stock.

**Dividends.** American Community paid a cash dividend of \$0.08 per share on March 17, 2003. After the merger, the Board of Directors of American Community will decide from time to time whether to pay dividends after evaluating business and financial results and other factors, such as legal restrictions. American Community does not know whether it will declare dividends in the future.

After the merger, the only funds available to American Community for use in paying cash dividends would be dividends received from American Community Bank and First National Bank of the Carolinas. North Carolina law imposes restrictions on the payment of dividends by North Carolina chartered banks. Pursuant to North Carolina banking statutes, a state chartered bank may pay dividends only out of its undivided profits and may not declare a cash dividend unless it has surplus in an amount equal to 50% of its paid-in capital stock after payment of the cash dividend. The National Bank Act states that a national banking association, such as First National Bank of the Carolinas, may only pay dividends out of undivided profits. Additionally, a national banking association may not pay dividends until its surplus fund equals its common capital, unless at least 10% of its net income during the past six month period has been carried to its surplus fund (in the case of quarterly or semi-annual dividends) or (in the case of annual dividends) at least 10% of its net income during the past twelve months.

## Edgar Filing: AMERICAN COMMUNITY BANCSHARES INC - Form S-4/A

Also, under federal banking law, no cash dividend may be paid if a bank is undercapitalized or insolvent or if payment of the cash dividend would render the bank undercapitalized or insolvent, and no cash dividend may be paid by a bank if it is in default of any deposit insurance assessment due to the FDIC. In addition, North Carolina corporate law precludes any distribution to shareholders, including the payment of a dividend, if, after giving effect to the distribution, the corporation:

would not be able to pay its debts as they become due in the usual course of business; or

its total assets would be less than the sum of its total liabilities.

Future dividends will be determined by American Community's Board of Directors in light of circumstances existing from time to time, including:

American Community's growth;

American Community's financial condition and results of operations;

**Table of Contents**

the continued existence of the restrictions described above; and

other factors that the Board of Directors considers relevant.

American Community can give no assurance as to when, or if, it will pay dividends in the future.

**FNB Bancshares, Inc.**

**Limited Market for the Common Stock of FNB.** FNB's common stock is quoted publicly on the OTC Bulletin Board under the symbol

FNBC.OB. As of January 9, 2004, FNB had 521 shareholders of record. The prices shown below do not include commissions or other expenses charged by brokers. The following table sets forth the high and low sale price information of FNB's common stock for the periods indicated. All information has been adjusted for any stock splits and stock dividends effected during the periods presented

Year	Quarterly Period	Price	
		High	Low
		FNBC.OB	
2002	First Quarter	\$ 12.01	\$ 9.29
	Second Quarter	12.38	9.97
	Third Quarter	10.71	10.00
	Fourth Quarter	10.48	10.01
2003	First Quarter	\$ 10.95	\$ 10.05
	Second Quarter	11.75	8.67
	Third Quarter	15.55	11.75
	Fourth Quarter	21.75	15.51

**Dividends.** On March 25, 2003, the FNB Board of Directors approved a 5% common stock dividend payable April 25, 2003 to shareholders of record on April 11, 2003. On March 19, 2002, the FNB Board of Directors approved a 5% common stock dividend payable April 19, 2002 to shareholders of record on April 5, 2002. All share and per share data has been retroactively restated to reflect the stock dividends. FNB has never paid cash dividends.

**Restrictions on Cash Dividends.** FNB's ability to pay dividends is dependent largely upon the ability of its subsidiary bank, First National Bank of the Carolinas, to declare dividends. The National Bank Act states that a national banking association, such as First National Bank of the Carolinas, may only pay dividends out of undivided profits. Additionally, a national banking association may not pay dividends until its surplus fund equals its common capital, unless at least 10% of its net income during the past six month period has been carried to its surplus fund (in the case of quarterly or semi-annual dividends) or (in the case of annual dividends) at least 10% of its net income during the past twelve months.

Also, under federal banking law, no cash dividend may be paid if a bank is undercapitalized or insolvent or if payment of the cash dividend would render the bank undercapitalized or insolvent, and no cash dividend may be paid by a bank if it is in default of any deposit insurance

## Edgar Filing: AMERICAN COMMUNITY BANCSHARES INC - Form S-4/A

assessment due to the FDIC. Subject to these same restrictions on the effect on capital, the payment of future cash dividends will be considered by FNB's Board of Directors when it is deemed prudent to do so.

The following table sets forth equity compensation plan information at December 31, 2002.

### Equity Compensation Plan Information

<u>Plan Category</u>	<u>Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)</u>	<u>Weighted-average exercise price of outstanding options, warrants and rights (b)</u>	<u>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column(a))</u>
Equity compensation plans approved by security holders	136,068	\$ 9.17	32,007



**Table of Contents**

**AMERICAN COMMUNITY AND FNB UNAUDITED PRO FORMA CONDENSED COMBINED CONSOLIDATED FINANCIAL INFORMATION**

The following unaudited pro forma condensed combined consolidated balance sheet as of September 30, 2003 and the unaudited pro forma condensed combined consolidated statements of income for the nine months ended September 30, 2003 and for the year ended December 31, 2002 give effect to the merger, accounted for under the purchase method of accounting.

The unaudited pro forma condensed combined consolidated financial information as of and for the nine months ended September 30, 2003 has been derived from the unaudited interim financial statements for both American Community and FNB, which accompany this Joint Proxy Statement/Prospectus (see Information Incorporated by Reference and FNB Bancshares, Inc. Financial Statements ). The unaudited pro forma condensed combined financial information for the year ended December 31, 2002 is based on the historical financial statements of American Community and FNB under the assumptions and adjustments set forth in the accompanying notes to the unaudited pro forma condensed combined consolidated financial statements. It gives effect to the merger as if it had been consummated at the beginning of the earliest period presented. The unaudited pro forma condensed combined consolidated financial statements do not give effect to the anticipated cost savings or revenue enhancements in connection with the merger.

The unaudited pro forma condensed combined consolidated financial statements should be read together with the historical financial statements of American Community and FNB, including the respective notes to those statements. The pro forma information does not necessarily indicate the combined financial position or the results of operations in the future or the combined financial position or the results of operations that would have been realized had the merger been consummated during the periods or as of the dates for which the pro forma information is presented.

Pro forma per share amounts for the combined entity are based on the consideration as set forth in the merger agreement, (i) using the 20-day average closing price of American Community's common stock of \$11.46 per share on October 20, 2003; (ii) a fixed exchange ratio of 0.50 times 1.7888 American Community's shares for each share of FNB; and (iii) cash consideration of \$6,962,610.

Table of Contents

## AMERICAN COMMUNITY BANCSHARES, INC.

## FNB BANCSHARES, INC.

## UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET

SEPTEMBER 30, 2003

	American Community	FNB	Pro Forma Acquisition Adjustments (Note 2)	Pro Forma Combined
(In thousands, except per share data)				
<b>ASSETS</b>				
Cash and due from banks	\$ 9,479	\$ 1,445	\$ (7,533) B	\$ 3,391
Investment securities available for sale at fair value	52,532	11,213		63,745
Investment securities held to maturity at cost	1,893			1,893
Non-marketable equity securities	792	398		1,190
Loans	197,676	54,985	251 D	252,912
Interest receivable	1,084	288		1,372
Bank premises and equipment	5,271	3,214		8,485
Core deposit intangible			1,208 D	1,208
Goodwill			8,211 E	8,211
Other assets	1,780	186	(487) D	1,479
<b>Total Assets</b>	<b>\$ 270,507</b>	<b>\$ 71,729</b>	<b>\$ 1,650</b>	<b>\$ 343,886</b>
<b>LIABILITIES</b>				
Deposits	\$ 207,790	\$ 60,410	\$ 177 D	\$ 268,377
Borrowings	36,448	3,540		39,988
Other liabilities	2,476	229	520 B	3,225
<b>Total Liabilities</b>	<b>246,714</b>	<b>64,179</b>	<b>697</b>	<b>311,590</b>
<b>SHAREHOLDERS EQUITY</b>				
American Community				
Preferred stock, no par value, 1,000,000 shares authorized, no shares issued and outstanding				
Common stock, \$1 par value, 9,000,000 shares authorized, 2,824,376 shares issued, 3,431,934 shares issued pro forma	2,824		608 A	3,432
Additional paid-in-capital	19,191		7,895 A	27,086
Retained earnings	1,764			1,764
Accumulated other comprehensive income	14			14
FNB				
Preferred stock, \$.01 par value, 10,000,000 shares authorized, no shares issued and outstanding				
		7	(7) C	

Edgar Filing: AMERICAN COMMUNITY BANCSHARES INC - Form S-4/A

Common stock, \$.01 par value, 10,000,000 shares authorized, 679,279

issued and outstanding

Additional paid-in-capital	6,820	(6,820)	C
Retained Earnings	714	(714)	C
Accumulated other comprehensive income	9	(9)	C
	<u>23,793</u>	<u>7,550</u>	<u>953</u>
Total Stockholders Equity			32,296
	<u>\$ 270,507</u>	<u>\$ 71,729</u>	<u>\$ 1,650</u>
Total Liabilities and Stockholders Equity			\$ 343,886
	<u>\$ 8.42</u>	<u>\$ 11.11</u>	<u>\$ 9.41</u>
Total book value per common share			
Tangible book value per common share	\$ 8.42	\$	