

MARK E. EDISON
ATTORNEY AT LAW
216 SOUTH BUCKMAN STREET
SUITE 7
SHEPHERDSVILLE, KENTUCKY 40165

(502) 543-5616
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September 21, 2012

RECEIVED AND FILED
DATE Sept. 24, 2012

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Kandie Adkinson

Ms. Kandie Adkinson
Office of the Secretary of State
Suite 152, State Capitol
700 Capital Avenue
Frankfort, KY 40601

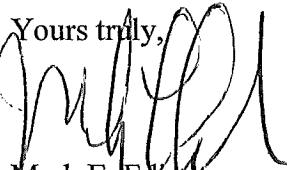
RE: Adjoining Boundaries
Pioneer Village – Hillview
Bullitt County, Kentucky

Dear Ms. Adkinson:

Your office has raised a question concerning what was an overlapping boundary line between the City of Pioneer Village and the City of Hillview in Bullitt County, Kentucky.

Your office was previously provided with a survey prepared by Paul Bradley Armstrong, PLS # 334 dated March 12, 2012, which specifically notes this prior overlap which was decided by the Bullitt Circuit Court case number 83-CI-492 (Judgment enclosed) which was affirmed by the Kentucky Court of Appeals. This Court Order establishes that no overlap of the City boundaries exist as the Court has established this boundary.

If you have any questions, please feel free to contact me.

Yours truly,


Mark E. Edison
Pioneer Village City Attorney

MEE/je

Enclosure
c.c. Mayor Gary Hatcher

BULLITT CIRCUIT COURT
NO. 83-CI-492

CITY OF HILLVIEW

PLAINTIFF

VS:

OPINION - JUDGMENT

CITY OF PIONEER VILLAGE

DEFENDANT

This action comes before the Court on the Defendant's Motion to Dismiss. The Court has previously heard the statement of counsel, and has considered the Memorandum Briefs filed by both parties. It is therefore the Court's opinion:

1. This case presents the classic case for a declaratory judgment action under the provisions of KRS 418.040. There is an actual dispute between two municipalities concerning the validity of their respective annexation ordinances which would annex the same territory. This Court has jurisdiction of the subject matter of this Ordinance.

2. On November 15, 1982, the City of Hillview enacted an Ordinance of Annexation, No. 100. The Complaint discloses that steps to annex the territory commenced on July 20, 1981 by that city's enactment of an ordinance proposing such annexation.

Since within the statutory period, a petition for an election was filed, an election was held on the issue of annexation on November 3, 1981.

Petitioner has filed a zerox copy of a letter dated October 18, 1982 which reads as follows:

Page 1 of 4 Pages

RECEIVED BY THE CLERK OF COURT/EMERGENCY
AT THE COUNTY CLERK'S OFFICE
ON SEPTEMBER 20, 1982
BY: *W. W. Corneel* CLERK
D.C.

"TO WHOM IT MAY CONCERN:"

"This is to certify that the totals for the Annexation Question on November 3, 1981 ballot are as follows:

Yes	47
No	324

Witness my hand this Oct. 18, 1982.

(signed) Nina Mooney
Bullitt County Clerk"

KRS 81A.420(3) provides:

"(3). . . . within sixty (60) days of the certification of election results in which less than seventy five (75%) per cent of the qualified voters in the area opposed annexation, the legislative body may enact an ordinance annexing to the city the territory described in the ordinance."

It must be noted that the election was held on November 3, 1981, the County Clerk's Certificate was dated October 18, 1982 (nearly a year later) and the annexation ordinance enacted November 15, 1982 (more than a year after the election).

KRS 117.035 provides for the appointment of a "County Board of Elections" and further provides that "Records shall be kept of all proceedings, and the records shall be public and kept at the office of the County Clerk".

KRS 118.425(2) provides for the issuance of certificates of election to successful candidates by County Board of Elections. It is apparent that it is this Board that alone is charged with the responsibility for certifying all election results.

As early as 1922 in a case involving a bond issue, the Court of Appeals recognized that the election commissioners (now County Board of Elections) had the duty "to certify the result of the election - that is, how many votes were cast for the proposal and how many against it". Smith v. Livingston County, 195 Ky. 382, 242 S.W. 612 (1922).

It is incumbent on the Plaintiff to show that its Annexation Ordinance was enacted within 60 days of the certification of the 1981 election by the County Board of Elections. The enactment of such Ordinance more than a year later after a letter of certification from the County Clerk, does not satisfy the clear statutory requirements of KRS 81A.420(3).

It would be a strained statutory construction which would permit a city to postpone a decision for annexation for more than a year after an election, by simply waiting to obtain a certificate from the County Clerk until the city was ready to act. Such an issue so important to the residents of an area proposed to be annexed cannot be left in limbo for more than a year following an election. Likewise, other cities interested in annexing the same territory cannot be fenced out by such a delay.

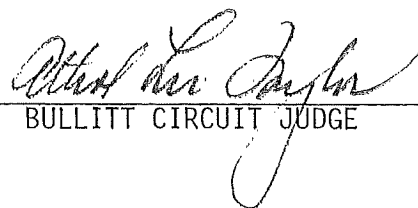
Rule 12.02, Rules of Civil Procedure, provide that in cases such as this, the motion to dismiss shall be treated as one for summary judgment and disposed of under Rule 56. All parties have been given full opportunity to present all material made pertinent to such a motion by the Court.

JUDGMENT

The Court having considered the original and amended pleadings, and all other papers and documents filed by the parties herein, and the oral argument of counsel, their Memorandum Briefs filed herein, and the Court being advised,

IT IS ORDERED AND ADJUDGED that Plaintiff's Complaint be and the same is hereby dismissed at Plaintiff's cost.


This is a final Order and there is no just cause for delay.


BULLITT CIRCUIT JUDGE

May 4, 1984

ENTERED

MAY 7 1984

JEAN HATZELL, CLERK
BULLITT CIRCUIT COURT
BY  D.C.

MARK E. EDISON
ATTORNEY AT LAW
216 SOUTH BUCKMAN STREET
SUITE 7
SHEPHERDSVILLE, KENTUCKY 40165

(502) 543-5616
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September 25, 2012

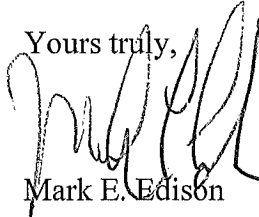
Ms. Kandie Adkinson
Office of the Secretary of State
Suite 152, State Capitol
700 Capitol Avenue
Frankfort, KY 40601

RE: Adjoining Boundaries
Pioneer Village – Hillview
Bullitt County, Kentucky

Dear Ms. Adkinson:

Per our telephone conversation of September 25, 2012, enclosed please find a copy of the original complaint and the final opinion of the Kentucky Court of Appeals in the case between these two (2) cities over the competing annexation ordinances in the early 1980s.

If you have any questions, please feel free to contact me.

Yours truly,

Mark E. Edison

MEE/ac

Enclosures

RECEIVED AND FILED
DATE Sept. 27, 2012

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Kandie Adkinson

FILED

12 SEP 83 08 24

BULLITT CIRCUIT COURT

JEAN HATZELL
BULLITT CIRCUIT COURT
B. Shaw
PLAINTIFF D.C.

CITY OF HILLVIEW
Maryville, Kentucky

VS.

COMPLAINT

NO. 83-CI-492

CITY OF PIONEER VILLAGE
Route 2
Shepherdsville, Kentucky
(Serve: James Welker, Mayor)

DEFENDANT

* * * * *

Comes the plaintiff, City of Hillview, and for its Complaint states:

1. That at all times hereinmentioned, the City of Hillview is a duly organized and existing fourth class city in Bullitt County, Commonwealth of Kentucky.
2. That at all times hereinmentioned, the City of Pioneer Village is a duly organized and existing sixth class city in Bullitt County, Commonwealth of Kentucky.
3. That at all times hereinmentioned, James Welker, is the duly elected mayor of the defendant city, Pioneer Village, and therefore is the chief executive officer thereof, and, therefore, the City of Pioneer Village is amenable to service of process pursuant to Civil Rule 4.04(7) of the Kentucky Rules of Civil Procedure by service on said James Welker.

4. That on July 20, 1981, the plaintiff, the City of Hillview, duly adopted Ordinance No. 80 captioned "An Ordinance Proposing the Annexation of Unincorporated Territory Adjoining the City of Hillview," a copy of which is attached hereto and made a part hereof and marked Exhibit A.

5. That said Ordinance was duly published.

6. Within sixty days of the publication of the Ordinance proposing to annex certain unincorporated territory, fifty percent of the resident votes or owners of real property within the limits of the territory proposed to be annexed petitioned the mayor in opposition thereto.

7. The mayor of the City of Hillview duly delivered a certified copy of the Ordinance to the county clerk of the county in which the territory proposed to be annexed was located who printed on the ballot for use in each precinct embraced in whole or in part within the territory proposed to be annexed the question "Are you in favor of being annexed to the City of Hillview?"

8. An election was duly held at the regular election occurring at least sixty days after the petition.

9. Less than seventy-five percent of the 874 qualified voters in the area to be annexed opposed the annexation as evidenced by the Bullitt County Clerk's certification dated August 26, 1983.

10. That within sixty days of the certification of the election results and which less than seventy-percent of the qualified voters in the area opposed annexation, the legislative body of the City of Hillview enacted an Ordinance No. 100 entitled "An Ordinance Annexing Unincorporated Territory Adjoining the City of Hillview, Kentucky."

Said Ordinance was duly passed and adopted at the regular meeting of the city council of the City of Hillview, Bullitt County, on the 15th day of November, 1982, a copy of which is attached hereto and made a part hereof and marked Exhibit B, along with a copy of said minutes.

11. That subsequent to the City of Hillview adopting Ordinance No. 80 proposing the annexation of certain unincorporated territory adjoining the City of Hillview, which was passed on July 20, 1981, the defendant, the City of Pioneer Village, commenced steps for annexing territory into its city territory which included part of the territory that was included in the City of Hillview's Ordinance No. 80 and which the City of Hillview subsequently annexed.

12. That the City of Pioneer Village is now claiming part of the territory annexed by the City of Hillview.

13. That the City of Pioneer Village has no right or claim to the area annexed by the City of Hillview.

14. That an actual controversy exists between the parties.

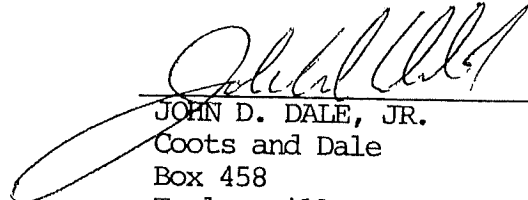
15. That the plaintiff, City of Hillview, seeks a Declaratory Judgment declaring that the City of Pioneer Village's actions taken in regard to annexing the unincorporated territory that the City of Hillview commenced annexation on July 20, 1981 and subsequently attempted to annex said territory be declared null and void, and said unincorporated territory that is in controversy to be declared to have been annexed by and has become a part of the City of Hillview.

16. The City of Hillview's claim is prior and superior to that of the City of Pioneer Village because the City of Hillview was the first

to initiate annexation proceedings in regard to said unincorporated territory that is in controversy and/or that the City of Pioneer Village failed to comply with the annexation procedures.

WHEREFORE, the plaintiff, the City of Hillview, demands:

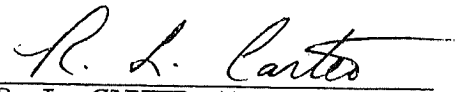
1. For the Court to declare the territory in question to have been annexed by the plaintiff, the City of Hillview.
2. Costs of this action, including a reasonable attorney's fee to the plaintiff's attorney.
3. To all other relief to which the plaintiff is entitled.



JOHN D. DALE, JR.
Coots and Dale
Box 458
Taylorsville, Kentucky 40071
502/477-2296
Attorney for Plaintiff

I verify that I have read the foregoing Complaint and the statements contained therein are true to the best of my knowledge and understanding.

CITY OF HILLVIEW, KENTUCKY

By 

R. L. CARTER, Mayor

STATE OF KENTUCKY)
) SS.
COUNTY OF BULLITT)

Subscribed and sworn to before me by R. L. Carter, Mayor, City of Hillview, Kentucky, this the 7th day of September, 1983.



NOTARY PUBLIC

My commission expires June 19, 1985.

ORDINANCE NO. 1888

AN ORDINANCE PROPOSING THE ANNEXATION OF UNINCORPORATED TERRITORY ADJOINING THE CITY OF HILLVIEW, KENTUCKY.

The City Council of the City of Hillview, Bullitt County, Kentucky, does hereby ordain as follows:

SECTION ONE: The City Council of the City of Hillview, Bullitt County, Kentucky, does hereby ordain that it proposes to annex certain unincorporated territory to the City of Hillview, Bullitt County, Kentucky, and such territory shall become a part of the City for all purposes under the laws of the Commonwealth of Kentucky and such territory to be annexed is described as follows:

TRACT I:

BEGINNING at a point, said point being located in the Northwest corner of Lone Acres, Section 7, Plat Book 4, Page 25 in the Bullitt-Jefferson County line; thence North 89 deg. 26' West 5551.00 feet to a point; thence South 7 deg. 36'20" East 2795.05 feet to a point; thence South 89 deg. 26' East 1802.05 feet to the west right of way of Bluelick Road; thence South 08 deg. 44'59" East 1371.61 feet to a point; thence South 71 deg. 09'20" East 1244.94 feet to a point; thence South 19 deg. 57'30" West 579.23076 feet to a point; thence South 71 deg. 09'20" East 439.68 feet to a point; thence North 18 deg. 58'10" East 2407.89 feet to a point; thence North 18 deg. 48'30" East 331.01 feet to a point; thence South 74 deg. 10'35" East 46.80 feet to a point; thence North 11 deg. 10'40" East 115.31 feet to a point; thence North 13 deg. 28'10" East 330.00 feet to a point; thence North 18 deg. 48'30" East 196.00 feet to a point; thence North 18 deg. 52' East 1377.75 feet to a point; thence North 18 deg. 51'52" East 715.00 feet to the point of beginning.

THERE IS EXCLUDED AND NOT ANNEXED IN THE WITHIN DESCRIBED TERRITORY THE FOLLOWING DESCRIBED TERRITORY:

BEGINNING at a point in the Southerly right-of-way line of Maryville Drive at its intersection with the Westerly line of the tract conveyed to Jeffie Lee by Deed Book 62, Page 406; thence along said Southerly right-of-way line of Maryville Drive South 71 degrees 45 minutes East 1057.51 feet; thence leaving Maryville Drive, South 40 degrees 38 minutes West 913.65 and South 42 degrees 46 minutes 03 seconds West 778.01 feet to a point in the aforesaid westerly line of the tract conveyed to Jeffie Lee; thence along said westerly line, the following courses and distances; North 17 degrees 46 minutes West 400 feet; North 20 degrees 31 minutes West 92 feet; North 21 degrees

E. D. L. A.

57 minutes 85 feet; North 25 degrees 50 minutes West 100.70 feet; North 64 degrees 10 minutes East 135.76 feet; and North 17 degrees 44 minutes East 844.81 feet to the point of beginning, and being Tract II as shown on plat attached to and made a part of a mortgage dated June 14, 1973, of record in Mortgage Book 94, Page 628.

TRACT II:

BEGINNING at a point in the southeast corner of the original boundary of the City of Hillview; thence North 18°10' East 674.70 feet to a point; thence North 69°44'30" East 1037.84 feet; thence North 20°45' East 249.80 feet to a point; thence South 89°26' East to a point 200.0 feet of the east right of way of Preston Highway; thence South 15°07' East 555.75 feet to a point; thence South 53°55'24" West 200.0 feet to a point in the east right of way of Kentucky Highway #61; thence with said right of way, South 25°42' East 200.00 feet; thence South 22°21' East 500.00 feet; thence South 31°16' East 500.00 feet; thence South 38°55'38" West 1031.17 feet to a point; thence South 74°22' West 625.00 feet to a point; thence South 86°37' West 1526.00 feet to a point; thence South 18°52' West 1257.00 feet to a point; thence South 18°52' West 4254.82 feet to a point; thence North 70°25' West 2397.72 feet to a point; thence North 18°51'50" East 2482.67 feet to a point; thence North 71°08'10" West 1693.11 feet to a point; thence North 19°57'30" East approximately 1200.0 feet to the westerly corner of Maryville Subdivision, Section "P" (Plat Book 3, Page 49); thence South 70°02'30" East 404.15 feet; thence North 35°53'24" East 76.27 feet; North 42°31' East 102.36 feet; North 47°28'22" East 59.16 feet; North 54°12'49" East 47.80 feet; North 61°47'55" East 47.80 feet; North 69°23'01" East 47.80 feet; North 84°50'44" East 51.48 feet; North 87°16'39" East 47.80 feet; North 79°41'33" East 47.80 feet; North 72°24'03" East 56.36 feet; North 71°08'10" East 70.00 feet to a point; North 18°51'50" East 5.00 feet; North 71°08'10" East 180.00 feet to a point; North 18°51'50" East 3.06 feet; North 71°08'10" East 585.00 feet; North 18°51'50" East 1370.00 feet; North 19°03'10" East 611.86 feet; North 69°44' East 1398.70 feet; North 71°50' East 851.64 feet to the point of beginning.

This Ordinance is enacted pursuant to KRS 81A.400 et. seq.

This Ordinance shall be published according to law.

Should any section, clause, line, paragraph or part of this Ordinance be held unconstitutional or invalid for any reason, the same shall not affect the remainder of this Ordinance.

Passed at the regular meeting of the City Council of the
City of Hillview, Bullitt County, Kentucky, on July 20, 1981.
Votes for 5, votes against 0, abstentions 0.

R. L. Carter
R. L. Carter, Mayor

ATTEST:

Myra Curry
City Clerk

This is to Certify that I, Myra Curry, City Clerk/Treasuere,
of the City of Hillview, that this is a true copy of the
Proposed Annexation Ordinance #80.

Myra Curry
Notary Public, State At Large, Ky.
Date 7-5-83, My Commission Expires, June 19, 1985

ORDINANCE NO. 100

AN ORDINANCE ANNEXING UNINCORPORATED TERRITORY ADJOINING THE CITY OF HILLVIEW, KENTUCKY.

The City Council of the City of Hillview, Bullitt County, Kentucky, does hereby ordain as follows:

SECTION ONE: The City Council of the City of Hillview, Bullitt County, Kentucky, does hereby ordain the annexing of unincorporated territory to the City of Hillview, Bullitt County, Kentucky, and such territory shall become a part of the City for all purposes under the laws of the Commonwealth of Kentucky and such territory to be annexed is described as follows:

BEGINNING at a point in the southeast corner of the original boundary of the City of Hillview; thence North 18°10' East 674.70 feet to a point; thence North 69°44'30" East 1037.84 feet; thence North 20°45' East 249.80 feet to a point; thence South 89°26' East to a point 200.0 feet of the east right of way of Preston Highway; thence South 15°07' East 555.75 feet to a point; thence South 53°55'24" West 200.0 feet to a point in the east right of way of Kentucky Highway #61; thence with said right of way, South 25°42' East 200.00 feet; thence South 22°21' East 500.00 feet; thence South 31°16' East 500.00 feet; thence South 38°55'38" West 1031.17 feet to a point; thence South 74°22' West 625.00 feet to a point; thence South 86°37' West 1526.00 feet to a point; thence South 18°52' West 1257.00 feet to a point; thence South 18°52' West 4254.82 feet to a point; thence North 70°25' West 2397.72 feet to a point; thence North 18°51'50" East 2482.67 feet to a point; thence North 71°08'10" West 1693.11 feet to a point; thence North 19°57'30" East approximately 1200.0 feet to the westerly corner of Maryville Subdivision, Section "P" (Plat Book 3, Page 49); thence South 70°02'30" East 404.15 feet; thence North 35°53'24" East 76.27 feet; North 42°31' East 102.36 feet; North 47°28'22" East 59.16 feet; North 54°12'49" East 47.80 feet; North 61°47'55" East 47.80 feet; North 69°23'01" East 47.80 feet; North 84°50'44" East 51.48 feet; North 87°16'39" East 47.80 feet; North 79°41'33" East 47.80 feet; North 72°24'03" East 56.36 feet; North 71°08'10" East 70.00 feet to a point; North 18°51'50" East 5.00 feet; North 71°08'10" East 180.00 feet to a point; North 18°51'50" East 3.06 feet; North 71°08'10" East 585.00 feet; North 18°51'50" East 1370.00 feet; North 19°03'10" East 611.86 feet; North 69°44' East 1398.70 feet; North 71°50' East 851.64 feet to the point of beginning.


This Ordinance is enacted pursuant to KRS 81A.400 et. seq.

This Ordinance shall be published according to law.

E. D. L. R.

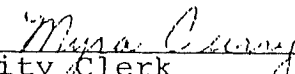
Should any section, clause, line, paragraph, or part of this Ordinance be held unconstitutional, or invalid for any reason, the same shall not affect the remainder of this Ordinance.

Passed at the regular meeting of the City Council of the City of Hillview, Bullitt County, Kentucky, on the 13th day of November, 1982. Votes for 5, votes against _____, abstentions _____




R. L. Carter, Mayor

ATTEST:



City Clerk

This is to Certify that I, Myra Curry, City Clerk/Treasurer, of the City Of Hillview, that this is a true copy of the Annexation Ordinance #100.



Notary Public, State at Large, Ky.
Date 7-5-83 My Commission Expires, June 19, 1985

OPINION RENDERED: March 29, 1985; 3:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

FINA

NO. 84-CA-2170-MR

DATE APR 19 1985

CITY OF HILLVIEW

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE ATHOL LEE TAYLOR, JUDGE
CIVIL ACTION NO. 83-CI-492

CITY OF PIONEER VILLAGE

APPELLEE

AFFIRMING

* * * * *

BEFORE: GUDGEL, LESTER and REYNOLDS, Judges.

LESTER, JUDGE. This is an appeal from a judgment, supported by an opinion, in a declaratory judgment action involving attempts by both the parties to annex the same territory.

In 1980, the General Assembly sought to bring order out of an array of annexation statutes and a product of its efforts was KRS 81A.420. Even though Louisville Shopping Center, Inc. v. City of St. Matthews, Ky., 635 S.W.2d 307 (1982); focused upon the statute, its main issues were not such as to be of any great assistance in the case at bar. Accordingly, this matter could be viewed as one of first impression.

In July, 1981, appellant enacted Ordinance No. 80 declaring its intention to annex certain described unincorporated territory adjoining the municipality. This action was in conformity with KRS 81A.420(1). The ordinance was published and within sixty days of the adoption, fifty percent of the voters resident in the territory sought to be incorporated into Hillview petitioned the mayor in opposition to the proposal. This was in conformity with KRS 81A.420(2).

Pursuant to KRS 81A.420(2)(a), the mayor delivered a certified copy of the ordinance to the county clerk who placed the proposed annexation issue on the ballot for the November, 1981 general election. For some reason, unexplained in the record, the Bullitt County Clerk did not certify the election results until October 18, 1982, at which time she reported that out of 371 votes cast on the annexation question, 47 favored the proposal while 324 were opposed. This result meant that less than 75% of the qualified voters in the area failed to oppose the annexation (there being 874 qualified) which brought the election results within the purview of KRS 81A.420(2)(b) to the effect:

If less than seventy-five percent (75%) of the qualified voters in the area to be annexed oppose annexation, the unincorporated territory shall become a part of the city.

It was not until November 15, 1982, that appellant took any further step which was the adoption of Ordinance No. 100 which purported to annex a portion of the territory which was described in its earlier enactment (Ord. No. 80) as well as being only a portion of the area submitted to the voters.

However, prior to the last mentioned date, Pioneer Village took steps to annex a portion of the land claimed by Hillview. This was done after the election and prior to the enactment of Ordinance No. 100 by appellant, or more specifically in July, 1982.

On August 26, 1983, the Bullitt County Clerk's Office notified appellant that there were approximately 874 voters eligible to vote on the issue of annexation. The following month, Hillview filed a declaratory judgment action, naming appellee as the defendant, seeking a judicial mandate that the area sought to be annexed by Pioneer Village had already been annexed by Hillview and that any action on the part of appellee with regard thereto be declared null and void.

Pioneer Village, although it did not file an answer, moved to dismiss which motion was eventually sustained by the trial court whose judgment was supported by an opinion.

Appellant takes a rather unique approach in its first contention on appeal, in that it maintains that appellee had no standing to object to the annexation sought by way of the declaratory judgment action it filed. This position is based upon the premise that Pioneer Village failed to plea, by way of answer, and prove its own commencement of annexation proceedings. We note that it was Hillview that named Pioneer Village and caused process to issue pursuant to CR 57 and Bertelsman & Phillips, Kentucky Practice and Comment 2 thereunder, both of which provide in part:

The procedure for obtaining a declaratory judgment pursuant to statute shall be in accordance with these Rules, ...

and

opposing parties should be served with process as in other cases under Rule 4.

Moreover, we note that the same authors under Comment 6 following CR 13.01 express the view:

It is submitted that this Rule, as do other Rules, applies to the declaratory judgment action (emphasis added).

We are cognizant that there can be cases where no responsive pleadings, such as an answer, are necessary in declaratory judgment actions as was discussed in Osborne v. Hewitt, Ky., 335 S.W.2d 922 (1960). This leads us to the conclusion that in this type of litigation such pleadings are permissive as opposed to mandatory. This view gains some support in light of the provision of KRS 418.050 which permits a declaration of rights action to be "docketed for early hearing as in the case of a motion." In light of what we have said, then the averments of Hillview's pleading shall be taken as denied or avoided. CR 8.04. Therefore, appellee was not required to file an answer.

Appellant has obviously overlooked the provisions of CR 12.01 and the comments following it in Bertelsman & Phillips, Kentucky Practice, for the appellee's motion to dismiss suspended the running of the time for responsive pleading until after the court took some action on the motion. Theoretically, the time for answer, if one was necessary, is still open.

The second issue revolves around the time lapse between the election, the certification and the adoption of the second annexation ordinance (No. 100). For the purpose of dealing with this question, we will assume, without so stating, that the certification was valid in all respects. KRS 81A.420(3) permits a city, if it desires to complete the annexation cycle, to adopt a second ordinance following the vote on the issue. This must be accomplished not within sixty days from the election but within sixty days following the certification. Treating the certification as valid and it being dated October 18, 1982, and Ordinance No. 100 having been adopted some twenty-eight days thereafter, then the second legislative act was within the time frame of the statute. We wish to point out to the parties that the legislature did not set a limit following the election as to when the certification had to be made and we, as did the court in City of St. Matthews v. Arterburn, Ky., 419 S.W.2d 730, 732 (1967), recognize

... that a court may not legislate by fixing an arbitrary time limit in the absence of a statute fixing a maximum time.

We hasten to comment that if Hillview was so vitally interested in consuming the area involved, then it should have sought a proper certification as soon after the election as possible.

In Milby v. Mears, Ky.App., 580 S.W.2d 724 (1979), this court pointed out that "[t]he reply brief is not a device for raising new issues which are essential to the success of the appeal" and, to some extent, we find such to be the

situation in the case at bar. Without any specific reference in the brief-in-chief, the appellant urges, by way of reply, that KRS 81A.420(2)(b) is self executing in that once an election is held and less than 75% of the qualified voters oppose annexation, then "the unincorporated territory shall become part of the city." Appellee was not afforded an opportunity to address the question, but since it neither moved for such a chance to so argue nor sought to have stricken that portion of the brief, we will deal with the contention. We do so because this is a matter of first impression under the applicable existing statutes.

It is the function of the judiciary to interpret the legislative enactment in an effort to seek the true intent thereof. Historically, our several annexation statutes pertaining to the smaller municipalities anticipated two distinct ordinances in order to annex. This we deem to be true in our present statutes. Even though KRS 81A.420(2)(b), at first blush, would indicate that the vote would be the same as incorporation of the territory, we view KRS 81A.420(3) as being a necessary final step which must follow the vote. It provides a safety valve in the event the city may want to abandon the annexation or take in less territory than originally sought. We see the use of the permissive term "may" as meaning a city may complete the annexation cycle or may bring the efforts to a conclusion without annexing. We note that the last sentence of the subsection provides:

Upon the enactment of this ordinance
[the second ordinance], the territory
shall become part of the city for all
purposes.

We find it difficult, reading the statute as a whole, to believe that the General Assembly intended that where there is opposition to the annexation, anything other than the first ordinance, the election and the second ordinance would suffice to accomplish the purpose.

The last major contention is the validity of the certification. In the first place, the certification of 1982 is faulty as to content. The statute (KRS 81A.420(2)(b)) refers to "less than seventy-five percent (75%) of the qualified voters in the area ..." which means that the certification should set forth the total number of qualified voters in the area or else how could it be determined if less than 75% of them opposed the annexation? Merely reciting how many were "for" or "against" relates nothing from a statutory standpoint. By the same token, a certification informing as to the number of qualified voters without the election results tells nothing. In this litigation, the alleged certifications standing separately fail to fulfill the office of proper certification.

Smith v. Livingston, 195 Ky. 382, 242 S.W. 612, 616 (1922), in speaking of the duties of election commissioners, pointed out:

Their only duty is to certify the result of the election - that is, how many votes were cast for the proposal and how many against it.

By virtue of KRS 117.035(4), the county board of elections (successor title to election commissioners) is to make such certificates of elections as are necessary. The predecessor statutes (KRS 127.030, 116.040 etc.) required the same.

Pursuant to KRS 81.420(3) such a certificate is mandated

and we believe the law to be clear that the county board of elections is the only proper source of a certificate from any type of election or vote upon any type of issue. Appellant's argument that Smith, supra, is a 1922 case, that we no longer employ the term election commissioners and that the case did not involve annexation are all without merit since we are dealing with whom is the proper entity to issue a certificate of election and nothing else.

Since the appellant sought a declaration of rights based upon a faulty election certificate, the judgment is affirmed for the reasons stated herein.

ALL CONCUR.

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APR 30 1985

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October 17, 2012

RECEIVED AND FILED
DATE October 22, 2012

ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY Kandie Adkinson

Ms. Kandie Adkinson
Office of the Secretary of State
Land Office Division
Capitol Annex Suite T40
702 Capital Avenue
Frankfort, KY 40601

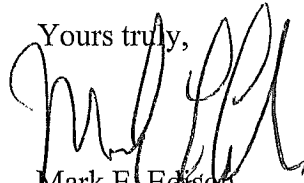
RE: City of Hillview/City of Pioneer Village
Prior boundary overlap
Bullitt County, Kentucky

Dear Ms. Adkinson:

I have reviewed the e-mail sent to Ms. Ricki Daniels, City Clerk of the City of Pioneer Village concerning the above referenced issue and the statements of facts that are contained therein.

All of the statements reflect what the public record discloses and what each City recognizes as its current boundary since the Kentucky Court of Appeals decision in 1985.

If you have any questions, or need any additional information, please feel free to contact me.

Yours truly,

Mark E. Edison

MEE/ac

x.c. Recka Daniels, City Clerk

Adkinson, Kandie (SOS)

To: Ricki Daniels
Cc: Anness, Kimberly (COT)
Subject: RE: Pioneer Village Boundaries

Good Morning, Ladies,

Mark sent a copy of the complaint styled City of Hillview vs. City of Pioneer Village. The information is extremely helpful. (Thank you)

Please confirm our understanding of this:

1. Hillview approved Annexation Ordinance 100 and Pioneer Village approved Annexation Ordinance 82-03.
2. A portion of the areas annexed by each city overlapped.
3. Neither ordinance was nullified by the Bullitt Circuit Court or the Kentucky Court of Appeals.
4. Due to a delayed election regarding Hillview Ordinance 100, the court ruled Pioneer Village had completed the annexation process for the overlapping area first. (The court was quick to point out there is no time requirement for holding elections regarding annexations. That decision may have resulted in Hillview retaining the remainder of the area annexed by Ordinance 100.)
5. The overlapping area is identified on Annexation Ordinance 82-03 with Resolution 2012-01 attached received by the office of Secretary of State on April 2, 2012.
6. Due to the court's decision to grant the overlap to Pioneer Village, the Hillview map should be adjusted to remove the overlapping area from the Hillview boundary as depicted on the interactive map on the "Kentucky Cities Website."
7. Both cities accepted the court decision and have considered the area once in contention as belonging to Pioneer Village since the 1980's.

Ricki, can you forward this to Mark, please? If I have interpreted the court information correctly, or if edits need to be made, please let me know. I'll file your response along with copies of the court records in the Hillview and Pioneer Village files so we will be prepared to answer any future inquiries. Kim, we'll also send you copies of the court records.

Based on the response by Ricki/Mark, and any edits that need to be made, our office will ask the state DGI office to correct the Hillview boundary to remove the overlap.

Thank you, Everyone, for helping us ensure the interactive maps correctly reflect changes to city boundaries.

Kandie Adkinson
Office of the Secretary of State
Land Office Division
Capitol Annex, Suite T40
702 Capital Avenue
Frankfort, KY 40601
phone (502) 782-7408

From: Ricki Daniels [mailto:cityclerk@cityofpioneervillage.org]
Sent: Wednesday, October 10, 2012 4:43 PM
To: Adkinson, Kandie (SOS)
Subject: Pioneer Village Boundaries

Hi Kandie,

Have you heard anything on the overlap of Hillview and Pioneer Village. I believe Mark has sent what you requested.