

appeals
NO. 82-CI-06570

FILED
MAR 18 1 05 PM '83
JEFFERSON CIRCUIT COURT
SECOND DIVISION

IN RE: THE PROPOSED SIXTH CLASS CITY
OF NEWBURG, KENTUCKY

SECRETARY OF STATE
RECEIVED

MAR 23 1983

AGREED AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND JUDGMENT

COMMONWEALTH OF KENTUCKY

* * * * *

Pursuant to CR 60.02, the parties having agreed that a mistake was committed, and now the Court having been advised by the parties as to the proper facts, does hereby rescind its Findings of Fact, Conclusions of Law and Judgment entered on Decmber 29, 1982, and in lieu thereof enter the following Agreed Amended Findings of Fact, Conclusions of Law and Judgment.

This case coming on for hearing on November 15, 1982, November 22, 1982, and December 27, 1982, all at 1:00 P.M., on the application of the Petitioners to incorporate a sixth class city in Jefferson County, Kentucky, to be known as the City of Newburg, and the Court having considered the Amended Petition, its supporting exhibits, and testimony of all interested parties, including objectors and having now considered the Settlement Agreement of the parties and the tendered Agreed Amended Findings of

Fact, Conclusions of Law and Judgment in In Re: City of Old Petersburg, Jefferson County, Kentucky, Ex Parte, 82-CI-07756, makes the following Findings of Fact and Conclusions of Law and orders and adjudges the following:

1. The Petition was docketed for a hearing not less than twenty (20) days from the date of filing of the Petition and notice of the Petition and of its purpose was given by publication, in accordance with Chapter 424 of the Kentucky Revised Statutes by means of publication in the Louisville Times, which is the newspaper published in Jefferson County, Kentucky, meeting the qualifications of KRS 424.140, on November 6, 1982, said date not being less than seven (7) nor more than twenty-one (21) days before the hearing of November 15, 1982. Said notice was given in accordance with KRS 81.05 and KRS 424.120 and 424.130.

2. At least 300 persons, and more specifically, approximately 354 persons reside in the territory sought to be incorporated.

3. The total assessed value of the real property in the proposed territory is \$23,471,760.00 and the total assessed value of the real property owners who are signators to the Amended Petition is \$17,518,830.00.

4. The Amended Petition contains the signatures and addresses of at least two-thirds (2/3) of the assessed value of the real estate located within the proposed territory and that said Amended Petition conforms with the requirements of KRS 81.050.

5. Incorporation constitutes a reasonable way of providing the public services sought by the voters and property owners of the territory, and there is no other reasonable way of providing the services.
6. The territory is contiguous.
7. The territory is able to provide necessary city services to its residents within a reasonable period after its incorporation.
8. The interest of other areas and adjacent local governments are not unreasonably prejudiced by the incorporation.
9. The character of the territory is urban.
10. No existing city, county or district has the ability of providing needed services within a reasonable period of time.
11. The territory is not interdependent or part of one community with an existing city.
12. The territory needs police protection, street lighting, drainage and insect control, as well as other city services which will be provided by the incorporation of the territory.
13. The development scheme of applicable land use plans is consistent with the incorporation of the territory.
14. The territory contains approximately 385 acres, more or less, and is generally flat in topography.
15. The incorporation of the territory will have a favorable effect on the population growth and assessed valuation of the real property in the territory and would not adversely affect other areas located in the vicinity of said territory.

16. Attached hereto and incorporated herein is an accurate map of the proposed city.

17. The Petitioners seek to incorporate the proposed city in order to provide services for the area through the medium of a city government. These services include street lighting, police protection, drainage and weed and insect control, as well as other city services. Furthermore, the Petitioners desire to incorporate so that they may form their own governmental unit, instead of subjecting themselves to the risk of absorption by neighboring municipalities, and so they may preserve the cohesive residential, commercial and industrial character of this community and enact ordinances for the common good of the inhabitants and property owners in this territory.

18. At the present time, the following services currently exist within the territory:

(a) Police protection is provided by the Jefferson County Police Department.

(b) Fire protection is provided by the Black Mudd Volunteer Fire Department, Camp Taylor Volunteer Fire Department, and the Buechel Volunteer Fire Department.

(c) Road maintenance is provided by Jefferson County with respect to those roads constituting part of the county road system and by the State of Kentucky for those roads constituting part of the State road system.

(d) Garbage removal is available through private contractors.

(e) Storm and sanitary sewers are provided by the Metropolitan Sewer District.

(f) Water is provided by the Louisville Water Company.

(g) Gas and electricity are furnished by the Louisville Gas and Electric Company.

(h) Telephone service is furnished by South Central Bell Telephone Co.

(i) The educational system is provided by the Louisville and Jefferson County Board of Education.

19. Petitioners intend and desire that the proposed City shall be governed by the commission plan pursuant to and in accordance with Chapter 83A of the Kentucky Revised Statutes.

20. The Petitioners desire the appointment of the following persons, all residents of the proposed City, who are registered voters and meet the other legal requirements of KRS 83A.040, said persons to hold the following offices until the next regular election, at which time officers shall be elected by the residents of the City.

<u>NAME</u>	<u>OFFICE</u>
William E. Coons, Jr. 4815 Poplar Level Road Louisville, KY 40213	Mayor
Clarence B. Mattingly 4819 Poplar Level Road Louisville, KY 40213	City Commissioner

<u>NAME</u>	<u>OFFICE</u>
Phillip A. Schevetto, Sr. 4829 Poplar Level Road Louisville, KY 40213	City Commissioner
Ronald Ray Wolf 4201 E. Indian Trail Louisville, KY 40213	City Commissioner
Burton Wolkow 606 Huntington Park Louisville, KY 40213	City Commissioner

21. The Court further concludes that the duly constituted City Council of the City is the legal representative of the Petitioners herein, and in their representative capacity desire to change the proposed name of the City from the "City of Newburg" to the "City of Poplar Hills."

CONCLUSIONS OF LAW

The Kentucky Revised Statute 81.060 requires that this Court consider whether:

(a) "The interests of other areas and adjacent local government is not unreasonably prejudiced by incorporation." KRS 81.060(1)(e).

(b) "The ability of any existing city, county or district to provide needed services." KRS 81.060(2)(b).

(c) "... the territory and any existing city are interdependent on part of one community." KRS 81.060(2)(c).

(d) "The need for city services in the territory." KRS 81.060(2)(d).

This Court in fulfilling the ministerial function of municipal incorporation which the Legislature has granted to it, necessarily must consider the advantages of incorporation by the proposed sixth class city in the context of the services which can be provided by existing governmental units. Most particularly, in this case, it has been necessary to consider the ability of the City of Old Petersburg to provide services.

There is a relationship between Old Petersburg and the proposed City. The Petition to form the City of Newburg was filed on July 23, 1982. By order of the Jefferson Circuit Court, Third Division, issued on December 6, 1982, the Petition was granted. The newly formed City of Old Petersburg includes most of the entire area which was sought to be incorporated by the City of Newburg.

This Court finds as a matter of law that if the proposed City is incorporated, then its' area shall be deleted from the boundaries of the City of Old Petersburg as Newburg took the first public procedural steps towards incorporation. Therefore, the issue before the Court is not whether the residents of the proposed City should be a city, since that question has been decided by the Third Division ruling which incorporated the City of Old Petersburg, but rather the question is whether the proposed City should be a separately incorporated city.

There is no obligation by law to include the Petitioners herein in the largest available city. Smaller units of government can be and frequently are more responsive to the wishes and needs of the residents and businesses which they govern.

This Court has heard all the evidence presented in this case and infers from this evidence that Old Petersburg sought to incorporate the area also sought to be incorporated as Newburg primarily for the tax base which the area businesses would provide. In addition, the City of Old Petersburg sought to incorporate the area in order to control the growth and zoning therein.

There is no reason that Old Petersburg cannot stand alone. The evidence presented has proven to this Court that the proposed City is not interrelated with the remainder of the area of Old Petersburg. The proposed City has unique community concerns, interests and needs for services which the remainder of Old Petersburg does not share.

Therefore, the Court concludes, as a matter of law, that:

A. That there are at least 300 persons residing in the territory sought to be incorporated and more specifically the Court finds that there are 354 residents in the territory.

B. Incorporation constitutes a reasonable way of providing the public services sought by the voters or property owners of the territory, and there is no other reasonable way of providing the services needed, such services include, but are not limited to, police protection, street lighting,

drainage, insect control, and development of the residential, commercial and industrial characteristics of the territory of Newburg.

C. The territory is contiguous.

D. The territory is able to provide necessary city services to its residents within a reasonable period after its incorporation; specifically, the Court finds that the Petitioners have submitted to this Court a number of services to be provided to the residents, a proposed budget for said services and the means of raising taxes to provide services to the territory within the immediate future.

E. The interest of other areas and adjacent local governments, and more specifically the City of Old Petersburg, as referenced above and as set forth in the Court's Findings of Fact, are not unreasonably prejudiced by the incorporation of the proposed City.

The Court incorporates herein by reference as if cited in full its Findings of Fact and the Court concludes, as a matter of law, that all the standards and conditions for incorporation of the proposed City of Newburg, Jefferson County, Kentucky, as set forth in KRS 81.050 through 81.060, both inclusive, have been met and further concludes that the publication requirements of KRS Chapter 424 have also been met.

JUDGMENT

Therefore, the premises considered, IT IS ORDERED AND ADJUDGED as follows:

1. There is hereby incorporated and established in Jefferson County, Kentucky, the City of Poplar Hills.

2. The metes and bounds description of the boundaries of the City of Poplar Hills is as follows:

BEGINNING at the intersection of the centerline of Poplar Level Road with the centerline of Indian Trail; then Northwest with the centerline of Poplar Level Road 3114 feet+ to its intersection with the East line of the tract conveyed to Molter by deed of record in Deed Book 3442, Page 71 in the Office of the County Court Clerk of Jefferson County, Kentucky; thence with the East line of Molter in a Southerly direction, 220 feet+ to the Southeast corner of said Molter tract; thence with the South line of Molter if extended in a Northwesterly direction, 411 feet+ to a point in the East line of a tract conveyed to Bloom and Rosen by deed of record in Deed Book 4414, Page 256 in the aforesaid Clerk's office; thence in a Southerly direction with the East line of Bloom and Rosen and the East line of a tract conveyed to Millwood Limited Partnership by deed of record in Deed Book 4982, Page 205 in the aforesaid Clerk's office a distance of 935 feet+ to the Southeast corner of Millwood Limited Partnership; thence with the South line of Millwood Limited Partnership, in a Westerly direction 449.5 feet+ to the Southwest corner of same; thence with the West line of Millwood Limited Partnership in a Northerly direction 1161.6 feet+ to the Southwesterly corner of a tract conveyed to E.P. Scott by deed of record in Deed Book 5095, Page 566 in the aforesaid Clerk's office; thence with the Westerly line of Scott in a Northeasterly direction 230 feet+, to its intersection with the centerline of Poplar Level Road; thence with the centerline of Poplar Level Road in a Southeasterly direction, 450 feet+ to its intersection with the centerline of Produce Road; thence with the centerline of Produce Road in a Northeasterly direction 3260 feet+ to its intersection with the centerline of Jennings Lane; thence with the centerline of Jennings Lane in a Northwesterly direction 2650 feet+ to its intersection with the Southerly right of way line of the Southern Railroad; thence with the Southerly line of the Southern Railroad in an Easterly direction, 3740 feet+ to its intersection with the Northerly line of Produce Road; thence in a Southerly direction 80 feet+ to the Southerly line of Produce Road; thence along said right-of-way line of Produce in a

westerly direction 26 feet+ to a P.C. of a curve; thence along said curve to the left having a radius of 769 feet+, 338 feet+ to the P.T. of the curve; thence continuing with said south right-of-way line of Produce Road in a westerly direction, 740 feet+ to a point at the northwest corner of tract 1-D of U.R. Project No. R-69, Secion 1 as recorded in Plat Book 30, Page 79, in the Office of the Jefferson County Court Clerk; thence along the westerly line of said tract 1-D in a southerly direction 834 feet+ to the northerly line of Abernathy Road; thence along said northerly line of Abernathy Road 793.18 feet+ in a southwesterly direction to a point, said point also being on the northerly line of Abernathy Road; thence continuing 584.00 feet+ southwesterly on said northerly line of Abernathy Road extended to its intersection with the northeasterly line of a tract conveyed to the Georgia Industrial Realty Company by deed of record in Deed Book 3199, Page 113; thence southeasterly with said northeasterly line of said tract extended to its point of intersection with the centerline of Indian Trail; thence southeast along the centerline of Indian Trail 3408 feet+ to the point of the beginning, containing 390 acres+.

3. The population contained in the City of Poplar Hills is 354 and by reason of its population the City of Poplar Hills shall be and is hereby assigned to the sixth class of cities.

4. The City of Poplar Hills shall operate under the commission plan of government and the following persons be, and they are hereby appointed to hold the following offices, until the next regular election, at which time the officers may be elected and at which time officers shall be elected by residents of the City of Poplar Hills, Jefferson County, Kentucky.

<u>NAME</u>	<u>OFFICE</u>
William E. Coons, Jr. 4815 Poplar Level Road Louisville, KY 40213	Mayor
Clarence B. Mattingly 4819 Poplar Level Road Louisville, KY 40213	City Commissioner

NAME

Phillip A. Schevetto, Sr.
4829 Poplar Level Road
Louisville, KY 40213

Ronald Ray Wolf
4201 E. Indian Trail
Louisville, KY 40213

Burton Wolkow
606 Huntington Park
Louisville, KY 40213

OFFICE

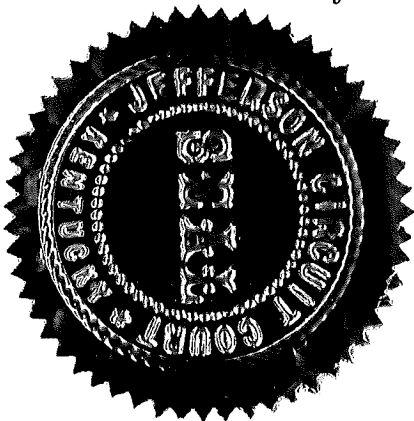
City Commissioner

City Commissioner

City Commissioner

5. The Clerk of the Jefferson Circuit Court is hereby ORDERED within ten (10) days from the date of entry of Judgment, to send a certified copy of this Agreed Amended Findings of Fact, Conclusions of Law and Judgment to the Secretary of State of the Commonwealth of Kentucky, whose duty it shall be to properly index and file this Judgment as a permanent record in his office, all in accordance with KRS 81.060(5).

This is a final Judgment, and there is no just reason for delay in its entry.



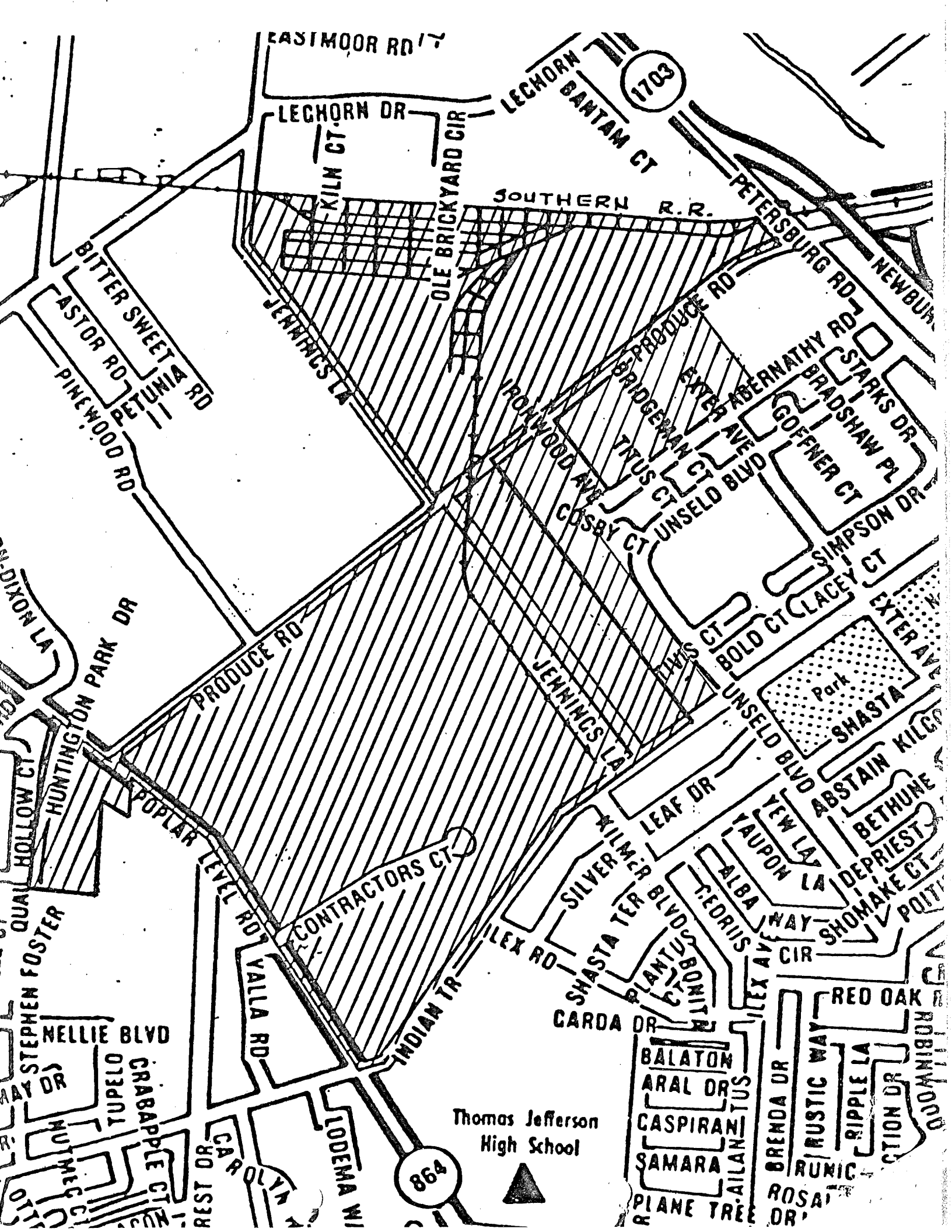
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JUDGE ENTERED IN COURT

DATED: MAR 18 1983
PAULIE MILLER, Clerk
By *[Signature]* _____
Deputy Clerk

CERTIFIED COPY OF RECORD
OF JEFFERSON CIRCUIT COURT
Paulie Miller
PAULIE MILLER, CLERK
BY *[Signature]* D.C.



EASTMOOR RD

LECHORN DR

KILN CT

OLE BRICKYARD CIR

SOUTHERN R.R.

LECHORN BANTAM CT

1703

PETERSBURG RD

NEWBUR

BITTER SWEET RD

ASTOR RD

PINEWOOD RD

JENNINGS LA

ROCKWOOD AVE

COSBY CT

RIDGEMAN CT

THUS CT

UNSELD BLVD

STARKS DR

BRADSHAW PL

GOFFNER CT

SIMPSON DR

CLACEY CT

EXTER AVE

SHASTA

ABSTAIN

KILCO

BETHUNE

DEPRIEST

SHOMAKE CT

POIT

YEW LA

TAUPON LA

ALBA WAY

CEDRIS

SILVER TER BLVD

MILMER

LEAF DR

UNSELD BLVD

BOLD CT

CLACEY CT

SIMPSON DR

GOFFNER CT

BRADSHAW PL

STARKS DR

ABERNATHY RD

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