

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED
SEP 02 2004
PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

PADDOCK AT EASTPOINT, LLC,)	
LOUIS K. KLEMENZ, AND ST. JOSEPH)	
CATHOLIC ORPHAN SOCIETY,)	CASE NO. 2004-00293
COMPLAINANTS)	
)	
v.)	
)	
LOUISVILLE GAS & ELECTRIC CO.)	
DEFENDANT)	
)	

**MOTION FOR LEAVE TO INTERVENE
IN THE PROCEEDING**

* * * * *

Comes MRH Development Company (“MRH”), by counsel and pursuant to 807 KAR 5:001(8), moves the Public Service Commission to enter an order permitting MRH to intervene in the above matter and for an order requiring Respondent Louisville Gas & Electric Company (“LG&E”) to apply for a *Certificate of Public Convenience and Necessity* as required KRS 278.020 and 807 KAR 5:120(e).

In support of its motion, MRH states as follows:

1. That MRH owns a parcel of real estate adjacent to I-265 in Louisville, Jefferson County, Kentucky.
2. That MRH has been named as a Defendant in an action filed by LG&E by which it attempts to acquire an easement together with rights and authorities to enter, construct, inspect,

maintain, operate, enlarge, rebuild, repair and patrol the parcel owned by MRH (Complaint attached hereto as Exhibit "A").

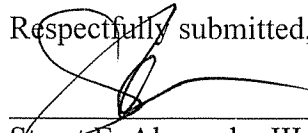
3. That LG&E has numerous planned routes for this line, some of which involve MRH's parcel and some of which that do not, but LG&E has never obtained a *Certificate of Public Convenience and Necessity* as required by KRS 278.020.

4. The interests of MRH will not be adequately represented unless the Commission permits MRH to intervene as MRH is an adjoining landowner to Complainants herein, and since MRH (like Complainants) have been sued by LG&E in an attempt to avoid its statutory obligations to obtain a *Certificate of Public Convenience and Necessity* from this Commission.

5. That LG&E is required, by Kentucky law, to obtained a *Certificate of Public Convenience and Necessity* and that KRS 278.020 is a procedural statute which, among other things, represents the Legislature's intention that the issue of necessity be determined by this Commission.

Based on the foregoing, Intervening Petitioner MRH is, has been, and will be directly affected by LG&E's actions and, therefore should be granted leave to intervene and to participate in a local public hearing on the proposed extension. MRH requests that this Commission enter an order requiring LG&E to file an application for the construction of the extension of the subject 138 KV Electrical Transmission Line and to obtain a *Certificate of Public Convenience and Necessity*.

Respectfully submitted,



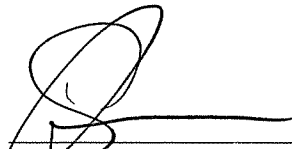
Stuart F. Alexander III
Sandra F. Keene
Terrell L. Black
Tilford Dobbins Alexander Buckaway
& Black, LLP
401 West Main Street, Ste. 1400
Louisville, Kentucky 40202
(502) 584-1000

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was this 2nd day of September, 2004 mailed to the following parties of record:

Kendrick R. Riggs
J. Gregory Cornett
OGDEN NEWELL & WELCH, PLLC
1700 PNC Plaza
500 W. Jefferson Street
Louisville, Kentucky 40202

James Dimas, Sr. Corporate Atty.
Louisville Gas & Electric Company
220 West Main Street
P.O. Box 32010
Louisville, Kentucky 40232
Counsel for LG&E



Stuart F. Alexander III

NO. 04C107083

JEFFERSON CIRCUIT COURT

DIVISION _____

LOUISVILLE GAS AND ELECTRIC COMPANY

PLAINTIFF

VS.

PETITION

JEFFERSON CIRCUIT COURT
DIVISION SIX (6)

MRH DEVELOPMENT CO.

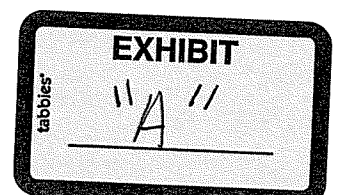
DEFENDANT

Serve:
Terrell Black
3 Riverfront Plaza, Suite 320
Louisville, Kentucky 40202

* * * * *

Comes the plaintiff, Louisville Gas and Electric Company, and, for its Petition herein, states and alleges as follows:

1. That plaintiff is a corporation duly organized and existing under the laws of the Commonwealth of Kentucky, and that by reason of its creation under said laws it is authorized to construct, inspect, maintain, operate, enlarge, rebuild and repair transmission and distribution lines and systems in and through the said Commonwealth in the County of Jefferson and other counties of Kentucky for the transmission, distribution and sale of electrical energy to persons, corporations and municipalities desiring to purchase same and that plaintiff has the power of eminent domain to acquire the property rights and privileges needed for such uses and purposes.



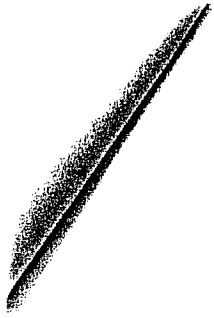
2. That in order to construct, operate and maintain its said system of transmission and distribution lines, it is necessary that the plaintiff acquire from the defendant the easement hereinafter described, together with right and authority to enter upon said lands for the purpose of constructing, inspecting, maintaining, operating, enlarging, rebuilding, repairing and patrolling over, on and across said lands, the aforesaid lines including poles and all equipment and facilities related thereto.

3. That the easement, hereinafter described, will be located upon a portion of that land situated in Jefferson County, Kentucky, and being more particularly described in Exhibit "A" attached hereto, being a part of the same property conveyed to MRH Development Co., by deed from Jefferson County Economic Development Corporation, dated March 18, 1997, and of record in Deed Book 6860, Page 045, in the Jefferson County Court Clerk's Office.

4. That the easement for transmission line and electric distribution purposes sought on the above described property is described as follows:

An easement for transmission line and electric distribution purposes over and across a strip of land 100 feet in width and lying 50 feet on both sides of a centerline, insofar as the lands of the defendant extend to 50 feet on each side of said centerline, which centerline is described as follows:

Beginning at a point, on the East edge of right-of-way of US-I-265 (Gene Snyder Freeway ramp-1), said point being the southern most corner of the parent tract (D.B. 6860, Pg. 45), said point also being the Southwest Corner of an adjoining tract owned by The



Commonwealth of Kentucky (D.B. 5387, Pg. 633 excess purchase for the construction of US-I-265 along old Old Henry Road now a dead end); Thence with the east edge of right-of-way and the southern edge of the parent tract N56°51'40"W - 69.83 feet to the point where centerline of said easement enters parent tract and being the **Point of Beginning** for the description of centerline of said easement; Thence leaving the right-of-way of US-I-265 with the centerline of said easement and across the parent tract N07°56'25"W - 21.60 feet, N20°40'04"W - 683.54 feet, N02°57'06"E - 598.29 feet and N05°05'01"E - 494.53 feet to the point on the division line between the parent tract and Louis Klemenz (D.B. 6909, Pg. 592) and being S58°52'49"E - 14.47 feet to an iron pin found PLS 3477, said pin being the northwest corner of the parent tract. Said easement covers 2.893 acres.

5. That the above described easement is shown as the hatched area on that plat annexed hereto as Exhibit "B" and made a part hereof by reference.

6. That this action is prosecuted under KRS 416.550 to KRS 416.670.

7. That in connection with the construction, inspection, maintenance, operation, enlargement, rebuilding, repairing and patrolling of said lines, it is necessary that the plaintiff be granted the right and privilege to trim trees and cut down any trees located within said easement above described and any other trees located in such proximity to said lines that in falling might come in contact with wires, and also the right to do all trimming and removal of trees and branches necessary for the proper clearance of said lines; and that it is also necessary that plaintiff be granted the right of ingress and egress over

and upon the lands of defendant provided, however, that plaintiff will, whenever practicable to do so, use regularly established roads; and it is further necessary that the defendant be restricted from constructing any buildings, signs, towers, antennas, swimming pools or other structures upon the easement herein sought, excepting fences, and that no changes in grade be made within the easement which would interfere with the rights and privileges herein sought.

8. That plaintiff shall pay all damages that may be caused to fences and other property in constructing, inspecting, maintaining, operating, enlarging, rebuilding, repairing and patrolling said lines, except that it shall not be liable for cutting down or trimming trees or removing obstructions in the manner and to the extent above indicated.

9. That plaintiff shall also remain liable for any damages done through its negligence in the operation and management of its lines, equipment and facilities.

10. That plaintiff shall have only an easement on the lands of the defendant to use same for the purposes herein set forth and defendant shall continue to own, use, occupy and enjoy the lands crossed by the easement provided such use shall not interfere with the plaintiff's operation and management of said lines, equipment and facilities within the limitations herein set forth.

11. That plaintiff has at all times been unable to acquire by agreement with the defendant the easement and rights herein sought, although it has attempted in good faith to do so.

12. That the defendant, MRH Development Co., is the only entity that has a material interest in the property above described, insofar as it is known to the plaintiff.

WHEREFORE, plaintiff prays that this Court, or the Circuit Court Clerk in the absence of the Circuit Judge from the county, appoint commissioners to find the fair market value of the entire property immediately before the taking of the easement, and the fair market value of the entire property immediately after the taking of the easement for the purposes and uses aforesaid, and plaintiff prays for the easement, rights and privileges above described, and for all further and proper relief.

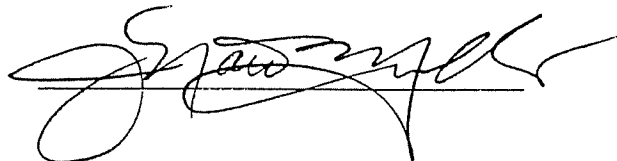
LESLIE W. MORRIS II
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BY 
ATTORNEYS FOR PLAINTIFF

STATE OF KENTUCKY

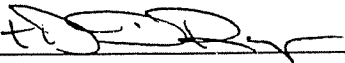
COUNTY OF Kentucky

The affiant, J. NATE MULLINS, states that he is the Manager, Transmission Lines of the plaintiff, Louisville Gas and Electric Company, a Kentucky corporation, and that this affiant has read the foregoing Petition and that the statements contained therein are true.



Subscribed and sworn to before me by J. NATE MULLINS
this the 20th day of August, 2004.

My notarial commission expires on the 17th day of
November, 2004.



NOTARY PUBLIC
Franklin COUNTY, KENTUCKY

EXHIBIT A

Being a part of the property conveyed to He-Ha, Inc. as recorded in Deed Book 4936, Page 526 in the office of the County Court Clerk of Jefferson County, Kentucky; and more particularly described as follows:

Beginning at a point in the northwest right-of-way line of Old Henry Road, said point being the southernmost corner of the remainder of property conveyed to Albin and Anna Oyr as recorded in Deed Book 1618, Page 167 and shown on the plat recorded in Deed Book 4936, Page 526 in said clerk's office; thence with Old Henry Road, South $38^{\circ}12'12''$ West, 462.16 feet to a pipe; thence South $43^{\circ}56'36''$ West, 353.67 feet to a pipe; thence South $33^{\circ}46'41''$ West, 66.85 feet to a pipe; thence with the east right-of-way of Jefferson Freeway Ramp No. 1, North $56^{\circ}54'54''$ West, 90.37 feet to a pipe; thence North $21^{\circ}53'40''$ West, 397.18 feet to a pipe; thence with the arc of a curve to the right having a radius of 636.197 feet and a chord of North $06^{\circ}07'34''$ West, 223.37 feet to a pipe in the east right-of-way of Jefferson Freeway; thence with the Freeway, North $02^{\circ}26'14''$ East, 148.53 feet to a pipe; thence North $05^{\circ}07'50''$ East, 825.85 feet to a pipe and corner to Chester W., Karl G. and Edith J. Klemenz as recorded in Deed Book 3022, Page 331 in said clerk's office; thence with Klemenz, South $58^{\circ}55'51''$ East, 466.37 feet to a pipe and corner to Klemenz and corner to Lot 10 as shown on the plat recorded in Deed Book 5375, Page 867 in said clerk's office; thence with Lot 10, South $32^{\circ}17'32''$ East, 275.71 feet to a fence post and corner to said Oyr; thence with Oyr, South $37^{\circ}20'59''$ West, 439.83 feet to a metal post; thence South $57^{\circ}51'25''$ East, 119.98 feet to a post; thence South $58^{\circ}45'39''$ East, 490.40 feet to the point of beginning containing 19.466 acres.

VICINITY MAP

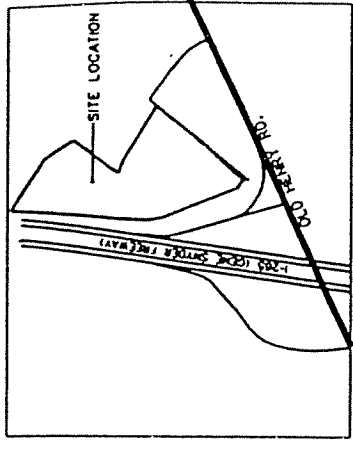
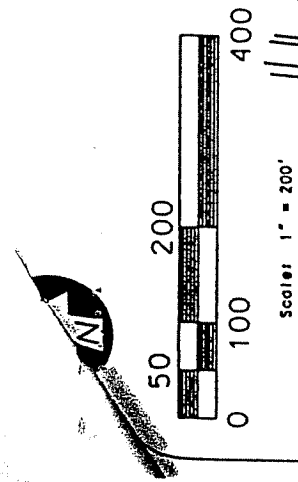


EXHIBIT B

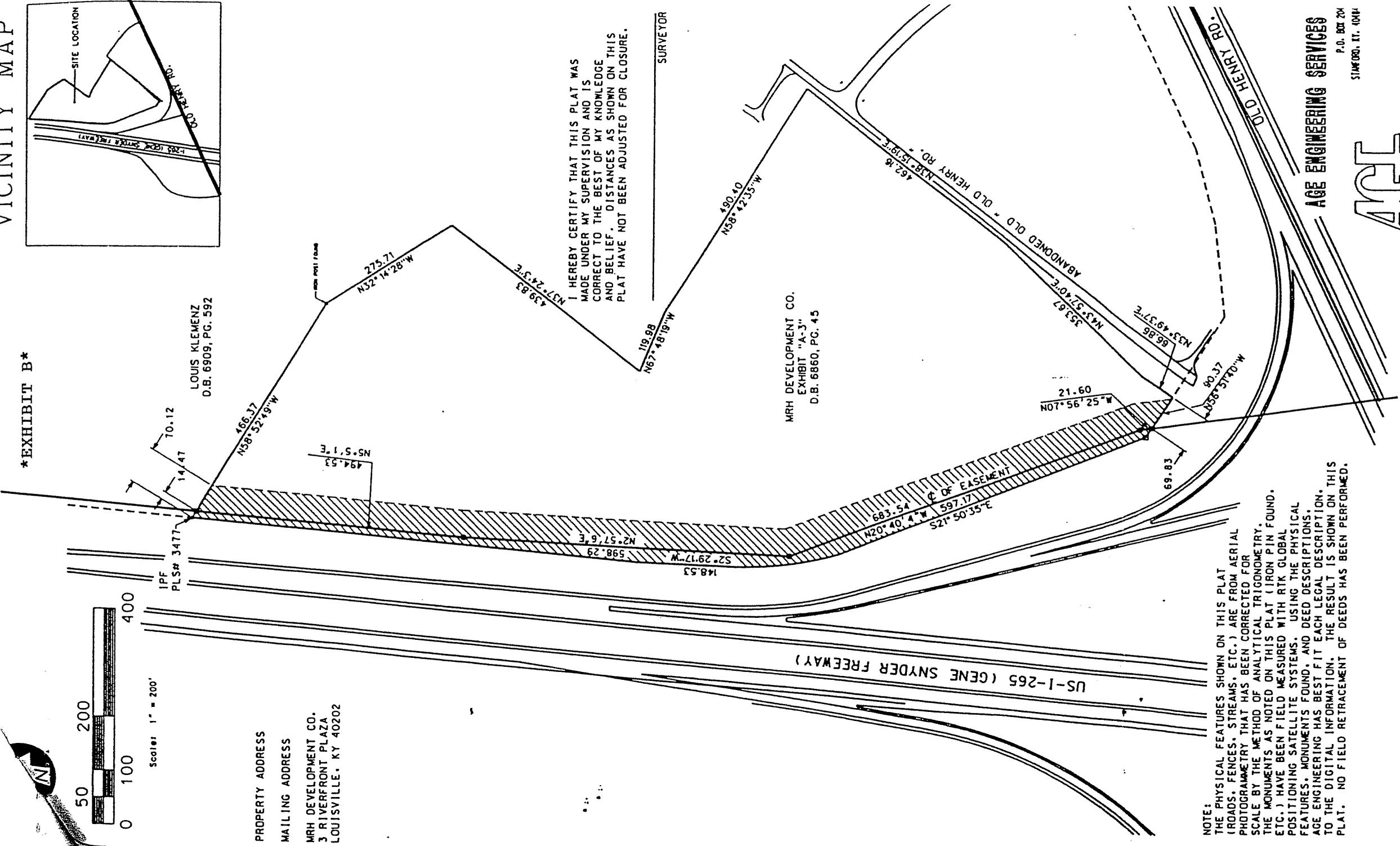


Scale: 1" = 200'

LOUIS KLEMENZ
O.B. 6909, PG. 592

PROPERTY ADDRESS
MAILING ADDRESS

MRH DEVELOPMENT CO.
3 RIVERFRONT PLAZA
LOUISVILLE, KY 40202



I HEREBY CERTIFY THAT THIS PLAT WAS MADE UNDER MY SUPERVISION AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. DISTANCES AS SHOWN ON THIS PLAT HAVE NOT BEEN ADJUSTED FOR CLOSURE.

SURVEYOR

MRH DEVELOPMENT CO.
EXHIBIT "A-3"
D.B. 6860, PG. 45

NOTE:
THE PHYSICAL FEATURES SHOWN ON THIS PLAT (ROADS, FENCES, STREAMS, ETC.) ARE FROM AERIAL PHOTOGRAMMETRY THAT HAS BEEN CORRECTED FOR SCALE BY THE METHOD OF ANALYTICAL TRIGONOMETRY. THE MONUMENTS AS NOTED ON THIS PLAT (IRON PIN FOUND, ETC.) HAVE BEEN FIELD MEASURED WITH RTK GLOBAL POSITIONING SATELLITE SYSTEMS, USING THE PHYSICAL FEATURES, MONUMENTS FOUND, AND DEED DESCRIPTIONS. AGE ENGINEERING HAS BEST FIT EACH LEGAL DESCRIPTION TO THE DIGITAL INFORMATION. THE RESULT IS SHOWN ON THIS PLAT. NO FIELD RETRACEMENT OF DEEDS HAS BEEN PERFORMED.



■ ELECTRIC TRANSMISSION EASEMENT (2.893 ACRES BY SURVEY)

PARCEL NO. _____ RECORD NO. _____ DATE _____

AGE ENGINEERING SERVICES

P.O. BOX 204
STAMFORD, KY 40484



606-365-8362 606-365-109

ALL LOT DISTANCES ARE PER DEED RECORD.