

ENGLISH LUCAS PRIEST & OWSLEY, LLP

2009-00190

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May 14, 2009

RECEIVED

MAY 18 2009

PUBLIC SERVICE  
COMMISSION

JAMES H. LUCAS  
(1932-2004)

Public Service Commission  
P. O. Box 615  
Frankfort, KY 40602-0615

Re: Roy G. Cooksey, M.D. v. Bowling Green Municipal Utilities Board  
and Warren County Water District

Gentlemen:

Enclosed you will find a "*Verified Complaint and Petition of Roy G. Cooksey, M.D., to Retain Warren County Water District as the Exclusive Provider of Water and Sewer Service to His Farm.*" The Defendants in this action are Bowling Green Municipal Utilities Board and Warren County Water District. I realize that frequently the Public Service Commission does not exercise jurisdiction over municipal utilities; however, this action arises from a specific agreement between Warren County Water District and Bowling Green Municipal Utilities which affects services provided to Dr. Cooksey. Therefore, pursuant to the decision of the Kentucky Supreme Court in *Simpson County Water District v. Franklin, Ky.*, 872 S.W.2d 460 (1994), it is respectfully submitted that the Public Service Commission does have jurisdiction with respect to this matter.

Very truly yours,

ENGLISH, LUCAS, PRIEST & OWSLEY, LLP

  
Keith M. Carwell

jhs

Enclosure

cc: Dr. Roy G. Cooksey  
800 Wakefield  
Bowling Green, KY 42101

RECEIVED

MAY 18 2009

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF

ROY G. COOKSEY, M.D.,  
COMPLAINANT

VS.

CASE NO. 2009-00190

BOWLING GREEN MUNICIPAL UTILITIES BOARD and  
WARREN COUNTY WATER DISTRICT,  
DEFENDANTS

**VERIFIED COMPLAINT AND PETITION  
OF ROY G. COOKSEY, M.D.,  
TO RETAIN WARREN COUNTY WATER DISTRICT  
AS THE EXCLUSIVE PROVIDER OF WATER AND SEWER SERVICE  
TO HIS FARM**

Pursuant to KRS 278.260, Roy G. Cooksey, M.D. ("Dr. Cooksey"), by counsel, hereby submits his Verified Complaint and Petition to the Kentucky Public Service Commission to retain the Warren County Water District ("WCWD") as the exclusive provider of water and sewer service to his farm located in Warren County, Kentucky, entirely outside the corporate limits of the City of Bowling Green, Kentucky, and to terminate the rights of Bowling Green Municipal Utilities Board ("BGMU") to provide water or sewer service to his farm.

1. Dr. Cooksey has owned a farm comprised of approximately 101 acres ("the Farm") on Lovers Lane in Warren County, Kentucky, since 1975. The description of the Farm is set

forth on **EXHIBIT A** annexed hereto and incorporated herein by reference. The Farm is entirely outside the corporate limits of the City of Bowling Green as set forth on the map annexed hereto as **EXHIBIT B** and incorporated herein by reference. At the time Dr. Cooksey acquired the Farm, and for years prior to that date, Warren County Water District and its predecessor, Northside Water District, provided all water service to the entire Farm. In fact, to this date, the only water service to the Farm has been provided by WCWD which has both a ¾-inch and 8-inch water main on the Farm. BGMU does not presently nor has it ever provided water or sewer service to the Farm.

2. Sewer service is, likewise, presently available on the Farm from Warren County Water District as a 12-inch sewer line with manhole has been installed on the Farm where it fronts on Lovers Lane. BGMU does not have sewer service presently available to the Farm and has never provided sewer service to the Farm.

3. Dr. Cooksey has now been advised that BGMU is asserting the exclusive right to provide water and sewer service to the rear 70 acres of the Farm. This 70-acre portion is a virtual island which currently has no access to water or sewer service from BGMU and, for that matter, does not have access to a public street (**EXHIBIT A**). This state of affairs has resulted from an agreement between WCWD and BGMU amending their service boundaries in such a manner as to have divided Dr. Cooksey's Farm into two separate service areas with no notice to him or opportunity afforded him to be heard on that matter. This action had the effect of removing the rear portion of the Farm from the service area of WCWD, the only utility to ever provide water or sewer service to the Farm.

This revision of the utilities' service areas had its genesis in an Agreed Order entered by the Public Service Commission in Case No. 95-044 which required BGMU and WCWD to create a Joint Engineering, Planning and Finance Committee which was to address a long-range plan

for development and expansion of water and sewer services with the cost of such expansion being allocated based upon factors including “the need for the capital improvements” and further to ensure that “the customers of both utilities the best service at the least cost.” Resolutions of the Board of Directors of BGMU and WCWD were then adopted approving a revision to both the sewer service boundary area and the water service boundary area. With respect to the sewer service boundary, this boundary was expressly to be established to “provide the customers of both utilities with the best service for the least cost.” (EXHIBIT C)

These resolutions revising the service areas for water and sewer service between WCWD and BGMU clearly do not provide Dr. Cooksey with the “best service for the least cost.” In fact, this action will result in a totally unnecessary and expensive duplication of facilities and services.

As a result of the creation of this 70-acre island, Dr. Cooksey is prohibited from extending his existing water lines on the Farm to the rear of the Farm for such simple matters as supplying a water trough. Dr. Cooksey currently has a barn on the rear 70 acres but is not able to provide water or restroom facilities to that barn as he is not permitted to extend his existing WCWD water lines or extend sewer service over the imaginary service line boundary. In the past, Dr. Cooksey has intermittently supplied water to the rear 70 acres by use of temporary surface lines, but he has been advised that this is no longer permitted. There can be no question that Dr. Cooksey is being discriminated against in an unjust manner as a result of the agreement entered into between BGMU and WCWD.

4. The Farm is currently the only property on Lovers Lane to be transected in this manner as to water and sewer service between BGMU and WCWD. The service area boundary with respect to sewer service to other similarly situated tracts within this geographical area follows their

property line boundaries. In addition, this is the only tract in this geographic vicinity which lies wholly outside the city limits of Bowling Green but with respect to which BGMU is asserting exclusive service rights for both water and sewer service. Therefore, the action of the Defendants is clearly discriminatory and, in this case, unjustly so and subjects Dr. Cooksey to significant disadvantages with respect to the obtaining of utility services.

5. As the agreement entered into between WCWD and BGMU affects the service provided to Dr. Cooksey as a customer of the utility, jurisdiction over this dispute does lie with the Public Service Commission of Kentucky pursuant to the decision of the Kentucky Supreme Court in *Simpson County Water District v. Franklin*, Ky., 872 S.W.2d 460 (1994). As set forth in that decision, one of the manifest purposes of the Public Service Commission is to prevent unjust discrimination in not only rates but also services.

6. The actions of BGMU and WCWD are in violation of KRS 278.170 in that this action unjustly discriminates against Dr. Cooksey and subjects Dr. Cooksey to unreasonable prejudice or disadvantage with respect to services. Dr. Cooksey, in order to obtain sewer service to the rear of his Farm from BGMU, will be required to pay a fee to access the BGMU sewer in excess of \$320,000. This "hookup fee" has been referred to by BGMU as the "allocated sewer development cost" although strangely none of the sewer which has been constructed goes to the Farm and is, in fact, more than 1,700 feet from the Farm. In addition, Dr. Cooksey would be required to construct a sewer line in excess of 1,700 feet across adjacent properties, where no easement presently exists, at an additional cost in excess of \$200,000--this, while at the same, a WCWD 12-inch sewer line with manhole is actually located on the Farm. It is problematic as to whether or not an easement may even be acquired across the adjacent properties in view of the fact that Dr. Cooksey's Farm presently has access to both

water and sewer service; and, therefore, there would be no public purpose to be achieved by a condemnation, and there certainly could be no showing of necessity for the easement. No other property in this geographic vicinity is being, likewise, discriminated against.

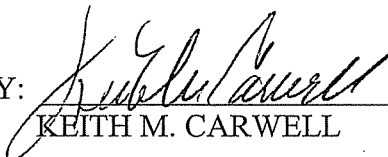
7. The extension of BGMU into the service area of WCWD is in further violation of KRS 96.150 in that no evidence exists that WCWD requested this extension, and there is certainly not even a suggestion that WCWD is unable to provide adequate water and sewer service to the Farm and, in fact, it presently does provide such service. The Cooksey Farm is currently completely served by WCWD and neither needs nor desires service from BGMU.

**WHEREFORE**, Roy G. Cooksey, M.D., moves as follows:

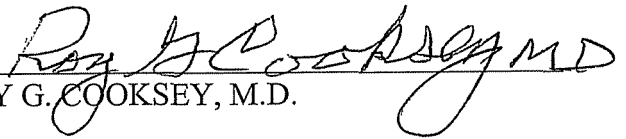
1. That the Public Service Commission commence a proceeding to declare that WCWD to be the sole provider of water and sewer service to Dr. Cooksey's Farm and to require WCWD and BGMU to adjust their service area boundaries accordingly.
2. That the Public Service Commission make BGMU and WCWD parties to this proceeding and require their prompt responses to the Complaint and Petition herein.
3. For all other relief to which Dr. Cooksey may appear entitled.

This 12<sup>th</sup> day of May, 2009.

ENGLISH, LUCAS, PRIEST & OWSLEY, LLP  
1101 College Street, P. O. Box 770  
Bowling Green, Kentucky 42102-0770  
Phone: (270) 781-6500  
Attorneys for Roy G. Cooksey, M.D.

BY:   
\_\_\_\_\_  
KEITH M. CARWELL


I, Roy G. Cooksey, M.D., certify that I have read the foregoing Verified Petition and Complaint and state that to the best of my knowledge, information and belief all facts set forth therein are true.

  
\_\_\_\_\_  
ROY G. COOKSEY, M.D.

COMMONWEALTH OF KENTUCKY

COUNTY OF WARREN

**SUBSCRIBED AND SWORN TO** before me by Roy G. Cooksey, M.D., on this 14<sup>th</sup> day of May, 2009.

  
\_\_\_\_\_  
NOTARY PUBLIC, Ky. State-at-Large

My Commission Expires: 2-11-2010

This is to certify that the original of the foregoing **VERIFIED PETITION AND COMPLAINT OF ROY G. COOKSEY, M.D., TO RETAIN WARREN COUNTY WATER DISTRICT AS THE EXCLUSIVE PROVIDER OF WATER AND SEWER SERVICE TO HIS FARM** were mailed to:

Public Service Commission  
P. O. Box 615  
Frankfort, KY 40602-0615

and copies were mailed to:

Warren County Water District  
Attention: Alan Vilines, General Manager  
P. O. Box 10180  
Bowling Green, KY 42102-4780

Bowling Green Municipal Utilities  
Attention: Mark Iverson, General Manager  
P. O. Box 10300  
Bowling Green, KY 42102-7300

This 14 day of May, 2009.

  
\_\_\_\_\_  
KEITH M. CARWELL

Cooksey Farm and  
Division of Service Territory

The image is a grayscale aerial photograph of a rural area. A large, irregular polygonal boundary is drawn over the terrain, enclosing a central area. Within this boundary, there are several smaller, more complex shapes. The text 'Cooksey Farm and Division of Service Territory' is printed in a white box in the center of the main boundary. To the right of the main boundary, the letters 'BGMU' are printed vertically. To the left, 'WICQWMD' is printed vertically. At the bottom left, 'WLDONERS LAKES' is written in a cursive script. At the bottom center, there is a decorative flourish or signature. At the bottom of the page, the text 'EXHIBIT A' is printed in a white box. The background shows a mix of fields, roads, and some buildings.

BGMU

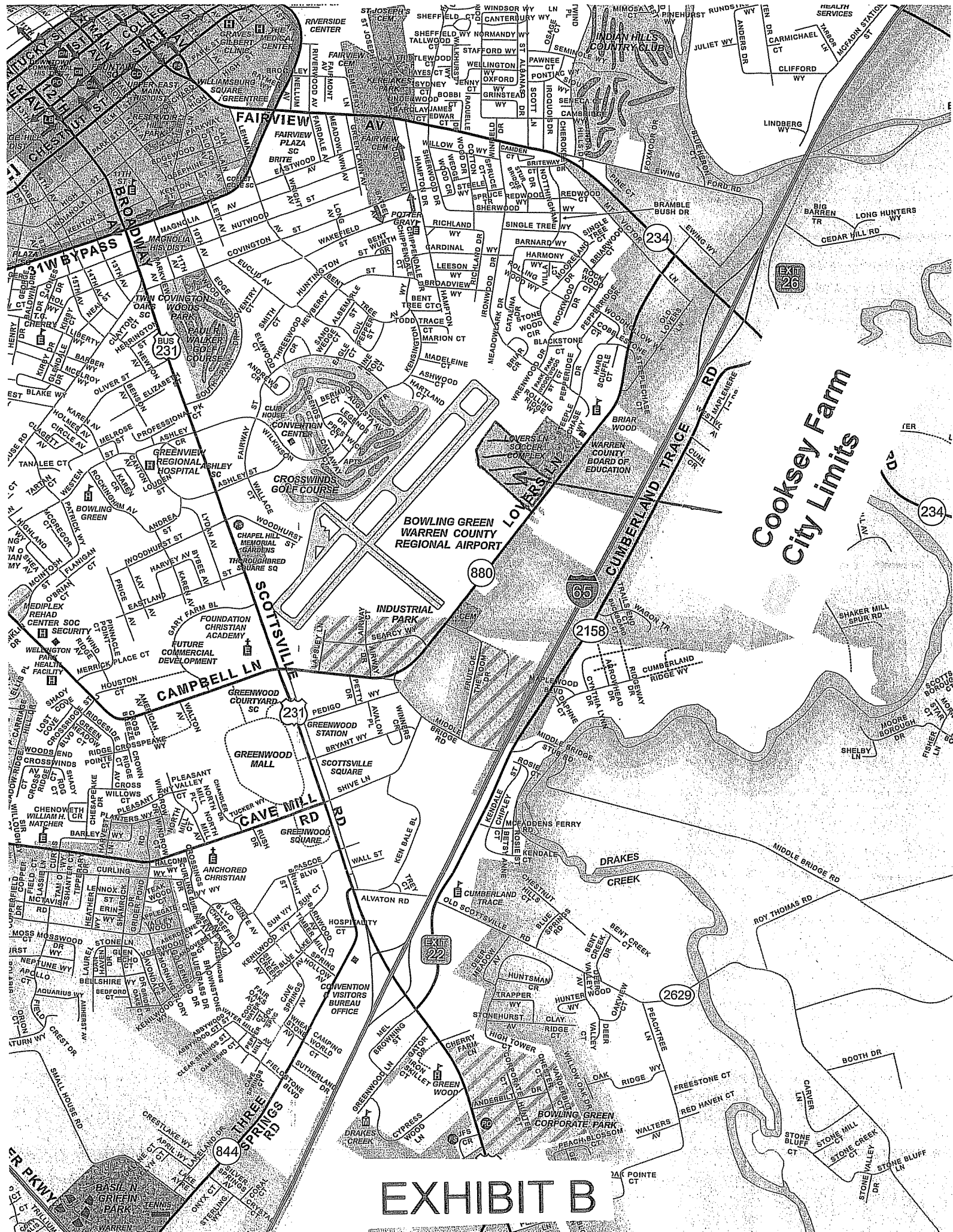
WICQWMD

WLDONERS LAKES



EXHIBIT A





Cooksey Farm  
City Limits

# EXHIBIT B

RECIPROCAL RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE WARREN COUNTY WATER DISTRICT

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

WHEREAS, all future capital improvements of BGMU and WCWD that result from the need for increased service and all future capital improvements which have an impact on the service of BGMU and WCWD is to be reviewed by the Committee in an effort to provide the customers of both utilities with the best service for the least costs, and:

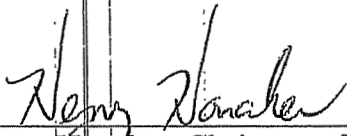
WHEREAS, the Committee has met and has recommended to the Board of Commissioners the approval of a sewer service boundary as described in the attached resolution and map dated the 3<sup>RD</sup> day of AUGUST, 2006.

NOW, THEREFORE, be it resolved by WCWD that the resolution of the joint committee be approved by WCWD and the sewer service boundary contained therein

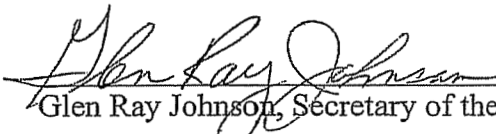
EXHIBIT C

adopted by WCWD as the jurisdictional limits of sewer service effective as of the date of this resolution.

ADOPTED this 29<sup>th</sup> day of AUGUST, 2006.

  
Henry Honaker, Chairman of the Board

ATTEST:

  
Glen Ray Johnson, Secretary of the Board

**RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF THE BOWLING GREEN MUNICIPAL UTILITIES**

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

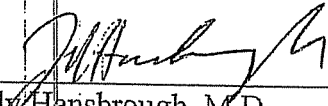
WHEREAS, all future capital improvements of BGMU and WCWD that result from the need for increased service and all future capital improvements which have an impact on the service of BGMU and WCWD is to be reviewed by the Committee in an effort to provide the customers of both utilities with the best service for the least costs, and:

WHEREAS, the Committee has met and has recommended to the Board of Directors the approval of a sewer service boundary as described in the attached resolution and map dated the 3rd day of August, 2006.

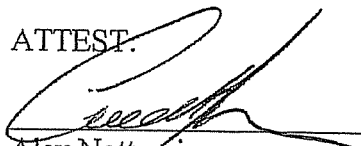
NOW, THEREFORE, be it resolved by BGMU that the resolution of the joint Committee be approved by BGMU and the sewer service boundary contained therein

adopted by BGMU as the jurisdictional limits of sewer service effective as of the date of this resolution.

ADOPTED this 14<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Randy Hansbrough, M.D.  
Chairman of the Board

ATTEST.

  
\_\_\_\_\_  
Alex Nottmeier  
Secretary of the Board

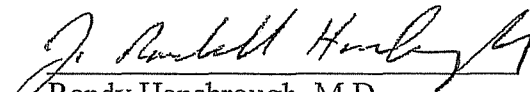
RESOLUTION OF THE JOINT ENGINEERING,  
PLANNING, AND FINANCE COMMITTEE OF THE  
WARREN COUNTY WATER DISTRICT AND THE  
BOWLING GREEN MUNICIPAL UTILITIES

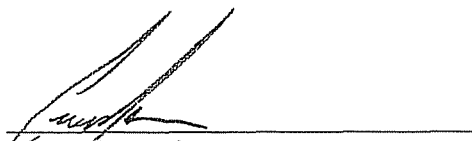
At a meeting of the Joint Engineering, Planning, and Finance Committee ("Joint Committee") which occurred on the 3<sup>RD</sup> day of AUGUST, 2006, the following resolution was unanimously adopted:

RESOLVED, that it is the recommendation of the Joint Engineering, Planning, and Finance Committee of the Warren County Water District ("WCWD") and Bowling Green Municipal Utilities ("BGMU") that the respective Boards of BGMU and WCWD approve and adopt the sewer service boundary as shown on the attached map (BGMU/WCWD Agreed Sewer Service Area Boundary Map dated August 3, 2006) as the jurisdictional limits for sewer service by the respective utilities, effective on the date of this resolution.

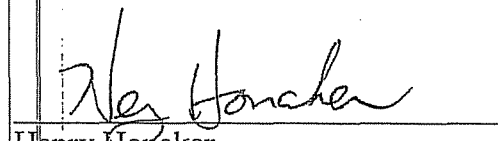
DATED this 3<sup>RD</sup> day of AUGUST, 2006.

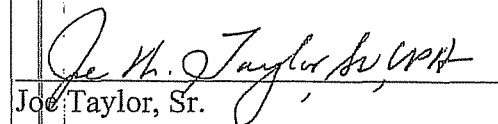
BOWLING GREEN  
MUNICIPAL UTILITIES

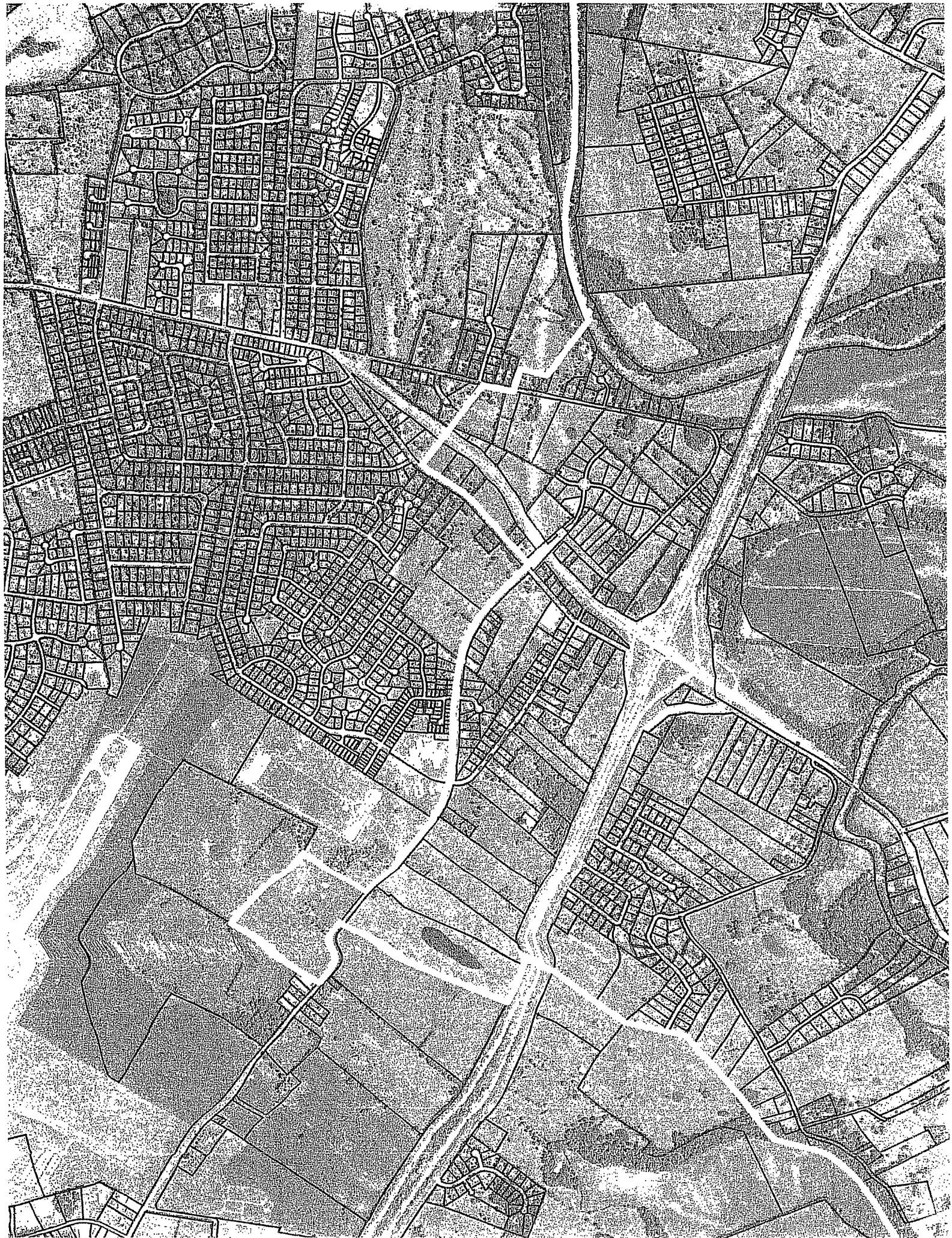
  
Randy Hansbrough, M.D.

  
Alex Nottmeier

WARREN COUNTY  
WATER DISTRICT

  
Henry Honaker

  
Joe Taylor, Sr.



sewer service boundary



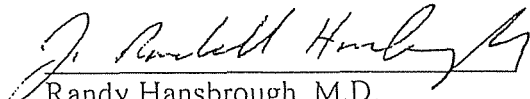
RESOLUTION OF THE JOINT ENGINEERING,  
PLANNING, AND FINANCE COMMITTEE OF THE  
WARREN COUNTY WATER DISTRICT AND THE  
BOWLING GREEN MUNICIPAL UTILITIES


At a meeting of the Joint Engineering, Planning, and Finance Committee ("Joint Committee") which occurred on the 3<sup>RD</sup> day of AUGUST, 2006, the following resolution was unanimously adopted:

RESOLVED, that it is the recommendation of the Joint Engineering, Planning, and Finance Committee of the Warren County Water District ("WCWD") and Bowling Green Municipal Utilities ("BGMU") that the respective Boards of BGMU and WCWD approve and adopt the sewer service boundary as shown on the attached map (BGMU/WCWD Agreed Sewer Service Area Boundary Map dated August 3, 2006) as the jurisdictional limits for sewer service by the respective utilities, effective on the date of this resolution.

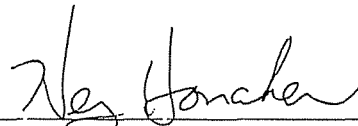
DATED this 3<sup>RD</sup> day of AUGUST, 2006.

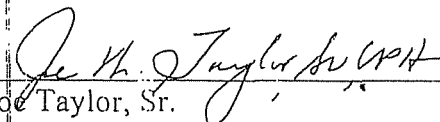
BOWLING GREEN  
MUNICIPAL UTILITIES

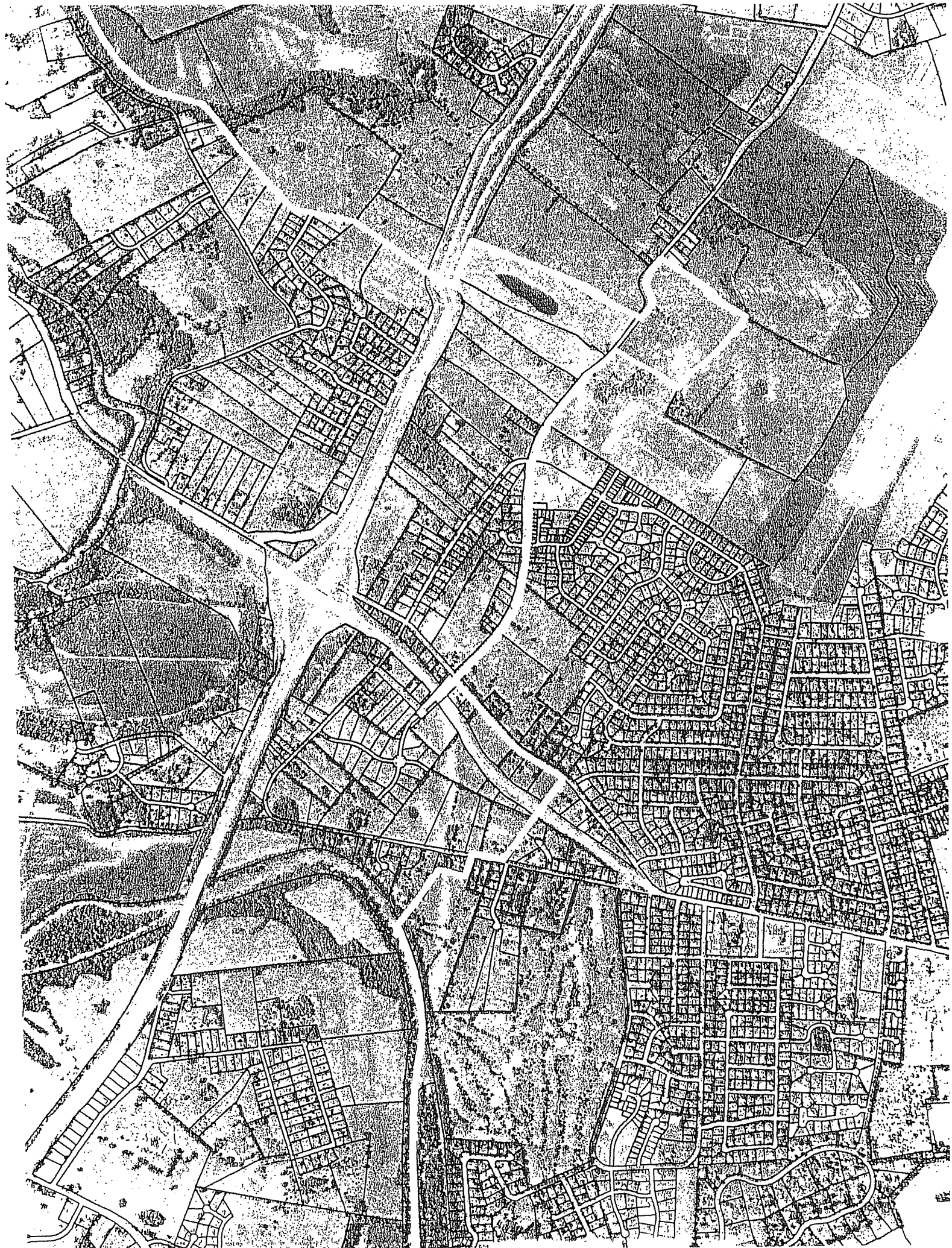
  
Randy Hansbrough, M.D.

  
Alex Nottmeier

WARREN COUNTY  
WATER DISTRICT

  
Henry Horaker

  
Joe Taylor, Sr.



**RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF THE BOWLING GREEN MUNICIPAL UTILITIES**

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

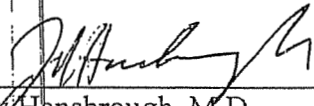
WHEREAS, all future capital improvements of BGMU and WCWD that result from the need for increased service and all future capital improvements which have an impact on the service of BGMU and WCWD is to be reviewed by the Committee in an effort to provide the customers of both utilities with the best service for the least costs, and:

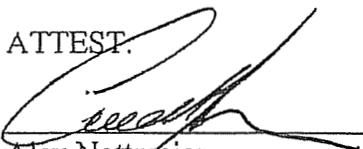
WHEREAS, the Committee has met and has recommended to the Board of Directors the approval of a sewer service boundary as described in the attached resolution and map dated the 3rd day of August, 2006.

NOW, THEREFORE, be it resolved by BGMU that the resolution of the joint Committee be approved by BGMU and the sewer service boundary contained therein

adopted by BGMU as the jurisdictional limits of sewer service effective as of the date of this resolution.

ADOPTED this 14<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Randy Hansbrough, M.D.  
Chairman of the Board

ATTEST.  
  
\_\_\_\_\_  
Alex Nottmeier  
Secretary of the Board

RECIPROCAL RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE WARREN COUNTY WATER DISTRICT

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

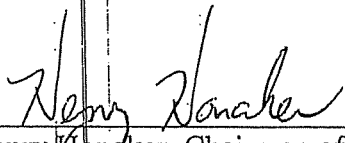
WHEREAS, all future capital improvements of BGMU and WCWD that result from the need for increased service and all future capital improvements which have an impact on the service of BGMU and WCWD is to be reviewed by the Committee in an effort to provide the customers of both utilities with the best service for the least costs, and:

WHEREAS, the Committee has met and has recommended to the Board of Commissioners the approval of a sewer service boundary as described in the attached resolution and map dated the 3<sup>RD</sup> day of AUGUST, 2006.

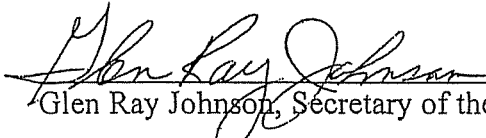
NOW, THEREFORE, be it resolved by WCWD that the resolution of the joint committee be approved by WCWD and the sewer service boundary contained therein

adopted by WCWD as the jurisdictional limits of sewer service effective as of the date of this resolution.

ADOPTED this 29<sup>th</sup> day of August, 2006.

  
Henry Honaker, Chairman of the Board

ATTEST:

  
Glen Ray Johnson, Secretary of the Board

RESOLUTION OF THE JOINT ENGINEERING,  
PLANNING, AND FINANCE COMMITTEE OF THE  
WARREN COUNTY WATER DISTRICT AND THE  
BOWLING GREEN MUNICIPAL UTILITIES

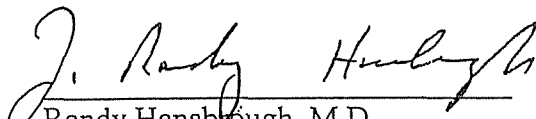
At a meeting of the Joint Engineering, Planning, and Finance Committee ("Joint Committee") which occurred on the 19<sup>TH</sup> day of JUNE, 2007, the following resolution was unanimously adopted:

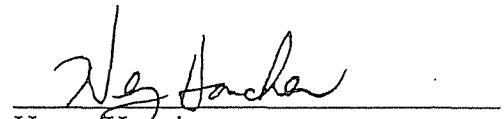
RESOLVED, that it is the recommendation of the Joint Engineering, Planning, and Finance Committee of the Warren County Water District ("WCWD") and Bowling Green Municipal Utilities ("BGMU") that the respective Boards of BGMU and WCWD approve and adopt the water service boundary as shown on the attached map (BGMU/WCWD Agreed Water Service Area Boundary Map dated June 19, 2007) as the jurisdictional limits for water service by the respective utilities, effective on the date of this resolution.


DATED this 19<sup>TH</sup> day of JUNE, 2007.

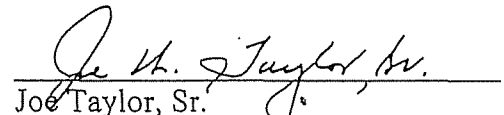
BOWLING GREEN  
MUNICIPAL UTILITIES

WARREN COUNTY  
WATER DISTRICT

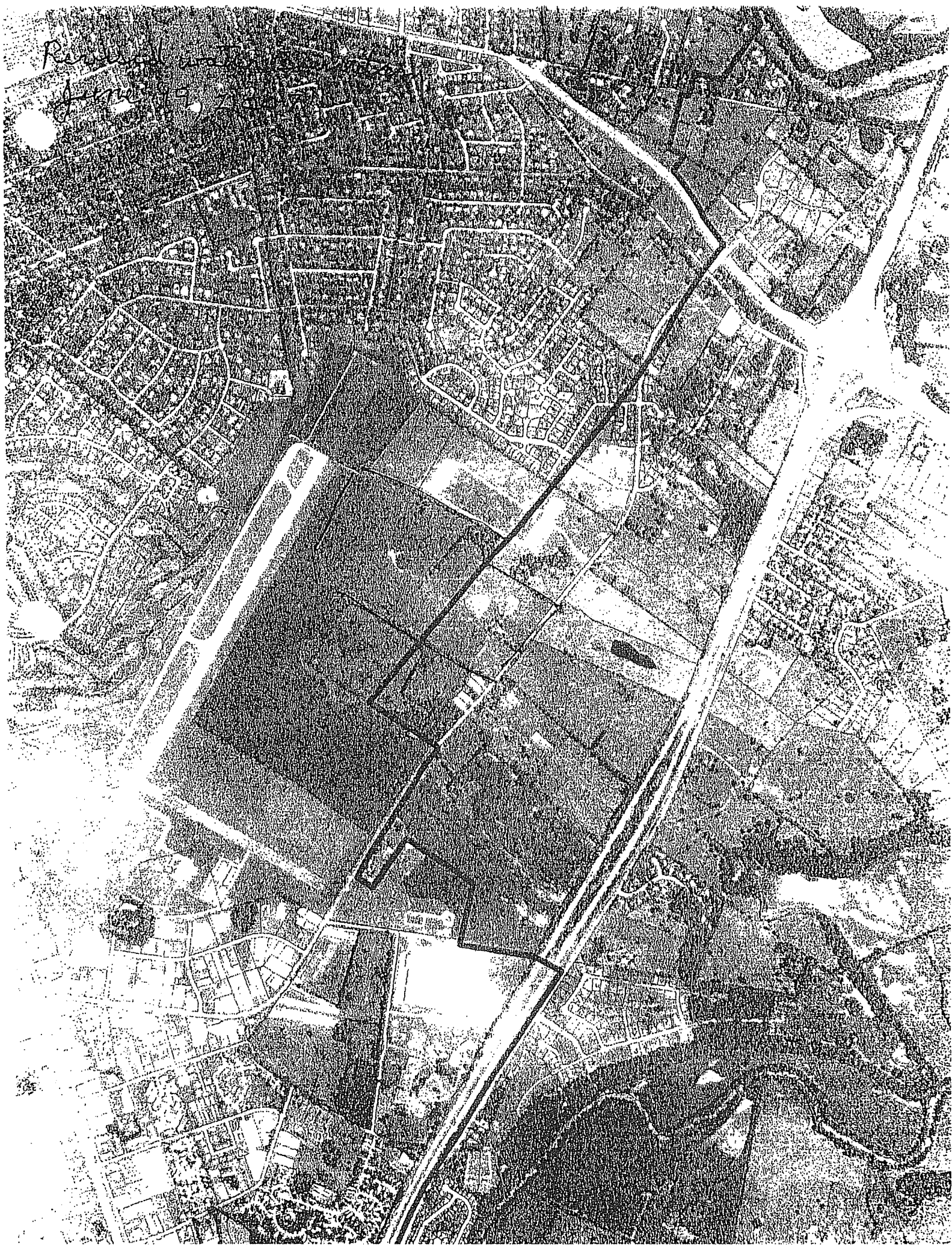
  
Randy Hansbrough, M.D.

  
Henry Honaker

  
Alex Nottmeier

  
Joe Taylor, Sr.

Re  
Am





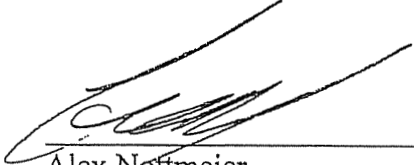
**RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF THE BOWLING GREEN MUNICIPAL UTILITIES**

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

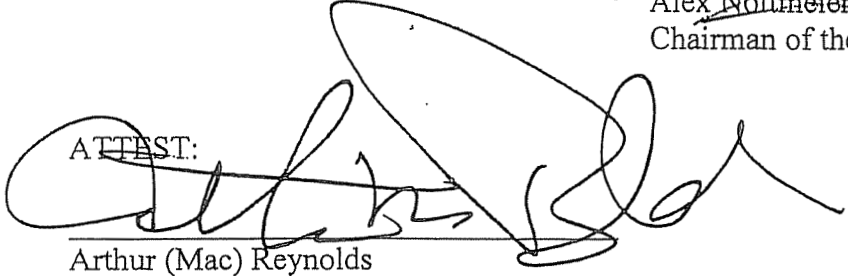
WHEREAS, the Committee has met and has recommended to the Board of Directors the approval of a water service boundary as described in the attached resolution and map dated the 19<sup>th</sup> day of June, 2007.

NOW, THEREFORE, be it resolved by BGMU that the resolution of the joint Committee be approved by BGMU and the water service boundary contained therein adopted by BGMU as the jurisdictional limits of water service effective as of the date of this resolution.

ADOPTED this 9<sup>th</sup> day of July, 2007.

  
\_\_\_\_\_  
Alex Noffmeier  
Chairman of the Board

ATTEST:

  
\_\_\_\_\_  
Arthur (Mac) Reynolds  
Secretary of the Board

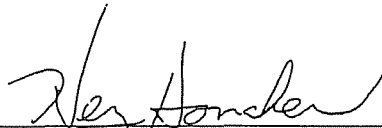
**RECIPROCAL RESOLUTION OF THE BOARD OF COMMISSIONERS  
OF THE WARREN COUNTY WATER DISTRICT**

WHEREAS, an agreed order issued by the Commonwealth of Kentucky before the Public Service Commission set forth in Case No. 95-044 directed that Bowling Green Municipal Utilities ("BGMU") and Warren County Water District ("WCWD") jointly create a "Joint Engineering, Planning, and Finance Committee" ("COMMITTEE") to oversee and develop the implementation of long range plans for the development and expansion of water and sewer service by BGMU and WCWD, to include the necessary capital improvements needed for such service, and:

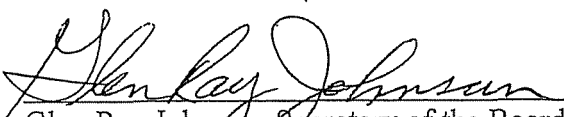
WHEREAS, the Committee has met and has recommended to the Board of Commissioners the approval of a water service boundary as described in the attached resolution and map dated the 19<sup>th</sup> day of June, 2007.

NOW, THEREFORE, be it resolved by WCWD that the resolution of the joint committee be approved by WCWD and the water service boundary contained therein adopted by WCWD as the jurisdictional limits of water service effective as of the date of this resolution.

ADOPTED this 26<sup>th</sup> day of June, 2007.

  
Henry Honaker, Chairman of the Board

ATTEST:

  
Glen Ray Johnson, Secretary of the Board