

September 14, 2019

Zach Schwager
Louisville Metro Planning & Design Services
444 S. 5th Street, Suite 300
Louisville, KY 40202-4313

RE: 5868 New Cut Road
19-VARIANCE-0023 and 19-WAIVER-0029

Dear Zach:

This letter is a summary of some reasons that I am opposed to what is being proposed by my neighbor, Terry Smith of ACT Development. I am not opposed to a development in his property but I do have some concerns which I will mention. I own the adjoining property on the north side of 5868 New Cut Road and my property is the only property that will be affected by his proposal. I inherited my property from my parents who purchased it in 1942 and I know a lot about it and the neighborhood since I grew up there. It appears that Terry Smith has no regards for me or my property because he is proposing to set a detention basin right up against my property. Walmart didn't do it and there should be no reason for Terry Smith to do it. I feel that the detention basin, if needed should be situated farther away from my property and made smaller if possible. I wouldn't think that large of basin would be needed.

I feel that the Board of Zoning should take a closer look at the Plan that he submitted this year and determine exactly what he is planning to build in his property. I don't believe that it is a 1600 sq ft Drive-Thru Restaurant as suggested on the applications that were submitted on 7/15/19. The 47 maximum Parking Spaces shown appear to be excessive for that size restaurant with 230 sq ft of outdoor seating. I believe that he intends to build a larger building and will add additional Parking Spaces up to the maximum allowed. Based on his previous record on the property that he developed on the east side of New Cut Road, he was going to build a Day-Care Center but ended up building a Hardware Store. He bought the adjoining residential property at 5863 New Cut Road on the north side of his development which consists of Tract 1 and Tract 2. The rear of of 5863 New Cut Road is Tract 2 and extended south to the Big Ditch. As Terry Smith owned all of the adjoining properties, he was able to do whatever he wanted to do with no opposition from any neighbor. In order to fit the Hardware Store with it's size into the property, he set it farther north and at a different angle than the other buildings to avoid the Pipeline Easement that runs through the development and used part of the residential property for a Buffer. He filed a Minor Plat for the entire development which included part of the adjoining residential property. It appears that when the Hardware Store bought their portion, their Deed was set up with no description of what they actually purchased. Now, it appears that he wants to do the same thing on the west side of New Cut Road and use part of my property for a Buffer with pavement on it but he does not own my property.

Previously, he tried to purchase a portion of my property but I declined to sell the portion that he wanted. Now, it appears that he just wants to take a portion without paying for it. He knows what he is doing and does not care. He made the comment to me, that in a hundred years, it will not matter. I do not want my property and property lines ruined as he did on the east side of New Cut Road. That is why the Board of Zoning should take a closer look at this. He is not just asking for a Waiver to allow pavement and a detention basin to encroach into the 25 foot Landscape Buffer but his Plan also shows 14 customer parking spaces on the north side as well, which appear to be partly on my property. There is a big difference between pavement and parking spaces where customers pull in and back out creating congestion and noise from slamming doors, etc. I believe that the size of the building or buildings, the type of establishment, the hours of operation and if liquor will be served, etc should all be taken into consideration before allowing parking spaces to abut against any residential property. The pavement behind Terry Smith's development on the east side of New Cut Road is not used for customers driving through and pulling in and out of parking spaces so this Waiver should be looked at differently. If he builds a larger building or buildings, he will add even more pavement and parking spaces abutting against my property if there is no set limit specified. Even if my property is mostly vacant now with a lot of trees and bushes, most likely sometime in the future it may not be.

I am opposed to a Drainage Ditch along the south side of my front 3 acres which I mentioned to Terry Smith over a year ago. Also, part of the 15 foot Sewer and Drain Easement that is being proposed is on part of my property. He has also proposed closing the existing entrance and moving it farther south which will make that portion part of the Buffer area. The existing entrance has been in that location for over a hundred years and has always been part of my property, not his. I have six Deeds dating back to 1900 and a Title Report showing that my property has a 15 foot wide road along the southern edge of the front three acres for access to New Cut Road on that side. It was originally part of the 7 acre tract behind the 3 acre tract. My parents purchased the 3 acre tract and 2 acres off of the 7 acre tract so the 15 foot wide road was conveyed to them in Fee Simple. It had also been conveyed to the owner of the 3 acre tract back in 1904 when the owner of the 7 acre tract was granted the right to use the road on the north which is now known as Star Lane. I have a letter from my Dad's Attorney which gives an explanation. There was a sizable round marker on the south side of the entrance before and after New Cut Road was widened which somebody dug up. It was originally on the west bank of the ditch along New Cut Road and then was set back due to the widening. KYTC should have a record of the location as they have records that date back over hundred years. That marker marked the corner to my property and Lot 10 of the large 1100 acre Finley tract that my property came off of. KYTC should be able to reset that marker in the location where it was. I can provide a Survey at the meeting, that was done before New Cut Road was widened. I found it in recent years in my parents' possessions. It shows the road to the rear portion of the property and corresponds very close to the angles and distances described in my parents' Deed. The road was always a gravel road behind the entrance and is now overgrown with grass. The road has always been part of my property except for the part that swerved over back beyond the house that was there. The Deeds state that the 15 foot wide road was used in common but the owner of the 3 acre tract has control over it. The previous owner of Terry Smith's property tried to purchase the 15 foot wide road from my parents several times throughout the years and was turned down each time. My parents wanted to retain it for access to New Cut Road on that side due to the depth and

width of our property and I feel the same way. I offered to sell Terry Smith an Easement to use the 15 foot wide road but he did not want to pay anything. Now he is proposing to just take it with no regrets and turn it into a Drainage Ditch which I am opposed to. What he is proposing to do will land-lock my property on the south side due to having no outlet to New Cut Road from the rear portion that was indicated in the Deeds. I would think that he could get an entrance farther south in his property instead of closing off the one that is there. I don't see how KYTC can agree to closing the existing entrance which has been in that location for over hundred years and is shown on several Deeds as part of my property.

Also, the angle shown on the Plan that Terry Smith submitted is based on the Form District Line on the north side of the curb cut and does not correspond with the angles for his north and south property lines as described in his Deed. My south property line was always on the south side of the entrance. When the Form District line was established, it ran behind the Hardware Store on the east side. As the Hardware Store was set farther north into the adjoining property and at a different angle, it caused the Form District Line to be farther north than my property line. You will notice on the aerial view on the LOJIC website, that there is a 20 foot wide strip that is owned by the Hardware Store that is used as a Buffer. If everybody goes by the Form District line and ignores the actual property line, it slices the side off of my property. I have told Terry Smith more than once that he has the amount of frontage listed in his Deed without taking the side off of my property and that anybody can measure across and see that. It appears that he does not care. I feel that he can not be trusted based on what he did on the east side of New Cut Road. The previous owner of his property planted a row of trees along the south property line of the property and that line of trees has always been his south property line. By measuring 120 feet north from that tree line along the sidewalk based on his Deed, it comes out around where the marker was that was dug up from the south side of the entrance. I know because I have measured it. Anybody else can measure it too and see that I am right. If he does a Minor Plat and uses the Form District line as his north line and the tree line as his south line, his property will have 145 to 150 feet of frontage that will enable him to build a larger building which I believe he intends to do. So I will be losing the side off of my property containing the 15 foot wide road to the rear of my property which he will benefit from without paying for it. From what I have seen recently on New Cut Road, I believe that he already has a Minor Plat in the works that will combine part of my property with his and put the tree line as his south line where it always was. Obviously, if the frontage on his property would be increased, the property would be more desirable to companies looking to construct a larger building.

I might add that KYTC admitted that they paid the wrong owner for the front part of the entrance a few years ago when they did acquisitions for widening New Cut Road. They stated that it affected the entire block and they declined to do anything about it. Their Right of Way Plan shows that they shorted the frontage on my property by around 15 feet but it is really 20 to 22 feet in the front due to their mistake on the amount of frontage shown on the north side of my property which I can show anybody. KYTC was working with MSD at that time. KYTC and MSD thought that Star Lane was part of my parents' property instead of the 15 foot wide road on the south side. This is indicated on an incorrect MSD diagram. The pavement on Star Lane was dug up for MSD to run a main sewer line back. When the pavement was replaced, it was moved farther north and the angle was changed due to their mistake. It was apparently caused by the LOJIC line being shown incorrectly farther north than the actual property line. I

should not lose part of my property to Terry Smith based on the Form District line, LOJIC lines or a mistake made by KYTC. Currently, most of my property is vacant land but in the future it could have buildings on the south side. I am open to various options for the property. Years ago, my Dad was thinking of selling building lots going back on both sides of our property due to the width. A person has also expressed an interest in building patio homes. I know that the property has commercial potential but I am not sure if that will ever happen.

I am asking that the Board of Zoning take a closer look at this. Before granting a Variance and Waiver, Terry Smith should be required to furnish something showing his true and actual property lines on the north and south showing the correct angles as described in his Deed, not the Form District line or LOJIC line. It should not include the existing entrance and 15 foot road to the rear portion of my property which was never a part of his property. Since my property has senior rights over his property, someone would have to measure across my property from my north line to the south to get the correct lines based on the description in the Deeds. If someone wants to do that, I will be glad to be available to make sure it is done right. If measuring from the correct place, anybody will see that the LOJIC lines on Star Lane are not where my north property line is. There is evidence on Star Lane of where my north line is that has been there for many years and it is not along the LOJIC line. It appears that a Survey was filed on a property on the south side of Terry Smith's property which moves the line farther north of the tree line by around 19 feet in the front which I believe was based on the incorrect Right of Way Plan from KYTC and/or the location of the Form District line. Anyone can see that the north line on that Survey is incorrect based on the location of the overhead power lines in the LG&E Easement that run right alongside the tree line at the same angle. Apparently the Deeds on both of those properties were disregarded. Anything north of the tree line was never considered to be part of the adjoining property on the south of 5868 New Cut Road.

Also, It should be determined exactly what he is planning to build in the property before making any decisions. The Variance and Waiver Applications show that ABTB Louisville LLC is listed as the Applicant but I don't feel that he plans to construct a Taco Bell Restaurant. There is already a Taco Bell Restaurant around 1 ½ miles farther north on New Cut Road. I wouldn't think that they would build another restaurant so close to the other one. I believe that Terry Smith is planning on building something larger in the property which should be taken into consideration. The nearest house at 5862 New Cut Road on the west side of New Cut Road is around 150 feet from the proposed development. The distance may not always be that far if something is built on the south side of my property. The application states that the existing curb cut is 5 feet away from my property line. This is based on the location of the Form District line and the incorrect Right of Way Plan from KYTC as the existing curb cut and entrance have always been a part of my property frontage, not his. Enclosed is a copy of the Right of Way Plan showing their mistake on the angle and amount of frontage taken which cuts the side off of my property. The 100 ft marks in the center of New Cut Road on their Plan also show that my frontage was shorted. I don't feel that KYTC should be able to change the angle and side lines of my property based on the location of a Hardware Store on the east side of New Cut Road, which apparently is what happened.

My parents' Deed should not be ignored which shows my property is wider in the front due to having the 15 foot wide road along the southern line of the front portion which I oppose

changing into a Drainage Ditch. Terry Smith's Deed should not be ignored either, which shows the correct angle of his property and the amount of his frontage. I am enclosing a copy of Deed #535, Page 167, that refers to the 15 foot wide road on the south side of my property that was used as an outlet from the 7 acre tract to New Cut Road. Also, I am enclosing a copy of my parents' Deed #1825, Page 102, that describes the outlet from the 7 acre tract to New Cut Road over the southern 15 feet of the 3 acre tract in the front. The reason that it shows abandoned for years was because the owner of the 7 acre tract stopped using it when he was granted the right to use Star Lane on the north. Also, enclosed are some photos that show where my south property line always was based on the marker that was dug up on the south side of the entrance. In addition, there are several photos, showing where his south line always was in the line of trees that the previous owner planted on the property. If the Form District line is used as his north line, it would make his south line a lot farther north from the tree line into the property which is ridiculous and not even logical. The line of trees that the previous owner planted has been there many years and it was always referred to as her south property line.

I am respectfully asking that the Board of Zoning take a closer look at everything before making a decision and possibly even look at historic records. Without seeing the full and true picture, you will be giving Terry Smith an open door to do anything next to my property. I believe that there is more going on than meets the eye. I believe that he is misrepresenting his intentions and trying to rush through the Variance and Waiver. By granting his request without actually knowing what he plans to construct or do, it gives him an open door for doing anything that he wants including taking part of my property due to a Form District line that is farther north than my property line. If that is allowed, it will enable him to have more frontage than listed in his Deed. This is a concern that I have if he is given an open door. It is said that if you give someone an inch, they will end up and take a mile which I believe he will do based on what I have already seen. I am not opposed to development in his property within reason as long as my property is not encroached upon. I don't feel that the side of my property should be used for part of his development. Thank you and the Board of Zoning in advance for your consideration on this matter.

Sincerely,



Betty Curran

Wm Johnson Clerk of the County Court Johnson County in the State of Kentucky do hereby certify that on this day at 4 20 PM the foregoing and duly examined and certified by act of Congress was produced to me in my office and acknowledged and delivered by Eliza Jameson a party thereto to be her act and deed and that I have recorded it and this certificate in my said office.

Witness my hand this 6th day of April 1900

Wm Johnson Clerk
By Walter Ketchum

DB 535
PG 167

Lee
to E. J. M.
Cable
Wm. Johnson Clerk
June 9-1900
R. M. Lee

This deed made and entered into this the 20th day of March 1900 between Samuel M. Lee and wife Mollie E. Lee of the first part and Henry Cable of the second part all of Johnson County and state of Kentucky.

Witnesseth that the parties of the first part for and in consideration of the sum of Three hundred and thirty two dollars and fifty cents (\$332.50) of which amount the sum of Fifty (\$50.00) dollars is paid in cash and for the remainder of Two hundred and eighty two dollars and fifty cents (\$282.50) The party of the second part has executed this four promissory bear notes of even date herewith bearing 6% ~~interest~~ ~~interest~~ bearing interest as follows one note for (\$65.00) sixty five dollars due and payable Oct 10th 1900, one note for Sixty Two (\$65.00) dollars due and payable Oct 10th 1901 one note for sixty five (\$65.00) dollars due and payable Oct 10th 1902 and one note for Eighty seven (\$87.50) dollars and fifty cents due and payable Oct 10th 1903 and should however the party of the second part fail to pay any two of these notes and interest when due then it is understood and agreed that all of said notes ~~notes~~ become due and payable and the parties of the

SEE
PAGE 2

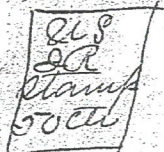
power is hereby issued by law to recover title & possession of the property herein conveyed. It is further herein agreed as a part of the consideration that the party of the second part shall pay all taxes and on the property herein conveyed for the year 1900 the receipt of which cash and notes herein acknowledged the parties of the first part do hereby sell grant convey and confirm unto the said party of the second part his heirs and assigns a certain tract of land lying and being in the above said County and State about 2 3/4 miles south of the City of Louisville and near the new cut Road and bounded as follows

Beginning at a stone in the division line between the Fenley and Heattledge tracts of land and corner to lots 8 and 10 of L. N. Fenley's Division of Real Estate, and running thence with the division line of said lots N 2 1/4 E 18 3/4 poles to a stake thence S 68 N E 60 poles to a stake thence S 2 1/4 W 18 3/4 poles to a stake in the division line between the Fenley and Heattledge tracts thence with said line N 68 E 106 poles to the beginning containing 7 acres of land together with thoroughfare & way in common over a strip of land fifteen feet wide along the division line between the Fenley & Heattledge tracts of land and from this 7 acre tract to the new cut Road as an outlet from said 7 acre tract. The 7 acre tract and said strip of land being a part of Lot no 10 of L. N. Fenley's Division of Real Estate.

To have and to hold the same unto the party of the second part his heirs and assigns forever with covenants of General Warranty.

In Testimony whereof witnesses on names hereto subscribed this the 2nd day of May 1900

Samuel M Lee
Mollie E Lee



I, J. M. Johnson, Clerk of the County Court of Jefferson County in the State of Kentucky, do certify that on this day the foregoing deed duly stamped as required by act of Congress was produced to me in my office and acknowledged and delivered by Samuel M Lee and

4
11/12

The
11/12

#8
L.M.

THIS DEED Between Bernard G. Poike (unmarried) party of the first part, and Herald Young and Alpha Young, his wife, whose address is R. R. No. 1, Box 162, Coral Ridge, Kentucky, parties of the second part;

WITNESSETH:

That, for the consideration hereinafter set forth, the party of the first part hereby conveys to the parties of the second part, for their joint lives, with remainder in fee simple to the survivor, with covenant of GENERAL WARRANTY, the property in the County of Jefferson, and State of Kentucky, hereinafter described; further covenanting lawful seizin of the estate hereby conveyed, good right and full power to convey; that is free of all liens, taxes and encumbrances; except the 1942 State and County taxes, which the second parties hereby assume and agree to pay;

The consideration is a valuable consideration, cash in hand paid, the receipt whereof is hereby acknowledged, and for the remainder of the consideration, the second parties have executed and delivered to said first party their One (1) note of even date herewith, for the principal sum of Four Hundred & no/100 (\$400.00) Dollars, payable to the said Bernard G. Poike, or order, of West Mansfield, Ohio, in monthly installments of Ten & no/100 (\$10.00) Dollars each, with interest at the rate of five (5%) per cent per annum, payable monthly; the first monthly installment of Ten & No/100 (\$10.00) Dollars, which shall be applied first to payment of interest and then to the principal, being due and payable on or before the 27th day of May 1942, and One (1) installment being due and payable on or before the 27th day of each month thereafter until said note and interest is paid in full; and to secure the payment of said note and interest a lien is retained on the property hereinafter described;

The property conveyed is thus described: - -

"BEGINNING at a stake in the Western side of the New Cut Road, where a stone formerly stood in Laux line and corner to Mrs. Gore and also corner to Lots Numbered 10 and 11 of I. H. Fenley's division of land; thence with Laux line, formerly line between Fenley and Hartledge, North 67 degrees 43 minutes West, 23.96 poles to a stake at the Southeastern corner of the 7 acre tract conveyed by Samuel M. Lee and wife to Henry Cable, by deed recorded in Deed Book 535, Page 167, in the Jefferson County Court Clerk's Office; thence continuing with said division line formerly between Fenley and Hartledge, North 68-1/2 degrees West, 17.14 poles to a pipe in said former division line; thence North 21-1/2 degrees East, 18-2/3 poles along the Eastern line of the 5 acres, more or less, this day conveyed by first party to Walter Lee Moore and wife, to a pipe in the present division line between the lands of Walter Lee Moore and wife, and said first party herein; thence with said last mentioned division line, South 68-1/2 degrees East, 17.14 poles to the Northeastern corner of the 7 acre tract conveyed by Samuel M. Lee and wife, to Henry Cable, by deed hereinabove mentioned; thence along the Southern line of the 15 foot Right of Way, established in deed recorded in Deed Book 659, Page 393, in the Clerk's Office aforesaid, South 67 degrees 43 minutes East, passing a stake at 26.64 poles, in all 27.64 poles to a stake in the New Cut Road and in the division line of lots Numbered 10 and 11, of I. H. Fenley's division of land; thence with said Road, South 33 degrees 20 minutes East 19-3/10 poles to the beginning; containing Five (5) acres, more or less; and being the three (3) acre tract and Two (2) acres, more or less, off of the East end of the tract conveyed to the said Bernard G. Poike, said first party, by deed dated April 9th, 1926, and recorded in Deed Book 121C, Page 244, in the Clerk's Office aforesaid."

It is agreed and understood between the parties hereto that if default be made for the space of Thirty (30) days in the payment of said note, or any part thereof, or any installment, or any part thereof, or any interest, or any part thereof, after the same becomes due and payable, then the holder of said note may declare the whole debt due and payable and proceed to enforce the same.

WHEREAS, by deed above mentioned conveying to said first party the seven (7) acre tract therein described, a provision was made for an outlet from said seven acre tract to the New Cut Road, over the Southern Fifteen (15) feet of the Three (3) acre tract therein described; and,

WHEREAS, said Right of Way has been abandoned for years, and, in fact no longer exists.

NOW, in order to free the property herein conveyed from any question as to the existence of said right of way and to vest the second parties herein with the full and complete fee simple title to the property herein conveyed, said first party in consideration of One & no/100 (\$1.00) Dollar and other good and valuable consideration, does hereby release, quit claim and convey to the said second parties, for their joint lives, with remainder in fee simple to the survivor, any and all right title or interest he has or may have in and to the said Fifteen (15) foot Right of Way Mentioned in the aforesaid deed to said first party.

IN TESTIMONY WHEREOF, Witness the signature of the party of the first part, this the 27 day of April, 1942.

U. S.
Internat

Bernard G. Poike

Delivered to
Katherine Moore
5-11-42

SEE DEED ON RELEASE
BOOK 2023
PAGE 540
6-6-45



BASED ON MEASURING SOUTH FROM THE FORM DISTRICT LINE, IT COMES OUT NORTH OF THE LEGGE ANCHOR

SOUTH PROPERTY LINE OF SMITH TRACT HAS ALWAYS BEEN IN THE TREE LINE THAT WAS PLANTED BY THE PREVIOUS OWNER

01/06/2011 07:24



ACTUAL
SOUTH
PROPERTY
LINE OF
SMITH
TRACT

01/04/2011 13:32

SOUTH PROPERTY LINE
OF SMITH TRACT
SHOULD NOT BE
FARTHER NORTH OF
THIS MANHOLE



02/21/2011 08:16



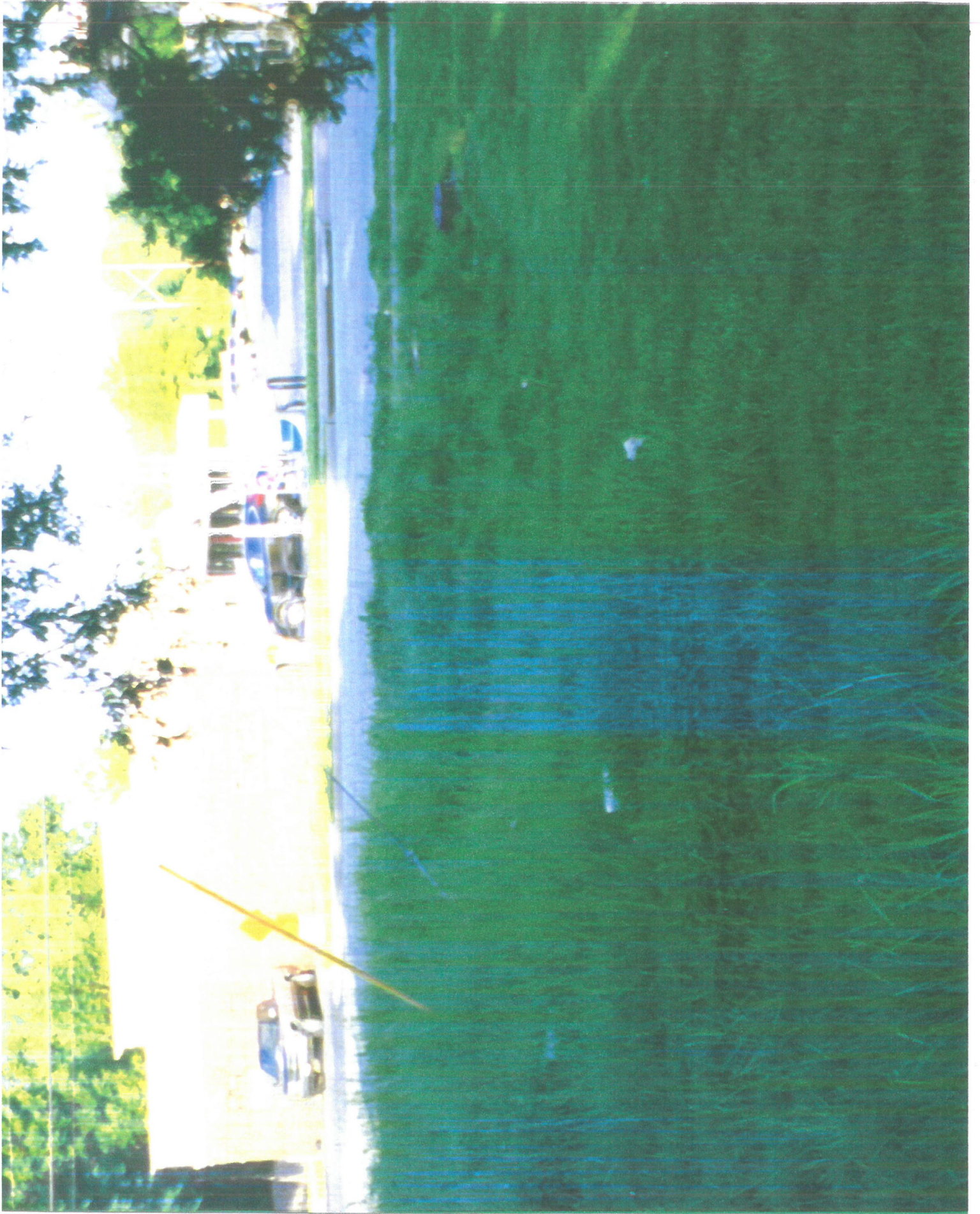
SOUTH PROPERTY LINE
OF SMITH TRACT
SHOULD NOT BE
FARTHER NORTH OF
THIS MANHOLE

02/21/2011 08:16



THIS GUYWIRE IS TOO
FAR NORTH TO BE THE
SOUTH PROPERTY LINE
OF THE SMITH TRACT









OVERHEAD POWER
LINES AGAINST THE
LINE OF TREES AT THE
SAME ANGLE



OVERHEAD POWER LINES
IN THE LG&E EASEMENT
RUN ALONG THE TREE
LINE AT THE SAME
ANGLE

Untitled Map

Entrance to Curran property on New Cut Road.

Legend

■ New Cut @ Candlelight

THE PINK CIRCLE
SHOWS THE LOCATION
OF THE MARKER THAT
WAS 'DUG UP BY
SOMEBODY



Untitled Map

Entrance to Curran property on New Cut Road.

Legend

■ New Cut @ Candlelight

THE ROAD TO THE REAR
PORTION OF THE CURRAN
PROPERTY EXTENDED
BACK FROM THE ENTRANCE

THE PINK CIRCLE
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Legend

- New Cut @ Candlelight



THE PINK CIRCLE SHOWS THE LOCATION OF THE MARKER THAT WAS DUG UP BY SOMEBODY

THE ROAD TO THE REAR PORTION OF THE CURRAN PROPERTY EXTENDED BACK FROM THE ENTRANCE

