

Polly Properties, LLC, The Nashville City Cemetery Association Inc., Tennessee Supreme Court Historical Society Inc., Tennessee Bar Association, The Tennessee Historical Society, and Tri Star Energy Fuel, LLC have filed a petition to remove and relocate remains from the Judge John Haywood Gravesite, located at 5012 Nolensville Rd., Nashville, Davidson County, Tennessee. In accordance with TCA 46-4-103 the petition is available here.

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE**

**POLLY PROPERTIES, LLC, THE )  
NASHVILLE CITY CEMETERY )  
ASSOCIATION, INC., TENNESSEE )  
SUPREME COURT HISTORICAL SOCIETY, )  
INC., TENNESSEE BAR ASSOCIATION, and )  
THE TENNESSEE HISTORICAL SOCIETY, )**

**Petitioners,**

**v.**

**MARGARET HAYWOOD SIEGRIST, JOHN )  
HAYWOOD, ANNABETH HAYES, )  
(Known Heirs of Judge John Haywood and )  
Wife, Martha Haywood), )  
and )  
UNKNOWN HEIRS OF JUDGE JOHN )  
HAYWOOD AND WIFE, MARTHA )  
HAYWOOD, and OTHERS WHOSE )  
REMAINS MAY BE BURIED AT HAYWOOD )  
GRAVESITE, )**

**Respondents.**

**Case No. \_\_\_\_\_**

**In Re: Relocation of the Graves of  
Judge John Haywood and Wife,  
Martha Haywood and Others**

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**PETITION FOR REMOVAL AND REINTERMENT OF REMAINS OF JUDGE JOHN  
HAYWOOD AND OTHERS**

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The Petitioners, Polly Properties, LLC, The Nashville City Cemetery Association, Inc., Tennessee Supreme Court Historical Society, Inc., Tennessee Bar Association, and The Tennessee Historical Society (hereinafter, collectively, "Petitioners"), by and through their undersigned counsel, respectfully petition the Court for the termination of use of an abandoned gravesite in Davidson County as a burial ground, and for removal and reinterment of the remains of all the decedents who are buried there.

In support of their Petition, Petitioners state as follows:

## I. PARTIES AND JURISDICTION

1. Polly Properties, LLC (“Polly Properties”), located at 101 E. Kings Highway, San Antonio, Texas, is a Tennessee limited liability company. It is the owner of certain land generally identified and described as 5012 Nolensville Road, Nashville, Tennessee, (the “Property”), where at least two persons are buried (the “Gravesite”). The Property is part of a large parcel once owned by Judge John Haywood, which he named Tusculum. As stated by its counsel in support of this Petition, part of a lawyer’s duties is “defending the preservation of our legal heritage.”
2. The Nashville City Cemetery Association, Inc. (the “Cemetery Association”), located at 3000 Granny White Pike, Nashville, Tennessee, is a Tennessee non-profit corporation. It is a membership organization and works to protect, preserve, restore, and raise public awareness of the Nashville City Cemetery in collaboration with the Historical Commission of the Metropolitan Government of Nashville and Davidson County, Tennessee. It operates the historic Nashville City Cemetery, located at 1001 Fourth Avenue South, Nashville, Tennessee (the “Cemetery”). The Cemetery opened in 1822, and is the oldest cemetery in Nashville. Located therein are over 22,000 deceased citizens, of whom some 6,000 are African Americans. Those buried there include two of Nashville’s founders; numerous lawyers; the first Superior Court Judge of the Cumberland Frontier; four Judges of the Supreme Court of Errors and Appeals; a Chief Justice of the Supreme Court; a Judge of the Superior Court of Law and Equity; Davidson County attorneys, including the illustrious Felix Grundy; a Tennessee Governor; twenty-two Mayors of Nashville; early civic leaders; a U.S. Secretary of the Treasury; an Ambassador to Russia; three Davidson

County Court Clerks (including the first one); two of the historic Fisk Jubilee Singers; a United States Attorney General; three United States Senators; U.S. Representatives; school teachers; prominent business persons; and other citizens of various backgrounds.

3. Tennessee Supreme Court Historical Society, Inc. (the “TSCHS”) is a Tennessee non-profit corporation located at Suite 1700, 150 Third Avenue South, Nashville, Tennessee. It was formed in 1995 for the purpose of ensuring that the records and history of the Tennessee Supreme Court and the other courts of Tennessee are not only preserved, but also are accessible to our citizens. Additionally, its purpose is to educate Tennesseans of all ages about the rule of law and the vital importance of an independent judiciary in ensuring appropriate checks and balances in our form of government. The TSCHS also oversees the Tennessee Judiciary Museum located in the Tennessee Supreme Court Building at 401 7<sup>th</sup> Avenue North, Nashville, Tennessee.
4. Tennessee Bar Association (the “Bar Association”) is a Tennessee non-profit corporation located at Suite 400, Tennessee Bar Center, 221 4<sup>th</sup> Avenue North, Nashville, Tennessee. Founded in 1881, it is dedicated to fostering legal education, maintaining the honor, dignity and well-being of the members of the legal profession, enhancing the performance of the legal profession, cultivating professional ethics and fellowship among its members and promoting responsible relationships between the legal profession and the public. To that end, in 1957, the Bar Association, along with the Tennessee Historical Commission and the Historical Society, launched a mission to erect a monument to properly “honor the memory of Judge John Haywood, father of Tennessee history and father of Tennessee common law.” This was accomplished two years later.

5. The Tennessee Historical Society (the “Historical Society”) is a Tennessee non-profit corporation located at War Memorial Building, 305 6<sup>th</sup> Avenue North, Nashville, Tennessee. It was founded in 1849 and is the oldest continually operating historical organization in Tennessee. Its principal purpose is the preservation of Tennessee history. Until the early 20<sup>th</sup> Century, it focused on collecting documents and artifacts related to Tennessee’s natural, aboriginal and civil history. The artifact collection became the basis for the Tennessee State Museum.
6. Tri Star Energy Fuel, LLC (“Tri Star”) is a Tennessee corporation located at 1740 Ed Temple Boulevard, Nashville, Tennessee. It is the lessee of the Property where the Gravesite is located, pursuant to a lease with Polly Properties. Tri Star operates a convenience store and gasoline station on the Property. Though not a party, Tri Star has authorized Petitioners to state to the Court that it does not oppose this Petition. (Exhibit A, Declaration of the Respondent COO, Steve Hofstetter (the “Hofstetter Declaration”).)
7. Through the efforts detailed below and communications with the heirs who have been located, Petitioners have identified the following known Haywood heirs, who are being served with notice and process of these proceedings:
  - a. Margaret Haywood Siegrist, who resides in Nashville, Tennessee, and is a direct descendent of Judge John and Martha Haywood.
  - b. John Haywood, who resides in Ashland City, Tennessee, and is a direct descendent of Judge John and Martha Haywood.
  - c. Annabeth Hayes, who resides in Nashville, Tennessee and is a curator at the Tennessee State Museum, and a descendent of Judge John and Martha Haywood.

All the known Haywood descendants support this Petition and have signed Declarations waiving formal service of process and supporting this Petition. (Collective Exhibit B, Declarations of Known Heirs (the “Known Heirs Declaration”).)

8. The Petitioners allege that, based upon information and belief, the following persons are buried in the Gravesite:

- a. Judge John Haywood;
- b. Mrs. Martha Haywood, his wife;
- c. Possibly unknown Haywood children; and
- d. Possibly unnamed enslaved persons and/or farm workers.

9. Pursuant to *Tennessee Code Annotated § 46-4-103(b)*, necessary Respondents in this proceeding are all “interested persons” (“Interested Persons”), who are defined in *Tennessee Code Annotated § 46-4-102* as follows:

As used in this chapter, unless context otherwise requires, “interested persons” means any and all persons who have any right or easement or other right in, or incident or appurtenant to, a burial ground as such, including the surviving spouse and children, or if no surviving spouse or children, the nearest relative or relatives by consanguinity of any one (1) or more deceased persons whose remains are buried in any burial ground.

[Emphasis added.]

10. A diligent search has been made for potential heirs of the persons who are, or may be, buried at the Gravesite. The search has included various online databases, research of public records, and numerous phone calls to persons who might have knowledge of possible heirs. As a result, the persons named above have been located, who Petitioners believe constitute the living heirs of Judge and Mrs. Haywood.

11. Further, the Gravesite and a portion of the Property near the Gravesite have been surveyed with electronic equipment. This survey and additional research lead Petitioners to believe that Judge Haywood and Mrs. Haywood are buried there. Based on information and belief, Petitioners do not believe that other Haywood family members, farm workers, enslaved persons, or unknown others are buried there. In the event other remains are located at the Gravesite, they will also be removed and reinterred at the Nashville City Cemetery.

12. *Tennessee Code Annotated § 46-4-103(b)* provides, in relevant part, that “[n]onresident and unknown defendants may be proceeded against by order of publication, and publication, in the manner provided by law.” See also *Tennessee Code Annotated § 21-1-204* (detailing service by publication in Tennessee). Accordingly, for any unknown Interested Persons, Petitioners request that the Clerk and Master enter an order and cause notice to be given by publication in a newspaper of general circulation in Davidson County, Tennessee, once a week for four (4) consecutive weeks.
13. In addition, pursuant to *Tennessee Code Annotated § 46-4-103(c)*, the requisite notice has been provided to the Tennessee Historical Commission, along with a copy of this Petition.

## II. FACTS

14. The Property is a tract of land owned by Petitioner Polly Properties, and leased to Tri Star. It is presently used for commercial purposes, as described in Paragraph 6 above. (Exhibit A, (the “Tri Star Declaration”), ¶ 3.)
15. Nick Fielder and Zada Law were engaged to evaluate, research and analyze the Gravesite on the Property. Mr. Fielder is the retired, long tenured Tennessee State Archeologist. Ms. Law is Director of the MTSU Geospatial Research Center in Murfreesboro, Tennessee. (Exhibit C, Declaration of Nick Fielder (the “Fielder Declaration”), ¶¶ 4 and 5, in which he discusses the research and findings regarding the Gravesite.)
16. Mr. Fielder has over 50 years of experience in conducting archaeological investigations. He has overseen or assisted with several hundred grave removals and relocations.
17. The Gravesite includes now, or included in the past, marked stone monuments (the “Monuments”). (Exhibit C, Fielder Declaration, Figures 2-4.) The Monuments include a small stone marker (the “Marker”), which for some years has been in the possession of the

Tennessee State Museum, and a stone obelisk (the “Obelisk”) that is presently adjacent to the Gravesite.

18. The Marker’s inscriptions contain the following information: “John Haywood, Born, 1753, Died 1826, Jurist, Author, Philosopher, Father of Tennessee History,” and “Grave 26 FT 8 IN South of this Tablet.” Included in the Report are photographs of the Monuments. (Exhibit C, Fielder Declaration, Report, Figures 2-6.)
19. A history of efforts to locate and memorialize the graves of John Haywood, his wife and others, was prepared by Jeff Sellers, Director of Education & Community Engagement, Tennessee State Museum (the “History”). (Exhibit D.)
20. As shown in the attached Exhibits, the remains buried in the Gravesite are of historical importance. Judge John Haywood is considered by many to be the architect of both Tennessee jurisprudence and history. Before statehood, he was already considered to be a legal scholar, author, attorney general and judge. Upon moving to Tennessee in the early 1800s, he practiced law, established the first law school in the Southwest, and was a judge on the Tennessee Supreme Court of Errors and Appeals (now the Tennessee Supreme Court). His legal publications include *North Carolina Reports*, *A Manual of the Laws of North Carolina*; *A Revisal of the Public Acts of the States of North Carolina and Tennessee*; *Duty and Authority of Justices of the Peace*; and *The Statute Laws of the State of Tennessee*. Haywood County, Tennessee bears his name.
21. The current location of the Gravesite hinders Polly Properties from further development on the Property, legally complicates any sale of the Property and exposes the Property and any lessees or purchasers of the Property to possible lawsuits by the heirs. (Exhibit E, Declaration of Polly Properties, ¶ 4.) If the remains are not moved, they will continue to



be surrounded by walls of concrete and a gasoline station. *Id.* Further, access to the Gravesite for any of the known or unknown descendants, historians, and interested parties is impeded and inconvenient. *Id.* Over many years, the Gravesite has been neglected as the use of the Property has changed from farmland to commercial use. The Gravesite will inevitably continue to deteriorate, despite its historical importance. This is inconsistent with the due and proper reverence and respect for the memory of all of the dead, as required by *Tennessee Code Annotated § 46-4-101(3)*.

22. Petitioners respectfully request permission from this Court to terminate the use of the Gravesite as a burial ground. They further request the Court's permission to have the remains of the deceased removed from the Gravesite, the Marker moved from the Tennessee State Museum, and the Marker and remains moved to the Cemetery as provided for in *Tennessee Code Annotated § 46-4-103(a)*.
23. Petitioners have worked together to identify a suitable site for the Marker and remains at the Cemetery (the "New Gravesite"). Unlike the current location, where there is no easy access to the Gravesite, the New Gravesite at the Cemetery will be near a driveway for easy visiting and clear of commercial development or other obstructions. Exhibit E, *supra*.
24. In undertaking to relocate the remains, the Cemetery Association will arrange to conduct the reinterment of the remains with due care and decency in accordance with *Tennessee Code Annotated § 46-4-104*.
25. Petitioners plan to erect an appropriate memorial at the New Gravesite in the Cemetery. The Marker will be placed at the New Gravesite. The New Gravesite will be surrounded by natural landscape, in order to separate it and protect it from disrepair. The cost of disinterring the remains and reintering them at the New Gravesite, the moving and

placement of the Marker, landscaping, etc., will be defrayed by voluntary private contributions. Going forward, the New Gravesite will be maintained by the Metro Historical Commission and the Metro Parks Department.

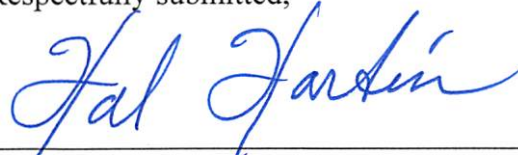
26. This entire effort is endorsed by Davidson County Historian, scholar and professor, Dr. Carole Stanford Bucy, as is reflected in her attached Declaration. (Exhibit F, the “Bucy Declaration.”)

**WHEREFORE**, Petitioners respectfully request that the Court:

1. In accordance with *Tennessee Code Annotated* §§ 21-1-204 and 46-4-103, enter an Order authorizing notice to all known and unknown Interested Persons by publication in a newspaper of general circulation in Davidson County, Tennessee, once a week for four (4) consecutive weeks;
2. Issue proper process upon the known Interested Persons, all of whom have advised counsel that they will waive personal service;
3. In accordance with *Tennessee Code Annotated* §§ 46-4-101 and 46-4-104, enter an Order holding that the current Gravesite is unsuitable as a resting place for the remains of the decedents because the conditions and activities about or near the Gravesite (development of a commercial neighborhood) are wholly inconsistent with due and proper reverence or respect for the memory of all buried therein;
4. In accordance with *Tennessee Code Annotated* § 46-4-104, enter an Order approving and authorizing the disinterment and reinterment of the remains from the Gravesite, the moving of the Marker, and the reinterment of the remains, and installation of the Marker, at the New Gravesite, in the manner proposed in this Petition; and

5. Grant such further and general relief as may be appropriate.

Respectfully submitted,



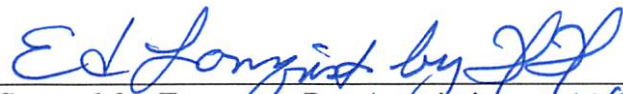
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Hal Hardin, #003101  
Hardin Law Office  
***Counsel for and Appearing Specially for Purposes  
of This Case Only The Nashville City Cemetery  
Association, Inc., Tennessee Supreme Court  
Historical Society, Inc., and The Tennessee  
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**WE APPROVE THIS PETITION:**

**TENNESSEE SUPREME COURT HISTORICAL SOCIETY, INC.**

By: Linda W. Knight

Linda W. Knight

Its: Secretary

150 Third Avenue South, Suite 1700

Nashville, TN 37201

(615) 242-4994: Telephone

(615) 256-6339: Fax

[lknight@gsrcm.com](mailto:lknight@gsrcm.com)

**THE NASHVILLE CITY CEMETERY ASSOCIATION, INC.**

By: Jim Hoobler by Helen Wittkowski

Jim Hoobler

Its: President

3000 Granny White Pike

Nashville, TN 37204

(615) 862-7970

[Jim.hoobler@outlook.com](mailto:Jim.hoobler@outlook.com)

**THE TENNESSEE HISTORICAL SOCIETY**

David A. Fox

By: \_\_\_\_\_

Its: President

305 Sixth Ave. North

Nashville TN 37243

[foxdavid@gmail.com](mailto:foxdavid@gmail.com)

**CERTIFICATE OF SERVICE**

20<sup>th</sup> I certify that a true and exact copy of this Petition has been sent via U.S. Mail on this the  
day of July, 2021, to the following:

Tri Star Energy Fuel, LLC  
1740 Ed Temple Blvd.  
Nashville, TN 37228

Tri Star Energy Fuel, LLC  
Attn: CT Corporation System  
300 Montvue Rd.  
Knoxville, TN 37919-5546

Margaret Haywood Siegrist, John Haywood, Annabeth Hayes  
At their last known addresses  
All Known Interested Parties



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Hal Hardin

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE**

**POLLY PROPERTY, LLC, )  
THE NASHVILLE CITY CEMETERY )  
ASSOCIATION, INC., )  
THE TENNESSEE SUPREME COURT )  
HISTORICAL SOCIETY, INC., )  
THE TENNESSEE HISTORICAL )  
SOCIETY, and )  
THE TENNESSEE BAR ASSOCIATION )  
    Petitioners, )  
v. )  
    ) )  
**KNOWN AND UNKNOWN HEIRS )  
OF JUDGE JOHN AND WIFE, MRS. )  
MARTHA HAYWOOD, AND KNOWN )  
AND UNKNOWN HEIRS OF OTHERS )  
WHOSE REMAINS MAY BE BURIED )  
AT HAYWOOD GRAVESITE, )  
    Respondents. )****

Case No. \_\_\_\_\_

**In re: Relocation of the Graves of  
Judge John Haywood and Wife,  
Martha Haywood, and Others**

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**DECLARATION OF STEVE HOSTETTER**

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I hereby state and declare under penalty of perjury that the following is correct to the best of my information, knowledge, and belief.

1. My name is Steve Hostetter. I am the CEO and COO of Tri Star Services, LLC located at 1740 Ed Temple Boulevard, Nashville TN 37208.

2. Tri Star Services, LLC is the operations and management company for Tri Star Energy, LLC. Tri Star Energy, LLC has numerous facilities that sell fuel and operate convenience stores. One such business is located at 5012 Nolensville Road, Nashville, Tennessee. Tri Star Energy, LLC leases that property from Polly Properties, LLC.

3. On the aforementioned leased property is a graveyard. It is my understanding that the entities listed in the caption intend to seek court approval for the



removal of the remains of those buried there and reinter them in the Nashville City Cemetery.

4. Tri Star Services, LLC and Tri Star Energy, LLC have no objection to the said removal.

Executed and declared this 21 day May, 2021.



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Steve Hostetter  
Tri Star Services, LLC and  
Tri Star Energy, LLC  
F: (615)313-3612  
[steve@tristarenergy.com](mailto:steve@tristarenergy.com)

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE**

**POLLY PROPERTIES, LLC, NASHVILLE )  
CITY CEMETERY ASSOCIATION, INC., )  
TENNESSEE SUPREME COURT )  
HISTORICAL SOCIETY, LLC., TENNESSEE )  
BAR ASSOCIATION, INC., and TENNESSEE )  
HISTORICAL SOCIETY, INC., )  
Petitioners, )**

v. )

**KNOWN HEIRS OF JUDGE JOHN AND )  
MRS. MARTHA HAYWOOD AND KNOWN )  
HEIRS AND UNKNOWN HEIRS, )  
Respondents. )**

Case No. \_\_\_\_\_

**In Re: Relocation of the Graves of  
Judge John Haywood and Wife,  
Martha Haywood and Others**

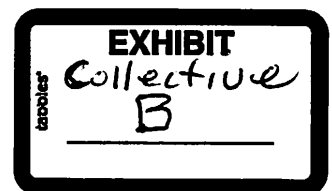
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**DECLARATION OF JOHN HAYWOOD AND WAIVER OF FORMAL SERVICE OF  
PROCESS**

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I hereby state and declare under penalty of perjury that the following is true:

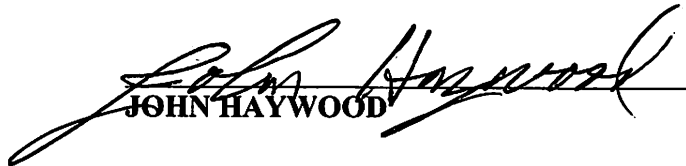
1. My name is John Haywood, and I reside in Cheatham County, Tennessee. I am over twenty-one years of age and am capable of making this declaration.
2. I am a descendant of Judge and Martha Haywood.
3. I understand that a Petition will be filed with the Court requesting the removal of my ancestors from their present graves on Nolensville Road and transferring their remains to the Nashville City Cemetery.
4. I agree with that Petition and have no objections to it.





5. I understand that I have a right to be personally and formally served with a copy of the Petition. I hereby waive any of my rights to personal service.

Stated and declared on this the 4<sup>th</sup> day of June, 2021.

  
JOHN HAYWOOD

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE**

**POLLY PROPERTIES, LLC, NASHVILLE )  
CITY CEMETERY ASSOCIATION, INC., )  
TENNESSEE SUPREME COURT )  
HISTORICAL SOCIETY, LLC., TENNESSEE )  
BAR ASSOCIATION, INC., and TENNESSEE )  
HISTORICAL SOCIETY, INC., )**

**Petitioners,**

**v.**

**KNOWN HEIRS OF JUDGE JOHN AND )  
MRS. MARTHA HAYWOOD AND KNOWN )  
HEIRS AND UNKNOWN HEIRS, )**

**Respondents.**

**Case No. \_\_\_\_\_**

**In Re: Relocation of the Graves of  
Judge John Haywood and Wife,  
Martha Haywood and Others**

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**DECLARATION OF MARGARET HAYWOOD SIEGRIST AND WAIVER OF FORMAL  
SERVICE OF PROCESS**

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I hereby state and declare under penalty of perjury that the following is true:

1. My name is Margaret Haywood Siegrist, and I reside in Davidson County, Tennessee. I am over twenty-one years of age and am capable of making this declaration.
2. I am a descendant of Judge and Martha Haywood.
3. I understand that a Petition will be filed with the Court requesting the removal of my ancestors from their present graves on Nolensville Road and transferring their remains to the Nashville City Cemetery.
4. I agree with that Petition and have no objections to it.

5. I understand that I have a right to be personally and formally served with a copy of the Petition. I hereby waive any of my rights to personal service.

Stated and declared on this the 3 day of June, 2021.

  
**MARGARET HAYWOOD SIEGRIST**

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE**

**POLLY PROPERTIES, LLC, NASHVILLE )**  
**CITY CEMETERY ASSOCIATION, INC., )**  
**TENNESSEE SUPREME COURT )**  
**HISTORICAL SOCIETY, LLC., TENNESSEE )**  
**BAR ASSOCIATION, INC., and TENNESSEE )**  
**HISTORICAL SOCIETY, INC., )**  
**Petitioners, )**  
**)**  
**v. )**  
**)**  
**KNOWN HEIRS OF JUDGE JOHN AND )**  
**MRS. MARTHA HAYWOOD AND KNOWN )**  
**HEIRS AND UNKNOWN HEIRS, )**  
**Respondents. )**  
**)**

**Case No. \_\_\_\_\_**

**In Re: Relocation of the Graves of  
Judge John Haywood and Wife,  
Martha Haywood and Others**

**DECLARATION OF ANNABETH HAYES AND WAIVER OF FORMAL SERVICE OF  
PROCESS**

I hereby state and declare under penalty of perjury that the following is true:

1. My name is Annabeth Hayes, and I reside in Davidson County, Tennessee. I am over twenty-one years of age and am capable of making this declaration.
2. I am a descendant of Judge and Martha Haywood.
3. I understand that a Petition will be filed with the Court requesting the removal of my ancestors from their present graves on Nolensville Road and transferring their remains to the Nashville City Cemetery.
4. I agree with that Petition and have no objections to it.

5. I understand that I have a right to be personally and formally served with a copy of the Petition. I hereby waive any of my rights to personal service.

Stated and declared on this the 27 day of May, 2021.

  
ANNABETH HAYES

Comments on Judge John Haywood's Lost Grave  
By Nick Fielder  
Former State Archaeologist  
October 20, 2016

In December 1988 Tusculum Hills Baptist Church, 4930 Nolensville Pike, was planning a building expansion near the location of a monument to historic Judge John Haywood. The church is now on the site of Haywood's home known as Tusculum.

The judge is considered the founder of common law in Tennessee. A member of the state supreme court until his death in 1826, he was also a noted historian. The monument was erected in 1959 by the Bar Association of Tennessee, the Tennessee Historical Society, the Tennessee Historical Commission and the Court of Haywood County.



Fig. 1 Judge John Haywood

The church asked the Tennessee Division of Archaeology to investigate the area around a presumed grave marker adjacent to the monument to determine where the grave was located. Using volunteers from the congregation directed by Nick Fielder, State Archaeologist, a stone marker flush with the surface was investigated (Fig. 2).

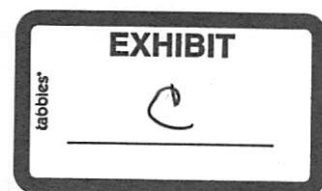




Fig. 2 Stone grave marker prior to excavation. Looking northwest

To our surprise the stone was a base to a grave marker but the top was missing. The base was carved with the name HAYWOOD in block letters. Soil had been filled around the base but it had been exposed originally (Fig. 3).

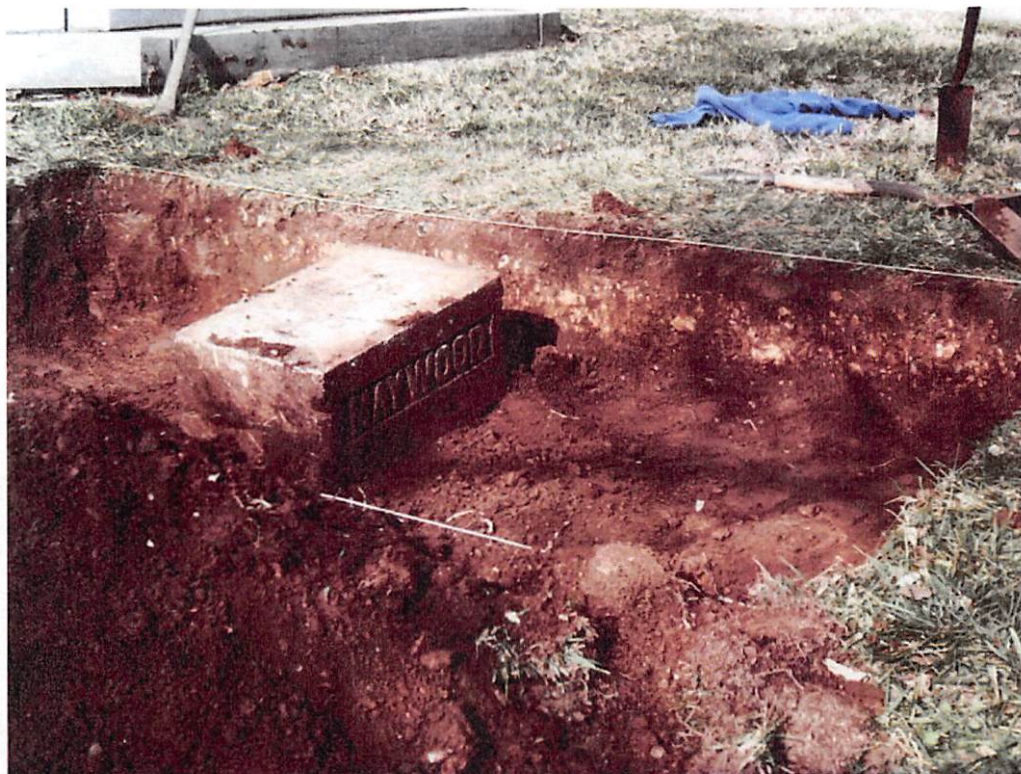


Fig. 3 Exposed base of Haywood grave marker. Looking northwest

I used a steel probe to see if there was a grave shaft on either side of the marker. There were none discernable. Traditionally the actual grave is on the west side of the grave stone and the stone is oriented with the face to the east.

Since the stone did not mark a grave, it was removed and taken to the offices of the Division of Archaeology.

Also since the church did not own the monument, it could not be removed and the new construction was done leaving it in place (Fig. 4)





Fig. 4 Monument after church construction was completed. Looking East

The matter would have been left as a mystery had it not been for a chance discovery in the storage area of the Tennessee state Museum. Steve Rogers, historic preservation specialist on the staff of the Tennessee Historical Commission discovered a tombstone for Haywood in the museum (Fig. 5). It had been done by the Tennessee Historical Society sometime after the judge's death. Apparently it had been removed in 1959 when the large monument was constructed. According to James Hoobler, long time TSM staff person, the stone was kept in the office of Robert McBride, the editor of the Tennessee Historical Quarterly, a publication of the Tennessee Historical Society.



Fig. 5 Top piece of Haywood marker at Tennessee State Museum

Holes for iron pins on the bottom of the top piece matched holes in the base marked HAYWOOD. On the back of the top piece was incised with "GRAVE 26 FT 8 IN SOUTH OF THIS TABLET" (Fig. 6).

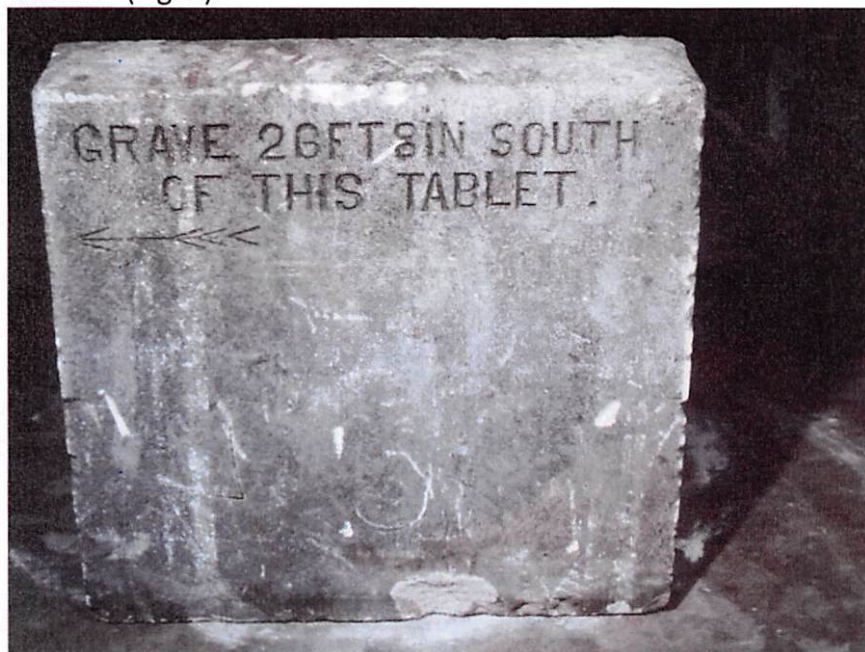


Fig. 6 Reverse side of Haywood marker top

Intrigued by why the marker was not at the grave, Steve Rogers did research at the Tennessee Library and Archives. He found a map that shows the location of the actual grave is on the south side of a yard fence 201 feet from the center of Nolensville Pike (Fig. 7). Notes in the files stated that when the older THS marker was erected, the grave was on a separate property whose owner would not allow them to put it on the grave. Hence the inscription on the back.

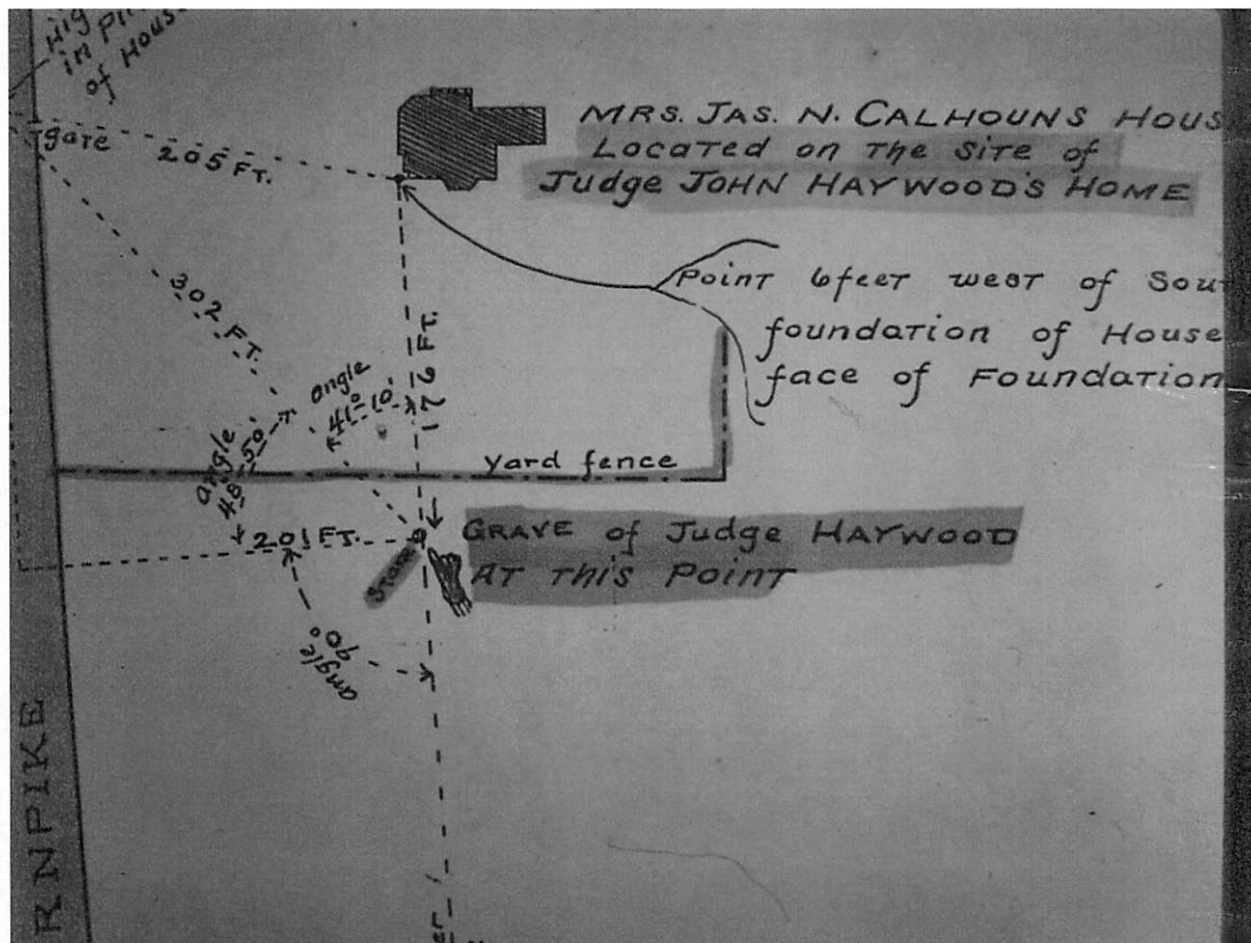


Fig. 7 Map of Judge Haywood's grave site

We combined the historical and archaeological information with the church construction drawings. The grave location fell on the adjacent tract in the back yard of a Texaco station (Fig. 8)

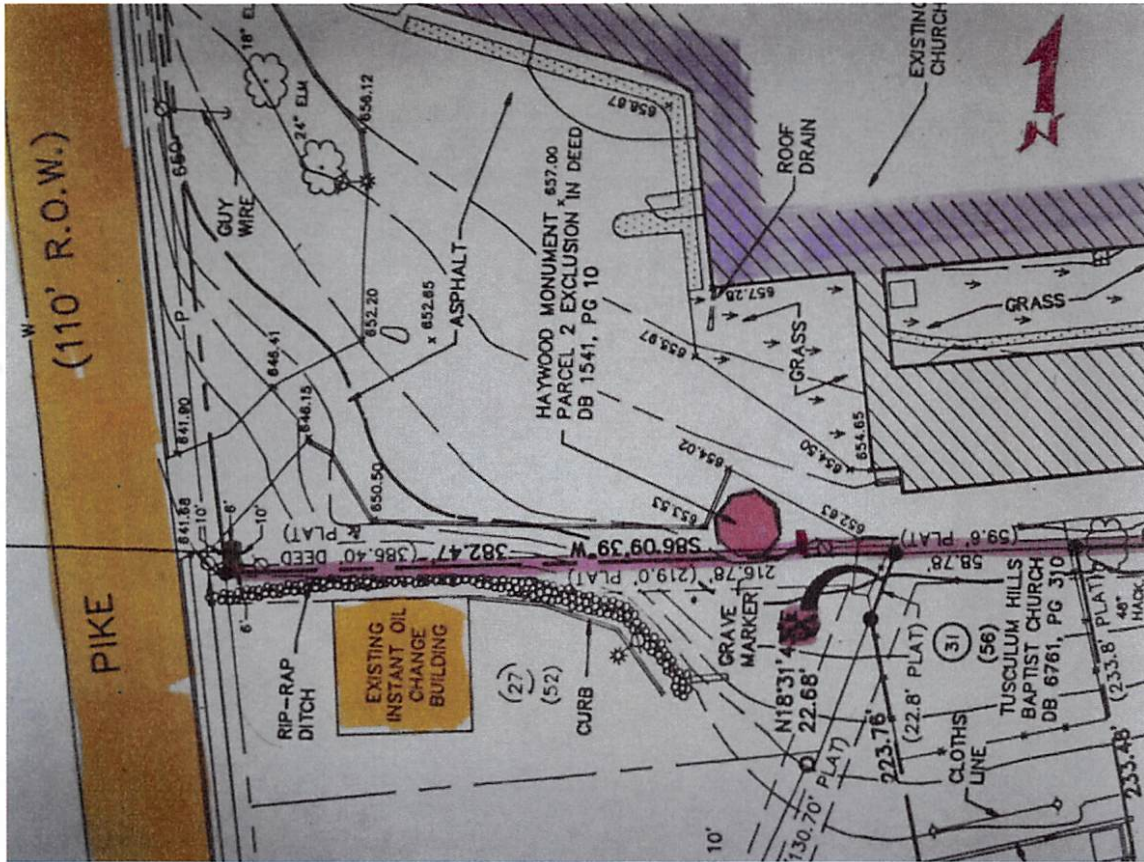


Fig. 8 Construction plans showing monument, grave marker and actual unmarked grave site.

The tract with presumed unmarked grave is located at 5012 Nolensville Pike (Parcel No. 14716005200) Metro records show it is owned by Polly Properties LLC, San Antonio, TX who acquired it March 4, 2008.



Fig. 9 Property in 1989 from Nolensville Pike Looking East



Fig. 9 Google Earth aerial of Haywood grave site in 2016. South end of red line should be near the actual John Haywood grave.

The combined archaeological, historical information and present observations indicates there is a high probability that a small undisturbed plot of land at 5012 Nolensville Pike contains the grave and physical remains of John Haywood, noted jurist and historian who died in 1826 and was buried in the family cemetery.

Further investigation using ground penetrating radar should show the precise grave location and if other graves are present. The judge reportedly weighed over 400 pounds so he should be in a larger than normal grave and coffin.

When the grave is found, he should be exhumed following proper legal processes and re-interred in the city cemetery.

#### VERIFICATION

I declare under penalty of perjury that the foregoing factual statements are true and correct to the best of my knowledge and belief.

This the 7<sup>th</sup> day of June, 2021.

  
\_\_\_\_\_  
Nick Fielder

## A History of Efforts to Locate & Memorialize the Grave of Judge John Haywood

Prepared by Jeff Sellers

May 23, 2021



**John Haywood**

(March 16, 1762- December 22, 1826)

### **1826 – Death of Judge John Haywood**

On December 22, 1826, the noted Judge John Haywood passed away at his home, named Tusculum, after a brief illness. He was buried there, next to his wife Martha on Christmas Eve.<sup>1</sup>

### **1827 – The Supreme Court Mourns the Loss**

In January 1827, the Supreme Court convened in Nashville for one day to pass a resolution of mourning for Judge Haywood. They unanimously resolved to each wear “crepe around their left arm for the space of thirty days” and encouraged the lower courts throughout the state to take similar measures.<sup>2</sup>

*Knoxville Register*, January 17, 1827

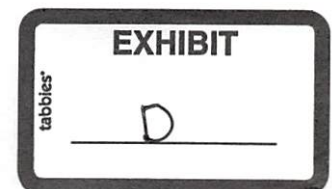
### **1879 – The Nashville Bar Attempts to Place a Monument**

In March 1879, the Nashville Bar Association convened under the leadership of prominent 19<sup>th</sup> century Judge, Joseph Conn Guild. Guild, who had received his certificate to practice law from Haywood, lamented the fact that his grave was lost and unkept in a farm field without proper memorialization. The Bar met and adopted the following resolution:

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<sup>1</sup> Erwin, Ned. *Voice in the Wilderness: John Haywood and the Preservation of Early Tennessee History*. Tennessee Historical Quarterly. Fall 1999.

<sup>2</sup> *Knoxville Register*, January 17, 1827, newspapers.com



*The Bar of Nashville have this morning assembled for the purpose of giving a tribute to the memory of Judge John Haywood, who at an early period occupied a most conspicuous place on the Supreme Bench of Tennessee...Judge Haywood has been dead for nearly sixty years and his grave is to be found upon his farm, now owned by Dr. Provine, in this county. Its enclosures have long since been destroyed by time and remain in a neglected condition. It is justly due to the memory of this great lawyer and judge that the Bar should take the necessary action to erect over his grave a suitable tribute to the memory of this eminent jurist.*<sup>3</sup>

It is unknown if the resolution resulted in any other action but it is most certain that a monument was not erected at this time.

### **1906 - An Account of the graves from John Haywood's grandson, also named John Haywood**

In 1906, the grandson of Haywood published an article in *The Tennessean*. The article described his memories of the judge's house, law school, and grave site. He wrote to correct what he believed to be biographical errors in an earlier (unknown) publication. In this article, he described the surroundings of Tusculum and the placement of the Haywood graves.

*The yard was large, the front fence running along the pike and there was a garden paled in the southeast corner of the yard. In the corner of this garden, on a line with the south chimney were the graves of both the Judge and his most refined, adorable and intelligent consort. It is supposed that both graves are situated about eighty yards on a direct line from where the south chimney stood, and but a short distance from the pike.*

*The Tennessean*, April 13, 1906

### **1911 - The Tennessee Historical Society Erects a Tablet**

Four years later, the Tennessee Historical Society began efforts to locate and erect a small monument at the grave. Two members were appointed to this committee, Col. George C. Porter and Melville Williams. Williams' grandfather bought the Haywood plantation from Egbert, the judge's son, a few years after Judge Haywood's death. In a newspaper account from the *Nashville Banner*, Williams recounted his memory of the graves when he had visited his grandfather's farm as a child.

*The writer, when a boy, was often on the place, as well as after he became of age, and often had occasion to see the little private graveyard about sixty and seventy yards south of the residence where he was frequently told that Judge Haywood was buried. There were at that time six or eight graves, with headstones, and a small cluster of trees had grown up around them. Since then the trees have been cut down and there are no*

## **NO MONUMENT FOR HAYWOOD**

**Historical Society Committee  
Locates It Near Old Home.**

**OWNER OF PROPERTY  
OBJECTS TO MEMORIAL**

**Distinguished Jurist and Historian Sleeps  
in a Field That Has Been Many  
Years Under Cultivation—Simple  
Marker May Be Put Up.**

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<sup>3</sup> *The Grave of Judge Haywood*, *Nashville Daily American*, March 30, 1879, newspapers.com



*traces of any of the graves except one or two scattering tombstones out of place.*

*Nashville Banner, June 11, 1910*

By the summer of 1911, the committee reported that the monument had been completed and that it would soon be installed. However, the monument was not placed on the exact location identified by Williams and Porter. Instead the monument was inscribed on the back with a message saying grave 26 ft 8 inches with an arrow pointing to its location.

The reason for this odd inscription is that the landowner objected to a monument placed in the field he was farming. Therefore, the Historical Society marker had to be located on the adjacent property near the actual grave site but not directly on it. This marker stood near the graves for forty-eight years until another effort began to memorialize the judge.



#### **1947 – State Purchases Land to Place a New Monument**

In September 1947 the State of Tennessee purchased a twenty-foot wide octagonal parcel of land from Joe H. Strasser, the current landowner. The deed expresses that it would be “understood between both parties that party of the second part, acting through the Tennessee Historical Commission plans to erect a sandstone marker or monument.”<sup>4</sup>

#### **1951 – First Highway Historical Marker in the Nashville Area Erected**

On April 20, 1951, members of the Tennessee Historical Commission, Tennessee Highway Department (now TDOT), and the Tennessee Historical Society dedicated the first roadside historical marker in the

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<sup>4</sup> Deed Book 12, Metro Nashville Archives

Nashville area to John Haywood. The marker was installed alongside Nolensville Road and McMurray Drive.



#### **1959 – Large Obelisk Monument Erected**

In January 1957, members of the Tennessee Bar Association, the Tennessee Historical Commission, and the Tennessee Historical Society convened at the Andrew Jackson Hotel in downtown Nashville. This time a new generation of lawyers and historians launched a mission to erect a monument that would properly "honor the memory of Judge John Haywood, Father of Tennessee History and Father of Tennessee Common Law." A few years earlier the state had acquired a small octagonal piece of land that would serve as a base for the monument. By 1959, funds had been secured for the estimated \$7,500 monument and a large obelisk was placed on the base. Inscribed on it was all the agencies that helped raise funds for the monument including the three organizations previously listed as well as Haywood County which added additional funds. When the obelisk was installed the smaller marker from the Tennessee Historical Society was removed, leaving only the cement base behind. Either at the time of the installation or years later, this base was covered over with dirt leaving only the top portion exposed above ground.



### 1988 – State Archaeologist Conducts a Survey for the Grave

In 1988, Nick Fielder, state archaeologist at the time, was called to the monument to locate the grave. Tusculum Hills Baptist Church were the modern owners of the property. They were in the planning phase for an addition to their church building and wanted to ensure that they did not disturb the grave they thought was nearby the obelisk. Fielder was called in to do a survey of the grounds. It was the 1911 Historical Society base that Fielder found during this excavation and presumed it to be the stone that marked the actual grave of Haywood. He and others did not realize that the Historical Society monument directed the graves 26 feet 8 inches away. After digging around each side of the base, Fielder and his team were perplexed when they did not find any grave underneath the marker.



## 2016 - Present

The Historical Society marker and adjoining base eventually found their way to the Tennessee State Museum where they are now accessioned into the state's collection.

It was this association with the Tennessee State Museum that joined the latest effort to locate the grave. Nick Fielder was serving as a consultant to the museum on the new building project. Jeff Sellers, Director of Education and Programming, was using Haywood's histories to research exhibits for the new Tennessee State Museum. Their shared passion for the history and desire to locate and remove the graves to a proper cemetery began the latest effort.

That leads us to the present effort to finally locate the burial site of Judge John Haywood and his wife Martha. Currently a new generation is seeking to locate his grave and remove it from the property that now sits a gas station and oil change business to the Nashville City Cemetery where the graves may be safe from future development and more properly honored.

In 2018 and 2019, research was conducted on the history of the monumentation and attempts to find the graves. In 2019, Fielder and Sellers presented their findings to the Tennessee Historical Society and the Historical Committee of the Nashville Bar Association.

In March, Fielder attempted probing the ground to locate graves. He found potential features but needed more conclusive evidence that ground penetrating radar might provide.

In March 2020, the Department of Geosciences at Middle Tennessee State University under the leadership of Dr. Zada Law, Joe Collins, and Oluwatosin Obe conducted a ground Penetrating Radar survey. The survey concluded there is a "high probability that unmarked graves exist within the surveyed area."



Probing, March 2019



GPR Survey, March 2020

### How many people are buried at the site?

The exact number of burials at the site remains a mystery. We know there are at least two, John Haywood and his wife, Martha Haywood. Martha preceded John in death a few years earlier. The 1820 census indicates that was alive and living at Tusculum. However, she is not listed in his 1826 Will.<sup>5</sup> Also, newspaper accounts written by a family member mentions that she passed away before him.

Another potential burial is Haywood's son, Robert. According to an 1808 death notice, Robert passed away at the age of 14. The notice indicates he may have been away at Louisburgh Academy, a boarding school in Louisburg, North Carolina, some 550 miles away.<sup>6</sup> It is questionable whether or not 1.) he was away from home when he died and 2.) if he did die at school whether his body was shipped back to be buried at Tusculum or was he buried in North Carolina. If the first proposition is correct, it is highly unlikely he was shipped back given lack of speedy transportation and body preservation knowledge in 1808.

No other children of Haywood's are known to have died between the years 1807 to 1826 when Haywood resided at Tusculum. However, other relatives might have resided there during those years.

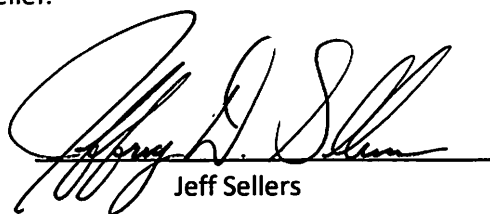
As for those enslaved persons at Tusculum, the 1820 census lists 21 people. However, it was not customary for slaves to be buried in the owner's family plot. Of course, there are exceptions and there could be African Americans buried here as well.

As for other accounts, there are two published eye-witness accounts of the graves. One from the grandson of John Haywood, whose name was John Haywood, and Melville Williams the other from the grandson of the man who bought the farm after Haywood's death. Haywood recalled only two graves, those of John and Martha, while Melville remembered "six or eight graves with at that time headstones, with a small cluster of trees growing up around them."

### VERIFICATION

I declare under penalty of perjury that the foregoing factual statements are true and correct to the best of my knowledge and belief.

This the 3rd day of June, 2021.



Jeff Sellers

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<sup>5</sup> Last Will and Testament, John Haywood, Tennessee State Library and Archives

<sup>6</sup> *The Impartial Review and Cumberland Repository*, July 28, 1808, page 3, newspapers.com

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE**

**POLLY PROPERTIES, LLC, NASHVILLE )  
CITY CEMETERY ASSOCIATION, INC., )  
TENNESSEE SUPREME COURT )  
HISTORICAL SOCIETY, LLC., TENNESSEE )  
BAR ASSOCIATION, INC., and TENNESSEE )  
HISTORICAL SOCIETY, INC., )  
    **Petitioners,** )  
 )  
v. )  
 )  
**KNOWN HEIRS OF JUDGE JOHN AND )  
 )  
MRS. MARTHA HAYWOOD AND KNOWN )  
HEIRS AND UNKNOWN HEIRS, )  
    **Respondents.** )  
 )****

**Case No. \_\_\_\_\_**

**In Re: Relocation of the Graves of  
Judge John Haywood and Wife,  
Martha Haywood and Others**

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**DECLARATION OF ROBERT I. THOMASON. JR.**

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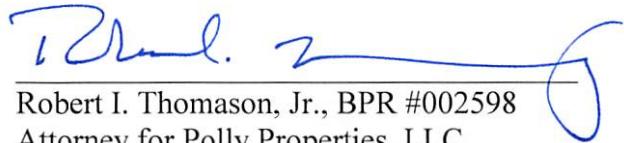
I hereby state and declare under penalty of perjury that the following is correct to the best of my information, knowledge, and belief.

1. I am a licensed Tennessee attorney in good standing.
2. I represent the petitioner Polly Properties, LLC, and I am authorized to make this Declaration.
3. Polly Properties, LLC owns the property located at 5012 Nolensville Road, Nashville, Tennessee. Presently, Polly Properties, LLC leases the property to Tri-Star Energy Services, LLC which in turn operates a gasoline station on the property.
4. On a part of the property there is a small gravesite which is reported to be the burial site of Judge John Haywood and his wife, Martha Haywood.



5. For commercial reasons, Polly Properties, LLC wishes to have the graves removed. This would be of benefit to Polly Properties, LLC as it would free the land for other uses. As a lawyer whose duties include defending the preservation of our legal heritage, I believe the graves should be placed in a more suitable and respectful place such as the Nashville City Cemetery where they would be more accessible to the general public and better preserved.

Executed and declared this 3rd day June, 2021.



Robert I. Thomason, Jr., BPR #002598  
Attorney for Polly Properties, LLC  
102 South Court Square  
Waverly, TN 37185  
T: (931) 296-7741  
robert.thomason@porchpeeler.com

### Declaration of Carole Stanford Bucy

1. I support the proposed removal of the remains of Judge John Haywood, his wife, Martha Edwards Haywood, and other members of his family from inaccessible unmarked graves in a vacant field off of Nolensville Road in Nashville to the Nashville City Cemetery. As a professor of history at Volunteer State Community College, I have taught Tennessee history for more than 25 years, and hold a Ph.D. in United States history from Vanderbilt University. I was a member of the board of the Tennessee Historical Society for fifteen years and served as its Vice President for four years. Currently, I am the Davidson County Historian, appointed in 2011 by Mayor Karl Dean.

2. John Haywood, a highly respected lawyer and judge in North Carolina, moved to Davidson County around 1807, eleven years after Tennessee became a state. He acquired a large tract of land on the Nolensville Pike about seven miles from Nashville where he established a farm and built a house as well as a separate building which became his law office. Here he trained young men to be lawyers by creating a process that became known as the first law school of the Southwest. He began to compile court opinions for Tennessee and published his *Revisal of the Public Acts of the State of North Carolina and the State of Tennessee* in 1809. After being elected to Tennessee's Supreme Court of Errors and Appeals in 1816, he continued to study a wide variety of subjects in the areas of the law, science, religion, and history. In order to compile a collection of materials related to the early history of Tennessee, he organized the Tennessee Antiquarian Society as a way to support his research interests and became its chairman. Three years later, he published *The Natural and Aboriginal History of Tennessee* and *The Civil and Political History of the State of Tennessee* in 1823. These two volumes were the first published works of Tennessee history and continue to be cited today. He continued collecting materials related to the trans-Appalachian frontier until his death. These materials became the foundation for the Tennessee Historical Society's collection which today is housed at the Tennessee State Library & Archives and the Tennessee State Museum. Judge Haywood's research and writing paved the way for all of the other historians of Tennessee. He rightly is referred to as "the Father of Tennessee History."

### VERIFICATION

I declare under penalty of perjury that the foregoing factual statements are true and correct.

This the 16<sup>th</sup> day of April, 2021.

Carole S. Bucy

Carole Stanford Bucy  
2411 Golf Club Lane  
Nashville, TN 37215

