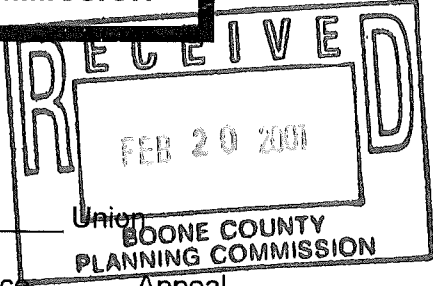


APPLICATION FORM

BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION



See Boone County Zoning Regulations SECTION A (To be completed by applicant)

- 1. (Check One) X Boone Florence Walton Union
2. (Check One) X Conditional Use Permit Variance Appeal
3. Applicant's Name Tom Withorn, Phone Number (859) 586-5496, Fax No. 586-5491, Applicant's Address 11500 Victory School House Rd, Union Ky. 41091
4. Description of Request: We would like to add four camper cabins, one settler's log cabin, outdoor amphitheater and a welcome center/office building in an A-1 zone
5. Name of Development POTTER'S RANCH
6. Location of Development Victory School House Rd + HWY 338
7. Acreage Under Review 385
8. Lot Number and Name of Subdivision (if part of a subdivision)
9. Owner of Property ROBERT J. LIGHTNER, Phone Number of Owner (859) 586-5475, Address of Property Owner Union Ky. 41091
10.
11. Proposed Use(s) on Site ADD TO THE EXISTING Tipi Village Camper Program to meet additional needs to provide adequate office space + general meeting area
12. Total Square Footage of Existing and/or Proposed Buildings 40,500
13. Current Zoning on Property A-1 AND A SMALL PORTION OF RECREATION
14. Deed Book 334 Page No. 57 Group No. 2060
15. Is the site subject to a zone change? NO
16. Have you submitted a Site Plan with this request? YES
17. Have you submitted a list of adjoining property owners with this request? YES
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

Applicant's Signature: Tom Withorn

Property Owner's Signature: Robert J. Lightner

**BOARD OF ADJUSTMENT AND
ZONING APPEALS ACTION
APPLICATION
PAGE 2**

SECTION B (To be completed by the Boone County Planning Commission Staff)

1. Date Received 2/20/01 Fee Received \$ 554.00 R 26811
2. Is application complete? _____ Yes _____ No
3. Staff Reviewer Linda Robertson
4. Scheduled Board Action Date _____
5. Board Action:
 Approved
 Approved with Conditions (See #6)
 Denial (See #7)
6. Conditions of Approval: See CLR
7. Reasons for Denial: _____

**Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005
(859) 334-2196 - Phone
(859) 334-2264 - Fax
plancom@boonecountyky.org - E-mail**

www.boonecountyky.org

NOTE: See Boone County Planning Commission Fee Schedule for Board of Adjustment Fees.

Site Plan Review is not granted by the appropriate Board of Adjustment.

An application consists of all fees paid in full, submitted drawings and a completed application form.

COPY

CLUR #01-BCBOA-012-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)
Robert J. Lightner
11500 Victory School House Road
Union, KY 41091

2. ADDRESS OF PROPERTY
11500 Victory School House Road
Union, KY 41091
3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)
Potter's Ranch

4. DEED BOOK 334 PAGE NO. 57 GROUP NO. 2060

5. TYPE OF RESTRICTION(S) (Check all that apply)

 Zoning Map Amendment: Conditional Use Permit
From To

 Development Plan Conditional Zoning

 Subdivision Plat Other:
(Not Recorded)

 Variance

6. NAME AND ADDRESS OF PLANNING COMMISSION, BOARD OF ADJUSTMENT, LEGISLATIVE BODY OR FISCAL COURT WHICH MAINTAINS THE ORIGINAL RECORDS CONTAINING THE RESTRICTION

BOONE COUNTY PLANNING COMMISSION
2995 WASHINGTON STREET
BURLINGTON, KENTUCKY 41005

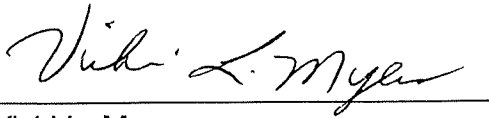

SIGNATURE OF COMPLETING OFFICIAL

Mitchell A. Light, Asst. Zoning Administrator
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

COUNTY OF BOONE

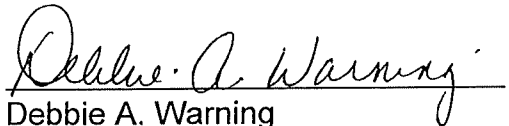
Subscribed, sworn to, and acknowledged before me by Mitchell A. Light on behalf of the
Boone County Planning Commission this 21 day of March, 2001.



Vicki L. Myers
NOTARY PUBLIC, State at Large

My commission Expires:
April 17, 2003

This instrument was prepared for recording purposes only by:



Debbie A. Warning
Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

NO TITLE EXAMINATION

(Legal Description and source of Title and Group Number furnished by the applicant.)

CONDITIONS OF APPROVAL

The following Conditions of Approval apply to the Conditional Use Permit approved by the Boone County Board of Adjustments and in accordance with the current zoning in effect as of March 14, 2001 Certificate of Land Use Restriction (#01-BCBOA-012-A), for Robert J. Lightner, Property Owner(s).

The following conditions will apply:

1. A Site Plan depicting appropriate access, buffer yards, landscaping, parking, signage, etc. be reviewed and approved by Staff.
2. All permanent structures be constructed beyond the 100-year flood elevation of Gunpowder Creek in a manner consistent with the hillside development guidelines.
3. All cemeteries on the property be preserved and maintained in accordance with Article 31, Section 3166 of the *Boone County Zoning Regulations*.

The approved Conditional Use Permit as well as the preceding conditions apply to the property described in:

DEED BOOK 334

PAGE NO. 57

GROUP NO. 2060

FILED

NOV 30 1992

BOONE CIRCUIT COURT
CIVIL ACTION NO. 92-CI-00656

PAT GUTZEIT, CLERK
BOONE CIRCUIT/DISTRICT COURTS
PLAINTIFFS/APPELLANTS *PG* D.C.

RON ALLEN, ET AL

V.

BRIEF OF BOONE COUNTY BOARD OF ADJUSTMENT

BOONE COUNTY BOARD OF ADJUSTMENT, ET AL DEFENDANTS/APPELLEES

* * * * *

Comes now the Boone County Board of Adjustment, through counsel, and for its Brief herein states as follows:

I. KIND OF ACTION

Appellants' action is a statutory appeal under K.R.S. 100.347(1) from the Boone County Board of Adjustment decision approving the conditional use requested by the Robert J. Lightner Foundation, Inc. This approval is subject to specified conditions restricting the requested activities, making it compatible, suitable and appropriate under the comprehensive plan and applicable zoning regulations.

The Boone Board of Adjustment is a local government administrative agency empowered under Chapter 100 of the Kentucky Revised Statutes to hear and decide applications for conditional uses. The scope of judicial review is limited to whether the Board acted arbitrarily, based on the facts contained within the record, taking it as a whole, before the Board.

II. ISSUE

Have Appellants sustained their burden to show that the Board's decision is arbitrary and unsupported by any substantial facts within the record, taking it as a whole?

ANSWER: No.

III. FACTS

Lightner's conditional use application had two hearings before the Boone Board of Adjustment. The first hearing occurred on June 10, 1992, and after hearing several speakers, the Board deferred taking action until it had an opportunity to view the site, which the Board members may elect to do pursuant to K.R.S. 100.345. The application then came before the Board for decision on July 22, 1992. These two hearings combined lasted approximately three hours.

Lightner's application was for development of a resident youth ranch or program and a family life center to be located on 380 acres. Of this acreage, 330 acres is zoned Agriculture one (A-1) and the remainder zoned Recreation (R). Lightner's application included a concept plan showing all development would be in the A-1 zoned area and consist of a lodge containing a 2,500 square foot meeting room, five bedrooms for no more than ten boys, three bedrooms for resident instructors and two apartments for administrative staff and their families. The application included a parking lot for no more than 20 vehicles, a small administrative office building, garage, picnic area, camp sites and no more than five cabins. The plan also showed a barn and stables for livestock. These proposed buildings, according to the record, will occupy less than .01% of the site. Lightner's representatives explained their proposal as having the primary function of being a park, providing primitive camping, tillable acreage, 4 to 5 miles

of hiking, horseback riding, and related agricultural uses. Specifically, those representatives acknowledged and agreed that if there are any changes or expansion of the requested conditional use, they would be subject to the conditional use review process.

The park or ranch is to be open to community organizations, such as church groups, and the public is to be invited for nature, livestock and agricultural projects or programs and given an opportunity to participate. Currently, the property has 15 acres as active agricultural use and that will be expanded as part of the youth ranch activities. The ranch will house no more than ten boys at any one time and these boys will not be from Court or institution referrals for delinquency problems. Rather, this program is to serve local boys, primarily if not exclusively from Boone County, referred by schools or churches for problems arising from within the family unit. The ranch and family life center are designed to put the family unit back together and provide a means for family counseling for these teenage boys within a family environment. All staff persons would be required to meet state regulation for licensing, as would the project itself. As support for the project, several ministers submitted in writing their comments, establishing the need for such a facility in Boone County. Mr. Lightner explained that he himself had come from a broken or dysfunctional family background and wanted to provide an opportunity for boys similarly situated.

In addition to the resident youth program, Lightner intends to have counseling sessions on weekends for families

experiencing problems within the family unit. He anticipates having no more than once a month up to 300 people attending these family counseling seminars. These sessions would not be weekly, as Appellants suggest, and are not likely to be even once a month, but they could occur that frequently, according to the record. There is no basis within the record to support Appellants' assertion that on a weekly basis 300 people would be attending these family seminars. Such an assertion is not consistent with the application and facts presented to the Boone Board of Adjustment.

The application as presented and described within the record involves 380 acres, with less than .01% of this land area being disturbed by the proposed buildings. The project would house no more than ten resident boys within a 9,800 square foot lodge, residential in appearance. Seven full time licensed staff members, with six of them living in the lodge 24 hours a day, would be supervising ten boys. The applicant agreed and acknowledged that any changes would require approvals by the Board. Further, the project as described was subject to obtaining approvals and licenses from various state agencies. These approvals would include staffing licenses, sanitary sewer approvals, building code inspections and permits and other reviews. Moreover, the project, according to the record, is not publicly funded and has no affiliation with juvenile court or delinquent institutions and is not to house children with a criminal background.

Based on these facts, the issue before the Board was whether the proposed activities met the criteria for a conditional

use in the A-1 zone. That criteria is specifically set forth in the Staff Report dated June 10, 1992, presented to the Board at its hearing that same date. This Staff Report (copy attached) is referenced in the Board's minutes of June 10, 1992, at page 2, and that Report specifically states the section of the Boone County Zoning Regulations (Section 613) listing the proposed activities as being eligible for consideration as a conditional use in the A-1 zone.

Appellants are clearly in error when they contend that the applicable section for the proposed conditional use is not contained within the minutes. It is specifically listed in the Staff Report that is referenced in the June 10, 1992, minutes.

Conditional uses are evaluated in terms of not only the request, but the comprehensive plan as referenced in the Staff Report, the purpose of the agriculture district as shown in Section 610 of the Zoning Regulations and the permitted uses allowed as a matter of right in Section 611 of that zone. Clearly, the Board evaluated that criteria, recognizing that as a matter of right over 50 single family residences could be built on the 330 acres zoned A-1. The minimum lot size for a residence in that zone is 5 acres. Since over 330 acres is zoned A-1, more than 60 homes could be built as a matter of right with no discretionary review as to use. The youth program as outlined by the Lightner Foundation of no more than ten boys being supervised by seven full time staff members presents no where near the land use impact as a residential subdivision having over 60 homes.

In short, the Lightner Foundation has a wide range of uses that it could put on the 330 acres as a matter of right that exceed the land use impacts presented by the youth ranch and family life center as proposed.

As noted in the Staff Report, Section 613 lists as a conditional use public and commercial or private recreation uses. The criteria for these uses under Section 613 recognizes that the proposed conditional use is to be either an integral part of the agricultural use and of a scale, nature or character that will not conflict with the purposes of the A-1 district, or that it provides a public service that does not overpower or conflict with the district's purpose. Clearly the proposed activity at the intensity level outlined does not conflict with the agricultural use of land within the A-1 district. The agricultural use of the land will be incorporated with the youth ranch activities to make it part of an overall program. Further the public is benefiting by the proposed conditional use being developed at a level consistent with the comprehensive plan and the A-1 district's purpose of providing open space and preserving the supply of productive agricultural lands. Less than .01% of the total land area is being disturbed for building under the conditional use proposal.

The Board had to evaluate the requested conditional use based on the zoning regulations as they exist, not as Appellants would wish. Based on these facts and the following legal principles, the Board's decision should be upheld.

IV. LAW

1. APPELLANTS HAVE NOT SHOWN THE BOARD'S DECISION TO BE ARBITRARY, SUPPORTED BY NO SUBSTANTIAL EVIDENCE WITHIN THE RECORD, TAKEN AS A WHOLE.

Boards of Adjustment are authorized under K.R.S. 100.237 to hear and decide conditional use applications. This authority allows approval or integration of uses designated as conditional uses under the zoning regulations. By this designation, those uses which may be suitable only in some areas or locations within the planning unit under a particular zoning classification may be approved for appropriate locations, but not allowed for other areas with the same zoning classification. In other words, when the Fiscal Court zoned areas within the planning unit A-1, by adopting the zoning text it determined that recreation uses should not be allowed throughout all areas zoned A-1. Rather, they should only be allowed as conditional uses. This allows the Board of Adjustment to review and decide the suitability or appropriateness of a proposed conditional use for a given area zoned A-1.

As an administrative agency empowered to exercise discretionary review on conditional use applications, Board of Adjustment decisions are presumed valid. If there is any substantial evidence to support the Board's decision within the record taking it as a whole, then that decision must be upheld. The Board has the authority to consider all evidence and facts presented and to choose those facts upon which it wishes to rely. Even where the record may contain conflicting evidence, the Board's

decision must be upheld if there is other substantial evidence within that record to support it. See Taylor v. Coblin, Ky., 461 S.W.2d 78 (1970); Com. Transp. Cabinet v. Cornell, Ky.App., 796 S.W.2d 591 (1990); City of Lancaster v. Trumbo, 660 S.W.2d 954 (1983).

As administrative agencies performing quasi-judicial functions, the burden is not on boards of adjustment to prove their actions supported by substantial evidence. Rather, the burden is on Appellants to show a complete absence of substantial evidence within the record. If reasonable minds could differ, based on the record, then the administrative agency decision exercised within its discretionary authority must be upheld. American Beauty Homes Corp. v. Louisville, etc., Ky., 379 S.W.2d 450 (1964); Hamner v. Best, Ky.App., 656 S.W.2d 253 (1983); and Gentry v. Ressnier, Ky., 437 S.W.2d 756 (1969).

The record here reflects that the Board in granting its approval on July 22, 1992, properly considered the concerns expressed by Appellants. At page 7 of those minutes, the number of resident boys in the youth program is limited, no disturbance can occur in the developmentally sensitive areas shown on the future land use map of Boone County, cabins are restricted to five in number on the entire site and the applicant was specifically required to work with county agencies to solve any potential transportation problems. Moreover, a copy of the health permit for sanitation disposal as approved by the appropriate governmental agency was required to be placed on file with the Board records

through the Planning Commission. Contrary to Appellants' contentions, the applicant has complied with that condition. Attached is a copy of the "Onsite Sewage Disposal System Permit". This permit was issued by the Kentucky Cabinet for Human Resources through its Department for Health Services. This disposal system provides that level of treatment found acceptable by the appropriate state agency.

From the foregoing, it is clear that the proposed conditional use did not conflict with the comprehensive plan or the purpose of the A-1 district as outlined in the zoning text. Moreover, it incorporates as part of its youth ranch and family life center activities agricultural uses on the land. The activities as outlined in the record are compatible with the permitted uses as a matter of right under the A-1 zone and, in fact, impact the area less than some of the uses allowed as a matter of right in this zoning classification. Appellants choose to characterize the A-1 zone as a classification allowing only active farmland. However, the A-1 zoning district as enacted and made a part of the zoning regulations does not limit land so zoned only to active farms. See Sladon v. Shawk, Ky.App. 815 S.W.2d 404 (1991).

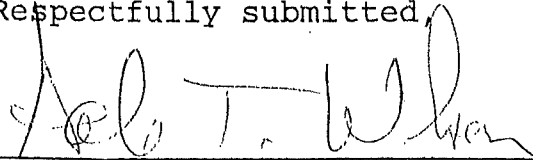
V. CONCLUSION

Based on the foregoing, Appellants have failed to sustain their burden showing the Board's decision to be arbitrary and unsupported by any substantial facts. Even if the land use restriction form and conditions attached to it do not recite the

Board's findings within the four corners of that instrument, that does not render the Board's decision arbitrary.

Simply put, there are no substantial facts within the record to justify finding the proposed conditional use unsuitable for the area. As proposed and approved by the Board, less than .01% of the total 380 acres is disturbed by this conditional use.

Respectfully submitted,



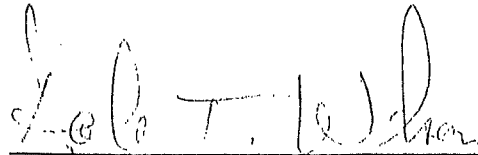
DALE T. WILSON
ROUSE, SKEES, WILSON & DILLON
Attorneys for Boone County
Board of Adjustment
7699 Tanners Lane, P.O. Box 756
Florence, Kentucky 41042-0756

CERTIFICATION

I hereby certify that a copy of the foregoing Answer and Response to Appeal herein was served on the following persons of record by placing same in the U.S. mail, postage pre-paid, this 30 day of November, 1992:

Michael W. Lyons, Esq.
Attorney for Plaintiff/Appellants
488 Erlanger Road
Erlanger, Kentucky 41018

The Robert J. Lightner Foundation, Inc.
c/o Jeffrey Blankenship, Esq.
Attorney at Law
832 Main Street
Cincinnati, Ohio 45202



DALE T. WILSON
ROUSE, SKEES, WILSON & DILLON

Commonwealth Of Kentucky
Court Of Appeals

NO. 93-CA-000229-MR

ROBERT J. LIGHTNER FOUNDATION,
INC.

APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JOSEPH F. BAMBERGER, JUDGE
ACTION NO. 92-CI-656

BOONE COUNTY BOARD OF ADJUSTMENT;
RON ALLEN; BERTHA ARRASMITH; TIM
BAYNUM; ROCKY J. and KAREN BEGLEY;
JOHN and BRENDA BELLAMY; VINCENT
and KATHY BOWMAN; JERRY and CONNIE
CROWDER; RANDALL and NANCY CURRY;
WILLIAM J. DOMETRICH; ROBERT W.
and KATHERYN FLAIG; DR. VINCENT
and LENA E. GIBNEY; MARIE HENSLEY;
MARLIN E. HENSLEY; RENDELL HENSLEY;
BRIAN and SUSAN KNOLA; MARK and
BECKY LAY; BOB and SUSAN MICHAELS;
RAINBOW FARM; VINCENT and BETTY
RYLE; DALE D. and DOROTHY F.
WILLIAMSON; and KENNY and RITA
WILLIAMSON

APPELLEES

OPINION
REVERSING

* * * * *

BEFORE: GARDNER, JOHNSTONE, and MILLER, Judges.

GARDNER, JUDGE: Appellant, Robert J. Lightner Foundation, Inc.,

(the foundation) appeals from an order of the Boone Circuit Court

reversing the decision of the Boone County Board of Adjustment (the board), granting a conditional use permit to the foundation. The individual appellees are neighboring citizens who opposed the granting of a conditional use permit. After carefully reviewing the record and the applicable law, this Court must reverse the circuit court's order.

The foundation is a non-profit corporation which owns a 380 acre tract of land in Boone County, Kentucky. The majority of the tract was zoned A-1 (Agricultural) while the remainder was zoned R (Recreational). In May 1992, the foundation applied to the board for a conditional use permit. The foundation sought to develop a resident youth program for boys from dysfunctional homes and a family life center for seminars and retreats. The proposed use of the property would generally comprise a park with a youth building lodge, hiking trails, barn and stables for livestock and no more than five cabins. A traditional family unit would consist of eight to ten teenage boys and house parents. The foundation stated that the boys would be from dysfunctional or broken homes, but would not be juvenile delinquents referred by the court system.

On June 19, 1992, the board conducted a public hearing regarding the foundation's application for a conditional use permit. The board heard from many interested parties, but ultimately tabled the request so that the board could visit the site. On July 22, 1992, the board again considered the foundation's request for a conditional use permit. At the

meeting, the zoning administrator recommended that the conditional use permit be granted. After hearing from numerous interested parties, the board passed a motion to grant the conditional use permit to the foundation subject to eight conditions. These were: (1) that not more than ten boys be in residence at one time (this is in addition to children that would be with staff); (2) that the developmentally sensitive areas as designated by the Planning Commission remain permanently undisturbed; (3) that the preservation of the cemeteries on the site occur as required by the zoning regulations; (4) that not more than five cabins be on the site; (5) that the foundation be willing to work with the Boone County Planning Commission and Fiscal Court to solve any transportation problems that occur on Victory School House Road; (6) that a copy of the health permit be provided to the Boone County Planning Commission for the sewer treatment plant; (7) that no more than 300 people be in attendance at special meetings with the exception of the grand opening and dedications; and (8) that a list of the boys on the property be provided to the board's staff at different intervals.

The neighboring citizens objecting to the conditional use permit appealed to the Boone Circuit Court. The circuit court on December 23, 1992, issued an order reversing the board's decision. The court found that the project more closely fit the definition of an institutional use, and thus found that the conditional use permit should not have been granted. This appeal followed.

This Court must first note that the complaining appellees have failed to file a brief with this Court. Kentucky Rule of Civil Procedure (CR) 76.12(8)(c) provides,

If the appellee's brief has not been filed within the time allowed, the court may: (i) accept the appellant's statement of the facts and issues as correct; (ii) reverse the judgment if appellant's brief reasonably appears to sustain such action; or (iii) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case.

We have considered the merits and find that the appellant's brief reasonably appears to sustain a reversal of the circuit court's order.

In general, there is an inherent right of appeal from orders of administrative agencies where constitutional rights are involved, and Section Two of the Kentucky Constitution prohibits the exercise of arbitrary power. American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Comm'n., Ky., 379 S.W.2d 450, 456 (1964). If the agency acted outside of its statutory powers, failed to afford a party procedural due process, or if there was not substantial evidence to support the agency's action, then it acted arbitrarily. Id. An administrative board's findings are binding on a reviewing court if supported by substantial evidence of probative value. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985); Trimble County Board of Supervisors v. Mullikin, Ky., 438 S.W.2d 524 (1968).

A zoning board's determination must be upheld on review if supported by substantial, reliable and probative evidence found within the record as a whole. Hamner v. Best, Ky. App., 656 S.W.2d 253, 255 (1983). See Crain v. City of Louisville, 298 Ky. 421, 182 S.W.2d 787, 790 (1944). Zoning resolutions are in derogation of common law and deprive a property owner of certain uses of his land and thus must be strictly construed. Hamner v. Best, 656 S.W.2d at 255. Further, too strict an application of a prohibited use ought not to be given a zoning ordinance as the Kentucky Bill of Rights declares acquiring and protecting property as one of the great and essential principles of liberty and free government and as an inherent and inalienable right. Crain v. City of Louisville, 182 S.W.2d at 790. Any restrictions contained in zoning resolutions may not be extended by courts to include limitations not clearly proscribed. Hamner v. Best, 656 S.W.2d at 255.

Kentucky Revised Statute (KRS) 100.237 states that a zoning board shall have the power to hear and decide applications for conditional use permits and may approve, modify, or deny any application for a conditional use permit. The board if it approves the application, may attach necessary conditions such as time limitations or specific things to be done. KRS 100.237. See Davis v. Richardson, Ky., 507 S.W.2d 446, 448 (1974). In considering conditional use permit procedures, where the particular use is permissible in any zone, a board is required to make an ad hoc determination on a case-by-case basis on the

effect of permitting the use on the public health, safety or welfare in one or more zones, and to determine the degree of impairment upon the integrity and character of the zone in which it is located or in adjoining zones. Davis v. Richardson, 507 S.W.2d at 448.

The circuit court in the instant case erred by finding that the board's decision was arbitrary and factually incorrect. The record reflects that the staff of the Boone County Board of Adjustment and the board itself carefully studied the proposed project and weighed all of the necessary factors before deciding to grant the conditional use permit. There was conflicting evidence presented; however there was clearly substantial evidence to support the board's decision that the project should be granted a conditional use permit in the A-1 zone. While the project may have had some attributes of an institution, there were clearly many qualities to the project which more closely resembled a residence or recreational use allowed in the A-1 zone. The facts of the instant case closely resemble those in Hamner v. Best, supra, where this Court upheld a trial court's and board's ruling that a similar project was more closely akin to a home rather than an institution and was allowable in a residential zone.

The qualities of the foundation's project in the instant case clearly fit within the guidelines for a conditional use allowed in the Boone County Planning and Zoning Regulations and the Kentucky Revised Statutes. The record shows that the

board carefully examined the applicable zoning regulations in reaching its decision. Additionally, the board carefully attached several conditions as it is authorized to do in order to make sure that the use would not unduly impede on the other surrounding agricultural uses. The circuit court incorrectly substituted its opinion for the board's opinion. The board's decision should have been affirmed.

For the foregoing reasons, the Boone Circuit Court's order is reversed.

ALL CONCUR.

ATTORNEY FOR APPELLANT:

N. Jeffrey Blankenship
Cincinnati, Ohio

ATTORNEY FOR APPELLEES, RON ALLEN, BERTHA ARRASMITH, TIM BAYNUM, ROCKY J. BEGLEY, KAREN BEGLEY, JOHN BELLAMY, BRENDA BELLAMY, VINCENT BOWMAN, KATHY BOWMAN, JERRY CROWDER, CONNIE CROWDER, RANDALL L. CURRY, NANCY CURRY, WILLIAM J. DOMETRICH, DR. VINCENT GIBNEY, LENA B. GIBNEY, MARIE HENSLEY, MARLIN E. HENSLEY, RENDELL HENSLEY, BRIAN KNOLA, SUSAN KNOLA, MARK LAY, BECKY LAY, BOB MICHAELS, SUSAN MICHAELS, RAINBOW FARM, VINCENT RYLE, BETTY RYLE, DALE D. WILLIAMSON, DOROTHY F. WILLIAMSON, KENY WILLIAMSON, RITA WILLIAMSON:

Michael W. Lyons
Erlanger, Kentucky

ATTORNEY FOR APPELLEE, BOONE COUNTY BOARD OF ADJUSTMENT:

Dale T. Wilson
Florence, Kentucky

ENTERED
12/23/92

PAT GUTZERT, CLERK

COMMONWEALTH OF KENTUCKY

BOONE CIRCUIT/DISTRICT COURTS

BOONE CIRCUIT COURT

D.C.

CASE NO. 92-CI-00656

RON ALLEN, et al

PLAINTIFFS

and

BOONE COUNTY BOARD OF ADJUSTMENTS, et al

DEFENDANTS

ORDER REVERSING

This is an appeal from a decision of the Boone County Board of Adjustments granting a conditional use permit to the Robert J. Lightner Foundation, Inc.

On May 20, 1992, Robert J. Lightner, as a representative of the Robert J. Lightner Foundation, Inc., applied to the Boone County Board of Adjustments for a conditional use permit to develop a resident youth program for boys from dysfunctional homes and a family life center for seminars and retreats at Highway 338, Victory Schoolhouse Road.

The three hundred eighty (380) total acres involved was determined to be zoned Agricultural and Recreational. The site itself consists primarily of wooded hillsides and the proposed use was characterized as a park with a youth building and lodge open to community organizations. The lodge would house eight (8) to ten (10) teenage boys. The Lightner Foundation contended that the facility would be recreational in nature with ancillary counseling.

The Boone County Board of Adjustments approved a conditional use permit based primarily upon the Agricultural/Recreational aspects of the proposed project. The Plaintiffs, adjacent

landowners, contend that the decision by the Board of Adjustment was arbitrary, capricious and contrary to law.

The Boone County Planning and Zoning regulations allow a conditional use permit in an area zoned Agricultural under Section 613.

SECTION 613

Conditional Uses and Criteria

The following uses and appropriate accessories subject to the approval and qualifications of the Board of Adjustment and Zoning Appeals provided: a) the activity is an integral part of the agricultural use of the land, and the activity is not of scale, nature or other character which will detract or conflict with the principal purposes of the district; or b) the activity is necessary to provide the specified public service for the character of the activity does not overpower, transcend or conflict with the principal purpose of the district; and c) provided the arrangement of use, building or structure is mutually compatible with the organization of permitted and accessory uses to be protected in the district.

6. Public and commercial recreation (Site Plan Review required).

The Board found that the proposed project fell under Subsection "6" as a conditional permitted use.

The regulations define commercial recreation as a privately owned and operated facility that offers activities related to fitness, purposeful relaxation and/or games. Institution is defined as a facility designed and used to aid individuals in need of mental, therapeutic rehabilitation, counseling and/or other correctional services.


The record is clear that while this project would provide such recreational activities as hiking and camping, it would be primarily directed toward the teenage boys from dysfunctional families providing both individual and family counseling. A staff would be hired to see to both the emotional and physical

needs of the boys. The facility, as well as the staff, would be licensed by various state agencies.

The facts clearly show that the proposed project fits into the definition of an institutional use. Therefore, the Boone County Board of Adjustment's decision to grant a conditional use permit under Section 613, Subsection 6 is both arbitrary and capricious as well as factually incorrect.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the conditional use permit granted by the Boone County Board of Adjustment to the Robert J. Lightner Foundation, Inc. is held to be null and void.

Entered this 23 day of Dec., 1992


HON. JOSEPH F. BAMBERGER
Judge - Boone Circuit Court

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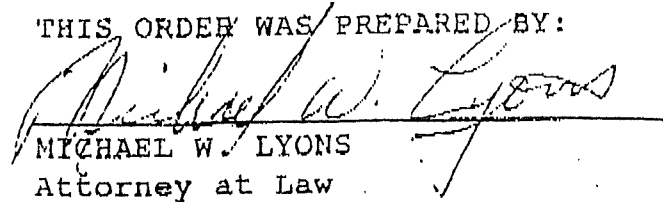
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THIS ORDER WAS PREPARED BY:

A handwritten signature in cursive script, appearing to read "Michael W. Lyons", is written over a horizontal line.

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