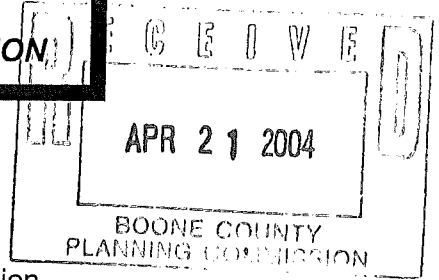


APPLICATION FORM

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) Boone [checked] Florence _____ Walton _____ Union _____
2. (Check One) Conditional Use Permit _____ Variance _____ Appeal _____ Change in Non-Conforming Use _____
3. Applicant's Name Rick Newman / Newman Tractor Phone Number 859-485-8500 Fax No. _____ Applicant's Address 2841 Verona Rd Verona Ky 41092
4. Description of Request: Permit to Build office addition
5. Name of Development Newman Tractor
6. Location of Development 2841 Verona Rd
7. Acreage Under Review 4 acres
8. Lot Number and Name of Subdivision (if part of a subdivision)
9. Owner of Property Rick Newman Phone Number of Owner 859-384-3280
10. Address of Property Owner 2231 Clarkson Ln Union Ky 41091
11. Proposed Use(s) on Site Office Addition
12. Total Square Footage of Existing and/or Proposed Buildings 6000 Existing 4000 Addition
13. Current Zoning on Property C-3
14. Deed Book 484 Page No. 261 Group No. 2087-A
15. Is the site subject to a zone change?
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: [Signature]

Property Owner's Signature: [Signature]

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 4-21-04 Fee Received \$ 669.00 (#38541)
2. Is application complete? _____ Yes _____ No
3. Staff Reviewer _____
4. Scheduled Board Action Date _____
5. Board Action:
_____ Approved
_____ Approved with Conditions (See #6)
_____ Denial (See #7)
6. Conditions of Approval: _____

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 - Web Page

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.

STAFF REPORT

APPLICANT: Rick Newman
LOCATION: 2841 Verona Mudlick Road, Boone County, Kentucky
ZONING: Commercial Services (C-3)
DATE: May 12, 2004

Proposal

The Applicant is requesting a Change in Non-Conforming use to allow parking lot improvements and a building addition to Newman Tractor. The heavy equipment sales and rental business is located at 2841 Verona Mudlick Road and is zoned Commercial Services (C-3). The Applicant is proposing the following changes to the property:

- (1) Construction of a 4,000 square foot office addition onto the northeast building facade. The proposed addition will be constructed with a brick and stone exterior and will have a metal standing seam roof.
- (2) Construction of a new curb cut on the shared driveway which serves Newman Tractor, the BP Station, and adjoining property to the southeast. The proposed curb cut is approximately 45 feet from the KY 14 (Verona Mudlick Road edge of pavement).
- (3) Construction of an approximate 12 stall parking lot in front of the proposed building addition. This parking lot addition would remove a portion of the heavy equipment display and storage area that is currently in front of the building.
- (4) Allow an approximate 1.35 acre area behind the building to be used as a heavy equipment storage area (gravel lot). Staff would like to note that this improvement has already been made on the site. No grading or Site Plans were submitted to the Planning Commission before this improvement was made.

Site Characteristics

Newman Tractor is located two lots of records which total 7.32 acres in area. The first tract has frontage on KY 14 and is 4.32 acres in area. This tract contains a 6,000 square foot building (office/work shop) which is constructed of metal siding, an approximate 10 stall paved parking lot which is directly in front of the building, a gravel lot which displays heavy equipment along KY 14 and the Interstate 71 off-ramp, and a large gravel storage lot which is located behind the building. The KY 14 frontage area is screened by some low-level shrubs. The front of the building and access drive are heavily landscaped.

The second lot of record is 3 acres in areas and contains a telecommunication tower and gravel lot which is used to store heavy equipment. Staff's has approximated that the gravel storage lot on this tract is 1.35 acres in area.

Site History

- 10/02/91 Site Plan Approved to allow construction of a 6,000 square foot building for Newman Tractor Sales. The development is located on a 4.3 acre tract.
- 09/01/93 Site Plan Approved to allow gravel display and storage lot in front of the building.

Applicable Regulations

Article 2, Section 220 of the Boone County Zoning Regulations states that the Board of Adjustment and Zoning Appeals shall have the power to hear and decide on applications for change in non-conforming use.

Article 2, Section 270 of the Boone County Zoning Regulations states that it is the intent of the regulations to keep non-conforming lots, uses or structures from being "enlarged or extended beyond the scope and area of its operation at the time it became a legal non-conforming use, nor shall other uses or structures which are prohibited elsewhere in the same district be permitted on lots of non-conforming uses or structures."

Article 2, Section 272 of the Boone County Zoning Regulations states that where, at the time of adoption of this order, legally established, uses of land exist which would not be permitted by regulations imposed by this order, the uses may be continued so long as they remain otherwise lawful, provided the Board shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time these regulations were adopted.

K.R.S. 100.253 allows the following:

1. The lawful use of a building or premises, existing at the time of the adoption of any zoning regulations affecting it may be continued, although such use does not conform to the provisions of such regulations, except as otherwise provided herein.
2. The board of adjustment shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time the regulation which makes its use nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification, provided, however, the board of adjustment may grant approval, effective to maintain nonconforming-use status, for enlargements or extensions, made or to be made, of the facilities of a nonconforming use, where the use consists of the presenting of a major public attraction or attractions, such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demands of participants and patrons.

3. Any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous existence for a period of ten (10) years, and which has not been the subject of any adverse order or other adverse action by the administrative official during said period, shall be deemed a nonconforming use. Thereafter, such use shall be governed by the provisions of subsection (2) of this section.

Sections 1031 and 1033 of the Boone County Zoning Regulations do not list heavy equipment or truck rental businesses as principally permitted uses or conditional uses in the Commercial Services (C-3) zoning district.

Article 11, Section 1141 of the Boone County Zoning Regulations principally permits heavy machinery, transportation vehicles, and heavy equipment businesses in the Industrial Two (I-2) zoning district.

Article 30, Section 3002 of the Boone County Zoning Regulations states that Major Site Plan review is required when a project involves exterior utility construction (storm sewer, water, sanitary sewer, etc.), grading work, more than 12 parking spaces, more than a 15% increase in the existing building square footage, access points or curb cuts, and loading areas in excess of 10,000 square feet.

Section 3311 of the Boone County Zoning Regulations requires a 24 foot wide driveway aisle when there is parking on both sides of the aisle (double loaded). The minimum width of any commercial/industrial driveway aisle is 20 feet.

Section 3314 of the Boone County Zoning Regulations requires all parking and loading spaces including driveways, aisles, vehicle storage, outdoor storage and vehicle circulation areas to be improved with either asphalt concrete or portland cement concrete.

Section 3325 of the Boone County Zoning Regulations requires 1 parking stall for every 250 square feet of office space and 1 parking stall per two employees on the largest shift that work in the shop.

Section 3735 of the Boone County Zoning Regulations states that "activities such as outside storage, loading/unloading areas, parking of semi-trailers and heavy equipment, utility and mechanical equipment, and similar unsightly activities or operations which do not require visibility for the operation of the use, shall be required to be screened with continuous screening."

Article 40, Section 4000 of the Boone County Zoning Regulations defines light equipment as "equipment, implements, and machinery used for commercial, industrial, construction, small scale excavation, landscaping, and other purposes, which are equal to or smaller in size than a Bobcat style implement such as Bobcat style loaders and mini-excavators, fork lifts, scissor lifts, generators, compressors, power washers, and jack hammers."

Article 40, Section 4000 of the Boone County Zoning Regulations defines heavy equipment as "equipment, implements, and machinery used for commercial, industrial, construction, small scale excavation, landscaping, and other purposes, which are larger than a Bobcat style implement such as bulldozers, excavators, backhoes, crushers, compactors, cranes, and cherry pickers."

Surrounding Land Uses and Zoning

Northeast: KY 14 & Chevron Mini-Market (C-3)

Northwest: Interstate 71

Southeast: Shared Access Drive, BP Mini-Market (C-3), Undeveloped 2 Acre Parcel (C-3 and A-2), and an Undeveloped 29 Acre Parcel (C-3 and A-2)

Southwest: Undeveloped 98 Acre Tract (C-3 and A-2)

Staff Comments

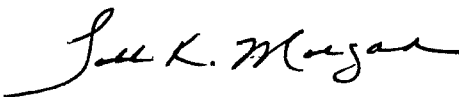
1. The business is non-conforming because the Commercial Services (C-3) zoning district does not permit heavy equipment businesses as a principally permitted or conditional use. Heavy equipment businesses that deal with bulldozers, excavators, backhoes, and cranes are principally permitted in the Industrial Two (I-2) zoning district.
2. The 2001/2002 Boone County Zoning Regulations were adopted by Boone County Fiscal Court on July 23, 2002. The previous regulations (1996 Boone County Zoning Regulations) did not differentiate between heavy equipment and light equipment businesses and the use was principally permitted in the Commercial Services (C-3) district.
3. The Applicant submitted a revised Site Plan for the 4.32 acre tract in 1993. This plan defined gravel storage and display areas which were located in front of the building and near the southwest property boundary (along Interstate 71). Staff would like to point out that heavy equipment storage area is now occurring across the entire front yard, along the entire western property line, and the majority of the rear yard.
4. The Applicant sent Staff an e-mail which states that he bought the approximate 3 acre tract in 1993 or 1994 (see attachments). Staff is not sure when he graded and graveled portions of this rear lot for heavy equipment storage. Staff would like to point out these improvements were made to this property without obtaining approvals from the Planning Commission.
5. The Board needs to determine if the proposed building addition, customer parking area, or display/storage constitute an enlargement or extension of the existing non-conforming use.

6. Staff is concerned about the aesthetic appearance of heavy equipment display and storage lots from KY 14 and the Interstate 71 off-ramp. Staff believes that the proposal could be less objectionable than the existing non-conforming use if the following conditions of approval were imposed:
 - A. Street frontage landscaping (Buffer Yard A) shall be installed along the entire Interstate 71 frontage;
 - B. No more than 5 to 10 vehicles (light trucks or heavy equipment) can be stored in the front yard. The front yard is the area between the front of the building, the front property line, northwest property boundary, and the southeast property boundary.
 - C. Staff Design Review will be required for the proposed building addition. The front and sides of addition must be constructed per the Applicant's description (brick or stone exterior with standing metal seam roof).
7. If the Board grants approval, the Applicant will need to file a Site Plan with the Planning Commission which addresses building setbacks, parking lot dimensions, storm water detention, landscaping, septic approval, and any pertinent conditions of approval.

Conclusion

KRS 100.253 and Section 220 of the Boone County Zoning Regulations gives the Boone County Board of Adjustment and Zoning Appeals the authority to grant the applicant's request for a Change in Non-Conforming Use.

Respectfully submitted,

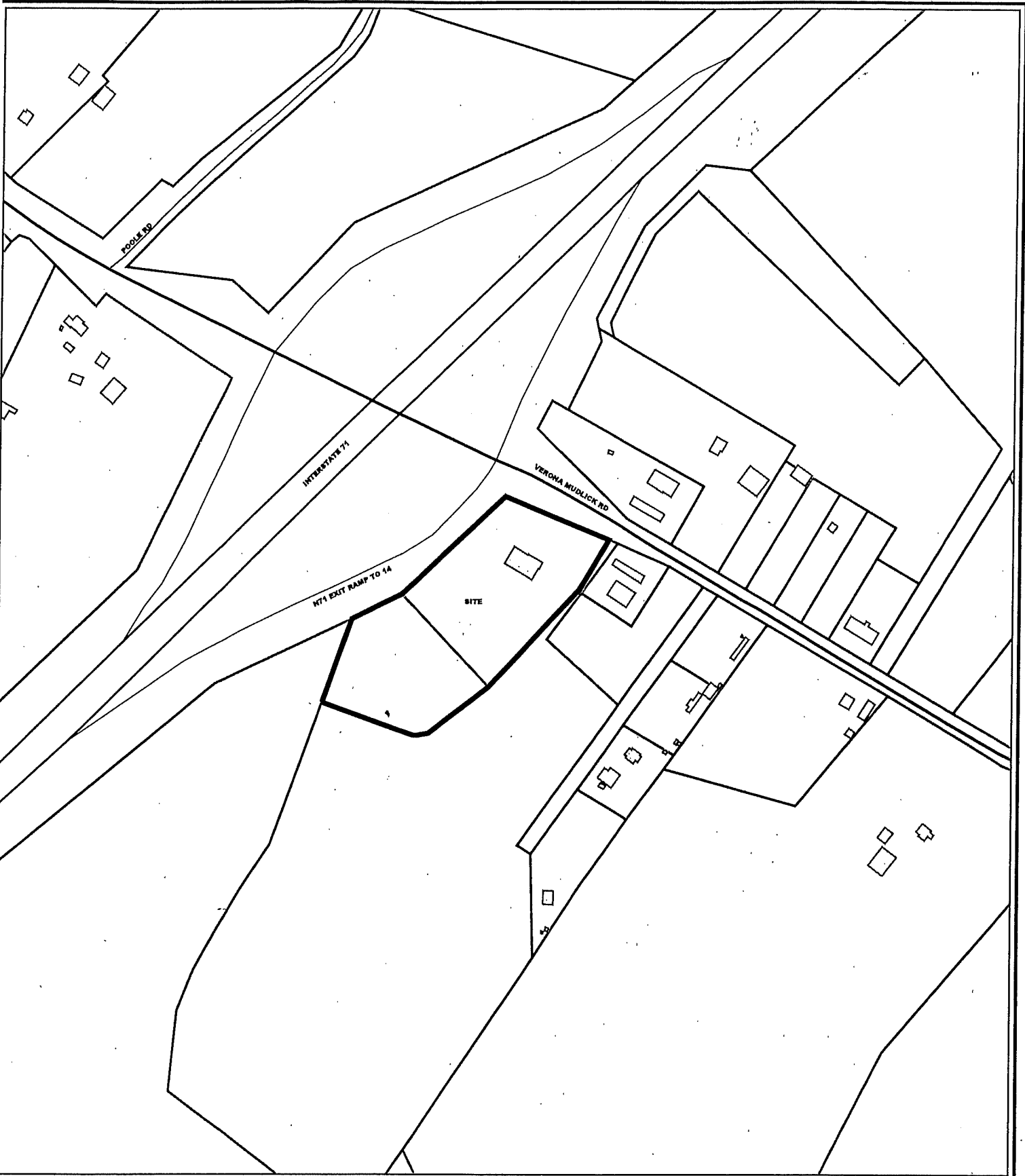


Todd K. Morgan, AICP
Planner, Zoning Services

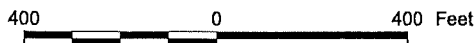
TKM/pr

Attachments

- Exhibit A – Site Vicinity Map
- Exhibit B – Letter From Applicant
- Exhibit C – E-Mail From Applicant
- Exhibit D – Concept Plan
- Exhibit E – Zoning Map
- Exhibit F – Aerial Map
- Exhibit G – 9/1/93 Site Plan
- Exhibit H – Application



Newman Tractor Site Vicinity Map



1 inch equals 400 feet
Produced by the
Boone County Planning Commission
GIS Services Division
May 1, 2004





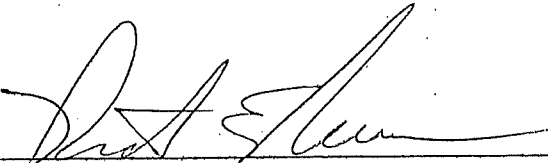
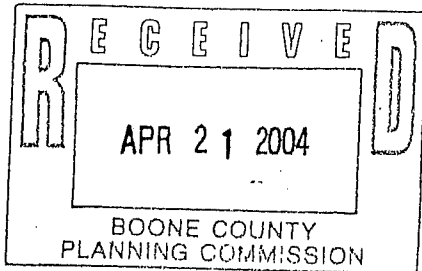
NEWMAN TRACTOR, INC.

HEAVY EQUIPMENT
SALES & RENTALS

2841 VERONA ROAD VERONA, KY 41092

(859) 485-8500
(859) 485-8573 (fax)
www.newmantractor.com
sales@newmantractor.com

Newman Tractor proposes to build a new office addition to its existing pre-engineered building. The current building consists of a metal low pitch roof with metal siding. The current office is located in the existing 6000 sq ft building. The proposed addition would be approximately 4000 sq ft and constructed with a brick and stone exterior, with a metal standing seam roof. The addition would move the current entrance to Newman Tractor into the existing equipment storage area. This would provide a greater green area for landscaping along the existing common driveway. The office addition would be in compliance with the current zoning and would not increase the non-conforming aspect of Newman Tractor.


Rick E. Newman

Todd Morgan

From: Rick Newman [rick@newmantractor.com]

Sent: Wednesday, May 05, 2004 6:19 PM

To: TMORGAN@BOONECOUNTYKY.ORG

Subject: KY 14 OFFICE ADDITION

TODD

WE BOUGHT AN ADDITIONAL 2.8 ACRES FROM RON TACKETT AROUND 1993 OR 1994 WITH THE PLAN OF EXTENDING STORAGE TO THIS AREA . WE GRADED AN ADDITIONAL 165' X 155' AREA CONNECTING TO THE REAR OF OUR LOT AND GRAVELED SAID AREA . WE ALSO RECENTLY CONSTRUCTED A BERM THAT WE ARE GOING TO SEED AND POSSIBLY LANDSCAPE TO PROTECT LINE OF SIGHT FROM ACCESS ROAD . TODD , IF YOU NEED MORE INFO PLEASE FEEL FREE TO CALL .

THANKS , RICK NEWMAN

NEWMAN TRACTOR

OFF. 859-485-8500

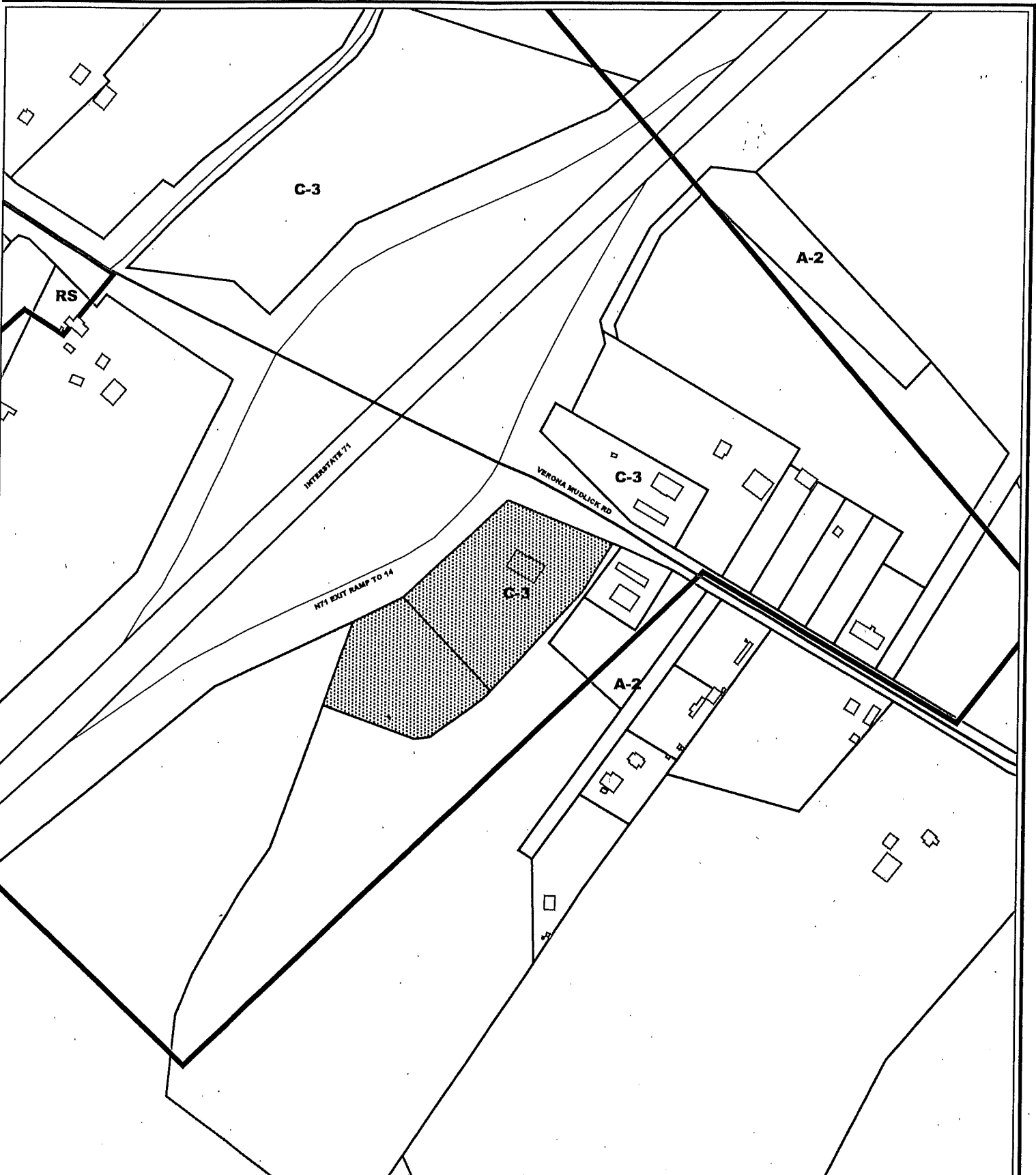
CELL 513-608-9100

FAX 859-485-8573

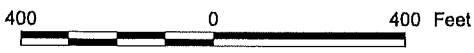
EMAIL sales@newmantractor.com

WEB WWW.NEWMANTRACTOR.COM

5/6/2004

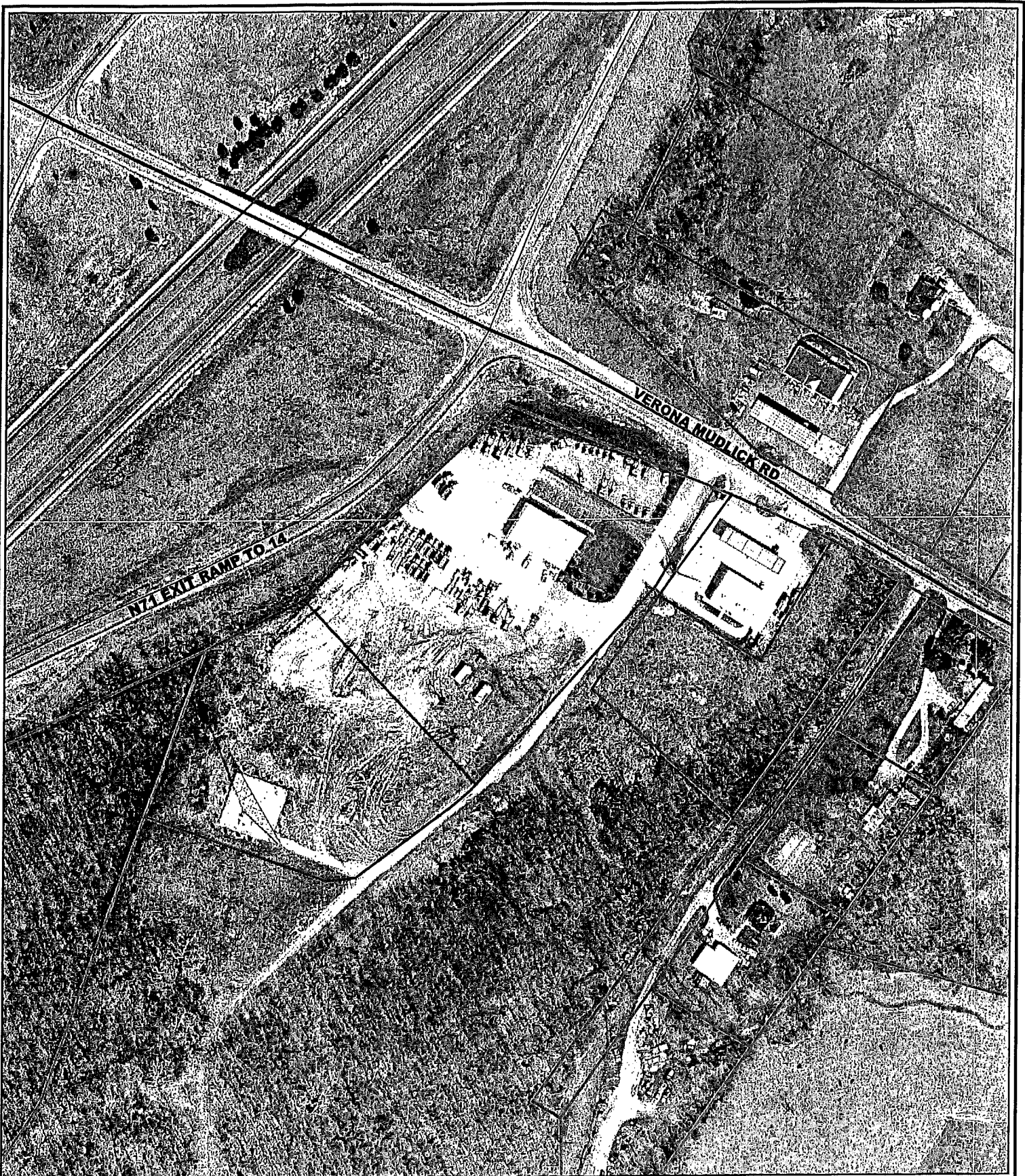


Newman Tractor Zoning Map



1 inch equals 400 feet
 Produced by the
 Boone County Planning Commission
 GIS Services Division
 May 1, 2004





Newman Tractor Aerial Map

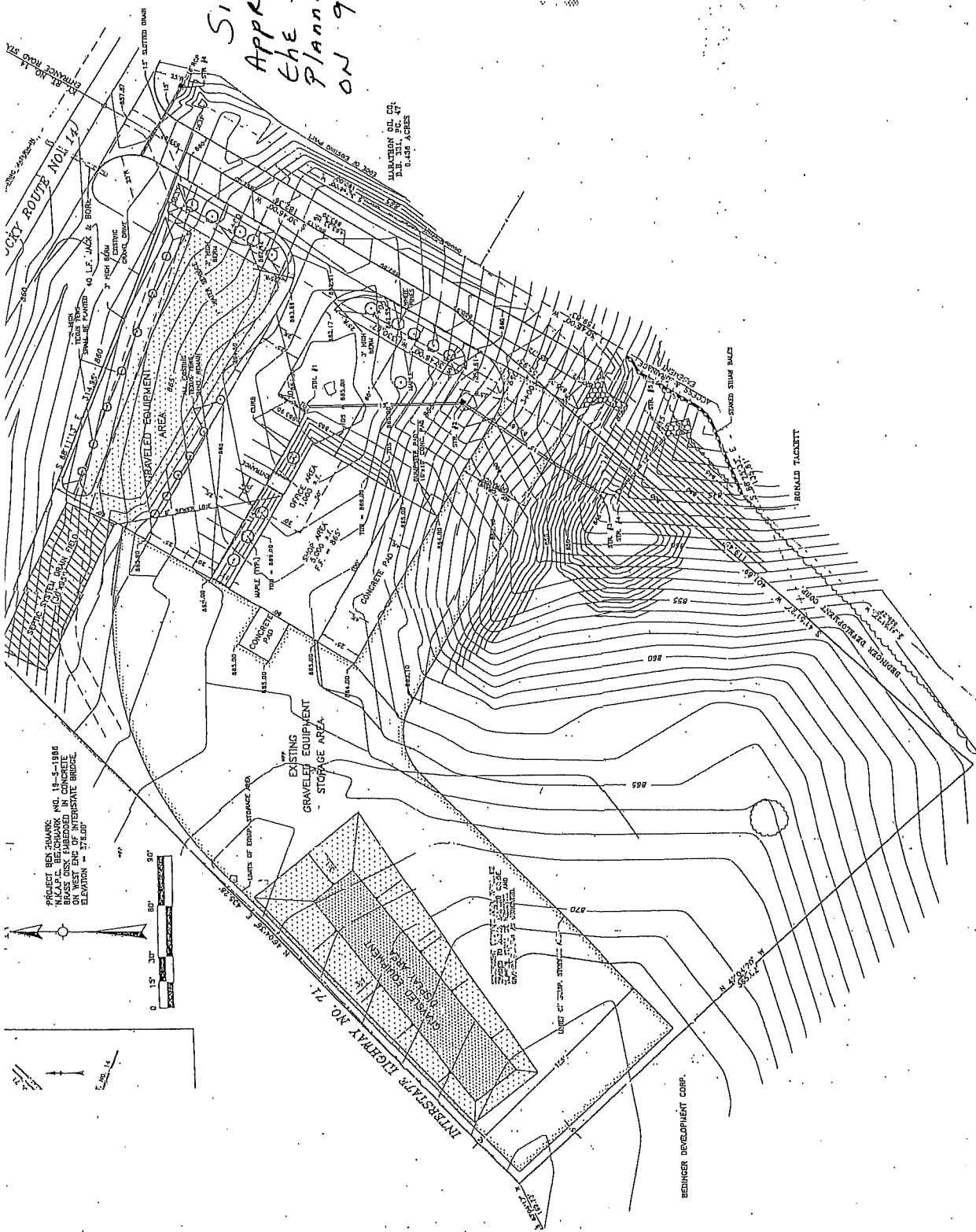
200 0 200 Feet

1 inch equals 200 feet

Produced by the
Boone County Planning Commission
GIS Services Division
May 1, 2004

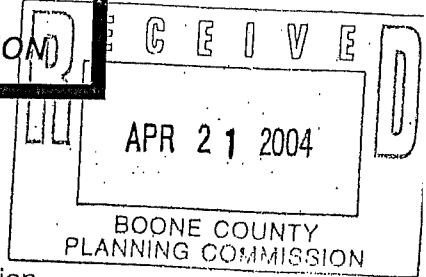


SITE PLAN
 APPROVED BY
 THE BOONE CO.
 PLANNING COMMISSION
 ON 9/1/93



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) Boone _____ Florence _____ Walton _____ Union _____
- 2. (Check One) _____ Conditional Use Permit _____ Variance _____ Appeal _____
_____ Change in Non-Conforming Use _____
- 3. Applicant's Name Rick Newman / Newman Tractor
Phone Number 859-485-8500 Fax No. _____
Applicant's Address 2841 Verona Rd.
Verona ky 41092
City State Zip
- 4. Description of Request: Permit to Build office Addition
- 5. Name of Development Newman Tractor
- 6. Location of Development 2841 Verona Rd
- 7. Acreage Under Review 4 acres
- 8. Lot Number and Name of Subdivision (if part of a subdivision) _____
- 9. Owner of Property Rick Newman
Phone Number of Owner 859-384-3280
- 10. Address of Property Owner 2231 Clarkson Ln
Union ky 41091
City State Zip
- 11. Proposed Use(s) on Site Office Addition
- 12. Total Square Footage of Existing and/or Proposed Buildings 6000 Existing 4000 Addition
- 13. Current Zoning on Property C-3
- 14. Deed Book 484 Page No. 261 Group No. 2087-A
- 15. Is the site subject to a zone change? _____
If yes, give date of approval _____
- 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: [Signature]

Property Owner's Signature: [Signature]

COPY

CLUR #04-BCBOA-015-A

CERTIFICATE OF LAND USE RESTRICTION

1. NAME AND ADDRESS OF PROPERTY OWNER(S)

Rick Newman
2231 Clarkson Lane
Union, KY 41091

2. ADDRESS OF PROPERTY

2841 Verona-Mudlick Road
Verona, KY 41092

3. NAME OF SUBDIVISION OR DEVELOPMENT (if applicable)

Newman Tractor

4. DEED BOOK 484

PAGE NO. 261

GROUP NO. 2087A

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

Zoning Map Amendment:
From To

Conditional Use Permit

Development Plan

Conditional Zoning

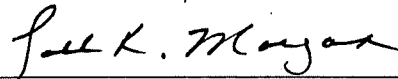
Subdivision Plat
(Not Recorded)

Other: Change in Non-Conforming Use

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



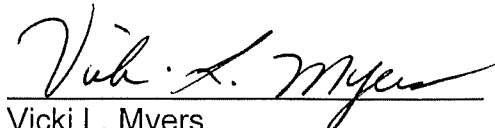
SIGNATURE OF COMPLETING OFFICIAL

Todd K. Morgan, Planner, Zoning Services
Name and Title of Completing Official

COMMONWEALTH OF KENTUCKY

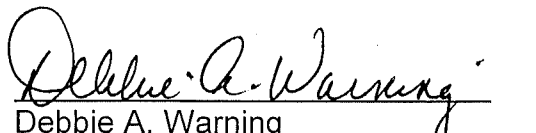
COUNTY OF BOONE

Subscribed, sworn to, and acknowledged before me by Todd K. Morgan on behalf of the
Boone County Planning Commission this 18 day of May, 2004.


Vicki L. Myers
NOTARY PUBLIC, State at Large

My commission Expires:
April 17, 2007

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 Change in Non-Conforming Use approved by the Boone County Board of Adjustments and in accordance with the current zoning in effect as of May 12, 2004 Certificate of Land Use Restriction (#04-BCBOA-015-A), for Rick Newman, Property Owner(s).

The following conditions will apply:

- 1) No more than 25 vehicles (light trucks or heavy equipment) can be stored in the front yard. The front yard is the area between the front of the building, the front property line, the northwest property boundary, and the southeast property boundary.
- 2) A Staff Design Review is required for the proposed building addition. The front and sides of the addition must be constructed per the Applicant's description (brick or stone exterior with standing metal seam roof).
- 3) The Applicant is required to file a Site Plan with the Planning Commission which addresses building setbacks, parking lot dimensions, storm water detention, landscaping, septic approval, and any pertinent conditions of approval.

The approved Change in Non-Conforming Use as well as the preceding conditions apply to the property described in:

DEED BOOK 484

PAGE NO. 261

GROUP NO. 2087A