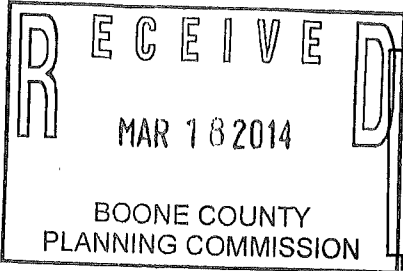


APPLICATION FORM



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

FIVE (5) SCALED COPIES AND ONE (1) 11X17 REDUCTION OF SUBMITTED DRAWINGS ARE REQUIRED

See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

- (Check One) 1. Boone [checked] Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_
(2) Conditional Use Permit \_\_\_\_\_ Variance [checked] Appeal \_\_\_\_\_
Change in Non-Conforming Use \_\_\_\_\_
3. Applicant's Name Christina R. Edmondson Attorney
Applicant's Address 635 W. 7th St. Suite 401
Cincinnati OH 45203
City State Zip
Phone Number 513 729 1999 Fax No. 513 381 4084 E-Mail tedmondson@eriedeters.com
4. Description of Request: Appeal
5. Name of Development St. James Place
6. Location of Development Verona Ky
7. Acreage Under Review 7
8. Lot Number and Name of Subdivision (if part of a subdivision)
9. Owner of Property Ray
Address of Property Owner 15487 Lebanon Crittenden Rd
10. Verona Ky State Zip
Phone Number \_\_\_\_\_ Fax No. \_\_\_\_\_ E-Mail \_\_\_\_\_
11. Proposed Use(s) on Site 24 Hour Towing & Truck Repair
Business per website
12. Total Square Footage of Existing and/or Proposed Buildings
13. Current Zoning on Property RSE.
14. Deed Book \_\_\_\_\_ Page No. \_\_\_\_\_ Group No. \_\_\_\_\_
15. Is the site subject to a zone change? NO
If yes, give date of approval
16. Have you submitted a Site Plan with this request? NO
17. Have you submitted a list of adjoining property owners with this request?
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

ORIGINAL Property Owner's Signature: (Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

ORIGINAL Applicant's Signature: (Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

**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 3/18/14 Fee Received \$1082<sup>00</sup> Receipt # 68458
2. Is application complete? Yes No
3. Staff Reviewer KEVIN WALL
4. Scheduled Board Action Date 4/9/14
5. Board Action:
  - Approved
  - Approved with Conditions (See #6)
  - Denial (See #7) APPEAL DENIED, ZONING ADMINISTRATOR DECISION UPHELD
6. Conditions of Approval: \_\_\_\_\_
7. Reasons for Denial: \_\_\_\_\_

**Boone County Planning Commission**  
**Boone County Administration Building**  
 2950 Washington Street, Room 317  
 P.O. Box 958  
 Burlington, Kentucky 41005  
 (859) 334-2196 - Phone  
 (859) 334-2264 - Fax  
[plancom@boonecountky.org](mailto:plancom@boonecountky.org) - E-mail  
[www.boonecountky.org](http://www.boonecountky.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.

*Lisa Trenkamp*  
*Wes Cordery*

*Debbie Thaman*  
*Jeremy Warts*  
*Heather Honeycutt*  
*Jenny Coleman*  
*Bill Roth*  
*Jody Beck*  
*Kristin Martinie*  
*Linda Brewer*  
*Maranatha Burch*  
*Todd Brewer*

*Jodi Guevara*  
*Dewayne DAVIS*  
*Jeff Burch*  
*Pat Thomas*  
*Larry Dwyer*  
*John Farrell*  
*Michelle Carrico*  
*Randy Hodge*  
*Melissa Davis*

## STAFF REPORT

#4

APPELLANT: Christina R. Edmondson, Attorney  
LOCATION: 15487 Lebanon-Crittenden Road, Boone County, Kentucky  
ZONING: Rural Suburban Estates (RSE)  
DATE: April 9, 2014

### DESCRIPTION OF REQUEST AND ISSUE

In accordance with sections 201, 220, 230, 240, 245, 253, and 254 of the Boone County Zoning Regulations, an Appeal of the Zoning Administrator's interpretation of the zoning regulations has been filed before the Boone County Board of Adjustment. The determination in question is outlined in the letter dated 1/17/14 from Kevin T. Wall, Zoning Administrator for the Boone County Fiscal Court, to Richard A. Brueggemann, attorney for Ray Branscum. Ray Branscum is the owner of the property in question.

The 1/17/14 letter and supporting materials, including a letter dated 1/3/14 and other documentation from the property owner's attorney, are attached as Exhibit A. A previous letter dated 12/4/13 from Kevin T. Wall to Richard A. Brueggemann which asked for additional information, and related materials, are attached as Exhibit B. This letter was written in response to a 11/27/13 letter from Richard A. Brueggemann and supporting materials which are included in Exhibit B. An e-mailed Notice of Appeal letter dated 2/15/14 from Christina R. Edmondson to Kevin T. Wall and supporting materials are attached as Exhibit C. The grounds for appeal are stated in the 2/15/14 Notice of Appeal letter. The Appeal application form and its supporting materials are attached as Exhibit D. Christina R. Edmondson is an attorney representing a group of area property owners/residents.

The Zoning Administrator decision outlined in the 1/17/14 letter (Exhibit A) defined the scope of a pre-existing, nonconforming truck repair business based on documentation provided by the property owner's attorney. The Zoning Administrator had previously determined that pre-existing, nonconforming status had been established for a heavy trucking, truck repair, and excavation business on the property (4/19/13 letter from Kevin T. Wall to Richard A. Brueggemann is attached as Exhibit E).

Specific limits regarding the number of vehicles kept on the property, hours of operation and the like were not outlined in the 4/19/13 determination since it was understood by the property owner that his operation, as it was proposed at the time, would need to be approved by the Boone County Board of Adjustment (BCBOA) through the Change in Nonconforming Use procedure. The proposal was for a truck and automotive repair business with towing, impounding, and related improvements. This Change in Nonconf-

orming Use application was denied by the BCBOA on 10/9/13. Neither the original 4/19/13 Zoning Administrator determination or the 10/9/13 BCBOA denial were appealed so these decisions stand.

### APPLICABLE REGULATIONS

Article 2, Section 201 of the Boone County Zoning Regulations states that one of the duties of the Zoning Administrator is to determine the classification of a use of land, buildings or structures as a permitted, accessory or conditional use in a specific zoning district, as well as determine the applicability and substance of development performance standards, based on interpretation of the stated and implied requirements of the zoning regulations. This includes the determination of classification of new uses or uses not specifically identified in these regulations.

Article 2, Section 220 of the Boone County Zoning Regulations states that one of the duties of the Board of Adjustment is to hear and decide appeals where it is alleged there is an error in any order, requirements, decision, interpretation, grant, or refusal made by the Zoning Administrator.

Article 2, Section 230 of the Boone County Zoning Regulations states that it is the intent of the regulations that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board shall be to the appropriate court of jurisdiction as provided by law. It is further the intent of the regulations that the duties for the legislative bodies in connection with the zoning regulations shall not include hearing and deciding questions of interpretation and enforcement that may arise. The legislative bodies shall have only the duties of considering and adopting or rejecting proposed amendments or repeal.

Article 2, Section 245 of the Boone County Zoning Regulations states that appeal to the Board of Adjustment and Zoning Appeals may be taken by any person, or entity claiming to be injuriously affected or aggrieved by an official action, order, requirement, interpretation, grant, refusal, or decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days after the decision by filing, with the Board of Adjustment and Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is being taken, and by giving notice of such appeal to any and all parties of record. The Zoning Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken. The appellant may also submit any materials appropriate for review in consideration of the appeal.

Article 2, Section 270 of the Boone County Zoning Regulations states that within the districts established by the regulations or amendments to districts that may later be adopted, lots, uses of land, and structures, which were lawful before the regulations were

passed or amended, but which would be prohibited, regulated, or restricted under the terms of the regulations or further amendments may exist. It is the intent of the regulations to permit these nonconforming lots, uses and structures to continue until they are no longer non-conforming. It is further the intent of the regulations that a nonconforming use or structure shall not be enlarged or extended beyond the scope and area of its operation at the time it became a legal nonconforming use, nor shall other uses or structures which are prohibited elsewhere in the same district be permitted on lots of nonconforming uses or structures.

Article 2, Section 272 of the Boone County Zoning Regulations states that where at the time of adoption of the regulations, legally established, uses of land exist which would not be permitted, 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 the regulations were adopted. Section 272 also states that 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.

Article 9, Sections 911, 912, and 913 of the Boone County Zoning Regulations outline the Principally Permitted, Accessory, and Conditional Uses in the Rural Suburban Estates (RSE) zone.

### HISTORY OF ISSUE

On 1/29/04, Boone County Planning Commission issued a Zoning Permit for a 30' x 60' pole barn to be constructed on the property. The approval indicated that the structure was not to be used for business purposes.

On 6/26/09, a realtor inquired if the nonconforming use on the property can be changed from an excavating and trucking business to a landscaping nursery. The Zoning Administrator wrote a response which stated that more information would need to be provided before he could determine that the excavating and trucking business was a pre-existing nonconforming use.

On 1/31/12 Mr. Branscum bought the subject property.

On 10/4/12, an attorney inquired if a towing and impounding business could occupy the property. The Zoning Administrator wrote a response stating that this type of business is not permitted in the RSE zoning district. He acknowledged that a previous claim was made regarding a nonconforming use but it was never substantiated with credible documentation.

On 1/15/13, the Boone County Planning Commission sent Mr. Branscum a letter making him aware that they received a complaint about a towing and impound business operating from the property. The letter asked the owner to cease operations because the business is not permitted in the RSE zoning district.

On 2/2/13, Mr. Branscum wrote a letter to the Zoning Administrator which stated that he bought the property in January 2012. He stated that he was residing on the site and was towing vehicles. He stated that he had removed hundreds of tires, trash, and debris from the property because the previous owner ran a trucking and excavation business for over 20 years.

On 2/7/13, the Zoning Administrator wrote a reply stating that the Boone County Planning Commission does not have any compelling evidence to suggest that the above referenced nonconforming use was legitimately established on the property. He asked Mr. Branscum to submit such evidence so that he can make a determination if a change in nonconforming use can be sought.

On 3/1/13, Mr. Matthew C. Smith, Esq., sent the Zoning Administrator an e-mail stating that Mr. Branscum would remove the wreckers and stored vehicles on the property and take them to his Walton site by March 8<sup>th</sup>. Mr. Branscum would also submit a Home Occupation Permit in the next week.

On 3/7/13, Mr. Branscum sent the Planning Commission an e-mail which requested that he be given two additional weeks to remove the stored vehicles and equipment from the site. He had hired a new attorney and was reconsidering the home occupation permit application. The Boone County Planning Commission Staff responded that they will grant an extension until March 22<sup>nd</sup> so that nonconforming use documentation can be submitted or proper zoning permits can be obtained.

On 4/8/13, Mr. Richard Brueggemann submitted evidence supporting that a pre-existing nonconforming heavy trucking, truck repair, and excavation business existed on site for more than ten years.

On 4/19/13, the Zoning Administrator determined that a legal pre-existing, nonconforming use has been established on the property for a heavy trucking, truck repair, and excavation business (see Exhibit E).

On 7/30/13, the Boone County Planning Commission Staff sent Mr. Branscum a letter stating that three months had passed since the Zoning Administrator made his determination. The letter asks him to contact the office so they can discuss what course of action he will be taking. A Change of Nonconforming Use application was submitted for a truck and automotive repair business with towing, impounding, and related improvements. The Boone County Board of Adjustment conducted a public hearing for this request on 9/11/13 and denied the application on 10/9/13.

On 11/27/13, Richard A. Brueggemann provided a letter and supporting materials to document the limits of the pre-existing, nonconforming use on the property. The Zoning Administrator replied in a letter dated 12/4/13 requesting additional information (both letters are attached as Exhibit B).

On 1/3/14, Richard A. Brueggemann provided a letter with additional documentation as requested in the Zoning Administrator's 12/4/13 letter. On 1/16/14 Richard A. Brueggemann provided an e-mail at the request of the Zoning Administrator which outlined the proposed hours of operation and the business hours of the previous owner. On 1/17/14, the Zoning Administrator provided a written decision which determined the scope of the pre-existing, nonconforming use (all three items are included in Exhibit A).

On 2/15/14, a Notice of Appeal from Christina R. Edmondson was received via e-mail (Exhibit C). The formal Appeal application was received on 3/18/14 (Exhibit D).

On 3/18/14, a Major Site Plan application was submitted to the Boone County Planning Commission for the improvements that were made on the property without any approvals.

### SURROUNDING LAND USES & ZONING

Northeast: Lebanon-Crittenden Road, Single-Family Residential Dwelling and Farm (RSE)

Northwest: Single-Family Residential Dwellings and Farm (RSE and A-2)

Southeast: Single-Family Residential Dwellings Fronting on St. James Place (RSE)

Southwest: Single-Family Residential Dwelling Fronting on St. James Place (RSE)

### SITE CHARACTERISTICS

The 7.13 acre property is located on the southwest side of Lebanon-Crittenden Road and has approximately 266 feet of road frontage. The front of the property currently contains two single-family residential dwellings units and access to them is provided from two gravel driveways which connect to Lebanon-Crittenden Road.

The area immediately behind the two single-family residential dwellings contains a 60' x 76' garage with four bays, an approximate 36' x 36' office/storage building, a gravel parking lot, and a separate 6' tall chain link fenced compound (61' x 95'). Access to the garage and fenced compound is provided from the southernmost access point on Lebanon-Crittenden Road. Fill dirt was added and the gravel area was expanded by the current property owner in the portion of the site that is between the garage and the farm pond.

The rear of the site is a large open field which contains said farm pond. The rear property line and portions of the side property lines are wooded with mature deciduous trees. The property owner also installed some evergreen trees between the fenced compound and the farm pond along the southeast property line.

Boone County GIS shows that the elevation of the site is 910 feet above sea level at Lebanon-Crittenden Road, 916 feet above sea level behind the two single-family residential dwellings, 880 feet above sea level at the farm pond, and 844 feet above sea level along a portion of the rear property line.

#### DECISION AND BASIS FOR DECISION

The decision in question, and the basis for this decision, are described in the previously mentioned letter dated 1/17/14 from Kevin T. Wall to Richard A. Brueggemann (Exhibit A).

#### CONCLUSION

KRS 100.257 and Section 220 of the Boone County Zoning Regulations give the Boone County Board of Adjustment and Zoning Appeals the authority to act on this request. In order for an appeal to be granted, the Board must determine that the administrative decision in question is in error.

Respectfully submitted,

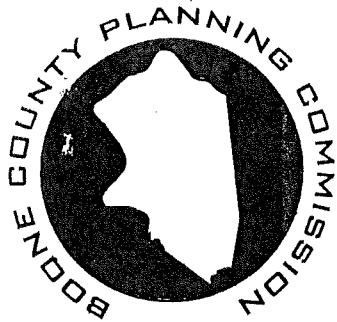


Kevin T. Wall, AICP  
Zoning Administrator  
Boone County Fiscal Court

KTW/tlb

**EXHIBITS**

- Exhibit A - 1/17/14 letter from Kevin T. Wall, Zoning Administrator, to Richard A. Brueggemann, Attorney, and supporting materials (Zoning Administrator decision subject to this appeal)
- Exhibit B - 12/4/13 letter from Kevin T. Wall, Zoning Administrator, to Richard A. Brueggemann, Attorney, and supporting materials
- Exhibit C - 2/15/14 Notice of Appeal letter from Christina R. Edmondson, Attorney, to Kevin T. Wall, Zoning Administrator, and supporting materials
- Exhibit D - Appeal application form and supporting materials
- Exhibit E - 4/19/13 letter from Kevin T. Wall, Zoning Administrator, to Richard A. Brueggemann, Attorney (original Zoning Administrator decision which determined that a pre-existing, nonconforming heavy trucking, truck repair, and excavation business had been established on the property)
- Exhibit F - Site Map (air photo)



# EXHIBIT A BOONE COUNTY PLANNING COMMISSION

[www.boonecountyky.org/pc](http://www.boonecountyky.org/pc)  
[www.boonecountygis.com](http://www.boonecountygis.com)

Boone County Administration Building  
2950 Washington Street, Room 317  
P.O. Box 958  
Burlington, KY 41005

Phone (859) 334-2196; Fax (859) 334-2264  
[plancom@boonecountyky.org](mailto:plancom@boonecountyky.org)

January 17, 2014

Mr. Richard A. Brueggemann  
Hemmer DeFrank  
250 Grandview Drive, Suite 500  
Ft. Mitchell, KY 41017-5646

FAX: 578-3869

RE: 1/3/14 Letter Regarding Truck Repair Business at 15487 Lebanon-Crittenden Road, Boone County, Kentucky; Rural Suburban Estates (RSE) zone

Dear Mr. Brueggemann:

I have reviewed the letter dated 1/3/14 and supporting materials that you provided regarding the truck repair business at 15487 Lebanon-Crittenden Road. This was provided in response to my 12/4/13 letter, which was a reply to your letter dated 11/27/13. The purpose of this exchange is to determine a concrete definition to the pre-existing, nonconforming use of the property for a heavy trucking, truck repair, and excavation business as outlined in my Zoning Administrator decision dated 4/19/13. The 4/19/13 decision was not appealed to the Boone County Board of Adjustment so the determination that a heavy trucking, truck repair, and excavation business has pre-existing, nonconforming status on the subject property stands.

The determinations in this letter help define the 4/19/13 decision versus change it in any way. Concrete limits were not defined at that time as it was understood that your client was to promptly submit a Change in Nonconforming Use application. As you are aware, the Change in Nonconforming Use application was denied by the Board of Adjustment (BOA) on 10/9/13. The Board's decision was not appealed.

My task at this juncture is to specifically define the scope pre-existing, nonconforming use of the property, and not act as a de facto BOA rehearing the Change in Nonconforming Use application. As such, I can determine directives which keep the current use of the property within the scope of the pre-existing, nonconforming limits, but I am not authorized to impose conditions which are over and above those limits, even if they would mitigate impacts created by the Branscum operation.

Your 1/3/14 letter contends (pg. 5) that the BOA's denial of the Change in Nonconforming Use application was only to add a towing-impound component to the use of the property. The legal ad for the BOA public hearing stated that the application was for:

Request of **Richard A. Brueggemann, Esq.** for a Change in Non-Conforming Use to (1) allow a heavy trucking, truck repair, and excavation business to be converted to a truck and automotive repair business with towing and impounding. Impounded vehicles may remain on site for 30 days or more; and (2) building, parking, and fencing additions. The

approximate 7.13 acre site is located at 15487 Lebanon Crittendon Road, Verona (Boone County), Kentucky and is currently zoned Rural Suburban Estates (RSE).

You indicated in an e-mail dated 8/20/13 that this was an accurate description of the request before the BOA. A phone message from Ray Branscum dated 8/21/13 indicated the same. Thus, the BOA action also denied automotive repair at this location. "Automotive repair facility" is a different use category than truck repair under the Boone County Zoning Regulations. This is important because a repair business for private automobiles could experience substantial volumes which are beyond the scope of the grandfathered use. The BOA action also denied certain improvements (building, parking, and fence additions) to be used for any purpose that was inconsistent with the RSE zone principally permitted and/or accessory uses. While the building and fencing additions could be readily used for activities that are principally permitted or accessory uses in the RSE zone, this is not so apparent for the expansive gravel surfacing which was added to the site by your client.

A key issue regarding the use of the property is determining the number and types of vehicles which legitimately fall under the established pre-existing, nonconforming status. Your letter and the supporting materials indicate several different figures and types of vehicles, trailers, and/or equipment, depending on the source or context. Five trucks of varying kinds and one trailer are actually documented on the property as evidenced by the insurance cards for "All Ways Trucking & Excavating" at 15487 Lebanon-Crittenden Road which are dated 4/22/02. These were vehicles actually used in the on-site business versus vehicles for outside customers being repaired on the premises. Additionally, the 4/22/02 date on the cards confirms that these vehicles have met the "10 year rule" per KRS 100.253(3).

The bottom of the table on page 7 of your 1/3/14 letter indicates that the previous business customarily had "approximately 6 heavy trucks under or awaiting repair." This specific figure is not documented with any type of paperwork, but it is fairly consistent with the number of vehicles in a later air photo and corroborated by some of the anecdotal accounts provided regarding the total number of vehicles on the site. While not precise, it is the best information available to me on this specific issue.

When considering the number of business vehicles and repair vehicles that you outlined, it is my conclusion that a maximum of eleven (11) trucks and one (1) trailer may be kept on the site in conjunction with the business. This can be either vehicles which are used in the business itself, vehicles being repaired, and/or vehicles awaiting repair. Except for vehicles which are obviously wrecked, it would be difficult to otherwise discern any difference between the vehicles used by the business or those on the site for service work. This can also include the tow trucks and step vans mentioned in your letter as they are the same or similar in size and commercial appearance to some of the vehicles documented on the site for the previous owner. This can also include semis as they constitute "heavy trucks." Heavy trucks are noted in the 4/19/13 Zoning Administrator decision, and semi trucks are mentioned in the supporting materials that you provided regarding the use of the property by the previous owner.

The tow trucks must be used to haul in trucks that will be repaired by the on-site business. You provided documentation which verifies that trucks were towed to this location under the prior owner. As you are aware, a separate towing operation which dispatched trucks to tow vehicles unrelated to the on-site truck repair was denied by the BOA in October. That does not mean that Mr. Branscum cannot tow vehicles which are unrelated to the on-site truck repair business, but that it must be done legally from a different location.

The bottom of the table on page 7 under the "current and continuing legal, pre-existing use" column states that Mr. Branscum would have "approximately 5 heavy trucks under or awaiting repair (plus add'l trucks allowed to compensate for permanent terminal use)". I cannot administratively grant an undefined quantity of additional trucks to compensate for the now discontinued terminal use of the property for the prior excavation business. As evidenced by the legal ad and staff report for the Change in Nonconforming Use application that was denied in October, the BOA has already acted on a proposal to substitute one nonconforming use for another. Modifying the proportions of one nonconforming activity to another is a form of Change in Nonconforming Use, which must be decided by the BOA and not the Zoning Administrator. As mentioned in the paragraph above, I can reasonably conclude that eleven (11) trucks total and one (1) trailer were part of the established pre-existing, nonconforming use based on the evidence presented.

Also, this same table indicates that "business equipment storage" for the Branscum operation is "TBD" (to be determined). I can not make a decision on this specific aspect of the operation without more tangible information.

I have heard at least one neighbor complaint that Mr. Branscum has been running what is essentially a 24 hour business. Relative to the hours of operation, you stated in a 1/16/14 e-mail that:

Reportedly, in the fall/winter Mr. Morgan Thomas' trucks usually started out of his facility at 5:00am and would return between 5-7pm. In the summer, the trucks would typically return later between 9-11pm. His mechanics/dispatcher was typically at his shop throughout the day. Work on weekends depended on what he had going and what was in the shop but Saturday work was common. On very cold nights during the winter, he'd let his trucks idle all night.

Mr. Branscum's on site hours are Monday-Friday 8:00am - 5:00pm. Mr. Branscum only sometimes works at the facility on Saturdays depending upon the trucks in his garage needing work. Occasionally, Mr. Branscum may be called out in the evening for towing or other work but that work is not performed on his property.

Based on this information, Mr. Branscum's stated hours of operation are somewhat less than that of the prior business and are acceptable. I have no documentation which would indicate that the prior business ran 24 hours or otherwise into the late hours of the night on any consistent basis. Thus, I can not determine that overnight hours fall under the pre-existing, nonconforming status. Again, relative to tow work at any hour, a separate towing operation which dispatched trucks to tow vehicles unrelated to the on-site truck repair was denied by the BOA in October.

Your 1/3/14 letter mentions that a commercial boarding kennel is not intended for the property, but that dog breeding may occur. Article 40 of the zoning regulations define a "kennel" as:

A lot or a facility in which four (4) or more domesticated animals greater than four (4) months of age are maintained for commercial purposes. Commercial purposes include the grooming, breeding, boarding, training, raising, and selling of domesticated animals.

As noted in the definition, dog breeding would constitute a kennel if it involved keeping four or more dogs which were greater than four months of age. Kennels are a Conditional Use in the RSE zone, which means that a Conditional Use Permit (CUP) must be approved by the BOA before the use

Mr. Richard A. Brueggemann  
January 17, 2014  
Page 4

may be initiated. There is also a minimum land area requirement of five (5) acres for a kennel in the RSE zone.

As outlined in my 12/4/13 letter, a Major Site Plan application prepared by a Professional Engineer (P.E.) licensed in Kentucky needs to be submitted to and approved by the Planning Commission for the improvements which have already been made. I recommend that your client hire a Professional Engineer who routinely prepares Major Site Plans for work in Boone County. Since a substantial amount of work has already been done without any type of plan approval, a complete Major Site Plan application must be submitted by Friday 2/28/14.

In addition to the standard items, the Major Site Plan should show where business and repair vehicles will be parked, include a floor plan drawing of the building which outlines the business and personal storage areas mentioned in your 11/27/13 letter, and describe the use of the fenced area for the storage of various personal items. As noted above, it is not apparent that the expansive gravel surfacing which was added to the site by your client would be used for a principally permitted and/or accessory use permitted in the RSE zone. Unless otherwise justified, the additional gravel areas will need to be removed or covered as mentioned in your letter. Air photos in our database can be used for determining the previous limits, with these limits in turn shown on the site plan. There is no issue with a graveled access drive to rear of the property for maintenance as noted in your letter.

I believe that some of the neighbor objections to the operation pertain to the expansion of the gravel surfacing, which makes the operation appear larger, and the miscellaneous junk and debris which have been kept on the site. I would hope that at least a portion of these objections would be alleviated by returning the surfacing to the limits established by the previous property owner. Additionally, there are requirements administered through the Boone County Public Works Department regarding junk, and the zoning regulations do not permit a "junk yard" as defined by Article 40 on the property. In short, junk and debris cannot accumulate on the property.

Because this letter outlines a decision of the Zoning Administrator, it may be appealed by any aggrieved party to the Boone County Board of Adjustment (BOA) within thirty (30) days of today's date. In order for an appeal to be granted, it must be demonstrated that the decision is in error.

Sincerely,



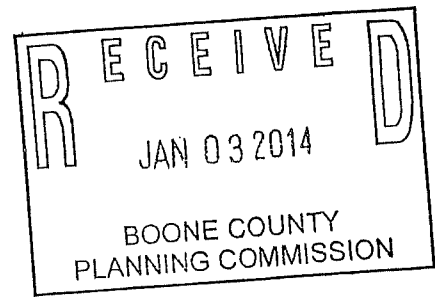
Kevin T. Wall, AICP  
Zoning Administrator  
Boone County Fiscal Court

KTW/vlm

cc: Kevin Costello, Executive Director  
Matt Dedden, Commissioner  
Jeff Earlywine, Boone County Administrator  
Graydon Head & Ritchey LLP; FAX: 525-0214  
Mike Keller, 15794 KY 491, Verona, KY 41092  
Mitch Light, Asst. Zoning Administrator/Enforcement Officer

Mr. Richard A. Brueggemann  
January 17, 2014  
Page 5

cc: Todd Morgan, Senior Planner  
Robert Neace, Boone County Attorney  
Pat Thomas, 15763 Lebanon-Crittenden Road, Verona, KY 41092  
Kimberly and Jeremy Waits, 1879 St. James Place, Verona, KY 41092  
Dale Wilson, BCPC Legal Counsel



Email: [rbrueggemann@hemmerlaw.com](mailto:rbrueggemann@hemmerlaw.com)  
Direct Dial: 859-578-3855

January 3, 2014

Mr. Kevin Wall  
Boone County Zoning Administrator  
Boone County Planning Commission  
2950 Washington St.  
Room 317  
P.O. Box 958  
Burlington, KY 41005

**Re: 15487 Lebanon Crittenden Road, Verona Kentucky ("Property")**

Dear Mr. Wall:

I write on behalf of our client, Mr. Branscum, in response to your December 4, 2013 letter and your request for follow-up information. We appreciate your extension of this response deadline to January 3<sup>rd</sup>.

**1. Additional Documentation of Prior Use.**

The first request in your letter asked for corroborating evidence to confirm the extent of the prior use of the Property as attested to in the affidavit of Morgan Thomas, the previous owner. More specifically, you requested documents in addition to Mr. Thomas' testimony that could tie the heavy trucks detailed in his affidavit to the Property. It is difficult to obtain documents extant more than ten years past, especially from a business that no longer exists. However, we are able to verify Mr. Thomas' affidavit by sworn statements of several adjoining neighbors that lived nearest to his operation throughout the relevant period. These neighbors include Walt Ryan, Susan Stephenson, and Lee Anne Ryan and their affidavits are respectively attached at **Exhibits A, B and C**. These individuals lived next to the Property even before Mr. Thomas began his operation. See also the affidavits of neighbors Gene Dixon and Rhonda Dixon at **Exhibits D and E**. Collectively, these affiants corroborate the number of heavy trucks, the type of trucks, and the extent of Morgan Thomas' business as contained in his affidavit. For example, Mr. Ryan detailed the following information about the preexisting operation:

- "[D]uring and beyond 2002 . . . Mr. Thomas commonly had many heavy tri-axle dump trucks, and even semi-tractors and trailers that either parked at his property or were daily coming and going . . . there were at least a dozen or so either parked there or coming and going daily."

- “Mr. Thomas’ operation worked on trucks other than his own . . . .”
- “[T]here was always heavy excavation equipment parked at, or being hauled into or out of, the 15487 Property . . . he constantly bought and traded that type of equipment as well as trucks/trailers out of the 15487 Property.”
- “Morgan Thomas also used the 15487 Property as a staging area for various types of aggregates that he hauled or used in his business.”

Ms. Stephenson also confirms that “Mr. Thomas had more trucks, trailers and equipment on the site” ten years ago than does Mr. Branscum now, that “[t]rucks were always coming or going,” that Morgan Thomas “performed truck repair work and always had tires, trailers and other junk setting around,” and that he “also stored piles of gravel and sand on the 15487 Property . . . just feet from my home in the area where Mr. Branscum was temporarily storing cars.” Ms. Stephenson further states that, “My home has always been the closest neighbor . . . just a few feet from both operations. And I know Mr. Branscum’s current truck and repair operation is not more extensive than the truck and repair operation Mr. Thomas had going on.” If anyone could know from the experience of a neighbor, the Ryans, Ms. Stephenson and the Dixons would. These respected and credible individuals have nothing to gain by their testimony other than truthfully presenting the facts. Mr. Morgan Thomas likewise has no stake in Mr. Branscum’s operation.

In addition to these sworn statements, there are also documents that corroborate Mr. Morgan Thomas’ affidavit. Insurance records were among the items requested in your letter to “tie” the trucks referenced by Mr. Thomas to the Property. Although availability of such records is sparse, Mr. Branscum was able to obtain some insurance documents from 2002 and 2005. Mr. Charles Crawley of Old Kentucky Insurance, Inc., also confirmed that he wrote insurance for All Ways Trucking and its operation in Verona. See letter of Charles Crawley attached at **Exhibit F**. Mr. Crawley states, “I was out there often, plenty of trucks and excavation equipment always located there, and I used to hit that little diner just up the road . . . .”

Attached at **Exhibit G** are copies of insurance identification cards issued for the period beginning April 22, 2002 to April 22, 2003. Although these are for only some of the trucks and equipment owned by Mr. Morgan Thomas, it demonstrates at least five heavy trucks and one trailer was both insured and operating out of the Property during 2002. These included a 1995 Mack RD690, a 1988 Ford Dump Truck, a 1993 Mack, a 1987 Western Star, a 1978 Mack, and a 2002 P&T Trailer. Because action was first taken against Mr. Branscum’s operation in 2013, the ten year look-back date would be 2003, not 2002. Although we do not have any insurance records from 2003, we know from Mr. Thomas’ affidavit that his operation grew in 2003 and continued to grow thereafter. This is also corroborated by an insurance document dated 2005, the only other insurance document Mr. Branscum was able to obtain. This document is a declaration by Motorists® and shows nine heavy trucks, two trailers and various excavation equipment—all as being insured to All Ways Trucking and garaged in Verona during that time. See the Motorists® declaration pages attached at **Exhibit H**. It is also important to note that the

trucks Morgan Thomas worked on for other truck owners, and the equipment that he acquired to fix up and trade, would be in addition to that listed on his insurance documents.

Your letter indicates that some “neighbors” contend that the “Branscum operation is more intensive than the prior use of the property,” and that some of the vehicles are “larger.” Without knowing precisely to which “neighbors” this refers and what exactly they allege, it is difficult to address their contentions with specificity. However, based upon what has been produced to Mr. Branscum, the most recent complaints are from Kimberly and Jeremy Waits, at 1879 St. James Place. Based upon the letter they submitted September 2<sup>nd</sup>, the Waits did not even live in the area until September 21, 2013. Of the other written complaints, the overwhelming majority are from residents who merely drive past Mr. Branscum’s Property, many of whom live on Teal Road nearly a mile away.

As a drive past Mr. Branscum’s Property is sufficient to demonstrate, his operation is not visible from Route 491. This fact is admitted even by many that were enlisted to complain about his application. For example, an email to your office from Steve and Brenda Cook states, “*The fact that he has been able to conceal his activities behind his property* was understood as private activities such as that of a farmer and his machinery, not that of commercial activity. *My understanding was he owned trucks for hauling gravel, dirt etc.*” (Emphasis added.) This makes two very clear admissions against the interests of the complainers: First, this proves Branscum’s operation is “concealed” from view. Because of this, they cannot accurately compare Morgan Thomas’ operation with that of Mr. Branscum’s. Secondly—but more importantly—this complainant also admits that the prior owner’s use involved “trucks for hauling gravel, dirt etc.”

Another complaint illustrates the same initial points. Consider the letter to your office from Daniel Kenzie who wrote, “I live at 15480 Teal Road . . . and *never knew a business existed there before.*” His primary complaint is that, “*The secret, hidden business is now going to become a 24 hour/7 day a week operation . . .*” (Emphasis added.) By admitting the business was (and is) hidden, so much so that *he never knew of a business existed there before*, this complainant is likewise not in a position to compare the preexisting business on the Property.

In a different vein, a resident on St. James Place wrote, “*I purchased my property in April 2013 . . . From my front porch, I can see the subject property. Currently what I see is large garage surrounded by green pastures. I do not currently hear industrial noises.*” (See letter to your office by Wes/Bridgett Conley; emphasis added.) This is a defense of Mr. Branscum, not a denunciation. As the record shows, Mr. Branscum commenced operations in 2012. This complainant moved in April 2013, and wrote this complaint in September 2013. Even as of that date, he can articulate no objection to Mr. Branscum’s ongoing operation even though he claims to see it from his front porch. He confirms having no objection based on anything he can personally see or hear of Mr. Branscum’s current operation. Obviously, this writer has no complaint about anything that was already occurring in Mr. Branscum’s business. Rather, this complaint was solely driven by what he or she was told in hearsay—about what was *going to happen* in the future. Indeed, the words “*I was told*” are a recurring theme throughout the complaints.

For a final example, the opposition of Mr. Larry Thomas deserves special consideration. On information and belief, he owns Airport Towing (or is closely associated with it) and is a competitor of Mr. Branscum.<sup>1</sup> As stated at the hearing (and as is apparent by the correspondence copied), Mr. Larry Thomas engaged counsel to oppose Mr. Branscum's application and prevent him from obtaining an accessory use of towing-impounding in lieu of excavation. Mr. Branscum later learned that Larry Thomas himself sought to purchase the Property for use as a towing-impounding lot. If true, the opposition led by Larry Thomas is remarkable. Below is an excerpt of a letter submitted by Mrs. Pat Thomas, Larry's spouse:

I would never considered [sic] moving close to a repair, towing and storage business. Mr. Branscum is responsible to check into the zoning of this property before he purchased it. I cannot imagine that he was unaware what the property was zoned prior to purchasing and establishing a business there. Why should we who already live here have to change to benefit him[?]

If Larry Thomas wanted to purchase the same Property for use as a towing operation, he should not be heard to complain about that very use on the same Property simply because a competitor in fact did so. At the very least, it is fair to question whether an anti-competitive spirit drives Larry's opposition. Another curious fact is that Mr. Branscum reports there are typically two wreckers parked at Larry and Pat Thomas' residence. See the photo attached at **Exhibit I** showing an Airport Towing wrecker parked at Larry Thomas' residence (from which the above complaint originates). Mr. Branscum points this out not because parking tow trucks at one's residence is objectionable, but to underscore the obvious double standard. Quite simply, the complainant violates the *goosey-gander* rule.

Other examples abound but are unnecessary and redundant. The complaints are overwhelmingly from persons who merely drive by the Property and admittedly cannot even see what occurs on it. And nearly all the complainants who do live closer have only recently moved in—much less lived there in 2003. Any of these circumstances eliminate their complaints. The existence of these facts also demonstrates that they cannot make a fair comparison of Morgan Thomas' operation.

On the other hand, Walt Ryan, Susan Stephenson, and Lee Anne Ryan are the neighbors that live nearest to Mr. Branscum. And they lived there even before the ten year period of Morgan Thomas' operation began (and are further corroborated by Gene Dixon and Rhonda Dixon). These individuals have no ax to grind either way. Mr. Morgan Thomas is also unbiased and has nothing to gain or lose by Branscum's business. These sworn statements prove that Mr. Branscum's trucking/truck repair on the Property is no more intense than that of his predecessor's operation. And the affidavits of these individuals are also corroborated with

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<sup>1</sup> Despite the common last name, there is no known relationship between Larry Thomas and Morgan Thomas.

insurance documents, all of which prove many heavy trucks were garaged out of the Property by 2003, *i.e.*, ten years before any action against Mr. Branscum in 2013.

Your letter requested that Mr. Branscum document how many commercial style vehicles were kept on the Property at any given time during Mr. Thomas' operation. The 2002 insurance identification cards document at least five heavy trucks and a trailer being housed on the property at that time. And, as the affidavits of Morgan Thomas, Walt Ryan, and those discussed hereinafter from Sechrest Garage show, other trucks not owned by Morgan Thomas were often at the Property for repairs. Mr. Walt Ryan stated there were "at least a dozen or so either parked there or coming and going daily" during 2002. The 2005 insurance declaration page shows nine heavy trucks and two trailers being owned by Morgan Thomas alone, all of which the document indicates were garaged at the Property. We trust this adequately demonstrates that Mr. Morgan Thomas' operation would have included at least a dozen heavy trucks either parked at, or coming from/going to, the Property daily. In comparison, as stated in my letter dated November 27, 2013, Mr. Branscum currently has only three trucks, two medium duties and one heavy truck. These include a 1996 Ford® rollback, a 1990 International® wrecker, and a heavy 1994 Peterbuilt® 378 wrecker. He also has two step-vans that contain tools used for mobile repair service. He estimates that his business would not exceed eight customer vehicles on his property at any one time for repair.

The contention of certain complainants "that some of the vehicles associated with the Branscum business are much larger" has likewise been fully addressed. First, it has already been conclusively determined "that a legal pre-existing, nonconforming use has been established on the property for a heavy trucking, truck repair and excavation business." (See your decision of April 19, 2013, p. 3; emphasis added.) The preexisting use is defined as "heavy trucking." In any event, the trucks listed above for Mr. Branscum's operation are no heavier than those listed in Morgan Thomas' affidavit or the insurance documents provided with this letter at Exhibits G and H. See also **Exhibit J** for a photo of the semi-tractor that Mr. Morgan Thomas kept on the Property. Therefore, this complaint is likewise without merit.

## **2. Requested Documentation as to Prior Use of Tow Trucks on the Property.**

The second request in your letter concerned Mr. Branscum's proposal that two wreckers would be kept on the site. Specifically, you requested clarification on whether the parking or wreckers might contravene the Board of Adjustment's denial of Mr. Branscum's application for a change in use. The application before the Board of Adjustments ("BOA") was for an "addition" of towing-impound use in lieu of excavation. Neither the parking/terminaling of trucks nor the repair of any type of trucks was before the BOA. The only action taken by the BOA was merely its denial of a requested additional use. The board made no ruling that prohibited tow-trucks or any other truck from being parked at or repaired on the Property.

Under Kentucky law it is well settled that "a nonconforming use is a property right constitutionally protected." *Martin v. Beehan*, 689 S.W.2d 29, 31 (Ky. Ct. App. 1985). Even were it otherwise in Kentucky, the United States Constitution "protects vested rights from encroachment by the States" pursuant to the due process clause of the Fourteenth Amendment

just as the Fifth Amendment does against the Federal Government itself. *Darlington v. Board of Councilmen*, 282 Ky. 778, 785 (Ky. 1940). And a nonconforming use is a vested right. “While a nonconforming use may be deemed to be undesirable by a portion of the community, it nonetheless constitutes a legitimate, vested property right and clearly enjoys broad constitutional protection. [Internal citations omitted.] Vested property rights are not easily lost or voided.” *Dempsey v. Newport Bd. of Adjustments*, 941 S.W.2d 483, 485 (Ky. Ct. App. 1997).

As previously determined, “a legal pre-existing, nonconforming use has been established on the property for a heavy trucking, truck repair and excavation business.” Therefore, Mr. Branscum has a vested right to this use. That right is protected by the Constitutions of both Kentucky and United States. So long this use is not expanded beyond that previously established, he is free to use the Property for trucking and truck repair. A tow-truck is simply a truck, as a tri-axle is a truck, and a semi-tractor is a truck. These trucks may be parked at and repaired on the Property.

It also remains true that the prior owner did frequently utilize wreckers to tow trucks onto the Property. See the attached affidavits of Donald Sechrest and Jim Haines of Sechrest Garage & Co., Inc., that are respectively attached hereto as **Exhibits K and L**. Clearly, wreckers were routinely used to tow broken-down, heavy trucks to the Property. And as Exhibit I demonstrates, just up the street from Mr. Branscum, Larry Thomas parks tow-trucks a matter of course. Again, however, there is no prohibition against Mr. Branscum parking his tow-trucks on the Property under the nonconforming use to which he is entitled.

### **3. Intended Use of the Expanded Gravel Area.**

Your letter instructs Mr. Branscum to state the purpose of the additional graveled area and that, if it is not a purpose contemplated for the RSE zone, it must be removed. Most of the area filled or graveled that was not used by the previous operator involved the placement of the improved access drive to the rear portion of Mr. Branscum’s Property. This will be used solely to access that Property to cut grass/hay or for future agricultural uses. The other area filled that was not previously used by Morgan Thomas’ operation will be graded, seeded and covered with straw. Any area not used by Mr. Thomas for his business and on which gravel was placed will be used only for parking Mr. Branscum’s personal horse trailer, race car/trailer or other personal property. However, if such proposed use is problematic or expands the extent of the required site plan or review, Mr. Branscum will simply apply soil and seed this similar to the sloped areas that are filled. This will be further discussed under part 6 below that addresses site plans.

### **4. Clarification of Intention Concerning Possible Dog Kennel.**

Mr. Branscum has no current intention of operating a commercial dog kennel. The mention of a dog kennel by Mr. Branscum referred to the possibility of an animal breeding/husbandry operation involving his own animals or pets, not commercial kenneling of

dogs belonging to another. At this time, we are unsure whether or not the kennel discussed by Morgan Thomas in his affidavit involved commercial or private kennels.

**5. Outline of Mr. Branscum's Business Activities.**

Your fifth request recommended that Mr. Branscum provide a "point by point outline or punch list" of his business with comparisons to the prior use. Following is a table that compares the prior uses of Morgan Thomas' business against that currently in place or intended for Mr. Branscum's business:

	Legal, Pre-existing Use of Morgan Thomas' Operation	Morgan Operation Detail		Current and Continuing Legal, Pre-existing Use	Branscum Operation Detail
<b>Permanent Truck Terminal</b>	Minimum of 6 heavy trucks - maximum of 9 heavy trucks	1978 Mack, 1988 Mack tri-axle Freightliner semi-tractor/trailer, 3-1993 DM Mack tri-axle trucks, 1995 RD Macks, 1987 Western Star, Mack, 1997 Mack, 1994 Ford LN9000, 1979 Ford, 1995 Mack, 1987 Western 4864, 2002	v.	Currently 3 trucks - (allowed at least 3 additional heavy trucks to be in terminal awaiting repair)	1996 Ford rollback, 1990 IH tow-truck, 1994 Peterbuilt 378 (plus 3 add'l awaiting repair)
<b>Permanent Trailer Terminal</b>	Minimum of 1 large trailer - maximum of 3 large trailers	P&T Trailer, 2003 P&T Trailer, 53' car-hauler, a "low-boy" drag trailer, a 45' van trailer (for parts)	v.	Currently 2 step-van trucks with tools	Currently 2 step-vans with tools
<b>Business Equipment Storage</b>	3 pieces of heavy equipment, 1 skid-steer	Cat 70 track hoe, Cat 953 track loader, Kamatsu D38 dozer, and a Bobcat skid-steer	v.	TBD	TBD
<b>Truck Repair</b>	Approximately 6 heavy trucks under or awaiting repair	Various	v.	Approximately 5 heavy trucks under or awaiting repair (plus add'l trucks allowed to compensate for permanent terminal use)	Various

<b>Employees on site</b>	5 full-time	1 mechanic, 1 mechanic's helper, 1 dispatcher, and 2 secretaries	v.	2 full-time, 1-part time	2 mechanics full time, 1 part-time secretary.
<b>Dispatch Terminal / Brokering</b>	minimum of 6 heavy trucks - maximum of 26 heavy trucks	?	v.	Currently n/a	?
<b>Other</b>	Storage of aggregates	piles of various types of grave/sand separated with concrete K-block	v.	Additional gravel parking area	TBD

**6. Site Plan.**

Finally, your letter references the need of a site plan for improvements that have already been made. This also asks for confirmation that Mr. Branscum will not be using the fenced area for business purposes. That is correct. Mr. Branscum sought to change the excavation part of the preexisting business to an auto towing-impound operation. Since that has been denied, he is not towing any vehicles to his lot for storage or impoundment. This fenced area will not be used for business use.

Mr. Branscum is in the process of securing a surveyor/engineer to prepare the site plan to show detail of any improvements, to identify where business and repair vehicles will be parked, and that will include a floor plan drawing of the building demarking the areas used solely for personal or agricultural uses of parking and working on his race car, use for personal vehicles and personal storage. However, the various surveyors with whom Mr. Branscum has spoken have provided differing assessments as to what need be included in the site plan. Primarily, the confusion relates to what might be required for outside areas of added surfacing, if any are to remain. Depending upon what is required, Mr. Branscum may choose to simply plant vegetation to any such areas. We ask that you provide specific detail as to what will be required in the site plan so this can be shared with the preparer. Perhaps it may be most productive to schedule a meeting between you and the proposed individual intended to prepare the site plan.

With the exception of the site plan, we trust this submittal provides all the information requested and adequately demonstrates that Mr. Branscum's business fairly comports with his legal nonconforming use. If you have any questions concerning this or any of the attachments, please feel free to call. Thank you very much.

Sincerely,



Richard A. Brueggemann

- Encl. (12): Exhibit A – Affidavit of Walt Ryan  
Exhibit B – Affidavit of Susan Stephenson  
Exhibit C – Affidavit of Lee Anne Ryan  
Exhibit D – Affidavit of Gene Dixon  
Exhibit E – Affidavit of Rhonda Dixon  
Exhibit F – Copy of letter from Charles Crawley of Old Kentucky Insurance, Inc.  
Exhibit G – Copies of 2002 insurance identification cards  
Exhibit H – Copy of 2005 insurance declaration pages  
Exhibit I – Photo of Airport Towing Wrecker parked at 15763 Hwy 491  
Exhibit J – Photo of semi-tractor kept by Morgan Thomas  
Exhibit K – Affidavit of Donald Sechrest of Sechrest Garage & Co. Inc.  
Exhibit L – Affidavit of Jim Haines of Sechrest Garage & Co. Inc.

- cc: Mr. Kevin Costello AICP, Executive Director  
Mr. Mitch Light, Assistant Zoning Administrator/Enforcement Officer  
Mr. Todd Morgan, Boone County Planning Commission  
Hon. Gary Moore, Boone County Judge Executive  
Hon. Matt Dedden, Boone County Commissioner  
Hon. Charles Walton, Boone County Commissioner  
Hon. Charles Kenner, Boone County Commissioner  
Mr. Jeffrey Earlywine, Boone County Administrator  
Hon. Robert Neace, Boone County Attorney  
Hon. Dale Wilson, BCPC Legal Counsel

**In Re: 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092  
Boone County Planning Commission v. Ray Branscum**

**AFFIDAVIT OF CHARLES ("WALT") RYAN**

Comes now affiant, Charles ("Walt") Ryan, after having first been duly cautioned and sworn, deposes and states as follows according to his best recollection and belief:

1. My name is Charles ("Walt") Ryan. I am of legal age and reside at 15329 Lebanon-Crittenden Rd Verona, Kentucky 41092. I have personal knowledge concerning the statements in this affidavit.
2. I am a neighbor to Ray Branscum. My property adjoins Mr. Branscum's property at 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092 (the "15487 Property").
3. Mr. Morgan Thomas owned the 15487 Property before Mr. Branscum acquired it. I owned my property during the entire time Mr. Thomas operated his business out of the 15487 Property. I have reviewed the affidavit signed by Morgan Thomas and state that the description Mr. Thomas gave of his operation is at least as intense as I remember it.
4. Specifically, Morgan Thomas ran a trucking operation out of the 15487 Property during and beyond 2002. For at least the ten years prior to Mr. Branscum's operation, Mr. Thomas commonly had many heavy tri-axle dump trucks, and even semi-tractors and trailers that either parked at his property or were daily coming and going. While I cannot recite all the makes or models of trucks/trailers that frequented the 15487 Property in 2002, I know there were

at least a dozen or so either parked there or coming and going daily. In fact, for a while, Morgan Thomas did some hauling for me using a semi-tractor/trailer combination and these were parked at the 15487 Property.

5. Morgan Thomas also performed truck repair work at the 15487 Property from at least 2002. Truck repairs have continued constantly at the 15487 Property through today with Mr. Branscum's current operation. And I know that Mr. Thomas' operation worked on trucks other than his own while Mr. Thomas was there.

6. In addition to Morgan Thomas' trucking terminal and repair operation, during the same period of time there was always heavy excavation equipment parked at, or being hauled into or out of, the 15487 Property. This was common. Not only did Morgan Thomas use excavation equipment in his business, he constantly bought and traded that type of equipment as well as trucks/trailers out of the 15487 Property.

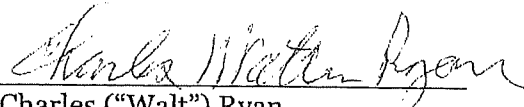
7. Morgan Thomas also used the 15487 Property as a staging area for various types of aggregates that he hauled or used in his business.

8. Mr. Thomas operated the foregoing businesses out of the 15487 Property for at least ten continuous years prior to the time Mr. Branscum began his operation there.

9. I've previously stated that Mr. Branscum's use and operation of the 15487 Property was and is less intense and more esthetically pleasing, even when he was storing some cars and running his towing operation from there. I was surprised when the Board of Adjustments declined to allow a minor impounding area and towing operation in lieu of the excavation business.

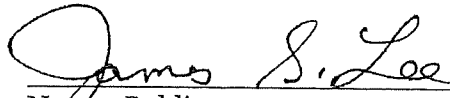
10. Mr. Branscum's truck parking and truck repair is certainly no greater than that of the former operator.

FURTHER, AFFIANT SAYETH NAUGHT.

  
Charles ("Walt") Ryan

STATE OF KENTUCKY    )  
                                  ) SS:  
COUNTY OF BOONE    )

The foregoing affidavit was signed, acknowledged and sworn to before me, a notary public for the State and County aforesaid, on this 31<sup>st</sup> day of December 2013, by Charles ("Walt") Ryan as his own free and voluntary act.

 #451598  
Notary Public  
My commission expires: 9/30/15

**In Re: 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092  
Boone County Planning Commission v. Ray Branscum**

**AFFIDAVIT OF SUSAN STEPHENSON**

Comes now affiant, Susan Stephenson, after having first been duly cautioned and sworn, deposes and states as follows according to her best recollection, belief and personal knowledge:

1. My name is Susan Stephenson. I am of legal age and reside at 15519 Lebanon-Crittenden Rd Verona, Kentucky 41092. Mr. Branscum owns the property at 15487 Lebanon-Crittenden Road (the "15487 Property").
2. I am Mr. Branscum's neighbor and my property adjoins the 15487 Property. My home is nearer to Mr. Branscum's operation than anyone else.
3. Before Mr. Branscum purchased the 15487 Property, I lived near Mr. Morgan Thomas and his operation. In fact, I lived next to the 15487 Property even before Mr. Morgan Thomas purchased it. I remember Mr. Thomas' operation very well. Mr. Thomas had more trucks, trailers and equipment on the site for at least ten years before Mr. Branscum came on the scene. Trucks were always coming or going. Morgan Thomas also performed truck repair work and always had tires, trailers and other junk setting around.
4. In addition to having trucks, trailers, equipment and junk setting around, Morgan Thomas also stored piles of gravel and sand on the 15487 Property. He frequently hauled these materials in and out. Morgan stored these piles just feet from my home in the area where Mr. Branscum was temporarily storing cars.



Notary Public

Notary ID No. 475761

My commission expires:

My Commission Expires 10/1/2016

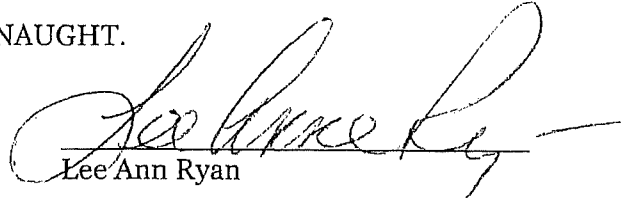
**In Re: 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092  
*Boone County Planning Commission v. Ray Branscum***

**AFFIDAVIT OF LEE ANNE RYAN**

Comes now affiant, Lee Anne Ryan, after having first been duly cautioned and sworn, deposes and states as follows according to her best recollection and belief:

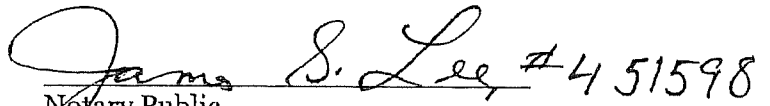
1. My name is Lee Anne Ryan. I am of legal age and reside at 15459 Lebanon-Crittenden Rd Verona, Kentucky 41092. I have personal knowledge concerning the statements in this affidavit.
2. I am a neighbor to Ray Branscum. My property adjoins Mr. Branscum's property at 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092 (the "15487 Property").
3. I lived near Mr. Morgan Thomas when he owned the 15487 Property. I remember Mr. Thomas' operation back to 2002 and beyond. There were then at least as many trucks at (or coming or going to) the 15487 Property as there is now.
4. In addition to the trucks associated with Morgan Thomas' trucking terminal and repair operation, there was always heavy excavation equipment parked at, or being hauled into or out of, the 15487 Property. This was common.
5. Mr. Branscum's truck parking and repair is no greater than that of the former operator. And, as I've previously stated, I find Mr. Branscum's use and operation of the 15487 Property to be less intense and more esthetically pleasing.

FURTHER, AFFLIANT SAYETH NAUGHT.

  
Lee Ann Ryan

STATE OF KENTUCKY    )  
                                  ) SS:  
COUNTY OF BOONE    )

The foregoing affidavit was signed, acknowledged and sworn to before me, a notary public for the State and County aforesaid, on this 31<sup>st</sup> day of December 2013, by Lee Ann Ryan as her own free and voluntary act.

  
Notary Public #451598  
My commission expires: 9/30/15

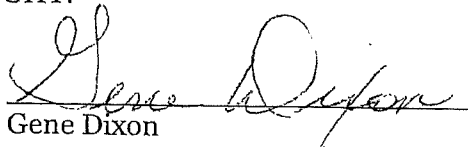
**In Re: 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092  
Boone County Planning Commission v. Ray Branscum**

**AFFIDAVIT OF GENE DIXON**

Comes now affiant, Gene Dixon, after having first been duly cautioned and sworn, deposes and states as follows according to his best recollection and belief:

1. My name is Gene Dixon. I am of legal age and reside at 15458 Lebanon-Crittenden Rd Verona, Kentucky 41092. I have personal knowledge concerning the statements in this affidavit.
2. I am a neighbor to Ray Branscum. I live near to Mr. Branscum's property at 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092 (the "15487 Property").
3. I also lived near the 15487 Property when Mr. Thomas owned it and ran his operation back in 2002 and beyond. There were then at least as many trucks at (or coming or going to) the 15487 Property as there is now.
4. In addition to the trucks associated with Morgan Thomas' trucking terminal and repair operation, there was always heavy excavation equipment parked at, or being hauled into or out of, the 15487 Property. This was common.
5. Mr. Branscum's truck parking and repair is no greater than that of the former operator. I find Mr. Branscum's use and operation of the 15487 Property to be less intense and more esthetically pleasing than that of the former owner.

FURTHER, AFFIANT SAYETH NAUGHT.

  
Gene Dixon

STATE OF KENTUCKY    )  
                                  ) SS:  
COUNTY OF BOONE    )

The foregoing affidavit was signed, acknowledged and sworn to before me, a notary public for the State and County aforesaid, on this 31st day of December 2013, by Gene Dixon as his own free and voluntary act.

James S. Lee #451598  
Notary Public  
My commission expires: 9/30/15


**In Re: 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092  
Boone County Planning Commission v. Ray Branscum**

**AFFIDAVIT OF RHONDA DIXON**

Comes now affiant, Rhonda Dixon, after having first been duly cautioned and sworn, deposes and states as follows according to her best recollection and belief:

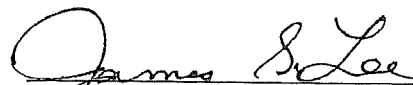
1. My name is Rhonda Dixon. I am of legal age and reside at 15508 Lebanon-Crittenden Rd Verona, Kentucky 41092. I have personal knowledge concerning the statements in this affidavit.
2. I am a neighbor to Ray Branscum. I live near to Mr. Branscum's property at 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092 (the "15487 Property").
3. I also lived near the 15487 Property when Mr. Thomas owned it and ran his operation back in 2002 and beyond. There were then at least as many trucks at (or coming or going to) the 15487 Property as there is now.
4. In addition to the trucks associated with Morgan Thomas' trucking terminal and repair operation, there was always heavy excavation equipment parked at, or being hauled into or out of, the 15487 Property. This was common.
5. Mr. Branscum's truck parking and repair is no greater than that of the former operator. I find Mr. Branscum's use and operation of the 15487 Property to be less intense and more esthetically pleasing than that of the former owner.

FURTHER, AFFIANT SAYETH NAUGHT.

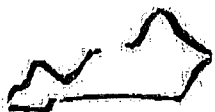
  
Rhonda Dixon

STATE OF KENTUCKY    )  
                                  ) SS:  
COUNTY OF BOONE    )

The foregoing affidavit was signed, acknowledged and sworn to before me, a notary public for the State and County aforesaid, on this 31st day of December 2013, by Rhonda Dixon as her own free and voluntary act.

 #451598  
Notary Public  
My commission expires: 9/30/15

W. BRUCE MYER, CIG  
G. HOWARD MCYER, CIG  
JEFFREY L. ROGERS, CIG  
H.C. BAKER  
JOHN P. BALDWIN  
ALLIE L. DETROY  
MICHAEL J. GATTS, CIG  
KEELY GOLDSMITH  
CHARLES G. HAWLEY  
DERRICK W. KUSTICA  
RANDI M. THOMPSON, CIG  
C. CRAIG WEBER



# OLD KENTUCKY INSURANCE, INC.

3089 BRECKENRIDGE LANE SUITE 105 • P.O. BOX 20887 • LOUISVILLE, KY. 40250-0887  
(502) 451-8800 • FAX (502) 451-8866 • E-MAIL: CHAWLEY@OLDKYINS.COM

December 16, 2013

To: Ray

From: Charles G. Hawley (Charlie)

Re: All Ways Trucking

Dear Ray:

I used to insured All Ways Trucking and excavating for Morgan Thomas that resided at 15487 HWY 91 (Lebanon-Crittenden Rd), Verona, KY 41092. After Morgan sold the business I still insured it but at a different address. Attached is a list of original vehicles and you will see that Morgan was a scheduled driver also for the new owner, Craig Bedient.

I was at a different agency when I insured All Ways Trucking while it was located in Verona. I am trying to get you something with that address. I was out there often, plenty of trucks and excavation equipment always located there and I used to hit that little diner just up the road from there.

Thanks,

Charlie

Charlie Hawley  
Old Kentucky Insurance, Inc.  
Cell: 502-321-9518  
Office: 502-451-8800  
Office Fax: 502-451-8866  
Toll Free: 888-451-8819

[chawley@oldkyins.com](mailto:chawley@oldkyins.com)

Charlie Hawley, Agent  
(502) 451-8800 Office  
(502) 321-9518 Cell  
[chawley@oldkyins.com](mailto:chawley@oldkyins.com)

INSURANCE IDENTIFICATION CARD

OF ID CH

STATE KY  
COMPANY NUMBER 14621 COMPANY The Motorists Insurance

THIS CARD MUST BE KEPT IN THE INSURED VEHICLE AND PRESENTED UPON DEMAND

Policy Number PENDING Effective Date 04/22/02 Expiration Date 04/22/03

YEAR 1988 MAKE/MODEL Ford Dump VEHICLE IDENTIFICATION NUMBER

IN CASE OF ACCIDENT Report all accidents to your Agent/Company as soon as possible. Obtain the FOLLOWING INFORMATION:

AGENCY/COMPANY ISSUING CARD  
The Grant Insurance Corp  
Charles Hawley  
502-254-3332

- 1. Name and address of each driver, passenger, and witness.
- 2. Name of Insurance Company and policy number for each vehicle involved.

INSURED  
All Ways Trucking & Excavating  
15487 Lebanon Crittenden Rd.  
Verona, Ky 41092

COVERAGE MEETS MINIMUM LIABILITY INSURANCE PRESCRIBED BY LAW

ACORD 90 WM(2/95)

INSURANCE IDENTIFICATION CARD

OF ID CH

STATE KY  
COMPANY NUMBER 14621 COMPANY The Motorists Insurance

THIS CARD MUST BE KEPT IN THE INSURED VEHICLE AND PRESENTED UPON DEMAND

Policy Number PENDING Effective Date 04/22/02 Expiration Date 04/22/03

YEAR 1995 MAKE/MODEL Mack R0690 VEHICLE IDENTIFICATION NUMBER 1M2P264C4SM017620

IN CASE OF ACCIDENT Report all accidents to your Agent/Company as soon as possible. Obtain the FOLLOWING INFORMATION:

AGENCY/COMPANY ISSUING CARD  
The Grant Insurance Corp  
Charles Hawley  
502-254-3332

- 1. Name and address of each driver, passenger, and witness.
- 2. Name of Insurance Company and policy number for each vehicle involved.

INSURED  
All Ways Trucking & Excavating  
15487 Lebanon Crittenden Rd.  
Verona, Ky 41092

COVERAGE MEETS MINIMUM LIABILITY INSURANCE PRESCRIBED BY LAW

ACORD 90 WM(2/95)

INSURANCE IDENTIFICATION CARD

OF ID CH

STATE KY  
 COMPANY NUMBER 14621  
 COMPANY The Motorists Insurance  
 Effective Date 04/22/02  
 EXPIRES 04/22/03  
 MEMBER NAME/TYPE Trailer  
 IDENTIFICATION NUMBER 50AE16233A00311A  
 AGENCY COMPANY LICENSE CARD  
 The Grant Insurance Corp.  
 Charles Hawley  
 502-254-3332

THIS CARD MUST BE KEPT IN YOUR VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT Report all accidents to your agent/company as soon as possible Obtain the following information:

1. Name and address of each driver involved and vehicle.
2. Name of insurance company and policy number for each vehicle involved.

REVISED 12/99

INSURED  
 All Ways Trucking & Excavating  
 15487 Lebanon Crittenden Rd  
 Verona, KY 41092

NOT VALID UNLESS SHOWN TO THE POLICE BY THE DRIVER OF THE VEHICLE

INSURANCE IDENTIFICATION CARD

OF ID CH

STATE KY  
 COMPANY NUMBER 14621  
 COMPANY The Motorists Insurance  
 Effective Date 04/22/02  
 EXPIRES 04/22/03  
 MEMBER NAME/TYPE Mack  
 IDENTIFICATION NUMBER 2N2P267C3P6016221  
 AGENCY COMPANY LICENSE CARD  
 The Grant Insurance Corp.  
 Charles Hawley  
 502-254-3332

THIS CARD MUST BE KEPT IN YOUR VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT Report all accidents to your agent/company as soon as possible Obtain the following information:

1. Name and address of each driver involved and vehicle.
2. Name of insurance company and policy number for each vehicle involved.

REVISED 12/99

INSURED  
 All Ways Trucking & Excavating  
 15487 Lebanon Crittenden Rd  
 Verona, Ky 41092

NOT VALID UNLESS SHOWN TO THE POLICE BY THE DRIVER OF THE VEHICLE

**INSURANCE IDENTIFICATION CARD**

STATE **KY** COMPANY **The Motorists Insurance**

COMPANY NUMBER **14621**

POLICY NUMBER **PENDING**

Effective Date **04/22/02** Expiration Date **04/22/03**

YEAR **1987** MAKE/MODEL **Western 4864** VEHICLE IDENTIFICATION NUMBER **2WYNZCZZXHK198274**

AGENCY/COMPANY ISSUING CARD  
**The Grant Insurance Corp**  
**Charles Hawley**  
**502-254-3332**

INSURED:  
**All Ways Trucking & Excavating**  
**15487 Lebanon Crittenden Rd**  
**Verona, KY 41092**

COVERAGE MEETS MINIMUM LIABILITY INSURANCE PRESCRIBED BY LAW

**OF ID CH**

THIS CARD MUST BE KEPT IN THE ASSURED VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible. Obtain the following information:

1. Name and address of each driver, passenger and witness

2. Name of Insurance Company and policy number for each vehicle involved.

ACCORD TO §(25)

**INSURANCE IDENTIFICATION CARD**

STATE **KY** COMPANY **The Motorists Insurance**

COMPANY NUMBER **14621**

POLICY NUMBER **PENDING**

Effective Date **04/22/02** Expiration Date **04/22/03**

YEAR **1978** MAKE/MODEL **Mack 686** VEHICLE IDENTIFICATION NUMBER **RD68654212**

AGENCY/COMPANY ISSUING CARD  
**The Grant Insurance Corp**  
**Charles Hawley**  
**502-254-3332**

INSURED:  
**All Ways Trucking & Excavating**  
**15487 Lebanon Crittenden Rd**  
**Verona, Ky 41092**

COVERAGE MEETS MINIMUM LIABILITY INSURANCE PRESCRIBED BY LAW

**OF ID CH**

THIS CARD MUST BE KEPT IN THE ASSURED VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible. Obtain the following information:

1. Name and address of each driver, passenger and witness

2. Name of Insurance Company and policy number for each vehicle involved.

ACCORD TO §(25)

POLICY NUMBER 33.260310-70E  
 EFFECTIVE DATE 04/22/2005



ALL WAYS TRUCKING  
 AND EXCAVATING LLC

VEH	YEAR	MAKE	MODEL	SERIAL NUMBER	CLASS CODE	COST NEW	INTERESTED PARTY APPLIES
0001	1997	MACK	RD6905	1M2P264C3VMO23543	40472	48,000	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		
0002	1994	FORD	LN9000	1FDZW90L2RVA48048	40472	13,000	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		
0003	1993	MACK	DM69	1M2B209C6PMO10546	40472	20,000	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		
0004	1979	FORD	LT8000	U80DVEE5909	40472	13,000	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		
0005	1988	FORD		11122	40472	5,000	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		
0006	1995	MACK	RD690	1M2P264C4SMO17620	40472	25,000	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		
0007	1987	WESTERN	4864	2WMNZCZZXHK198274	40472	8,000	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		
0008	1978	MACK	686	RD68654212	40472	6,000	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		
0009	1993	MACK	P267	2M2P267C3PC016221	40472	25,000	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		
0010	2004	EAGER	BEAVTRLR	112HBV3264L063505	68499	13,900	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		
0011	2003	P & T	TRLR	5JAE16233A003114	68499	5,000	N
		GARAGED CITY: VERONA		STATE: KY	ZIP CODE: 41092		

VEH	LIABILITY LIAB	PIP	UM/UIM	OTC	PHYSICAL DAMAGE DED	DAMAGE COLL	DED	TL	TOTAL PREMIUM
0001				COMP	1,000		1,000	\$	
0002				COMP	1,000		1,000	\$	
0003				COMP	1,000		1,000	\$	
0004				COMP	1,000		1,000	\$	
0005				COMP	1,000		1,000	\$	
0006				COMP	1,000		1,000	\$	
0007				COMP	1,000		1,000	\$	
0008				COMP	1,000		1,000	\$	
0009				COMP	1,000		1,000	\$	
0010				COMP	1,000		1,000	\$	
0011				COMP	500		500	\$	

# Declarations

POLICY NUMBER 33.260310-70E  
EFFECTIVE DATE 04/22/2005



ALL WAYS TRUCKING  
AND EXCAVATING LLC

## Commercial Inland Marine Coverage Form Declarations Page

CM 7000 (04-96)

ALL WAYS TRUCKING  
AND EXCAVATING LLC

### Forms and Endorsements

Forms applicable to this Coverage Form are listed in the Schedule of Forms and Endorsements (IL 7004).

### Contractor's Equipment - Special Form (CM 7004)

LIMIT OF INSURANCE \$ 74,100

REPLACEMENT COST DOES NOT APPLY

EXTRA EXPENSE LIMIT OF INSURANCE \$ NIL

### Contractor's Equipment - Schedule (CM 7004)

ITEM NUMBER	DESCRIPTION OF ITEM	DEDUCTIBLE	LIMIT OF INSURANCE	INTERESTED PARTY APPLIES
0001	1990 E70B CAT TRACKHDE S# 7YF03605	\$ 250	\$ 18,000	NO
0002	1990 40 X T BOBCAT SKID STEER S# JAF0396819	\$ 250	\$ 19,000	NO
0003	1990 953 CAT LOADER S# 76Y00794	\$ 250	\$ 37,100	NO

### Scheduled Property - Special Form (CM 7011)

LIMIT OF INSURANCE \$ 10,000

THEFT LIMITATION DOES NOT APPLY

REPLACEMENT COST DOES NOT APPLY

CM 7000 (04-96)

Page 01

PROCESSED 05/19/2005

Motorists Mutual  
Insurance Company®  
471 East Broad Street, Columbus, Ohio 43215-3861

THE GRANT INSURANCE CORP  
306 MIDDLETOWN PARK PLACE  
SUITE D  
LOUISVILLE KY 40243 2517  
(502) 254-3332

# Declarations

POLICY NUMBER 33.260310-70E  
EFFECTIVE DATE 04/22/2005



ALL WAYS TRUCKING  
AND EXCAVATING LLC

## Business Auto Coverage Form Declarations Page

CA 7000 (04-96)

### ITEM ONE - Named Insured

ALL WAYS TRUCKING  
AND EXCAVATING LLC

### ITEM TWO - Schedule of Coverages and Covered Autos

Each of the following coverages will apply only to those "autos" shown as covered "autos". Covered "autos" are designated for a particular coverage by the entry of one or more Covered Auto Symbols described in Section I of the Business Auto Coverage Form; CA 0001.

Coverages	Covered Auto Symbols	Limit of Liability
LIABILITY	1	\$ 1,000,000 PER ACCIDENT
UNINSURED MOTORISTS/ UNDERINSURED MOTORISTS	KY 2	\$ 1,000,000 PER ACCIDENT
PERSONAL INJURY PROTECTION	KY 5	\$ NO DEDUCTIBLE BASIC
COMPREHENSIVE	7	REFER TO SCHEDULE OF COVERED AUTOS FOR DEDUCTIBLE. NO DEDUCTIBLE APPLIES TO LOSS CAUSED BY FIRE OR LIGHTNING.
COLLISION	7	REFER TO SCHEDULE OF COVERED AUTOS FOR DEDUCTIBLE.

### Forms and Endorsements

Forms applicable to this coverage form are listed in the Schedule Of Forms And Endorsements (IL 7004).

### ITEM THREE - Schedule of Covered Autos You Own

See Schedule of Covered Autos Form CA 7002.

# Declarations

POLICY NUMBER 33.260310-70E

EFFECTIVE DATE 04/22/2005



ALL WAYS TRUCKING  
AND EXCAVATING LLC

## Commercial General Liability Coverage Form Declarations Page

CG 7000 (04-96)

ALL WAYS TRUCKING  
AND EXCAVATING LLC

### Summary of Coverages

### Limits of Insurance

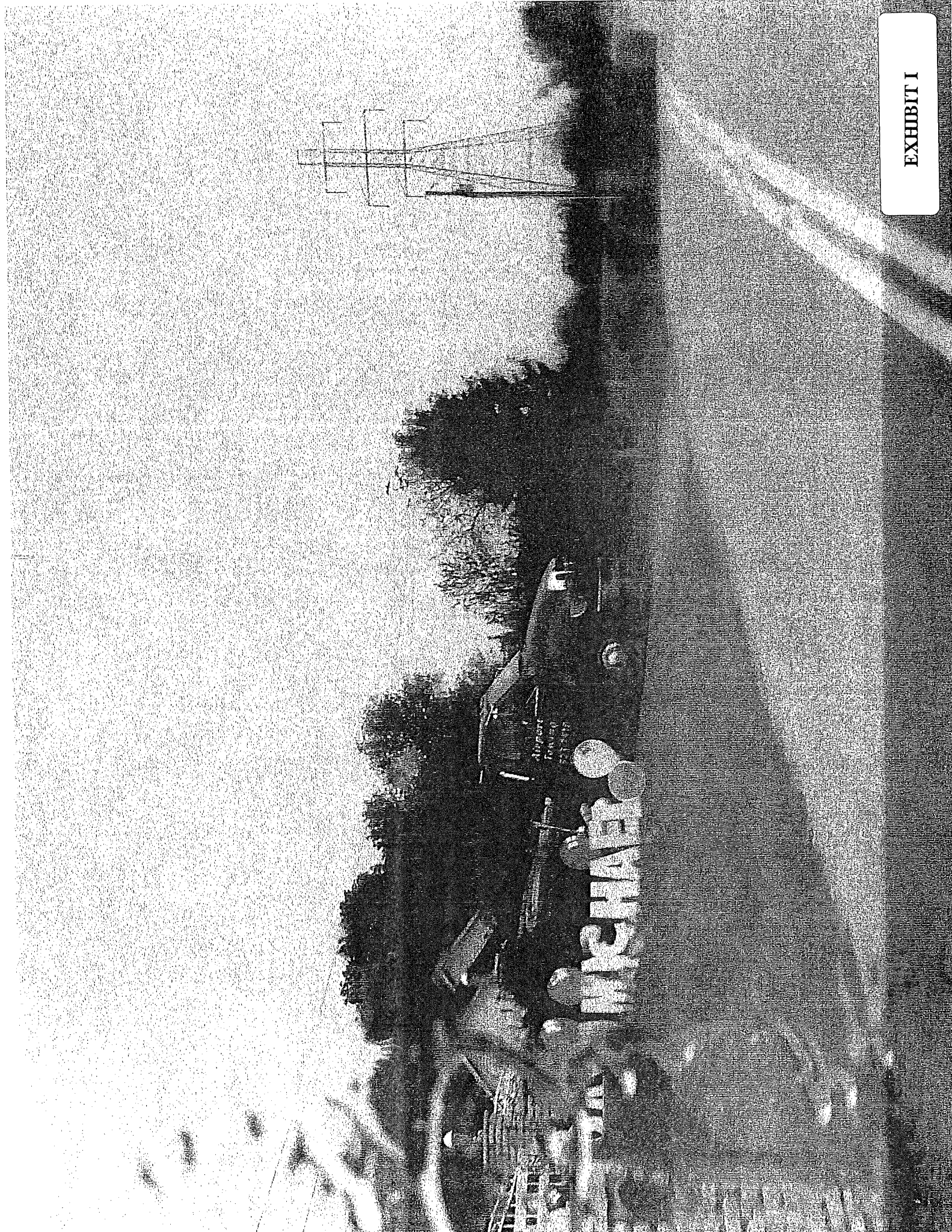
EACH OCCURRENCE LIMIT	\$	1,000,000
GENERAL AGGREGATE LIMIT (OTHER THAN PRODUCTS-COMPLETED OPERATIONS)	\$	2,000,000
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$	2,000,000
PERSONAL AND ADVERTISING INJURY LIMIT	\$	1,000,000 ANY ONE PERSON OR ORGANIZATION
FIRE DAMAGE LIMIT (KY)	\$	100,000 ANY ONE FIRE
MEDICAL PAYMENTS LIMIT	\$	5,000 ANY ONE PERSON

REFER TO SCHEDULE OF PREMISES (IL 7005) FOR A DESCRIPTION OF THE PREMISES LISTED.

PREMISES NUMBER	CLASS CODE NUMBER	CLASSIFICATION DESCRIPTION
0001	94007	EXCAVATION
0001	95410	GRADING OF LAND

### Forms and Endorsements

Forms applicable to this Coverage Form are listed in the Schedule of Forms and Endorsements (IL 7004).





**In Re: Morgan Thomas and All Ways Trucking, LLC, Formerly located  
at 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092**


**AFFIDAVIT OF DONALD SECHREST**

Comes now affiant, Donald Sechrest, after having first been duly cautioned and sworn, deposes and states as follows according to his best recollection and belief:

1. My name is Donald Sechrest. I am of legal age and am an owner of Sechrest Garage & Co. Inc. ("Sechrest"), located at 1010 N. Main Street, Williamstown, Kentucky 41097. I have personal knowledge concerning the statements in this affidavit.
2. Sechrest is and has been engaged in the towing business for many years. Sechrest often tows large, heavy trucks. I was familiar with Morgan Thomas' heavy truck terminal and repair business that he operated out of 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092 (the "15487 Property") during 2002 and earlier. I was also familiar with the trucking and repair business, "All Ways Trucking, LLC," that Morgan Thomas later owned and also ran out of the 15487 Property.
3. Sechrest often towed large, heavy trucks to the 15487 Property at least as far back as 2002. I personally did some of this towing and knew that other Sechrest drivers towed trucks to the 15487 Property. Sechrest towed trucks needing repairs that were owned by Morgan Thomas or All Ways Trucking, LLC. We also towed trucks to the 15487 Property for many other owners who engaged Morgan Thomas to perform truck repairs when their trucks broke down.

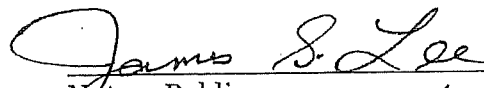
4. Sechrest towed trucks as described above to the 15487 Property beginning in 2002 and throughout the time Morgan Thomas ran his trucking business.

FURTHER, AFFIANT SAYETH NAUGHT.

  
Donald Sechrest

STATE OF KENTUCKY    )  
                                  ) SS:  
COUNTY OF BOONE    )

The foregoing affidavit was signed, acknowledged and sworn to before me, a notary public for the State and County aforesaid, on this 27<sup>th</sup> day of December 2013, by Donald Sechrest as his own free and voluntary act.

 #451598  
Notary Public  
My commission expires: 9/30/15

**In Re: Morgan Thomas and All Ways Trucking, LLC, Formerly located  
at 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092**

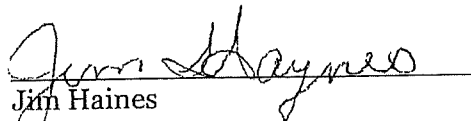
**AFFIDAVIT OF JIM HAINES**

Comes now affiant, Jim Haines, after having first been duly cautioned and sworn, deposes and states as follows according to his best recollection and belief:

1. My name is Jim Haines. I am of legal age and work for Sechrest Garage & Co. Inc. ("Sechrest"), located at 1010 N. Main Street, Williamstown, Kentucky 41097. I have personal knowledge concerning the statements in this affidavit.
2. Part of the work I perform for Sechrest is towing trucks. I have done this for Sechrest for many years. We tow large, heavy trucks.
3. Beginning at least around 2002, I was familiar with Morgan Thomas' heavy truck terminal and repair business that he operated out of 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092 (the "15487 Property"). I was also familiar with the trucking and repair business, "All Ways Trucking, LLC," that Morgan Thomas later ran out of the 15487 Property.
4. During and after 2002, I often towed large, heavy trucks to the 15487 Property. I towed trucks needing repairs that were owned by Morgan Thomas or All Ways Trucking, LLC. I also towed trucks to the 15487 Property for many other owners who engaged Morgan Thomas to repair their trucks when their trucks broke down.

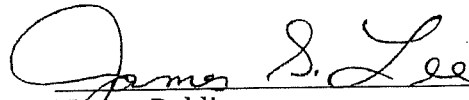
5. I performed the towing described above to the 15487 Property beginning in 2002 and occasionally throughout the time Morgan Thomas ran his trucking business.

FURTHER, AFFIANT SAYETH NAUGHT.

  
Jim Haines

STATE OF KENTUCKY    )  
                                  ) SS:  
COUNTY OF BOONE    )

The foregoing affidavit was signed, acknowledged and sworn to before me, a notary public for the State and County aforesaid, on this 27<sup>th</sup> day of December 2013, by Jim Haines as his own free and voluntary act.

 #451598  
Notary Public  
My commission expires: 9/30/15

## Kevin Wall

---

**From:** Rick Brueggemann [rbrueggemann@hemmerlaw.com]  
**Sent:** Thursday, January 16, 2014 5:03 PM  
**To:** Kevin Wall  
**Subject:** RE: Ray Branscum

Kevin,  
I've been able to ascertain the typical hours of Morgan Thomas's operation at the site and that of Ray Branscum's.

Reportedly, in the fall/winter Mr. Morgan Thomas' trucks usually started out of his facility at 5:00am and would return between 5-7pm. In the summer, the trucks would typically return later between 9-11pm. His mechanics/dispatcher was typically at his shop throughout the day. Work on weekends depended on what he had going and what was in the shop but Saturday work was common. On very cold nights during the winter, he'd let his trucks idle all night.

Mr. Branscum's on site hours are Monday-Friday 8:00am - 5:00pm. Mr. Branscum only sometimes works at the facility on Saturdays depending upon the trucks in his garage needing work. Occasionally, Mr. Branscum may be called out in the evening for towing or other work but that work is not performed on his property.

Let me know if you need anything else. Thanks.

Richard A. Brueggemann, Esq.  
Hemmer DeFrank PLLC  
Suite 500  
250 Grandview Drive  
Ft. Mitchell, Kentucky 41017  
(859) 578-3855 (direct dial)  
(859) 578-3869 (fax)

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-----Original Message-----

**From:** Kevin Wall [<mailto:KWall@boonecountyky.org>]  
**Sent:** Friday, January 10, 2014 10:17 AM  
**To:** Rick Brueggemann  
**Subject:** RE: Ray Branscum

Rick:

Can you provide a synopsis of Mr. Branscum's operating hours versus the customary business hours of Morgan Thomas at this property? I have heard several claims that the Branscum business operates 24 hours, and that the Morgan Thomas operation had more customary daytime hours.

Thanks,

kw

-----Original Message-----

From: Rick Brueggemann [mailto:rbrueggemann@hemmerlaw.com]  
Sent: Friday, January 03, 2014 4:46 PM  
To: Kevin Wall  
Subject: RE: Ray Branscum

Correct.

Kevin Wall <KWall@boonecountyky.org> wrote:

I assume that there is no issue with forwarding this to neighbors.  
Please confirm.

From: Rick Brueggemann [mailto:rbrueggemann@hemmerlaw.com]  
Sent: Friday, January 03, 2014 3:42 PM  
To: Kevin Wall  
Subject: Ray Branscum

Kevin,  
I'll be hand delivering the letter containing the information you requested. Attached is a courtesy pdf copy. Thanks.

Richard A. Brueggemann, Esq.

Hemmer DeFrank PLLC

Suite 500

250 Grandview Drive

Ft. Mitchell, Kentucky 41017

(859) 578-3855 (direct dial)

(859) 578-3869 (fax)

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Thank you.

## Kevin Wall

---

**From:** kimberly waits [waits02@yahoo.com]  
**Sent:** Wednesday, December 11, 2013 11:26 AM  
**To:** Kevin Wall  
**Subject:** Re: FW: Ray Branscum

Just wanted to let you know because be addressed this so specifically. That picture was taken from my neighbor and the truck did pull out in front of them from his property. I was basically just trying to show you pictures that have been taken by neighbors and what has continued to go on because that is what we were advised to do. Thanks for forwarding the letters. I would like to be cc on every letter received and sent from him and to him going forward. Thanks.

Kim Waits

-----  
On Wed, Dec 11, 2013 5:25 AM PST Kevin Wall wrote:

>  
>  
>  
>

>From: Rick Brueggemann [<mailto:rbrueggemann@hemmerlaw.com>]  
>Sent: Wednesday, November 27, 2013 2:42 PM  
>To: Kevin Wall  
>Cc: Todd Morgan; Mitch Light; Kevin Costello  
>Subject: Ray Branscum

>  
>  
>

>Kevin,  
>I hope this finds you well. At our meeting a week or so past, I  
>promised to forward to you a description of Mr. Branscum's current use  
>of the property, and address how he will to use the expanded  
>pole-barn/garage. A letter containing this information, together with  
>an affidavit from the previous owner, Morgan Thomas, detailing his  
>previous use, is also attached. Hard copies of these will follow by  
>mail. I also write to address the complaint you received from Kim  
>Waits alleging Mr. Branscum towed a tractor-trailer to his property.  
>With her email, Ms. Waits attached a photo of a semi-truck driving  
>apparently in the middle of Rt. 491 heading toward the rail road  
>tracks. That photo is attached. Not that it's relevant (since you don't  
>enforce traffic laws), but Mr. Branscum wants you to know this truck  
>has nothing to do with his operation. It is not his truck, nor did he  
>work on it. There are many trucks that travel Route 491, only very few  
>of which have business with Mr. Branscum. With regard to the alleged  
>towing incident, Mr. Branscum confirmed that he did tow a truck to his  
>property. However, this tow was not done to store or impound the  
>truck. Rather, it was done solely so Mr. Branscum could perform a  
>repair. He attempted to repair the truck with his mobile unit along  
>I-71 but it needed a new turbo, a repair that had to be done in the

>shop. After the repair, the truck drove out on its own power.  
>Therefore, the towing was simply incidental to the repair business.  
>Please feel free to call me if you have questions concerning the  
>attached. I hope you have a happy Thanksgiving. Thank you very much.  
>All the best,  
>  
>  
>  
>Rick  
>  
>  
>  
>Richard A. Brueggemann, Esq.  
>  
>Hemmer DeFrank PLLC  
>  
>Suite 500  
>  
>250 Grandview Drive  
>  
>Ft. Mitchell, Kentucky 41017  
>  
>(859) 578-3855 (direct dial)  
>  
>(859) 578-3869 (fax)  
>  
>  
>  
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>Thank you.  
>  
>  
>  
>  
>

## Kevin Wall

---

**From:** Kevin Wall  
**Sent:** Monday, January 06, 2014 4:41 PM  
**To:** Mitch Light  
**Subject:** FW: Additoinal photos  
**Attachments:** Add'l Airport Towing Truck (pic 2).JPG; Add'l Airport Towing Truck (pic 3).jpg; Add'l Airport Towing Truck (pic 4).jpg; Add'l Airport Towing Truck (pic 5).jpg; Add'l Airport Towing Truck (pic 6).jpg; Add'l Airport Towing-Verona (pic 7).jpg

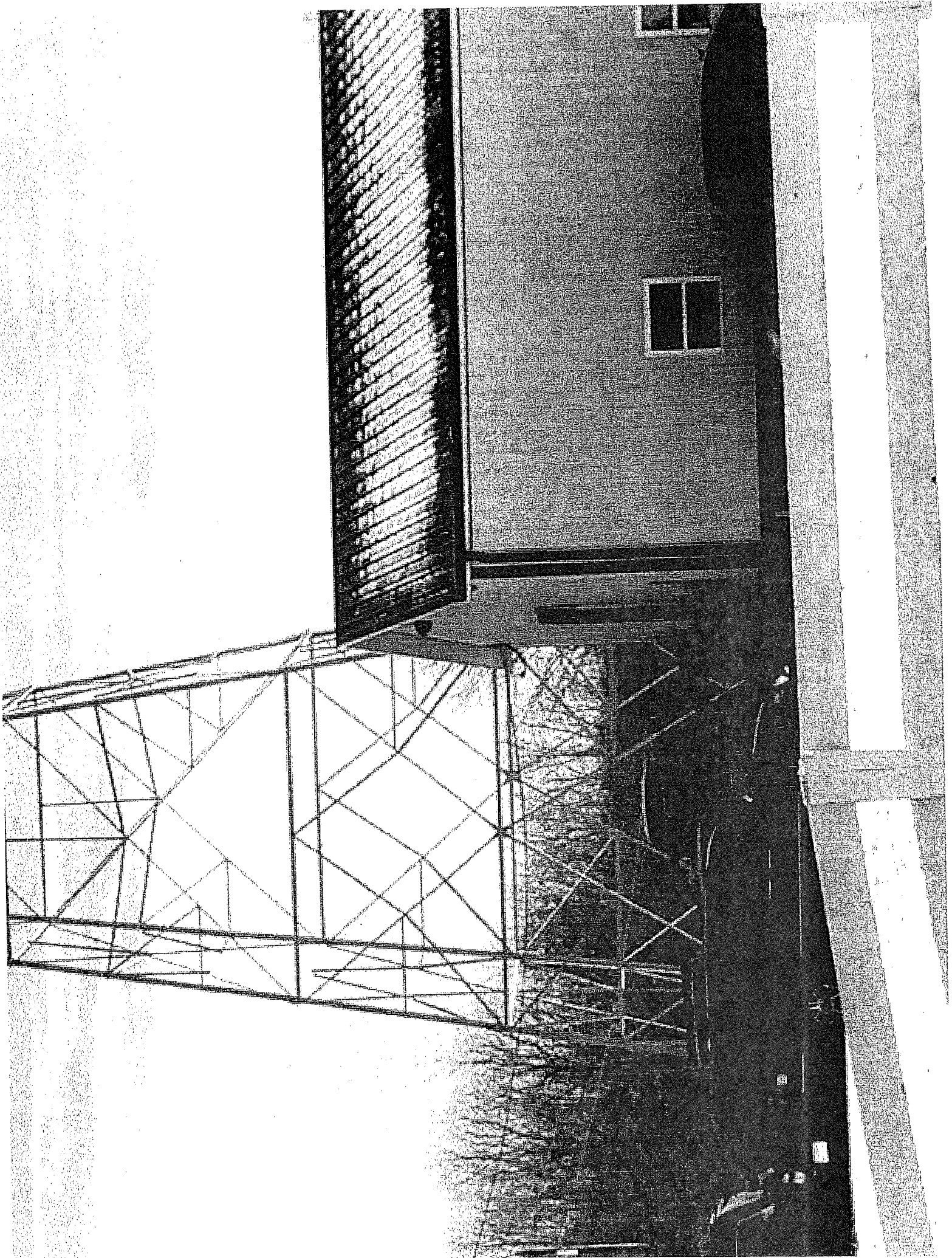
**From:** Rick Brueggemann [<mailto:rbrueggemann@hemmerlaw.com>]  
**Sent:** Monday, January 06, 2014 4:34 PM  
**To:** Kevin Wall  
**Subject:** Additoinal photos

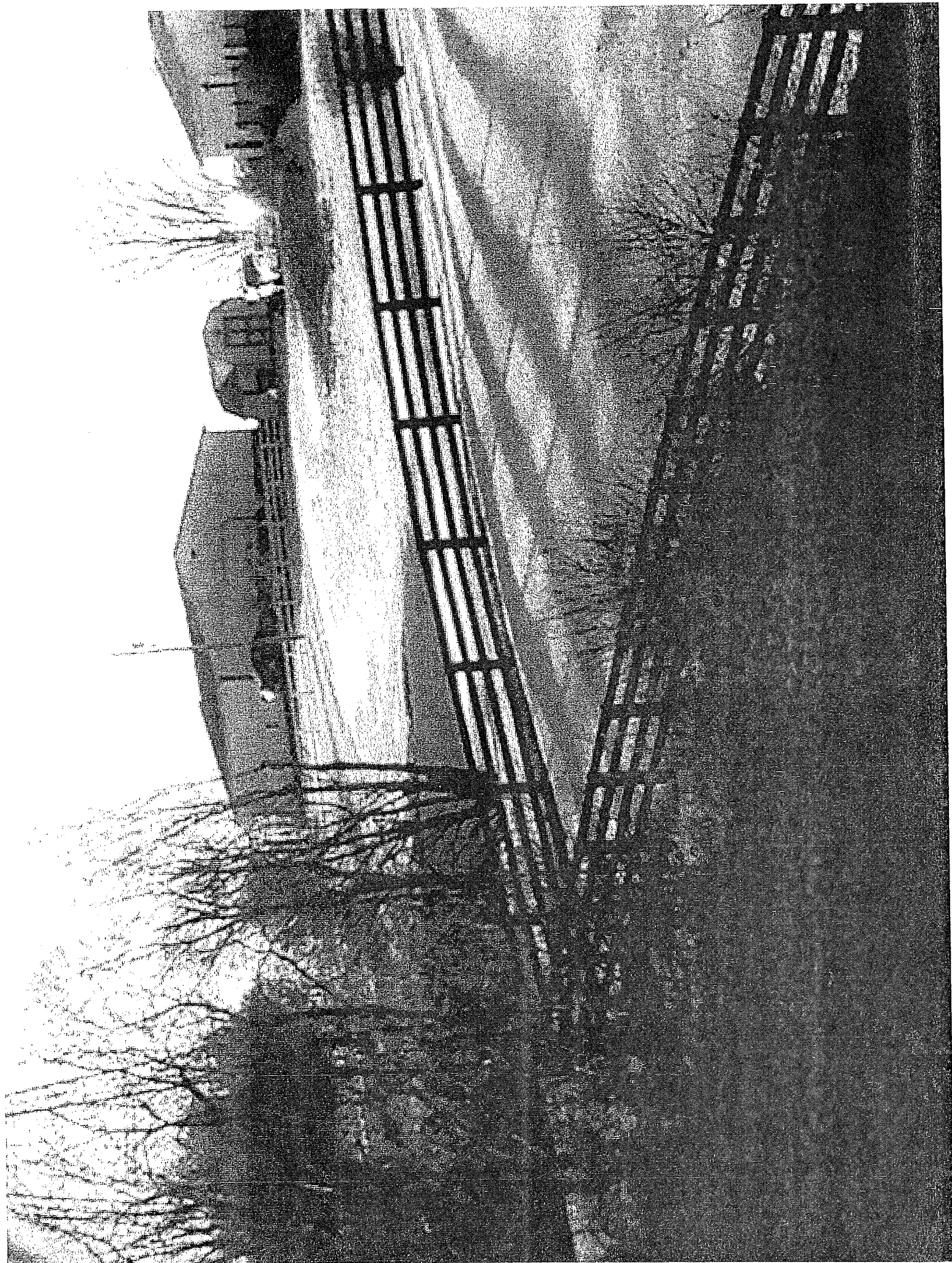
Kevin;

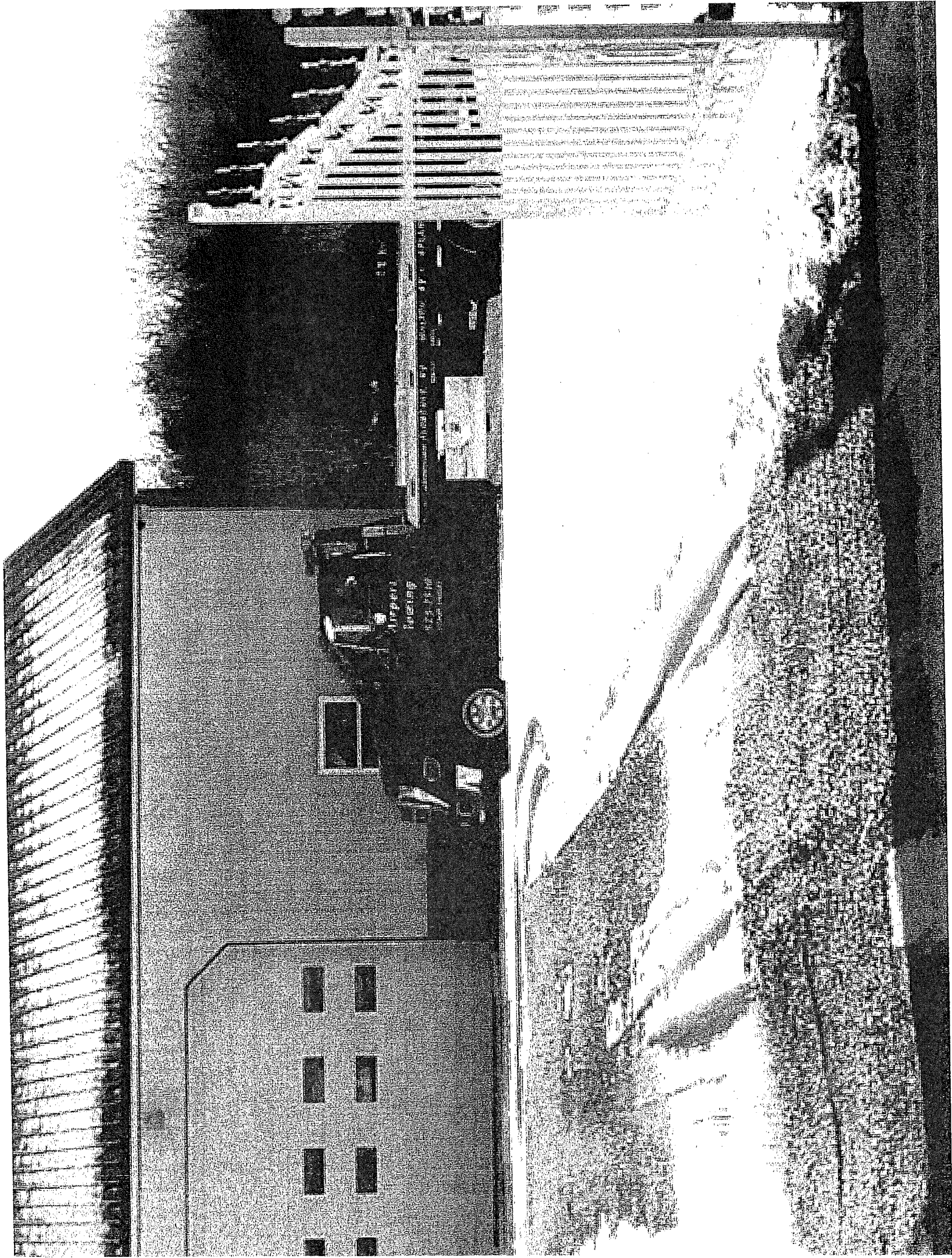
Attached are some additional photos that Mr. Branscum would like to submit showing tow-trucks at the residence of Mr. Larry Thomas. Mr. Branscum asks that you include these as part of his submittal, specifically as part of "Exhibit I." Thank you very much.

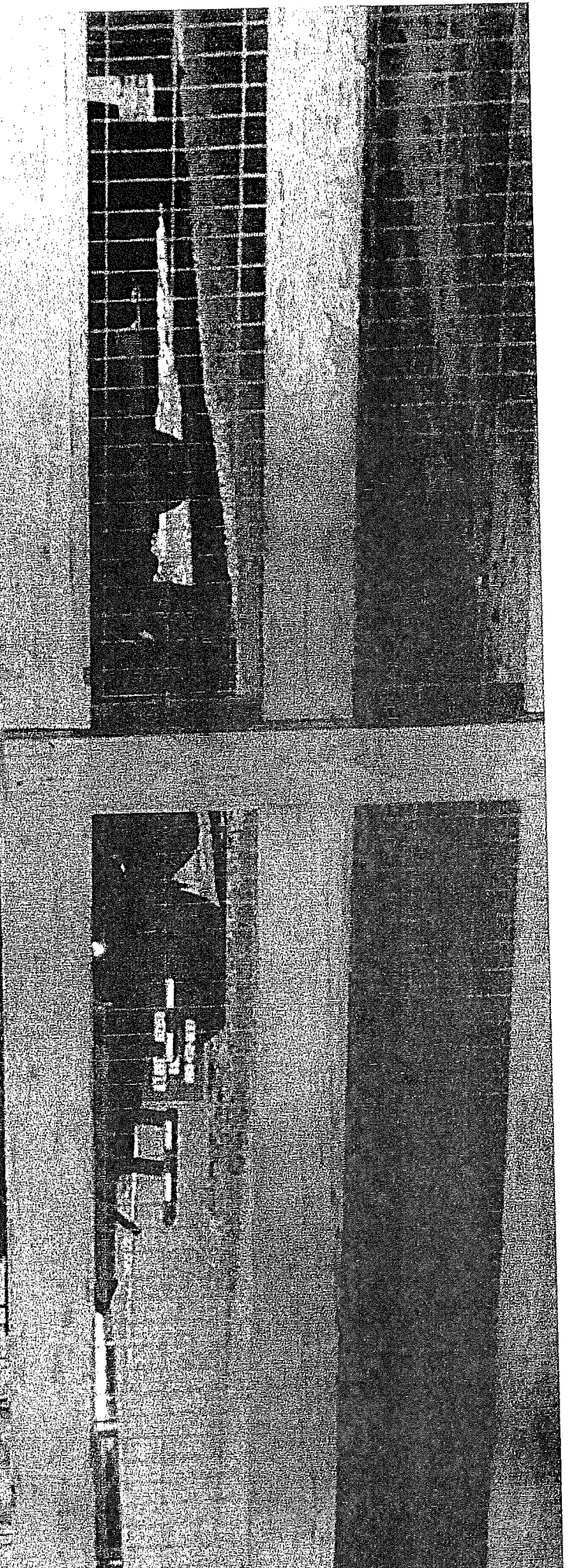
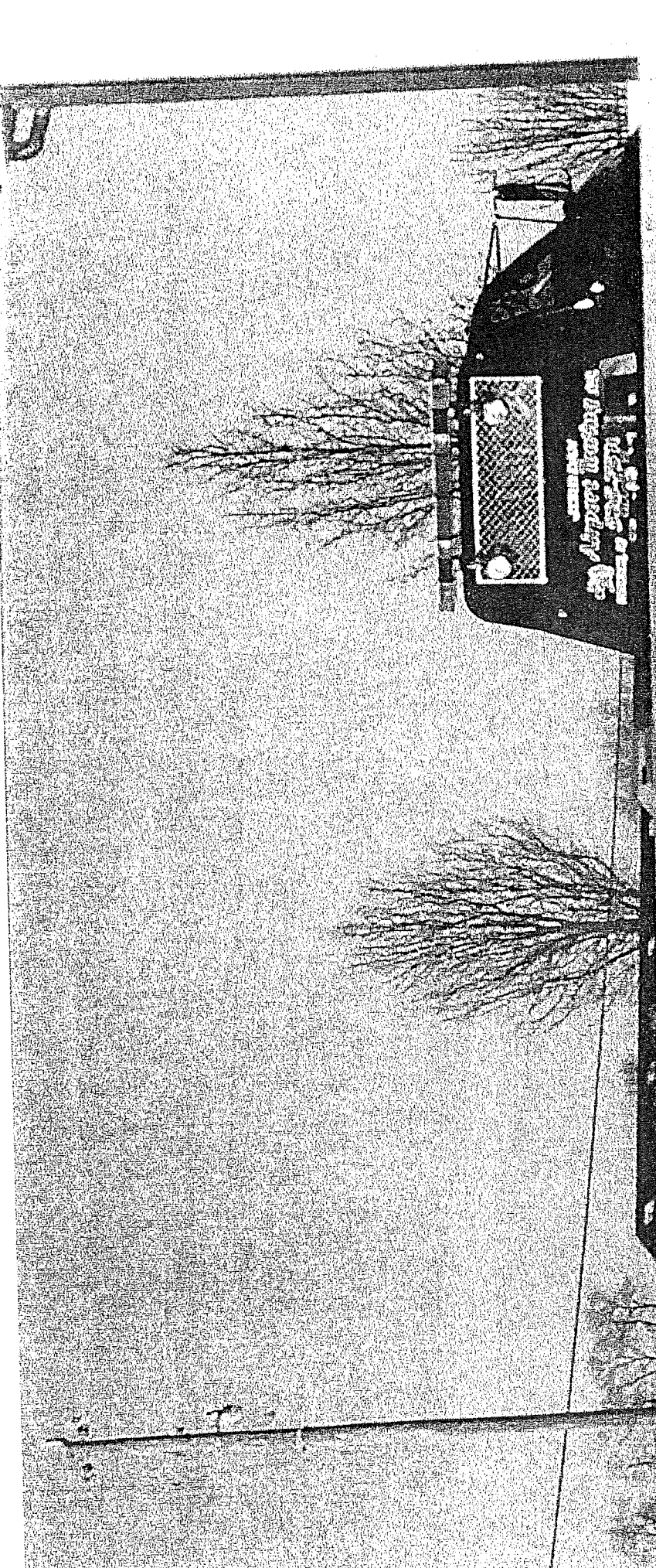
**Richard A. Brueggemann, Esq.**  
Hemmer DeFrank PLLC  
Suite 500  
250 Grandview Drive  
Ft. Mitchell, Kentucky 41017  
(859) 578-3855 (direct dial)  
(859) 578-3869 (fax)

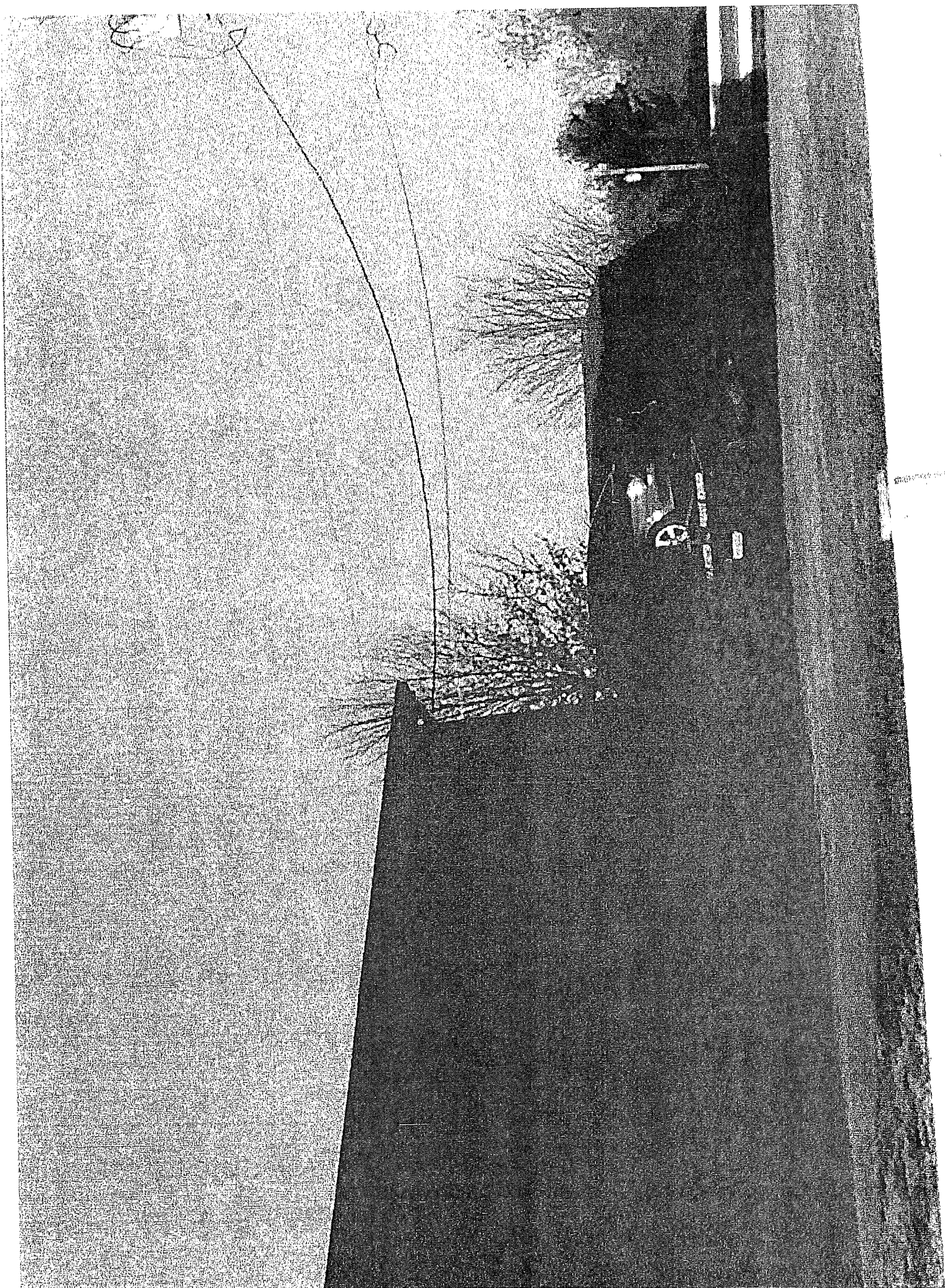
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# EXHIBIT B

## BOONE COUNTY PLANNING COMMISSION



[www.boonecountyky.org/pc](http://www.boonecountyky.org/pc)  
[www.boonecountygis.com](http://www.boonecountygis.com)

Boone County Administration Building  
2950 Washington Street, Room 317  
P.O. Box 958  
Burlington, KY 41005

Phone (859) 334-2196; Fax (859) 334-2264  
[plancom@boonecountyky.org](mailto:plancom@boonecountyky.org)

December 4, 2013

Mr. Richard A. Brueggemann  
Hemmer DeFrank  
250 Grandview Drive, Suite 500  
Ft. Mitchell, KY 41017-5646

FAX: 578-3869

RE: 11/27/13 Letter Regarding Towing/Truck Repair Business at 15487 Lebanon-Crittendon Road, Boone County, Kentucky; Rural Suburban Estates (RSE) zone

Dear Mr. Brueggemann:

I have reviewed your letter and the attached affidavit from Morgan Thomas, a prior property owner who conducted the "grandfathered" excavation, trucking and truck repair business. Based on this review I have a number of questions and issues which need to be addressed before I can determine that Mr. Branscum's operation is consistent with the established, pre-existing, nonconforming use of the property.

First, a fairly large amount of commercial style vehicles are claimed in your letter and the Thomas affidavit to have been kept or based at the site. This information could potentially be used as a benchmark for the number and type of permissible vehicles for the Branscum business. Please provide documentation which would tie these vehicles to the subject property such as titles, insurance records and the like. Also, please document how many of the commercial style vehicles were customarily kept on the premises at any given time. Dump trucks and comparable vehicles are visible on at least one past air photo and are known to have been part of the prior use of the property, but we have not received any other indication or evidence that the number and size of vehicles mentioned (larger vehicles such as tractor-trailers and a car hauler) had been kept on the site. We have received claims from neighbors that the Branscum operation is more extensive than the prior use of the property, and that some of the vehicles associated with the Branscum business are much larger than those used by the prior business.

Second, please document if the prior operation towed vehicles in, or kept a tow truck(s) on site as part of its day-to-day operations. The current proposal includes two wreckers that are intended to be kept on the site. Unless the prior use included the same or comparable vehicles, it seems as though this aspect of the business was denied by the Board of Adjustment when the Change in Nonconforming Use application was turned down.

Third, the gravel surfacing on the tract has been substantially expanded beyond the limits of the prior use. The purpose of this additional surfacing needs to be stated. If it is not for a purpose permitted in the RSE zone, the additional surfacing will need to be removed.

Mr. Richard A. Brueggemann  
December 4, 2013  
Page 2

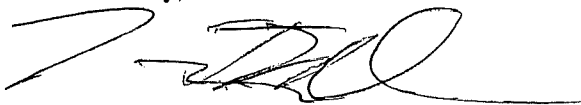
Fourth, your letter and the Thomas affidavit mention that a kennel was conducted on the property, and that Mr. Branscum may wish to conduct this use as well. This would presumably be a commercial boarding kennel. This is the first time that we've heard any mention of a kennel. We do not have any evidence at this point in time which indicates that a commercial kennel is part of any established pre-existing, nonconforming use. Kennels are a Conditional Use in the RSE zone and there is a minimum land area requirement of five (5) acres. If a non-commercial "kennel" for personal pets is intended, please explain.

Fifth, please concisely outline or punch list specific activities or functions which the Branscum business would conduct. No specific limits are currently stated, leaving the exact nature, scope, and scale of the business ambiguous. The use needs to be defined in a concrete, measurable manner. Your letter states in a comprehensive fashion that "Mr. Branscum's use is similar to and no greater than the pre-existing, nonconforming use of the prior owner." A point by point outline or punch list would help explain this claim, particularly if comparisons are made to the prior use. Please use the pre-existing, nonconforming use determination outlined in my 4/19/13 letter as an overall guide.

Sixth, as we discussed previously, a Major Site Plan will need to be submitted to the Planning Commission for review and approval for the improvements which have already been made. In addition to the standard items, this should show where business and repair vehicles will be parked, include a floor plan drawing of the building which outlines the areas mentioned in your letter, and include a description of the intended use of the fenced area. It sounds like the fenced area is now intended to store Mr. Branscum's personal property only (aside from the potential kennel issue), and would not be used to store any type of business vehicles, equipment, or materials - please confirm. To avoid potential future issues in the fenced area or elsewhere on the site, please review the definition of "junk yard" in Article 40 of the zoning regulations. Please state if any other outside storage would occur.

Please respond by 12/18/13 (within two weeks) as our office is getting routine inquiries about Mr. Branscum's business. Please call me if you have any questions or if additional time is needed to adequately respond.

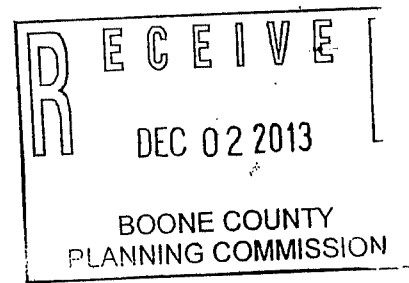
Sincerely,



Kevin T. Wall, AICP  
Zoning Administrator  
Boone County Fiscal Court

KTW/vlm

cc: Kevin Costello, AICP, Executive Director  
Matt Dedden, Commissioner  
Jeff Earlywine, Boone County Administrator  
Mike Keller, 15794 KY 491, Verona, KY 41092  
Mitch Light, Asst. Zoning Administrator/Enforcement Officer  
Robert Neace, Boone County Attorney  
Richard Robinson, Graydon Head & Ritchey LLP; FAX: 525-0214  
Kimberly and Jeremy Waits, 1879 St. James Place, Verona, KY 41092  
Dale Wilson, BCPC Legal Counsel



Email: [rbrueggemann@hemmerlaw.com](mailto:rbrueggemann@hemmerlaw.com)  
Direct Dial: 859-578-3855

November 27, 2013

Mr. Kevin Wall  
Boone County Zoning Administrator  
Mr. Mitch Light  
Mr. Todd Morgan  
Boone County Planning Commission  
2950 Washington St.  
Room 317  
P.O. Box 958  
Burlington, KY 41005

**Re: 15487 Lebanon Crittenden Road, Verona Kentucky ("Property")**

Dear Messrs. Wall, Light and Morgan:

I write on behalf of our client, Mr. Ray Branscum, and in follow up to our meeting of November 13, 2013. As discussed at our meeting, this letter is to provide a description of Mr. Branscum's continuing nonconforming use of his Property. This will also address the proposed use of the addition to the previously existing garage, fenced area and additional filled and graded portion of on the Property.

Garage/Pole-barn Addition

The area of the preexisting pole barn used as a garage measured 30 feet x 60 feet. Mr. Branscum added an additional 30 feet, and a lien-to onto this structure. Mr. Branscum will use the new area for personal and possibly agricultural use. More specifically, these uses will include private garage use, parking and working on his race car, use for persona vehicles and personal storage. Only the original 30' x 60' area, which consists of two bays, will be used for Mr. Branscum's business.

Fenced Area

Mr. Branscum anticipated that the preexisting heavy equipment storage could be changed to allow a small impounding lot. To demark and accommodate this potential, Mr. Branscum fenced an open area on the Property. Mr. Branscum is no longer seeking to use this area for impounds storage. Currently this area contains an old, antique Chevrolet that Mr. Branscum owns and is restoring. It will be used to park a skid-steer loader, his gooseneck trailer, and his race car trailer and personal vehicles he owns. He may also decide to kennel dogs in the area.

Additional filled/leveled area on Property

When Mr. Branscum purchased the Property, there were nearly 100 loads of concrete pieces, dirt and other solid fill dumped on the property. He added to these with clean fill and graded the material to fill areas on the Property. He also used this fill to provide a sloped drive to better access the rear portion of the property. Gravel has been placed on the sloped area, and much of the other area leveled has been seeded. The portion of the area filled is primarily in the region of or behind the fenced area. Previously, although not graveled, seeded or well kept, much of this area was used by the prior owner to stockpile gravel and sand for delivery and use. Sections of this lot were separated with k-block type dividers and contained remnants of various aggregates. Mr. Branscum will not expand the prior area of nonconforming use.

Mr. Branscum's Nonconforming Use

Pursuant to KRS § 100.253, the timeline for establishing the extent of the nonconforming use commences ten years prior to the adverse action taken against Mr. Branscum this year. Enclosed with this letter is an affidavit from Mr. Morgan Thomas, the prior owner whose use developed the pre-existing, nonconforming status under which Mr. Branscum is operating.<sup>1</sup> During 2002 Mr. Thomas owned at least five heavy trucks, all of which he parked and maintained on the Property.<sup>2</sup> These trucks included a 1988 Mack® tri-axle heavy dump truck, a Freightliner® semi-truck, three 1993 DM model Mack® tri-axle trucks, and a 1995 RD model Mack® tri-axle heavy dump truck.<sup>3</sup> Furthermore, at this time Mr. Thomas also had various large trailers and other heavy equipment, including a 53' car-hauler, a "low-boy" drag trailer, a 45' van trailer (for parts), a Cat® 70 track hoe, Cat® 953® track loader, Kamatsu® D38 dozer, and a Bobcat® skid-steer. Mr. Thomas used the Property as a terminal and repair operation for all of the foregoing equipment for at least ten years prior.<sup>4</sup>

In addition, Mr. Thomas used the Property to dispatch and broker loads for many other truck owners, and provided repairs on these as well as his own trucks.<sup>5</sup> He also repaired and painted trucks for others not owned by him or those for whom he brokered loads.<sup>6</sup> For the entire time Mr. Thomas owned the property, he also engaged in buying, repairing, painting and selling trucks, trailers and equipment on the Property.<sup>7</sup> Moreover, in addition to the uses as a heavy truck terminal, dispatch and repair and paint shop, Mr. Thomas also engaged in various types of agricultural uses on the Property.<sup>8</sup>

Mr. Branscum's use will not exceed the intensity of the former owner's. Mr. Branscum currently has only three trucks, two medium duties and one heavy truck. These include a 1996 Ford® rollback, a 1990 International® wrecker, and a heavy 1994 Peterbuilt® 378 wrecker. He

---

<sup>1</sup> See enclosed affidavit of Mr. Morgan Thomas, hereinafter "Thomas Affidavit."

<sup>2</sup> Thomas Affidavit, ¶¶ 2, 6.

<sup>3</sup> *Id.*

<sup>4</sup> Thomas Affidavit, ¶¶ 3-4, 6-7, 14.

<sup>5</sup> Thomas Affidavit, ¶ 7.

<sup>6</sup> *Id.*

<sup>7</sup> Thomas Affidavit, ¶ 14.

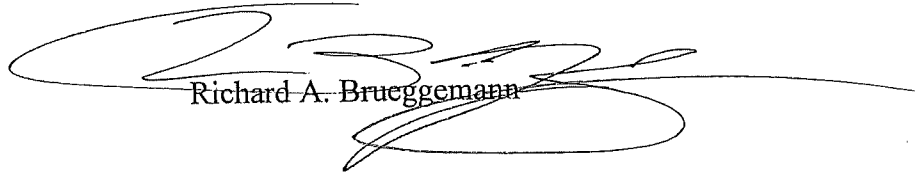
<sup>8</sup> Thomas Affidavit, ¶ 15.

also has two step-vans that contain tools used for mobile repair service. Mr. Branscum estimates that his business could include up to eight customer vehicles on his property at any one time for repair, usually less. This use is no more intense than Mr. Thomas' use ten years prior.

Finally, Mr. Branscum has also performed many aesthetic improvements to the Property, as his nearest neighbors, Mr. Walt Ryan and Ms. Susan Stephenson, have indicated in affidavits previously submitted. Mr. Branscum has increased the planting of trees and is willing to complete planting many of the trees recommended by Mr. Morgan for the change in use application.

As demonstrated by the Thomas Affidavit, Mr. Branscum's use is similar to and no greater than the preexisting, non conforming use of the prior owner. If you have any questions concerning the foregoing, please feel free to call. Again, I appreciate the time you and your office has expended in addressing this matter. Thank you very much.

Sincerely,



Richard A. Brueggemann

**In Re: 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092**  
***Prior Nonconforming Use***

**AFFIDAVIT OF MORGAN THOMAS**

Comes now affiant, Morgan Thomas, after having first been duly cautioned and sworn, deposes and states as follows according to his best recollection and belief:

1. My name is Morgan Thomas. I am of legal age, am competent to make the statements contained in this Affidavit, and have personal knowledge concerning the same.

2. I currently reside at 10390 Remy Lane, Florence, Kentucky 41042.

3. In 1986, I purchased the property located at 15487 Lebanon-Crittenden Rd Verona, Kentucky 41092 (the "Property"). At this time, I used it to park a Freightliner model semi-tractor, and some trailers. The trailer I usually hauled at this time included van freight trailer, a reefer for hauling produce, and a lowboy for hauling heavy equipment. A 53' car-hauler trailer I owned also often sat at the Property. During this time I engaged in buying, selling and trading equipment, primarily semi-trailers. I also performed repairs on the trucks and equipment on the Property.

4. During or around 1997 – 1998, I acquired two heavy dump trucks, namely, a 1988 Mack tri-axle heavy dump truck and a 1993 Mack tri-axle heavy dump truck. I also acquired a low-boy trailer. These were typically staged on the Property along with the old Freightliner® semi-tractor and various trailers, including the 53' car-hauler. I continued to repair the trucks and equipment on the Property.

5. From 1998 through 2002, I usually grossed around \$150k - \$200k per year in my business.

6. During or around 2002-2003, I began to expand my operation more into heavy trucking, truck repair and excavation. During this time, I acquired a Cat® 70 track hoe, Cat® 953 track loader, Kamatsu® D38 Dozer, and a Bobcat® skid-steer. At this time, I got rid of the Freightliner® semi-truck and bought two additional 1993 DM model Mack® tri-axle heavy dump trucks, and a 1995 RD model tri-axle heavy dump truck. In 2002, I had five heavy dump trucks prior to applying for a permit to build a new building. Sometime during or shortly after constructing the new building, I purchased two additional heavy tri-axle trucks, both of these were Ford® L-9000 models.

7. From 2002-2003 and beyond, my operation continued to grow. At one point I ran ten trucks out of the Property and brokered work for another 20 trucks owned by others. I also had a repair operation that repaired not only all of my trucks, but also trucks owned by others, including some of the trucks I brokered. We performed maintenance, repairs and painted trucks. I kept a full-time mechanic and a helper employed on the Property to work on trucks and equipment. I also kept three full time office personnel, namely one dispatcher and two secretaries.

8. During or around 2005 – 2006, I bought a 150 Kamatsu® track hoe, and a Kamatsu® 200 track hoe. However, the Kamatsu® was rarely on the Premises. My other equipment was all staged at the Property but not usually at the same time because it would be out on job-sites, or in transit to or from the Property.

9. During or around 2006 – 2007, I bought a Massey-Ferguson® rubber tire loader with a 2 yard bucket.

10. During or around 2007-2008, my operation grossed over \$3,000,000.

11. It was around 2008-2009 that I sold the trucking and excavating business to Greg Bennett. As part of the deal, he was allowed to continue to run the heavy truck terminal and repair operation on the Property. In addition, I financed half of the sale price with seller-financing.


12. During or around 2009-2010, my involvement in running the business began increasing because Greg Bennett was not doing so. During or around 2010-2011, the operation faced insolvency and work largely stopped but trucks, trailers and equipment were still located at the Property. During and after this period, Keven Nagel also resided and/or worked out of the Property.

13. Sometime during 2011, I recall the police assisting with trying to locate tools that were stolen from the Property. Ultimately, and later, I lost the Property in a foreclosure sale.

14. During the entire time I owned the Property, I also engaged in buying, repairing and selling trucks, trailers and equipment from the Property. For much of the time from around 2002-2003 onward, I kept a 45' van trailer on the Property to store parts.

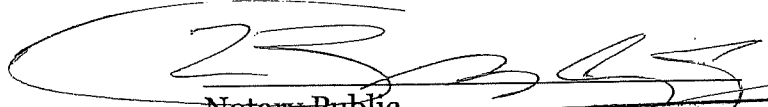
15. In addition to the foregoing, at various times during my ownership, I or others also engaged in certain agricultural operations on or about the Property. These included, horses, hay, tobacco (usually leased out), dog kennel of approximately 15 dogs at a time, and later Kevin Nagel raised chickens.

FURTHER, AFFIANT SAYETH NAUGHT.

  
Morgan Thomas

STATE OF KENTUCKY    )  
                                  ) SS:  
COUNTY OF KENTON    )

The foregoing affidavit was signed, acknowledged and sworn to before me, a notary public for the State and County aforesaid, on this 4<sup>th</sup> day of November 2013, by Morgan Thomas as his own free and voluntary act.

  
Notary Public  
My commission expires \_\_\_\_\_

RICHARD A. BRUEGGEMANN  
NOTARY PUBLIC  
STATE AT LARGE - KENTUCKY  
NOTARY ID # 409264  
MY COMMISSION EXPIRES DECEMBER 5, 2013

# EXHIBIT C

Kevin Wall

---

**From:** Tina Edmondson [tedmondson@ericdeters.com]  
**Sent:** Saturday, February 15, 2014 7:12 PM  
**To:** Kevin Wall  
**Subject:** 15487 Lebanon Crittendon Rd  
**Attachments:** APPEAL LETTER.pdf

Dear Mr. Wall,

Please find attached a Notice of Appeal Letter regarding the above-referenced property.

Thank you,

Tina R. Edmondson  
19 Broadcast Plaza  
635 W. 7th Street, Ste., 401  
Cincinnati, OH 45202  
Office: (513) 729-1999  
Cell: (859) 380-9168  
Email: [tedmondson@ericdeters.com](mailto:tedmondson@ericdeters.com)

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# LAW OFFICE

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Kentucky, Ohio, West Virginia and Florida

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Erin G. Rosen  
Nancy H. Ludwig  
Mark C. Eppley  
Tina R. Edmondson  
Edward A. Clark  
Greg A. Temming  
Ian A. Stegmaier  
Stephanie L. Collins  
Christopher D. Roach  
Brian M. Cable

Diane E. Huff  
K. Joshua Waters  
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C. Stephen M. Kilburn  
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Ginger Dietrich (Nurse)  
Bonnie Cook (Nurse)

Chuck Holbrook (Investigator)  
Chad Fuller (Investigator)  
Parker Deters (Investigator)  
Doug Hunter (Worker's Comp Paralegal)  
Alexa Kavanaugh (Paralegal)  
Kelly Malt (Paralegal)  
Shelly Bagby (Employment Paralegal)  
Mona Eldridge (Personal Injury Paralegal)  
Erika Morthland (Paralegal)  
Trisha Morley (In-house Court Reporter)

February 15, 2014  
Reply To:

Mr. Kevin T. Wall, AICP  
Boone County Zoning Administrator  
Mr. Mitch Light  
Mr. Todd Morgan  
Boone County Planning Commission  
2950 Washington St., Rm. 317  
P.O. Box 958  
Burlington, KY 41005

**RE: 01/17/14 Letter Regarding Business at 15487 Lebanon-Crittenden Road, Boone County, Kentucky; Rural Suburban Estates (RSE) zone.**

Dear Mr. Wall:

I have been retained by the following community members in the nearby area of the above-referenced property located in Boone County, in Verona, Kentucky: Kimberly Waits; Jeremy Waits; Heather Honeycutt; Nate Honeycutt; Jenny Coleman; Christopher Coleman; Jenny Roth; Bill Roth; Jody Beck; Kristin Martini; Linda Brewer; Todd Brewer; Maranatha Burch; Jeff Burch; Marie Tobler; Pat Thomas; Jenny Dwyer; Larry Dwyer; Mark Trenkamp; Lisa Trenkamp; Anita Dennis; DeWayne Dennis; Wes Conley; Bridgette Conley; Randy Thaman; Debbie Thaman; Michelle Carrio; John Carrio; Randy Hodge; Teresa Hodge; Ken Guevara; Jodi Guevara; John Farrell; Tracey Farrell; Melissa Davis; and Brian Davis.

It has come to light that false evidence has been presented to the Commission in the form of the affidavit of Morgan Thomas, a purported prior "owner" of this property. The affidavit was submitted to support Mr. Branscum's claim that he is entitled to be "grandfathered" in by a grant of nonconforming use status of the property, based upon the nonconforming use status of the prior owner in the ten years prior to the adverse action taken against Mr. Branscum.

Pursuant to Article 40 of the Boone County Zoning Regulations, the term "Owner" is defined as:

Main Office  
5247 Madison Pike  
Independence, KY 41051  
859.363.1900 • Fax: 859.363.1444  
1.866.960.HURT

5290 Madison Pike, Suite 30  
Independence, KY 41051  
859.534.6220  
Fax: 859.960.6245

19 Broadcast Plaza  
635 West 7th Street, Suite 401  
Cincinnati, OH 45203  
513.729.1999 • Fax: 513.381.4084

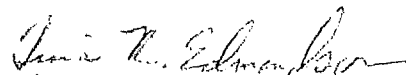
The person, persons, or other entity having legal title to particular real estate, or such other person, persons, or entity acting on behalf of and with the written permission and authority of the legal title holder, such as a holder of an option or contract to purchase the real estate or a lessee. In the context of this order, "owner" means the person, persons, or entity bearing responsibility for a development review application or proposal, and the term "owner" may be used interchangeably with terms such as applicant, developer, owner by option, etc.

However, Boone County Tax records from 2002 until 2011 do not reflect that Morgan Thomas at any time was a "prior owner" during the ten years prior to the adverse action taken against Mr. Branscum. Copies of the tax records for these years are attached hereto for your reference.

Additionally, your letter of January 17, 2014, refers to the complaint that Mr. Branscum has been running what is essentially a 24-hour business, but goes on to state that because Mr. Brueggeman stated to you via email on 01/16/14 that Mr. Branscum's hours are Monday-Friday 8:00 a.m. to 5:00 p.m., you determined Mr. Branscum's hours to be acceptable. However, Mr. Branscum's website for his business clearly indicates that he operates 24-hours. A copy of the screen print from his website is also attached hereto for your reference.

Based upon the information that has come to light, my clients believe this to be more than sufficient grounds for granting their appeal. Also, because my investigation into this matter is continuing, I respectfully reserve the right to supplement additional information as it is discovered and/or becomes available.

Sincerely,



Tina R. Edmondson

cc: Kevin Costello, Executive Director  
Jeff Earlywine, Boone County Administrator  
Mitch Light, Asst. Zoning Administrator/Enforcement Officer  
Robert Neace, Boone County Attorney  
Richard Robinson, Graydon Head and Ritchey, LLP; Fax: 525-0214  
Dale Wilson, BCPC Legal Counsel  
Mr. Richard A. Brueggemann

# Property Tax Information

## Property Owner Information

1. Tax Year: 2013
2. Bill No: 037457
3. Owner Name: BRANSCUMRAY
4. Owner Name2:
5. Property Type: Real Estate
6. District: Graded
7. Street Address: 15487 LEBANON CRITTENDEN I
8. City/State: VERONA KY
9. Zip Code: 41092

## Payment Information

1. Paid By: RBT TRUCK & TRAILER REPAIR
2. Sheriff Fee: \$0.00
3. Date Paid: 10/4/2013

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

1. paid by 11/1/2013 \$3,974.64
2. paid by 12/31/2013 \$4,055.76
3. paid by 1/31/2014 \$4,258.55
4. paid after 1/31/2014 \$4,907.47

Amount paid with:

1. Check:
2. Cash:
3. Credit Card:
4. Total Amount Paid:

Property Information

1. Owner on January 1
2. PIDN:
3. Mortgage Company:
4. Legal Description:
5. Property Location:
6. Deed Book/Page:
7. HomeStead Exemption:
8. Disability:

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.122	\$262,000.00	\$319.64
County	.105	\$262,000.00	\$275.10
School	1.047	\$262,000.00	\$2,743.14
Library	.052	\$262,000.00	\$136.24
Health	.019	\$262,000.00	\$49.78
Extension	.018	\$262,000.00	\$47.16
Verona Fire	.185	\$262,000.00	\$484.70

# Property Tax Information

## Property Owner Information

1. Tax Year: 2011
2. Bill No: 037048
3. Owner Name: FEDERAL NATIONAL MORTGAGE ASSOCIATION
4. Owner Name2:
5. Property Type: Real Estate
6. District: Graded
7. Street Address: PO BOX 650043
8. City/State: DALLAS TX
9. Zip Code: 75265

## Payment Information

1. Paid By: CITIMORTGAGE
2. Sheriff Fee: \$0.00
3. Date Paid: 10/22/2011

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

1. paid by 11/1/2011 \$2,474.54
2. paid by 12/31/2011 \$2,525.04
3. paid by 1/31/2012 \$2,651.29
4. paid after 1/31/2012 \$3,055.29

Amount paid with:

1. Check:
2. Cash:
3. Credit Card:
4. Total Amount Paid:

Property Information

1. Owner on January 1
2. PIDN:
3. Mortgage Company:
4. Legal Description:
5. Property Location:
6. Deed Book/Page:
7. HomeStead Exemption:
8. Disability:

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.122	\$168,000.00	\$204.96
County	.104	\$168,000.00	\$174.72
School	1.006	\$168,000.00	\$1,690.08
Library	.051	\$168,000.00	\$85.68
Health	.019	\$168,000.00	\$31.92
Extension	.016	\$168,000.00	\$26.88
Verona Fire	.185	\$168,000.00	\$310.80

# Property Tax Information

## Property Owner Information

1. Tax Year: 2010
2. Bill No: 036864
3. Owner Name: CENTERS ENDA
4. Owner Name2:
5. PropertyType: Real Estate
6. District: Graded
7. Street Address: 15487 LEBANON CRITTENDEN I
8. City/State: Verona KY
9. Zip Code: 41092

## Payment Information

1. Paid By: CITIMORTGAGE
2. Sheriff Fee: \$0.00
3. Date Paid: 1/13/2011

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

1. paid by 11/1/2010 \$1,391.80
2. paid by 12/31/2010 \$1,420.20
3. paid by 1/31/2011 \$1,491.21
4. paid after 1/31/2011 \$1,718.44

Amount paid with:

1. Check:
2. Cash:
3. Credit Card:
4. Total Amount Paid:

Property Information

1. Owner on January 1
2. PIDN:
3. Mortgage Company:
4. Legal Description:
5. Property Location:
6. Deed Book/Page:
7. HomeStead Exemption:
8. Disability:

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.122	\$94,680.00	\$115.51
County	.102	\$94,680.00	\$96.57
School	1.006	\$94,680.00	\$952.48
Library	.05	\$94,680.00	\$47.34
Health	.019	\$94,680.00	\$17.99
Extension	.016	\$94,680.00	\$15.15
Verona Fire	.185	\$94,680.00	\$175.16

# Property Tax Information

## Property Owner Information

1. Tax Year: 2009
2. Bill No: 036620
3. Owner Name: CENTERS ENDA
4. Owner Name2:
5. PropertyType: Real Estate
6. District: Graded
7. Street Address: 15487 LEBANON CRITTENDEN I
8. City/State: Verona KY
9. Zip Code: 41092

## Payment Information

1. Paid By: CITIMORTGAGE, INC.
2. Sheriff Fee: \$0.00
3. Date Paid: 10/28/2009

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

1. paid by 11/1/2009 \$1,391.80
2. paid by 12/31/2009 \$1,420.20
3. paid by 1/31/2010 \$1,491.21
4. paid after 1/31/2010 \$1,718.44

Amount paid with:

1. Check:
2. Cash:
3. Credit Card:
4. Total Amount Paid:

Property Information

1. Owner on January 1
2. PIDN:
3. Mortgage Company:
4. Legal Description:
5. Property Location:
6. Deed Book/Page:
7. HomeStead Exemption:
8. Disability:

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.122	\$94,680.00	\$115.51
County	.102	\$94,680.00	\$96.57
School	1.006	\$94,680.00	\$952.48
Library	.05	\$94,680.00	\$47.34
Health	.019	\$94,680.00	\$17.99
Extension	.016	\$94,680.00	\$15.15
Verona Fire	.185	\$94,680.00	\$175.16

# Property Tax Information

## Property Owner Information

1. Tax Year: 2008
2. Bill No: 036271
3. Owner Name: CENTERS ENDA
4. Owner Name2:
5. PropertyType: Real Estate
6. District: Graded
7. Street Address: 15487 LEBANON CRITTENDEN I
8. City/State: Verona KY
9. Zip Code: 41092

## Payment Information

1. Paid By: CITIMORTGAGE INC.
2. Sheriff Fee: \$0.00
3. Date Paid: 10/28/2008

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

1. paid by 11/1/2008 \$1,391.80
2. paid by 12/31/2008 \$1,420.20
3. paid by 1/31/2009 \$1,491.21
4. paid after 1/31/2009 \$1,718.44

Amount paid with:

- 1. Check: \$1,391.80
- 2. Cash: \$0.00
- 3. Credit Card: \$0.00
- 4. Total Amount Paid: \$1,391.80

Property Information

- 1. Owner on January 1: CENTERS ENDA
- 2. PIDN: 068.00-00-023.01
- 3. Mortgage Company: 071
- 4. Legal Description: 7.13 ACKY 14 (68-23)
- 5. Property Location: 15487 LEBANON CRITTENDEN RD
- 6. Deed Book/Page: 0- 0
- 7. HomeStead Exemption: 0
- 8. Disability: 0

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.122	\$94,680.00	\$115.51
County	.102	\$94,680.00	\$96.57
School	1.006	\$94,680.00	\$952.48
Library	.05	\$94,680.00	\$47.34
Health	.019	\$94,680.00	\$17.99
Extension	.016	\$94,680.00	\$15.15
Verona Fire	.185	\$94,680.00	\$175.16

# Property Tax Information

## Property Owner Information

1. Tax Year: 2007
2. Bill No: 006755
3. Owner Name: CENTERS ENDA
4. Owner Name2:
5. Property Type: Real Estate
6. District: Graded
7. Street Address: 15487 LEBANON CRITTENDEN I
8. City/State: VERONA KY
9. Zip Code: 41092

## Payment Information

1. Paid By: CITIMORTGAGE, INC.
2. Sheriff Fee: \$0.00
3. Date Paid: 10/27/2007

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

1. paid by 11/1/2007 \$5,498.46
2. paid by 12/31/2007 \$5,610.67
3. paid by 1/31/2008 \$5,891.20
4. paid after 1/31/2008 \$6,788.91

Amount paid with:

1. Check:
2. Cash:
3. Credit Card:
4. Total Amount Paid:

Property Information

1. Owner on January 1
2. PIDN:
3. Mortgage Company:
4. Legal Description:
5. Property Location:
6. Deed Book/Page:
7. HomeStead Exemption:
8. Disability:

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.124	\$368,880.00	\$457.41
County	.099	\$368,880.00	\$365.19
School	1.006	\$368,880.00	\$3,710.93
Library	.068	\$368,880.00	\$250.84
Health	.02	\$368,880.00	\$73.78
Extension	.019	\$368,880.00	\$70.09
Verona Fire	.185	\$368,880.00	\$682.43

# Property Tax Information

## Property Owner Information

1. Tax Year: 2006
2. Bill No: 006504
3. Owner Name: CENTERS ENDA
4. Owner Name2:
5. PropertyType: Real Estate
6. District: Graded
7. Street Address: 15487 LEBANON CRITTENDEN I
8. City/State: VERONA KY
9. Zip Code: 41092

## Payment Information

1. Paid By: CITIMORTGAGE, INC.
2. Sheriff Fee: \$0.00
3. Date Paid: 10/27/2006

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

1. paid by 11/1/2006 \$4,443.48
2. paid by 12/31/2006 \$4,534.16
3. paid by 1/31/2007 \$4,760.87
4. paid after 1/31/2007 \$5,486.34

Amount paid with:

1. Check:
2. Cash:
3. Credit Card:
4. Total Amount Paid:

Property Information

1. Owner on January 1
2. PIDN:
3. Mortgage Company:
4. Legal Description:
5. Property Location:
6. Deed Book/Page:
7. HomeStead Exemption:
8. Disability:

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.128	\$314,000.00	\$401.92
County	.099	\$314,000.00	\$310.86
School	1.006	\$314,000.00	\$3,158.84
Library	.072	\$314,000.00	\$226.08
Health	.02	\$314,000.00	\$62.80
Extension	.019	\$314,000.00	\$59.66
Verona Fire	.1	\$314,000.00	\$314.00

# Property Tax Information

## Property Owner Information

1. Tax Year: 2005
2. Bill No: 006315
3. Owner Name: CENTERS ENDA
4. Owner Name2:
5. PropertyType: Real Estate
6. District: Graded
7. Street Address: 15487 LEBANON CRITTENDEN I
8. City/State: VERONA KY
9. Zip Code: 41092

## Payment Information

1. Paid By: CITIMORTGAGE, INC.
2. Sheriff Fee: \$0.00
3. Date Paid: 11/1/2005

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

1. paid by 11/1/2005 \$2,006.69
2. paid by 12/31/2005 \$2,047.64
3. paid by 1/31/2006 \$2,150.02
4. paid after 1/31/2006 \$2,477.64

Amount paid with:

1. Check:
2. Cash:
3. Credit Card:
4. Total Amount Paid:

Property Information

1. Owner on January 1:
2. PIDN:
3. Mortgage Company:
4. Legal Description:
5. Property Location:
6. Deed Book/Page:
7. HomeStead Exemption:
8. Disability:

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.131	\$142,000.00	\$186.02
County	.095	\$142,000.00	\$134.90
School	1.006	\$142,000.00	\$1,428.52
Library	.072	\$142,000.00	\$102.24
Health	.02	\$142,000.00	\$28.40
Extension	.018	\$142,000.00	\$25.56
Verona Fire	.1	\$142,000.00	\$142.00

# Property Tax Information

## Property Owner Information

1. Tax Year: 2004
2. Bill No: 006248
3. Owner Name: CENTERS ENDA
4. Owner Name2:
5. PropertyType: Real Estate
6. District: Graded
7. Street Address: 15487 LEBANON CRITTENDEN I
8. City/State: CRITTENDEN KY
9. Zip Code: 41030

## Payment Information

1. Paid By:
2. Sheriff Fee: \$10.00
3. Date Paid:

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

1. paid by 11/1/2004 \$1,970.51
2. paid by 12/31/2004 \$2,010.72
3. paid by 1/31/2005 \$2,111.26
4. paid after 1/31/2005 \$2,442.97

Amount paid with:

1. Check:
2. Cash:
3. Credit Card:
4. Total Amount Paid:

Property Information

1. Owner on January 1
2. PIDN:
3. Mortgage Company:
4. Legal Description:
5. Property Location:
6. Deed Book/Page:
7. HomeStead Excmption:
8. Disability:

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.131	\$142,000.00	\$186.02
County	.095	\$142,000.00	\$134.90
School	.966	\$142,000.00	\$1,371.72
Library	.087	\$142,000.00	\$123.54
Health	.02	\$142,000.00	\$28.40
Extension	.017	\$142,000.00	\$24.14
Verona Fire	.1	\$142,000.00	\$142.00

# Property Tax Information

## Property Owner Information

1. Tax Year: 2003
2. Bill No: 006095
3. Owner Name: CENTERS ENDA
4. Owner Name2:
5. PropertyType: Real Estate
6. District: Graded
7. Street Address: 15487 LEBANON CRITTENDEN I
8. City/State: VERONA KY
9. Zip Code: 41092

## Payment Information

1. Paid By: UNION PLANTERS
2. Sheriff Fee: \$0.00
3. Date Paid: 10/30/2003

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

1. paid by 11/1/2003 \$1,537.27
2. paid by 12/31/2003 \$1,568.64
3. paid by 1/31/2004 \$1,647.07
4. paid after 1/31/2004 \$1,898.05

Amount paid with:

1. Check:
2. Cash:
3. Credit Card:
4. Total Amount Paid:

Property Information

1. Owner on January 1
2. PIDN:
3. Mortgage Company:
4. Legal Description:
5. Property Location:
6. Deed Book/Page:
7. HomeStead Exemption:
8. Disability:

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.133	\$114,000.00	\$151.62
County	.095	\$114,000.00	\$108.30
School	.939	\$114,000.00	\$1,070.46
Library	.072	\$114,000.00	\$82.08
Health	.02	\$114,000.00	\$22.80
Extension	.017	\$114,000.00	\$19.38
Verona Fire	.1	\$114,000.00	\$114.00

# Property Tax Information

## Property Owner Information

1. Tax Year: 2002
2. Bill No: 005656
3. Owner Name: CENTERS ENDA
4. Owner Name2: \_\_\_\_\_
5. PropertyType: Real Estate
6. District: Graded
7. Street Address: 15487 CRITTENDEN LEBANON I
8. City/State: VERONA KY
9. Zip Code: 41092

## Payment Information

1. Paid By: VINTAGE TITLE AGENCY, INC.
2. Sheriff Fee: \$0.00
3. Date Paid: 12/10/2002

Amount due if:

Make checks payable to:

Michael A. Helmig  
Boone County Sheriff's Department  
3000 Conrad Lane  
P.O. Box 198  
Burlington, KY 41005

- |                         |                   |
|-------------------------|-------------------|
| 1. paid by 11/1/2002    | <u>\$1,544.41</u> |
| 2. paid by 12/31/2002   | <u>\$1,575.93</u> |
| 3. paid by 1/31/2003    | <u>\$1,654.73</u> |
| 4. paid after 1/31/2003 | <u>\$1,906.87</u> |

Amount paid with:

- 1. Check: \$1,575.93
- 2. Cash: \$0.00
- 3. Credit Card: \$0.00
- 4. Total Amount Paid: \$1,575.93

Property Information

- 1. Owner on January 1
- 2. PIDN: 68-23
- 3. Mortgage Company:
- 4. Legal Description: 7-13 ACT 14
- 5. Property Location:
- 6. Deed Book/Page: 350 178
- 7. HomeStead Exemption: 26800
- 8. Disability: 0

Tax Detail

Description	Tax Rate	Assessment	Tax Amount
State	.135	\$115,200.00	\$155.52
County	.095	\$115,200.00	\$109.44
School	.939	\$115,200.00	\$1,081.73
Library	.062	\$115,200.00	\$71.42
Health	.02	\$115,200.00	\$23.04
Extension	.017	\$115,200.00	\$19.58
Verona Fire	.1	\$115,200.00	\$115.20



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• Western Star™

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Load Shifts  
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Pickup Trucks  
Clutches

**Towing:**

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Lockouts  
Fuel Delivery

**Towing:**

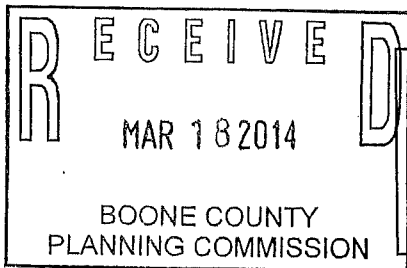
Framework on Trailers  
Truck Frames, Cross  
Welds, Brackets  
Arc Welding  
Mig Welding

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# EXHIBIT D

## APPLICATION FORM



### BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

#### FIVE (5) SCALED COPIES AND ONE (1) 11X17 REDUCTION OF SUBMITTED DRAWINGS ARE REQUIRED

See Boone County Zoning Regulations

#### SECTION A (To be completed by applicant)

- (Check One)
1.  Boone \_\_\_\_\_ Florence \_\_\_\_\_ Walton \_\_\_\_\_ Union \_\_\_\_\_
- (Check One)
2. \_\_\_\_\_ Conditional Use Permit \_\_\_\_\_ Variance  Appeal  
\_\_\_\_\_ Change in Non-Conforming Use
3. Applicant's Name Christina R. Edmondson Attorney  
Applicant's Address 635 W. 7th St. Suite 401  
Cincinnati OH 45203
- City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone Number 513 729 1999 Fax No. 513 381 4084 E-Mail tedmondson@ericdeters.com
4. Description of Request: Appeal
5. Name of Development St. James Place
6. Location of Development Verona Ky
7. Acreage Under Review 7
8. Lot Number and Name of Subdivision (if part of a subdivision) \_\_\_\_\_
9. Owner of Property Ray  
Address of Property Owner 15487 Lebanon Crittenden Rd
10. Verona Ky State \_\_\_\_\_ Zip \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone Number \_\_\_\_\_ Fax No. \_\_\_\_\_ E-Mail \_\_\_\_\_
11. Proposed Use(s) on Site 24 Hour Towing & Truck Repair  
Business per ~~the~~ website
12. Total Square Footage of Existing and/or Proposed Buildings \_\_\_\_\_
13. Current Zoning on Property RSE
14. Deed Book \_\_\_\_\_ Page No. \_\_\_\_\_ Group No. \_\_\_\_\_
15. Is the site subject to a zone change? NO  
If yes, give date of approval \_\_\_\_\_
16. Have you submitted a Site Plan with this request? NO
17. Have you submitted a list of adjoining property owners with this request? \_\_\_\_\_
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

ORIGINAL Property Owner's Signature: \_\_\_\_\_  
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

ORIGINAL Applicant's Signature: Christina R. Edmondson  
(Faxed, Photocopied or Scanned Signatures will NOT be Accepted)

**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 3/18/14 Fee Received \$1682<sup>00</sup> Receipt # 68458
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**  
**Boone County Administration Building**  
**2950 Washington Street, Room 317**  
**P.O. Box 958**  
**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.

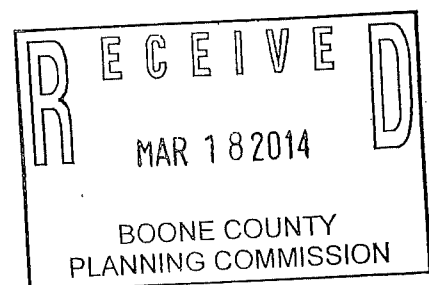
An application consists of all fees paid in full, submitted drawings and a completed application form.

- |  |  |  |
|--|--|--|
| <p><i>Lisa Trenkamp</i></p> <p><i>Wes Corley</i></p> | <p><i>Debbie Thaman</i></p> <p><i>Jeremy Warts</i></p> <p><i>Heather Honeycutt</i></p> <p><i>Jenny Coleman</i></p> <p><i>Bill Roth</i></p> <p><i>Jody Beck</i></p> <p><i>Kristin Martinie</i></p> <p><i>Linda Brewer</i></p> <p><i>Maranatha Burch</i></p> <p><i>Todd Brewer</i></p> | <p><i>Jodi Guevara</i></p> <p><i>Dewayne DAVIS</i></p> <p><i>Jeff Burch</i></p> <p><i>Pat Thomas</i></p> <p><i>Larry Dwyer</i></p> <p><i>John Farrell</i></p> <p><i>Michelle Carrico</i></p> <p><i>Randy Hodge</i></p> <p><i>Melissa Davis</i></p> |
|--|--|--|

**AFFIDAVIT**

NOW COMES, Robert Dennis, being first duly sworn and stating as follows:

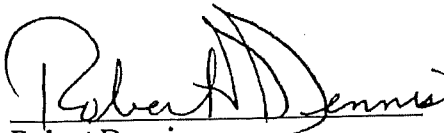
1. Robert Dennis purchased property located at 1886 St. James Place, Verona, KY 41092 in February 2009.
2. The property of Ray Branscum, which is 15487 Lebanon-Crittenden Road, Verona, Kentucky 41092, lies approximately ¼ mile directly to the north and northeast of Mr. Dennis' property.
3. Mr. Ray Branscum owns and operates his business, RBI Trucking, on his property causing disruption to Mr. and Mrs. Dennis.
4. During the first four years of residence in their home, Mr. Dennis and his wife were unaware a business was or had operated from 15487 Lebanon-Crittenden Road and always assumed it was owned by someone who was quietly involved in farming.
5. During the fourth year of residency, Mr. and Mrs. Dennis began hearing the loud noises of large dump trucks dumping concrete chunks and other fill material where Mr. Branscum's graveled lot is now.
6. Although the Dennis' property does not connect to Mr. Branscum's property, the rear of the property owned by Mr. Branscum is visible from Mr. and Mrs. Dennis' deck and backyard.
7. On one occasion, a large pile of construction debris on Mr. Branscum's property was set on fire in a careless open burn which warranted a visit from the Verona Fire Department. It was not long after this that Mr. and Mrs. Dennis became aware of the business that was being operated on said property.



8. Mr. Dennis is concerned that Mr. Branscum's business is being operated beyond the parameters of the ordinances of the RES zoned community.
9. During a Boone County Board of Appeals meeting on October 9, 2013, Mr. Branscum's appeal for a change in use was denied. As one of the community members opposing the change in use appeal present at the meeting, Mr. Dennis believed Mr. Branscum could not continue to operate his business at the property other than limited to the size and scope of the previous business that operated at that address.
10. Mr. Branscum stated in the October 9, 2013 meeting that his business hours of operation would be typically 8:00a.m. to 5:00p.m.
11. Mr. Dennis witnessed on more than one occasion Mr. Branscum's heavy wrecker leaving his premises well after dark and one of those times was 10:30p.m.
12. Mr. Branscum has no regard for the people of the St. James Place community.
13. When Mr. Branscum was unable to obtain a change in use in property in the fall of 2013, he did not lose the legal preexisting, nonconforming use on the property for heavy trucking, truck repair and excavation business. That condition does not imply Mr. Branscum can operate a commercial towing service.
14. Trucking, truck repair and excavation was how the said property was used by the prior business at said location and that is all that shall be allowed by the current business.
15. Mr. Branscum's application and his appeal for a change in use was denied on October 9, 2013 which is interpreted as meaning no towing.
16. Mr. Branscum has tremendously increased the size of the "footprint" of the prior business by the towing in of heavy trucks, building a huge pole barn and filling and leveling a low area to create a big gravel parking lot.

17. Mr. Dennis believes Mr. Branscum is stretching the envelope of the legal nonconforming use and finds his business to be intense and objectionable.


If called to testify in this matter, we would testify as stated in this Affidavit.

  
Robert Dennis

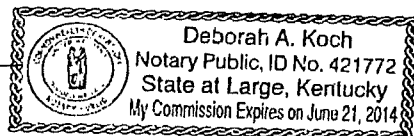
STATE OF KENTUCKY

COUNTY OF BOONE

Sworn and subscribed before me, this, the 15 day of March, 2014.

  
Notary Public

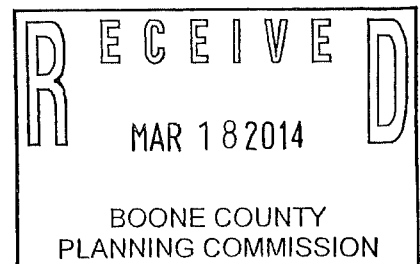
My Commission Expires:



AFFIDAVIT

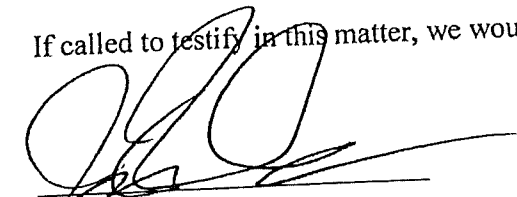
NOW COMES, Jeremy and Kimberly Waits, being first duly sworn and stating as follows:

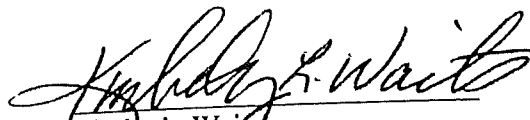
1. Jeremy and Kimberly Waits purchased property located at 1879 St. James Place, Verona, KY 41092.
1. Mr. and Mrs. Waits began looking to purchase land in March of 2012. They found St. James Place and viewed property at this location multiple times throughout the period of one year. They specifically viewed lot 35 which runs adjacent to the Branscum property.
2. The property of Ray Branscum is located at 15487 Lebanon-Crittenden Road, Verona, Kentucky 41092.
3. Mr. Ray Branscum owns and operates his business, RBI Trucking, on his property causing disruption to Mr. and Mrs. Waits.
4. Mr. and Mrs. Waits purchased lot 25 specifically because of the unknown information about the mysterious white barn and 7 acre lot of the Branscum property.
5. Mr. and Mrs. Waits purchased property at the other end of the street as they were unaware of the operations at the Branscum property and considered the white barn an "eye sore".
6. Not once during an entire year which consisted of multiple trips when coming out to look at the land did Mr. and Mrs. Waits ever see any type of business being run on said property nor a business with any consistent business hours.



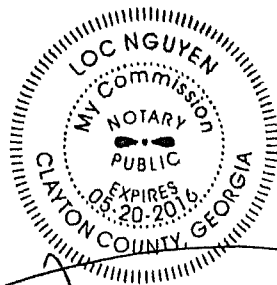
7. Mr. and Mrs. Waits never saw any heavy trucks or tow trucks or the property would not have been so "mysterious". They have never seen anyone outside of Mr. Branscum's activity tow or conduct any type of business from said property.
8. On Tuesday, February 18, 2014, Mrs. Waits saw a semi-truck and trailer being towed onto Mr. Branscum's property at 9:42p.m. which is past his stated business hours.
9. Mrs. Wait has witnessed more than eleven vehicles at one time, including regular automobiles, parked sporadically within and throughout the property from September 2013 to present. Mr. Branscum has also had more than one trailer at a time on said property and continues to use his "fenced in area" to park cars. (Photos attached)
10. To Mr. and Mrs. Waits' knowledge, RBI Trucking is a 24/7 hour business and has operated at all hours of the day from and on said property.
11. Mr. and Mrs. Waits were informed by their builder prior to purchasing a lot that he was unaware of any business being run on said property. Their builder has been building on St. James since 2005.

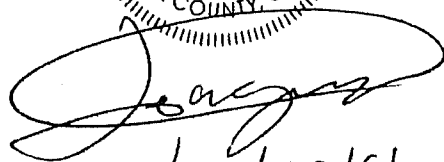
If called to testify in this matter, we would testify as stated in this Affidavit.

  
Jeremy Waits

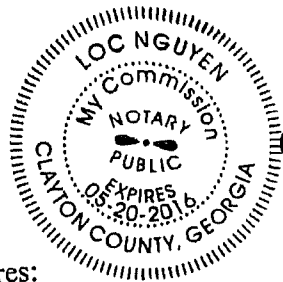
  
Kimberly Waits

STATE OF KENTUCKY  
COUNTY OF BOONE



  
03/17/2014

Sworn and subscribed before me, this, the 17 day of March, 2014.



*[Handwritten Signature]*  
Notary Public

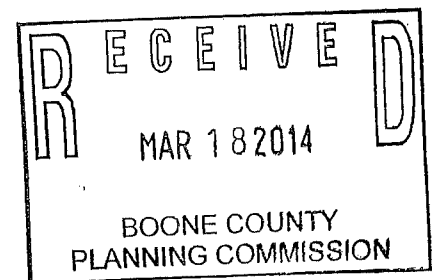
My Commission Expires:

05/20/2016

**AFFIDAVIT**

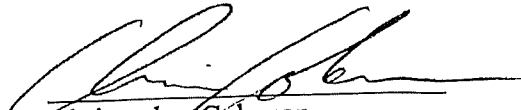
NOW COMES, Christopher and Jennifer Coleman, being first duly sworn and stating as follows:

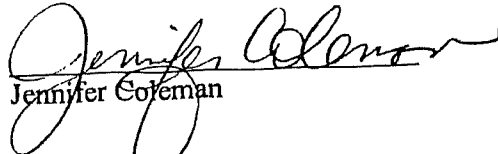
1. Christopher and Jennifer Coleman purchased property located at 1858 St. James Place, Verona, KY 41092 in July 2009.
2. Mr. and Mrs. Coleman's lot shares the property line with the property newly owned by Ray Branscum located at 15487 Lebanon-Crittenden Road, Verona, Kentucky 41092.
3. When Mr. and Mrs. Coleman viewed their lot with their builder and realtor, they were told the land behind their lot was zoned RSE only, and they could expect agricultural or residential use in the future.
4. Mr. and Mrs. Coleman felt very confident that their home would remain peaceful and beautiful which was ideal for raising their two young children.
5. Mr. Ray Branscum owns and operates his business, RBI Trucking, on his property causing disruption to Mr. and Mrs. Coleman.
6. Ray Branscum's use of his property is far more offensive to Mr. and Mrs. Coleman's lives than it ever was before.
7. Mr. and Mrs. Coleman never noticed any activity, noise or any interruption on their lives at all prior to Mr. Branscum taking over said property.
8. Mr. and Mrs. Coleman were completely unaware of anyone living at said property much less running a business before Ray Branscum purchased said property.
9. Mr. and Mrs. Coleman feel extremely frustrated and saddened that they spent a large amount of money to invest in a home they cannot preserve from a large business operating in their backyard.



10. Mr. and Mrs. Coleman request Ray Branscum not be allowed to continue operating his large business of towing 24 hours per day in their back yard.

If called to testify in this matter, we would testify as stated in this Affidavit.

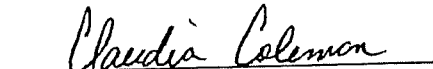
  
Christopher Coleman

  
Jennifer Coleman

STATE OF KENTUCKY

COUNTY OF BOONE

Sworn and subscribed before me, this, the 15<sup>th</sup> day of March, 2014.

  
Notary Public

My Commission Expires:

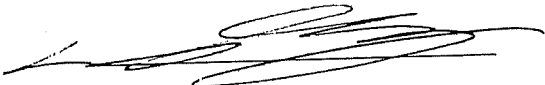
2-19-2017

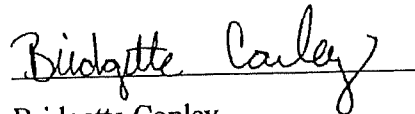
AFFIDAVIT

NOW COMES, Wes and Bridgette Conley, being first duly sworn and stating as follows:

1. Wes and Bridgette Conley purchased property located at 1870 St. James Place, Verona, KY 41092 in April 2013.
2. The property of Ray Branscum, which is 15487 Lebanon-Crittenden Road, Verona, Kentucky, is adjoining to Mr. and Mrs. Conley's property.
3. Mr. Ray Branscum owns and operates his business, RBI Trucking, on his property causing disruption to Mr. and Mrs. Conley.
4. Mr. and Mrs. Conley were never informed nor was information disclosed concerning the Branscum property being an issue for Boone County at the time they purchased their home. They were never notified a business had been ran previously on said property.
5. Mr. and Mrs. Conley have no knowledge regarding Morgan Thomas's name not being reflected in any tax documents as a previous owner of said property.

If called to testify in this matter, we would testify as stated in this Affidavit.


  
Wes Conley

  
Bridgette Conley

STATE OF KENTUCKY

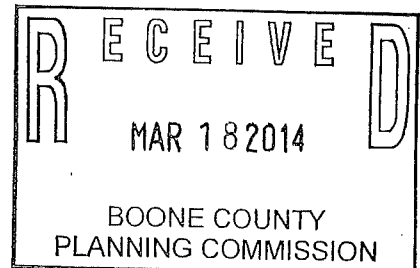
COUNTY OF BOONE

Sworn and subscribed before me, this, the 15<sup>th</sup> day of March, 2014.

  
Notary Public

My Commission Expires:

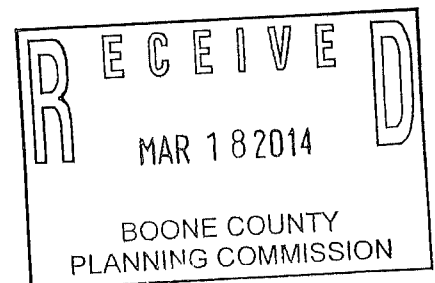
2-19-2017



AFFIDAVIT

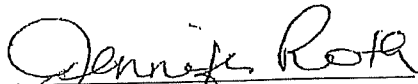
NOW COMES, Jennifer Roth, being first duly sworn and stating as follows:

1. Jennifer Roth and her husband purchased property located at 1862 St. James Place, Verona, KY 41092 in December 2004.
2. Mr. and Mrs. Roth picked out their lot in December 2004. During the time, they were searching for property in the Walton Verona School District. They checked the zoning of the lots in Stephenson Reserve and the surrounding area. They were told by Boone County it was zoned Residential Estate.
3. When Mr. and Mrs. Roth began construction on their house in January of 2005, they were at the property daily during the construction.
4. Their property is located adjacent to the property newly owned by Ray Branscum located at 15487 Lebanon-Crittenden Road, Verona, Kentucky 41092. The field at the back of the Branscum property is directly behind their property.
5. Mr. Ray Branscum owns and operates his business, RBI Trucking, on his property causing disruption to Mr. and Mrs. Roth.
6. Ms. Roth only saw Dump trucks on the said property until Mr. Branscum purchased the property. She never saw more than three or four trucks at one time. The building and the gravel lot were much smaller. The building only had one large sliding door. The field was never maintained.
7. A pond was put in on the Branscum property on or about 2005 or 2006.
8. There was never any hay cut on the property or animals kept on the property from 2005 to present. There were never trucks running all night long from 2005 to 2010.



9. Ms. Roth has witnessed Mr. Branscum pulling large trucks into the third bay in the structure which is in contradiction to the letter from Kevin Wall dated 11/27/13.

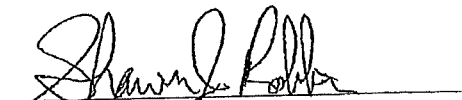
If called to testify in this matter, we would testify as stated in this Affidavit.

  
Jennifer Roth

STATE OF KENTUCKY

COUNTY OF BOONE

Sworn and subscribed before me, this, the 18th day of March, 2014.

  
Notary Public  
Notary ID: 467936

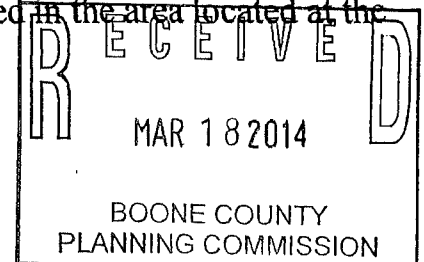
My Commission Expires:

6/5/2016

## AFFIDAVIT

NOW COMES, Pat Thomas, being first duly sworn and stating as follows:

1. Mrs. Pat Thomas purchased property located at 15763 Lebanon-Crittenden Road, Verona, KY 41092 in 2006.
2. Mrs. Thomas looked for the perfect home that met all the requirements she needed. She never would have bought her home if she knew there was a commercial business being operated so close to it.
3. Ray Branscum owns and operated his business, RBI Trucking, on his property located at 15487 Lebanon-Crittenden Road, Verona, Kentucky 41092.
4. Mr. Ray Branscum's operation of his business, RBI Trucking, on his property has and is causing disruption to Mrs. Pat Thomas.
5. Prior to Mr. Brascum purchasing his property, Mrs. Thomas had seen a couple of dump trucks on the property but never once saw tow trucks, semi-trucks (wrecked or disabled) or wrecked or disabled automobiles on the property.
6. Prior to Mr. Brascum purchasing his property, Mrs. Thomas never saw any kind of business being operated on said property.
7. After Mr. Branscum bought the property, all that changed, and it was clear that a business was being ran in a residential area. It was obvious a 24 hour towing company was being operated on the property.
8. The Zoning Board was made aware that Mr. Branscum was operating a business in a residential area. They were made aware he did not have a permit to build a new garage, doubling the size of the previous garage in size. He also filled in the area located at the rear of the property without a permit.



- 9. The Zoning Board reported the garage Mr. Branscum built was not any larger than the previous garage.
- 10. The Branscum property is not the same as when Pat Thomas purchased her home eight years ago.

If called to testify in this matter, we would testify as stated in this Affidavit.

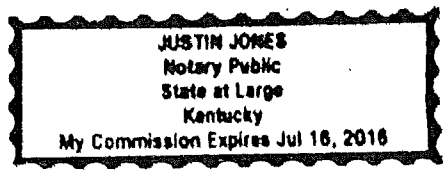
Pat Thomas  
Pat Thomas

STATE OF KENTUCKY  
COUNTY OF BOONE

Sworn and subscribed before me, this, the 18<sup>th</sup> day of March, 2014.

[Signature] Notary ID 470704  
Notary Public

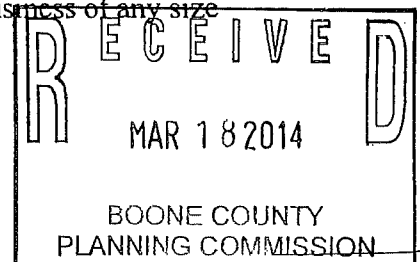
My Commission Expires:  
July 16 2016



AFFIDAVIT

NOW COMES, John and Tracey Farrell, being first duly sworn and stating as follows:

1. John and Tracey Farrell purchased property located at 15815 Teal Road, Verona, KY 41092 in 2004.
2. Mr. and Mrs. Farrell moved into their home in January 2005.
3. Mr. and Mrs. Farrell drive past Ray Branscum's property located at 15487 Lebanon-Crittenden Road, Verona, Kentucky 41092 every time they leave their home to head into Walton or the Florence area.
4. Since Mr. and Mrs. Farrell have lived at their property, they have never noticed any business type activity going on at the address of the Branscum property. In the past, if a business did operate out of that location, it was kept to a bare minimum with no offense to the neighborhood as far as traffic, large trucks or the property overloaded with vehicles.
5. Mr. Ray Branscum owns and operates his business, RBI Trucking, on his property causing disruption to Mr. and Mrs. Coleman.
6. Since Branscum took over the property, it has been quite obvious that a business is operating out of that location. There are almost always more than eleven vehicles parked at said property at all times.
7. The traffic going in and out of said property is much more frequent than it has been in the past and does not only occur between the hours of 8:00a.m. to 5:00p.m., Monday through Friday. Tow trucks have been seen leaving and returning after 9:00p.m. in the evening.
8. Public records such as tax records indicate that the property did not include the seven acres until 2002; therefore, the town officials cannot justify that a business of any size



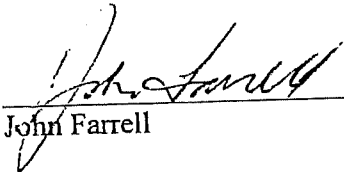
operated out of that location. Satellite photos also do not appear to support the size business that has now been grandfathered in for the new owner.

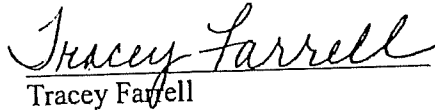
9. The new owner has expanded the building by more than double and has extended the parking area by also more than double what existed previously.
10. The new owner has more than the grandfathered in number of vehicles and operated beyond the hours stated in the letter from the town. The new owner is also towing vehicles in and out of the location in the evening hours. Towing is only allowed Monday through Friday between the hours of 8:00a.m. to 5:00p.m. and only if they are going there for repair. These vehicles must only be trucks.
11. At a meeting in September 2013, the ruling was that no vehicles may sit on the property in a non-operational state for more than thirty days, or the property is considered a junkyard. It was ruled against operating a junkyard at that location.
12. The grandfather clause stated that the business must be within the boundaries of the previous business and must maintain the same footprint. Neither one of these clauses is being abided by at this time.
13. Although this entire matter is very offensive to Mr. and Mrs. Farrell and many of their neighbors, they do not feel that it is their responsibility to police said property and its business owner.
14. The new owner has shown over and over again that he has no intention of following the rules of the town and continues to do so. He has operated without permits, expanded his business as he so chooses and continues to run his towing business as he sees fit.
15. The burden of proof of what is going on and what has gone on in the past should be the responsibility of the property owner and the town records. The five Affidavits that were

originally presented have been shown to have inaccurate information in them yet they were included as factual pieces of information.

16. Mr. and Mrs. Farrell would like to see said business run in the manner of the previous business: no towing of vehicles in and out as this did not happen in the past; repairs would be only on the vehicles owned by the business as was in the past; operating hours would be Monday through Friday, 8:00a.m. to 5:00p.m.; no more than six vehicles parked in the lot at one time with the exception of his personal vehicles; and the gravel area and barn reduced to the size that it was prior to the changes made by Branscum.
17. Mr. and Mrs. Farrell would like to know how this is going to be enforced by the authorities responsible for enforcing zoning regulations.

If called to testify in this matter, we would testify as stated in this Affidavit.

  
John Farrell

  
Tracey Farrell

STATE OF KENTUCKY  
COUNTY OF BOONE

Sworn and subscribed before me, this, the 15 day of March, 2014.

  
Notary Public 429196

My Commission Expires:

10-1-14


## AFFIDAVIT

NOW COMES, Heather Huneycutt, being first duly sworn and stating as follows:

1. Heather Huneycutt, and spouse Nate, purchased property located at 1883 St. James Place, Verona, KY 41092 in January 2011.
2. Mrs. Huneycutt and her spouse debated for six months where to build prior to the purchase of their lot. They debated extensively on location and environment. The rural setting and peaceful environment coupled with a nationally ranked, not to mention once of the top rated Kentucky, school district won them over.
3. Mrs. Huneycutt and her spouse drove past the property located at 14487 Lebannon-Crittenden Road, Verona, Kentucky 41092 while frequently visiting friends, John & Michelle Carrico on St James Place since building their home in 2005 before deciding to make their home there, and not once did they know a business was being run from said property.
4. Mr. Ray Branscum newly owns and operates his business, RBI Trucking, on said property causing disruption to Mrs. Huneycutt and her spouse.
5. Mrs. Huneycutt and family drive past Ray Branscum's property every time they travel 491 to and from their home.
6. It was not until Mr. Branscum bought said property did things start to change.
7. Since Mr. Branscum took over the property, there has been an increase in traffic. The property is an eye sore. He has many trucks sitting behind the white barn where Mr. Branscum parks small vehicles between the large trucks he keeps on the property.
8. Mrs. Huneycutt and spouse frequently visit Chris and Jenny Coleman, who live closest to Ray Branscum, on St. James Place.
9. Mrs. Huneycutt not once saw trucks on the property until Mr. Branscum bought the property and moved in.
10. Several times, Ms. Huneycutt and family has been on the road with the large vehicles from RBI, and they do not leave any room on the road while towing.

11. Since the proposed zoning change, everything Mrs. Huneycutt and spouse have done to build and provide the best for their family will decline in value if Mr. Branscum is granted his request.
12. It is the understanding of Mrs. Huneycutt that the previous owner of Mr. Branscum's property ran his business illegally unbeknownst to the Stevenson Mill residents, including St James builder (and Huneycutt family friend) Dave Kinder, and surrounding residents as well. No one even knew a business was being run out of that residence until Mr. Branscum came along with his heavy dump trucks and loud noise projecting from his property.
13. It will be difficult to believe Mr. Branscum will operate his business honestly if he has yet to do so thus far. He has already made an addition to an existing building without obtaining a building permit from Boone County, which is illegal. Nor did Mr. Branscum obtain a permit to extend what was the existing parking lot on said property.
14. On October 9th, 2013 meeting, Mr. Branscum stated his business hours of operation would typically be 8:00am to 5:00pm, yet has on several occasions Mrs. Huneycutt has witnessed Mr. Branscum's wrecker leaving the property well after the times he stated
15. Mrs. Huneycutt is concerned that Mr. Branscum's business is being operated beyond the parameters of the ordinances of the RSE zoned community.
16. Mrs. Huneycutt would request that Mr. Branscum's business be run exactly as the prior business, which means no towing onto or off of the property.
17. Mrs. Huneycutt would also request that all changes made to the property be changed back to the footprint of the prior owner.
18. Mrs. Huneycutt believes Mr. Branscum is stretching the envelope of the legal nonconforming use and find his business to be intense and objectionable.
19. Lastly, let it be known that in all the communication made between Mrs. Huneycutt and Boone County Planning and Zoning back in September/October 2013, not once was it suggested to Mrs. Huneycutt to appeal the grandfathering in of Mr. Branscum's business. If she had been informed at that time about possible appeal, Mrs. Huneycutt would have done so, promptly. Now, it has been said that it is too late for an appeal on the grandfathering clause.

If called to testify in this matter, I would testify as stated in this Affidavit.



Heather Huneycutt

STATE OF KENTUCKY

COUNTY OF BOONE

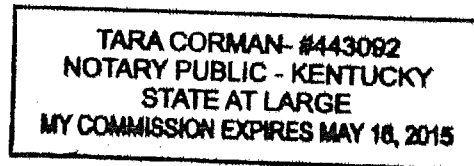
Sworn and subscribed before me, this, the 18 day of March 2014.



Notary Public

My Commission Expires:

5-16-2015



## Kevin Wall

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**From:** Tina Edmondson <tedmondson@ericdeters.com>  
**Sent:** Tuesday, March 18, 2014 4:39 PM  
**To:** Kevin Wall  
**Subject:** 15487 Lebanon Crittenden  
**Attachments:** image.jpeg; image.jpeg; photo.JPG; ATT00001.txt; image.jpeg; ATT00002.txt; image.jpeg; image.jpeg; ATT00003.txt

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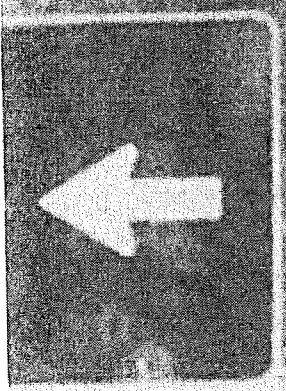
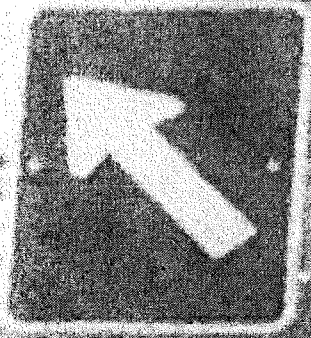
From: Heather HUNEYCUTT [hrhuneycutt@gmail.com]

Sent: Wednesday, March 12, 2014 11:39 PM

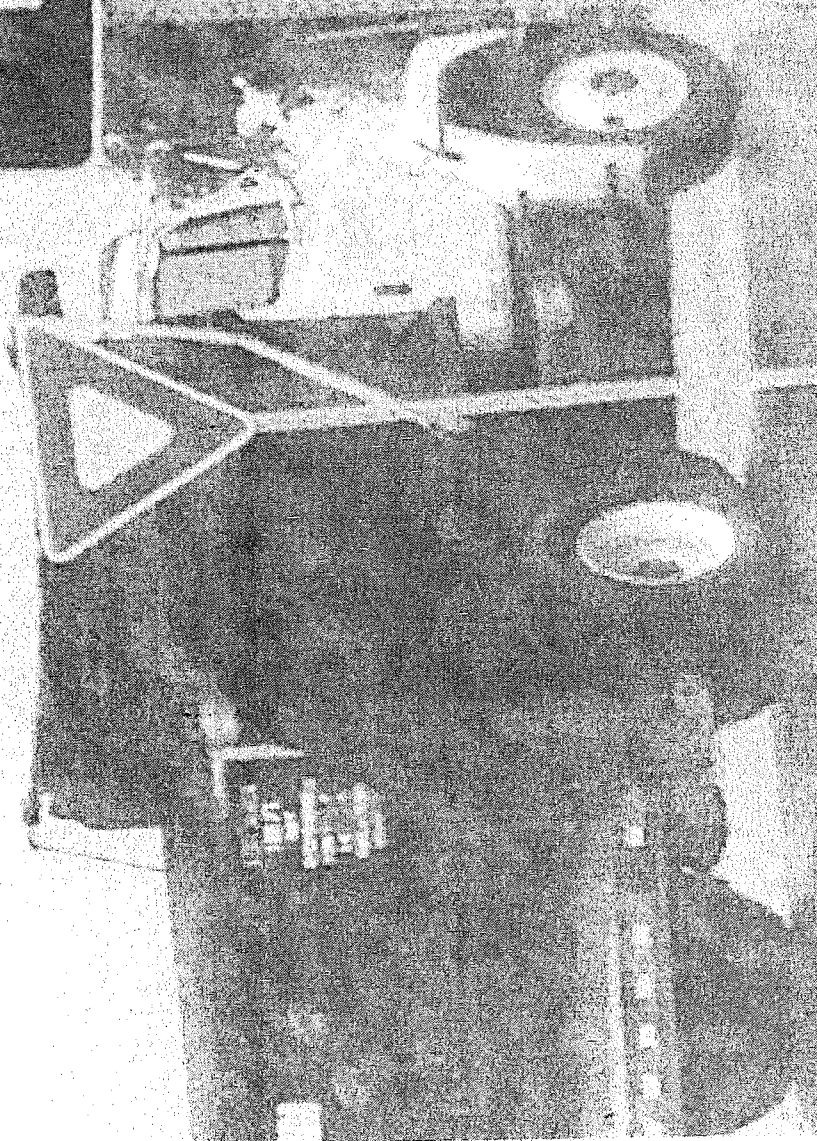
To: Tina Edmondson

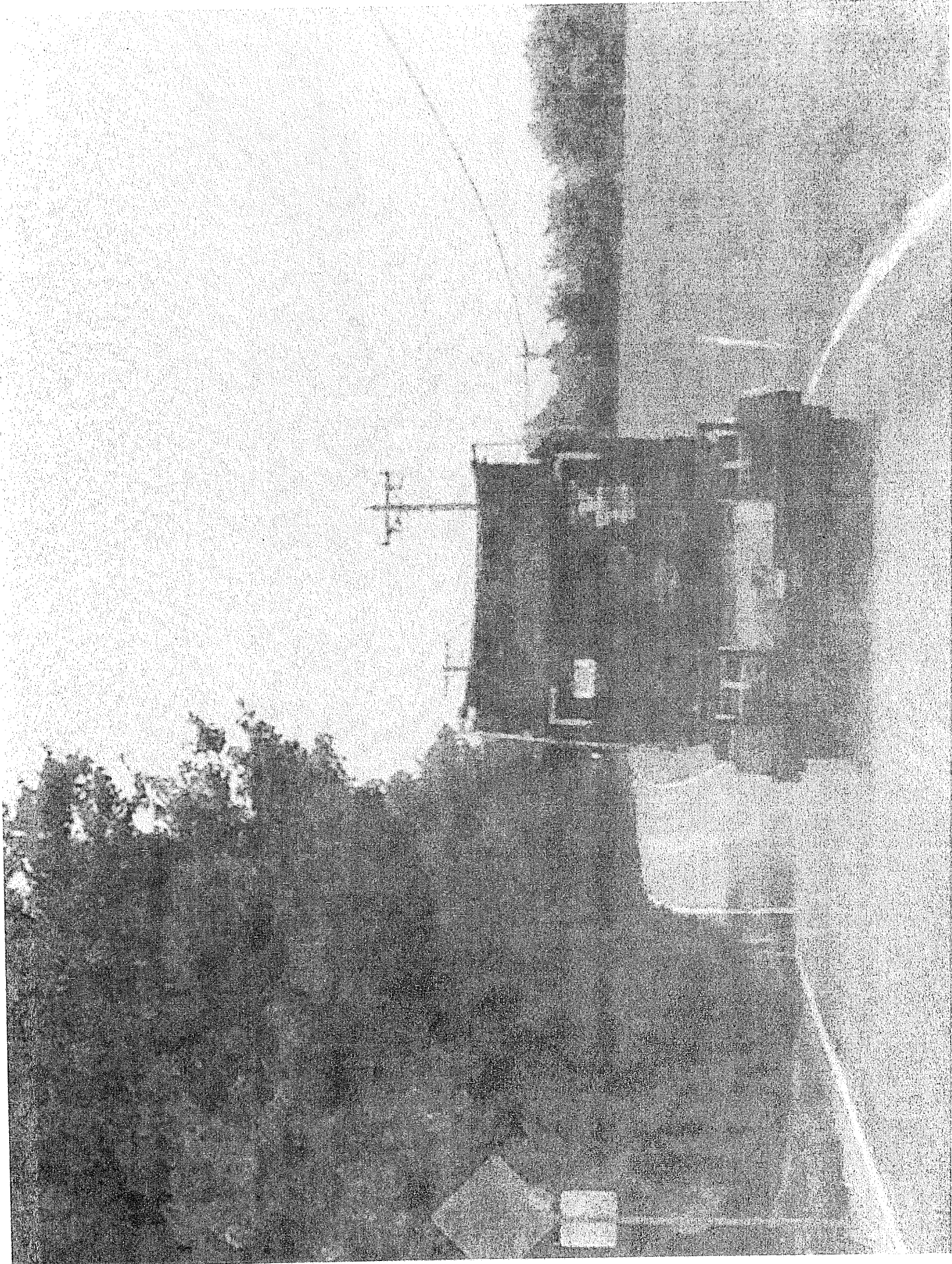
Cc: Jeremy and Kim Waits

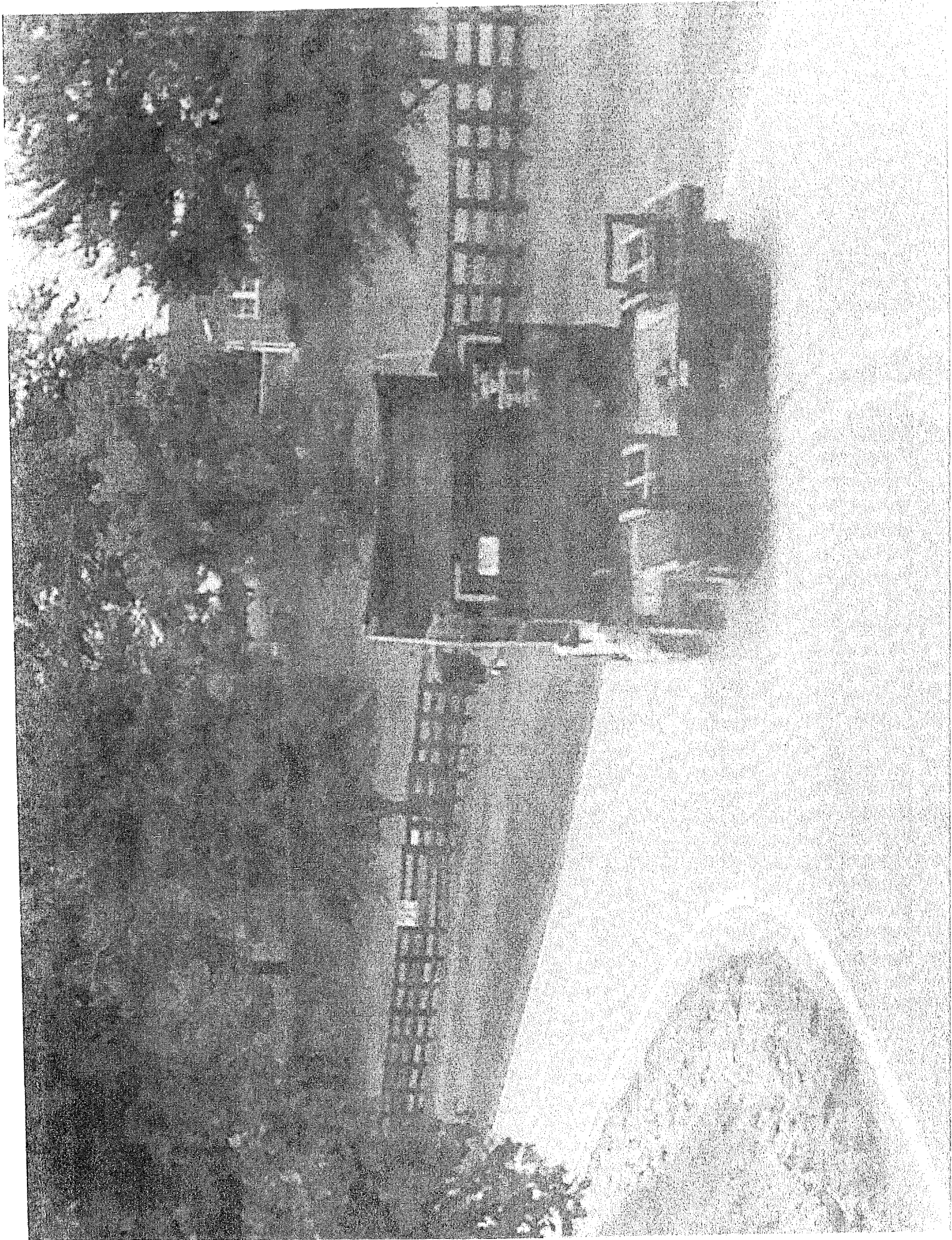
Subject: From branscum's property, bad drivers CONFIDENTIALITY NOTICE: This e-mail message contains information that is confidential, may be protected by the attorney/client or other applicable privileges, and may constitute non-public information and trade secrets. It is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this message, please notify the sender at 859-363-1900. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.

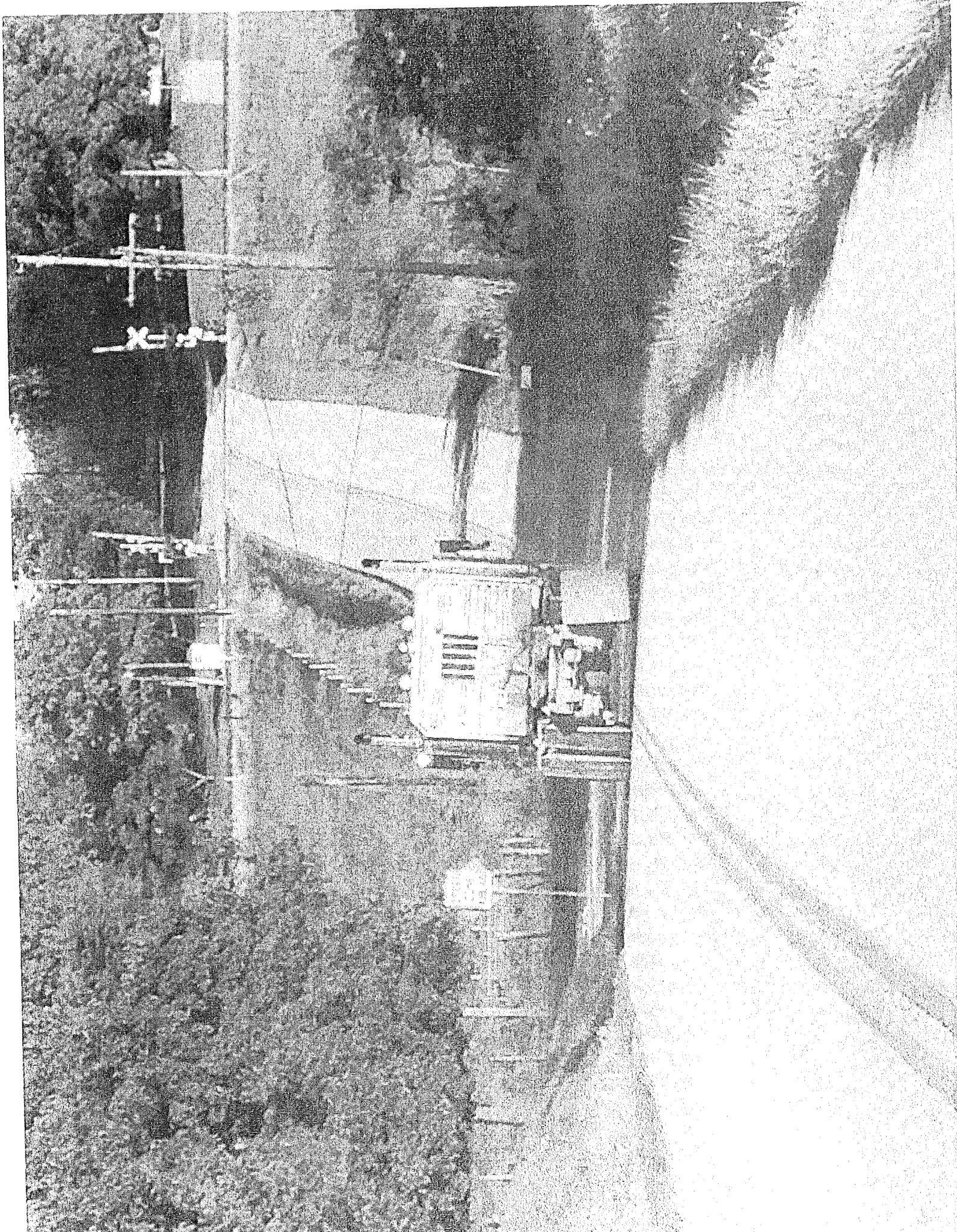


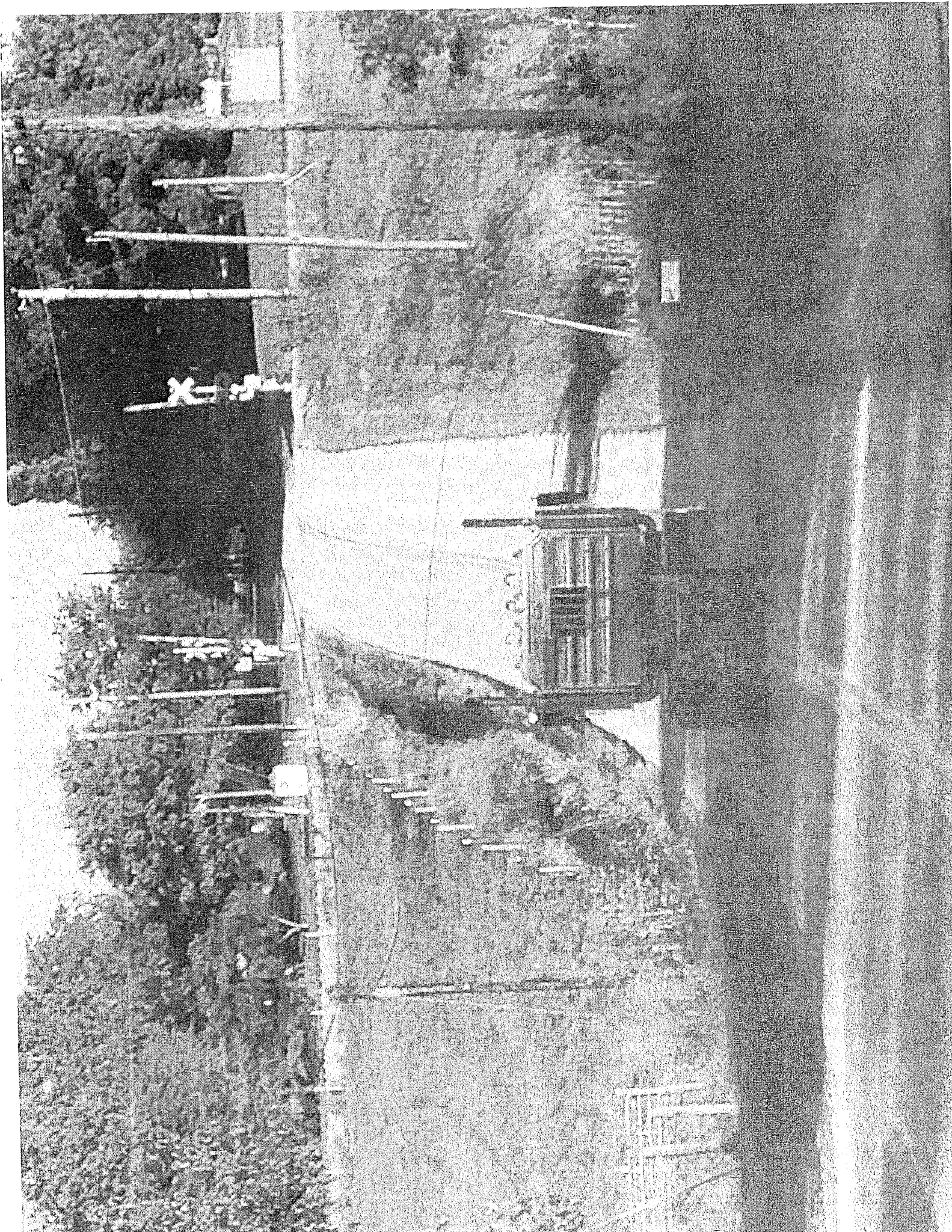
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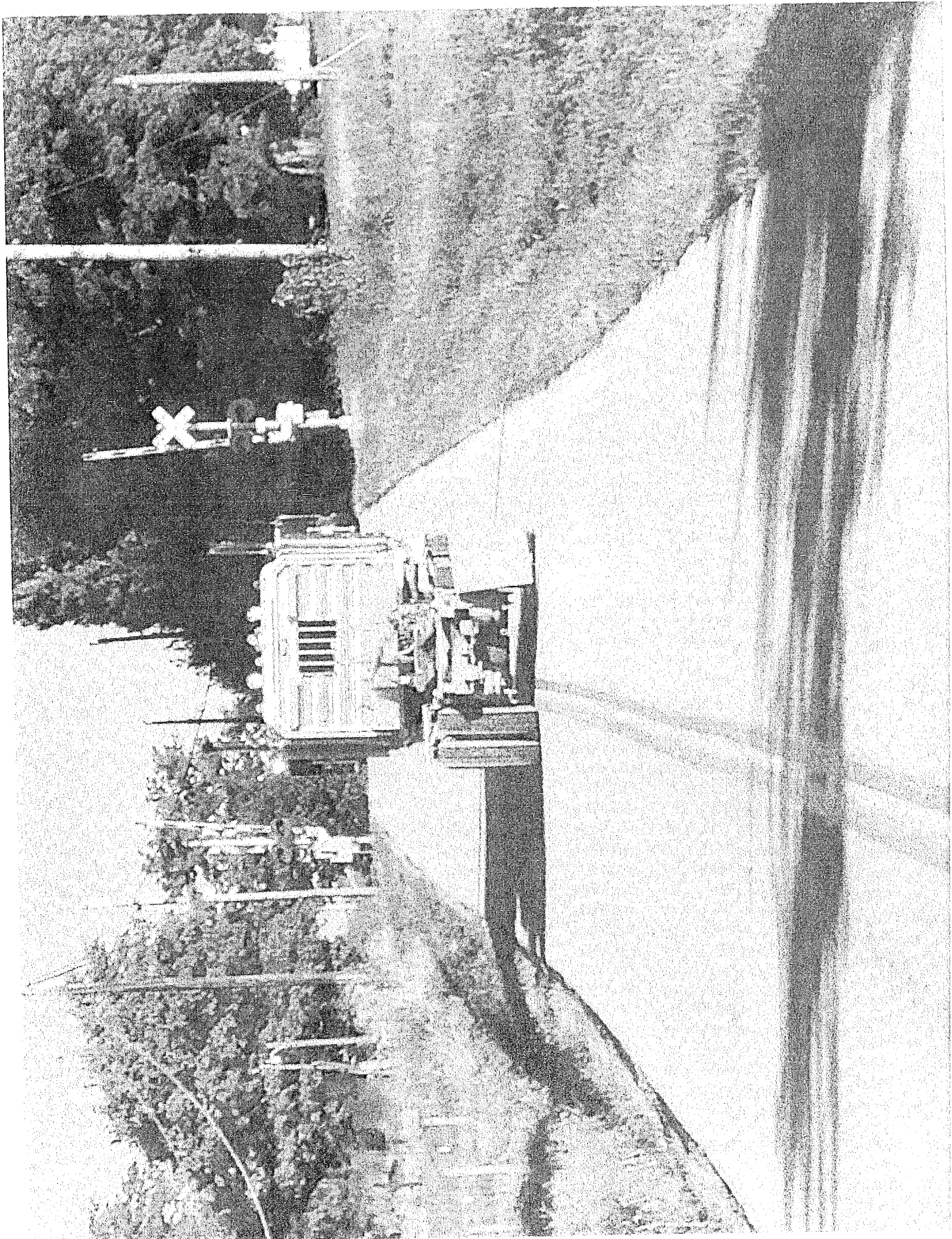












## Kevin Wall

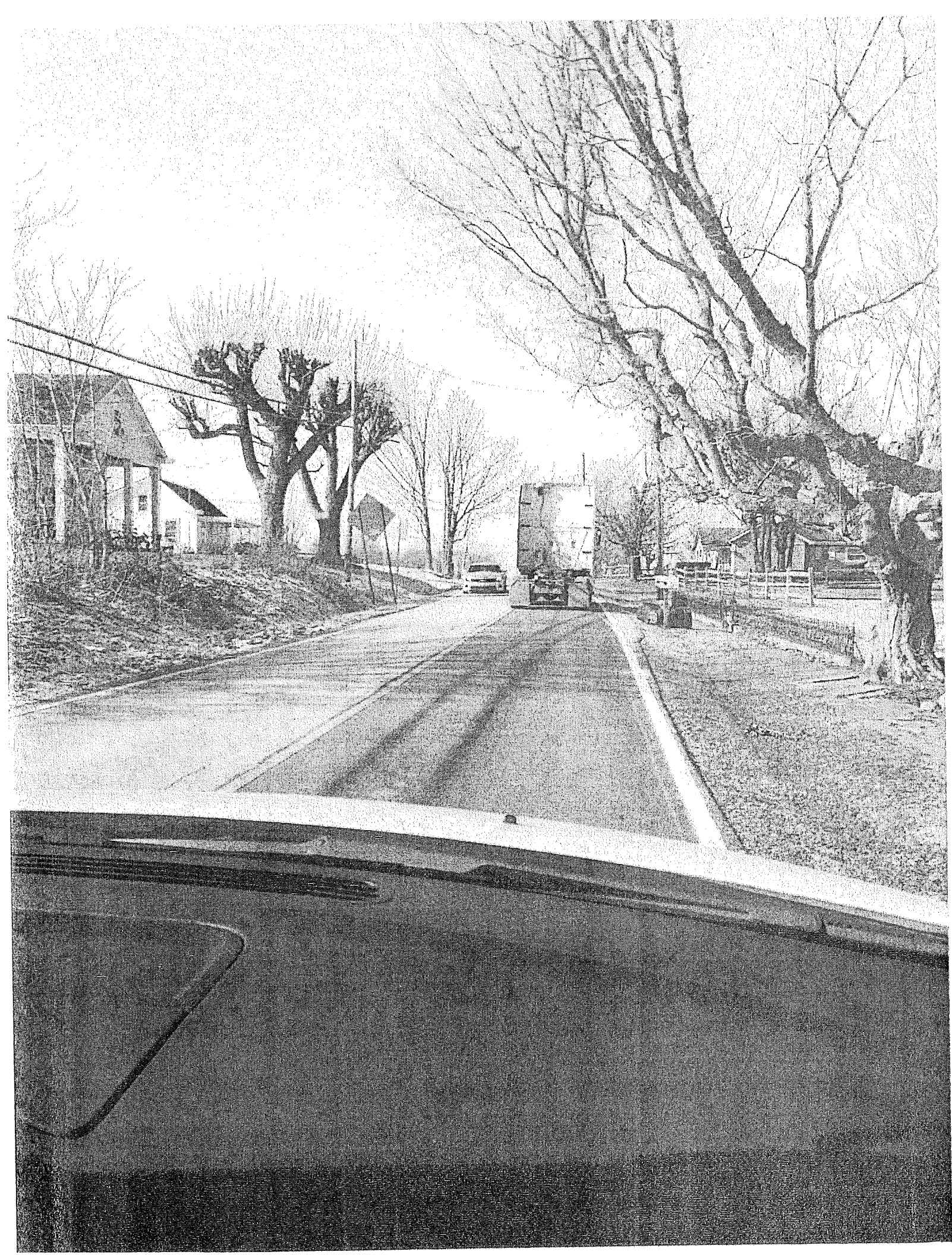
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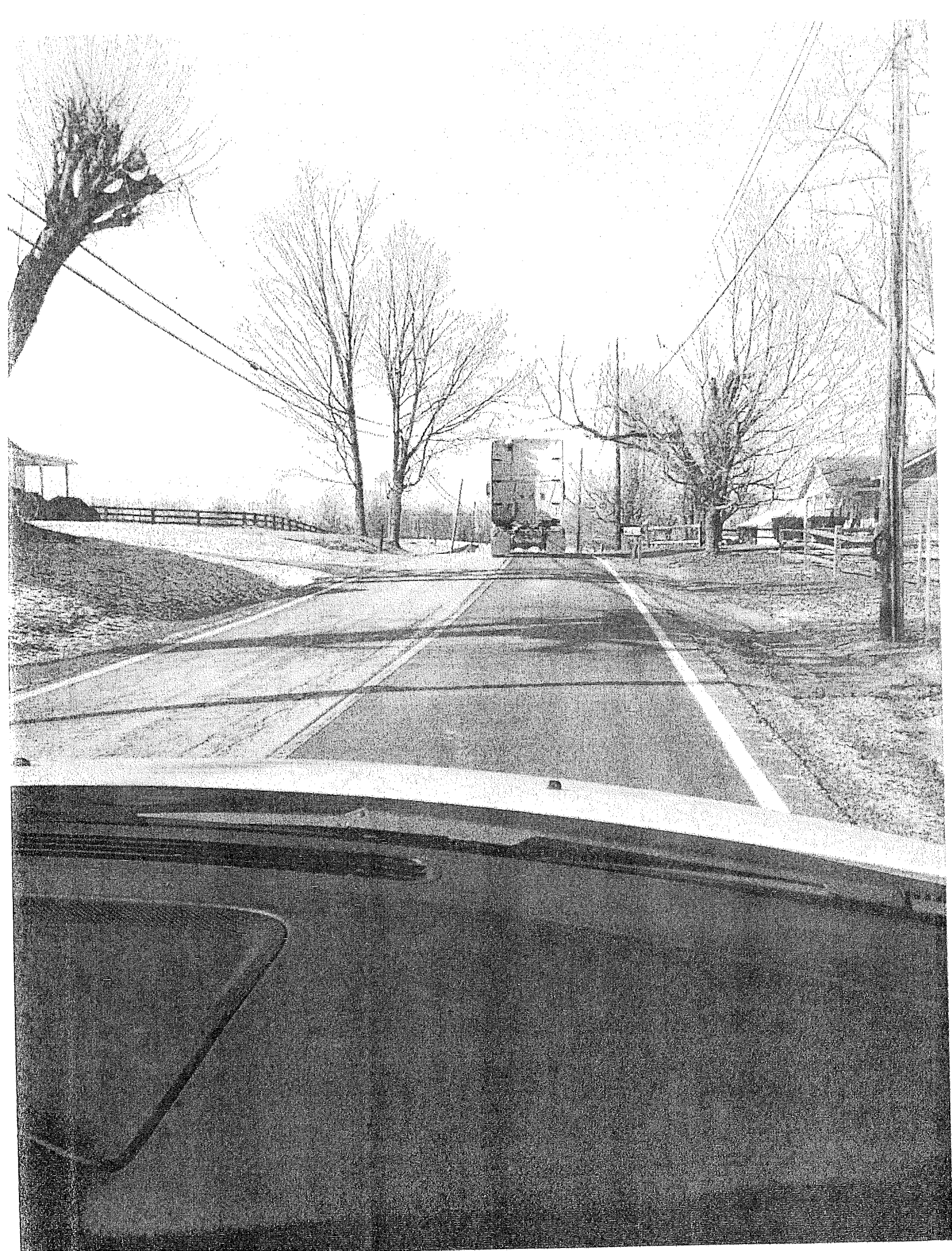
**From:** Tina Edmondson <tedmondson@ericdeters.com>  
**Sent:** Tuesday, March 18, 2014 4:39 PM  
**To:** Kevin Wall  
**Subject:** FW: Few more pics of trucks from RBI  
**Attachments:** image.jpeg; image.jpeg; image.jpeg; ATT00001.txt

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**From:** Heather HUNEYCUTT [hrhuneycutt@gmail.com]  
**Sent:** Wednesday, March 12, 2014 11:52 PM  
**To:** Tina Edmondson  
**Cc:** Jeremy and Kim Waits  
**Subject:** Few more pics of trucks from RBI

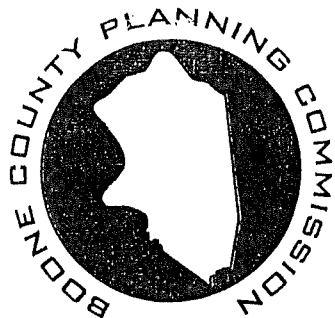






# EXHIBIT E

## BOONE COUNTY PLANNING COMMISSION



[www.boonecountyky.org/pc](http://www.boonecountyky.org/pc)  
[www.boonecountygis.com](http://www.boonecountygis.com)

Boone County Administration Building  
2950 Washington Street, Room 317  
P.O. Box 958  
Burlington, KY 41005

Phone (859) 334-2196; Fax (859) 334-2264  
[plancom@boonecountyky.org](mailto:plancom@boonecountyky.org)

April 19, 2013

Mr. Richard A. Brueggemann  
Hemmer DeFrank  
250 Grandview Drive, Suite 500  
Ft. Mitchell, KY 41017-5646

FAX: 578-3869

RE: Towing/Truck Repair Business at 15487 Lebanon-Crittendon Road, Boone County, Kentucky; Rural Suburban Estates (RSE) zone

Dear Mr. Brueggemann:

The purpose of this letter is to inform you of my determination as Zoning Administrator for the Boone County Fiscal Court regarding the alleged pre-existing, nonconforming status of the Ray Branscum property at 15487 Lebanon-Crittendon Road. It outlines the decision of the Zoning Administrator for the Boone County Fiscal Court and not any type of action by the Boone County Planning Commission.

As you are aware, the Planning Commission's staff contacted your client about a zoning violation for a towing business on the property due to a citizen complaint. In response to a letter sent by your client, I informed him in my 2/7/13 letter that I had no information at that time which supported a claim that a legal pre-existing, nonconforming use had been established, but that evidence could still be gathered and presented for a Zoning Administrator determination.

You claimed in your letter dated April 5, 2013 that legal pre-existing, nonconforming status had been established on the property for a "heavy trucking, truck repair and excavation business" pursuant to KRS 100.253(3) which states:

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.

Mr. Richard A. Brueggemann  
April 19, 2013  
Page 2

This same language is also outlined in Section 272 of the Boone County Zoning Regulations.

Your letter indicates that Mr. Branscum wishes to operate a towing and truck repair business on the property. A fenced area and additional gravel surfacing was added by your client for the purpose of storing towed vehicles. Thus, your client's use of the property is somewhat different than the prior owner's operation.

Several documents were provided to support the claim of a legal pre-existing, nonconforming use under the "ten year" rule. These include:

- A. A memorandum dated 4/5/13 which outlines the history of business activities on the site.
- B. The Articles of Organization of All Ways Trucking and Excavating, LLC, which formerly occupied the site.
- C. Boone County police reports.
- D. Delivery receipts for parts delivered to the site by Truck & Trailer Supply.
- E. Sworn affidavits from five long time neighbors who have personal knowledge of the site's history.
- F. Vendor records indicating that Boone County made payments to All Ways Trucking & Excavating, LLC.
- G. Commercial Property Data Card from the Boone County PVA office which indicates a "shop for trucking."

Some of the individual documents by themselves are not very compelling. For example, the police report which indicated a theft on the property could have been for a residence. However, when considering the documentation as a whole, it is my conclusion that a reasonable case has been made that a legal pre-existing, nonconforming use has been established on the property for a heavy trucking, truck repair and excavation business. From what I can discern, this business was operating on the site as early as 1998.

I have not identified any fact which leads me to believe that there was an attempt to discontinue or abandon the pre-existing, nonconforming use. "Abandonment" is defined in Article 40 of the Boone County Zoning Regulations as:

Mr. Richard A. Brueggemann  
April 19, 2013  
Page 3


To cease or discontinue a use or activity without intent to resume, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining, or otherwise improving or rearranging a facility, or during normal periods or vacation or seasonal closure, and also excluding lapses in between different owners or tenants who carry out the same use or activity.

It is my understanding that the prior owner went out of business due to financial problems versus an overt attempt to end the business. As noted in the definition, a change in ownership of the real estate or a short term lapse between owners does not automatically abandon a pre-existing, nonconforming use.

As stated above, I have determined that a legal pre-existing, nonconforming use has been established on the property for a heavy trucking, truck repair and excavation business. Your client now has the opportunity to submit an application for a Change in Nonconforming Use for review by the Board of Adjustment. Although I am authorized to determine whether or not a legal pre-existing, nonconforming use has been established, I am not authorized to grant changes to them. In this instance, both towing services and the fenced/graveled area for the storage of vehicles have been added by your client and were not part of the previous owner's operation. Additionally, your client's business does not include excavation like the previous business.

Because this letter outlines a decision of the Zoning Administrator, it may be appealed by any aggrieved party to the Boone County Board of Adjustment (BOA) within thirty (30) days of today's date. In order for an appeal to be granted, it must be demonstrated that the decision is in error.

Sincerely,

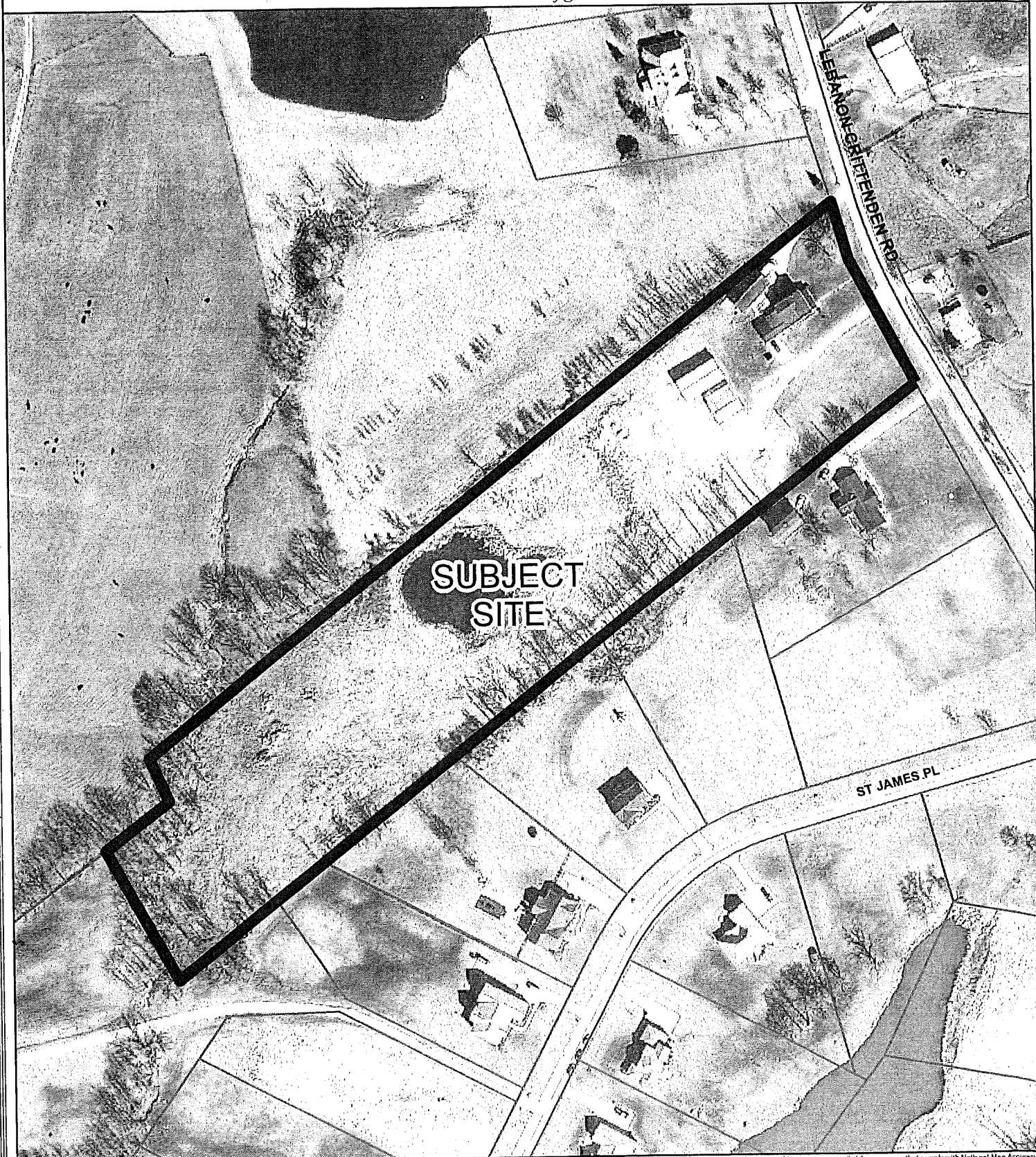


Kevin T. Wall, AICP  
Zoning Administrator  
Boone County Fiscal Court

cc: Kevin Costello, AICP, Executive Director  
Jeff Earlywine, Boone County Administrator  
Mitch Light, Asst. Zoning Administrator/Enforcement Officer  
Robert Neace, Boone County Attorney  
Richard Robinson, Graydon Head & Ritchey LLP; FAX: 525-0214  
Dale Wilson, BCPC Legal Counsel

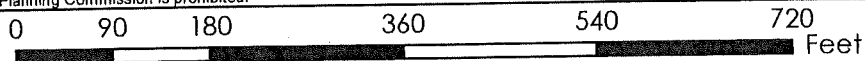
# Exhibit F - Site Map

www.boonecountygis.com



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**Boone County GIS - Putting Northern Kentucky on the Map**



Map Created: 07/01/2013

Map File: BooneMap.mxd  
ArcMap Document: BooneMap.mxd