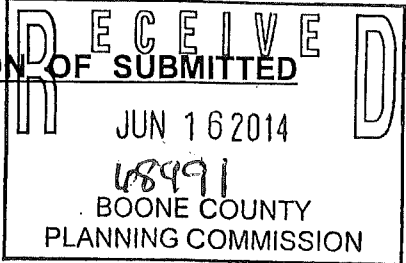


APPLICATION FORM

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) Boone Florence Walton Union
1. Boone Florence Walton Union
2. Conditional Use Permit Variance Appeal
3. Applicant's Name James & Ann Kelley
Applicant's Address 11953 U.S. Highway 42
Union Kentucky 41091
4. Description of Request: Improper use of property to effectuate a flea market/yard sale
5. Name of Development Agricultural Estate (A-2) and Rural
6. Location of Development 11941 U.S. 42 Boone County, Kentucky
7. Acreage Under Review 5.0113
8. Lot Number and Name of Subdivision (if part of a subdivision) Parcel 054.00-60-016.05
9. Owner of Property Ernest & Darlene Keeton
Address of Property Owner 11941 U.S. 42
10. Union Kentucky 41091
11. Proposed Use(s) on Site
12. Total Square Footage of Existing and/or Proposed Buildings
13. Current Zoning on Property
14. Deed Book Page No. Group No.
15. Is the site subject to a zone change?
16. Have you submitted a Site Plan with this request?
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: James & Ann Kelley (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 10/16/14 Fee Received \$1,820.00 Receipt # 18991
2. Is application complete? Yes No
3. Staff Reviewer KEVIN WALL
4. Scheduled Board Action Date 8/13/14
5. Board Action:
 Approved
 Approved with Conditions (See #6)
 Denial (See #7) APPEAL DENIED, ZA DECISION UPHOLD
6. Conditions of Approval: _____

7. Reasons for Denial: NO FINDING OF ZA ERROR

**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.

STAFF REPORT

APPELLANT: James Kelley and Ann Kelley through C. Ed Massey, Attorney
LOCATION: 11941 US 42, Boone County, Kentucky
ZONING: Agricultural Estate (A-2) and Rural Suburban (RS)
DATE: August 13, 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 5/21/14 from Kevin T. Wall, Zoning Administrator for the Boone County Fiscal Court, to Richard A. Brueggemann, attorney for Ernest Keeton and Darlene Keeton. Ernest Keeton and Darlene Keeton are the owners of the property in question.

The 5/21/14 letter and supporting materials, including a memorandum dated 5/14/14 and other documentation from the property owners' attorney, are attached as Exhibit A. A previous letter dated 4/16/14 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 4/13/14 memorandum from Richard A. Brueggemann and supporting materials which are included in Exhibit B.

The Appeal application, which includes a written Notice of Appeal prepared by C. Ed Massey, was received on 6/16/14. These items are attached as Exhibit C. The grounds for appeal are stated in the Notice of Appeal document. The application was complete when the adjoining property owners list for mailed public notices was received on 6/23/14. The Appellants are neighboring property owners.

The Zoning Administrator decision outlined in the 5/21/14 letter (Exhibit A) determined that a pre-existing, nonconforming use for a limited yard sale/flea market/swap meet/rummage sale type operation had been established on the property. The operation is limited to a four (4) day period beginning on the first Thursday of August each year during the "World's Longest Yard Sale," and could have a maximum of thirty five (35) outside vendors who sell merchandise from folding tables, tent canopies, booths, and the like. The decision does not permit overnight camping, parties, and comparable activities for vendors participating in the sale.

Flea market/swap meet style yard sales with outside vendors are not permitted in either the A-2 or RS zones that apply to the property. Yard sales or garages sales in which the

property owner or occupant occasionally sells their personal property is considered to be an acceptable accessory use at a single family residence.

Based on KRS 100.253(3), the Zoning Administrator determined that the use had occurred for at least ten (10) years without adverse orders and is therefore considered pre-existing, nonconforming. This determination is based on information provided by the property owners' attorney that the limited yard sale/flea market/swap meet/rummage sale had occurred every year since 1996 with at least thirty five (35) vendors. This determination was made in response to a request from the property owners' attorney, as a criminal complaint filed by the Planning Commission's Zoning Enforcement Officer for the event was pending in District Court. In response to the Appeal, the property owners' attorney filed a "Memorandum of Ernest Keeton and Darlene Keeton, Appellees, In Opposition to Appellants Appeal" which was received by the Planning Commission on 8/4/14 (Exhibit E).

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 6, Sections 621, 622, and 623 of the Boone County Zoning Regulations outline the Principally Permitted, Accessory, and Conditional Uses in the Agricultural Estate (A-2) zone.

Article 9, Sections 921, 922, and 923 of the Boone County Zoning Regulations outline the Principally Permitted, Accessory, and Conditional Uses in the Rural Suburban (RS) zone.

SURROUNDING LAND USES & ZONING

Detached single family residences on frontage lots are located to the east across US 42 (RS). Detached single family residences on frontage lots are located to the immediate north and south (A-2 and RS). Farmland is located to the west (A-2).

SITE CHARACTERISTICS

The property in question is comprised of two lots. It contains approximately 10 total acres and has approximately 470 feet of frontage along US 42. The property contains a detached single family residence and several outbuildings. The residence is approximately 260 feet from the edge of the US 42 road pavement and is accessed by a gravel driveway. The area around the residence is an open lawn. The rear/west part of the site is hilly and partially wooded.

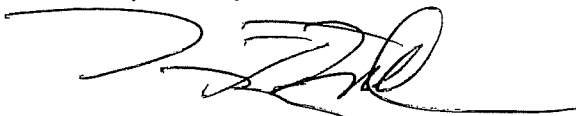
DECISION AND BASIS FOR DECISION

The decision in question, and the basis for this decision, are described in the previously mentioned letter dated 5/21/14 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,



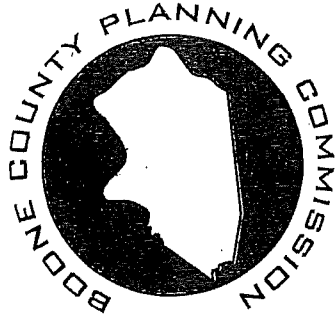
Kevin T. Wall, AICP
Zoning Administrator
Boone County Fiscal Court

EXHIBITS

- Exhibit A - 5/21/14 letter from Kevin T. Wall, Zoning Administrator, to Richard A. Brueggemann, Attorney, and supporting materials (Zoning Administrator decision subject to this appeal)
- Exhibit B - 4/16/14 letter from Kevin T. Wall, Zoning Administrator, to Richard A. Brueggemann, Attorney, and supporting materials
- Exhibit C - Application Materials including Notice of Appeal
- Exhibit D - Site Map
- Exhibit E - "Memorandum of Ernest Keeton and Darlene Keeton, Appellees, In Opposition to Appellants Appeal" received 8/4/14

EXHIBIT A

BOONE COUNTY PLANNING COMMISSION



www.boonecountyky.org/pc
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

May 21, 2014

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

FAX: 578-3869

RE: Annual Multi-Vendor Yard Sale at Ernest and Darlene Keeton Property, 11941 U.S. 42, Boone County, Kentucky; Agricultural Estate (A-2) and Rural Suburban (RS) Zones

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 Ernest and Darlene Keeton property at 11941 U.S. 42. 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 running a multi-vendor garage/yard/rummage sale in response to a citizen complaint.

You have argued that your clients have established a legal pre-existing, nonconforming use pursuant to the "ten year rule" in 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.

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

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

Mr. Richard A. Brueggemann
May 21, 2014
Page 2

- A. A memorandum dated 4/13/14 which outlines the history of the multi-vendor yard sale use and legal arguments.
- B. Sworn affidavits from eight individuals having knowledge of the operation's history were included with the 4/13/14 memorandum.
- C. Check receipts from the Keetons for two checks which paid for the construction of the barn in 1999, copies from Michael Paul's appointment books from 2007, 2008, and 2009 showing that he had scheduled time for the "127 yard sale," a photograph of a T-shirt from the 2004 "World's Longest Yard Sale," and photographs of the event on the Keeton's property from 2005, 2006, 2010, 2011, and 2012 were also included with the 4/13/14 memorandum. As stated in my 4/16/14 letter, these items do not particularly help or hurt the arguments made as they do not compel any certain conclusions.
- D. A memorandum dated 5/14/14 which was provided in response to my 4/16/14 letter that asked for additional documentation.
- E. Two cancelled checks to Got-A-Go for a portable toilet, a sworn affidavit from Pat Kelly (owner of Got-A-Go), and a classified ad from the 7/31/03 Dixie News offering vendor spaces were included with the 5/14/14 memorandum.

Your basic argument is that the Keetons have allowed, or contracted with, vendors to set up booths, tables, tent canopies, and the like on their property at 11941 U.S. 42 and sell various types of household goods, furniture, personal items, etc. (standard garage/yard/rummage sale type merchandise) for a continuous four (4) day period each year starting on the first Thursday of August. There has been no claim that pre-existing, nonconforming status should be extended to any other time period. The event is run as part of the multi-state "127 Roadside Sale/Market" (annual world's longest yard sale). Your 4/13/14 memorandum reports that the barn on the property has been, or could be, used for the event in case of inclement weather.

It is also contended that this activity has occurred every year without interruption since 1996, and that at least thirty five (35) vendors have participated in the event for the last fifteen (15) years. As you are aware, a flea market/swap meet style yard sale with outside vendors is not permitted in either the A-2 or RS zones that apply to the property. Yard sales or garages sales in which the property owner or occupant occasionally sells their personal property is considered to be an acceptable accessory use at a single family residence.

Based on the information and evidence provided, it is my conclusion that pre-existing, nonconforming status has been established per KRS 100.253(3) for the multi-vendor garage/yard/rummage sale use on the property at 11941 U.S. 42. As contended in the materials that you provided, this status is only for a continuous four (4) day period each

Mr. Richard A. Brueggemann
May 21, 2014
Page 3

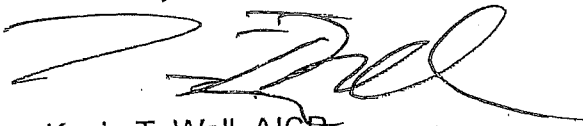
year starting on the first Thursday of August, and no other time period. This four day period coincides with the annual multi-state world's longest yard sale. Also as contended in your materials, it is limited to a maximum of thirty five (35) vendors.

In addition to the materials that you provided, I corresponded with a former Planning Commission employee regarding the event. He was familiar with the property and operation as his father was a vendor there between 2001 and 2006.

This decision does not allow overnight camping, parties, and the like in conjunction with the four day multi-vendor sale. I did not see any evidence or claims that these types of "extracurricular" activities should be included in the pre-existing, nonconforming status. Overnight activities seem to be at the root of the complaints that our office has received.

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, AICP, Executive Director
Jeff Earlywine, Boone County Administrator
James and Ann Kelley, 11953 U.S. 42, Union, KY 41091
Mitch Light, Asst. Zoning Administrator/Enforcement Officer
Robert Neace, Boone County Attorney
Dale Wilson, BCPC Legal Counsel

MEMORANDUM

To: Boone County Planning Commission (“Commission”)
From: Richard A. Brueggemann, on behalf of Ernest and Darlene Keeton
Re: Nonconforming Use/11941 U.S. Hwy 42, Union, Kentucky 41091
Date: May 14, 2014

This memorandum is submitted to present supplemental supporting evidence (“Supplemental Memorandum”) to accompany that contained in the initial Memorandum dated April 13, 2014, which is incorporated herein by this reference as if restated in full (the “Initial Memorandum”). The Initial Memorandum contains sworn testimony in the form of eight affidavits and certain other evidence to corroborate that testimony. This supplies additional corroborating evidence as requested in your response to the Initial Memorandum.

A. APPLICABLE EVIDENTIARY STANDARD

“Zoning ordinances . . . operate to deprive an owner of property of a use thereof which would otherwise be lawful, and [therefore] should be strictly construed in favor of the property owner.” *Bellemeade Co. v. Priddle*, 503 S.W.2d 734, 742 (Ky. 1973) (internal citations omitted). Resolving a question of whether a nonconforming use has been established on a property requires a determination on the facts available. “Factual determinations” are to be deemed “conclusive . . . if supported by substantial evidence.” *Hodge v. Luckett*, 357 S.W.2d 303, 304 (Ky. 1962). “Substantial evidence has been defined as some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people.” *Warren County Citizens for Managed Growth, Inc. v. Bd. of Comm’rs*, 207 S.W.3d 7, 16 (Ky. Ct. App. 2006).

B. ABUNDANT SUBSTANTIAL EVIDENCE PROVES THE EXISTENCE OF A NONCONFORMING USE ON THE KEETON PROPERTY

The Initial Memorandum presents numerous affidavits of sworn testimony, corroborating check register, calendar entries, and photos. To supplement that information, Mr. Keeton herewith submits additional evidence to prove the 127 Roadside Sale/Mart continued more than ten years on his property.

1. 2002 Portable Toilet Rental and Service for 127 Roadside Sale/Mart

Attached hereto at **Exhibit P** is a copy of a check register showing a check (ck. #519) dated August 13, 2002, payable to Got-A-Go for rental of a portable toilet. Another check (ck. #524) dated August 16, 2002, is attached at **Exhibit Q** and shows a payment for cleaning and pumping the toilet. These payments were made following the 127 Roadside Sale/Mart event that year for portable toilet rental and cleaning during that event. Mr. Patrick Kelly, sole officer and owner of Got-A-Go! Inc., has provided sworn testimony that corroborates that these payments were in fact made to Got-A-Go! Inc. for toilet rental, pumping and cleaning services during the 127 Roadside Sale/Mart on the Keeton Property in August 2002. See the Affidavit of Patrick Kelly at **Exhibit R**.

2. 2003 Dixie News Advertisement to Rent Space for 127 Roadside Sale/Mart

In 2003, Mr. Keeton advertised in the Dixie News to let space on his property for the 127 Roadside Sale/Mart. A copy of this Advertisement is attached at **Exhibit S**. The relevant portions of the classified publication are pasted below:

JULY 31, 2003 - THE DIXIE NEWS



This ad clearly shows the Keetons advertised to let space during August 2 – 10, 2003 for “NKY’s LARGEST 127 YARD SALE.” The phone number on the ad is that belonging to Mr. Keeton as is clear from the check registers attached at Exhibits P and Q. These checks show the same phone number for Mr. Keeton in 2002, a year prior to the ad. Mr. Keeton still has the same phone number today.

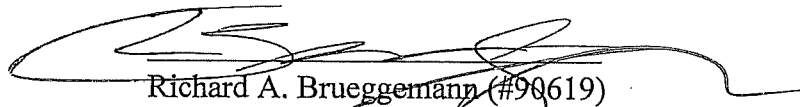
The totality of the sworn testimony in nine affidavits, check registers from 1999 showing payment for the barn used for the 127 Roadside Sale/Mart, commemorative shirt from 2004, photos from 2005, 2006, 2010, 2011 and 2012, copies of 2002 check registers and an affidavit from Got-A-Go! Inc.’s owner Mr. Patrick Kelly showing payment for portable toilets for the 127 Roadside Sale/Mart, and an advertisement from the Dixie News showing the Keetons offering space for the 2003 127 Yard Sale, represent abundant and substantial evidence of the nonconforming use for well beyond ten years.

As detailed in the Initial Memorandum, the evidence also demonstrates the number of vendors. Because the ordinances are to be construed in favor of the property owner's use, and because Mr. Keeton submitted "evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people," the nonconforming use of the 127 Roadside Sale/Mart should be established.

III. CONCLUSION

The Keetons 127 Roadside Sale/Mart business was an ongoing concern continuously, year after year, regularly and without interruption from 1996 through the present. Beginning 2000 and continuing through 2012, a span of fourteen years, the Keetons never had less than 35 vendors. Pursuant to KRS 100.253(3), this evidence establishes the Keetons' 127 Roadside Sale/Mart as a nonconforming use.

Respectfully Submitted,



Richard A. Brueggemann (#90619)

Hemmer DeFrank PLLC

250 Grandview Drive, Suite 500

Fort Mitchell, Kentucky 41017

(859) 344-1188

RBrueggemann@HemmerLaw.com

Counsel for Mr. Ernest and

Mrs. Darlene Keeton

Table of Exhibits

Exhibit P - Check register for Portable toilet rental (Check 519)

Exhibit Q - Check register for Portable toilet pumping/cleaning (Check 524)

Exhibit R - Affidavit of Patrick Kelly, sole officer and owner of Got-A-Go! Inc.

Exhibit S - Copy of advertisement page from the Dixie News dated July 31, 2003

ERNEST L. KEETON 07/01
DARLENE P. KEETON
859-485-6142
11941 HWY 42
UNION, KY 41091

TAX DEDUCTIBLE ITEM \$

519

73-70372421

8-13-02

BAL FORD	
THIS ITEM	110.60
BALANCE	
DEPOSIT	
OTHER	
BAL FORD	

*Let a few
months and you'll have it*

HOME SAVINGS BANK, FSB
LUDLOW, KENTUCKY

⑆ 24 24 70374⑆ 028000525800⑈ 0519

NOT NEGOTIABLE

ERNEST L. KEETON 07/01
DARLENE P. KEETON
859-485-6142
11941 HWY 42
UNION, KY 41091

TAX DEDUCTIBLE ITEM

\$ 524

73-70372421

8-16-02

BAL FORD	
THIS ITEM	35.00
BALANCE	
DEPOSIT	
OTHER	
BAL FORD	

*Let it go
Thank you so much
Ernest & Darlene Keeton*

HOME SAVINGS BANK, FSB
LUDLOW, KENTUCKY



⑆ 24270374⑆ 028000525800⑆ 0524

NOT NEGOTIABLE

**In Re: *Nonconforming use of Ernest Keeton*
at 11941 Hwy 42, Union, Kentucky 41091**

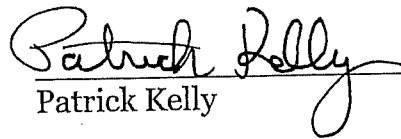
AFFIDAVIT OF PATRICK KELLY

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

1. My name is Patrick Kelly. I am of legal age and have personal knowledge concerning the statements in this affidavit.
2. I am the sole officer and the owner of Got-A-Go! Inc. In the past, I provided portable toilets for Mr. Keeton at his property at 11941 Hwy 42, Union, Kentucky 41091 (the "Keeton Property"). The purpose of providing these portable toilets were for use during the 127 Yard Sale events he hosted on his property at least as far back as 2002.
3. Got-A-Go! Inc. no longer has any records of portable toilet delivery or cleaning at the Keeton Property. However, I remember delivering and servicing toilets myself there on occasions for Mr. Keeton's 127 Yard Sale event. More specifically, I have reviewed the check stubs provided by Mr. Keeton at Exhibit A to this Affidavit and can state from my own recollection that this was for portable toilet service for the 127 Yard Sale event during August 2002. In fact, I remember that the portable toilet was so heavily used during the first couple days of the 127 Yard Sale that year that I had to return on the Saturday of the event to clean and pump it. That requires a fairly heavy use.


4. I know from personal knowledge, experience and involvement that Got-A-Go! Inc. delivered and serviced portable toilets on the Keeton Property for the 127 Yard Sale event at least as far back as 2002.

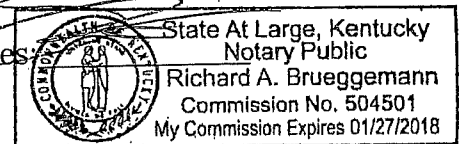
FURTHER, AFFIANT SAYETH NAUGHT.


Patrick Kelly

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 14th day of May 2014, by Patrick Kelly as his own free and voluntary act.


Notary Public
My commission expires



Erlange
Fri. • 8 to 9
RAIN OR SHINE
3421 Liberty
(behind Super
off Erlanger)

Florence
Fri, Sat & Sun • 9 to 9
5 Miriam Dr.
(off Ewing Blvd,
between RT 18 & 42)

Florence
Sat. • 8 to 2
STREET SALE
(Drive to Banklick to
7779 Cedar
Wood Circle

clothes 2 1/4 & 7/8,
toys, microwave,
hshld, crafts (fab-
rics, notebooks &
tote bags, etc).
1 Miriam Dr.
(corner of Ewing)

YARD SALE PACKS
With ANY Paid Yard Sale Ad
Kit Includes:
4 Durable, 8 1/2" x 11" Yard Sale
Signs • One Pen • Inventory List
• City Rules & Regulations
• Tips For A Successful Yard Sale
• 28 Peel and Stick Labels

Danny's
Yard
Maintenance
Lawn Mowing
Tree Trimming
Rainage Ditches
Lite Hauling
Estimates • 7 days/week
Owner Operated
59-992-4571

Erlange
Sat. • 9 to 11
BIG MOVING
302 McAlister

Edgewood
Sat. • 8 to 12
HUGE! Little Tykes
toys, quality kids
clothes & coats.
Pack 'N Play.
254 North Colony

Florence
Fri. • 8 to 4
Moving In Sale
Lots of misc
(Hopeful to Quinn to
8582 Winthrop
Circle

NKY'S LARGEST
127 YARD SALE
Spaces Available
Aug 2-10 in Union
485-6142

BURLINGTON Sat. • 8 to 4
Multi Family, Big Sale, Great Prices!
Old roll-top desk & handmade quilt
frames; clawfoot dining table; fishing
& sporting goods; baby items,
children's toys & clothes; household,
office & outdoor items; bike;
8-week-old beagle pups
& adult beagles-trained.
3999 Bullittsville Rd.

ECRICIAN
Prompt Service
Reasonable Prices
Free Estimates
Call Today!
363-8035

Erlange
Fri & Sat • 8 to 11
Computer
res, bed, dis
oods & on
44 Carriage
Drive

Park Hills
Fri & Sat • 8 to 3
Teen, baby & misc
items.
1409 Amsterdam
Road

Fort Thomas
Fri & Sat • 8 to 11
HHH TV microwave
table & chairs
Xmas presents
90 Highview Dr.

Verona
Sat & Sun • 9 to 5
Multi Family Street
Sale
NEAR WORLD'S LONGEST
YARD SALE
Southridge Dr.
(off Hwy 16, 3 1/2 miles
south of Verona
• 859-648-0108)

LAKESIDE PARK
Fri & Sat • 9 to 4
IT'S HERE! HUGE SALE- Antiques, col-
lectibles, glass, pottery, china, old cos-
tume jewelry, cedar wardrobe, metal doll
bed, baby & girls' clothes, stroller, baby
items, chain saws, toys, RAIN OR SHINE
Everything half-price Saturday
231 Applewood Drive

LANDSCAPING
MOWING
HEBRON
86-4765

ESTATE SALE

Elsmere
Fri & Sat • 8:30 to 11
Huge Yard Sale
30 Park Ave.

Burlington
Fri & Sat • 8 to 2
Moving Sale
furn, wash, microwave
kitchen, clothes,
computer, washer, dryer,
jewelry, aquarium
2953 Holly Hill Dr.
(Burlington Woods
Subd. off Rogers
Lane)

Ft. Mitchell
Sat. 8/9 • 8 to 3 Sun. 8/10 • 11 to 3
Diocesan Catholic Children's Home
Flea Market
Furn, antiques, dolls, collectibles
75 Orphanage Road
Edgewood

DI Removal
Clean out Basements,
Garages, Attics &
Remove Yard Debris
282-1505
801-8931 Cell

Ryland Heights
Thurs 8/7, Fri 8/8 & Sat 8/9 • 8
Due to the death of my mother, I am selling cc
of house & storage building. Antique furn
lectibles, depression glass, Shenango, I
Laughlin, Shawnee, 10 dolls, clocks, costun
elry, ironware, crocks, vintage child's clot
much more.

10261 Decoursey Pike
(275 East to Taylor Mill/Govington exit #7:
right onto Route 16 & Taylor Mill Road. Go 1
miles to Wolf Road; turn left. Stay on Wolf
dead ends 1/2 mile. Turn right onto Route
Decoursey Pike. Go 3 1/2 miles to sale.)

Crescent Springs
Fri & Sat • 9 to 2
Something for
everyone
No Entry Bids
568 Sycamore

Edgewood
Painting &
Such

HELP WANTED
You may submit your resume to us via E-Mail at

HELP WANTED

HELP WANTED

HELP WANTED

HELP WANTED

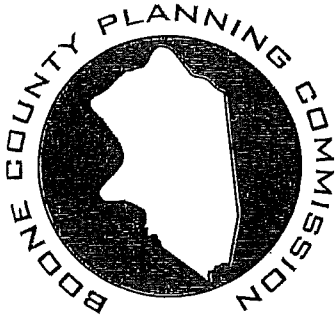
EXHIBIT B

BOONE COUNTY PLANNING COMMISSION

www.boonecountyky.org/pc
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



April 16, 2014

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

FAX: 578-3869

RE: 4/13/14 Memorandum Regarding Multi-Vendor Yard Sales at Ernest and Darlene Keeton Property, 11941 U.S. 42, Boone County, Kentucky; Agricultural Estate (A-2) and Rural Suburban (RS) Zones

Dear Mr. Brueggemann:

I have reviewed the memorandum and supporting documentation that you provided regarding vendor sales at the above referenced property. In these materials, it is contended that a pre-existing, nonconforming use has been established under the "ten year rule" per KRS 100.253(3). In this regard, the statute 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.

The basic argument is that the Keetons' have allowed vendors to set up booths, tables, tent canopies, and the like on their property at 11941 U.S. 42 and sell various types of household goods, furniture, personal items, etc. (standard garage/yard/rummage sale type merchandise) for a continuous four (4) day period each year starting on the first Thursday of August. The event is run as part of the multi-state "127 Roadside Sale/Market," which I have heard referred to as the "world's longest yard sale." Your memorandum reports that the barn on the property has been, or could be, used for the event in case of inclement weather.

It is contended that this activity has occurred every year without interruption since 1996, and that at least thirty five (35) vendors have participated in the event for the last fifteen (15) years. As you are aware, a flea market/swap meet style yard sale with outside vendors is not permitted in either the A-2 or RS zones that apply to the property. Yard sales or garages sales in which the property owner or occupant occasionally sells their personal property is considered to be an acceptable accessory use at a single family residence.

The supporting materials provided largely consist of testimonials or personal recollections from various parties in the form of affidavits. The supporting documents provided do not particularly help or hurt the arguments made as they do not compel any certain conclusions. These documents include:

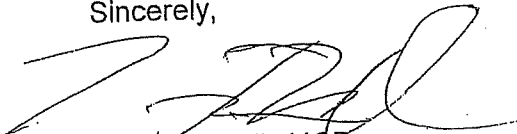
Mr. Richard A. Brueggemann
April 16, 2014
Page 2

- A. Check receipts from the Keeton's for two checks paying for the construction of the barn in 1999. These receipts do not show a connection or relationship to the annual event any more than any other barn in the community. Additionally, I could not find any record which showed that a Zoning Permit had been obtained for the construction of the barn and that it had been constructed legally.
- B. Copies from Michael Paul's appointment books from 2007, 2008, and 2009 showing that he had scheduled time for the "127 yard sale." While I don't dispute that this time may have been spent on the Keeton property as part of multi-vendor sales events, these documents do not show any connection to the Keeton property and they are only for three specific years which do not go back to at least the requisite ten year mark.
- C. A photograph of a T-shirt from the 2004 "World's Longest Yard Sale."
- D. Photographs of the event at the Keeton's property from 2005, 2006, 2010, 2011, and 2012. While these photos show the character of the event (multi-vendor yard sale with numerous customers), they do not attest to the size of the event and they do not go back to at least the requisite ten year mark.

In short, I am not in a position to make a final determination at this point based on the documentation provided. I request that you work with your clients to find additional documents which are specifically tied to the events held on the property over the years. Such documents could include receipts/invoices for services paid (like portable toilets or waste removal), receipts written to vendors for payment of their sales spaces, cancelled checks, tax or insurance documents, etc.

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. Please keep in mind that my decision at this juncture is that more documentation is needed.

Sincerely,

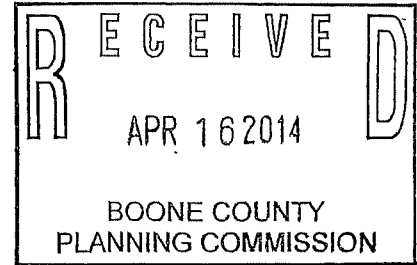


Kevin T. Wall, AICP
Zoning Administrator
Boone County Fiscal Court

KTW/vlm

cc: Kevin Costello, AICP, Executive Director
Jeff Earlywine, Boone County Administrator
James and Ann Kelley, 11953 U.S. 42, Union, KY 41091
Mitch Light, Asst. Zoning Administrator/Enforcement Officer
Robert Neace, Boone County Attorney
Dale Wilson, BCPC Legal Counsel

MEMORANDUM



To: Boone County Planning Commission ("Commission")
From: Richard A. Brueggemann, on behalf of Ernest and Darlene Keeton
Re: Nonconforming Use/11941 U.S. Hwy 42, Union, Kentucky 41091
Date: April 13, 2014

This memorandum presents facts and supporting evidence that demonstrates the property located at 11941 U.S. Hwy 42, Union, Kentucky 41091 (the "Property") has an established nonconforming¹ use of letting spaces to vendors desiring to participate in the recurring 127 Yard Sale (the "127 Roadside Sale/Mart").

I. BACKGROUND

The "127 Yard Sale", also known as the "127 Corridor Sale" began in 1987.² It is a four day sale that always starts on the first Thursday in August. Currently, the 127 Yard Sale extends from Addison, MI to Gadsden, AL for a total of 690 miles.³ For many property owners, the business use of letting of space on their property along the route to third party vendors developed from the 127 Yard Sale.⁴ Mr. Keeton has done so continuously every year without interruption since 1996.⁵

The Property owned by Mr. Ernest and Darlene Keeton comprises in excess of 10 acres.⁶ They purchased 5+/- acres in 1981, built their home, and moved in during 1983.⁷

¹ Ernest and Darlene Keeton do not concede that this use is otherwise illegal and that a nonconforming use is necessary to continue. In fact, they believe the use for their 127 Roadside Sale/Mart should be allowed pursuant to § 610, ¶ 12, via § 621, § 613, ¶¶ 13 and 20a via § 622, § 623, ¶¶ 11 and 18. Although the Keetons present that even if such use is illegal it is nevertheless an established nonconforming use, they expressly reserve the right to argue in the alternative that the use is not illegal.

² See press release on Website of the "Official" 127 Corridor Yard Sale at <http://www.127sale.com/media.htm>.

³ *Id.*

⁴ However, at the time of this writing, spaces are advertised at <http://www.127sale.com/vendor> that include locations in Florence, Lakeside Park, Fort Wright, and Owen County to name but a few. See also <http://127yardsale.net>.

⁵ See Affidavit of Mr. Ernest Keeton attached hereto at Exhibit A at ¶¶ 3-8. See also Affidavits of Mr. Michael Paul, Mr. Dan Berkemeier, Mr. Gary Hedrick, Ms. Patricia Woodward, Ms. Debbie Wood, and Mr. Kenny Brinkman referenced in Section II of this Memorandum. The testimony all corroborate Mr. Keetons.

⁶ See Keeton Affidavit, at ¶ 3.

⁷ *Id.*

In 1993, the Keetons purchased an additional 5+/- acres adjoining their initial tract.⁸ Except the portion fronting U.S. Highway 42, all of the Keetons' property is zoned "A2." The portion nearest to this highway is zoned "RS." Mr. Keeton first let his property to approximately five vendors in 1996.⁹ Mr. Keeton did not personally participate as a vendor that year. The next year, the Keetons let space to more vendors and also participated themselves.¹⁰ By 1999, the Keetons let to approximately 30 vendors for participation in the 127 Roadside Sale/Mart on his property.¹¹ The temperatures were very hot during the 1999 Roadside Sale/Mart that year; one day exceeded 100° Fahrenheit.¹² In October of 1999, the Keetons built a barn that could provide a place for shelter or shade.¹³ Copies from the Keeton's check register show the two checks that paid Blitz for the barn, namely, check numbers 1756 dated October 1, 1999 in the amount \$4,253.00, and 1777 dated October 21, 1999 in the same amount.¹⁴ These checks are attached as an exhibit to the Keeton Affidavit, and separately hereto as **Exhibit B**.

During August of 2000, the Keetons let space to between 40 and 50 persons, and in 2001 the number of spaces let increased to more than 50.¹⁵ Thereafter the number of spaces let remained fairly consistent until 2007.¹⁶ Beginning 2008, the number of spaces let dropped to between 40 and 45. Since 2008, the number has steadily declined to approximately 35.¹⁷ But between 1999 and 2012, the Keetons have never had less than 35 spaces let for their 127 Roadside Sale/Mart.¹⁸ Some of Keeton's neighbors participate in the 127 Roadside Sale/Mart on the Keetons property and have certified by affidavit that the property has been so used continuously for more than eleven years prior to 2012.¹⁹

II. THE PROPERTY HAS A NONCONFORMING USE

A. Applicable Law.

KRS § 100.253(3) states that:

Any use which has existed illegally and does not conform to the provisions of the zoning regulations, and has been in continuous

⁸ *Id.*

⁹ *Id.*

¹⁰ Keeton Affidavit, at ¶ 4.

¹¹ Keeton Affidavit, at ¶ 5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Keeton Affidavit, at ¶ 6.

¹⁶ Keeton Affidavit, at ¶ 7.

¹⁷ *Id.*

¹⁸ Keeton Affidavit, at ¶¶ 7-8.

¹⁹ See Affidavits of Michael Paul and Dan Berkemeier.

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.

A use may be continuous even though the use is only conducted seasonally or annually, provided it is regularly conducted. See *Hinkle v. Board of Zoning Adjustment & Appeals*, 415 S.W.2d 97, 100 (Ky. 1967) (holding seasonal operation of asphalt plant did not require continuous operation so long as it operated in proximity of the need). In *Hinkle*, Kentucky's then highest court distinguished seasonal but regular use from that of a carnival operation that used the property only "from time to time, but *never regularly or even annually*." See *id.* (emphasis added), distinguishing *Durning v. Summerfield*, 235 S.W.2d 761 (Ky. 1951). The carnival in *Durning* had no constant annual or continuous schedule and had only operated sporadically, three times out of ten years.

The complaining party has the burden of proving their allegations that the property owner is operating a nonconforming use without any right to continue that use. *Hinkle*, 415 S.W.2d, at 101; see also 4-22 ZONING LAW AND PRACTICE § 22-5, citing *id.* The complaining party cannot meet this burden against the Keetons. The Keetons have been engaging in the 127 Roadside Stand/Mart business regularly, the very same week(s) every single year, for more than fifteen years.

B. Proof of Continuous Use.

The exact date that the Keetons began operating their 127 Roadside Sale/Mart was 1996. Action was taken against Mr. Keeton in 2013 after that year's event. Therefore, the ten year look back for purposes of KRS § 100.253(3) would be 2004.²⁰ The Keeton 127 Roadside Sale/Mart business was never smaller than 35 vendors during any year beginning with 2000 all the way through 2013. This is proved by the testimony of Mr. Keeton as is presented in the factual background above. Corroborating Mr. Keeton's affidavit is sworn testimony from his neighbors and other individuals who participated in the 127 Roadside Sale/Mart on the Keeton Property during the past fifteen years or so. Certain physical evidence also corroborates the testimony.

²⁰ Apparently a complaint was also made in 2012 after the event but did not result in continuing enforcement to the current action. If it had, 2003 would be the ten year look back date. Either way, there is a period of nonconforming use well beyond 2003.

1. Testimony of Neighbors

Mr. Michael Paul, who owns property adjoining the Keeton Property,²¹ has lived next to the Keetons for 29 years. Mr. Paul has testified in his affidavit as follows:²²

- That Mr. Keeton operated his Property as a 127 Roadside Sale/Mart, including for sales, marketing and exhibition, continuously and consistently since the later 1990s, that being a few years before Mr. Keeton built his barn. Mr. Paul was able to confirm the dates by the fact that he and his son participated in the sales/mart on the Keeton Property, and that they did so regularly for more than ten years after the date Mr. Keeton's barn was first constructed.
- Mr. Paul stated that his son, David, was only a child at the time the Keeton barn was constructed and that David, who always enjoyed the 127 Roadside Sale/Mart on the Keeton Property, never missed the event until very recently.
- Mr. Paul also recounted that Mr. Keeton was injured sometime around 1996 and that, although Mr. Keeton did not personally participate that year, several vendors operated on the Property.
- Mr. Paul took off work every year to participate in the 127 Roadside Sale/Mart beginning 1999, and continued doing so every year thereafter until 2009 when he scaled back involvement.
- The event flourished on the Keeton Property from 1999 until around 2009, during which time Mr. Paul sold (mostly) old antique items and farm related equipment pieces.
- That in 2000 there were at least 40 vendors on the Keeton Property and that, in the years thereafter, participation increased every year until 2008.
- That, based upon Mr. Paul's personal knowledge, experience and participation, the Keeton 127 Roadside Sale/Mart has continued annually without interruption from at least 1999 through the present date.
- That, as a neighbor, Mr. Paul believes Mr. Keeton should be allowed to continue operating his 127 Roadside Sale/Mart.

²¹ See Affidavit of Michael Paul at Exhibit C.

²² *Id.*

Michael Paul also found past calendars documenting vacation days he took for the purpose of the 127 Roadside Sale/Mart from 2007-2009.²³ Mr. Dan Berkemeier, who is another long-time neighbor of the Keetons, testified that the Keetons have operated their 127 Roadside Sale/Mart for during the entire time Mr. Berkemeier lived there. He likewise testified that, as a neighbor, he believes the Keetons should be allowed to continue the operation.²⁴

2. Testimony of Participants

In addition to the foregoing neighbors, the persons identified below testified by affidavit as follows:

- **Mr. Gary Hedrick** testified that he “knew from personal knowledge, experience and participation that the [127 Roadside Sale/Mart] has continued annually without interruption from at least 1998 through the present date” on the Keeton Property. Mr. Hedrick testified that he is both a repeat vendor and also helps Mr. Keeton with the business. He further testified that, “between 2001 and 2013 there have never been less than 30 vendors.” Mr. Hedrick, who retired from the Kentucky Department of Highways, further testified that, “the way Ernie does the 127 Yard Sale on his property is much safer than the other places where people are parking half on the road and half in the ditch, then jumping out of their cars.”²⁵
- **Ms. Patricia Woodward** testified that she has attended the 127 Roadside Sale/Mart on the Keeton Property every single year back to at least 2000, and that she knew from “personal knowledge, experience and participation that the [Keeton 127 Roadside Sale/Mart] has continued annually without interruption from at least 2000 through the present date.” In fact, she remembered helping Mr. Keeton prior to the barn being built. According to Ms. Woodward, after the Keetons built the barn, their 127 Roadside Sale/Mart business “increased a lot.” She testified that “[t]he vendors on the Keeton Property averaged around 45 or so until recent years when it dropped off some.”²⁶
- **Ms. Debbie Wood** testified that, except for 2013, she attended the 127 Roadside Sale/Mart on the Keeton Property “every single year back to

²³ See Calendar pages from Michael Paul’s Calendar at **Exhibit D**.

²⁴ See Affidavit of Dan Berkemeier at **Exhibit E**.

²⁵ See Affidavit of Gary Hedrick at **Exhibit F**.

²⁶ See Affidavit of Patricia Woodward at **Exhibit G**.

1997.” She cited particular details in her testimony that dated her participation, stating she remembered the first year of her participation “because [she] sold items there from [her] cousin’s Estate.”

Ms. Wood testified that her cousin died in 1996 and left Ms. Wood the house and personal property in it. According to Ms. Wood, she sold those items at the Keeton 127 Roadside Sale/Mart in 1997, and thereafter “continued to participate as a vendor through 2011.” Wood stated she “attended in 2012 but only for enjoyment” and that, for her, “it is a tourist attraction.” She certified in her affidavit that, based upon her own “personal knowledge, experience and participation, [the 127 Roadside Sale/Mart] has continued annually without interruption for more than ten continuous years prior to 2012.” Ms. Wood testified that she “[does not] ever recall [there] being less than 35 vendors on the Keeton Property after Ernest built his barn.”²⁷

- **Mr. Kenny Brinkman** testified that he participated in the 127 Roadside Sale/Mart on the Keeton Property “from at least the late 1990s through the present date.” Mr. Brinkman stated that before he retired from his job, his son set up their particular vendor area on the Keeton Property for the 127 Roadside Sale/Mart. Mr. Brinkman would work their stand on the weekend. Mr. Brinkman further testified that his son did this for him until Mr. Brinkman’s retirement in 2000, at and after which time he then set up and worked their stand himself. According to Mr. Brinkman, the Keeton event was and is extremely popular and he still attends it. Mr. Brinkman testified that he never remembered their being less than 35 vendors except for perhaps in 2013.²⁸
- **Mr. Gary Strange** testified that he has participated in the 127 Roadside Sale/Mart on the Keeton Property every past year for at least 15 years. He also testified that during most of those years there were approximately 50 vendors.²⁹

The consensus of the testimony from Mr. Keeton, the adjoining property owners, and participants in the 127 Roadside Sale/Mart on the Keeton Property, is that the Keetons operated this business for approximately fifteen continuous years, well beyond ten. Although the testimony as to the number of vendors varied a little, all agree that there was never less than 30 vendors—the lowest number of 30 vendors occurring last

²⁷ See Affidavit of Ms. Debbie Wood at **Exhibit O**.

²⁸ See Affidavit of Kenny Brinkman at **Exhibit H**.

²⁹ See Affidavit of Gary Strange at **Exhibit I**.

year, 2013. Between 2000 and 2012, the number was higher. All affiants who are neighbors to Mr. Keeton support his right to continue the use of his property for the 127 Roadside Sale/Mart. They hold this view despite their close proximity.

3. Corroborating Documents

The Keetons' check register demonstrates that they did in fact build their barn in October 1999, after the 127 Roadside Sale/Mart for that year.³⁰ This corroborates Mr. Keeton's testimony and also confirms the dates in the affidavits of Michael Paul, Patricia Woodward, and Debbie Wood, who referenced the build date of the barn to establish their first participation in the 127 Roadside Sale/Mart at the Keetons. Attached at **Exhibit J**, is a picture of a commemorative shirt that the Keetons provided for sale at their 127 Roadside Sale/Mart during 2004.

Finally, attached at **Exhibits K, L, M, and N** are photos of the 127 Roadside Sale/Mart at the Keetons for the years 2005, 2006, 2010 and 2011/2012, respectively. Some of these pictures go back nine years³¹ and demonstrate the size, use and similarity of 127 Roadside Sale/Mart business existing on the Keeton Property during the period.

III. CONCLUSION

The Keetons 127 Roadside Sale/Mart business was an ongoing concern continuously, year after year, regularly and without interruption from 1996 through the present. Beginning 2000 and continuing through 2012, a span of fourteen years, the Keetons never had less than 35 vendors. Pursuant to KRS 100.253(3), this evidence establishes the Keetons' 127 Roadside Sale/Mart as a nonconforming use.

³⁰ See Exhibit B for the two check register records, the Keeton Affidavit and attachment thereto.

³¹ The Keetons are attempting to locate pictures earlier than 2005.

Respectfully Submitted,



Richard A. Brueggemann (#90619)

Hemmer DeFrank PLLC

250 Grandview Drive, Suite 500

Fort Mitchell, Kentucky 41017

(859) 344-1188

RBrueggemann@HemmerLaw.com

Counsel for Mr. Ernest and
Mrs. Darlene Keeton

Table of Exhibits

- Exhibit A - Affidavit of Mr. Ernest Keeton
 - Exhibit B - Check register for Barn Purchase (Checks 1756 & 1777)
 - Exhibit C - Affidavit of Michael J. Paul
 - Exhibit D - Calendar Pages from Michael Paul's Calendar
 - Exhibit E - Affidavit of Dan Berkemeier
 - Exhibit F - Affidavit of Gary Hedrick
 - Exhibit G - Affidavit of Patricia Woodward
 - Exhibit H - Affidavit of Kenny Brinkman
 - Exhibit I - Affidavit of Gary Strange
 - Exhibit J - Photo of Commemorative Shirt sold by Keetons in 2004
 - Exhibit K - Photos of the Keeton 127 Roadside Sale/Mart from 2005
 - Exhibit L - Photos of the Keeton 127 Roadside Sale/Mart from 2006
 - Exhibit M - Photos of the Keeton 127 Roadside Sale/Mart from 2010
 - Exhibit N - Photos of the Keeton 127 Roadside Sale/Mart from 2011-12
 - Exhibit O - Affidavit of Debbie Wood
-

**In Re: *Nonconforming use of Ernest Keeton*
at 11941 Hwy 42, Union, Kentucky 41091**

AFFIDAVIT OF ERNEST KEETON

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

1. I am of legal age and reside at the property located at 11941 Highway 42, in Union, Kentucky 41091 (the "Property"). I have personal knowledge concerning the statements in this affidavit.

2. In 1981 I bought the Property, which then comprised over 5 acres. I moved to the Property during 1983. Ten years later, in 1993, I purchased an additional 5 acre tract adjoining the Property bringing the total acreage to more than ten.

3. During 1996, approximately five persons asked to use my property for the 127 Yard Sale that occurs annually during the first week end in August. I allowed them to do so, although I did not participate in the event that year.

4. In 1997, I got involved in the 127 Yard Sale by participating in it directly and offering space on my Property for vendors not having adequate yards or room to accommodate the 127 Yard Sale shoppers during the event. By the 1998 event, we had let 12 - 15 spaces to other persons. At that time, we set up alongside our house.

5. During 1999, we let space to 30 persons. During that year's sale, temperatures were very hot. As I recall, it was over 100° Fahrenheit. We did not

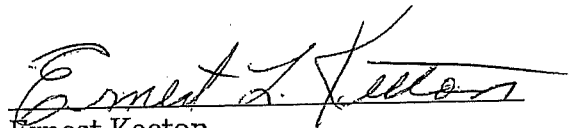
have adequate place to allow folks to find shade indoors. I decided we needed to either build a barn or quit letting space. So in October of 1999 we build our barn. Attached at **Exhibit A** are copies from our check register showing the two checks that paid Blitz for the barn, check no. 1756 dated October 1, 1999 in the amount \$4,253.00, and check no. 1777 dated October 21, 1999 in the same amount.

6. By August of 2000, we let space to between 40 and 50 persons. In 2001, the number of spaces let increased to between 50 and 55.

7. From 2001 until 2007, the number of spaces let remained fairly constant at between 50 and 55. In 2008, the number of spaces let dropped to around 40-45. Since 2008, the number has steadily declined to approximately 35.

8. Between 1997 and the present, we have used and operated our Property for the 127 Yard Sale consistently and continuously. We have not missed a single year. Our use has included the barn and tents for the vendors and patrons, as well as provision of refreshments. At no time between 1999 and 2012 have we had fewer than 35 spaces let for the event.

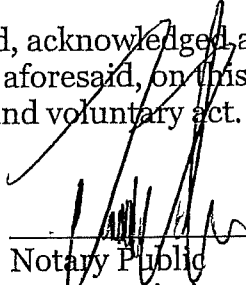
FURTHER, AFFLANT SAYETH NAUGHT.


Ernest Keeton

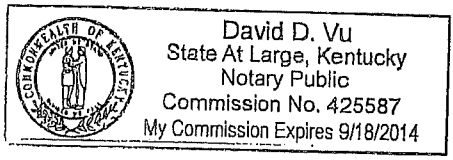
STATE OF KENTUCKY)
) SS:
COUNTY OF BOONE)

The foregoing affidavit was signed, acknowledged, and sworn to before me,
a notary public for the State and County aforesaid, on this 2nd day of ~~March~~ April
~~2013~~; by Ernest Keeton as his own free and voluntary act.

2014



Notary Public
My commission expires: 09-18-2014



DARLENE OR ERNEST KEETON 0-96
11941 US HWY. 42 PH. 485-6142
UNION, KY 41091

1756
73-18/421

PNC BANK, OHIO, NATIONAL ASSOCIATION
FORT MITCHELL, KY

DEPOSIT

[Redacted Box]

BALANCE
FORWARDED

4253.00

10421001881

1756 1800051808

NOT NEGOTIABLE

DARLENE OR ERNEST KEETON 0-96
11941 US HWY. 42 PH. 485-6142
UNION, KY 41091

1777
73-18/421

PNC BANK, OHIO, NATIONAL ASSOCIATION
FORT MITCHELL, KY

DEPOSIT

[Redacted Box]

BALANCE
FORWARDED

7233.00

10421001881

1777 1800051808

NOT NEGOTIABLE

**In Re: *Nonconforming use of Ernest Keeton*
at 11941 Hwy 42, Union, Kentucky 41091**

AFFIDAVIT OF MICHAEL J. PAUL

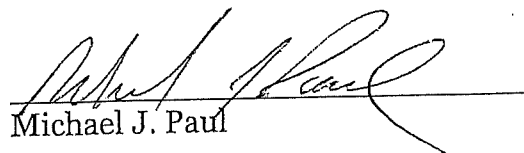
Comes now affiant, Michael J. Paul, after having first been duly cautioned and sworn, deposes and states as follows according to his best recollection and belief:

1. My name is Michael J. Paul. I am of legal age and reside at 11931 U.S. 42, in Union, Kentucky 41091. I have resided at this address for 29 years. I have personal knowledge concerning the statements in this affidavit.
2. I am a neighbor to Ernest Keeton. Mr. Keeton owns the property at 11941 Hwy 42, Union, Kentucky 41091 (the "Keeton Property"). Mr. Keeton has operated his property during the 127 Yard Sale events for marketing and exhibition continuously and consistently since the later 1990s, a few years before he built his barn. My son and I have participated in the event on the Keeton Property for more than ten continuous years from the date Mr. Keeton built his barn.
3. Mr. Keeton was injured sometime around 1996. As I recall, he didn't participate that year but had several folks use his property for the 127 Yard Sale that year. My son David, who was only a child at that time, used to enjoy being at the event. He never missed it until recently. I began participating on the Keeton Property by 1999 and continued participating every year thereafter until 2009 when I reduced my involvement. In fact, during each of those years I would take off work that week in order to participate.

4. The event flourished on the Keeton Property from 1999 until around 2009. I mostly sold old antique items and farm related equipment pieces. There was much interest. In 2000, there were at least 40 vendors on the Keeton Property. Participation and popularity of the event increased every year until around 2008. I think the economic downturn curbed interest somewhat. In 2009 I quit dedicating late July and early August to the event because the return no longer justified the expenditure of my time and expense. I still casually participate but my involvement is nothing compared to what it was before 2009. Part of the reason I stopped participating as heavily was the decrease in excitement for the event. But mostly I scaled back because buyers seemed to have less appreciation for the items I offered.

5. I know from personal knowledge, experience and participation that the 127 Yard Sale has continued annually without interruption from at least 1999 through the present date. It is my view as a neighbor that Mr. Keeton should be allowed to continue doing so. In fact, allowing me and other neighbors to sell from his property is far better than our trying to do so from our own properties. The 127 Yard Sale at the Keeton Property is much safer than the other places where people pull off into the ditch or stop on the highway while awaiting space to pull-into a congested driveway.

FURTHER, AFFIANT SAYETH NAUGHT.


Michael J. Paul

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 26 day of March 2014, by Michael J. Paul as his own free and voluntary act.

AMY MURRAY
Notary Public
State at Large
Kentucky
My Commission Expires Feb. 11, 2017

Amy Murray #48315
Notary Public
My commission expires: 02/11/17

JULY '07

AUGUST

S	M	T	W	T	F	S
	6	6	7	8	9	10
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

30 MONDAY

Joe VAC

31 TUESDAY

Joe VAC

1 WEDNESDAY

AUGUST

Joe VAC

SEPTEMBER

S	M	T	W	T	F	S
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

"The past always looks better than it was because it isn't here."

— FINLEY PETER DUNNE

THURSDAY 2

Mike VAC
127 yard Sale

FRIDAY 3

MIKE VAC
127 yard Sale

SATURDAY 4

127 yard sale OFF

SUNDAY 5

127 yard sale

AUGUST '08

AUGUST						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

4 MONDAY
Civic Holiday, Canada
(AB, BC, MD, NB, NT, ON, SK)

~~Fast~~

~~Greg VAC~~

5 TUESDAY

~~Fast~~

3:15 Hand Therapy

6 WEDNESDAY

~~Am. Lullaby 2:10 PM~~

SEPTEMBER

S	M	T	W	T	F	S
1	2	3	4	5	6	
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

"The best and most beautiful things in the world cannot be seen or even touched. They must be felt with the heart."
— HELEN KELLER

THURSDAY 7

Mike VAC

Fast / 127 yard sale

FRIDAY 8

~~Fast~~
~~Fast~~

Fast / 127 yard sale

Paul VAC

SATURDAY 9

127 yard sale OFF?

SUNDAY 10

127 yard sale

Tony's B-Day Party

AUGUST '09

AUGUST

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

3 MONDAY
 Civic Holiday, Canada
 (AB, BC, MB, NB, NT, ON, SK)

Boone City Fair

4 TUESDAY
 Jude Beck Las Vegas

Boone City Fair

5 WEDNESDAY
 Steve 1/2 PM VAC

Boone City Fair

Dave VAC

SEPTEMBER

S	M	T	W	T	F	S
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

"Keep high aspirations,
 moderate expectations and
 small needs."

— H. STEIN

THURSDAY 6

Steve VAC

Mike VAC

Boone City Fair
 127 yard Sale

Dave VAC

FRIDAY 7

Steve VAC

Mike VAC

Boone City Fair
 127 yard Sale

DAVE VAC

SATURDAY 8

City Auction

Boone City Fair

127 yard Sale

SUNDAY 9

127 yard Sale

Picked up Mack

**In Re: *Nonconforming use of Ernest Keeton*
at 11941 Hwy 42, Union, Kentucky 41091**

AFFIDAVIT OF DAN BERKEMEIER

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

1. My name is Dan Berkemeier. I am of legal age and reside at 11908 U.S. 42, in Union, Kentucky 41091. I have resided at this address for approximately nine years. I have personal knowledge concerning the statements in this affidavit.

2. I am a neighbor to Ernest Keeton. Mr. Keeton owns the property at 11941 Hwy 42, Union, Kentucky 41091 (the "Keeton Property").

3. I know from personal knowledge, experience and participation that the Keetons host the 127 Yard Sale on their property for other vendors continuously every year without interruption since I moved in. In fact, the event was in progress during when I purchased my home in August 2005. In fact, I help him with the event.

4. It is my view as a neighbor that Mr. Keeton should be allowed to continue doing so. In fact, allowing me and other neighbors to sell from his property is far better than our trying to do so from our own properties. It is much safer than the other places where people lack the space to accommodate the cars or crowds. We work to provide a safe place for this event for the buyers, vendors and passers-by.

FURTHER, AFFIANT SAYETH NAUGHT.



Dan Berkemeier

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 9th day of April 2014, by Dan Berkemeier as his own free and voluntary act.

Milam Bichkar

Notary Public

My commission expires: June 25 2017

Milam Bichkar



**In Re: Nonconforming use of Ernest Keeton
at 11941 Hwy 42, Union, Kentucky 41091**

AFFIDAVIT OF GARY HEDRICK

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

1. My name is Gary Hedrick. I am of legal age and reside at 7265 Highway 42. I have resided at this address for 17 years. Before that I resided at Beaver Rd Union Ky. I have personal knowledge concerning the statements in this affidavit.

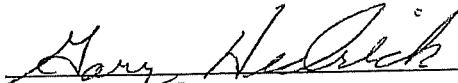
2. I know Ernest Keeton personally. Mr. Keeton owns the property at 11941 Hwy 42, Union, Kentucky 41091 (the "Keeton Property"). I have participated in and attended the 127 Yard Sale on the Keeton Property every single year back to around 1998. I often sell items at the Keeton Property and always help Mr. Keeton with the event.

3. The event was and is extremely popular, although it's fallen off a little the past couple years or so.

4. I know from personal knowledge, experience and participation that the 127 Yard Sale has continued annually without interruption from at least 1998 through the present date. And between 2001 and 2013 there have never been less than 30 vendors. I retired from the Kentucky Department of Highways and can state for sure that the way Ernie does the 127 Yard Sale on his property is much

safer than the other places where people are parking half on the road and half in the ditch, then jumping out of their cars.

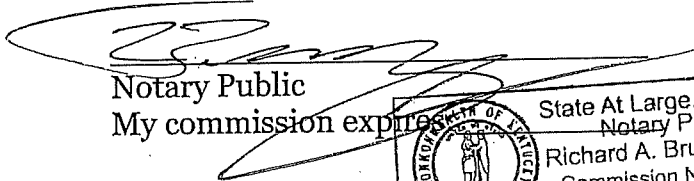
FURTHER, AFFIANT SAYETH NAUGHT.




Gary Hedrick

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 March 2014, by Gary Hedrick as his own free and voluntary act.


Notary Public
My commission expires

 State At Large, Kentucky
Notary Public
Richard A. Brueggemann
Commission No. 504501
My Commission Expires 01/27/2018

**In Re: *Nonconforming use of Ernest Keeton*
at 11941 Hwy 42, Union, Kentucky 41091**

AFFIDAVIT OF PATRICIA WOODWARD


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

1. My name is Patricia Woodward. I am of legal age and reside at 206 Floral Avenue, Elsmere, Kentucky 41018. I have personal knowledge concerning the statements in this affidavit.

2. I know Ernest Keeton personally. Mr. Keeton owns the property at 11941 Hwy 42, Union, Kentucky 41091 (the "Keeton Property"). I've attended the 127 Yard Sale on the Keeton Property every single year back to at least 2000. I remember helping him with this event even before he built his barn. Building the barn made the event on his property much nicer because people could get out of the heat or rain if that occurred. Shortly after Mr. Keeton built the barn, participation increased a lot. The vendors on the Keeton Property averaged around 45 or so until recent years when it dropped off some. But the event remains popular.

3. I know from personal knowledge, experience and participation that the 127 Yard Sale has continued annually without interruption from at least 2000 through the present date.

FURTHER, AFFIANT SAYETH NAUGHT.

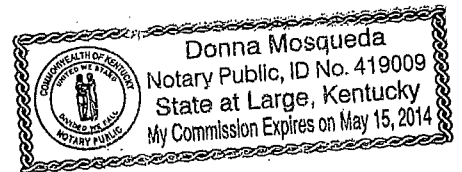

Patricia Woodward

169 DC

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 4 day of April 2014, by Patricia Woodward as her own free and voluntary act.

Donna Mosqueda
Notary Public
My commission expires: 5/15/14



**In Re: *Nonconforming use of Ernest Keeton*
at 11941 Hwy 42, Union, Kentucky 41091**

AFFIDAVIT OF KENNY BRINKMAN

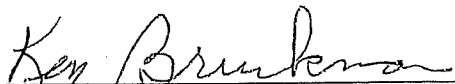
Comes now affiant, Kenny Brinkman, after having first been duly cautioned and sworn, deposes and states as follows according to his best recollection and belief:

1. My name is Kenny Brinkman. I am of legal age and reside at 3688 Akin Lane, Burlington, Kentucky 41005. I have personal knowledge concerning the statements in this affidavit.

2. I am familiar with Ernest Keeton and the property he owns at 11941 Hwy 42, Union, Kentucky 41091 (the "Keeton Property"). I have participated in the 127 Yard Sale on the Keeton Property since the late 1990s. Before retiring from my job, my son would set up our area on the Keeton Property and work it until the weekend. This continued until I retired in 2000. Then, I would set up and run our display myself. The event was and is extremely popular and I still attend it.

3. I know from personal knowledge, experience and participation that the 127 Yard Sale has continued annually without interruption from at least the late 1990s through the present date. Except for maybe last year, I never remember there being less than 35 vendors.

FURTHER, AFFIANT SAYETH NAUGHT.


Kenny Brinkman

In Re: *Nonconforming use of Ernest Keeton*
at 11941 Hwy 42, Union, Kentucky 41091

AFFIDAVIT OF GARY STRANGE

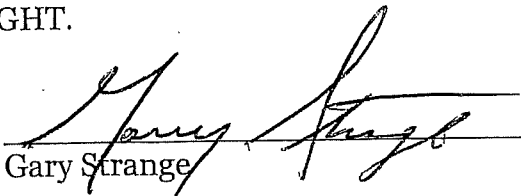
Comes now affiant, Gary Strange, after having first been duly cautioned and sworn, deposes and states as follows according to his best recollection and belief:

1. My name is Gary Strange. I am of legal age and reside at 11159 Lakeview Drive, Union, KY 41091. I have personal knowledge concerning the statements in this affidavit.

2. I know Ernest Keeton personally. Mr. Keeton owns the property at 11941 Hwy 42, Union, Kentucky 41091 (the "Keeton Property"). I have participated in and attended the 127 Yard Sale on the Keeton Property every year for at least the past 15 years.

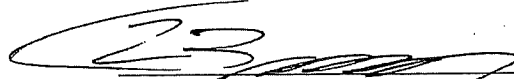
3. I participated in the 127 Yard Sale on the Keeton Property even before Mr. Keeton built his barn. I know from my own personal experience and participation that Mr. Keeton operated the 127 Yard Sale continually every year without interruption back to at least 1998. During most of those years, there were approximately 50 vendors.

FURTHER, AFFIANT SAYETH NAUGHT.

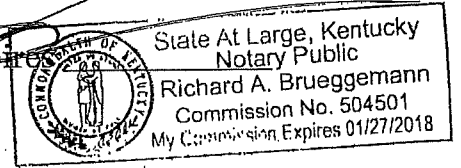

Gary Strange

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 9th day of April 2014, by Gary Strange as his own free and voluntary act.



Notary Public
My commission expires



World's Longest Yard Sale
KENTUCKY * TENNESSEE * ALABAMA
450 MILES - AUGUST 7-15, 2004

EXHIBIT J

EXHIBIT K - 2005 Photos



2005 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/25/2005)



2005 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/25/2005)

EXHIBIT K - 2005 Photos Cont'd



2005 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/25/2005)



2005 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/25/2005)

EXHIBIT K - 2005 Photos Cont'd



2005 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/25/2005)

EXHIBIT L - 2006 Photos

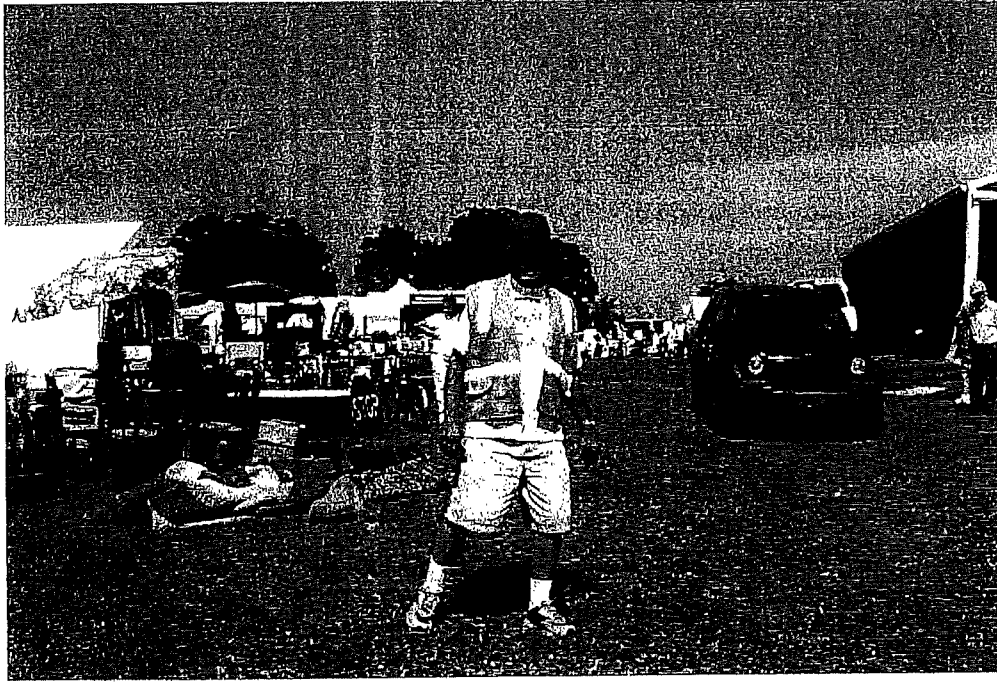


2006 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/5/2006)



2006 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/5/2006)

EXHIBIT L - 2006 Photos Cont'd



2006 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/5/2006)



2006 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/5/2006)

EXHIBIT L - 2006 Photos Cont'd



2006 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/5/2006)



2006 Photo of the Keeton 127 Roadside Sale/Mart (taken date 8/6/2006)

EXHIBIT L - 2006 Photos Cont'd



2006 Photo of the Keeton 127 Roadside Sale/Mart (taken date 8/6/2006)

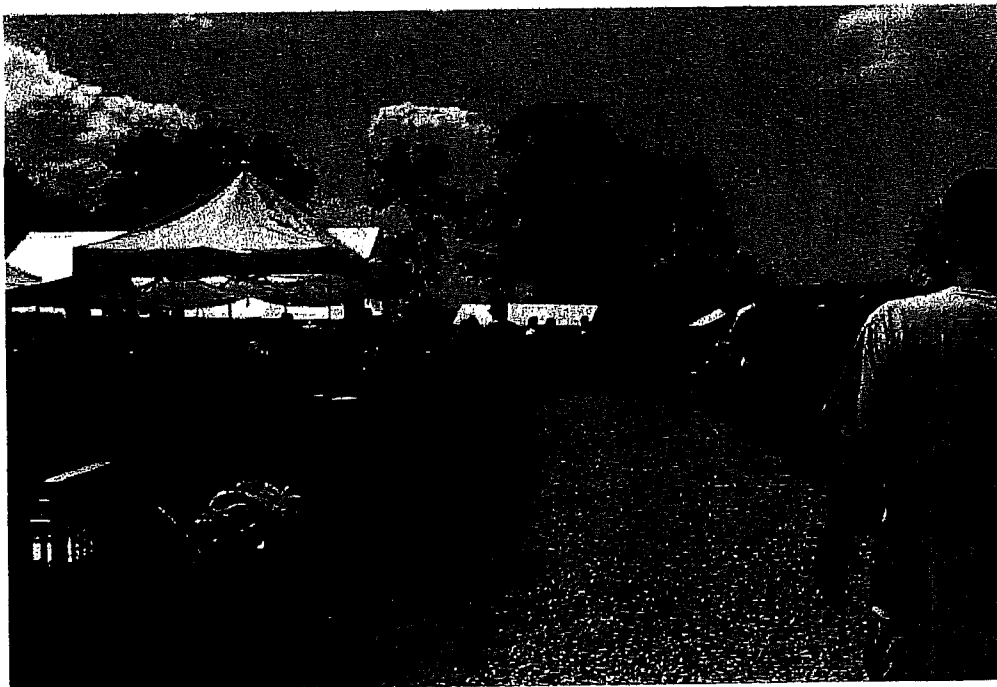


2006 Photo of the Keeton 127 Roadside Sale/Mart (taken date 8/6/2006)

EXHIBIT M - 2010 Photos



2010 Photo of the Keeton 127 Roadside Sale/Mart (print date 1/28/2011)



2010 Photo of the Keeton 127 Roadside Sale/Mart (print date 1/28/2011)

EXHIBIT N - 2011 & 2012 Photos



2011 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/12/2011)



2012 Photo of the Keeton 127 Roadside Sale/Mart (print date 8/20/2012)

**In Re: *Nonconforming use of Ernest Keeton*
at 11941 Hwy 42, Union, Kentucky 41091**

AFFIDAVIT OF DEBBIE WOOD

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

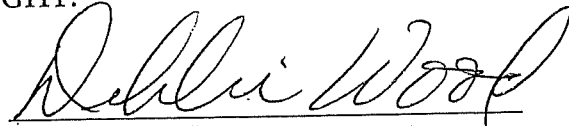
1. My name is Debbie Wood. I am of legal age and reside at ⁵⁴87 Circle Drive, Florence, Kentucky 41042. I have personal knowledge concerning the statements in this affidavit.

2. I know Ernest Keeton personally. Mr. Keeton owns the property at 11941 Hwy 42, Union, Kentucky 41091 (the "Keeton Property"). Except for 2013, I've attended the 127 Yard Sale on the Keeton Property every single year back to 1997. I remember the first year of my participation in the 127 Yard Sale because I sold items there from my cousin's Estate. My cousin died in 1996 and left me the house and personal property in it. I sold those items at the Keeton Property in 1997, and continued to participate as a vendor through 2011. I also attended in 2012 but only for enjoyment. For me it is as a tourist attraction. I didn't go last year because I couldn't take the heat. If I feel up to it, I'd like to return, though. The only feasible way for me to experience this nostalgic event of annual yard-sale tourists is on the Keeton Property.

3. I know from personal knowledge, experience and participation that the 127 Yard Sale has continued annually without interruption for more than ten continuous years prior to 2012. The event quickly became popular on the Keeton

Property. I don't ever recall their being less than 35 vendors on the Keeton
Property after Ernest built his barn.

FURTHER, AFFIANT SAYETH NAUGHT.


Debbie Wood

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 3 day of ~~March~~ April
2014, by Debbie Wood as her own free and voluntary act.

THOMAS R. MERRICK
NOTARY PUBLIC - KENTUCKY
STATE AT LARGE
MY COMMISSION EXPIRES MAR. 21, 2015
ID #439522

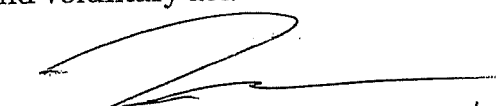

Notary Public
My commission expires: 03/21/2015

EXHIBIT C
APPLICATION FORM

BOARD OF ADJUSTMENT
AND
ZONING APPEALS ACTION
BOONE COUNTY PLANNING COMMISSION

RECEIVED
JUN 16 2014
68991
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)

- 1. (Check One) Boone _____ Florence _____ Walton Union
- 2. (Check One) Conditional Use Permit _____ Variance Appeal
Change in Non-Conforming Use _____
- 3. Applicant's Name James & Ann Kelley
Applicant's Address 11953 U.S. Highway 42
Union Kentucky 41091
City State Zip
Phone Number 859-485-9951 Fax No. _____ E-Mail _____
- 4. Description of Request: Improper use of property to effectuate a flea market/yard sale
- 5. Name of Development Agricultural Estate (A-2) and Rural Suburb. CRS.
- 6. Location of Development 11941 U.S. 42
Boone County, Kentucky
- 7. Acreage Under Review 5.6113
- 8. Lot Number and Name of Subdivision (if part of a subdivision)
Parcel 054.00-60-016.05
- 9. Owner of Property Ernest & Darlene Keeton
Address of Property Owner 11941 U.S. 42
Union Kentucky 41091
City State Zip
Phone Number _____ Fax No. _____ E-Mail _____
- 11. Proposed Use(s) on Site _____
- 12. Total Square Footage of Existing and/or Proposed Buildings _____
- 13. Current Zoning on Property _____
- 14. Deed Book _____ Page No. _____ Group No. _____
- 15. Is the site subject to a zone change? _____
If yes, give date of approval _____
- 16. Have you submitted a Site Plan with this request? _____
- 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: James & Ann Kelley
(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 1.16.14 Fee Received \$182.⁰⁰ Receipt # 18991
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.



BLANKENSHIP MASSEY & ASSOCIATES, PLLC

June 12, 2014

Randy J. Blankenship
Attorney at Law

Reply to: Dry Ridge office

C. Ed Massey
Attorney at Law

Carl E. Grayson
Of Counsel

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

Offices:

504 Erlanger Road
Erlanger, KY 41018
p: 859.426.9000
f: 859.426.9001

In Re: 11941 U.S. 42, Union, KY 41091
Appeal

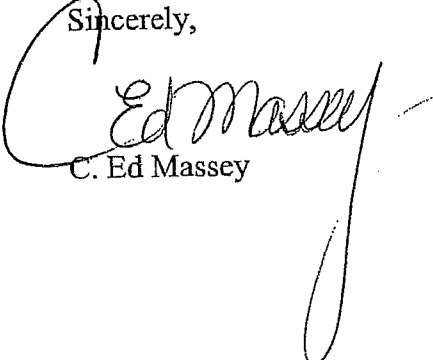
Dear Board:

This letter is to inform you that I represent, James & Ann Kelley, legal rights and interest as it relates to the above reference matter. Please find enclosed the Appeal and a check in the amount of \$682.00. According to Statute 100.523 existing non-conforming use continuance change effecting non-conforming use of 10 years duration etc. This flea market/yard sale has been continuing for some time, but there has been adverse actions pertaining to this matter. There has been an adverse action dating back to at least 2012. In paragraph three of the Statute, it is arguable that there has been an adverse action because last year the administrator shut down the use of overnight camping.

20 South Main Street
P.O. Box 86
Dry Ridge, KY 41035
p: 859.823.5351
f: 859.824.5167

www.nkylawyers.com

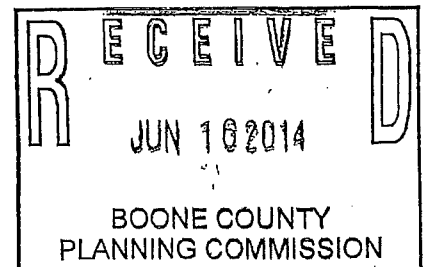
Sincerely,



C. Ed Massey

CEM/mab
Enclosures

cc: Mr. & Mrs. Kelley
Richard A. Brueggeman
Kevin Wall
Kevin Costello
Jeff Earlywine
Mitch Light
Robert Neace
Dale Wilson
Ernest & Darlene Keeton



IN RE: Annual Multi-Vendor Yard Sale at Ernest and Darlene Keeton Property, 11941 U.S. 42, Boone County, Kentucky; Agricultural Estate (A-2) and Rural Suburban (RS) Zones

NOTICE OF APPEAL

Now comes, James and Ann Kelley, by and through counsel, C. Ed Massey, and hereby gives Notice of their Appeal of the Boone County Planning Commissions approval of the zoning regulations, allowing the owners of property located at 11941 U.S. 42, Boone County, Kentucky; Zoned Agricultural Estate (A-2) and Rural Suburban (RS), to rent space to vendors during the "127 yard sale" on the following grounds:

1. That the allowance of the property named herein above does not meet the requirements as it relates to the KRS 100.253 as it was involved in an adverse order.
2. That on August 1, 2012 the owner of the property named above was order to cease any overnight parking of multiple recreational vehicles.
3. That the owners violated the Order to cease and a complaint was filed with the Boone District Court by the Zoning Division therefore it does not conform with the (10) year rule, as it clearly indicates in KRS 100.253 (3) as follows: 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 (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.

4. That allowing the property owners to continue to rent to vendors will cause a nuisance to Mr. and Mrs. Kelley. The Kelley's have been threatened sewage waste has been dumped on the property which is a hazard. In accordance to KRS 100.243 there should not be a variance granted if, if there is a nuisance or a hazard to the public.

5. KRS 100.243. Findings necessary for granting variances. -- (1) Before any variance is granted, the board must find that the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the board shall consider whether:

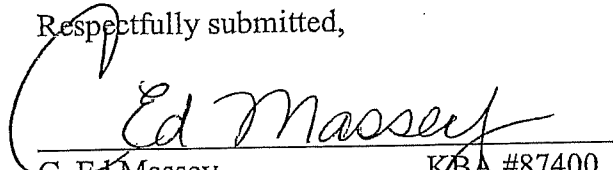
(a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;

(b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and

(c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

Wherefore, the appellants hereby request that the Boone County Planning Commission overturn its decision to allow Mr. and Mrs. Keeton owners of the property mentioned above, to rent out space to non-resident vendors during the 127 yard sale.

Respectfully submitted,



C. Ed Massey KBA #87400
Blankenship Massey & Associates, PLLC
504 Erlanger Road
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. regular mail on this the 12th day of June 2014 to the following:

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Ernest & Darlene Keeton
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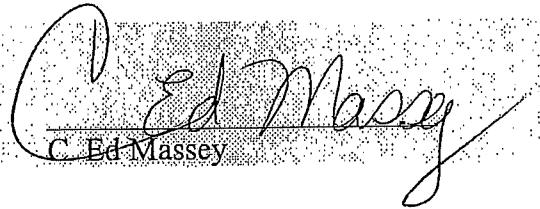
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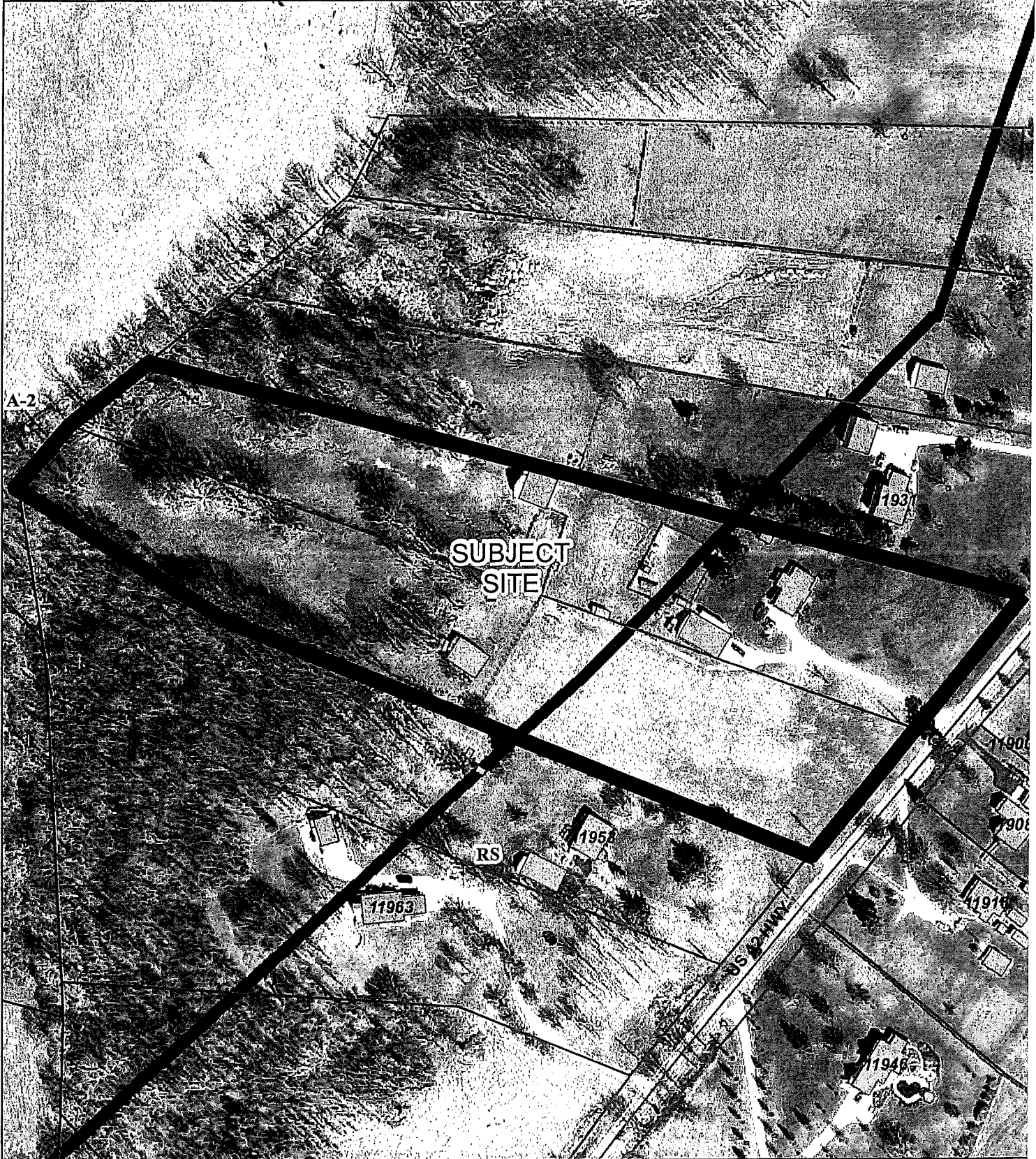
Dale Wilson
BCPC Legal Counsel
P.O. Box 958
Burlington, KY 41005



C. Ed Massey

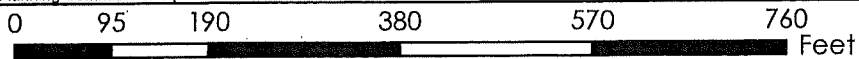
Exhibit D - Site Map

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Boone County GIS - Putting Northern Kentucky on the Map

EXHIBIT E

BOONE COUNTY PLANNING COMMISSION BOARD OF ADJUSTMENT

JAMES KELLEY AND ANN KELLEY.

APPELLANTS

v.

KEVIN WALL, IN HIS OFFICIAL CAPACITY
AS ZONING ADMINISTRATOR
FOR THE BOONE COUNTY FISCAL COURT

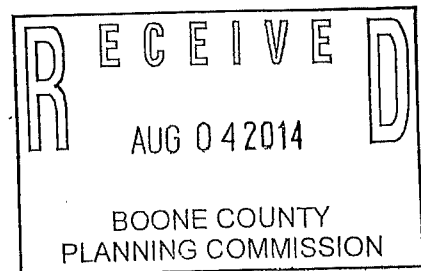
APPELLEES

MEMORANDUM OF ERNEST KEETON AND DARLENE KEETON, APPELLEES, IN OPPOSITION TO APPELLANTS APPEAL

COMES NOW Appellees, Earnest Keeton and Darlene Keeton (the "**Keetons**"), by and through counsel, to formally submit their objection and opposition to Appellants' appeal of the decisions of the Boone County Zoning Administrator ("**Zoning Administrator**").

I. INTRODUCTION.

This case originated from a complaint filed during or around October 16, 2013 against the Keetons for letting space on their property located at 11941 U.S. Hwy 42, Union, Kentucky 41091 (the "**Property**") for "flea market" type use during the recurring 127 Yard Sale (the "**127 Roadside Sale/Mart**"). The Keetons presented evidence to the Zoning Administrator proving this use to be preexisting and nonconforming via two memoranda and attachments, the first dated April 13, 2014 (the "**April Memo**"), and the second dated May 14, 2014 (the "**May Memo**"). In a written decision dated May 21, 2014 (the "**BCZA Decision**"), the Zoning Administrator determined the Keetons had established the nonconforming use of operating a "multi-vendor, garage/yard/rummage sale" on their Property. The Zoning Administrator timely copied Appellants on the BCZA Decision and other correspondence.



On June 12, 2014 Appellants appealed the BCZA Decision, alleging the following two issue as their sole basis for appeal: First, challenging the BCZA Decision on the basis that the Property was subject to an adverse order during 2012 for allowing overnight camping. (Appellants' Notice of Appeal, pp. 1-2.) The second challenge alleges an improper issuance of variance based upon KRS 100.243. (*Id.*) Appellants' statutory deadline for filing and perfecting an appeal was June 20, 2014. KRS § 100.261.

II. APPLICABLE LEGAL STANDARDS.

A. STANDARD OF REVIEW.

Pursuant to KRS § 100.257, the Appellant must show "there is error" in the decisions of the Zoning Administrator.

B. BURDEN OF PROOF.

Appellant (complaining party) has the burden of proof, not the property owner. From the outset of the process, it is the complaining party's burden to prove that the property owner is without any right to continue the nonconforming use. *Hinkle v. Board of Zoning Adjustment & Appeals*, 415 S.W.2d 97, 101 (Ky. 1967); see also 4-22 ZONING LAW AND PRACTICE § 22-5. Appellant has not and cannot meet this burden. "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). It is well settled under Kentucky law that "a nonconforming use is a property right constitutionally protected." *Martin v. Beehan*, 689 S.W.2d 29, 31 (Ky. Ct. App. 1985). Were it otherwise under Kentucky law, 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)

III. ARGUMENT.

Appellants' purported appeal must be overruled as a matter of law. Of the two grounds asserted in their appeal, neither presents any facts or law that could justify finding the BCZA Decision to be in error. And, pursuant to KRS § 100.261, appellants are barred from adding any new grounds or basis for the appeal.

A. THERE IS NO ERROR IN THE BCZA DECISION UNDER KRS KRS 100.253(3). THEREFORE, THE ZONING ADMINISTRATOR'S DECISION MUST BE UPHELD.

KRS § 100.253(3) 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. Thereafter, such use shall be governed by the provisions of subsection (2) of this section.

In the April Memo and May Memo, the Keetons presented abundant evidence that they operated a "multi-vendor, garage/yard/rummage sale use" on their Property during the 127 Roadside Sale/Mart continuously for fifteen years. That was the finding of the Zoning Administrator.

Appellants erroneously request the Board of Adjustments to overturn the BCZA Decision because an adverse action occurred in 2012 involving overnight camping. (Appellants' Notice of Appeal, pp. 1-2.) Arguments of Appellants must fail as a matter of law. First, the BCZA Decision did not find overnight camping to be a nonconforming use, nor did the Keetons seek that finding. Thus, any adverse action concerning that use is not even in issue. Second, even if the 2012 action was at issue, it *does not matter* because the Keetons demonstrated well over ten years of preexistence even assuming a

2012 baseline. (See April Memo; May Memo; and attachments to both.) Because Appellants have presented no basis whatsoever that shows the BCZA Decision to be in error, the BCZA Decision must be affirmed as a matter of law.

B. BECAUSE THERE IS NO VARIANCE AT ISSUE, KRS 100.243 DOES NOT APPLY AND THE BCZA DECISION MUST BE UPHELD.

The BCZA Decision is based solely on KRS 100.253(3) and applicable precedent construing the same. The Zoning Administrator did not grant a variance to the Keetons. Rather, based on the evidence, he found a preexisting, nonconforming use has been established on the Keeton Property for operating a “multi-vendor, garage/yard/rummage sale use.” (See BCZA Decision, pp. 2-3.) The Zoning Administrator did not rely on or construe the elements or factors relating to grants of variance in reaching his decision. Therefore, arguments relating to variances and KRS 100.243 cannot support any basis to overturn the BCZA Decisions. The decision of Zoning Administrator must be upheld.

C. APPELLANT FAILED TO RAISE ANY GROUNDS OF ERROR ON WHICH THE DECISIONS OF THE ZONING ADMINISTRATOR COULD BE OVERTURNED APPELLANTS ARE ALSO TIME BARRED FROM RAISING ANY ADDITIONAL ISSUE OR GROUNDS FOR APPEAL. THEREFORE, THE DECISION OF THE ZONING ADMINISTRATOR MUST BE AFFIRMED.

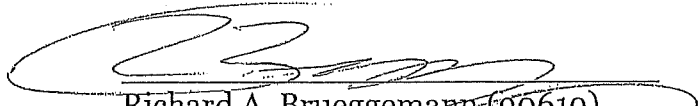
KRS § 100.257 provides the Board of Adjustment with authority to hear appeals on the basis of allegations of “error in . . . [the] decision.” And, pursuant to KRS § 100.261, the “appeal shall be taken within thirty (30) days . . . *specifying the grounds thereof*, and giving notice of such appeal to any and all parties or record.” (Emphasis added). Clearly, the statute requires the appellant must “specify the grounds” for the appeal in its initial filing. The two issues raised in the Appeal are all

that may be heard. Therefore, there is no basis on which the Board of Adjustments could find for the Appellants. The BCZA Decision must be affirmed.

IV. CONCLUSION.

For the foregoing reasons, the decision of the Zoning Administrator must be upheld and Appellants' appeal overruled.

Respectfully Submitted,

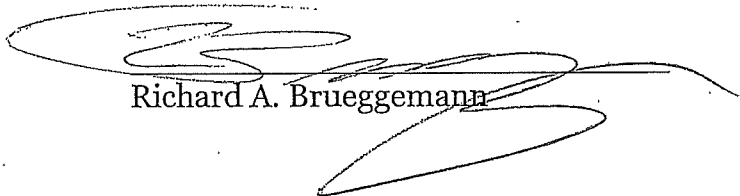


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Trial Attorney for Ernest and
Darlene Keeton

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by sending the same via pdf in email, and hard copy in U.S. Mail, to: Mr. Kevin Wall, AICP, Zoning Administrator, Hon. Dale Wilson, counsel for the Boone County Planning Commission, and Hon. C. Edward Massie, counsel for Appellants, this 15th day of Aug, 2014, at their respective addresses as reflected in the record in this matter.



Richard A. Brueggemann