


APPLICATION FORM

BOARD OF ADJUSTMENT
AND
ZONING APPEALS ACTION
BOONE COUNTY PLANNING COMMISSION

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

- 1. (Check One)
 Boone Florence Walton Union
- 2. (Check One)
 Conditional Use Permit Variance Appeal
 Change in Non-Conforming Use Keating, Muething & Klekamp, P.L.L.
- 3. Applicant's Name Joseph L. Trauth, Jr., (Attorney for Kroger)
Phone Number 513-579-6515 Fax No. 513-639-3864
Applicant's Address 1400 Provident Tower, One East Fourth Street
Cincinnati Ohio 45202
City State Zip
- 4. Description of Request: SEE EXHIBIT A ATTACHED HERETO.
- 5. Name of Development Union Village Shopping Center (Kroger)
- 6. Location of Development U.S. 42, Union, Kentucky
- 7. Acreage Under Review 14 (Approximately)
- 8. Lot Number and Name of Subdivision (if part of a subdivision)
Lot 4 - Divided into 4A, 4B, 4C, 4D. 4D was sold to Blockbuster.
- 9. Owner of Property The Kroger Company
Phone Number of Owner 513-782-3463 (Contact Person: Robert Perin) 10.
Address of Property Owner 130 Tri-County Parkway, Cincinnati, Ohio 45246
City State Zip
- 11. Proposed Use(s) on Site McDonald's Restaurant With Drive-Thru Facility.
- 12. Total Square Footage of Existing and/or Proposed Buildings As Built: 83,016; As Approved:
- 13. Current Zoning on Property Commercial Two (C-2) 115,000
- 14. Deed Book 679 Page No. 236 Group No. _____
- 15. Is the site subject to a zone change? Not currently. Zoning was previously approved in
If yes, give date of approval March, 1995 1995.
- 16. Have you submitted a Site Plan with this request? No
- 17. Have you submitted a list of adjoining property owners with this request? Yes
- 18. I, or we, understand and agree that this application and drawing(s) are being filed in
accordance with the Boone County Zoning Regulations.

Applicant's Signature: 
Joseph L. Trauth, Jr., Esq.
Keating, Muething & Klekamp, P.L.L.
Property Owner's Signature: Attorneys for The Kroger Co.

BOARD OF ADJUSTMENT AND
ZONING APPEALS ACTION
APPLICATION
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SECTION B (To be completed by the Boone County Planning Commission Staff)

1. Date Received 7-21-98 Fee Received \$810.00 (Att 21362)
2. Is application complete? Yes 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: Upheld Ast. Z. A. Interpretation

Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005
(606) 334-2196 Phone
(606) 334-2264 Fax

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

DEVELOPMENT: **Union Village Kroger Supermarket - Appeal**

APPELLANT: Joseph L. Trauth, Jr., Keating, Muething & Klekamp, P.L.L. for the Kroger Company

LOCATION: Lots 4A, 4B & 4C of the Union Village Subdivision, U.S. 42, Union, Kentucky

ZONE: Commercial Two/Concept Development (C-2/CD)

DATE: August 12, 1999

REQUEST

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 Union Board of Adjustment and Zoning Appeals. Specifically, Mr. Trauth, on behalf of the Kroger Limited Partnership I, has filed an Appeal of the Assistant Zoning Administrator's interpretation of the permitted uses established through the public hearing for approval of a Zoning Map Amendment and Concept Development Plan.

DUTIES OF ZONING ADMINISTRATOR AND BOARD OF ADJUSTMENT AND ZONING APPEALS

Section 201 of the Boone County Zoning Regulations describes the authority of the Zoning Administrator. One of the roles of the Zoning Administrator is to determine the classification of any use of land, buildings or structures as a principally permitted, accessory, or conditional use in a specific zoning district, as well as determine whether uses are illegal or have pre-existing, nonconforming status, based on an interpretation of the stated and implied requirements of the zoning regulations. This includes the classification of new uses or uses not specifically identified in the regulations, determination of how applicable development standards are applied in different circumstances, and the interpretation of the regulations in instances where there is not a precise "fit" between the regulations and existing site conditions or development objectives.

In addition, one of the Board's duties 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.

DESCRIPTION OF SITE

The site is located along the south side of U.S. 42, between Heritage Bank and Blockbuster Video, Union, Kentucky.

TIME LINE OF ISSUE

1995 The applicant, Mr. James W. Berling, for B & Z Development and the Scheben Company, made application to the Boone County Planning Commission for approval of a Concept Development Plan as part of a Zoning Map Amendment. The applicant requested on line 6 (Proposed Uses) of the Zoning Map Amendment application "Residential Subdivision and Grocery Store." The applicant did not request all permitted uses in the Commercial Two (C-2) zone. The application asks "please specify each use" (Exhibit A).

January 25, Staffs' Report (Exhibit B) was presented at the Public Hearing held by the Boone County Planning Commission and within the minutes of the hearing (Exhibit C) Mr. Berling stated "The commercial uses are supermarket, drugstore, and related neighborhood shops-such as a video store-but they do not have them on line yet" and "the restaurants are not fast food or drive-thru and will be quality restaurants" referring to the Concept Development Plan submitted with the application, within the Staff Report, and reviewed at the Public Hearing.

March 15, The Boone County Planning Commission recommended to the Union City Commission approval with conditions (Exhibit D) for the request of B & Z Development and the Scheben Company for approval of a Concept Development Plan, revised from the public hearing, as part of a Zoning Map Amendment (Exhibit E).

April 17, The Union City Commission granted the project approval with conditions and bound by the request made as part of the application and testimony from the Public Hearing held on January 25, 1995 (Exhibit F).

1996 March 26, A 9.6% increase in square footage of the Grocery Store was approved, at the request of the Kroger Company, by decreasing the square footage of the outlots and retail shops. This Revised Concept Development Plan is the third and most current (Exhibit G).

June 5, Approval of the Site Plan was granted

1997 January 30, A request made by Robert Perin of the Kroger Company and Gust Mecera of McDonalds (Exhibits H & I) for a Zoning Administrators' Interpretation for the proposed use of a franchise style fast food restaurant with drive-up window.

February 13, The interpretation was made that based on the Public Hearing minutes and request made as part of the application that a franchise style fast food restaurant with drive-up window was not requested or approved with the application made in 1995 (Exhibit J).

February 17, A letter from Monte Chesko, Real Estate Manager with the Kroger Company, to Kevin Costello, Executive Director of the Boone County Planning Commission, that made allegations toward the Planning Commission and its staff (see Exhibit K).

February 28, Mr. Costello responds to Mr. Chesko's letter to clarify issues raised (Exhibit L).

March 10, At the request of Mr. Perin, the interpretation was revoked on March 14, due to Krogers' desire to retain the thirty (30) day appeal clock (see Exhibits M & N).

1999 May 11, Joe Trauth letter to Kevin Costello (Exhibit O).

May 19, The interpretation was again made that based on the Public Hearing minutes and request made as part of the application that a franchise style fast food restaurant with drive-up window was not requested or approved with the application made in 1995. Attached was a similar interpretation made by Kevin Wall, Director of Zoning Services/Zoning Administrator, for a Skyline Chili next to the Heritage Bank (Exhibit P).

June 10, At the request of Mr. Trauth this time, the interpretation was again revoked on March 14, due to Krogers' desire to retain the thirty (30) day appeal clock (Exhibit Q).

June 14, Letter from Joe Trauth to Dale Wilson (Exhibit R).

June 24, Response from Dale Wilson to Joe Trauth (Exhibit S).

July 7, Letter from Joe Trauth to Kevin Costello requesting a formal interpretation (Exhibit T).

July 9, Response from Kevin Costello to Joe Trauth (Exhibit U).

July 12, For the third time the interpretation was made based on the Public Hearing minutes and request made as part of the application that a franchise style fast food restaurant with drive-up window was not requested or approved with the application made in 1995 (Exhibit V).

July 21, Appeal application and description request received (Exhibit W).

DECISION AND BASIS FOR DECISION

The decision in question, and the basis for the decision, are described in the previously mentioned letter dated July 12, 1999 (Exhibit V) from Mitchell A. Light, Assistant Zoning Administrator/Enforcement Officer, to Joseph L. Trauth, Jr., Esq., and is briefly described in the "Issue" section of this report.

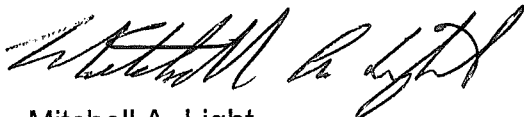
CONCLUSION

As provided in Article 2 of the Boone County Zoning Regulations, an Appeal of the Zoning Administrator's decision may be granted by the Board of Adjustment and Zoning Appeals when it has been demonstrated that the decision is in error. Other items of particular relevance to this matter include:

- A. The application (Exhibit A) requested "Residential Subdivision and Grocery Store" and not all C-2 uses as Mr. Trauth would like to believe.
- B. Remke Markets was present and active in the process from the beginning. The Kroger Company was not involved or even present at the January 25, 1995 Public Hearing, March 15, 1995 Business Meeting, or the April 11, or April 17, 1995 Union City Commission meetings which shaped this project. Therefore, Kroger purchased the property that others saw through the processes, making statements and agreeing to issues known only to those present and involved in the processes.
- C. The Boone County Planning Commissions' Staff has worked with the Kroger Company since they began negotiations to develop a Kroger Supermarket, instead of the original Remke Market, and they have known about this interpretation since February 13, 1997. The Kroger Company is attempting to lay its "hardship" on the Planning Commission and Union City Commission when they purchased the property knowing the interpretation of the fast food, drive-thru use.

- D. The original Concept Development Plan, (Exhibit D), has no outlots between the grocery store and US 42. The outlots appeared after the Public Hearing and through the Zone Change Committee.
- E. The Boone County Planning Commission and Union City Commission cannot impose conditions on issues that were never requested by the applicant/property owner.
- F. As of this writing, no evidence which demonstrates that the Assistant Zoning Administrator's decision is in error (as required by Section 220 of the zoning regulations and KRS 100.257 "Administrative Review") has been submitted.
- G. The Appellant may apply to the Boone County Planning Commission and Union City Commission for a "Change in Concept Development" in an attempt to allow the use of a "drive-thru" in conjunction with other approved uses for the development.

Respectfully Submitted,

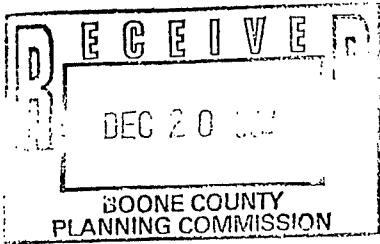


Mitchell A. Light
Asst. Zoning Administrator/Enforcement Officer

MAL/pr

Attachments

-Exhibits A-W



APPLICATION FORM ZONING MAP AMENDMENT

BOONE COUNTY PLANNING COMMISSION
(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

1. Name of Project R.C. Durr and Robert Kratz
2. Location of Project U.S. 42
3. Total Acreage of Site 90.0311 Acres
4. Current Zoning of Site RSE
5. Proposed Zoning (Classification being requested) SR-1 and C-2
6. Proposed Uses (please specify each use) Residential Subdivision and Grocery Store
7. Names of Applicant(s) James W. Berling
Phone Number 331-9191 Fax No. 344-7422
8. Address of Applicant(s) 1671 Park Road, Suite One
Fort Wright, Kentucky 41011
City State Zip
9. Name of Property Owner(s) B & Z Development and The Scheben Company
Phone Number 331-3160 Fax No. 331-8261
10. Address of Property Owner(s) 1671 Park Road, Suite 11
Fort Wright, Kentucky 41011
City State Zip
11. Proposed Building Intensities (please specify)
12. Are there any existing buildings on the site? Yes
How many? Two
13. Deed Book 358 Page No. 44 Group No. 2047
14. Are you also applying for:
No Conditional Use Permit
No Dimensional Variance
15. Have you submitted a Concept Development Plan? No YES
16. Have you had a pre-application meeting with BCPC Staff? No
17. Please check the following organizations/agencies which you have discussed the proposed development with in the last several months:
Boone County Water and Sewer District
Florence Water and Sewer Commission
Union Light Heat and Power
Cincinnati Bell
Owen County Rural Electric
Boone County Public Works Department
(over)

STAFF REPORT

Request of James W. Berling (applicant) for B & Z Development and The Scheben Company (owners by contract) for a Zoning Map Amendment on a 90 acre site located on the south side of U.S. 42 near Old 42, Union, Kentucky. The request is to rezone the site from Rural Suburban Estates (RSE) to Suburban Residential One (SR-1) and Commercial Two (C-2) to allow a residential subdivision and commercial uses.

January 25, 1995

REQUEST

This is a Zoning Map Amendment for the above referenced 90 acre tract to rezone approximately 66.58 acres of the site to Suburban Residential One (SR-1) and approximately 23.45 acres of the site to Commercial Two (C-2). The portion of the site that is proposed to be rezoned to C-2 is a strip that spans the entire U.S. 42 frontage and spans a distance of 600 feet from the U.S. 42 right-of-way into the site; the remainder of the site is proposed to be rezoned to SR-1.

The Concept Development Plan submitted with this request shows an approximately 86,700 square foot strip-style retail structure that includes a supermarket, a drug store, and retail tenant space within the proposed C-2 area. Other uses within the proposed C-2 area include a small landscaped area that is labelled "park," two "sit down" restaurant sites, a public branch library site, a bank site, and a bank/post office/professional office site. The residential portion of the site illustrates 148 lots for single family residences (gross density = 2.22 units/acre). A new lake is proposed in the northern portion of the proposed SR-1 area.

Two new streets are proposed to intersect with U.S. 42 at the north end of the development. These two streets are proposed to intersect with one another in the south portion of the site and provide a street connection to the Plantation Pointe site to the east. Another street connection to Plantation Pointe is proposed at the northeast corner of the site near U.S. 42. Three cul-de-sacs, that stem from the two "major" streets, are proposed within the residential portion of the site. Water and sewer service is tentatively to be provided by the Florence Water and Sewer Commission.

ADJACENT LAND USES AND ZONING

The existing land uses adjacent to the site include the following.

1. The Plantation Pointe site immediately to the east (currently SR-1, requested C-2/PD and RPD pending before the Cities of Union and Florence).

2. Agricultural and associated low density residential uses to the south and west (RSE).
3. The land uses to the north across U.S. 42 include: a part of the proposed commercial area of Plantation ~~located~~ on the northeast corner of the intersection at U.S. 42 and Farmview Drive (currently SR-1, C-2/PD pending); an open space/wooded area on the northwest corner of the intersection at U.S. 42 and Farmview Drive; Farmview Subdivision (SR-1/PD) and the Village at South Fork Creek Condos (UR-1) to the north and northwest of Old 42; and, an abandoned "roadside" style motel to the northwest immediately across U.S. 42 from the subject site (C-3).
4. The uses to the west and southwest along U.S. 42 to the Union city center generally include large lot residential uses and agriculture with associated residential uses (zoning in this area includes A-2, RSE, RS, and an island of C-1 that is focused on the U.S. 42/Fowler Creek intersection).

PHYSICAL FEATURES OF THE SITE

The site generally consists of rolling pastures and includes intermittent tree lines and a few tree stands. A small farm pond is located at the northwest corner of the site and a small creek is located on the tract. The site has been farmed in the past and there is evidence that deer frequent the site. There are several farm structures on the site, some of which may have historical significance. The predominate man-made object on the site is a large high voltage power line that crosses the tract in a southeast/northwest fashion. Soil types of the site include Faywood Silty Clay (FdD3) and Rossmoyne Silt Loam (RSB and RcB). These soil types have some limitation, particularly relative to erosion potential.

RELATIONSHIP TO COMPREHENSIVE PLAN

The 1990 Future Land Use Map designates the entire site in question, and the areas immediately adjoining the site, as "Suburban Density Residential" (SD). The Comprehensive Plan describes this designation as "residential uses that do not exceed four dwelling units per acre." The text of the Land Use Element that discusses area C-5 (where the subject site is located) (pp. 216 and 217) provides the following statements:

- A. "In general, this section should experience considerable residential growth due to Union's current residential nature and growth associated with the City of Florence. Most of the residential development should be of Suburban or Rural Density. New subdivisions should be developed with connecting roads, providing alternative routes for residential traffic and decreasing the impact on major roadways."

- B. "Commercial activity in this area should be limited to Union proper, in the vicinity of the Hathaway Road and U.S. 42 intersection. Any commercial development should be local in scale to serve the needs of the existing and future residents of the area. Proper access management and parking design, including shared parking, are important aspects of this growth."
- C. "Parking facilities should be an adequate distance from the roadways to allow landscaping to compliment the small town character of Union."
- D. "Consistent with the Recreation Element, all major residential developments should provide recreational facilities through cooperative efforts between developers, legislative bodies, and other agencies/organizations. These facilities should be designed not only to serve the residents of the specific subdivision but, where appropriate, to serve surrounding populations in order to mitigate the impacts upon existing recreational developments."

The text of the Land Use Element that discusses area C-4 (pp. 215 and 216) provides the following statements:

- A. "The uninterrupted commercial development of US 42 should extend no further south than the intersection with Pleasant Valley and Gunpowder Roads."
- B. "Any commercial development on US 42 south of Pleasant Valley should likewise be of a neighborhood scale, and should be limited to the first several hundred feet of frontage on US 42."

Statements included in other elements of the Comprehensive Plan that relate to the proposal include the following:

- A. The Transportation Element (pp. 75 and 76) generally discusses transportation system management strategies and access management strategies, including the provision of left or right turn lanes and the provision of frontage roads, interconnecting parking lots, and shared driveways.
- B. The Housing Element (pg. 115) states "overall, clustered housing development should be strongly encouraged, instead of the conventional subdivisions divided entirely into ownership lots."
- C. The Housing Element (pg. 115) states "residential development should occur near established urban or suburban areas as opposed to leapfrogging to isolated areas, such as the western portion of the county."

- D. The Housing Element (housing in the Union-West Florence area, pg. 118) states "any higher density uses, such as those in Farmview Subdivision, should be clustered in areas northeast of the established Union area enabling them to be closer to major transportation areas. The reconstruction of U.S. 42 to Union, the extension of a 16 inch City of Florence water line to serve Farmview, and various sanitary sewer improvements will accelerate development in the area."
- E. The Land Use Element (pg. 201) states "developments in Boone County should begin with an assessment of the existing site features to determine positive and useful attributes, as well as features which should or can be preserved. Development design should incorporate the use of these attributes for the benefit of the development and county as a whole, rather than levelling an entire site to meet a pre-conceived project design. Development plans should identify such areas, and delineate disturb limits to protect those areas that have been defined."
- F. The Land Use Element (pg. 201) states "developments in Boone County must recognize the potential impacts upon adjoining land uses and incorporate a transition of land uses, building setbacks, and/or landscaping to minimize these impacts" and "buffering to mitigate these impacts should be an integral part of the design of proposed projects; existing site features should be used in meeting this guideline."
- G. The Land Use Element (pg. 202) states "appropriate pedestrian networks should be incorporated into the design of developments which will generate or experience significant pedestrian use. These networks should not only provide internal paths, but should provide connections to adjoining uses where appropriate. Public open space and recreation sites should be connected by pedestrian paths where appropriate."
- H. The Land Use Element (pg. 202) states "developments in Boone County should give consideration to the overall design of the project. Design should be a primary concern at the early stages of the development, with an emphasis on the aesthetic impact of the proposed use."

The 1995 Boone County Comprehensive Plan Goals and Objectives include:

- A. The Overall objectives listed on page 1 state "development issues shall be viewed in terms of promoting overall quality of life. Mixing of residential and other land uses shall be encouraged, but only in appropriately planned and designed neighborhood developments" (#2).
- B. The Overall objectives listed on page 1 state "proper design principles shall be applied in development" (#3).

- C. The Environment goal listed on page 2 states "new development or redevelopment within Boone County is designed, constructed and operated in such a way that the quality of the existing physical environment and social environment are protected and enhanced. Development within Boone County preserves and promotes a better quality of life while allowing a reasonable economic return.
- D. The Environment objectives listed on pages 2 and 3 state "new development or redevelopment shall attempt to design sites utilizing existing topography and encourage preservation of the existing character of the land. New development shall be designed in harmony with the physical environment in such a way that each site's existing physical assets are used beneficially where possible" (Physical objective #2), and "existing vegetation shall be considered as both an important site characteristic and a community resource" (Social objective #4).
- E. The Business Activity objectives listed on page 4 state "commercial uses shall be limited to strategic locations serving trade areas and neighborhood needs . . ." (Commercial objective #1), and "the large scale mixing of commercial and non-commercial uses shall occur in planned developments or in areas where consideration has been given to assure compatibility with surrounding land uses . . . Small scale mixing of commercial uses adjacent to residential areas shall be carefully assessed and properly placed so as to enhance the neighborhood" (Commercial objective #2).
- F. The Housing objectives listed on pages 5 and 6 state "residential developments shall be designed in a manner which is compatible not only with the general housing character planned for the area but also with the existing conditions of the site, including the suitability of adjoining lands for appropriate access" (#13).
- G. The Transportation objectives and goal listed on pages 11 and 12 state the following.
- "New connector streets shall be developed where needed and feasible thus lessening the total dependence on arterial streets" (#2, page 11).
- "New and improved roadways shall be encouraged to include pedestrian, and where feasible, bicycle facilities" (#8, page 11).
- "The interdependence between transportation systems and land use patterns is recognized and used to assure future development and redevelopment is planned with multi-modal transportation facilities" (goal, page 12).
- "Planned, mixed-use neighborhoods that contain residential, retail, office, compatible light industrial, transit stations or stops, pedestrian and bicycle facilities, open space and public uses shall be encouraged. This would enable residents to travel by transit, bicycle, foot, or car. It would also open up employment opportunities near where they live" (objective #1, page 12).

STAFF CONCERNS

1. Commercial Uses

Staff is concerned with not only with the fact that commercial uses have been proposed, but is also concerned with the scale and nature of the specific commercial uses shown (and not shown in the case of the "neighborhood shops" shown on the Concept Development Plan). As noted above, the Comprehensive Plan is very cautious about allowing commercial uses on U.S. 42 south of the Gunpowder Road/U.S. 42 intersection. In addition, the western portion of the adjacent Plantation Pointe tract will be limited to office uses if the Planning Commission's resolution is adopted by the pertinent legislative bodies. Thus, if commercial uses are approved, consideration should be given to limiting these uses to the eastern portion of the site and limiting the uses per se to office and institutional uses.

Retail uses may be appropriate for the site if their physical development was sensitive to the site in question and to the adjacent areas. This development (including any non-retail commercial development) would be sensitive to the existing topography, would seek to retain as much of the existing tree cover as possible, and would utilize a design scheme that would harmonize with the adjacent areas and that would minimize the commercial appearance, particularly from U.S. 42 (vernacular architectural treatments, multiple buildings rather than one large strip center, site buildings near the street with multiple, scattered parking areas in lieu of one large parking area, small-scaled monument style freestanding signs, landscape treatment reflective of the open pasture/rural environment). As proposed, the commercial development illustrated could be located essentially anywhere.

Further, Staff finds the two proposed commercial sites at the northwest corner of the site to be very questionable at best and would suggest that this area be retained as an open space buffer, that retains the existing farm pond, for the properties to the west along U.S. 42 towards the Union city center. The site could also be used for attached housing (single or multi-family).

2. Utilization of Natural Features

The Comprehensive Plan as a whole, particularly the Environment and Land Use elements, encourage the retention of natural site features in the design of a development. Existing site features which apparently have not been considered in the design of this project include the existing tree lines and tree stands, creek, farm pond, farm structures, and topography as a whole. If the farm structures can not be realistically incorporated into this development, they should be effectively used elsewhere (either in toto or for materials and components).

3. Proposed Park

The location of the proposed park is poor. It is surrounded by driveways that (if approved) will experience continuous commercial traffic. In addition, the park is not centrally located within its service area (the residential portion of the development), thus, patronage will probably be low. A park of this size would be appropriate for a tot lot and passive recreational purposes if it were centrally located within the residential portion of the project, such as at the intersection of one of the main roads and one of the cul-de-sacs (not the northern-most cul-de-sac adjacent to the proposed strip center), or if it spanned between two of the proposed roadways (such as the two cul-de-sacs in the middle of the development). An alternate location for the park within the development could also yield buffer and transition benefits.

4. Relationship to Adjoining Properties

The design of the development as a whole tends to ignore the adjacent properties, particularly the large tract to the south and west. The placement of the housing sites could be much more reflective of the existing patterns on the sites to the west to insure compatibility. Further, extensive buffering that was reflective of the existing landscape could also be provided to insure compatibility.

5. Street Connections and Turn Lanes

Although two street connections have been proposed to Plantation Pointe at the northeast and southeast corners of the site, no connections have been proposed to the property at the south and west for improved accessibility to future development and to deter local traffic from the major street network. Staff would suggest that at least one street connection be provided to both the south (possibly at the intersection of the two major roads) and the west (possibly at the T intersection between the major road and the southern cul-de-sac).

The Commission should also consider the provision of right turn lanes from U.S. 42 onto the two proposed roadways that intersect with said highway. Any turn lanes would need to be coordinated with the plans for the upgrade of U.S. 42 into the Union city center and approved by KDOT.

6. Multi-Modal Transportation Network

The 1995 Comprehensive Plan Goals and Objectives seek multi-modal transportation networks. In addition, the site is adjacent to Plantation Pointe where multi-modal facilities will be provided if approved (bus stops, bike racks, pedestrian network) and the site is within bicycling (and perhaps walking) range of the Union city center. No such facilities have been proposed at this time. The provision of bicycle racks and a pedestrian walkway system from the adjoining areas to the proposed C-2 area, and within the proposed C-2 area, would help accomplish this purpose.

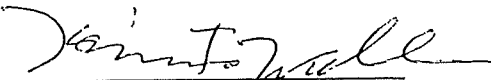
7. Cluster Design

The Comprehensive Plan generally encourages cluster subdivisions. A cluster design is particularly relevant to this site when considering the adjoining open space and low density residential areas, and when considering that the proposed gross residential density is approximately 2.22 units per acre. An overall cluster design could help remedy the concerns expressed in #1 "Commercial Uses," #2 "Utilization of Natural Features," #3 "Proposed Park," and, #4 "Relationship to Adjoining Properties" above.

CONCLUSION

This request needs to be evaluated by the Boone County Planning Commission and the Union City Council in terms of the three criteria necessary for approving a Zoning Map Amendment as stated in Article 3, "Amendment" of the Boone County Zoning Regulations and the potential impacts on the existing and planned uses in the area. The Future Land Use Map would need to be amended to reflect commercial land uses along U.S. 42 if the Planning Commission and City of Union approve this request.

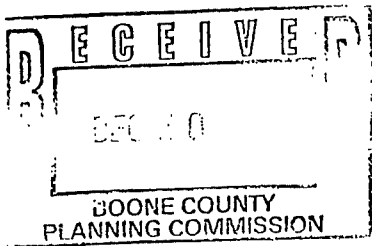
Respectfully submitted,



Kevin T. Wall, AICP CDT
Director, Zoning Services

attachments:

- air photo of area
- Future Land Use Map excerpt
- Zoning Map excerpt
- memo from Historic Preservation Planner
- application materials



APPLICATION FORM ZONING MAP AMENDMENT

BOONE COUNTY PLANNING COMMISSION
(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

1. Name of Project R.C. Durr and Robert Kratz
2. Location of Project U.S. 42
3. Total Acreage of Site 90.0311 Acres
4. Current Zoning of Site RSE
5. Proposed Zoning (Classification being requested) _____
SR-1 and C-2
6. Proposed Uses (please specify each use) _____
Residential Subdivision and Grocery Store

7. Names of Applicant(s) James W. Berling
- Phone Number 331-9191 Fax No. 344-7422

8. Address of Applicant(s) 1671 Park Road, Suite One
Fort Wright, Kentucky 41011
City State Zip

9. Name of Property Owner(s) B & Z Development and The Scheben Company
- Phone Number 331-3160 Fax No. 331-8261

10. Address of Property Owner(s) 1671 Park Road, Suite 11
Fort Wright, Kentucky 41011
City State Zip

11. Proposed Building Intensities (please specify) _____

12. Are there any existing buildings on the site? Yes
How many? Two

13. Deed Book 358 Page No. 44 Group No. 2047

14. Are you also applying for:
No Conditional Use Permit
No Dimensional Variance

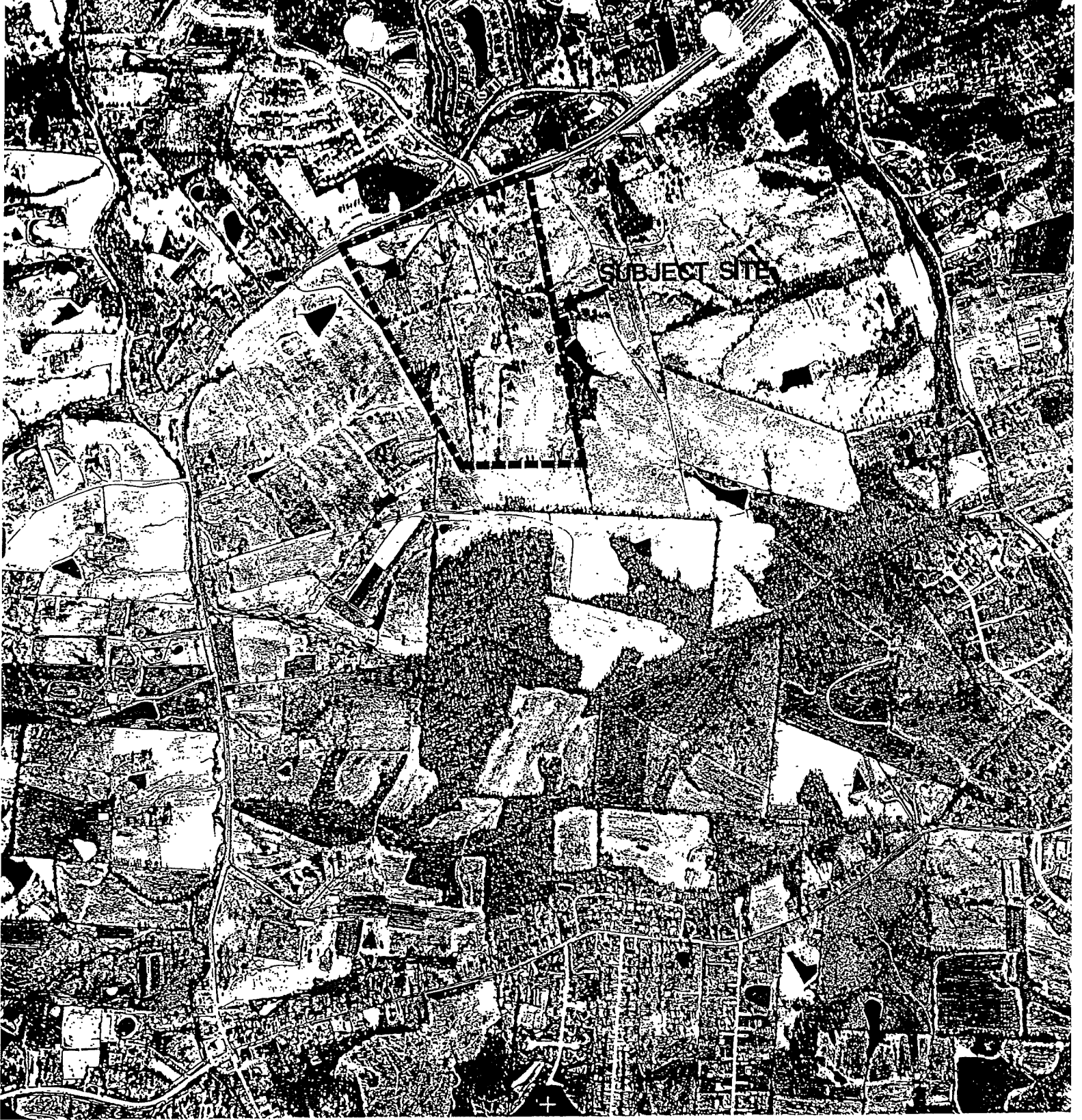
15. Have you submitted a Concept Development Plan? No YES

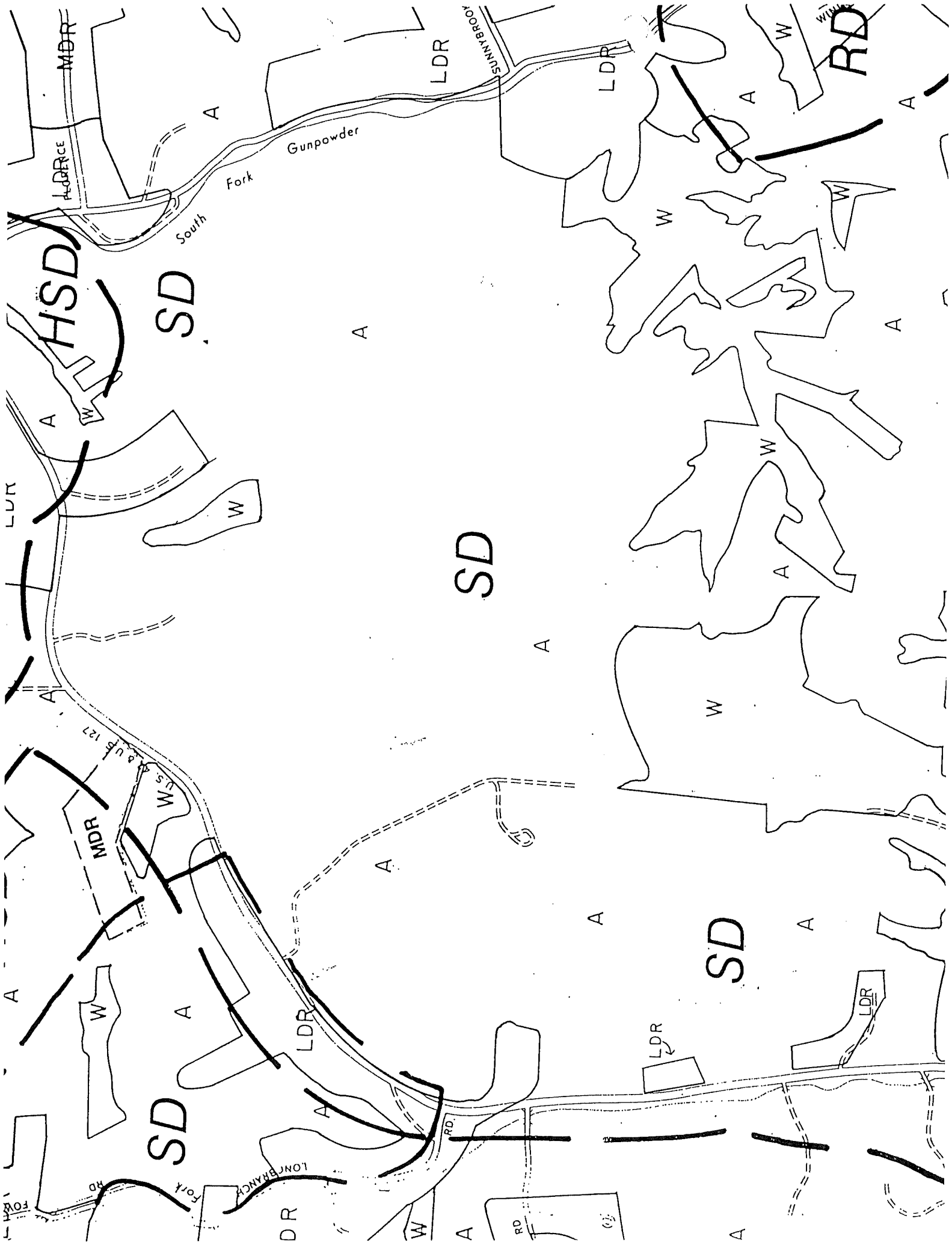
16. Have you had a pre-application meeting with BCPC Staff? No

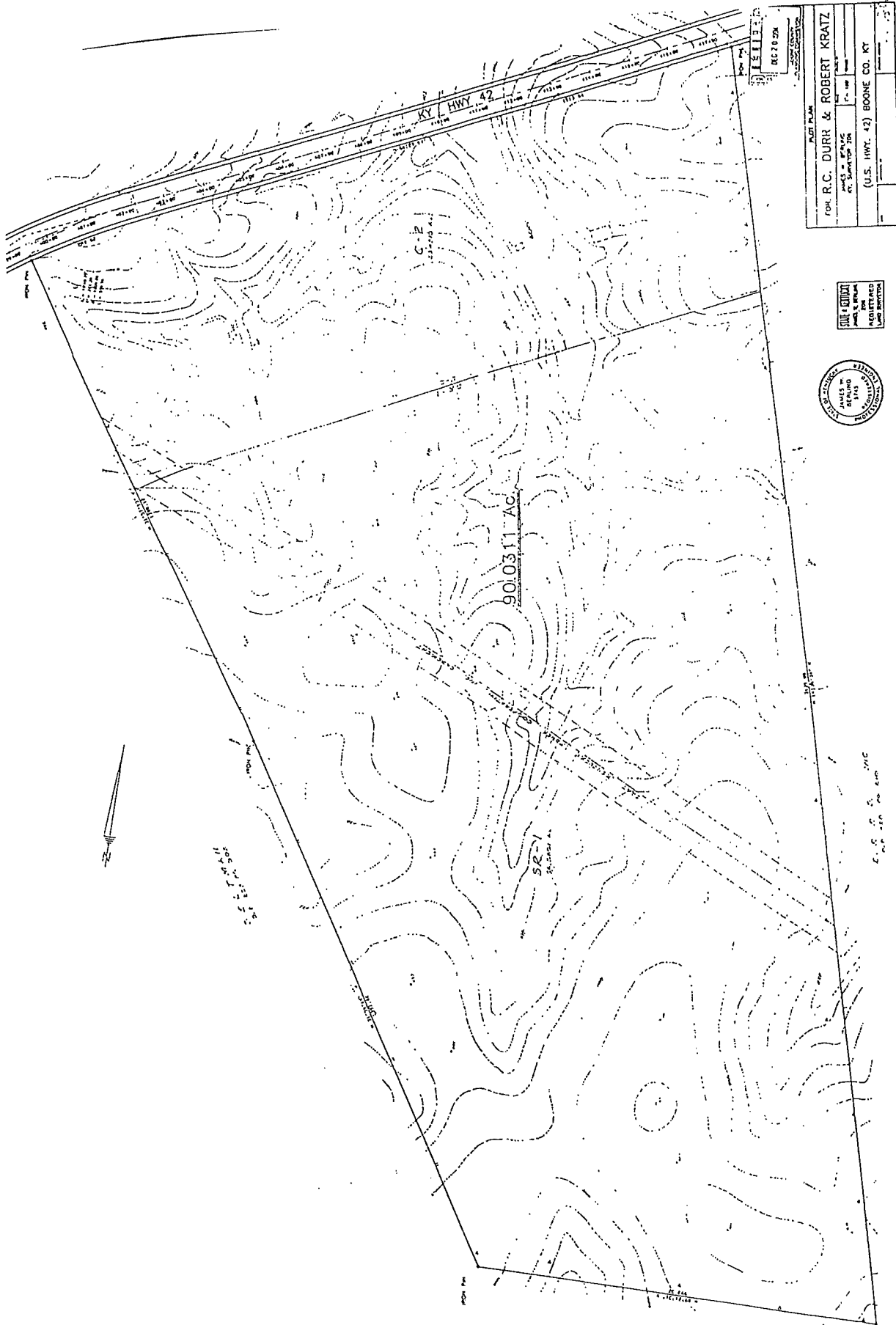
17. Please check the following organizations/agencies which you have discussed the proposed development with in the last several months:

- _____ Boone County Water and Sewer District
- _____ Florence Water and Sewer Commission
- _____ Union Light Heat and Power
- _____ Cincinnati Bell
- _____ Owen County Rural Electric
- _____ Boone County Public Works Department

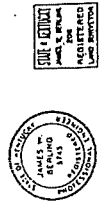
(over)







FOR R.C. DURR & ROBERT KRATZ
 DATE: 10/15/54
 BY: J. S. DUNN
 (U.S. HWY. 42) BOONE CO. KY



S. C. STANMAN

E. S. DUNN

ROONE COUNTY PLANNING COMMISSION
Ellis Cooperative Extension Center
January 25, 1995
7:00 P.M.

PUBLIC HEARINGS

Commission members present: Mrs. Arnett, Mr. Bailey, Mr. Burch - Vice Chairman, Mr. Damstrom, Mr. McElroy, Mr. McMillian, Mr. Millay, Mr. Neltner, Mr. Ries, Mr. Rush, Mrs. Schaffer, Mrs. Smith - Secretary/Treasurer, Mr. Viox - Chairman, and Mr. White.

Mr. William Viox, Chairman, called the meeting to order at 7 P.M.. Following an explanation of the Public Hearing process, Chairman Viox introduced the first item on the Agenda:

1. Applicant: James W. Berling for
B & Z Development and The Scheben Company (owners by contract)

Request: Zoning Map Amendment

The request of James W. Berling for B & Z Development and The Scheben Company (owners by contract) for a Zoning Map Amendment on a 90-acre site located on the south side of U.S. 42 near Old 42, Union, Kentucky. The request is to rezone the site from Rural Suburban Estates (RSE) to Suburban Residential One (SR-1) and Commercial Two (C-2) to allow a residential subdivision and a grocery store.

Staff Member Kevin Wall presented the Staff Report which included a slide presentation (see Staff Report).

Chairman Viox stated that the next step for this request will be the Committee Meeting on February 20, 1995 at 4 P.M. in the second floor conference room of the administration building. This item will be on the Agenda for the Business Meeting on March 1, 1995. Interested parties need to contact the Staff to determine the location of that meeting.

Counselor Wilson advised that this is the Public Hearing stage. The Committee will have the record and will present a report to the full Commission. If the report is adopted, there will be a recommendation to the City of Union for their final say. The city can go along with the Commission's recommendation, override it, or have its own Public Hearing.

Chairman Viox asked for comments from the applicant.

Exhibit C

Mr. Jim Berling, engineer for the development, stated that it is a 90-acre piece of property. Using an exhibit of the Development Plan, he stated that the commercial development is proposed in the front of the site and the remainder of the property will be residential at approximately two units per acre. In regard to the Staff Concerns, he stated that they tried to roll with the topography and use the trees and natural features of the site. The property is not well wooded -- it has a few clusters of trees and trees around the perimeter, which they have made every effort to maintain.

Mr. Berling stated that there is a large overhead power line thru the center of the property, which affects the layout, but they do not think it is a problem for the residential use. He stated that the commercial property is depressed below the road and it would take mass excavation to bring the site up to grade. The farm pond is in the middle of the commercial site. They intend to replace the small pond with a large lake that sets back at the end of the residential property. The commercial uses are supermarket, drugstore, and related neighborhood shops -- such as a video store -- but they do not have them on line yet. The park is a small area left over and he thought it would be nice to have a small wooded area with picnic benches, possibly to be used by the children while the mother shops -- it was not meant to be a regional park. He was not aware of the desires expressed by the Staff in regard to a park. They will try at the Committee level to bring the product around to what the Commission is thinking. Referring to the exhibit, Mr. Berling stated that on the northeast corner of the site is a bank and sit down restaurants with a connection to the property to the northeast. The restaurants are not fast food or drive-thru and will be quality restaurants. He stated that the main entrance in the northeast corner lines up with the main drive to Farmview and they predict a traffic signal in that location. If turning lanes are required, that is not a problem. On the northwest corner are two uses by another entrance to the residential development -- one is a library, for which they have set aside two acres, and adjacent to that is a bank or professional office or a post office. They have been in contract with several people who are interested in that corner.

Mr. Berling stated that most of the other items have been covered by the Staff, including sewer and water, which are readily available. In regard to the Staff Concern of relationship to adjoining properties, he stated that they have kept a tree line along the fence row. He stated that the trees really only occur in the area where the farm was not being used. He indicated the tree clusters on the site. They intend to keep the trees on the perimeter. There are a few clusters of trees to the southwest and the open areas can be filled in with other trees if that is desired. In regard to the street connections and turn lanes, he commented "that is not a problem". They will work with the Staff in regard to the multi-modal transportation network. Mr. Berling stated that if cluster development is what the Commission wants, he will talk with Mr. Costello and they will do some cluster development. There are areas to the rear where the lots can be cut to a lesser depth and areas reworked to develop common space owned by the city or an association. He stated that they get mixed signals on this and have created park areas in the past and found that no one wanted them. He stated that they will work with the Staff.

Mr. Jerry Dusing, attorney, complimented the Staff and Mr. Wall on the comprehensive and professional Staff Report which identifies the issues. He stated that he does not agree with some of the comments. Referring to the exhibits, Mr. Dusing stated that the facts to substantiate the zone change are contained in the Staff Report. He stated that the Comprehensive Plan with respect to the residential is Grid C-5 on the map. The attachment to the Staff Report clearly shows suburban density residential, which is what the project is designed to meet, and is traditionally upscale single-family detached residential development with each home having its own private lot. The Comprehensive Plan adopted in 1990 designates the area for four residential units per acre. The proposed development is 2.2 units per acre which is approximately half of what could be done on the site according to the long-range criteria. He quoted from Page 216 of the Comprehensive Plan that "the area should experience considerable growth . . .". He stated that the ERPS, Inc. development (Plantation Pointe) is to the east. He quoted that "Florence and Union will experience considerable growth and population development. . . ." and stated that this is the next parcel west of that community. Mr. Dusing stated that the Comprehensive Plan says the subdivision should be developed with alternative routes and decreasing impact on major roadways, and this development was done with that in mind. They have connected to Plantation Pointe in two places, they will connect to the undeveloped parcel to the west, and they can make a connection to the south. He stated that in order to make the low density residential feasible and viable, it needs to be complimented with neighborhood commercial development to serve the population that is approved for the area and will continue to develop toward the heart of Union. This location is ideal for limited community service commercial because in the Comprehensive Plan it says commercial development should not be a continuous uninterrupted stream from Pleasant Valley and Gunpowder to Hathaway Road and this plan takes that into account. The Comprehensive Plan also indicates that there should not be any commercial development more than several hundred feet south of Pleasant Valley Road and this plan is designed to keep that theme and be true to the intent of the Comprehensive Plan. They recognize facts that have occurred, including the neighborhood commercial type uses for Plantation Pointe approved last week. He noted the conditions for Plantation Pointe and stated that they held up their development to coordinate with Plantation Pointe. He stated that they are talking about sitdown restaurant, banks, library, grocery store, drugstore, and ancillary neighborhood uses and this type of development is entirely consistent with the development character and growing needs of the area. He stated that U.S. 42 is five lanes and has been upgraded since the late 1980's when the Comprehensive Plan was contemplated and written. Infrastructure is now provided. It is anticipated that sewer will come from the City of Florence.

Mr. Dusing stated that this is the least intense type of commercial service development consistent with serving the population growth earmarked for next door and this site. There will have to be these types of commercial services for the immediate population. They are not regional and are for the people who live there. He stated that this is the front door to Union and where the commercial needs to be. He questioned the alternative locations for commercial and stated that it

would not be practical and would not happen in downtown Union, and is not what is foreseen for downtown Union. He stated that there are plans to continue the improvement to U.S. 42 to five lanes thru Union, but it is not known where it will occur. The city of Union has a lot of input into the exact route and there are only a couple of alternatives that can happen -- the corner of Hathaway Road and U.S. 42 can be bypassed or it can go right thru there. He stated that either way, this type of neighborhood commercial needs to be on the edge of town and not in downtown Union as it would adversely affect the character of the village. It meets the intent of the Comprehensive Plan to discourage uninterrupted commercial development along U.S. 42 to Hathaway Road. He stated that there is existing commercial across the street, including a day care center and abandoned tourist stop.

Mr. Dusing stated that in the past he has been before the Commission on behalf of developers, neighborhood commercial uses, and a grocery store chain in Florence and the comments he has heard from the Florence representatives on the Planning Commission have been "Why are the commercial uses always proposed for Florence? Why not put them on the edge of the city where the population growth is happening? Why put them in Florence and drag all that traffic into the town and back out?". He stated that this application accomplishes that. He commented that these are pretty much direct quotes from Mr. Ries.

Mr. Dusing offered to answer any questions. He stated that the appropriate screening and alignment internally is flexible. Buffering is taken for granted and will occur to the Commission's satisfaction. He quoted from Staff Concern #1 and stated that they are open to discussion, but believe that the library, community service, bank or post office sites are assets to the area. In regard to Staff Concern #2 and the utilization of natural features, he stated that they are locked in to some extent due to the power lines. He stated that the big ravine in the front would have to be addressed for residential or commercial use. In regard to Staff Concern #4, he questioned that they "ignored" the property to the south and stated that they took it into account. He noted the trees proposed to be preserved. He stated that he does not know why they would have to hide a beautiful horse farm from their customers or why the horse farm would want to be hidden from this type of low density residential development. In regard to Staff Concern #6, he stated that they will all have the multi-modal transportation network. It makes sense to tie into Plantation Pointe. He stated that right now there is no place for anyone to walk to the west.

Mr. Dusing stated in summary that the request is consistent with the text and map of the Comprehensive Plan. Factors of a physical and demographic nature include infrastructure, and population anticipated is now on the verge of happening with the dirt turning next door -- which causes the present zoning to be inappropriate and the proposed zoning is about as less dense as you can get. He stated that the neighborhood commercial has the outstanding advantage that it is consistent with the Comprehensive Plan of serving this population without the people having to go out on U.S. 42 to the commercial in Florence or the south end of Union and then back to their residences, which is the idea of tying in with Plantation Pointe.

Chairman Viox asked if there was anyone else present who wished to speak in behalf of the request.

Carol Paras, representing Bill Remke, stated that they are very interested in this site. They discovered two years ago that they draw customers from this area to their Florence store and people in this neighborhood are asking them to represent them with a quality store similar to the type of neighborhood grocery store they build.

Mr. Warren Moore, Mayor of Union, stated that the City of Union wants to remain a bedroom community. This type of subdivision in response to the proposed residential population is what the city has been supporting for the last 10 to 12 years. He stated that the population is expanding and coming their way. This is the kind of development they want. They do not have any major problem with the commercial in principle. The city needs a grocery store and a post office and a library. He noted that the developers are willing to work with the Staff to come up with something that is appropriate. The city likes the development and would like to see it approved.

Chairman Viox asked if there was anyone present who wished to speak in opposition to the request.

Mr. Bill Smith, a resident of Farmview, stated that he is not for or against the request. He stated that the Commission opened up Pandora's box with the approval of Plantation Pointe. He stated that the plan written in 1989 to hold commercial at Gunpowder and Pleasant Valley is no longer a thought. He feels that the people living in the development will not mind going 4 or 5 miles to the grocery store. The people in Farmview do not like commercial where the houses are and like the area rural. He is concerned that the commercial will look like a hodgepodge, like it does around Hopeful Road, and not have a basic theme. They would like something indicative of what the area is like. In other states there is low rise commercial and low signage to add to the appearance of the area. They would be happy with a Remke's market, but he is opposed to a large chain. He stated that the people developing this have a better reputation than the people developing Plantation Pointe and this development will be done and sold before they are halfway thru Plantation Pointe. In regard to the school area the other company will give to the county, he stated that the county will not get it by 2010 and a school will be built somewhere else first. He stated that he would like something that matches with Plantation Pointe and the commercial so that it does not look like a hodgepodge.

Ms. Susan Cabot, Historic Preservation Planner, speaking in behalf of the Boone County Historic Preservation Review Board, reviewed her memorandum attached to the Staff Report. She added that it is their policy when removing a building for reuse to give it, rather than sell it, to someone else for use in the county. The Review Board is extremely concerned about the commercial development proposed for the site. They would not like to see the commercial proposed for the Plantation Pointe site. She stated that Pandora's box has been opened and the approval of commercial in this location makes it fine for commercial to go all the way up U.S. 42 to the

center of Union. This type of commercial activity does not belong in the center of Union. She stated that wherever the new road goes, these uses still need to be in the center of Union. This type of strip shopping center and strip development has destroyed the downtowns of small towns -- which can be seen in Burlington with the strip shopping center taking away many of the primary community uses of the town. They are very opposed to the commercial development. If it is approved, they would like to see it be of a style compatible with the character of Union and not one big building. They feel very strongly about the parking shown on U.S. 42. It would be extremely disruptive to Union to come up U.S. 42 and be met by a parking lot. They would like the parking lot placed to the rear of the building or split up and in smaller sections. She stated that the parking situation on Mall Road would not be appropriate on U.S. 42. They are also concerned about the adjoining property, which is a very extensive estate maintained by the same family for almost 50 years. They would like to see this property protected by more than a few existing trees. They would like a buffer and substantial fence line at least on this side of the property to protect the adjoining property. The people in the subdivision may like to look into the horse farm next door, but the horse farm does not need to look into the subdivision. She stated that they do not want to see this entrance to Union destroyed. They do not want to see the character and style of Union destroyed by extending commercial development this far. Most of the people living there now do not mind driving to Union or Florence for what they need. They moved out there for the rural character and expected it to grow residentially, but not commercially.

Joan Seltman, owner of the adjacent property, stated that the commercial does not belong on the main road. She does not want to look over at the development and wants something across the boundary and a fence so that the people do not dump their trash or come over onto her property. She stated that the homes are fine, but the commercial will ruin the rural city. She questioned the restriction on building around or under the power lines.

Janet Spaulding stated that she has been coming to the Commission meetings since October or November when the Commission started with Mr. Erpenbeck. She has not lived in Farmview for a year and already the reason she moved there is being taken away. Where she now looks across to the barn is where Remke's is proposing a grocery store. She does not need another grocery store and there are quite a few in Florence such as Thriftway, Bigg's, etc. and she does not mind driving to Florence. She works at the mall. She left Dilcrest to get away from what Florence was doing. She does not want any grocery stores and does not think her neighbors want them. She does not want nature destroyed and developers destroy nature. She questioned why the area cannot be left alone -- the developers have made enough money. She stated that the IGA in Union will fold up with Remke's moving in. She stated that the Commission put some restrictions on Plantation Pointe and should put some restrictions on this development to be fair. She is angry and bitter and wishes she had not moved to Farmview.

Thelma Castellini, a resident of Richwood, stated that for 15 years the people of this county have cried to leave it rural. People are here because of the rural atmosphere and time after time beautiful tracts of farmland and woodsy settings are eliminated. The people want the county to remain rural and they should be heard.

Mr. Raymond Spaulding, 6 Northfield in Farmview Subdivision, stated that he is concerned about the image of their city. People love to shop in Florence but do not want to live there because of the commercialization. He stated that they are concerned about property values. He does not know of any property that increases in value with a business in the front yard. He does not feel the zone change should be approved and straight C-2 zoning is more appropriate for the area and more consistent with the previous decisions made concerning Plantation Pointe, which was C-2/PD and more like O-1/PD as it progressed west on U.S. 42. He stated that they expect the same type of restrictions to occur on this application. He stated that the intent of the request is not consistent with the Comprehensive Plan which was to stop commercial construction at Gunpowder. He stated that they do not need the business in this area and do not want it. They purchased there because of the rural setting. He asked that this zone change be treated the same as the Erpenbeck change to help them maintain their property values.

There being no further comments from the audience, Chairman Viox asked if there were any comments or questions from the Commission.

Mr. Ries stated that there are 4 or 5 alternatives tentatively pending for U.S. 42. He asked if any of those alternatives affect this property or go thru it. Mr. Wall advised that the alternatives under consideration may widen the right-of-way, but will not radically change the route of the road. He noted that different factors could come into play. Mr. Costello stated that there is an alternative that affects the adjoining property to the west, but does not affect this property.

Mr. Damstrom asked who will develop the property. Mr. Berling stated that it is a joint effort of The Scheben Company and B & Z Development Company.

Mr. Damstrom question the water and sewer service. Mr. Berling stated that both services will come from Florence. Mr. Damstrom asked how that would be achieved when Florence has always annexed property in the past to provide water and sewer. Counselor Wilson advised that there may be a requirement to allow connection as a result of the 201 sewer project.

Mr. Neltner asked if the Library Board had indicted that two acres is a suitable site for them. Mr. Berling advised that that was the Library Board's choice. Mr. Neltner asked if the Library Board will get back with them and will formally indicate that they would like to have that property. Mr. Berling replied "yes" and advised that they were going to present it to their Board last week and seemed anxious to have it. Mr. Neltner asked that Mr. Berling follow up on this. Mr. Berling stated that they will report to the Committee.

Mr. Bailey stated that the Comprehensive Plan states that there should be commercial development in a development of this type to take care of neighborhood business and the other view is that the Comprehensive Plan states that there should be no development west of Pleasant Valley Road. Mr. Wall read Item E. on Page 5 of the Staff Report in regard to the Business Activity objectives. He referred to the land use policies in effect for this area versus the big picture goals and objectives and the text regarding area C-4, which goes over into the C-5 area, and this site is on the boundary. He referred to items A. and B. in the middle of Page 3 of the Staff Report. He read item A. and stated that between this intersection and Union city center there should not be commercial development at all. He noted that another interpretation is "uninterrupted commercial development". He stated that another interpretation is that commercial development is okay as long as it does not go all the way from this intersection to Hathaway. He read item B. on Page 3 and stated that in some aspects this qualifies the other statement and is more specific about where the commercial should be concentrated and talks about the physical development and the nature of the uses. Mr. Wall stated that his own interpretation is that neighborhood scale is not only the intensity and range of uses, but also the physical development.

Mr. Bailey stated that he thinks of C-2 commercial as being the Mall Road type which allows the large department stores, but noted that it says "serving the neighborhood". He questioned if C-1 would be more realistic for a commercial zone serving neighborhood type needs. Mr. Wall stated that the uses also are largely allowed in the C-1 and C-4 and, since a Concept Development Plan was submitted, the Commission can make it binding.

Mrs. Arnett noted that they have a distance of 600 feet from U.S. 42 and questioned if Mr. Erpenbeck was held to 400 feet. Mr. Wall advised that he was and stated that the commercial aspects of the Erpenbeck development are C-2/PD and the remainder is R/PD. He stated that the code allows flexibility within the Planned Development for those boundaries and in this instance it did not.

Mrs. Arnett stated that she is concerned about the parking lot being in the front. Mr. Berling stated that they can modify it. He stated that it is a small scale drawing with 1 inch = 100 feet. He stated that there is about 30' or 35' of planning out there. He stated that a lot of good ideas have come out tonight and they can do a lot to accomplish what the Commission is after.

Mrs. Arnett stated that she now lives in Union in order to get away from Florence. She stated that U.S. 42 is so beautiful and asked that it be preserved. She asked that the Commission realize that a precedent will be set for what will be there in the future.

Mr. Damstrom asked if the applicant is willing to work with the Committee to restrict some of the uses in the C-2 Zone. Mr. Dusing replied "absolutely, no problem".

Mrs. Schaffer asked if the library site is to be donated or purchased. Mr. Berling advised that it will be donated.

Mrs. Schaffer stated that the lake is a private lake and would not be for the use of the whole community. Mr. Berling replied "that is correct".

Mrs. Schaffer questioned the width of the transmission easement. Mr. Berling stated that it is 150 feet -- 75 feet on each side of the towers.

Mrs. Schaffer stated that she is not convinced that commercial is appropriate there. She noted the word "uninterrupted" and asked that the Committee look at this carefully. She stated that 600 feet is too deep and development that intense is not needed there. She does not want to start a precedent.

Mr. McMillian questioned if Plantation Pointe was under Design Review for their commercial. Mr. Costello replied "yes" and advised that there is a condition and, if approved by the City of Florence, an overall theme has to be developed and agreed to by the Planning Commission. Mr. McMillian asked if that would follow thru on this development. Mr. Costello replied "possibly yes, if the Commission wants it".

Chairman Viox asked if there were any further comments.

Mr. Dusing stated that the Staff Report quoted from Page 216 of the Comprehensive Plan in response to Mr. Bailey's question. He stated that the next sentence says "Farmview subdivision should continue to develop in a high suburban density fashion . . . and areas of local commercial uses". He stated that this is not uninterrupted and not an unreasonable expectation. He stated that a good point was made about the buffer to the back and property values and commercial development. He stated that this is not a case of infill commercial development abutting existing residential. This is the front door to a major high scale residential development to the rear and it has to protect those property values, much less those across the road. He stated that there can be no structures within the 150-foot power transmission lines. There can be driveways and streets, but no buildings there.

Mayor Moore stated that the state has 7 possibilities for U.S. 42 that start where the five lanes stop now and end at Frogtown Road. The alternative asked for by the business owners, the city commission, the entire congregation of the Baptist church, and other people will wipe out the existing downtown Union. The existing business people have said they will rebuild south or north and they will need commercial area to do that. If any of the other routes are picked, downtown will cease to exist because it will be bypassed. He asked that the Commission not consider downtown Union or anything to do with it in its decision.

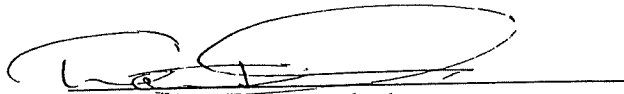
Mr. Burch questioned phasing of the commercial and residential sections. Mr. Berling stated that they have not addressed phasing and, if approved, they would proceed on all aspects as soon as possible. Mr. Burch questioned build out. Mr. Berling stated that they have 150 lots and build out is probably 4 to 4.5 years depending on absorption. He stated that they would do the excavation necessary on the entire site on the

front end and get it seeded back so that there would not be an on-going excavation program that would bother the residential and commercial uses. They would develop the commercial at the same time as they develop the residential to the rear. They intend to build both roadways up front and drop them back if needed.

There being no further comments, Chairman Viox stated that the Committee Meeting for this item will be on February 20, 1995 at 4 P.M. in the second floor conference room of the administration building. This item will be on the Agenda for the Business Meeting on March 1, 1995 at 8 P.M. to likely be held in the Ferguson Room of the Ellis Extension Center.

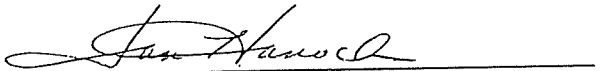
The Chairman closed this Public Hearing.

APPROVED:



William R. Viox, Chairman

Attest:


Jan Hancock, Recording Secretary

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Barry Neltner, Chairman

DATE: March 15, 1995

RE: Request of James W. Berling (applicant) for B & Z Development and The Scheben Company (owners by contract) for a Zoning Map Amendment on a 90 acre site located on the south side of U.S. 42 near old 42, Union, Kentucky. The request is to rezone the site from Rural Suburban Estates (RSE) to Suburban Residential One (SR-1) and Commercial Two (C-2).

REMARKS:

We, the Committee, recommend approval of the above referenced request based upon the following findings of fact and with the following conditions:

FINDINGS OF FACT

1. The residential aspects of the request are in agreement with the adopted Boone County Comprehensive Plan Future Land Use Map which indicates that the area as Suburban Density Residential.
2. The Committee concludes that due to the developing character and growing needs of the area, and that due to the fact that US 42 has been upgraded to a five lane highway adjacent to a portion of the site and will be upgraded further in the foreseeable future, that certain commercial uses, as well as residential uses, are appropriate for the site in question.
3. The Committee concludes that although commercial uses are appropriate, the physical development of these uses must be compatible with the existing physical character of the site in question and the adjoining areas. The Committee also concludes that it is appropriate to place "softer" land uses, such as the proposed library, at the northwestern corner of the site along US 42 to discourage future uninterrupted commercial development along US 42 to the center of the City of Union, as sought by the Boone County Comprehensive Plan. The Committee has also concluded that given the Comprehensive Plan's direction regarding commercial uses in this area of U.S. 42, the expansion of uninterrupted commercial development westward along said road from the intersection with Gunpowder Road should extend no further than this site.

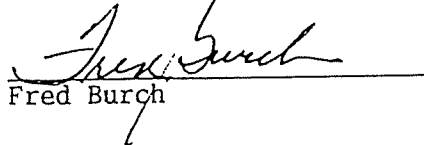
4. The Committee concludes that given the Findings of Fact numbered 2 and 3 above, the current zoning is inappropriate and the proposed zoning is more appropriate.
5. The Committee has concluded that the attached conditions are necessary to achieve consistency with the specific goals, objectives and policies of the 1990 Boone County Comprehensive Plan and the adopted 1995 Boone County Comprehensive Plan Goals and Objectives. The Committee has also concluded that the attached conditions are necessary to mitigate any foreseeable community impacts that may be created by the development. The applicant has signed a letter demonstrating agreement with these conditions.

CONDITIONS

1. The applicant shall donate the site designated on the Concept Development Plan as "library" to the Boone County Public Library District for use as a public library. This donation shall be subject to the terms mutually agreed to by the applicant and the District.
2. The physical development of the commercial uses (architectural design, landscaping, and site arrangement) shall be subject to design review by the Planning Commission's Staff to assure compatibility and appropriateness with the adjacent areas, and to assure that these uses will provide an overall high quality design. This design review will be conducted as part of the Site Plan procedure. The use of design elements that relate to the adjoining Plantation Pointe development, and the use of vernacular architectural elements, shall be incorporated into the commercial uses.
3. Any trees that are to be removed from the interior of the site and that can be reasonably moved shall be transplanted along the south and west boundaries of the site to add to the existing tree line/buffer.
4. Bicycle racks shall be provided for all facilities within the C-2 area. Bike racks shall be provided outside of vehicular parking areas but near main entrances to buildings. Bicycle parking spaces shall be provided at the ratio of 2 bicycle parking spaces for every twenty five required automobile parking spaces.
5. The applicant shall provide a revised legal description for both the SR-1 zone and the C-2 zone within the site to the Planning Commission.
6. The applicant shall actively pursue the signalization of the U.S. 42/ Farmview Drive intersection with the Kentucky Transportation Cabinet.

A copy of the Public Hearing minutes accompanies the findings and recommendation serving as a summary of the evidence and testimony presented by the proponents and opponents of this request.

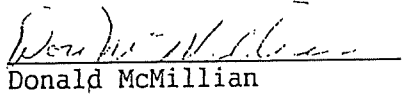

Barry Nelner, Chairman


Fred Burch


Robert Millay


Phil Damstrom

William Bailey


Donald McMillian

Approval of the Minutes:

Chairman Viox stated that each Commission member had received copies of the Minutes of the March 1, 1995 Public Hearing and the March 1, 1995 Business Meeting. He asked if there were any comments or corrections.

There being no changes to the Minutes, Mr. McMillian moved to approve the Minutes as mailed. Mrs. Smith seconded the motion and it carried unanimously.

UNFINISHED BUSINESS:

Chairman Viox advised that the following item is recommended for deferral:

2. Zoning Map Amendment: The request of Collett Partnership (applicant) for Estate of Russell Tanner, Charles Collett and Robert W. Collett (owners) for a Zoning Map Amendment for a 1.36-acre site located at the northwest corner of the intersection of U.S. 42 and Ewing Boulevard, Florence, Kentucky. The request is to rezone the site from Office Two/Planned Development (O-2/PD) to Commercial One/Office Two/Planned Development (C-1/O-2/PD) to allow a beer/wine retailer/delicatessen and general retail and general office uses.

Mr. Neltner moved to defer Agenda Item #1 to the April 5, 1995 Business Meeting to be held at 7 P.M. at Ryle High School. Mrs. Smith seconded the motion and it carried unanimously.

Chairman Viox advised that Agenda Item #7: Design Review - Provident Bank, has been withdrawn. The Chairman stated that the items on the Agenda would be heard in the following order: Item 1, Item 3, Item 5, Item 4 and Item 6. The Chairman introduced the first item on the Agenda:

1. Zoning Map Amendment

The request of James W. Berling (applicant) for B & Z Development and The Scheben Company (owners by contract) for a Zoning Map Amendment on a 90-acre site located on the south side of U.S. 42 near Old 42, Union, Kentucky. The request is to rezone the site from Rural Suburban Estates (RSE) to Suburban Residential One (SR-1) and Commercial Two (C-2) to allow a residential subdivision and a grocery store.

Staff Member Kevin Wall presented the Committee Report which recommended approval of the request based on the findings of fact, but subject to conditions (see Committee Report). Mr. Wall advised that the Concept Development Plan has changed since the Public Hearing. The area adjoining Plantation Pointe along the U.S. 42 frontage has not changed. On the western side of the site, the post office has been removed and the residential lots will adjoin the proposed grocery store. The library site is proposed for the northwest corner of the site and has frontage along U.S. 42. He reviewed the changes to the strip center proposed for the center portion of the site along U.S. 42, including that the supermarket will be a smaller, freestanding structure. The ancillary retail is proposed in smaller buildings and in two outlots near the front of the site. The parking area has been broken into smaller components. More

landscaping areas have been provided within the parking lot, and includes a landscape buffer strip going to U.S. 42 and a walkway between the supermarket and U.S. 42. There are two pocket seeding areas between the supermarket and adjoining buildings. There are two green areas on the site using more of a cluster concept (not a clustered subdivision) and there are common open areas intermittently in the development, which would be common HOA areas for the adjoining lots. These areas provide open space amenities, as does the lake.

In response to questions from Mrs. Schaffer, Mr. Wall advised that the number of lots has not changed. He stated that there are two sit-down restaurants. The commercial area is still about 600 feet deep in the area indicated and about 350 to 400 feet in a separate area. Mr. Jim Berling advised that the commercial is 350 feet deep in that area. Mrs. Schaffer noted that the depth of the commercial varies between 350 feet and 600 feet.

Mr. Kirby questioned the access to the lake. Mr. Wall advised that the lake is for the benefit of the abutting lots. Mr. Kirby asked if bike racks being provided for all facilities refers to the buildings or the tenants. Mr. Wall advised that the ratio is based on the number of parking spaces. The Commission reviewed the Concept Development Plan.

Counselor Wilson advised that the questions raised by the Commissioners were to identify the Development Plan presented by Mr. Wall as the plan that is now tied to the agreed conditions. He noted that the applicant was present with legal counsel. He asked if they would agree to sign and identify the plan, and that there are a set of agreed conditions attached to the plan. Mr. Jim Berling responded "that is acceptable". Chairman Viox noted that there is a letter on file indicating that the applicant has agreed to the conditions.

There being no further comments, Mrs. Smith moved by resolution to the City of Union to approve the request based on the Committee Report. Mr. Rush seconded the motion.

Mrs. Schaffer stated that she believed the idea was to hold the depth of the commercial area to 400 feet. Mr. Wall advised that this issue was raised by Mrs. Arnett at the Public Hearing. He stated that they have revised the depth of the commercial area along the northwest corner adjacent to the Seltman property, but not on the remainder of the property. He stated that the Committee's conclusion was that this was acceptable considering the adjacency of the Seltman farm and that this would be a softer use than any generic retail or C-2 uses. Mrs. Schaffer stated that she thought it was to be uniform along there. She questioned the uses that would be behind it. Mr. Wall advised that they would be the uses proposed and delineated on the plan. He noted that all of the other C-2 uses would be permitted in the other areas. Mrs. Schaffer asked how this would be different than the uses that could be in Plantation Pointe. Mr. Wall advised that this development is more liberal. Mrs. Schaffer noted that this is a wider range. Mr. Wall agreed, but noted that it is narrower in scope. He stated that they have shown specific limited sizes of buildings, and there was not that benefit for Plantation Pointe.

Mrs. Schaffer stated that the commercial being the same would be more consistent. She noted that the majority of Plantation Pointe is in Florence, which is different than Union, and she does not want to start something in Union -- which needs to be considered.

Counselor Wilson advised that the Commission's action is a recommendation to the City of Union. The City of Union can go along with the recommendation or override. He advised those present to follow up with the City of Union.

Chairman Viox asked the applicant to sign and date the plan before leaving the meeting.

The Chairman asked for a roll call vote on the motion made by Mrs. Smith, which found Mrs. Arnett, Mr. Burch, Mr. Damstrom, Mr. Kirby, Mr. Millay, Mr. McMillian, Mr. Neltner, Mr. Rush, Mrs. Smith, Mr. White, and Chairman Viox in favor. Mrs. Schaffer was opposed. The motion carried by a vote of 11 to 1.

3. Zoning Map Amendment

The request of Melvin Dolwick, Carlton Dolwick, and Lerov Dolwick (owners) for a Zoning Map Amendment for an approximate 15-acre site located near the KY 20/KY 8 intersection, Boone County, Kentucky. The request is to rezone the site from Suburban Residential One/Small Community (SR-1/SC) to Recreation (R) in order to allow a marina. The applicants are also requesting a Conditional Use Permit to allow related support facilities.

Staff Member Jeff Hayes presented the Committee Report which recommended approval of the request based on the findings of fact, but subject to conditions (see Committee Report). The applicant has signed the letter agreeing to the conditions.

Mr. Kirby moved by resolution to the Boone County Fiscal Court that the request be approved based on the Staff and Committee Reports. Mr. Burch seconded the motion.

Mr. Kirby referred to Condition #3 and stated that it sounds like the Zone Change Committee is taking on the Site Plan Review. He questioned how thoroughly a Design Review can be done at the concept stage. He asked if the Zone Change Committee will follow up on the Design Review and if both Committees will have a Design Review role -- will the Site Plan Committee need to follow up on the Design Review or will it be settled at the Zone Change Committee level?

Mr. Burch, Committee Chairman, advised that the Committee is recommending approval of the zone change now, but reserving the right to look at the Concept Development Plan before sending it to the Site Plan Committee. The Site Plan Committee will still look at it, as they would any Site Plan Review.

Counselor Wilson advised that from the condition it appears that the Zone Change Committee will be reviewing a Concept Plan and, as part of that

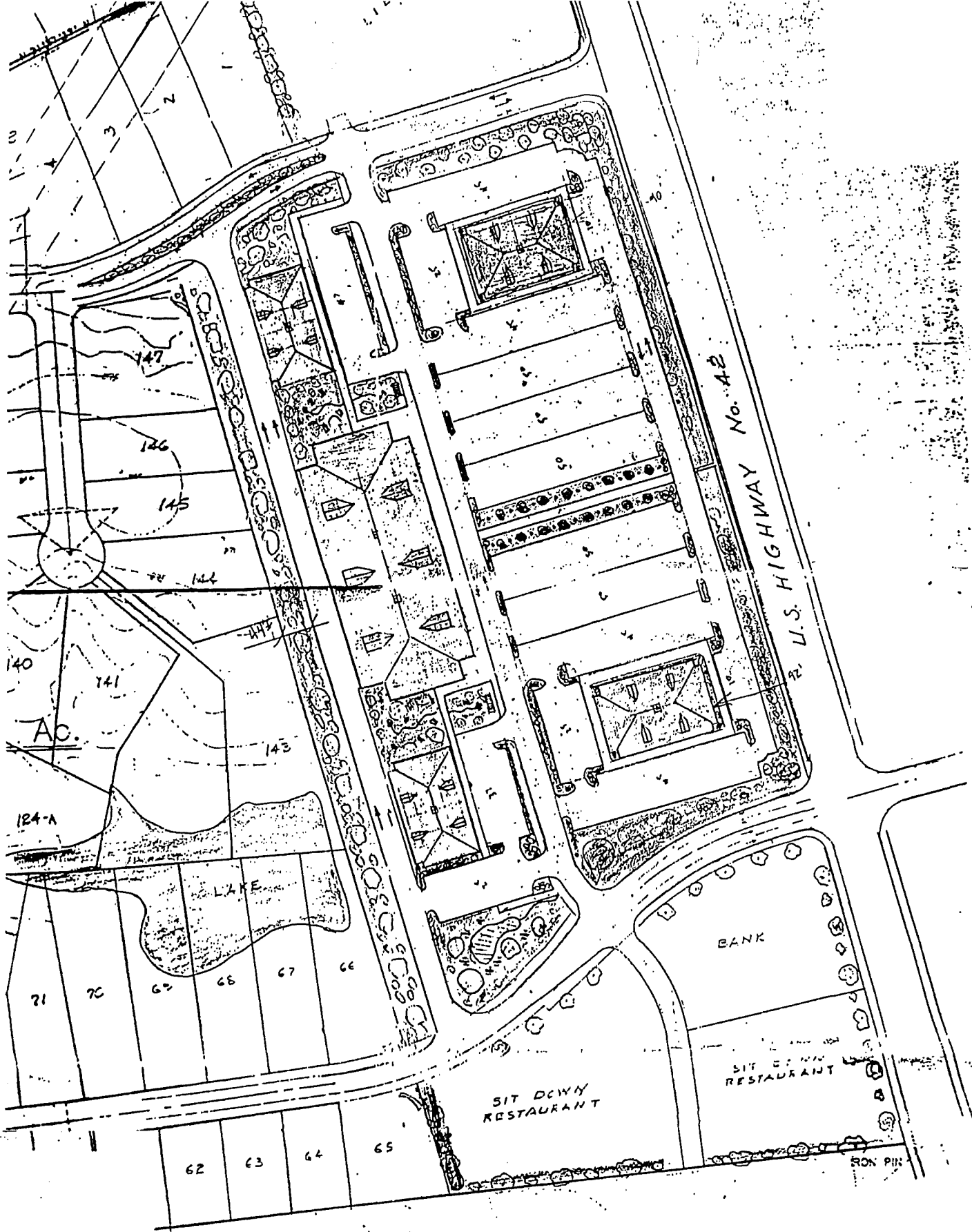


Exhibit E

SURVEYOR
 JAMES W. BERLING
 206
 REGISTERED
 LAND SURVEYOR

CONCEPT DEVELOPMENT PLAN		
FOR: R.C. DURR & ROBERT KRAT		
JAMES W. BERLING KY. SURVEYOR 206	SCALE 1" = 100'	DATE
(U.S. HWY. 42) BOONE CO. KY		
DATE	BY	DATE

CITY OF UNION, KENTUCKY
SPECIAL MEETING
APRIL 17, 1995

Mayor Moore called the specially called meeting to order at 7:40 p.m. Present were Commissioners Eddie Johnson, Phil Damstrom, Ron Sharp, Jack Johnson and City Attorney David Martin.

The purpose of the special called meeting was to have second reading on Ordinance 95-004 = AN ORDINANCE APPROVING AND ADOPTING A ZONING MAP AMENDMENT; SUCH ZONING MAP CHANGING FROM (RSE) RURAL SUBURBAN ESTATES TO COMMERCIAL (C1-2).

After stating the purpose of the special called meeting, Mayor Moore asked for any comments from the commission or the audience. Mayor Moore asked each person to state their name and address for the record.

Jack Hunt, a resident of Sycamore Dr., stated that he did not want Union turned into a strip mall.

Jackie Newman, Mt Zion Road stated that the rural situation was the reason she moved to Union. She said she believes that Union should be kept rural.

Dan Zmurk, Indian Hill - Asked if the commissioners had any idea what will happen if banks, grocery stores and retail stores start coming to Union.

Rick Oliver, Indian Hill, What are the residents going to gain. Commissioner stated that the City has to have space for commercial stores to serve residents.

Bill Smith, Farmview - said Florence and Farmview would have adverse effect.

Jason ? - Area has to grow. Doesn't need commercial.

Seltman, Highway 42 - Has been here since 1948 and had no problems since that time. Have places going down Highway 42. Wants Union kept rural.

Greg Grout, Indian Hill - I don't think anyone ever moved to Union to have commercial. How do other cities get by

Exhibit F

Roy Frost, Russwill Dr. Moved to area to escape growth in Florence. What about sewers? Going to bring in crime rate with development.

Patricia Smith, Farmview - Said P & Z promised there would be no commercial.

Carolyn Mitchell, Farmview - Would Union's progress be like Florence?

Joann Seltman, Highway 42 - What about citizens and others from Union who did not want the commission to approve the development?

Jerry Dusing, Representative of the Development - Wants the city to understand that you can't have everything offered without some commercial development. Must be compatible with surroundings. The designs have to go by P & Z to get o.k. Density has increased about one-half.

Commissioner Damstrom read the 1995 comprehensive plan to people in attendance. Gave clarification about signs in Plantation Pointe. Their signs, as any others, will have to be monument type.

Bob Brock - why is commission pushing so hard to get development?

Ray Konser - Lives next door to area in question. Would rather have planned development than none at all.

Rick Oliver moved to Union because he wanted some place quiet. doesn't mind residential, but doesn't want commercial.

Frances Barlow asked about the number of houses.. the answer was 2 per acre.

Danny Zmurk runs Ameristop and thinks Union needs more than one store and one gas station.

Commissioner Damstrom moved to pass Ordinance 95-004 on second reading. The motion was seconded by Commissioner Eddie Johnson and carried unanimously. Commissioner Jack Johnson abstained from voting due the fact that he was not here for the last meeting and could not make a decision.

Respectfully submitted:

Nancy Sellers
NANCY L. SELLERS

APPROVED: 

CITY OF UNION, KENTUCKY
BUSINESS MEETING
APRIL 11, 1995

MAYOR MOORE CALLED THE REGULARLY SCHEDULED BUSINESS MEETING TO ORDER AT 7:30 P.M. PRESENT WERE COMMISSIONERS EDDIE JOHNSON, PHIL DAMSTROM AND CITY ATTORNEY DAVID MARTIN. COMMISSIONER JACK JOHNSON WAS ABSENT. THERE WERE APPROXIMATELY TWENTY-FIVE (25) PEOPLE IN THE AUDIENCE, MOST OF WHOM WERE IN ATTENDANCE TO GIVE THEIR VIEWS ON THE PLANNED DEVELOPMENT ON THE ERPENBECK PROPERTY AND THE DEVELOPMENT OF PROPERTY OWNED BY MR. KRATZ AND MR. DURR.

MAYOR MOORE STATED THAT THE MEMBERS OF THE COMMISSION WERE SUPPLIED WITH COPIES OF THE OF THE MARCH 3, BUSINESS MEETING MINUTES, THE MARCH BOOKKEEPER'S AND TREASURER'S REPORTS AND A LIST OF BILLS FOR PAYMENT IN APRIL. HE SAID THAT ANYONE WISHING TO HAVE COPIES OF ANY OF THE DOCUMENTS COULD SEE THE CITY CLERK AFTER THE MEETING AND SHE WOULD MAKE COPIES OF THE DOCUMENTS FOR THEM.

COMMISSIONER DAMSTROM MOVED TO DISPENSE WITH THE READING OF THE MINUTES AND THAT THEY BE APPROVED AS WRITTEN. THE MOTION WAS SECONDED BY COMMISSIONER EDDIE JOHNSON AND THE MOTION CARRIED UNANIMOUSLY.

COMMISSIONER DAMSTROM MOVED TO APPROVE THE BOOKKEEPER'S AND TREASURER'S REPORTS AS PRESENTED. THE MOTION WAS SECONDED BY COMMISSIONER JOHNSON AND CARRIED UNANIMOUSLY.

COMMISSIONER JOHNSON MADE A MOTION TO PAY THE BILLS FOR APRIL AS LISTED. COMMISSIONER DAMSTROM SECONDED THE MOTION AND IT CARRIED UNANIMOUSLY,

CORRESPONDENCE:

THERE WAS NO CORRESPONDENCE TO BE BROUGHT BEFORE THE COMMISSION FOR THIS MONTH.

DEPARTMENTAL REPORTS:

COMMISSIONER JOHNSON REPORTED THAT HE HAD BOUGHT THE TREES AND HAD THEM PLANTED. HE IS NOW WORKING ON GETTING THE ACCUMULATED SAND AND DIRT OFF OF THE CITY STREETS. HE STATED THAT SOME OF THE BOONE COUNTY CREW HAD TO WORK OVERTIME TO GET IT ALL FINISHED.

OLD BUSINESS:

MR. RAY ERPENBECK WAS PRESENT REPRESENTING HIS PLANNED DEVELOPMENT. MR. ERPENBECK STATED THAT A COUNCIL MEETING WILL BE HELD TOMORROW NIGHT AT THE FLORENCE CITY HALL AND THAT THE ERPENBECK DEVELOPMENT WILL BE ON THEIR AGENDA. DISCUSSION

GARY MELBOURNE: WHAT ABOUT TRAFFIC CONTROL? MR. MELBOURNE STATED THAT HE HAS HEARD THAT PRICES ON THE NEW HOMES WILL BE ANYWHERE FROM \$80,000 TO \$200,000. MR. MELBOURNE SAID HE THINKS THE TRAFFIC WILL ONLY BE A HASSLE BETWEEN FARMVIEW AND THE NEW DEVELOPMENT. MAYOR MOORE STATED THAT HIGHWAY 42 HAS SEVEN (7) ALTERNATE ROUTES. THE CITY DOES NOT KNOW WHEN HIGHWAY 42 WILL BE DEVELOPED AND THERE IS A NEED FOR INFRASTRUCTURE TO SUPPORT THE COMMUNITY.

MR. BERLINGO STATED THE DEVELOPMENT IS ESPECIALLY FOR UNION.

JANET SPAULDING, 6 FARMVIEW DR., ASKED ABOUT THE RESTRICTIONS PLACED ON THE ERPENBECKS AND MR. DURR. WILL THEY BE LIMITED TO MONUMENT SIGNAGE? SHE SAID SHE FEELS THAT EVERYTHING THAT IS SAID IS FALLING ON DEAF EARS. MAYOR MOORE STATED THAT THE CITY NEEDS TO HAVE A LARGER TAX BASE TO BE ABLE TO PROVIDE SERVICES FOR UNION RESIDENTS.

MRS. JOANN SELTMAN, HIGHWAY 42 - MRS. SELTMAN STATED THAT PLANNING AND ZONING HAD PREVIOUSLY SAID COMMERCIALIZATION WOULD STOP AT GUNPOWDER, AND NOW IT HAS EXTENDED TO THE ERPENBECK AND DURR PROPERTY.

JACK FRYE, RICE PIKE - ASKED WHY DEVELOPERS COULD NOT KEEP THE COMMERCIAL AREAS PRETTY. WHATEVER GOES IN, TRY TO KEEP IT PRETTY. MAYOR MOORE SAID THE COMMISSION DOES NOT WANT HIGHWAY 42 TO LOOK LIKE HIGHWAY 18 OR DREAM STREET.

JERRY DUBINO - WANTS COMMISSION TO KEEP IN MIND THAT COMMENTS HAVE BEEN VOICED AT PUBLIC HEARING AND THE COMMISSION HAS PROMISED TO KEEP THE DEVELOPMENT COMPATIBLE WITH BURROUNDINGS.

AFTER THE DISCUSSION, COMMISSIONER PHIL DAMSTROM MADE A MOTION TO APPROVE ORDINANCE 95-004 ON FIRST READING. COMMISSIONER JOHNSON SECONDED THE MOTION AND IT CARRIED UNANIMOUSLY. MAYOR MOORE SET A DATE FOR THE SECOND READING OF ORDINANCE 95-004. THE MEETING WILL TAKE PLACE ON MONDAY, APRIL 17, 1995 AT 7:30 P.M. AT THE CITY BUILDING FOR THE SECOND READING. THE MEETING WILL BE ADVERTISED IN THE KENTUCKY POST PER MAYOR MOORE.

NEW BUSINESS:

THERE IS A VACANCY ON THE COMMISSION CAUSED BY COMMISSIONER ROGER WEAVER'S RESIGNATION. THREE NAMES HAVE BEEN SUBMITTED FOR THE POSITION. THEY ARE AMY LUTES, JACK HUNT AND RONALD SHARP. MAYOR MOORE ASKED EACH PERSON TO TELL THE COMMISSION WHY THEY WISH TO BE CHOSEN TO FILL THE VACANCY. MS. LUTES WITHDREW HER NAME, STATING THAT SHE IS RETURNING TO SCHOOL AND WOULD NOT BE ABLE TO HANDLE THE DUTIES. AFTER THE REMAINING PEOPLE SPOKE, COMMISSIONER JOHNSON MOVED TO GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF CHOOSING A COMMISSIONER. THE MOTION WAS SECONDED BY

FOLLOWED. AFTER DISCUSSION, COMMISSIONER DAMSTROM STATED THAT HE WOULD RATHER WAIT TO SEE WHAT FLORENCE WILL DO. THE OTHER MEMBERS OF THE UNION COMMISSION WERE IN AGREEMENT WITH MR. DAMSTROM AND THE MATTER WAS PUT ON HOLD TO WAIT UNTIL FLORENCE TAKES ACTION ON THEIR PART OF THE DEVELOPMENT. THERE WAS AGREEMENT BY BOTH PARTIES THAT THE TIME LIMIT BE WAIVED AND THAT SUCH ACTION SHOULD BE ON RECORD AND MADE A PART OF THE MINUTES OF TONIGHT'S MEETING.

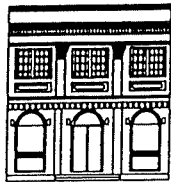
MR. BERLING, WHO IS THE REPRESENTATIVE FOR THE R.C. DURR DEVELOPMENT WAS PRESENT. MAYOR MOORE STATED THAT THE PLANNING COMMISSION HAS APPROVED THE PLAN AND THAT AS FAR AS HE KNOWS, NO ONE ON THE COMMISSION HAS A PROBLEM WITH THE ZONE CHANGE REQUEST. MAYOR MOORE THEN GAVE FIRST READING TO ORDINANCE 95-004 - AN ORDINANCE APPROVING A ZONE CHANGE FROM RURAL SUBURBAN (RSU) TO COMMERCIAL TWO (C-2) ON A STRIP COMMISSION HAS APPROVED THE ZONE CHANGE WITH SIX (6) CONDITIONS. AFTER READING THE ORDINANCE, MAYOR MOORE ASKED IF THERE WERE ANY QUESTIONS OR COMMENTS. THE FOLLOWING COMMENTS WERE VOICED:

MARK BAUMGARTNER - FARMVIEW RESIDENT: MR. BAUMGARTNER HAS RESERVATIONS REGARDING THE ZONING CHANGE. MR. BAUMGARTNER SAID THAT CHANGING THE ZONING WOULD HAVE A BIG IMPACT ON THE FARMVIEW SUBDIVISION. HE CONTINUED, ASKING THE COMMISSION WHERE IS DEVELOPMENT GOING TO STOP. MR. BAUMGARTNER STATED THAT IT SOUNDS AS IF THE CITY OF UNION HAS ALREADY MADE A DECISION ABOUT THE MATTER. MR. BAUMGARTNER SAID HE WOULD LIKE TO KNOW WHAT RESTRICTIONS WOULD BE PLACED ON SIGNAGE. WOULD THE SIGNS BE LIT TWENTY-FOUR (24) HOURS OR WHAT? MR. BAUMGARTNER FEELS THAT THE DEVELOPMENT IS IN DIRECT CONFLICT TO THE WISHES OF PLANNING AND ZONING, ACCORDING TO A COPY OF P & Z'S 1 000 PROGRAM. MAYOR MOORE ASKED COMMISSIONER DAMSTROM, WHO IS UNION'S REPRESENTATIVE TO THE PLANNING AND ZONING BOARD. MR. DAMSTROM STATED THAT HE WORKED ON THE COMMITTEE WHICH RECOMMENDED APPROVAL OF THE ZONE CHANGE. COMMISSIONER DAMSTROM STATED THAT THE COMMITTEE GAVE THE SAME CONDITIONS TO THE PROPERTY OWNED BY KRATZ/DURR THAT THEY DID TO THE ERPENBECK PROPERTY. COMMISSIONER DAMSTROM STATED THAT ALL SIGNS ARE COMMITTED TO A TYPE OF MONUMENT SIGNAGE. MR. BERLING STATED THAT MR. DURR PROVIDED FOR A LIBRARY IN THE PLANS. MAYOR MOORE STATED THAT HE, ALSO WOULD RATHER HAVE UNION REMAIN RESIDENTIAL, BUT THE CITY NEEDS SMALL SHOPPING PLACES.

DAVID (WOULD NOT GIVE LAST NAME) OF 27 BARNWOOD STATED THAT HIS CONCERN IS WHETHER THE CITY CAN CONTROL GROWTH AND THE TRAFFIC IT WOULD BRING. HE BELIEVES THE WORK TRAFFIC WILL BE EXCESSIVE. COMMISSIONER DAMSTROM STATED THAT THE SQUARE FOOTAGE OF THE COMMERCIAL AREA WILL BE CONTROLLED. MR. DAMSTROM STATED THAT BOTH THE ERPENBECK AND THE DURR DEVELOPMENTS WERE ASKED TO SCALE DOWN ON THEIR COMMERCIALIZATION.

MR. RON SHARP OF MT ZION ROAD ASKED THE COMMISSION TO KEEP IN MIND THAT THERE ARE COMMERCIAL AREAS APPROXIMATELY FIVE (5) MINUTES AWAY AND THAT THE CITY DOES NOT NECESSARILY NEED A DUPLICATION OF THE SERVICES OFFERED.

BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005
606-334-2196 FAX 606-334-2264

March 26, 1996

Mr. Robert J. Perin
Real Estate Supervisor
P.O. Box 46234
Cincinnati, Ohio 45246

RE: Kroger Shopping Center, Union, Kentucky

Dear Mr. Perin:

Pursuant to our final meeting of March 4, 1996, the purpose of this letter is to formally inform you that I have determined that the proposed change in your Concept Development Plan, from 104,000 square feet to 115,000 square feet (a 9.6 % increase) for the site on the southern side of U.S. 42 within the Union Village Subdivision is a minor change and that you may proceed directly to the major Site Plan Review.

This determination is based on the fact that the total number of buildings has not changed and that square footage was taken from the "B" stores/buildings to account for a portion of the increased square footage of the proposed Kroger store. I will remind you that conditions of approval, 2 and 4, expressed in the adopted Committee Report, dated March 2, 1995, still apply to the modified proposal. The remaining conditions (1,3,5 and 6) do not apply to the 14 acre tract that Kroger is developing. Conditions 1,3 and 5 have been fulfilled by the applicant and the applicant is to continue pursuing conditions six (6). The 14 acre tract is zoned Commercial Two (C-2) which allows for the combination food and drug store.

The architectural design of the shopping center as proposed on the Robert Ehmet Hayes and Associates elevations, dated January 29, 1996, and the site arrangement as proposed on the PDT Architects drawings, last revised February 22, 1996, has been approved. However, you must still submit a completed application for Major Site Plan Review for approval by the Planning Commission staff. Commission's Staff will also review the elevation design of each structure again as they are submitted.

Please contact me at the above number if you have any questions regarding this project.

Sincerely,

Mitchell A. Light
Asst. Zoning Administrator/Enforcement Officer

MAL/tlm

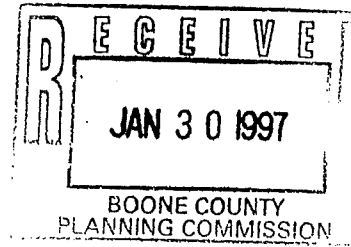
cc: Kevin P. Costello, AICP, Executive Director
The Honorable Warren Moore, Mayor, City of Union
Phil Damstrom
Jim Berling
Ehmet Hayes

Exhibit G



McDonald's Corporation
635 Brooksedge Boulevard
Westerville, Ohio 43081
614/891-3800
Fax: 614/899-3155

Mitch Light, Asst. Zoning Administrator
Boone County Planning Commission
2995 Washington Street
Burlington, KY 41005



RE: City of Union
Kroger Shopping Center
US Rt. 42 & Richmond Rd.

Dear Mitch:

McDonald's Corporation is investigating developing a restaurant with drive-thru at the outlot location referred to as Retail "C" in the approved development plans. I have reviewed the January 17th and March 8, 1995 Conditions of Approval for this development and the C-2 zoning guidelines. I believe a McDonald's restaurant is a permitted use but I would appreciate a written confirmation from you concerning this point. This will help clear-up existing rumors questioning this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gust Mecera".

Gust Mecera
Project Manager

PC: Steve Master

Exhibit H



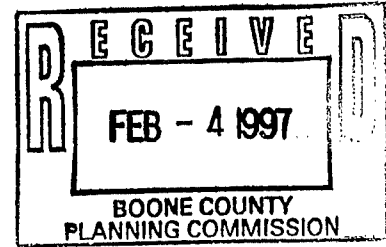
Telephone: (513) 782-3463
Fax: (513) 771-9045

THE KROGER CO.

130 Tri-County Pkwy., Suite 324
P.O. Box 46234, Cincinnati, Ohio 45246

REAL ESTATE DEPARTMENT
Cincinnati/Dayton KMA

January 30, 1997



Mr. Mitch Light
Boone County Regional Planning Commission
2995 Washington Street
Burlington, KY 41005

Re: Kroger Shopping Center
SWC US 42 & Richmond Road, Union, KY

Dear Mr. Light:

The Kroger Co. has committed to make our new Union, KY shopping center the showpiece neighborhood shopping center of Northern, KY. This commitment is evidenced by the architectural theme and the choice of materials we have incorporated into the buildings now under construction in the first phase of our development. Regrettably, it has come to my attention that there have been discussions within the Union community as to the legality of our efforts to seek fast food restaurants for our shopping center.

The March 8, 1995 Conditions of Approval letter from your office approved the zone change on this 14 acre property to a Commercial Two (C-2) zone. As I understand the Boone County zoning ordinance, a C-2 zoning designation allows for the operation of fast food restaurants. The Conditions of Approval letter has no mention of any exceptions to the typical C-2 uses. Would you please formally document your department's stance on this issue for me.

Thank you for your help on this matter.

Very truly yours,

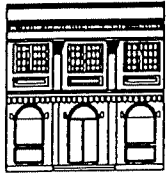
THE KROGER CO.

Robert J. Perin
Real Estate Manager

RJP/lma

Exhibit I

BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005
606-334-2196 FAX 606-334-2264

February 13, 1997

Mr. Robert J. Perin
Real Estate Manager
The Kroger Company
P.O. Box 46234
Cincinnati, OH 45246

RE: Union Village U.S. 42, Union, Kentucky

Dear Mr. Perin:

In response to your letter of January 30, 1997, I have reviewed the minutes of all meetings pertaining to the Union Village development and have come to the following conclusions in regard to the uses presented and approved by the Boone County Planning Commission and the City of Union.

At the January 25, 1995 Public Hearing, Mr. James Berling, applicant, made reference to the commercial portion of the development stating that the proposed uses do not include "fast food or drive-thru" type restaurants. Even though the Concept Development Plan shown at the Public Hearing did not show what is now retail "C" and retail "D", statements were made pertaining to the type of restaurants proposed ("sit down"... "not fast food or drive-thru").

The Concept Development Plan that was approved at the March 15, 1995 Business Meeting showed two (2) outlots within the Commercial portion between Richmond Road and Braxton Drive, but the statements made at the Public Hearing did not indicate drive-thru fast food restaurants in the project. If your Company desires to develop a drive-thru fast food restaurant for either outlot, then another Public Hearing would be required.

You should be aware that the original Concept Development Plan presented to the public and Planning Commission at the Public Hearing of January 25, 1995 noted "Super Market, Drug Store, Neighborhood Shops" for the commercial property between Richmond Road and Braxton Drive. Mr. Berling, the applicant at the time, stated; "The commercial uses are supermarket, drugstore, and related neighborhood shops - such as a video store..."

Exhibit J

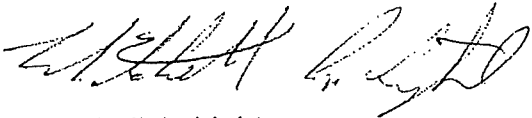
Mr. Robert J. Perin
February 13, 1997
Page 2

The minor changes in the concept development plan that the Kroger Company initiated later on increased the square footage of their development. It did not change the uses designated for the property. Therefore, the uses approved for the outlots must fall within the "Drug Store, Neighborhood Shops" uses.

If the Kroger Company wishes to appeal this interpretation, an application to the Union Board of Adjustment shall be filed in our office within thirty (30) days of the date of this letter.

If you have any questions, please contact me at the above number.

Sincerely,



Mitchell A. Light
Asst. Zoning Administrator/Enf. Officer

MAL\par

cc: The Honorable Warren Moore, Mayor, City of Union



Telephone: (513) 782-3463
Fax: (513) 771-9045

THE KROGER CO.

130 Tri-County Pkwy., Suite 324
P.O. Box 46234, Cincinnati, Ohio 45246

REAL ESTATE DEPARTMENT
Cincinnati/Dayton KMA

February 17, 1997

Mr. Kevin P. Costello, AICP
Executive Director
Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

RE: 14-Acre Tract owned by Topvalco, Inc., a
subsidiary of The Kroger Co. ("Kroger"), known as
Union Village Shopping Center
U.S. 42 at Farmview Dr.
Union (Boone County), Kentucky

Dear Mr. Costello,

As you are aware, Kroger purchased and is presently developing for retail use the above referenced property. I am disturbed by the recent series of events, findings and subsequent communications by your office to Kroger that have placed unexpected limitations on the use of this property and imputed unsolicited, procedural filing deadlines (to the Union Board of Adjustment) on our Company.

During the course of developing the subject property, we commenced sometime ago discussions with a potential retail user in regard to their interest in a portion of the Shopping Center (Parcel "C" on the latest approved Concept Development Plan) for use as what the Boone County Zoning Regulations might construe as a "fast food" or "drive-thru" restaurant. Robert Perin in our office initiated a series of inquiries with Mitchell Light, Assistant Zoning Administrator / Enforcement Officer for Boone County regarding certain physical design requirements and latitudes applicable to Parcel "C" for the purpose of enabling Kroger and this prospective user to ascertain the viability of Parcel "C" on which to construct their storeroom and operate their business. Mr. Light was made aware that Robert's questions centered around a prospective "fast food / drive thru" use. My understanding is that this prospective user (McDonalds) or his representative also contacted Mr. Light directly in regard to similar inquiries.

Apparently, Mr. Light (the County's Assistant Zoning Administrator / Enforcement Officer) had responded to Robert's initial inquiries without qualification or remarks that questioned the permissibility of this prospective "fast food / drive-through" use on Parcel "C". However, my understanding is that in a later dialogue Mr. Light began to raise with Robert some uncertainty over whether or not a "fast food / drive-thru" user such as McDonalds would be permitted on the subject property in accordance with the latest Zoning Map Amendment

Exhibit K

approved for the property. Mr. Light indicated that his office was reviewing the record and would make some determination in regard to this matter. This is the first time Kroger became alerted as to the possibility that the current zoning of the property may not permit a "fast food / drive thru" restaurant.

Kroger proceeded patiently to wait for some further clarification and response from your office in regard to this unexpected "use issue" during which time we requested, on more than one occasion, an opportunity to meet in your office with the appropriate Boone County personnel to informally discuss this matter and explore together whether or not "fast food and/or drive-thru" restaurants were permitted on the subject property.

It was at this time that Mr. Light prompted Robert Perin for a letter from Kroger requesting that Boone County investigate and make a determination whether or not "fast food / drive thru" restaurants were permitted on the property. However, at this point it was not Kroger's intention to trigger receipt of some "formal (standing) decision" from the Assistant Zoning Administrator on the matter or even necessarily challenge the information shared by Mr. Light that the County was leaning toward some determination that the zoning on the subject property would not permit a "fast food / drive thru" restaurant. We simply wanted to meet with your office to constructively discuss the facts underlying this issue.

Notwithstanding this, Robert cooperated, at Mr. Light's request, to direct a letter to him dated January 30, 1997 seeking Boone County's findings in regard to this "use issue". It was our belief that this letter would facilitate the meeting we had been requesting with your office to discuss this matter. Subsequently, we have received Mr. Light's letter dated February 13, 1997 informing Kroger that, among other things, "...the uses approved for the outlots must fall within the 'Drug Store, Neighborhood Shops' uses" and that "If the Kroger Company wishes to appeal this interpretation, an application to the Union Board of Adjustment shall be filed in our office within thirty (30) days of the date of this letter."

Kroger's frustration and disappointment with this series of events is as follows:

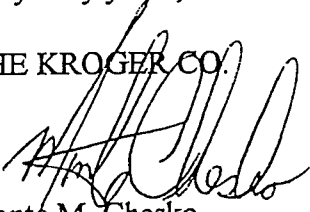
(1) For some period of time during which Kroger initially inquired of the Assistant Zoning Administrator /Enforcement Officer about certain design considerations in regard to occupancy of Parcel "C" by a "fast food /drive thru" restaurant, no mention was made by your office over "fast food / drive thru" restaurant operations not being permitted uses in accordance with the present zoning classification of the property. When your office finally raised this "use issue" with our Company, Kroger requested time and time again for a meeting with your office to informally and constructively discuss this matter and to gain some understanding for the basis of your office's tentative assessments and findings. In our estimation, "fast food / drive thru" restaurants did not appear to be prohibited uses on the subject property given (i) Mr. Light's March 26, 1996 letter directed to Kroger at Robert's request setting forth, among other things, that the subject property is zoned Commercial Two (C-2), and (ii) the Letter Agreement dated March 8, 1995 setting forth the Conditions of Approval as agreed by the Boone County Planning Commission's Zone Change Committee underlying the Zoning Map Amendment covering the subject property and, in turn, agreed to by the Applicant. We were never granted the opportunity for such a meeting to explore this matter.

(2) In the absence of any meeting to facilitate our understanding of this "use issue", and subsequently in advance of any decision on the part of Kroger to challenge staff's findings, it is my belief your office has acted in a confrontational manner by prematurely setting forth in writing to Kroger your determination that "fast food / drive thru" restaurants were not permitted uses of the subject property and notifying Kroger that its only recourse was to seek relief of this decision from the Union Board of Adjustment, which application, according to Mr. Light's letter dated February 13, 1996 "...shall be filed in our office within thirty (30) days of the date of this letter". By virtue of Robert Perin's January 30, 1997 letter seeking the Boone County Regional Planning Commission Department's stance on this issue, submitted in the spirit of cooperation at the request of Mr. Light, your office appears to have now engaged Kroger in certain proceedings outlined in the Boone County Zoning regulations which commit Kroger to both a formal procedure and related time constraints, in the event we elect to contest the decision of the assistant Zoning Administrator / Enforcement Officer.

Kroger is, as you are aware, making a significant monetary investment in the development of this Shopping Center project in the City of Union and Boone County. We have made a commitment within our Company to undertake the premiums necessary to build and operate a quality Shopping Center and, in doing so, have to date fully cooperated with your office during the course of developing this project. Accordingly, we continue to request and would expect the courtesy of a meeting with yourself, Mitchell Light and any other appropriate representatives from your office to discuss more fully the basis for your office's decision disallowing "fast food / drive-thru" restaurants on the subject property. I have left two telephone messages for you over the past week and would appreciate your notifying me of an available date to meet with us and our representatives to discuss this matter.

Very truly yours,

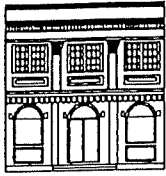
THE KROGER CO.


Monte M. Chesko
Real Estate Manager

cc: The Honorable Warren Moore, Mayor, City of Union
Mitchell Light, Assistant Zoning Administrator / Enforcement Officer
Robert Perin

BOONE COUNTY PLANNING COMMISSION

2995 Washington Street, Burlington, KY 41005
606-334-2196 FAX 606-334-2264



February 28, 1997

Mr. Monte M. Chesko
Real Estate Manager
The Kroger Company
130 Tri-County Parkway, Suite 324
P.O. Box 46234
Cincinnati, OH 45246

RE: February 17, 1997 Letter - Union Village Shopping Center

Dear Mr. Chesko:

First, the Planning Commission recognizes and appreciates the significant monetary investment in the development of Union Square Shopping Center by the Kroger Company. We also respect the Kroger Company as a leader in the food store industry in the Cincinnati Metropolitan area. However, I have reviewed your February 17th letter regarding the proposed McDonald's restaurant in Union Village Shopping Center. My letter is a response to the misstatements in your letter and provides an insight to the procedures of the Planning Commission. I find it equally disturbing that you find fault with our staff and not with your own company. The Planning Commission's staff works diligently with citizens, property owners and developers. Our track record is excellent as we provide a quality service to the community. We encourage pre-application meetings and always advise individuals to research the official records of the Planning Commission in order to know and understand development restrictions. This includes a recorded Certificate Land Use Restriction (CLUR), project files, resolution files and Business Meeting and Public Hearing minutes.

As you know, the Boone County Planning Commission worked with the Kroger Company and North American Properties a few years ago in planning a Kroger store in Richwood on the Bischoff property. Specifically, we worked with Dick Holzworth in 1992 and in fact, the Planning Commission were defendants in a lawsuit opposing the proposed Kroger store and retail center. Unfortunately, the Kroger Company chose not to locate at this site despite the two year legal challenge. In addition, our staff recently worked with a Kroger representative, Tim MacNamara, on the proposed Southeast Development site located on KY 18. These were good working relationships unlike what has occurred with the Union project.

Exhibit L

Mr. Monte M. Chesko
February 28, 1997
Page 2

In regard to your comment about unsolicited procedural filing deadlines, I would like to state that it was your Company, which sent a letter to us along with a letter from Gust Mecera of McDonald's requesting an opinion on whether a use is permitted or not. Your company solicited an opinion and we informed you of what the opinion or determination was in accordance with the adopted Concept Development Plan. This is how the Planning Commission operates in regard to zoning administration. Zoning Administrator letters are formal, official opinions or decisions. This procedure has been in place for 10 years and is quite successful. The development community appreciates this procedure because it represents a written decision and a basis for the decision.

As you know, the Kroger Company was not involved in the original Union Village Shopping Center Zoning Map Amendment request. In fact, a Remke food store was planned for the site. Our staff worked closely with a Remke representative and with the applicant, James W. Berling on the design of the retail center and the approved uses for the site. This was very important to the community at the time and still is presently. Commitments were made by the applicant and discussion took place about the retail uses. This is explained in the Public Hearing minutes. I don't know if the Kroger Company researched the project file and resolution file as part of their "due diligence" to purchase the property. If so, the Kroger Company would have known what the Planning Commission and the City of Union wanted for the site at the time.

Another point to be made is in regard to the role of the Zoning Administrator and Assistant Zoning Administrator. As stated in the *Boone County Zoning Regulations*, the Zoning Administrator is appointed by the legislative unit to interpret and to administer the zoning regulations and official action by the Planning Commission. This is also stated in KRS Chapter 100. This is not my role as Executive Director of the Planning Commission. I have no authority to override the opinions or interpretations of the Zoning Administrator. I respect the position and avoid getting involved in specific zoning issues. Originally, I was involved in the meetings with Kroger when the shopping center was planned. This was done because the City of Union officials asked me to arrange a meeting between themselves, Kroger officials and our staff. Ultimately, the decision to approve a larger Kroger store was made by Mitch Light, our Assistant Zoning Administrator/Enforcement Officer. This was explained to everyone involved in these meetings, however, I don't think you were present.

Contrary to your misleading statements in your letter, the limitations of uses on the subject property are documented and have not changed since approval by the Planning Commission and the City of Union. Mitch Light gave Gust Mecera information about Union Village Shopping Center. No formal or written opinion was asked or submitted about the proposed use at that time. Mitch Light continued to pursue the matter with Robert Perrin.

Mr. Monte M. Chesko
February 28, 1997
Page 3

Mitch Light researched this matter as requested by Robert Perrin. Mitch Light indicated to me that both he and Robert Perrin concluded that they would be better off arranging a meeting after the zoning letter had been issued. Mitch Light asked for a letter about the use from Kroger because he anticipated that McDonald's may apply for Site Plan Review. In Robert Perrin's January 30, 1997 letter, there was no request to meet with our staff to discuss this issue. In Mitch Light's March 26, 1996 letter, he notes that the Kroger grocery store would be permitted on the site. The letter did not address a proposed McDonald's restaurant and did not indicate an allowance or a prohibition.

Our office has not acted in a confrontational manner. If anything, there may been some communication problems between Robert Perrin and Mitch Light. We have acted according to the *Boone County Zoning Regulations* and with consultation from our legal counsel. We acted in response to two letters from Robert Perrin and Gust Mecera. This is our normal procedure. For the record, our staff offered to meet with you on February 14, 1997, but Robert Perrin cancelled the meeting. I felt there was a sense of urgency and that Mr. Light should meet with you as soon as possible. Mitch Light was instructed to meet with Kroger officials without me being in attendance because it his duty to do so. Besides the fact that there was no reason for me to be present, I was attending a meeting with Mike Hammons, Bill Bowdy and Bill Scheyer outside the office at the same time.

Finally, as you know, I called you on February 18th and did not get a returned phone call from you until February 21st. I feel that there are too many individuals involved in this issue and that is why there is confusion. This matter should have been resolved between Robert Perrin and Mitch Light. We are willing to meet with you to discuss this issue at your convenience. I hope this letter better explains our position in this matter.

Sincerely,



Kevin P. Costello, AICP
Executive Director

KPC/vlm

cc: The Honorable Warren Moore, Mayor, City of Union
Mitchell A. Light, Asst. Zoning Administrator/Enforcement Officer
Dale T. Wilson, Legal Counsel
Robert Perrin
James W. Berling, P.E., Berling Engineers



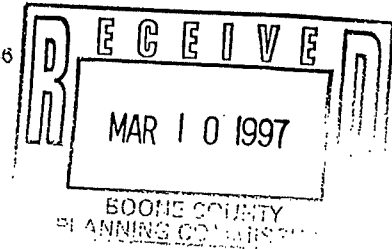
Telephone: (513) 782-3463
Fax: (513) 771-9045

THE KROGER CO.

130 Tri-County Pkwy., Suite 324
P.O. Box 46234, Cincinnati, Ohio 45246

REAL ESTATE DEPARTMENT
Cincinnati/Dayton KMA

March 10, 1997



Mr. Mitch Light
Asst. Zoning Administrator/Enforcement Officer
Boone County Regional Planning Commission
2995 Washington Street
Burlington, KY 41005

Re: Kroger Union Village Shopping Center
Union, KY

Dear Mr. Light:

The Kroger Co. did not intend to initiate any formal processes of zoning approval or appeal when we requested your view on the allowable uses on the above referenced property in my January 30, 1997 letter to you. I respectfully ask that you rescind your February 13, 1997 letter that formally stated your position on the matter and required us to appeal your decision within thirty days of the date of your letter. Although this letter should not be construed that The Kroger Co. is waiving any future rights to a formal interpretation of zoning or any future appeals, I would appreciate your written acknowledgment that there was a misunderstanding between us as to what I was requesting of you and that your formal interpretation and requirement to appeal before the Board of Adjustment is rescinded.

Very truly yours,

THE KROGER CO.

Robert J. Perin
Real Estate Manager

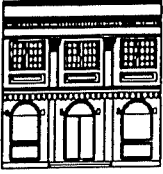
Attachment

424light5.SAM

Exhibit M

BOONE COUNTY PLANNING COMMISSION

2995 Washington Street, Burlington, KY 41005
606-334-2196 FAX 606-334-2264



March 14, 1997

Mr. Robert Perin
The Kroger Company
130 Tri-County Parkway Suite 324
P.O. Box 46234
Cincinnati, Ohio

Dear Mr. Perin:

The purpose of this letter is to notify you that we have received your letter of March 10, 1997 and now better understand the intent of the Kroger Company's request in your previous letter of January 30, 1997.

Based upon your Company's desire to withdraw the proposed use from the site as stated in January 30, 1997 letter, we will also withdraw our formal opinion or Zoning decision on the proposed use as stated in my letter of February 13, 1997.

When, or if, the Kroger Company wishes to make another formal request on a proposed use in comparison with approved uses, the Boone County Planning Commission will then provide a formal interpretation at such time.

If you have any questions, please contact me at the above number.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mitchell A. Light". The signature is fluid and cursive.

Mitchell A. Light,
Asst. Zoning Administrator/Enforcement Officer

MAL/tlm

cc: Honorable Warren Moore

Exhibit N



ATTORNEYS AT LAW

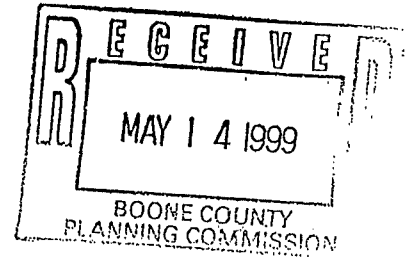
KEATING, MUETHING & KLEKAMP, P.L.L.

1400 PROVIDENT TOWER • ONE EAST FOURTH STREET • CINCINNATI, OHIO 45202
TEL. (513) 579-6400 • TDD (513) 579-6461

Mitch

JOSEPH L. TRAUTH, JR.
DIRECT DIAL: 579-6515
FACSIMILE: 639-3864
E-MAIL: JTRAUTH@KMKLAW.COM

May 11, 1999



Mr. Kevin P. Costello, AICP
Executive Director
Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

RE: 14-Acre Tract owned by Kroger Limited Partnership I, an affiliate of
of The Kroger Co. ("Kroger"), known as Union Village Shopping
Center U.S. 42 at Farmview Drive Union (Boone County), Kentucky

Dear Kevin:

This firm represents Kroger with regard to its development in Union Village Shopping Center, Union (Boone County), Kentucky. In follow up to our meeting of Monday, May 3, 1999 with my partner, Keith Noel, and Mitch Light of your office, I have the following comments.

I have thoroughly reviewed the entire zoning history of this specific site. By virtue of the City of Union Kentucky Ordinance No. 95-004, this site was rezoned to C-2 known as Commercial Two under Section 1016 of the Boone County Zoning Regulations. Permitted uses under Section 1021 include "3. Eating and drinking establishments including alcoholic beverages and with drive through facilities; eating and drinking establishments including alcoholic beverages and entertainment but excluding drive through and franchise style fast food establishment (CITY OF FLORENCE ONLY)." In other words, a principally permitted use under the C-2 zoning is an eating establishment with drive through facilities in the City of Union. The approved Concept Plan is just what the name implies, a Concept Development Plan showing a basic footprint for a retail use. On the Retail D Parcel of the revised Concept Plan dated November 17, 1995, a larger footprint than currently exists for Blockbuster was shown. We realize that Concept Plans change when the final development is presented.

Kroger has spent tremendous sums of money to create an architecturally unique shopping center. Kroger is aware of the architectural review process, however I have advised my client, after extensive review of the record and the Zoning Code, that a fast food use for a McDonalds or Burger King (with a drive through facility) is indeed appropriate and there are no conditions in the record

Exhibit O

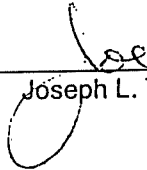
Mr. Kevin P. Costello, AICP
May 11, 1999
Page 2

that would prevent that type of use. Kroger has been greatly damaged by virtue of having the Retail C site remain vacant and has lost a very valuable user for the site due to the position taken by your department more than two years ago. I would request on an informal basis that you reconsider the position previously taken by your office and acknowledge that the C-2 Zoning on this particular piece of property allows for the principally permitted use of an eating establishment with drive through facilities. Such an action will allow Kroger a reasonable use of its land and a reasonable return on the large investment that it has made in this first class project. I would be happy to discuss my legal opinion with your counsel, Dale Wilson, if you think that will be helpful. I look forward to hearing from you in the near future.

Very truly yours,

KEATING, MUETHING & KLEKAMP

By: _____

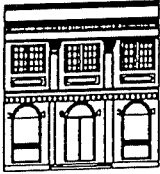

Joseph L. Trauth, Jr.

ksc
cc: Keith Noel

669475.1

BOONE COUNTY PLANNING COMMISSION

2995 Washington Street, Burlington, KY 41005



606-334-2196
FAX 606-334-2264
E-Mail plancom@one.net

May 19, 1999

Mr. Joseph L. Trauth, Jr.
Keating, Muething & Klekamp, P.L.L.
1400 Provident Tower
One East Fourth Street
Cincinnati, OH 45202

RE: Kroger Limited Partnership-14 Acre Tract, Union Village Shopping Center, U.S. 42,
Union, Kentucky

Dear Mr. Trauth:

In response to your letter of May 11, 1999, I have reexamined the minutes of the Public Hearing, Business Meeting, and Union City Council meetings pertaining to the Union Village development and have come to the following conclusions in regard to the uses presented and approved by the Boone County Planning Commission and the City of Union.

The applicant, Mr. James Berling, made reference to the commercial portion of the development at the January 25, 1995 Public Hearing, stating that the proposed uses did not include "fast food or drive-thru" type restaurants. Even though the Concept Development Plan presented at that Public Hearing did not show what is now retail "C" and retail "D", these statements were made pertaining to the type of restaurants proposed ("sit down"... "not fast food or drive-thru") and the commercial portion as a whole.

The Concept Development Plan that was approved at the March 15, 1995 Business Meeting showed two (2) outlots within the Commercial portion between Richmond Road and Braxton Drive, but the statements made at the Public Hearing did not indicate drive-thru fast food restaurants in the project. If a drive-thru fast food restaurant for the remaining outlot is desired, an application for a Public Hearing to review a Change in Concept Development Plan is required.

You should be aware that the original Concept Development Plan presented to the public and Planning Commission at the Public Hearing of January 25, 1995 noted "Super Market, Drug Store, Neighborhood Shops" for the commercial property between Richmond Road and Braxton Drive. Mr. Berling, the applicant at the time, stated; "The commercial uses are supermarket, drugstore, and related neighborhood shops - such as a video store..."

Exhibit P

Mr. Joseph L. Trauth, Jr.
May 19, 1999
Page 2

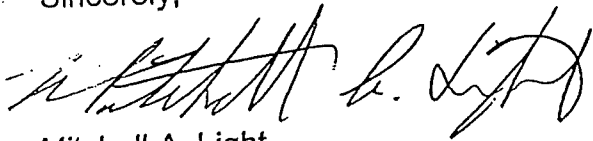
The Kroger Company initiated minor changes to the approved Concept Development Plan that increased the square footage of the grocery store by reducing the square footage of the remaining retail development. It did not change the uses designated for the property. Therefore, the uses approved must still fall within the "Drug Store, Neighborhood Shops" uses.

Furthermore, Kevin Wall, Director of Zoning Services, made an interpretation to Mr. J. E. Zang, Jr. dated February 8, 1999 that reinforces the Planning Commissions' position regarding the "fast food, drive-thru" issue. I have attached a copy of Mr. Walls' letter for your file.

If the Kroger Limited Partnership wishes to appeal this interpretation, an application to the Union Board of Adjustment shall be filed in our office within thirty (30) days.

If you have any questions regarding this matter, please contact me at the above number.

Sincerely,



Mitchell A. Light
Asst. Zoning Administrator/Enf. Officer

MAL\par

cc: The Honorable Warren Moore, Mayor, City of Union
Kevin Costello, Executive Director

BOONE COUNTY PLANNING COMMISSION

2995 Washington Street, Burlington, KY 41005



606-334-2196
FAX 606-334-2264
E-Mail plancom@one.net

February 8, 1999

Mr. J.E. Zang, Jr.
The Zang Group
3159 Dixie Highway
Suite A
Erlanger, KY 41018

RE: Proposed Skyline Restaurant on Parcel "A," Cavalry Drive, Union Village Subdivision, Union, Kentucky; Commercial Two (C-2) Zone

Dear Mr. Zang:

In response to your letter, I am providing the following information.

First, the tract in question (immediately east of Heritage Bank, in between U.S. 42 and Cavalry Drive) is within a C-2 zone. The Union Village development is subject to a zone change approval and a Concept Development Plan that was submitted in conjunction with the zone change application. As such, the development must follow the Concept Development Plan and the conditions of approval for the zone change.

Second, the Concept Development Plan designated the site in question for a "sit down restaurant." In addition, the developer stated in the Public Hearing for the zone change that the restaurants would be "sit down restaurants" and that "the restaurants are not fast food or drive-thru and will be quality restaurants." Thus, fast food restaurants and/or drive-through restaurants are prohibited by the current zone change approval. This same point is reinforced by the enclosed letter regarding a fast food restaurant that was proposed for a different lot within the same development.

Third, the Boone County Zoning Regulations themselves do not generally distinguish fast food restaurants from other types of restaurants. However, the City of Florence has adopted a definition which provides a good understanding of fast food restaurants in general. This definition is as follows:

Franchise Style Fast Food Establishment: A restaurant that sells ready made food or readily prepared made to order food (hot or cold), from a typically limited menu, that is typically served in disposable containers or wrappers. A franchise style fast food establishment may include drive-in or drive-through service, although orders

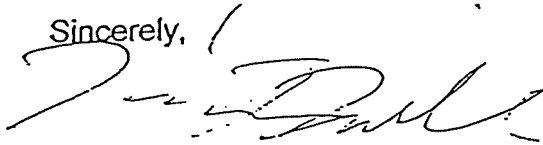
Mr. J.E. Zang, Jr.
February 8, 1999
Page 2

are generally not taken at the customer's table. A franchise style fast food establishment is typically characterized by the use of corporate trademarks in the design of on-site signage and by standardized corporate architecture in the design of the building.

Based on the distinguishing characteristics of a fast food restaurant, both in the regulatory definition outlined above and from a "conventional thinking" standpoint, the proposed Skyline Chili restaurant as described in your letter is more reasonably construed as a "sit down restaurant" than a fast food restaurant. This conclusion is shared by Warren Moore, Mayor of Union, who participated in the original zone change approval for the development (see attached letter).

I will reiterate the point that a drive-through facility is prohibited, and that the restaurant will need to follow all other applicable requirements for the development as you discussed with David Doerger (compatible architecture, monument style signage, no access on U.S. 42, etc.). Please call me if you have any questions or need any clarifications.

Sincerely,



Kevin T. Wall, AICP CDT
Director, Zoning Services

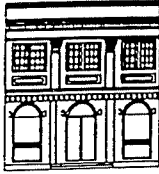
KTW/vlm

Enclosures

cc: The Honorable Warren Moore, Mayor, City of Union

BOONE COUNTY PLANNING COMMISSION

2995 Washington Street, Burlington, KY 41005



606-334-2196
FAX 606-334-2264
E-Mail plancom@one.net

June 10, 1999

Mr. Joseph L. Trauth, Jr.
Keating, Muething & Klekamp, P.L.L.
1400 Provident Tower
One East Fourth Street
Cincinnati, OH 45202

Dear Mr. Trauth:

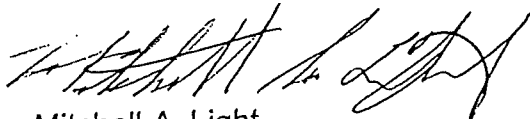
The purpose of this letter is to notify you that we have received your request and better understand the intent of your May 11, 1999 letter.

Based upon your desire to withdraw the proposed use from the site as stated in your May 11, 1999 letter, we will also withdraw our formal interpretation on the proposed use as stated in my letter of May 19, 1999.

If and when you wish to make a formal request, the Boone County Planning Commission will then provide a formal interpretation at that time.

If you have any questions regarding this matter, please contact me at the above number.

Sincerely,



Mitchell A. Light
Asst. Zoning Administrator/Enf. Officer

MAL\par

cc: The Honorable Warren Moore, Mayor, City of Union
Kevin P. Costello, AICP, Executive Director

Exhibit Q



KEATING, MUETHING & KLEKAMP, P.L.L.

ATTORNEYS AT LAW

1400 PROVIDENT TOWER • ONE EAST FOURTH STREET • CINCINNATI, OHIO 45202
TEL. (513) 579-6400 • TDD (513) 579-6461 • www.kmklaw.com

JOSEPH L. TRAUTH, JR.
DIRECT DIAL: (513) 579-6515
FACSIMILE: (513) 639-3864
E-MAIL: JTRAUTH@KMKLAW.COM

June 14, 1999

Mr. Dale T. Wilson
7699 Tanners Lane
Florence, Kentucky 41042-0756

RE: Kroger - City of Union

Dear Dale:

While you were out of town last week, I contacted Mitch Light to confirm that my May 11th letter was an informal request related to the absolute right of Kroger to utilize the front outparcel at their City of Union development for fast food use. Because the request was informal, it need not trigger the 30 day time period to appeal to the Board of Adjustment. By the attached letter dated June 10, 1999, Mitch Light has confirmed that we need not appeal. This does not, however, mean that we do not want to have them informally revisit the fact that Kroger does indeed have the absolute right to develop the outparcels in a fast food use. The zoning allows it and there is no condition in any of the official zoning documents that would disallow such a use.

Therefore, I would ask that you continue to work with Kevin Costello so that we can get a final clarification on an informal basis of this very crucial issue. As I had previously indicated, Kroger has been deprived of the use of their property during this time. They lost a very valuable sale or lease in the McDonald Company and do not want to exacerbate their losses any longer.

Exhibit R

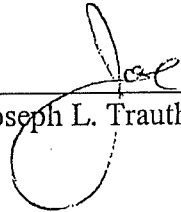
Mr. Dale T. Wilson
June 14, 1999
Page 2

I look forward to hearing from you in the very near future.

Yours very truly,

KEATING, MUETHING & KLEKAMP, P.L.L.

By: _____


Joseph L. Trauth, Jr.

cc: Mr. Robert Perin

677432.1

ROUSE, SKEES, WILSON & DILLON

ATTORNEYS AND COUNSELORS AT LAW

7699 EWING BOULEVARD

P. O. Box 756

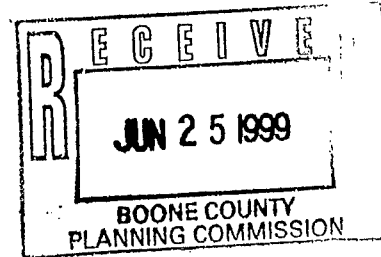
FLORENCE, KENTUCKY 41042-0756

TELEPHONE
(606) 371-7407
TELECOPIER
(606) 371-9872

H. DOUGLAS ROUSE
HUGH O. SKEES
DALE T. WILSON
LARRY B. DILLON

June 24, 1999

Joseph L. Trauth, Jr., Esq.
Attorney at Law
1400 Provident Tower
1 East Fourth Street
Cincinnati, OH 45202



In re: Kroger - City of Union

Dear Joe:

This letter responds to yours dated June 14, 1999. Your inquiry on behalf of Kroger relates to a zoning map amendment granted by the City of Union in April, 1995. Kroger was not the applicant for that zone change. Rather, the applicant was James W. Berling as agent for B & Z Development and the Scheben Company. They were owners by contract for approximately 90 acres owned by R.C. Durr and Robert Kratz.

To respond to your inquiry, Kevin P. Costello and Mitch Light reviewed materials relating to that 1995 zone change. I serve as legal counsel to the Boone County Planning Commission, not the City of Union which had the ultimate decision making authority regarding the 1995 zone change. The zoning map amendment, as granted, approved new zoning classifications of SR-1 and C-2. However, the zone change application as submitted did not seek all of the uses allowed in the SR-1 and C-2 zones. The only C-2 use listed on the application is for a grocery store. Fast food restaurants were not included on the original or revised development plan. Nor do the public hearing or business meeting minutes identify fast food as part of the zone change request. The only commercial uses sought were a supermarket, drug store, and neighborhood shops. Sit-down restaurants are shown on the development plan, near the bank site, but fast food restaurants are not. In short, fast food uses were not part of the 1995 application, its review, or approval.

Since this approval did not include a fast food restaurant as a use, Mr. Costello and Mr. Light disagree with your comment that Kroger has been improperly deprived a property right. In fact, Kroger was permitted to construct a larger grocery store than shown on the approved development plan. Some of the approved uses (drug store and bank) are within the same structure, allowing a combination of those approved uses. However, Mr. Costello and Mr. Light have no authority to administratively allow uses not legislatively approved by the City Council of Union. Kroger has been permitted to use its property consistent with the 1995 zone change applicant's request as submitted, reviewed and approved. If your client wishes other C-2 uses not approved in 1995, Kroger may request an amendment to the development plan to include those uses. The footprint for the 1995 development plan shows no fast food restaurant drive-thru facilities for any structure.

Exhibit S

June 24, 1999
Page Two (2)

Alternatively, your client may request a formal interpretation or decision by the Zoning Administrator's office and, if unacceptable, appeal to the City of Union Board of Adjustment. If you have other questions, please feel free to contact me, Mr. Costello or Mr. Light.

Sincerely yours,

DALE T. WILSON

DTW/sk

cc:

Kevin P. Costello, AICP, Executive Director
Mitch Light

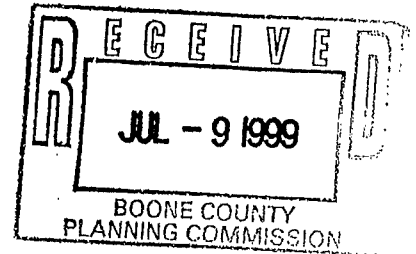


KEATING, MUETHING & KLEKAMP, P.L.L.

ATTORNEYS AT LAW

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TEL. (513) 579-6400 • TDD (513) 579-6461 • www.kmklaw.com

JOSEPH L. TRAUTH, JR.
DIRECT DIAL: 579-6515
FACSIMILE: 639-3864
E-MAIL: JTRAUTH@KMKLAW.COM



July 7, 1999

Mr. Kevin P. Costello, AICP
Executive Director
Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

RE: 14-Acre Tract owned by Kroger Limited Partnership I, an affiliate of
of The Kroger Co. ("Kroger"), known as Union Village Shopping
Center U.S. 42 at Farmview Drive Union (Boone County), Kentucky

Dear Kevin:

As you know, this firm represents Kroger with regard to its development in Union Village Shopping Center, Union (Boone County), Kentucky. Although in the past you have disagreed with our position that the C-2 zoning on this property allows for the principally permitted use of an eating establishment with drive-thru facilities, we respectfully request at this time a formal interpretation on our proposed use of the property. Again, Kroger has been greatly damaged by the prolonged vacancy of this site, and I would request that you reconsider the position previously taken by your department.

Very truly yours,

KEATING, MUETHING & KLEKAMP

By: _____

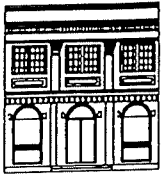
Joseph L. Trauth, Jr.

aad

cc: Keith Noel
Robert Perin

BOONE COUNTY PLANNING COMMISSION

2995 Washington Street, Burlington, KY 41005



606-334-2196

FAX 606-334-2264

E-Mail plancom@one.net

July 9, 1999

Mr. Joseph L. Trauth, Jr.
Kleating, Muething & Klekamp, P.P.L.
1400 Provident Tower
One East Fourth Street
Cincinnati, OH 45202

RE: July 7, 1999 Letter - Union Village Shopping Center

Dear Mr. Trauth:

I received your July 7, 1999 letter yesterday via facsimile regarding the vacant outlot as part of Union Village Shopping Center owned by the Kroger Company. I find your comments threatening and contradicting to your client's past and current relationship with the Boone County Planning Commission.

First, I would like to state that the determination or interpretation of whether a use is allowed on a specific site is the sole responsibility of the Zoning Administrator or Assistant Zoning Administrator and not myself. This is in accordance with the *Boone County Zoning Regulations* and the Kentucky Revised Statutes, Chapter 100. Second, for the past three years, our staff has explained the approved uses and Concept Development Plan to Kroger officials, Mr. Robert Perin and Mr. Monte Chesko. The revised Concept Development Plan was approved by our staff with the assistance of Kroger officials and City of Union representatives. This is evidenced by the number of meetings and correspondence with our staff. You are probably not aware of this because you were not involved in the process.

Third, the Assistant Zoning Administrator's position regarding the approved uses has been consistent with the interpretation of the uses allowed in the Union Village Shopping Center. In addition, I wanted you to be aware that Mr. Perin even asked to appear before the Union City Commission in 1997 to make an inquiry about the possibility of other uses such as a drive-thru fast food restaurant and going through the Public Hearing process (see attached minutes). Finally, it should be noted that the Kroger Company purchased the 14 acre site

Exhibit U

Mr. Joseph L. Trauth, Jr.
July 9, 1999
Page 2

knowing the restrictions with the use of the property. Nevertheless, I have referred your letter to Mr. Mitch Light for his review and comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin P. Costello", with a long horizontal flourish extending to the right.


Kevin P. Costello, AICP
Executive Director

KPC/vlm

Enclosure

cc: The Honorable Warren Moore, Mayor, City of Union
Dale T. Wilson, Legal Counsel
Mitch Light, Asst. Zoning Administrator
Keith Noel
Robert Perin

MOTION CARRIED UNANIMOUSLY.

 NEW BUSINESS:

Mayor Moore stated that Mr. Robert Perin called him about getting together with the Commission regarding what the city would like to see go into the Kroger development area. Mayor Moore mentioned that he would invite him to a Commission meeting for this discussion.

Mr. & Mrs. Paul Webster residents of 1290 Mt. Zion Road addressed the Commission regarding the Ordinance on cutting the grass at the Plantation Pointe & Antebellum Subdivision.

Mayor Moore discussed the need of hiring a part-time/temporary employee on an on call basis. The Commission took this under advisement.

Mayor Moore mentioned a proposal he received from the vendor of Tiger Hardware & Software for purchasing a new computer system for the city building. Commissioner Hunt stated that he would like to get a competitive rate from PC Connection.

ORAL RESOLUTION NO. 97-013 - Authorizing the Mayor to purchase the computer equipment that is already budgeted for. Commissioner Jack Johnson so moved, with a second from Commissioner E. Johnson, that Resolution No. 97-013 be approved. MOTION CARRIED UNANIMOUSLY.

Commissioner E. Johnson addressed the need of surveying the Union/Rice Cemetery. Commissioner Jack Johnson suggested that we explore on getting someone in line to do the surveying and to get a price. After discussion, the City Engineer will get in touch with some surveyors on getting a price to do the surveying.


ADJOURNMENT:

There being no further business for consideration, Mayor Moore called for a motion to adjourn. Motion was made by Commissioner J. Johnson, seconded by Commissioner E. Johnson, and CARRIED UNANIMOUSLY. The meeting was declared adjourned at 10:02 p.m.

Attest:


Kathy Porter, City Clerk

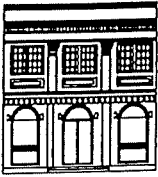
Approved:


Eddie Johnson, Mayor Pro Tem

Date: August 11, 1997

BOONE COUNTY PLANNING COMMISSION

2995 Washington Street, Burlington, KY 41005



606-334-2196

FAX 606-334-2264

E-Mail plancom@one.net

July 12, 1999

Mr. Joseph L. Trauth, Jr.
Keating, Muething & Klekamp, P.L.L.
1400 Provident Tower
One East Fourth Street
Cincinnati, OH 45202

RE: Kroger Limited Partnership-14 Acre Tract, Union Village Shopping Center, U.S. 42,
Union, Kentucky

Dear Mr. Trauth:

This is in response to your letter of July 7, 1999, and I have again reexamined the minutes of the Public Hearing, Business Meeting, and Union City Council meetings pertaining to the Union Village development and have come to the following (same) conclusions in regard to the uses presented and approved by the Boone County Planning Commission and the City of Union.

The applicant, Mr. James Berling, made reference to the commercial portion of the development at the January 25, 1995 Public Hearing, stating that the proposed uses did not include "fast food or drive-thru" type restaurants. Even though the Concept Development Plan presented at that Public Hearing did not show what is now retail "C" and retail "D", these statements were made pertaining to the type of restaurants proposed ("sit down"... "not fast food or drive-thru") and the commercial portion as a whole.

The Concept Development Plan that was approved at the March 15, 1995 Business Meeting showed two (2) outlots within the Commercial portion between Richmond Road and Braxton Drive, but the statements made at the Public Hearing did not indicate drive-thru fast food restaurants in the project. If a drive-thru fast food restaurant for the remaining outlot is desired, an application for a Public Hearing to review a Change in Concept Development Plan is required.

You should be aware that the original Concept Development Plan presented to the public and Planning Commission at the Public Hearing of January 25, 1995 noted "Super Market, Drug Store, Neighborhood Shops" for the commercial property between Richmond Road and Braxton Drive. Mr. Berling, the applicant at the time, stated; "The commercial uses are supermarket, drugstore, and related neighborhood shops - such as a video store..."

Exhibit V

Mr. Joseph L. Trauth, Jr.
Page 2
July 12, 1999

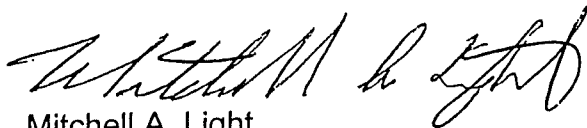
The Kroger Company initiated minor changes to the approved Concept Development Plan that increased the square footage of the grocery store by reducing the square footage of the remaining retail development. It did not change the uses designated for the property. Therefore, the uses approved must still fall within the "Drug Store, Neighborhood Shops" uses.

Furthermore, Kevin Wall, Director of Zoning Services, made an interpretation to Mr. J. E. Zang, Jr. dated February 8, 1999 that reinforces the Planning Commissions' position regarding the "fast food, drive-thru" issue.

If the Kroger Limited Partnership wishes to appeal this interpretation, an application to the Union Board of Adjustment shall be filed in our office within thirty (30) days of the date of this letter.

If you have any questions regarding this matter, please contact me at the above number.

Sincerely,



Mitchell A. Light
Asst. Zoning Administrator/Enf. Officer

MAL\par

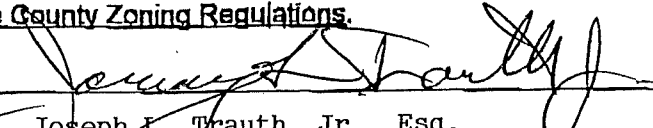
cc: The Honorable Warren Moore, Mayor, City of Union
Kevin Costello, AICP, Executive Director

APPLICATION FORM

BOARD OF ADJUSTMENT
AND
ZONING APPEALS ACTION
BOONE COUNTY PLANNING COMMISSION

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

- (Check One)
1. Boone Florence Walton X Union
- (Check One)
2. Conditional Use Permit Variance X Appeal
 Change in Non-Conforming Use Keating, Muething & Klekamp, P.L.L.
3. Applicant's Name Joseph L. Trauth, Jr., (Attorney for Kroger)
Phone Number 513-579-6515 Fax No. 513-639-3864
Applicant's Address 1400 Provident Tower, One East Fourth Street
Cincinnati Ohio 45202
City State Zip
4. Description of Request: SEE EXHIBIT A ATTACHED HERETO.
5. Name of Development Union Village Shopping Center (Kroger)
6. Location of Development U.S. 42, Union, Kentucky
7. Acreage Under Review 14 (Approximately)
8. Lot Number and Name of Subdivision (if part of a subdivision)
Lot 4 - Divided into 4A, 4B, 4C, 4D. 4D was sold to Blockbuster.
9. Owner of Property The Kroger Company
Phone Number of Owner 513-782-3463 (Contact Person: Robert Perin) 10.
Address of Property Owner 130 Tri-County Parkway, Cincinnati, Ohio 45246
City State Zip
11. Proposed Use(s) on Site McDonald's Restaurant With Drive-Thru Facility.
12. Total Square Footage of Existing and/or Proposed Buildings As Built: 83,016; As Approved: 115,000
13. Current Zoning on Property Commercial Two (C-2)
14. Deed Book 679 Page No. 236 Group No.
15. Is the site subject to a zone change? Not currently. Zoning was previously approved in 1995.
If yes, give date of approval March, 1995
16. Have you submitted a Site Plan with this request? No
17. Have you submitted a list of adjoining property owners with this request? Yes
18. I, or we, understand and agree that this application and drawing(s) are being filed in accordance with the Boone County Zoning Regulations.

Applicant's Signature: 
Joseph L. Trauth, Jr., Esq.
Keating, Muething & Klekamp, P.L.L.

Property Owner's Signature: Attorneys for The Kroger Co.

(over)

Exhibit W

EXHIBIT A

The property in question has been zoned Commercial Two (C-2). When the Boone County Planning Commission approved the Zoning Map Amendment in March 1995, changing the zoning from Rural Suburban Estates (RSE) to Suburban Residential One (SR-1) and Commercial Two (C-2), with six conditions. None of the conditions prohibit the development of a fast-food restaurant. According to the Boone County Zoning Regulations §1020-21, C-2 allows, as a principally permitted use, "eating and drinking establishments including alcoholic beverages and with drive-thru facilities." Nevertheless, the Assistant Zoning Administrator, Mitchell A. Light, has denied Kroger's request to develop Retail C (Lot 4C) as a McDonald's Restaurant with drive-thru facility.

John H. Burns

Charles Landrum, Jr.
(1917-1990)

William C. Shouse

Of Counsel
Weldon Shouse

Pierce W. Hamblin

Thomas M. Cooper

August 9, 2000

Mark L. Moseley

Leslie Patterson Yose

John R. Martin, Jr.

Kevin Walls
Zoning Administrator
2995 Washington Street
Burlington, KY 41005

Larry C. Deener

Sandra Mendez Dawahane

RE: Kroger v. City of Union

Mark J. Hinkel

Dear Kevin:

John G. McNeill

Enclosed is a copy of an Agreed Order entered by Judge Bambrugger July 27, 2000 resolving all issues in the above referenced litigation. Dale Wilson reviewed the proposed Agreed Order before it was entered and agreed with all of its terms.

R. Kent Westberry

Douglas L. Hoors

If you have any questions regarding this matter, please contact Dale Wilson or me.

Dave Whalin

Daniel E. Munner

Sheila P. Hiestand

Jane Dunkin Samuel

Very truly yours,

Stephen R. Chappell

Bennett E. Bayer



DAVE WHALIN
Louisville Office

Estill D. Banks II

R. Thad Keal

Sun S. Choy

DW/dks
enclosure

Carolyn C. Zerga

David W. Zahniser

Rheanne Dodson Falkner

Shannon M. Naish

Alex L. Scutchfield

Bradley C. Hooks

Jennifer A. Peterson

Angela Hatton Mullins



COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
CIVIL ACTION NO. 99-CI-01041

ENTERED
BOONE CIRCUIT/DISTRICT COURT
JUL 27 2000
BY: PAT GUTZEIT, CLERK, DC

KROGER LIMITED PARTNERSHIP I

PLAINTIFF/APPELLANT

V.

CITY OF UNION BOARD OF ADJUSTMENT
AND ZONING APPEALS, ET AL.

DEFENDANTS/APPELLEE

AGREED ORDER

By agreement of the parties, and the Court being otherwise sufficiently advised,
it is hereby,

ORDER AND ADJUDGED that the Court's Order of April 7, 2000 is set amended
as follows:

1. The Plaintiff is granted summary judgment on its appeal brought pursuant
to KRS 100.347. The Court finds that Plaintiff/owner has the right to develop all
principally permitted C-2 uses, including a drive-thru fast food restaurant, as they exist
in the Boone County Zoning Regulations on all property which Plaintiff owns along the
south side of U.S. 42 at Farm View Drive in the City of Union, Boone County, Kentucky.
Development of said property must conform to the six conditions set forth in the March
8, 1995 letter from the Boone County Planning Commission to Mr. Berling and Plaintiff's
concept development plan approved by the planning commission or any other plans
subsequently approved by the planning commission, which plans are subject to final
review and approval by the planning commission as required by statute and local
ordinance;

2. The Defendants have agreed to act in good faith regarding the future
development of Plaintiff's above described property pursuant to this Order. The parties
have agreed to the dismissal of all remaining claims in this action with prejudice as
settled;

3. The parties are to bear their own costs including attorneys fees; and

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JUL 28 2000

4. The parties have agreed to waive any rights of appeal and therefore this Order is final and constitutes disposition of all claims that were, or could have been made in this action.

J. F. Bamberger
JUDGE, BOONE CIRCUIT COURT

HAVE SEEN; AGREED TO; TO BE ENTERED:

David White
ATTORNEY FOR BOARD OF ADJUSTMENTS

Thomas M. Tepe
ATTORNEY FOR KROGER

CERTIFICATE

I, PAT GUTZEIT, Clerk of the Boone District Circuit Court, hereby certify that I have read the foregoing order and notice to all parties at their last known addresses or their offices on this 7 day of July, 2000

PAT GUTZEIT
BOONE DISTRICT/CIRCUIT COURT
[Signature]

NOTICE

All parties will take notice that this order was entered in office of the Boone District Circuit Court on the 7 day of July, 2000

PAT GUTZEIT
BOONE DISTRICT/CIRCUIT COURT
[Signature] D.C.