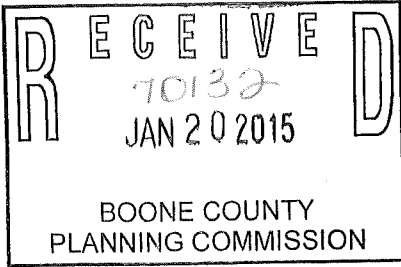


APPLICATION FORM



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

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

See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

- 1. (Check One) Boone ___ Florence Walton ___ Union ___
2. (Check One) Conditional Use Permit ___ Variance ___ Appeal ___
Change in Non-Conforming Use
3. Applicant's Name John & Susan Pittman
Applicant's Address PG Box 97
Glencoe KY 41046
4. Phone Number 859 643 5757 Fax No. 859 643 4863 E-Mail SPEXC@AOL.COM
Description of Request: Grandfather in excavating business in place of oil company
5. Name of Development Oil Brinkman Oil
6. Location of Development Old Nicholson Rd 257, 260, and 270
Walton Ky 41094
7. Acreage Under Review 4.27
8. Lot Number and Name of Subdivision (if part of a subdivision) N/A
9. Owner of Property Richard Brinkman
Address of Property Owner 3800 40th St South
10. St Petersburg FLA 33711
City State Zip
Phone Number 859 743 7740 Fax No. N/A E-Mail N/A
11. Proposed Use(s) on Site Excavating Business
12. Total Square Footage of Existing and/or Proposed Buildings 10,000 sq ft
13. Current Zoning on Property C2 Non-Conforming
14. Deed Book 588 Page No. 186-189 Group No. 2080 (copy attached)
15. Is the site subject to a zone change?
If yes, give date of approval
16. Have you submitted a Site Plan with this request? 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.

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

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

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

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

1. Date Received 1/20/15 Fee Received \$932.00 Receipt # 70132
2. Is application complete? Yes No
3. Staff Reviewer _____
4. Scheduled Board Action Date _____
5. Board Action:
 Approved
 Approved with Conditions (See #6)
 Denial (See #7)
6. Conditions of Approval: SEE 3/16/15 WBOA
Meeting MINUTES
7. Reasons for Denial: _____

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

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

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

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

STAFF REPORT

APPLICANT: John and Susan Pittman

LOCATION: 257, 260 and 270 Old Nicholson Road, Walton, Kentucky

ZONING: Commercial Two (C-2)

DATE: March 16, 2015

PROPOSAL

The applicants have submitted a Change in Nonconforming Use application to allow the former Brinkman Oil facility to be used by an excavating company. The submitted plan shows the following improvements are proposed:

257 Old Nicholson - Gravel an approximate 0.86 acre area in the southeastern portion of the site to store heavy excavating equipment (see attached pictures). A note on the plan indicates the area could be secured with 6' tall chainlink fencing if the applicant deems it's necessary.

260 Old Nicholson - Demolition of the former tank storage containment walls and an approximate 550 square foot office.

270 Old Nicholson - Demolition of an approximate 1,000 square foot office building (former house).

The applicant provided Staff with an email indicating that the slabs would be left in place on all demolished properties. Affected areas would be seeded and strawed.

APPLICABLE REGULATIONS

Section 220 of the Boone County Zoning Regulations states that one of the duties of the Board of Adjustment and Zoning Appeals is to act on applications for changes in non-conforming use.

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

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

KRS 100.253 allows the following:

1. The lawful use of a building or premises, existing at the time of the adoption of any zoning regulations affecting it, may be continued, although such use does not conform to the provisions of such regulations, except as otherwise provided herein.
2. The board of adjustment shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time the regulation which makes its

use nonconforming was adopted, nor shall the board permit a change from one (1) nonconforming use to another unless the new nonconforming use is in the same or a more restrictive classification, provided, however, the board of adjustment may grant approval, effective to maintain nonconforming-use status, for enlargements of extensions, made or to be made, of the facilities of a nonconforming use, where the use consists of the presenting of a major public attraction or attractions, such as a sports event or events, which has been presented at the same site over such period of years and has such attributes and public acceptance as to have attained international prestige and to have achieved the status of a public tradition, contributing substantially to the economy of the community and state, of which prestige and status the site is an essential element, and where the enlargement or extension was or is designed to maintain the prestige and status by meeting the increasing demands of participants and patrons.

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

Section 273 of the Boone County Zoning Regulations states that the Board of Adjustments and Zoning Appeals shall have the power to hear and decide on applications to permit a change from one nonconforming use to another.

The Board shall not permit such a change unless the new nonconforming use is as equally or more compatible with permitted uses in the district in which it is located as the existing nonconforming use. Application for change of nonconforming use shall conform to the procedures and requirements for appeals as specified in Sections 245-254, inclusive, of this order and Kentucky Revised Statutes, Section 100.253.

The Board shall not allow any changed nonconforming use to be increased or enlarged, nor extended to occupy a greater area of land than was occupied by the original nonconforming use. In permitting such change in nonconforming use, the Board may require appropriate conditions and safeguards in accord with other provisions of this order, such as the provision of landscaping and buffering, the improvement of parking areas, and restrictions on the hours of operation.

Section 1133 of the Boone County Zoning Regulations lists business which store explosives, fireworks, gas, biodiesel, or petroleum as a primary activity as a Conditional Use in the Industrial One (I-1) zoning district.

Section 1141 of the Boone County Zoning Regulations lists businesses which manufacture, assemble, process, treat, or store petroleum as a principally permitted use in the Industrial Two (I-2) zoning district.

Section 1141 of the Boone County Zoning Regulations lists businesses which manufacture, assemble, process, treat, or store heavy equipment as a principally permitted use in the Industrial Two (I-2) zoning district.

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

RELEVANT HISTORY

The 1986 Zoning Maps show the subject properties being zoned Commercial Two (C-2).

On April 22, 2002, the Walton Board of Adjustment approved a Change in Nonconforming Use for Brinkman Oil. The approval allowed a 2,333 square foot warehouse to be replaced with a 2,850 square foot warehouse at 260 Old Nicholson Road. The Board imposed a condition on the approval which prohibited the new warehouse from being any closer to the water main than the existing warehouse.

SITE CHARACTERISTICS

According to Boone County GIS, the property on the east side of Old Nicholson Road (257 Old Nicholson Road) is approximately 3.65 acres in area. The property contains the former Brinkman Oil warehouse/wash building (2,960 square feet), an approximate 38' x 38' concrete parking pad to the north side of the building, a large gravel parking lot to the south and southeast of the building, and a concrete pad which once contained two fuel pumps. Access to the property is provided from two access points on Old Nicholson Road. The northmost access point is approximately 35' wide and the southernmost access point is approximately 250' wide. The northern portion of the site (approximately 1.45 acres) is comprised entirely of grass and mature deciduous trees. A significant deciduous tree line (60-65' wide) also exists between the gravel parking lot and railroad right-of-way. The topography of the property falls from approximately 928' above sea level at the northern access point to 910' above sea level in the northeastern portion of the site. Overhead utilities exist along Old Nicholson Road.

According to Boone County GIS, the properties on the west side of Old Nicholson Road (260 and 270 Old Nicholson Road) are approximately 0.52 acres in area. The properties contain an approximate 1,000 square foot office (former house), a 2,600 square foot three-bay metal warehouse, a 550 square foot office, tank storage containment wall, and four access points on Old Nicholson Road. The topography falls from approximately 930 feet above sea level at the rear property lines to 926 feet above sea level at the front property lines.

SURROUNDING LAND USES & ZONING

North: Single-Family Residential Dwellings on Old Nicholson Road (C-2 and SR-1)

South: Single-Family Residential Dwelling and Undeveloped 1.2 Acre Tract (C-2)

East: Norfolk-Southern Railroad Right-of-Way, Single-Family Residential Lots in North Walton Pointe Subdivision (SR-1), and Industrial Building Fronting on Bessmer Lane (I-1)

West: Railroad-Right-of-Way, Dixie Highway, and Single-Family Residential Dwelling (C-2)

STAFF COMMENTS

1. The Board needs to analyze the request in terms of Sections 270, 272, and 273 of the Boone County Zoning Regulations. The Board can also analyze if the proposed change in non-conforming use is more objectionable than the established condition.
2. Staff has the following questions for the applicants:
 - A. Explain how both of the remaining buildings would be used?

- B. The submitted plan shows that two existing office buildings and the filling area containment wall will be demolished. Will the associated parking lots be removed or will they remain?
- C. Approximately how many company vehicles (cars, trucks, tractor trailers) or trailers would be kept on site? Where would these vehicles be parked?
- D. Approximately how many pieces of heavy equipment could be kept in the storage lot at any given time?
- E. Other than heavy equipment, vehicles, or trailers, will anything be stored outside (scrap material, lumber, fill dirt, stone, etc.)?
- F. How many people could work from this facility?
- G. What are the proposed hours of business operation?
- H. Is any additional security lighting being proposed?
- I. Will the fuel pumps be restored?
- J. Are any other improvements proposed anywhere else on the site that is not reflected on the aerial map exhibit?

3. Staff recommends the following conditions if the request is approved:

Overall

- A. Except as modified by the conditions below, the approval is based on the plan and pictures that were submitted by the applicant. The Zoning Administrator can permit minor changes administratively. Major changes would need to be approved by the Walton Board of Adjustment with a Change in Non Conforming Use application.
- B. The outside storage of supplies, second hand materials, scrap materials, building materials (including but not limited to lumber, masonry block, dirt, stone, etc.), or trash shall be prohibited.

257 Old Nicholson Road

- A. No business activities associated with the excavation business shall occur in the approximate 1.45 acre area to the north of the existing driveway and heavy equipment storage compound. The area shall be left undisturbed.
- B. The heavy equipment storage compound shall not encroach into the existing tree line along the eastern property line and shall be located a minimum of 10' from the southern property line.
- C. The heavy equipment compound shall be secured with an 8' tall privacy fence and gate. The front (except the gate) and sides of the fence compound shall be screened with a 6' tall columnar evergreen trees every 20 feet on center. The selected tree species shall have a anticipated height of 30' or more and an anticipated spread of 20' or more.

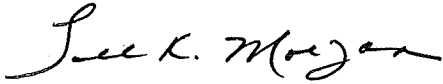
260 and 270 Old Nicholson Road

- A. The slabs of the demolished buildings shall be removed. All disturbed areas shall be leveled out and be replanted with grass.
- B. No heavy equipment, semi-trucks, or trailers shall be parked outside.

CONCLUSION

KRS 100.253 and Section 220 of the Boone County Zoning Regulations gives the Walton Board of Adjustment and Zoning Appeals the authority to act on the request.

Respectfully submitted,



Todd K. Morgan, AICP
Senior Planner, Zoning Services

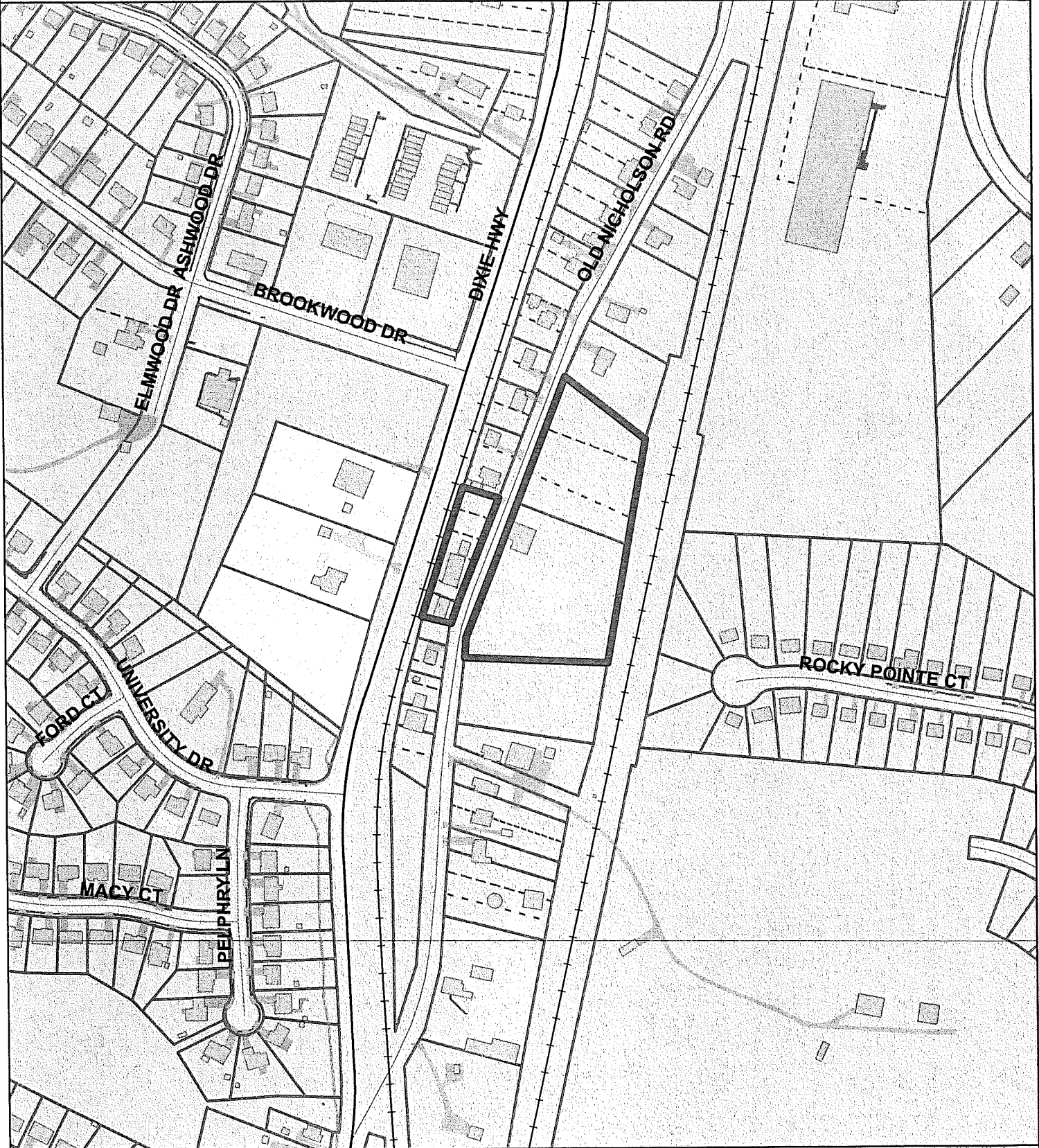
TKM/tlb

Attachments

- *Site Vicinity Map
- *2012 Aerial With Proposed Improvements
- *Email From Applicants
- *Pictures of Excavation Equipment
- *Email From Jerald E. Noran
- *2012 Aerial Map
- *2004 Aerial Map
- *1999 Aerial Map
- *Zoning Map
- *Topographical Map
- *4/22/02 Walton Board of Adjustment Meeting Minutes
- *Application

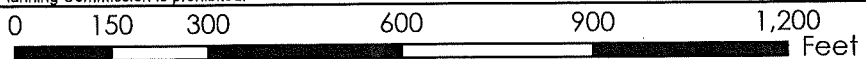
SITE VICINITY MAP

www.boonecountygis.com



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1 inch = 300 feet



Boone County GIS - Putting Northern Kentucky on the Map

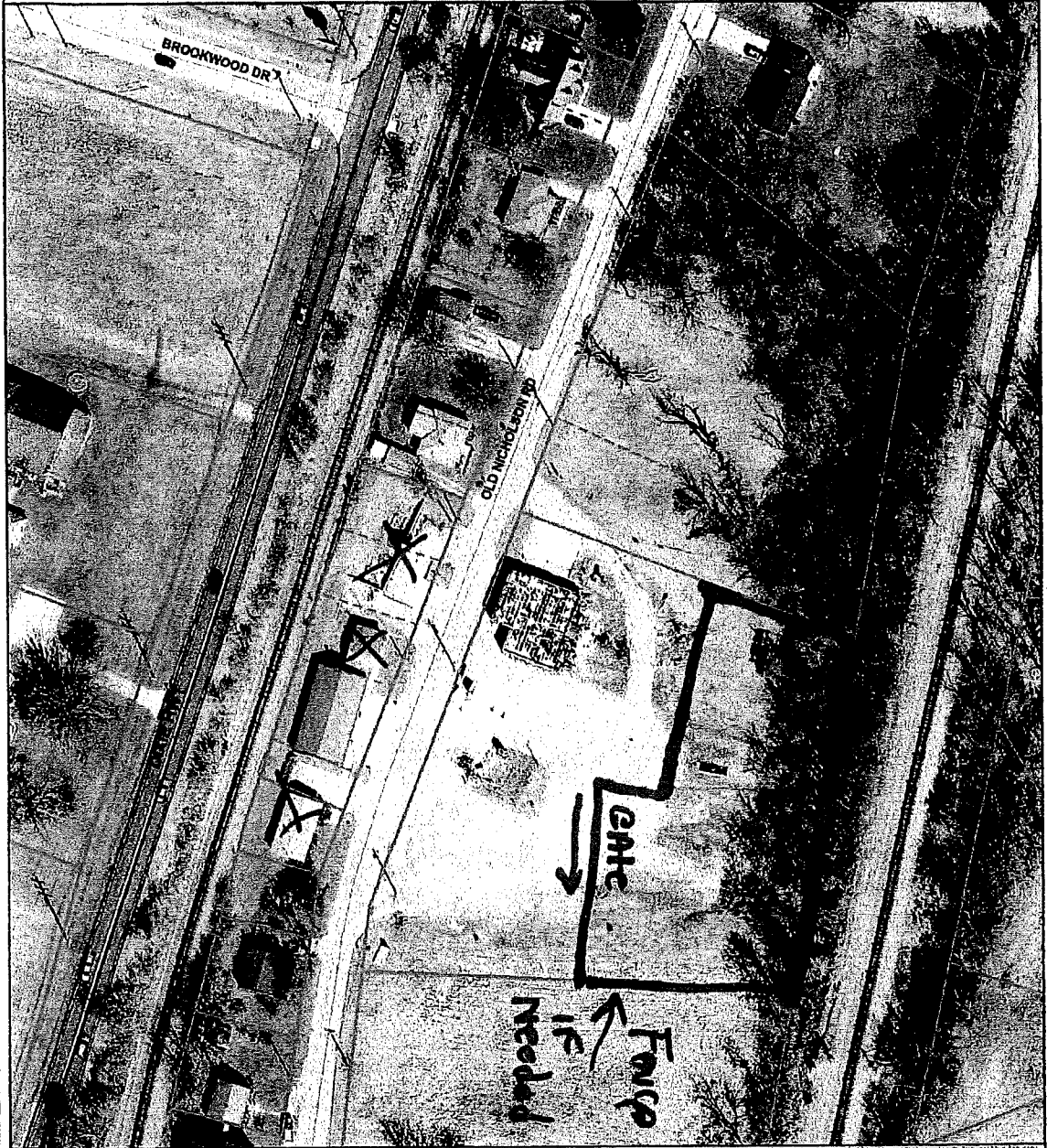


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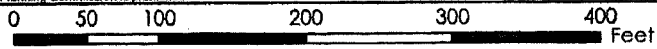
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Map Date: 07/01/2013

Boone County GIS

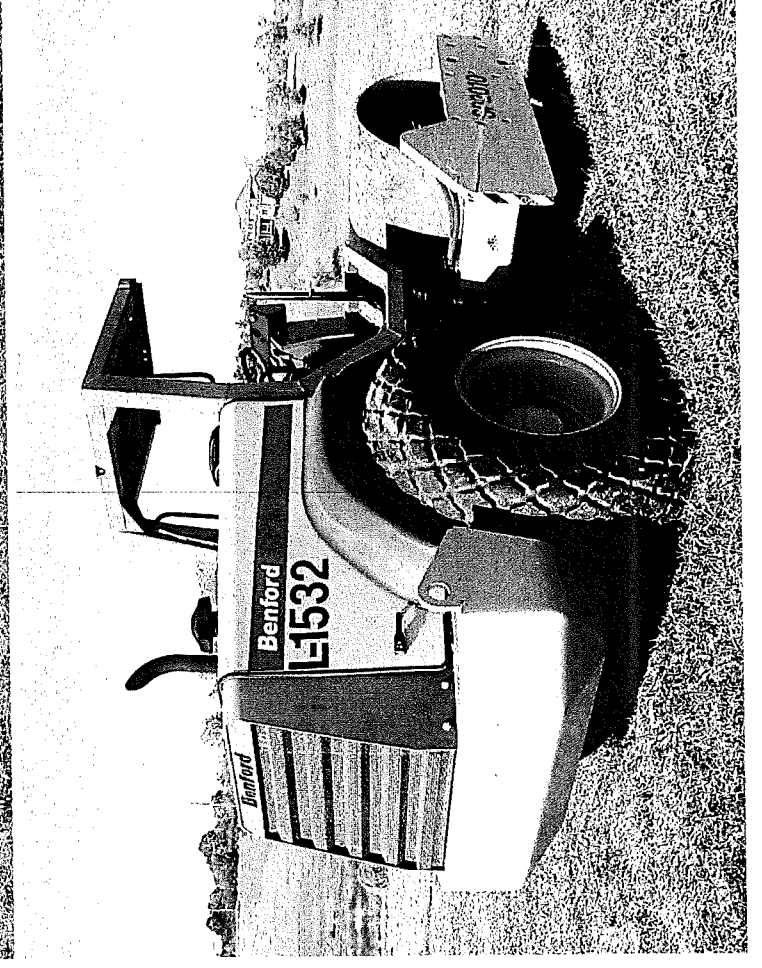
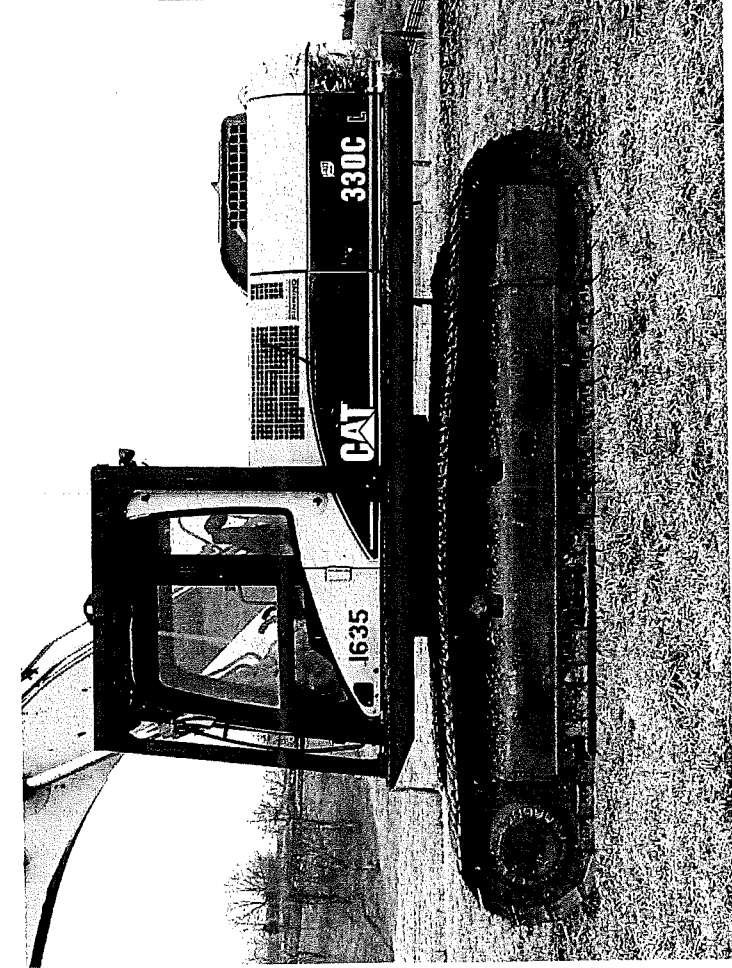
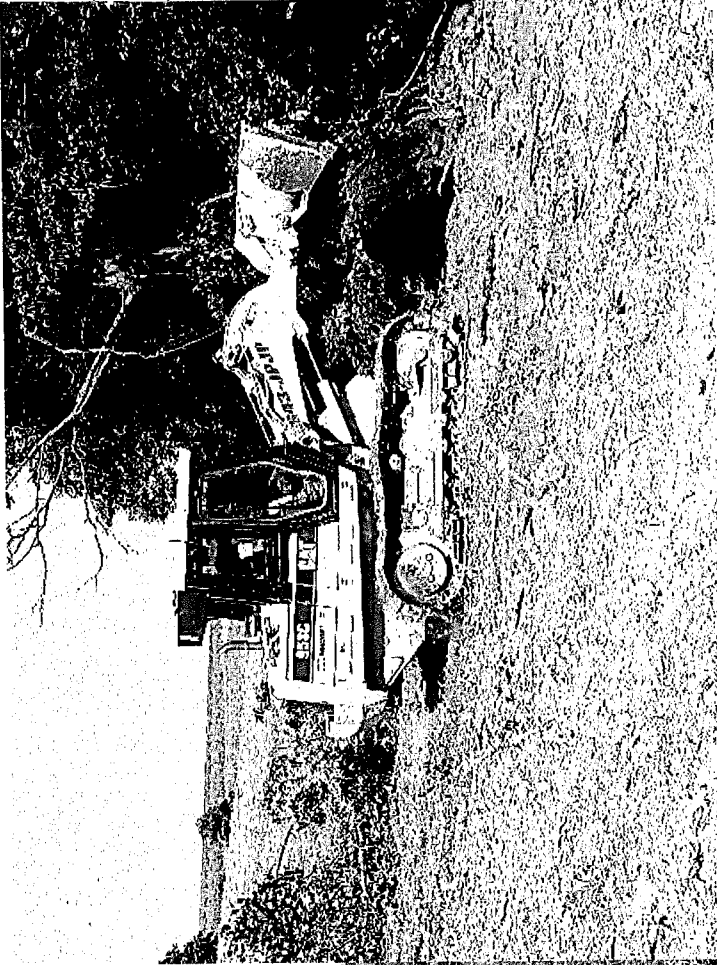
Todd Morgan

From: John Pittman <jpexc@aol.com>
Sent: Monday, January 26, 2015 2:35 PM
To: Todd Morgan
Subject: Brinkman Property

Todd

John said fence would be 6' chainlink. Demolished properties would leave slabs in place and seed and straw affected areas.

Thanks
Susan
jpexc@aol.com



Todd Morgan

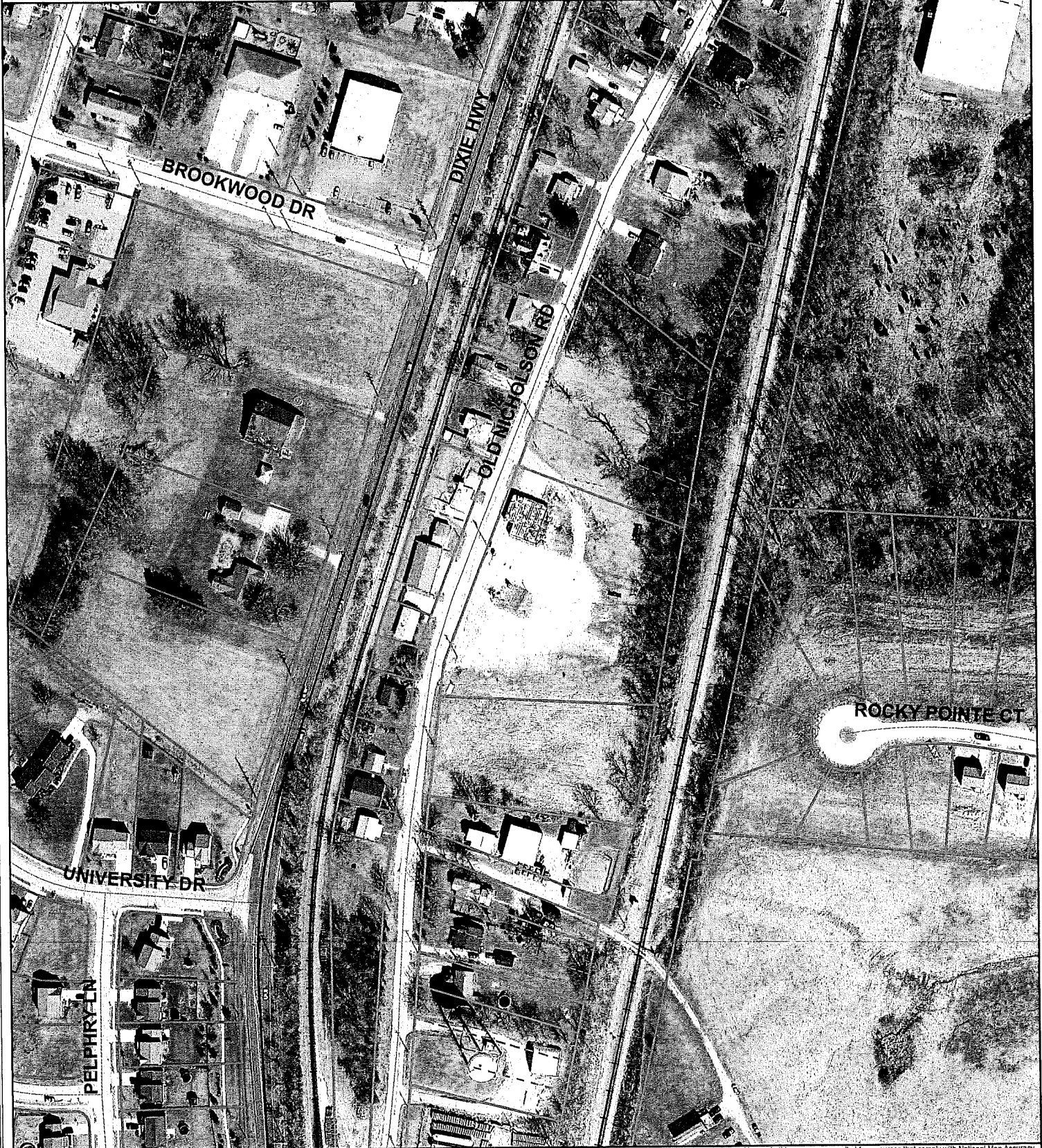
From: Jerry Noran
Sent: Friday, February 13, 2015 10:40 AM
To: Todd Morgan
Subject: Demolition of Bldg/Slab to Remain

There are no prohibitions in the Kentucky Building Code pertaining to your constituent's desire to demolish a building and leave the slab-on-grade. However, there may be code provisions relating to the slab if it causes a drainage problem, if there is a resultant grade difference that might require a guardrail, etc. There are probably some county ordinances relating to the complete removal of demolished material; hopefully it is your client's intent to completely remove all demolished material from the site.

Sincerely,
Jerald E. Noran, CBO, AIA
Chief Building Official
Boone County Building Department
2950 Washington Street
P.O.Box 900
Burlington, KY 41005
859-334-3288
jnoran@boonecountky.org

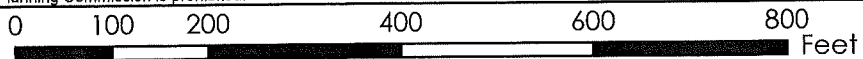
2012 AERIAL MAP

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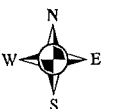
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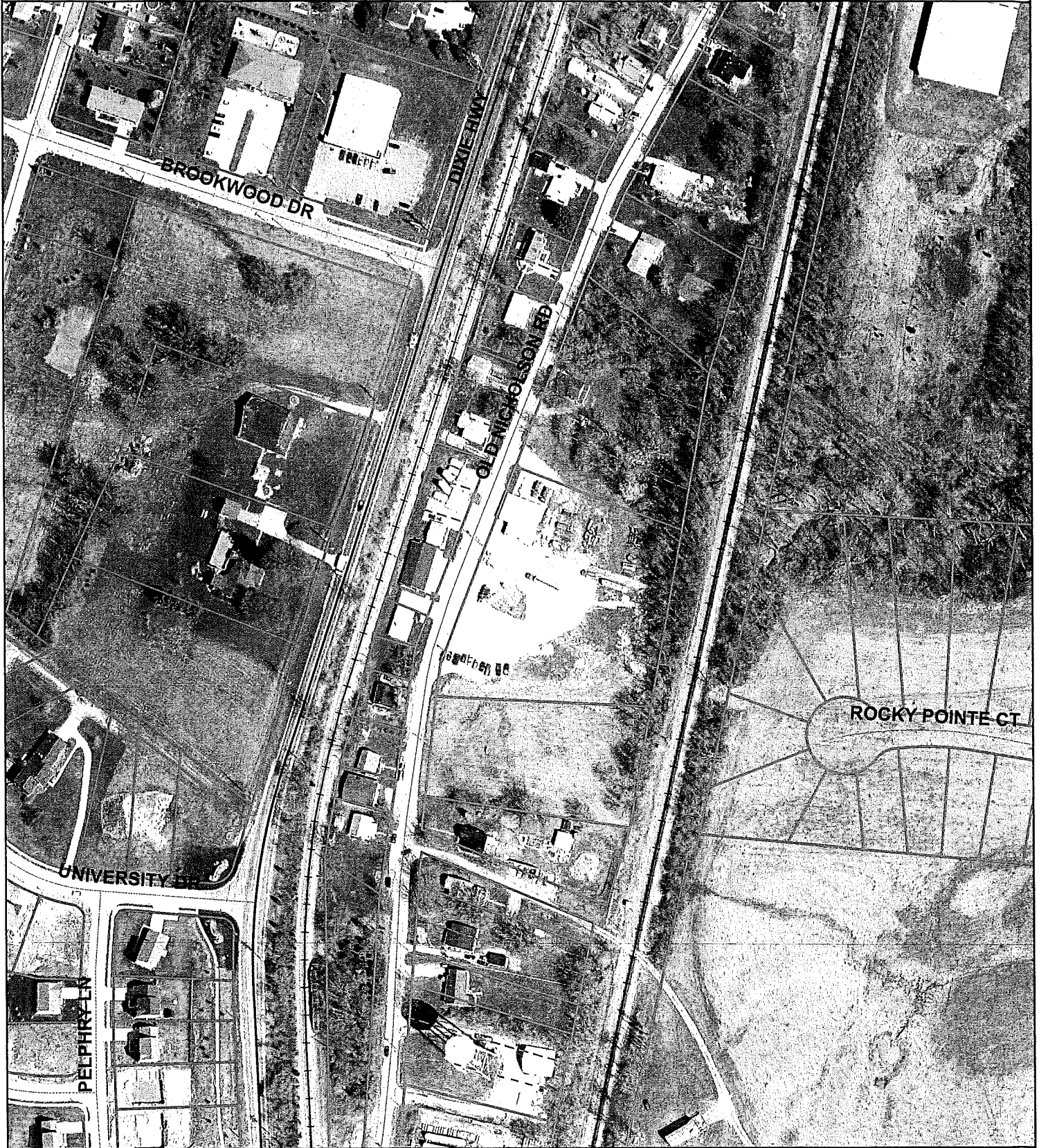


Boone County GIS - Putting Northern Kentucky on the Map



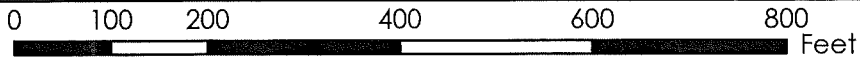
2004 AERIAL MAP

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ArcMap Document: BooneMap (04).mxd

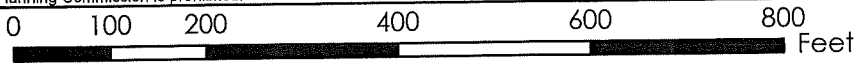
1999 AERIAL MAP

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1 inch = 200 feet



Map Created: 07/01/2013

Boone County GIS - Putting Northern Kentucky on the Map



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ArcMap Document: BooneMap (1999).mxd

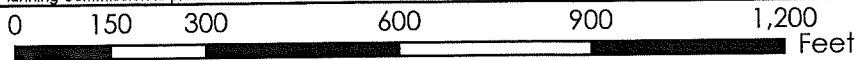
ZONING MAP

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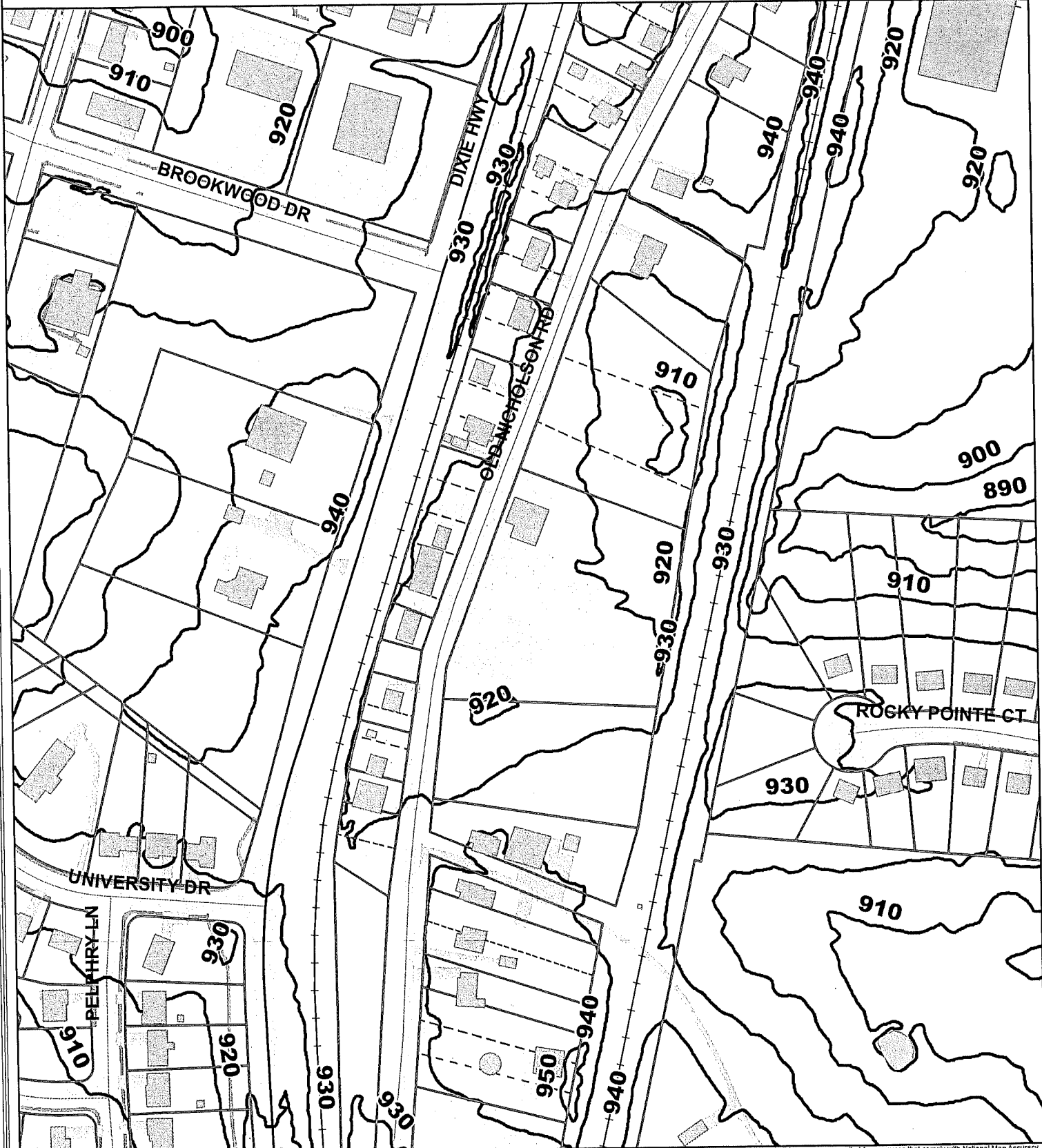
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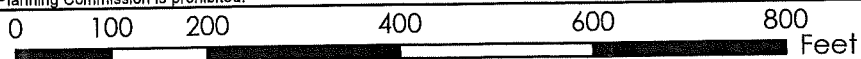
TOPOGRAPHICAL MAP

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Boone County GIS - Putting Northern Kentucky on the Map

Map Created: 07/01/2013

Map File: C:\GIS\Map\BooneMap (Rt).mxd

WALTON BOARD OF ADJUSTMENT
BUSINESS MEETING
WALTON CITY BUILDING

April 22, 2002
6:00 P.M.

BOARD MEMBERS PRESENT:

Mr. Jim Bridges, Chairman
Mrs. Rebecca Huth
Mrs. Romona Roberts
Mr. Steve Turner, Secretary/Treasurer
Mr. David Wethington, Vice Chairman

All members were present.

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

Mr. Jim Bridges, Chairman, called the meeting to order at 6:04 PM and introduced Romona Roberts, a new Board member, who was sworn in prior to the start of the meeting.

Approval of the Minutes:

There were no minutes to be approved at this time.

Agenda Item:

1. The request of **Brinkman Oil Company** for a Change in Non-Conforming use to allow the removal of a 2,333 square foot warehouse and replace it with a 2,850 square foot warehouse at 260 Old Walton Nicholson Road, Walton, Kentucky. The property is currently zoned Commercial Two (C-2).

Staff Member Todd Morgan, AICP, presented the Staff Report which included a slide presentation (see Staff Report). Mr. Morgan explained that if the size of the building is increased more than 15%, major Site Plan Review is required. If the increase is 15% or less, it would be minor Site Plan Review. In response to a question from Mrs. Huth, Mr. Morgan stated that a condition to that effect would not be needed as the requirement is in the Zoning Regulations. If the request is approved, Staff recommends a condition that the building be no closer to the water main than it is today (see Staff Comment #2).

Mr. Bridges questioned what is involved in locating the water main. Mayor Phil Trzop responded that it will probably have to be field located. He stated that the water main goes under the railroad tracks and is a major loop line to the subdivision to the south. The line goes close to the corner of the existing building (within about three feet) and currently a driveway would have to be torn up to make repairs – but they do not want to have to also tear out a building. If the request is approved, the city crew will go out and indicate three feet from the water main.

There being no further questions, Chairman Bridges asked for the applicant's presentation.

Mr. Richard Brinkman stated that he would not want to build over the water line. Mr. Morgan stated that what is proposed is a 22% increase in the size of the building and emphasized that if the increase is over 15% a more complex Site Plan is required.

Counselor Wilson advised that the use pre-dates the regulations and can stay as it is now forever. In order to change the pre-existing non-conforming use, the applicant is coming before the Board of Adjustment to ask for a substitution. The test is whether what is being proposed is less objectionable or no more objectionable than what was there before.

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

Mayor Trzop stated that he is pleased that the business has grown enough that they want to improve the building on Old Walton-Nicholson Road and that they have decided to stay in Walton. Mr. Brinkman stated that the water line is no problem.

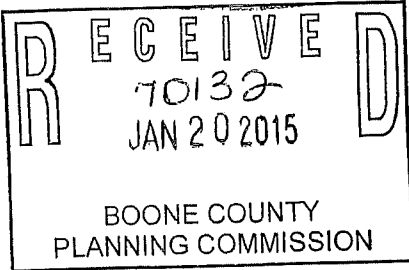
There being no one else present who wished to speak in favor of the request, the Chairman asked if there was anyone present who wished to speak in opposition or to ask questions. There being no response, he asked if there were any comments or questions from the Board.

Chairman Bridges asked if L & N Railroad may object to the request. Mr. Morgan responded that the railroad was notified and did not respond.

Mr. Wethington asked if the Board of Adjustment would be liable if a train were to hit the building and it was on the property line. Counselor Wilson responded that the Board would not be liable.

There being no further discussion, Mr. Wethington moved to grant the request on the basis that it meets the test of being less objectionable, subject to the condition that the building not be any closer to the existing water main than it is now. Mr. Turner seconded the motion and it carried unanimously.

APPLICATION FORM



BOARD OF ADJUSTMENT AND ZONING APPEALS ACTION BOONE COUNTY PLANNING COMMISSION

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

See Boone County Zoning Regulations

SECTION A (To be completed by applicant)

- 1. (Check One) Boone ___ Florence ___ Walton [X] Union ___
2. (Check One) Conditional Use Permit ___ Variance ___ Appeal ___
[X] Change in Non-Conforming Use
3. Applicant's Name John & Susan Pittman
Applicant's Address PO Box 97
Glencue Ky 41046
4. Phone Number 759 643 5757 Fax No. 759 643 4863 E-Mail SPEXC@AOL.com
Description of Request Grandfather in excavating business in place of oil company
5. Name of Development Oil Brinkman Oil
6. Location of Development Old Nicholson Rd 257, 260, and 270
Walter Ky 41094
7. Acreage Under Review 4.27
8. Lot Number and Name of Subdivision (if part of a subdivision) N/A
9. Owner of Property Richard Brinkman
Address of Property Owner 3800 40th St South
10. St Petersburg FLA 33711
City State Zip
Phone Number 859 743 7740 Fax No. N/A E-Mail N/A
11. Proposed Use(s) on Site Excavating Business
12. Total Square Footage of Existing and/or Proposed Buildings 10,000 sq ft
13. Current Zoning on Property C2 Non-Conforming
14. Deed Book 588 Page No. 186-189 Group No. 2080 (copy attached)
15. Is the site subject to a zone change?
If yes, give date of approval
16. Have you submitted a Site Plan with this request? 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.

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

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