

APPLICATION FORM

RECEIVED  
DEC 22 1999

CONCEPT DEVELOPMENT PLAN  
BOONE COUNTY PLANNING COMMISSION

BOONE COUNTY  
PLANNING COMMISSION

(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

1. Check One:

- Concept Development Plan (Includes Utilization of an Underlying Zone in a Planned Development)
- Change in an Approved Concept Development Plan
- Long Range Planning Committee Review (As stated in the Houston-Donaldson Study)

2. Name of Project #8133 Sam's Club Expansion
3. Location of Project 4949 Houston Road Florence, KY
4. Total Acreage of Site 14.65
5. Current Zoning C2/PD
6. Date of Previous Zoning Map Amendment or Approved Concept Development Plan (if applicable) 3/10/93
7. Is the site subject to a specialized Land Use Study approved by the Boone County Planning Commission? (If so, indicate the name of the Study) Houston-Donaldson Study
8. Proposed Uses (please specify each use) Retail Expansion
9. Proposed Building Intensities (please specify) 132,358 SF / 14.85 Acres = 20.46%
10. Have you submitted a Concept Development Plan? Yes
11. Are you also applying for:
  - Conditional Use Permit
  - Dimensional Variance
12. Name of Applicant(s) Carlson Consulting Engineers  
Phone Number 901-384-0404 Fax No. 901-384-0710
13. Address of Applicant(s) 4035 Hadley Drive  
Memphis, TN 38133  
City State Zip
14. Name of Property Owner(s) Benenson Capitol Co.  
Phone Number 217-867-0990 Fax No. \_\_\_\_\_
15. Address of Property Owner(s) 708 Third Ave 28th Floor  
New York, NY 10017  
City State Zip
16. Are there any existing buildings on the site? Yes  
How many? One
17. Deed Book 502 Page No. 274 Group No. 2033B
18. Have you had a pre-application meeting with BCPC Staff? Yes

(over)

19. 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
- Kentucky Transportation Cabinet
- City of Florence Public Services Department
- Boone County Building Department
- Northern Kentucky Health District
- U.S. Soil Conservation Service
- Local School District
- Local Fire District
- Other: \_\_\_\_\_

20. Concept Development Plan Jurisdiction/Location  
 Unincorporated Boone County  
 Florence  Walton  
 Union

21. Applicant's Signature(s) 

22. Property Owner's Signature(s) 

**SECTION B** (To be completed by BCPC Staff)

1. Date Received 12-22-99 Fee Received \$1300.00 RA 22780
2. Check what has been submitted:  
 Application  Fee  Legal Description  
 Concept Development Plan  Addresses of Adjoining Property Owners  
5 No. of copies of plan received \*\*
3. Is application complete?  YES  NO
4. Staff Reviewer MIKE HOMER
5. Committee Chairperson EARL WHITE
6. Scheduled Public Hearing Date \_\_\_\_\_
7. Boone County Planning Commission Action:  
 Approved  
 Approved With Conditions  
 Denied
8. Other: \_\_\_\_\_

\*\* Five (5) Copies Required

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

**EXHIBIT**  
**“A”**

## STAFF REPORT

Request of Carlson Consulting Engineers (applicant) for Benenson Capitol Co. (owner) to consider a Change in Concept Development Plan in a Commercial Two/Planned Development (C-2/PD) zone for a 14.65 acre lot that is located at 4949 Houston Road, Florence, Kentucky. The request is for a change in an approved Concept Development Plan to allow an expansion of the existing Sam's Club store.

February 23, 2000

### REQUEST

This request is for a Change in an Approved Concept Development Plan on a 14.85 acre site located at 4949 Houston Road, Florence, Kentucky. The request involves an expansion to the existing Sam's Club Warehouse and a reduction of the parking area. The proposed expansion occurs primarily on the front (southeast side) of the building and would extend into the existing parking thus reducing the total number of parking spaces. The proposed addition will allow the Sam's Club to increase their retail space. The following table indicates the existing and proposed land use intensities:

| <u>Existing</u>                           | <u>Proposed</u>  |
|---|--|
| Existing Sam's - 105,810 s.f.             | Proposed Sam's - 132,358 s.f.<br>(26,448 s.f. expansion) |
| Site Intensity - 7,125 s.f./acre          | Proposed Site Intensity - 8,913 s.f./acre                |
| Existing Parking - 717 (147.6 s.f./space) | Proposed Parking - 643<br>(205.8 s.f./space)             |
| Required Parking - 348 spaces             | Required Parking - 426 spaces                            |
| Existing Building Height - 27'-2"         | Proposed Building Height - 27'-2"                        |

### SITE HISTORY

**1986** A Concept Development Plan was approved for the development of the 69.57 acre site located on the west side of Turfway Road and north of Houston Road. The plan called for a mixture of industrial, office research, and commercial uses. The building containing the existing Sam's Club was later constructed as Price Savers as part of the Concept Development Plan.

**1988** The City of Florence adopts the first version of the Houston-Donaldson Study.

**1992** A request for a Change in Concept Development Plan on a 14.85 acre site by CEI Engineering Associates, Inc. was approved. The approval granted a 28,990 s.f. expansion of the Sam's Club.

The City of Florence adopts the second and current version of the Houston-Donaldson Study.

**1993** A request for a Change in Concept Development Plan on a 14.85 acre site by CEI Engineering Associates, Inc. was approved. The approval granted a 10,380 s.f. expansion of the Sam's Club. Plans for a previously approved restaurant in an out lot was eliminated to allow for parking expansion. This Change in Concept Development Plan approved the current state of the Sam's Club building.

### SURROUNDING LAND USES AND ZONING

|                  |  |
|------------------|--|
| <b>North</b>     | Turfway Business Center: Industrial Portion, I-1/PD                    |
| <b>Northeast</b> | Vacant Home Quarters, C-2/PD   |
| <b>East</b>      | Steak N Shake, Hampton Inn, and Longhorn Steakhouse, C-2/PD            |
| <b>Southeast</b> | Best Buy, O-2/C-2/PD   |
| <b>South</b>     | Meijer's Superstore, O-2/C-2/PD  |
| <b>West</b>      | Wal-Mart, C-2/PD   |
| <b>Northwest</b> | Turfway Business Center: Industrial Portion, Sach's Automotive, I-1/PD |

### RELATIONSHIP TO THE COMPREHENSIVE PLAN

The 1995 Boone County Comprehensive Plan's 2020 Land use Plan designates the site and general area in question as "Commercial". The Plan describes this designation as "retail, corporate and professional office, interchange commercial, indoor commercial recreation, restaurants, services, etc." The text of the Land Use Element states the following regarding the area (Area D-4: Florence Area, pg.226):

The northern portion of this section is within the Houston-Donaldson Study area. The Study recommends an employment district which would include a mix of office, commercial, and industrial uses for the existing Houston Road corridor, with a preferred emphasis on office development along I-75 and high-technology industrial uses west of Houston Road. The Houston-Donaldson Study further details these developments.

Another section of the Land Use Element (Area C-4: Camp Ernst Area, pg.222) states the following relative to the Houston-Donaldson Study area:

The Mall Road area should continue to develop as a regionally-oriented commercial district. This regionally-oriented growth should be confined to Mall Road and Houston Road, and should not expand onto US 42, KY 18 or Hopeful Church Road. However, the highway-scaled, automobile-oriented appearance of this growth should be minimized through the provision of pedestrian improvements, small facilities within outlots in conjunction with larger strip-style centers, multiple, scattered parking areas in lieu of large central parking areas, and street trees along Mall Road. This growth should include multi-modal transportation amenities. Any commercial development in the Houston Road area should be consistent with the recommendations of the Houston-Donaldson Study.

The Business Activity Element of the comprehensive Plan makes the following statements that relate to the future of the general area (Areas of future Commercial Activity, pg. 82)

Since the immediate Florence area figures so prominently in Boone County's commercial activity, this region has the momentum to continue dominating any expansion of commercial activity. However, two studies, the Houston-Donaldson Study and the Main Street Study have defined the scale and type of commercial uses in the City of Florence and the surrounding area. The Houston Road area will mature with expansion of the retail and office base, additional racetrack uses and the expansion of St. Luke Hospital...

Figure 5.3 "Future Industrial And Commercial Development" pg. 87 in the 1995 Boone County Comprehensive Plan specifically shows that future commercial development should be located in the area in question as well as the entire length of Houston Road within Boone County.

The Land Use Element makes the following statements that relate to the proposal.

- A. 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. Potential impacts include visual, noise or vibrations, odors, dust, smoke, and light. 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. Developments should provide buffering along public roadways, to soften the visual impact. Appropriate wooded areas and stream valleys should remain as greenbelts and open space within developments and between developments ("Buffering", pg. 210).
- B. Development in Boone County must include landscaping to accompany the proposed project. This landscaping should be designed to improve the public view of a development, and should be incorporated into parking lots and other vehicle circulation areas as well as within open spaces and around structures. Landscaping is intended to minimize the visual impacts of the development from adjoining properties and roadways.

Developments along major roadways in Boone County must include landscaping and/or the use of berms between the development and the right-of-way in order to promote the aesthetic appearance from the roads and to facilitate the compatibility of differing land uses ("Landscaping", pp. 210 and 211).

- C. 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 ("Design, Signs, and Historic Preservation", pg. 211)

The 1995 Boone County Comprehensive Plan Goals and Objectives include the following pertinent statements.

- A. Development issues shall be viewed in terms of promoting overall quality of life...("Overall", Objective 2)
- B. Proper design principles shall be applied in development ("Overall", Objective 3).
- C. The needs of Boone County's population base are accommodated through the provision of orderly growth ("Population", Goal).
- D. 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 ("Environment", Goal).
- E. Appropriate locations for businesses compatible with the surrounding area are provided in Boone County ("Business Activity", Goal).
- F. Commercial uses shall be limited to strategic locations serving trade areas and neighborhood needs and shall have safe and effective access and ample parking space ("Business Activity", Objective 1).

#### RELATIONSHIP TO THE HOUSTON-DONALDSON STUDY

The site in question is located within the Houston-Donaldson Study area. The Houston-Donaldson Study is an adopted guide for planned development within the area that further details and compliments the Boone County Comprehensive Plan. Proposed developments within the Houston-Donaldson Study area shall be evaluated according to the goals, objectives, and policies of the Study. The Individual Site Analysis and recommendations section of the Study provides the following recommended uses/zoning for the area in question ("Site 10, Turfway Business Park", pg. 30).

This development is recommended to continue to develop according to approved plans.

The Houston-Donaldson Study Goals and Objectives include the following pertinent statements.

- A. The future land uses in the Study Area are planned in relation to the overall land use pattern of Boone County, the existing and planned developments within the Study Area, and the sense of the Study Area as a distinct corridor (Goal 1).

- B. Commercial uses shall be designed in an innovative manner that creates prominent landscaping areas (Goal 1, Objective B).
- C. Each development shall have a central architectural design focus (Goal 1, Objective G).
- D. Submitted development requests shall be reviewed in context of Article 15 Planned Development of the Boone County Zoning Regulations and this document (Goal 1, Objective I).

### STAFF CONCERNS

1. Should the Change in Concept Development Plan be approved, the expansion will need to meet the Building Landscaping requirements specified in Article 36, Section 3630 of the Boone County Zoning Regulations. Modified portions of the parking area will need to meet Vehicular Use Area landscape requirements. The Boone County Planning Commission can evaluate requiring additional street frontage landscaping to soften the overall visual impacts of the addition from adjoining streets.
2. Because the existing Sam's Club is highly visible from both Houston Road and Thoroughbred Boulevard, staff is concerned about the future appearance of the proposed expansion since no building elevations were provided. Since the expansion will be required to go through the Site Plan and Design Review Process, it is staff's opinion that substantial improvements be made to improve the character of the building. The design of the new facades should be developed/enhanced beyond the standard "big box" character of the existing building through the use jogs in exterior, an arcade element, multiple roof lines between existing building and addition, etc.
3. The over all expansion is a 25 percent increase of the existing square footage. The site should experience a similar increase in vehicular trips generated. The average daily trips for an average weekday at a given Discount Club the same size would increase from 4,423 trips to 5,533 trips (ITE Trip Generation Manual, 6<sup>th</sup> Edition, "Discount Club" Land Use Classification).

### CONCLUSION

This request needs to be evaluated by the Boone County Planning commission and the Florence City Council in terms of the 1995 Boone County Comprehensive Plan, the Houston-Donaldson Study, Article 15 "Planned Development District" of the Boone County

Zoning Regulations, and the potential impacts on the existing and planned uses in the area. The Future Land Use Map will not need to be amended if the Planning Commission and City Council approve this request.

Respectfully submitted,

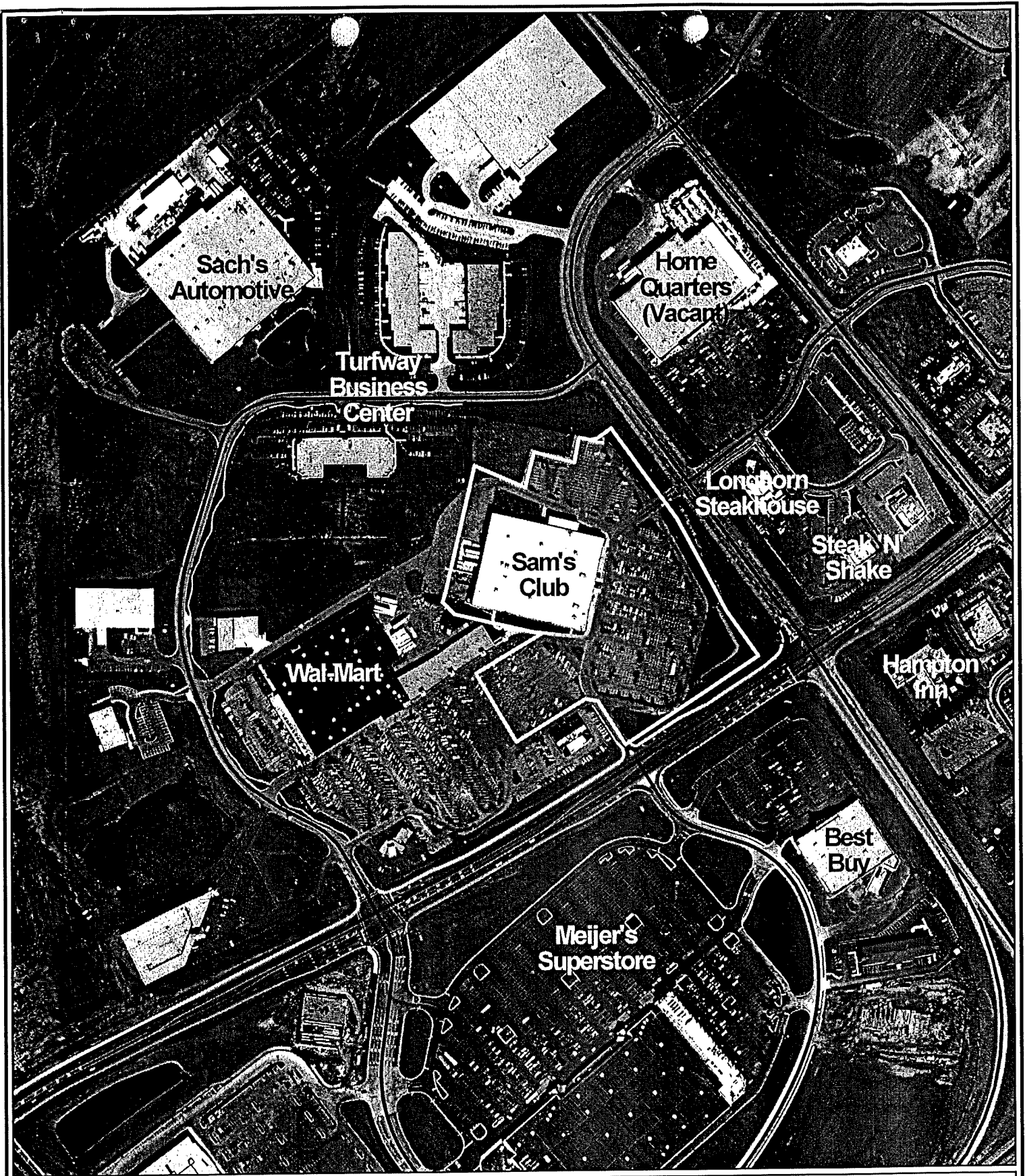


Mike Homer  
Planner

MH/pr

attachments:

- Vicinity Map
- Zoning Map
- Future Land Use Map
- Site Development Plan



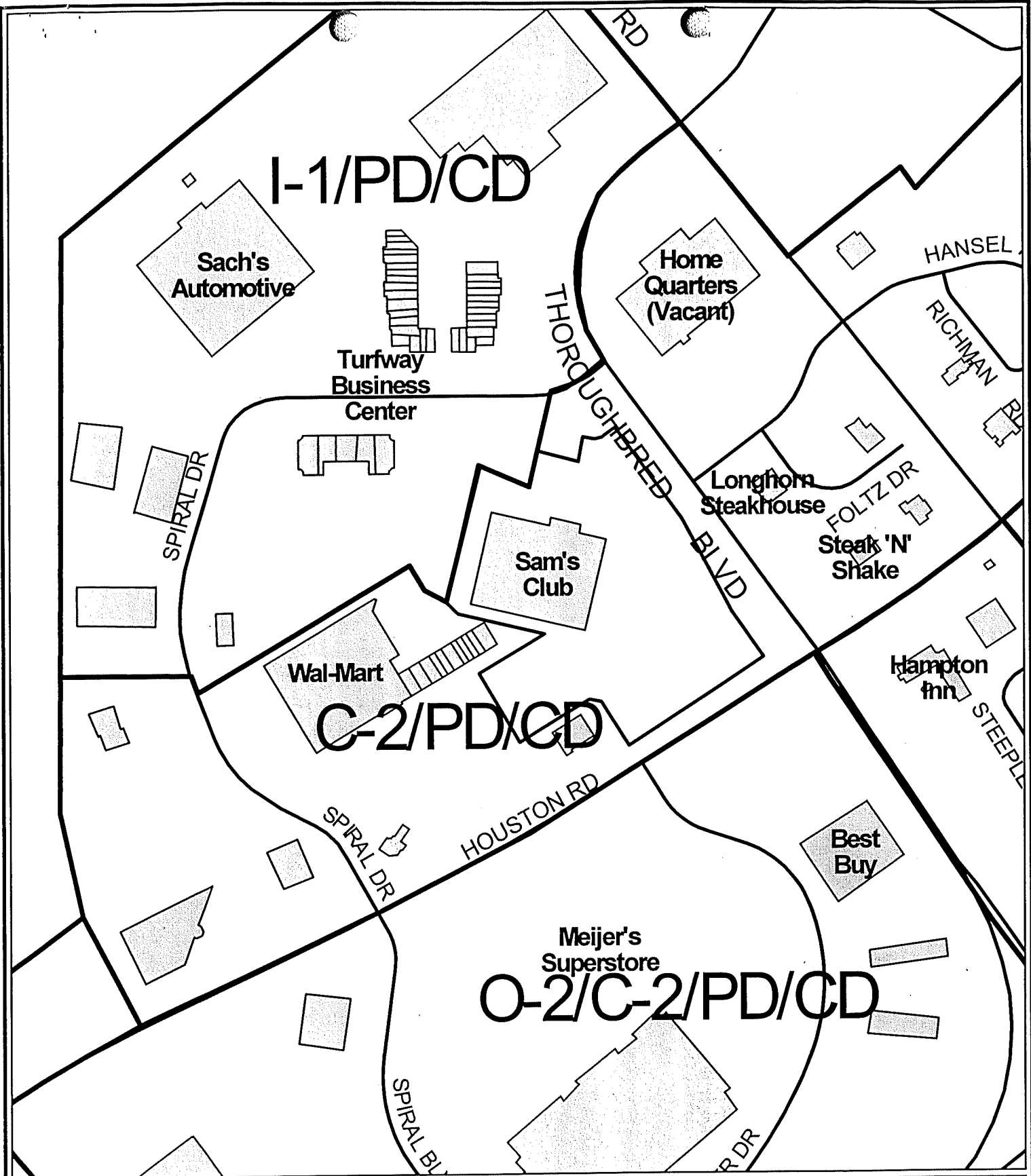
# Sam's Club Vicinity Map

400 0 400 Feet



1 inch equals 400 feet  
Produced by the  
Boone County Planning Commission  
GIS Services Division  
February 22, 2000





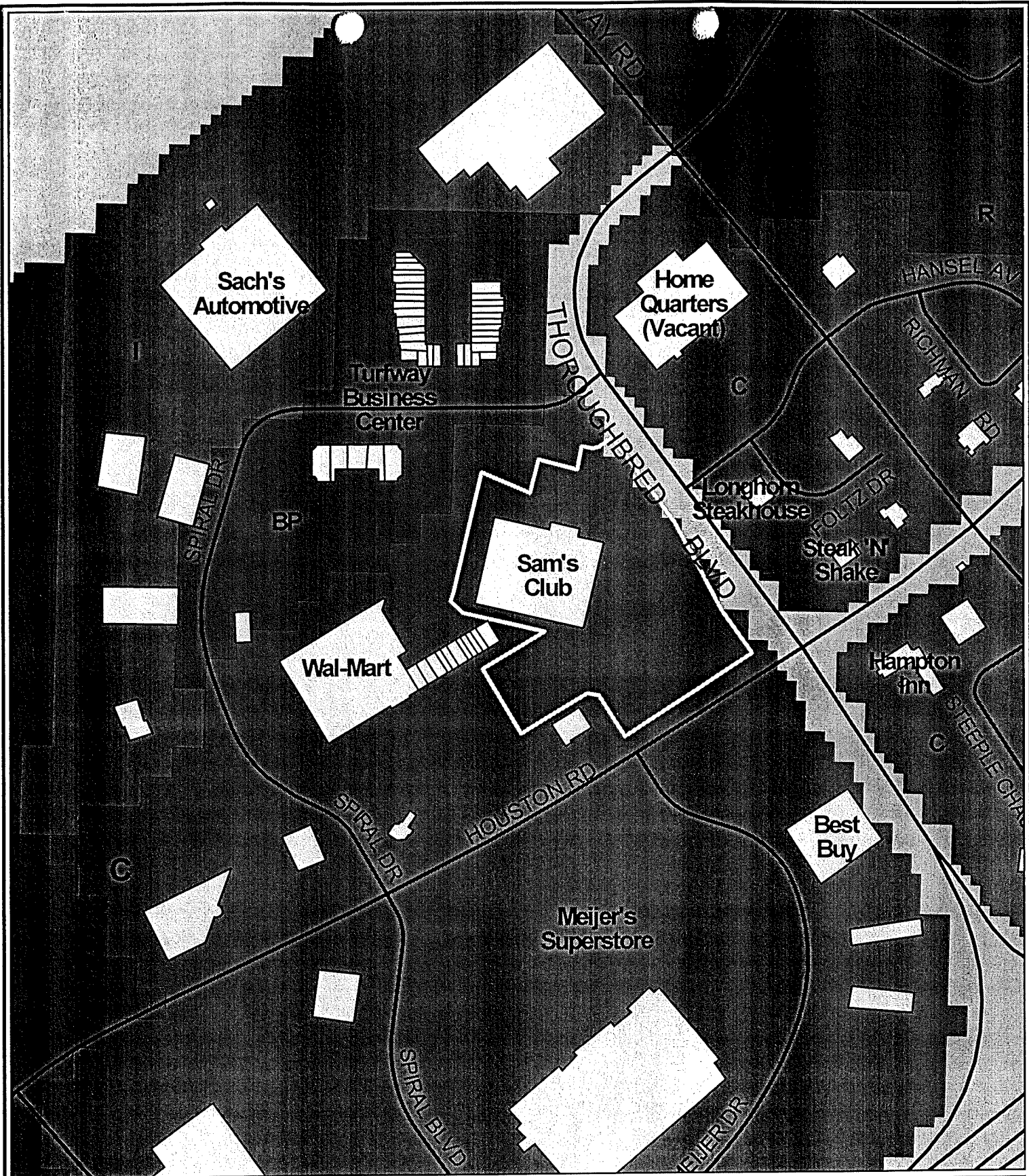
# Zoning Map

400 0 400 Feet



1 inch equals 400 feet  
 Produced by the  
 Boone County Planning Commission  
 GIS Services Division  
 February 22, 2000



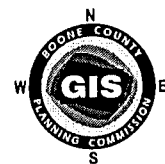


# Future Land Use

425 0 425 Feet



1 inch equals 425 feet  
 Produced by the  
 Boone County Planning Commission  
 GIS Services Division  
 February 22, 2000





**Public Hearing Item No. 3:**

**Commission Members Present:** Mr. Barlow, Mr. Hicks, Mr. Newman, Mrs. Poston, Mr. Reynolds, Mr. Ries – Temporary Presiding Officer, Mr. Schwenke, Mr. White, Mrs. Wilson, and Mr. Zimmer.

**Staff Members Present:** Mr. Kevin Costello, AICP, Executive Director; Ms. Jan Hancock, Secretary; Mr. Mike Homer, Planner; Mr. Mitch Light, Assistant Zoning Administrator/ZEO; Mr. Todd Morgan, Planner; Mr. Kevin Wall, AICP, CDT – Director, Zoning Services.

**Legal Counsel Present:** Mr. Dale Wilson

Mr. Ries introduced the last item on the Agenda:

1. **Applicant:** **Carlson Consulting Engineers for Benenson Capitol Company (owner)**

**Request:** **Change in Concept Development Plan**

**The request of Carlson Consulting Engineers (applicant) for Benenson Capitol Company (owner) to consider a Change in Concept Development Plan in a Commercial Two/Planned Development (C-2/PD) zone for a 14.65 acre lot at 4949 Houston Road, Florence, Kentucky. The request is for a change in an approved Concept Development Plan to allow an expansion of the existing Sam's Club store.**

Staff Member Mike Homer presented the Staff Report which included a slide presentation (see Staff Report).

Mr. Ries asked for the applicant's presentation.

Mr. Dean Carlson with Carlson Consulting Engineers, representing the owner of the property and Sam's Clubs, stated that the Concept Development Plan was amended a few years ago to allow for a 10,000 square foot expansion. They have determined that 10,000 square feet would not provide adequate room for the expansion and want an expansion of just over 26,000 square feet. They will expand out the front of the building and give the building a general facelift. They will submit preliminary elevations and know that they will have to go through Design Review. They will get away from the bright reds and blues and into sand and earth colors with minimal accent banding. The glass domes will be incorporated in the new color scheme. They will provide landscaping around the

building. The planting area in front of the building is being expanded to allow more room for plants to soften the front of the building. They will provide sidewalks through the site to get to the existing sidewalk system. The existing parking is over the city requirements and over what they need. The plan does not provide for parking on the previously approved out-parcel because there is already more parking than is needed. Most of the property they are expanding into is already paved. The impervious area remains relatively unchanged with the expansion plan.

Mr. Ries asked if there was anyone else present who wished to speak in favor of the request. There being no response, he asked if there was anyone present who wished to speak in opposition or to ask questions. There was no response.

Mr. Ries asked if there were any comments or questions from the Commissioners.

Mr. Zimmer asked if the 10,000 square foot expansion approved in 1993 has occurred. Mr. Carlson did not think so. Mr. Costello will verify this information. Mr. Zimmer asked that a large copy of the Site Plan be brought to the Committee Meeting. He stated that an area that has always been unusual is on the southwest side going towards Wal-Mart and people do not know if they are in a parking lot or a driving lane, and he would like that corrected. Mr. Carlson responded that the sidewalk is flush with the pavement and they would like to raise it up 6" so that it has the definition of a protective pedestrian way. Mr. Costello commented that Price Savers was there and it was a separate building.

Mr. Costello stated that he is concerned about the proposed color change. He stated that Wal-Mart originally wanted a brown building and it was turned down. Sam's would be deviating from the color scheme out there. The development there was supposed to be a center and has quite a history from when it was Price Savers. Mr. Wall added that the Staff Comment came from the perspective that the building demands more architectural development beyond colors and more design emphasis into the facades that face out to the street. Mr. Costello stated that the appearance of the building is one of the reasons for requiring the amount of landscaping. He asked if the building would ever become a Wal-Mart. Mr. Carlson responded that it would be highly unlikely.

Mr. Zimmer stated that this is an opportunity to correct a situation. It is more than just the sidewalk. He stated that it is like driving through a median that is not there and he will be reviewing this. He asked if there are some concepts to slow down traffic as it comes through the entrance to Sam's Club and goes down through the rest of the strip. He questioned speed bumps (not the short ones). He would like to discuss this in Committee. He is concerned about tilt-up big box buildings, which are ugly. The Houston-Donaldson Study tries to steer away from them. He asked if the request goes through another review process if it is approved. Mr. Costello responded that it would go through Design Review.

Mrs. Wilson asked if the red lines on the drawing indicated the parking spots that will be gone. Mr. Carlson reviewed the plan and stated that they are moving the existing end cap on the parking down about four or five spaces. He stated that they are going to take away parking spaces, but the parking will be the same distance from the front of the building because they are expanding the front of the building out and the end caps are moving about four or five spaces further out into the lot. Mrs. Wilson questioned where they would put more landscaping around the building. Mr. Homer responded that for whatever part of the parking they change, they will have to address landscaping within that area. Mr. Wall commented that they would have to dig up the blacktop and install islands. Mr. Homer stated that there are islands there now with shrubbery and they will have to increase them.

There being no further comments, Mr. Ries stated that the Committee Meeting for this item will be on March 2, 2000 at 5 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 15, 2000 at 7:30 P.M..

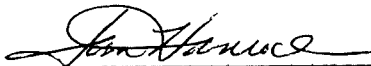
Mr. Ries closed this Public Hearing at 9:58 P.M..

**APPROVED:**



**Robert Ries**  
**Temporary Presiding Officer**

**Attest:**



**Jan Hancock, Recording Secretary**

**BOONE COUNTY PLANNING COMMISSION  
BOONE COUNTY ADMINISTRATION BUILDING  
COURTROOM 3A  
BUSINESS MEETING  
March 15, 2000  
7:30 P.M.**

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Mr. Arnold Caddell, Chairman, called the meeting to order at 7:30 P.M..

**COMMISSION MEMBERS PRESENT:**

Mrs. Judy Arnett, Secretary/Treasurer  
Mr. Randy Barlow  
Mr. Arnold Caddell, Chairman  
Mr. W. Thomas Chaney, Vice Chairman  
Mr. Mark Hicks  
Mr. Richard Knock  
Mr. Don McMillian  
Mr. Robert Newman  
Mrs. Susan Poston  
Mr. Robert Ries, Temporary Presiding Officer  
Mr. Bob Schwenke  
Mr. Earl White  
Mrs. Lisa Wilson  
Mr. David Zimmer

**COMMISSION MEMBERS NOT PRESENT:**

Mr. Charlie Reynolds

**LEGAL COUNSEL PRESENT:**

Mr. Dale Wilson

**STAFF MEMBERS PRESENT:**

Mr. Kevin Costello, AICP, Executive Director  
Ms. Jan Hancock, Secretary  
Mr. Mike Homer, Planner  
Mr. Mitch Light, Assistant Zoning Administrator/ZEO  
Mr. Todd Morgan, Planner  
Mr. Kevin Wall, AICP, CDT – Director, Zoning Services

There being no further discussion, Mr. Chaney asked for a vote on the motion made by Mr. Hicks to deny the request which found Mrs. Arnett, Mr. Chaney, Mr. Hicks, Mr. Knock, Mr. McMillian, Mr. Newman, Mr. Ries, Mr. Schwenke, Mr. White, Mrs. Wilson, and Mr. Zimmer in favor. Mr. Barlow and Mrs. Poston were opposed. The motion carried by a vote of 11 to 2 with 1 abstention. Mr. Costello stated that the Planning Commission's action is a recommendation to Fiscal Court for their final action.

Chairman Caddell returned to the meeting room at this time and chaired the rest of the meeting:

**2. Zoning Map Amendment**

The request of George Cosmah (applicant) for J. Curtis Bevins (owner) to consider a Zoning Map Amendment from Commercial One (C-1) to Commercial Two (C-2), and a Conditional Use Permit, for an approximate 0.95 acre tract at 1007 Burlington Pike, Boone County, Kentucky. The request is for a zone change and Conditional Use Permit to allow sales or leasing of motor vehicles.

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

There being no discussion, Mr. Ries moved by resolution to Boone County Fiscal Court to approve the request based on the Committee Report. Mr. White seconded the motion and it carried unanimously.

**3. Change in Concept Development Plan**

The request of Carlson Consulting Engineers (applicant) for Benenson Capitol Company (owner) to consider a Change in Concept Development Plan in a Commercial Two/Planned Development (C-2/PD) zone for a 14.65 acre lot at 4949 Houston Road, Florence, Kentucky. The request is for a change in an approved Concept Development plan to allow an expansion of the existing Sam's Club store.

Staff Member Mike Homer 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. White moved by resolution to the City of Florence to approve the request based on the Committee Report. Mr. Zimmer seconded the motion.

Mr. Zimmer referred to Condition #3 and asked if Staff will decide on the appropriate design features. Mr. Wall passed around a copy of "Attachment A" which was omitted from the Commissioners' copies of the Committee Report. He stated that the Site Plan elements were discussed at the Committee Meeting and they will have to go through Design Review, through the Technical Committee, and through the full Planning Commission. It is not just Staff that will evaluate the proposal.

Mr. Zimmer commented that the applicant was very amenable to making changes to help create a nicer looking facility and better traffic flow.

There being no further discussion, the Chairman asked for a vote on the motion made by Mr. White to approve the request and it carried unanimously.

4. **Wireless Communications Facility**

**The request of Ameritech (applicant) to consider an application for a Wireless Communications Facility at 7500 Turfway Road, Boone County, Kentucky. The request is for the construction of a 147-foot monopole communications tower.**

Chairman Caddell stated that Agenda Item #4 is recommended for deferral to April 5, 2000 at 7:30 P.M.. The Committee Meeting will be in Courtroom 3A on April 5 at 6:15 P.M.. Mr. Zimmer so moved. Mr. Ries seconded the motion and it carried unanimously.

5. **Zoning Map Amendment**

**The request of Hilltop Basic Resources, Inc. (applicant) for Hilltop Basic Resources, Inc., Addison G. Stevens, Myrna Stevens, Rodney Woods, Sandra Woods, Donald Gene Hodges, Niki Carol Hodges, Robert G. Kippler, William E. Kippler, Carl Taabar, and Cynthia Taabar (owners) to consider a Zoning Map Amendment from Agriculture (A-1) to Agriculture/Recreation/Industrial Four/Planned Development (A-1/R/I-4/PD) for an approximate 534 acre area located north of I-275 and the I-275/Petersburg (KY 8) interchange at the terminus of Garrison Creek Road, and along the south side of the Ohio River, Boone County, Kentucky. The request is for a zone change to allow underground extraction, processing, river barging of materials, and other activities pertaining to subsurface mining operations, and outdoor park/recreation and agricultural uses.**

Chairman Caddell stated that Agenda Item #5 is recommended for deferral to April 5, 2000 at 7:30 P.M.. The Committee Meeting will be on March 23, 2000 at 6:30 P.M.. Mr. Chaney so moved. Mr. Zimmer seconded the motion and it carried unanimously.

EXHIBIT  
"B"

## COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Earl White, Chairman

DATE: February 23, 2000

RE: Request of **Carlson Consulting Engineers (applicant)** for **Benenson Capitol Co. (owner)** to consider a Change in Concept Development Plan in a Commercial Two/Planned Development (C-2/PD) zone for a 14.65 acre lot that is located at 4949 Houston Road, Florence, Kentucky. The request is for a change in an approved Concept Development Plan to allow an expansion of the existing Sam's Club store.

### REMARKS:

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

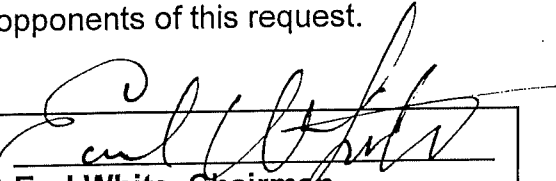
#### Findings of Fact

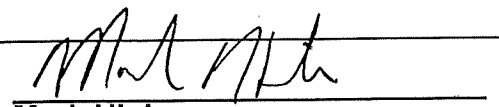
1. The Committee has concluded that the proposed Change in Concept Development Plan is in general agreement the Houston-Donaldson Study. The expansion is in agreement with the approved plans for the area in question. The conditions recommended by the committee will promote the overall character of the development.
2. The Committee has concluded that the request is in general agreement with the 1995 Boone County Comprehensive Plan; which was consulted in the evaluation of this request as prescribed by the "Goals and Objectives" section (page 4) of the Houston-Donaldson Study. The expansion does not conflict with current or future land use plans for the area in question.
3. The proposed uses and Change in Concept Development Plan generally meet the objectives of the Planned Development District.
4. The Committee has concluded that the attached condition is necessary to achieve consistency with the specific goals, objectives and policies of the 1995 Boone County Comprehensive Plan and the Houston-Donaldson Study, as well as the intent, objectives, and requirements of Article 15 "Planned Development District (PD)" of the Boone County Zoning Regulations. 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.

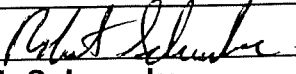
Conditions

1. The driveway and parking lot layout in the area adjoining the southeast corner of the building shall be reconfigured to create a four way intersection with stop signs provided in each direction. A concept of this reconfiguration is illustrated on the attached "Attachment A."
  
2. A customer loading zone shall be provided along the front of the building in addition to a full two-way driveway. The alignment of this two-way driveway shall jog near the building entrance in effort to slow vehicular speed in this area. A different paving surface shall be provided on this driveway in the areas at both ends of the front of the building, also in an effort to slow vehicular speed in this area. A concept of the requirements outlined in this condition is illustrated on the attached "Attachment A."
  
3. The design of the facades of the building addition shall be architecturally enhanced, articulated, and developed beyond the single mass, large-scaled design of the existing structure. This shall be accomplished by methods such as, but not limited to: providing multiple roof lines between the existing building and the addition; providing tangible jogs in the facades of the addition; constructing the overall addition out of multiple, smaller scaled building massings - the height of these smaller massings could exceed the height of the existing building as to disrupt a long, continuous parapet line; providing tangible wall openings and architectural details on the facades which help create a pedestrian scale; emphasizing the main customer entrance into the building through the use of an over-scaled entry feature; etc.

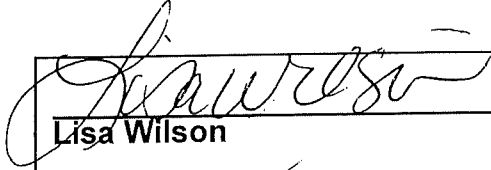
A copy of the Public Hearing minutes accompanies the findings and recommendation serving as a summary of the evidence and testimony presented by the proponents and opponents of this request.

  
Earl White, Chairman  
For  Against \_\_\_\_\_  
Abstain \_\_\_\_\_ Absent \_\_\_\_\_

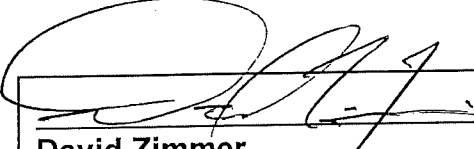
  
Mark Hicks  
For  Against \_\_\_\_\_  
Abstain \_\_\_\_\_ Absent \_\_\_\_\_

  
\_\_\_\_\_  
**Bob Schwenke**

For  Against \_\_\_\_\_  
Abstain \_\_\_\_\_ Absent \_\_\_\_\_

  
\_\_\_\_\_  
**Lisa Wilson**

For  Against \_\_\_\_\_  
Abstain \_\_\_\_\_ Absent \_\_\_\_\_

  
\_\_\_\_\_  
**David Zimmer**

For  Against \_\_\_\_\_  
Abstain \_\_\_\_\_ Absent \_\_\_\_\_

**TOTAL: 5 FOR 0 AGAINST 0 ABSTAIN 0 ABSENT**



**Public Hearing Item No. 3:**

**Commission Members Present:** Mr. Barlow, Mr. Hicks, Mr. Newman, Mrs. Poston, Mr. Reynolds, Mr. Ries – Temporary Presiding Officer, Mr. Schwenke, Mr. White, Mrs. Wilson, and Mr. Zimmer.

**Staff Members Present:** Mr. Kevin Costello, AICP, Executive Director; Ms. Jan Hancock, Secretary; Mr. Mike Homer, Planner; Mr. Mitch Light, Assistant Zoning Administrator/ZEO; Mr. Todd Morgan, Planner; Mr. Kevin Wall, AICP, CDT – Director, Zoning Services.

**Legal Counsel Present:** Mr. Dale Wilson

Mr. Ries introduced the last item on the Agenda:

1. **Applicant:** **Carlson Consulting Engineers for Benenson Capitol Company (owner)**

**Request:** **Change in Concept Development Plan**

**The request of Carlson Consulting Engineers (applicant) for Benenson Capitol Company (owner) to consider a Change in Concept Development Plan in a Commercial Two/Planned Development (C-2/PD) zone for a 14.65 acre lot at 4949 Houston Road, Florence, Kentucky. The request is for a change in an approved Concept Development Plan to allow an expansion of the existing Sam's Club store.**

Staff Member Mike Homer presented the Staff Report which included a slide presentation (see Staff Report).

Mr. Ries asked for the applicant's presentation.

Mr. Dean Carlson with Carlson Consulting Engineers, representing the owner of the property and Sam's Clubs, stated that the Concept Development Plan was amended a few years ago to allow for a 10,000 square foot expansion. They have determined that 10,000 square feet would not provide adequate room for the expansion and want an expansion of just over 26,000 square feet. They will expand out the front of the building and give the building a general facelift. They will submit preliminary elevations and know that they will have to go through Design Review. They will get away from the bright reds and blues and into sand and earth colors with minimal accent banding. The glass domes will be incorporated in the new color scheme. They will provide landscaping around the

building. The planting area in front of the building is being expanded to allow more room for plants to soften the front of the building. They will provide sidewalks through the site to get to the existing sidewalk system. The existing parking is over the city requirements and over what they need. The plan does not provide for parking on the previously approved out-parcel because there is already more parking than is needed. Most of the property they are expanding into is already paved. The impervious area remains relatively unchanged with the expansion plan.

Mr. Ries asked if there was anyone else present who wished to speak in favor of the request. There being no response, he asked if there was anyone present who wished to speak in opposition or to ask questions. There was no response.

Mr. Ries asked if there were any comments or questions from the Commissioners.

Mr. Zimmer asked if the 10,000 square foot expansion approved in 1993 has occurred. Mr. Carlson did not think so. Mr. Costello will verify this information. Mr. Zimmer asked that a large copy of the Site Plan be brought to the Committee Meeting. He stated that an area that has always been unusual is on the southwest side going towards Wal-Mart and people do not know if they are in a parking lot or a driving lane, and he would like that corrected. Mr. Carlson responded that the sidewalk is flush with the pavement and they would like to raise it up 6" so that it has the definition of a protective pedestrian way. Mr. Costello commented that Price Savers was there and it was a separate building.

Mr. Costello stated that he is concerned about the proposed color change. He stated that Wal-Mart originally wanted a brown building and it was turned down. Sam's would be deviating from the color scheme out there. The development there was supposed to be a center and has quite a history from when it was Price Savers. Mr. Wall added that the Staff Comment came from the perspective that the building demands more architectural development beyond colors and more design emphasis into the facades that face out to the street. Mr. Costello stated that the appearance of the building is one of the reasons for requiring the amount of landscaping. He asked if the building would ever become a Wal-Mart. Mr. Carlson responded that it would be highly unlikely.

Mr. Zimmer stated that this is an opportunity to correct a situation. It is more than just the sidewalk. He stated that it is like driving through a median that is not there and he will be reviewing this. He asked if there are some concepts to slow down traffic as it comes through the entrance to Sam's Club and goes down through the rest of the strip. He questioned speed bumps (not the short ones). He would like to discuss this in Committee. He is concerned about tilt-up big box buildings, which are ugly. The Houston-Donaldson Study tries to steer away from them. He asked if the request goes through another review process if it is approved. Mr. Costello responded that it would go through Design Review.

Mrs. Wilson asked if the red lines on the drawing indicated the parking spots that will be gone. Mr. Carlson reviewed the plan and stated that they are moving the existing end cap on the parking down about four or five spaces. He stated that they are going to take away parking spaces, but the parking will be the same distance from the front of the building because they are expanding the front of the building out and the end caps are moving about four or five spaces further out into the lot. Mrs. Wilson questioned where they would put more landscaping around the building. Mr. Homer responded that for whatever part of the parking they change, they will have to address landscaping within that area. Mr. Wall commented that they would have to dig up the blacktop and install islands. Mr. Homer stated that there are islands there now with shrubbery and they will have to increase them.

There being no further comments, Mr. Ries stated that the Committee Meeting for this item will be on March 2, 2000 at 5 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 15, 2000 at 7:30 P.M..

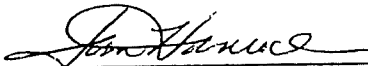
Mr. Ries closed this Public Hearing at 9:58 P.M..

**APPROVED:**



**Robert Ries**  
**Temporary Presiding Officer**

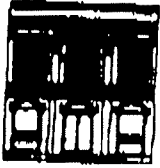
**Attest:**



**Jan Hancock, Recording Secretary**

# SUPPORTING INFORMATION

# BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005

606-334-2198  
FAX 606-334-2264  
E-Mail plancom@one.net

March 8, 2000

Mr. Charles B. Benenson  
Chairman, Benenson Capital Co.  
4036 Hadley Drive  
Memphis, TN 38133

FAX: (212) 983-1952

RE: Conditions for Approval for Change in Concept in Concept Development Plan Application for the 14.85 acre site located at the west corner of the Houston Road/Thoroughbred Boulevard Intersection, Florence, Kentucky (Sam's Club Development)

Dear Mr. Benenson:

The following represents the conditions of approval for the above referenced application as agreed by the Boone County Planning Commission's Zone Change Committee. If you, as the owner, agree to these conditions please indicate so by providing your signature in the agreement stated at the end of this letter. Please mail a signed copy of this letter with your original signature to me at the address noted above.

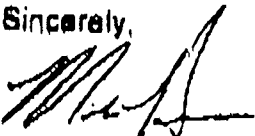
## Conditions

1. The driveway and parking lot layout in the area adjoining the southeast corner of the building shall be reconfigured to create a four way intersection with stop signs provided in each direction. A concept of this reconfiguration is illustrated on the attached "Attachment A."
2. A customer loading zone shall be provided along the front of the building in addition to a full two-way driveway. The alignment of this two-way driveway shall jog near the building entrance in effort to slow vehicular speed in this area. A different paving surface shall be provided on this driveway in the areas at both ends of the front of the building, also in an effort to slow vehicular speed in this area. A concept of the requirements outlined in this condition is illustrated on the attached "Attachment A."

Mr. Charles B. Benenson  
March 8, 2000  
Page 2

- 3. The design of the facades of the building addition shall be architecturally enhanced, articulated, and developed beyond the single mass, large-scaled design of the existing structure. This shall be accomplished by methods such as, but not limited to: providing multiple roof lines between the existing building and the addition; providing tangible jogs in the facades of the addition; constructing the overall addition out of multiple, smaller scaled building massings - the height of these smaller massings could exceed the height of the existing building as to disrupt a long, continuous parapet line; providing tangible wall openings and architectural details on the facades which help create a pedestrian scale, emphasizing the main customer entrance into the building through the use of an over-scaled entry feature; etc.

Sincerely,



Mike Homer  
Planner

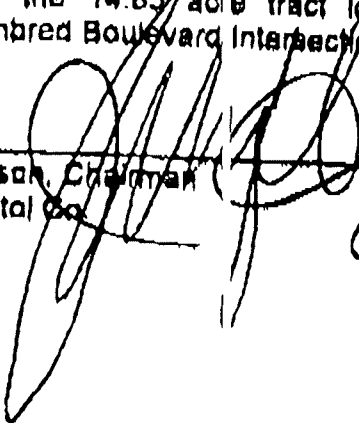
MH/pr

cc: Mr. Dean Carlson, Carlson Consulting Engineers

Agreement

I, Charles Benenson, Chairman of Benenson Capital Co., do hereby agree to the conditions of approval stated above for the Change in Concept Development Plan application for the 14.85 acre tract located at the west corner of the Houston Road/Thoroughbred Boulevard Intersection, Florence, Kentucky.

Charles Benenson, Chairman  
Benenson Capital Co.



Chief Investment Officer

3/14/00  
Date

ATTN: Debbie

BOOK 502 PAGE 274

PROPERTY TRANSFER TAX PAID \$ 6736.00  
JERRY WL ROUSE, CLERK

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That Tineb Associates, a New York general partnership, for and in consideration of Six Million Seven Hundred Twenty Thousand Eight Hundred Thirty-Six and 41/100 (\$6,720,836.41) Dollars to them paid by the Grantees herein, the receipt of which is acknowledged, do quitclaim to: The Benenson Capital Company, a New York general partnership, an undivided 98% interest, and Charles B. Benenson, on undivided 2% interest, their heirs and assigns forever, all of Grantor's right, title and/or interest, in and to the Real Estate described on Exhibit A annexed hereto and made a part hereof, in the County of Boone and Commonwealth of Kentucky, to wit:

Present Street Address: 4949 Houston Road, Florence, Kentucky

Grantee's Mailing Address: 708 Third Avenue, 28th Floor, New York, New York 10017

Grantor's Mailing Address: c/o Anthony J. DiNome, 708 Third Avenue, 28th Floor, New York New York 10017

Together with all the PRIVILEGES AND APPURTENANCES to the same belonging.

TO HAVE AND TO HOLD the same to The Benenson Capital Company, a New York general partnership, an undivided 98% interest, and Charles B. Benenson on undivided 2% interest, their successors, heirs and assigns, forever, in the fashion and manner stated in the conveying clause.

WITNESS the signature of said Grantor, Tineb Associates, a New York general partnership, on this 21st day of December, in the year 1992.

TINEB ASSOCIATES, a New York general partnership

BY: \_\_\_\_\_

BY: Jerry W. Rouse

- Prior instrument reference:  
Deed Book #411 page  
124 Boone County, Kentucky  
Records

RECORDED  
DEC 21 11 A.M. '92  
JERRY W. ROUSE  
BOONE COUNTY CLERK  
1359x

RETURN TO:  
New York Land Services  
630 Third Avenue, 5th Floor  
New York, New York 10017  
Attn: Tamara L. Neblome



BOOK 502 PAGE 276

DEED CERTIFICATION

WE, TINED Associates do hereby certify, pursuant to KRS Chapter 382, that the above-stated consideration in the amount of \$6,720,836.41, is the true, correct and full consideration paid for the property herein conveyed. We further certify our understanding that falsification of the stated consideration or sale price of the property is a Class D felony, subject to one to five years imprisonment and fines up to \$10,000.

TINED ASSOCIATES

BY: [Signature]  
Partner

BY: [Signature]  
Partner

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

On this December 18, 1997, before me, the undersigned, a Notary Public in and for the County and State aforesaid, duly commissioned and sworn, personally appeared THOMAS J. TISCH and JAMES S. TISCH to me known to be general partners of TINED Associates, a New York general partnership, and acknowledged said instrument to be the free and voluntary act and deed of said general partnership, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

[Signature]  
NOTARY PUBLIC

CAROL DOKTORSKI  
NOTARY PUBLIC, State of New York  
No. 004720114  
Qualified in NY State County  
of Boone, New York County  
Commission Expires June 30, 1994

This instrument prepared by:

[Signature]  
David M. Kaufman, Esq.  
Goldfarb & Fleece  
345 Park Avenue  
33rd Floor  
New York, New York 10154

A:24QUIT

BOOK 502 PAGE 277

DEED CERTIFICATION

WE, CHARLES B. BENENSON and THE BENENSON CAPITAL COMPANY do hereby certify, pursuant to KRS Chapter 382, that the above-stated consideration in the amount of \$6,720,836.41, is the true, correct and full consideration paid for the property herein conveyed. We further certify our understanding that falsification of the stated consideration or sale price of the property is a Class D felony, subject to one to five years imprisonment and fines up to \$10,000.

*Charles B. Benenson*  
\_\_\_\_\_  
CHARLES B. BENENSON

THE BENENSON CAPITAL COMPANY, a New York General Partnership

By: The Charles B. Benenson Family Trust, a general partner

*Charles B. Benenson*  
\_\_\_\_\_  
By: Charles B. Benenson, Trustee

STATE OF NEW YORK )  
                                  ) ss. 1  
COUNTY OF NEW YORK )

On this February 9<sup>th</sup>, 1993, before me, the undersigned, a Notary Public in and for the County and State aforesaid, duly commissioned and sworn, personally appeared CHARLES B. BENENSON to me known to be a trustee of The Charles B. Benenson Family Trust, known to me to be a general partner of THE BENENSON CAPITAL COMPANY, a New York general partnership, and acknowledged the foregoing Deed Certification to be the free and voluntary act and deed of said general partnership, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

*R. J. Yarnall*  
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
                                  ) ss. 1  
COUNTY OF NEW YORK )

ROBERT YARNALL  
Notary Public, State of New York  
No. 471776  
Qualified in Washington County  
August 94

The foregoing instrument was acknowledged before me this February 9<sup>th</sup>, 1993, by CHARLES B. BENENSON.

*R. J. Yarnall*  
\_\_\_\_\_  
Notary Public

ROBERT YARNALL  
Notary Public, State of New York  
No. 471776  
Qualified in Washington County  
Commission Expires March 20, 1994  
August

BOOK 502 PAGE 278

EXHIBIT A

1908

Lot 11-A of Parkway Business Park Subdivision recorded as Plat 511-A of the Boone County Court Clerk's Records at Burlington, Kentucky.

Together with all rights and benefits accruing to Grantee under a certain Reciprocal Easement Agreement and Declaration of Covenants and Restrictions dated June 15, 1989 by and between TRP Associates, Tineb Associates and Wal-Mart Stores, Inc. and

Together with an easement of ingress to and egress from Newton Road for pedestrian and vehicular traffic over a parcel of land lying on the northwesterly side of Newton Road in Florence, Boone County, Kentucky and being more particularly described as follows:

BEGINNING at a point in the northwesterly right-of-way line of Newton Road, said point also being S 87-02-27 W - 400.87 feet from the southwesterly right-of-way line of Thoroughbred Boulevard and running thence:

S 87-02-27 W, along the northwesterly right-of-way line of Newton Road, a distance of 16 feet, to a point, thence N 32-48-33 W, a distance of 187.88 feet, to a point, thence Northwesterly, along a curve toward the west, a chord bearing of N 77-27-14 W, a chord distance of 87.88 feet, an arc distance of 70.70 feet (radius of 48 feet), to a point, thence S 87-02-08 W, a distance of 219.04 feet, to a point, thence N 30-44-33 W, a distance of 21 feet, to a point, thence N 89-02-27 E, a distance of 211.50 feet, to a point, thence S 74-48-33 E, a distance of 40.28 feet, to a point, thence S 32-55-33 E, a distance of 188 feet, to the place of beginning, and containing 0.17 acres more or less.

State of Kentucky, County of Boone  
JERRY M. ROUSE, Clerk of the Boone County Court, do certify that the foregoing deed was on the 11 day of Feb

10 1908 at Florence, Ky in my office for record, and that it has been duly recorded in my said office, together with this and the certificate thereon endorsed, 11 day of Feb, 1908

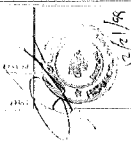
JERRY M. ROUSE, CLERK  
By Harold J. Turner D.C.

WAL-MART  
 STORE # 12345  
 12345 MAIN ST  
 FLORENCE, KENTUCKY 40341

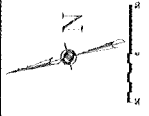
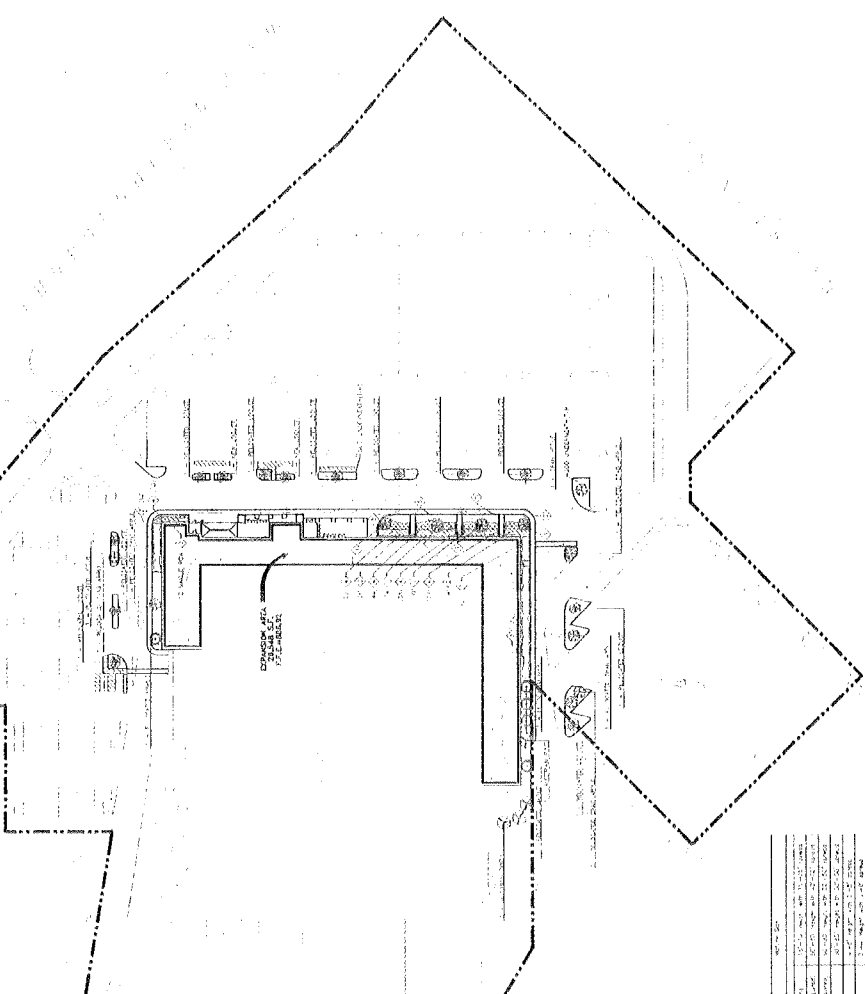
WAL-MART STORE # 12345  
 12345 MAIN ST  
 FLORENCE, KENTUCKY 40341

WAL-MART STORE # 12345  
 12345 MAIN ST  
 FLORENCE, KENTUCKY 40341

Carlson Consulting  
 12345 MAIN ST  
 FLORENCE, KY 40341  
 606-555-1234



SITE DEVELOPMENT PLAN



NOT TO SCALE  
 ALL DIMENSIONS TO BE VERIFIED IN THE FIELD  
 ALL UTILITIES TO BE LOCATED AND DEPT. MARKED PRIOR TO CONSTRUCTION  
 ALL DISTURBED AREAS TO BE RESTORED TO ORIGINAL OR BETTER CONDITION  
 ALL EROSION CONTROL MEASURES TO BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION  
 ALL STORMWATER TO BE COLLECTED AND DISCHARGED TO THE APPROPRIATE AGENCY  
 ALL TREE REMOVALS TO BE APPROVED BY THE APPROPRIATE AGENCY  
 ALL UTILITIES TO BE PROTECTED AND DEPT. MARKED PRIOR TO CONSTRUCTION  
 ALL DISTURBED AREAS TO BE RESTORED TO ORIGINAL OR BETTER CONDITION  
 ALL EROSION CONTROL MEASURES TO BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION  
 ALL STORMWATER TO BE COLLECTED AND DISCHARGED TO THE APPROPRIATE AGENCY  
 ALL TREE REMOVALS TO BE APPROVED BY THE APPROPRIATE AGENCY

| NO. | DESCRIPTION      | DATE    | BY   |
|-----|------------------|---------|------|
| 1   | PRELIMINARY PLAN | 12/1/15 | J.H. |
| 2   | REVISED PLAN     | 12/1/15 | J.H. |
| 3   | REVISED PLAN     | 12/1/15 | J.H. |
| 4   | REVISED PLAN     | 12/1/15 | J.H. |
| 5   | REVISED PLAN     | 12/1/15 | J.H. |
| 6   | REVISED PLAN     | 12/1/15 | J.H. |
| 7   | REVISED PLAN     | 12/1/15 | J.H. |
| 8   | REVISED PLAN     | 12/1/15 | J.H. |
| 9   | REVISED PLAN     | 12/1/15 | J.H. |
| 10  | REVISED PLAN     | 12/1/15 | J.H. |

DATE: 12/1/15  
 DRAWN BY: J.H.  
 CHECKED BY: J.H.  
 APPROVED BY: J.H.  
 PROJECT NO.: 12345  
 SHEET NO.: 1 OF 1

ORDINANCE NO. 0-13-00

**AN ORDINANCE ADOPTING AND APPROVING A CHANGE IN CONCEPT DEVELOPMENT PLAN FOR AN APPROXIMATE 14.65 ACRE SITE LOCATED AT 4949 HOUSTON ROAD, FLORENCE, KENTUCKY TO ALLOW AN EXPANSION OF THE EXISTING SAM'S CLUB STORE FOR PROPERTY CURRENTLY ZONED COMMERCIAL TWO/PLANNED DEVELOPMENT (C-2/PD). (BENENSON CAPITAL CO.-SAM'S CLUB STORE PROPERTY)**

WHEREAS<sup>d</sup>, the City of Florence, Kentucky is a member of the county-wide planning unit with a county-wide planning commission known as the Boone County Planning Commission, and

WHEREAS, the Boone County Planning Commission has recommended approval, subject to a development plan and agreed conditions, of a change in concept development plan for an approximate 14.65 acre site located at 4949 Houston Road in the City of Florence, Kentucky to allow an expansion of the existing Sam's Club Store, and

WHEREAS, the recommendation for approval by the Boone County Planning Commission is based upon certain findings and conditions attached to its Resolution of Recommendation, all of which have been reviewed by the City Council for the City of Florence, Kentucky.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF FLORENCE, KENTUCKY AS FOLLOWS:

**SECTION I**

That the requested change in concept development plan for the approximate 14.65 acre site located at 4949 Houston Road in the City of Florence, Kentucky shall be and is hereby approved to allow an expansion of the existing Sam's Club Store, subject to the concept development plan and other agreed conditions for this site currently zoned Commercial Two/Planned Development (C-2/PD). The real estate which is the subject of this Ordinance is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference. The zoning map of Boone County, Kentucky as it applies to the City of Florence, Kentucky shall be changed to reflect the approval of this concept development plan.

**SECTION II**

The approval of this change in concept development plan is granted subject to the conditions, terms and provisions of the Boone County Planning Commission recommendation, including the Committee Report made a part of that recommendation, and all provisions comprising the development plan herein, a copy of that recommendation and Committee Report of the Boone County Planning Commission being attached, marked Exhibit "B", and incorporated herein as if fully set out, this recommendation being in the form of Resolution No. R-00-007-A of the Boone County Planning Commission along with the referenced exhibits to that Resolution.

**SECTION III**

In addition to those conditions set forth in the recommendations of the Boone County Planning Commission, this approval of the City of Florence, Kentucky through its City Council shall be and is hereby subject to those additional conditions that have been agreed to in writing by the property owner/applicant as shown on Exhibit "C", a copy of which is attached and incorporated herein by reference.

**SECTION IV**

This approval is granted based on the findings of fact made by the Boone County Planning Commission and contained within its recommendation, including the Committee Report of that Commission, which is attached and part of the Commission's Resolution No. R-00-007-A, marked Exhibit "B", and incorporated herein as if fully set out.

**SECTION V**

If this approval for this change in concept development plan shall be held invalid, in whole or in part, by any Court of proper jurisdiction, such invalidity shall not affect the validity of any of the other zoning regulations, zoning map or comprehensive plan provisions as they are severable from this Ordinance and they are intended to have effect regardless of any invalidity relating to this particular Ordinance.

**SECTION VI**

Publication of this Ordinance is hereby authorized to be by summary publication in accordance with Kentucky law.

PASSED AND APPROVED ON FIRST READING THIS 30<sup>th</sup> DAY OF May, 2000.

PASSED AND APPROVED ON SECOND READING AND PUBLICATION ORDERED THIS 6<sup>th</sup> DAY OF June, 2000.

APPROVED:

Dean E. Whal  
MAYOR

ATTEST:

Patricia Conrad  
CITY CLERK

ATTN: Debbie

BOOK 502 PAGE 274

PROPERTY TRANSFER TAX PAID \$ 6721.00  
JERRY W. ROUSE, CLERK *Be*

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That Tineb Associates, a New York general partnership, for and in consideration of Six Million Seven Hundred Twenty Thousand Eight Hundred Thirty-Six and 41/100 (\$6,720,836.41) Dollars to them paid by the Grantees herein, the receipt of which is acknowledged, do quitclaim to: The Benenson Capital Company, a New York general partnership, an undivided 98% interest, and Charles B. Benenson, an undivided 2% interest, their heirs and assigns forever, all of Grantor's right, title and/or interest, in and to the Real Estate described on Exhibit A annexed hereto and made a part hereof, in the County of Boone and Commonwealth of Kentucky, to wit:

Present Street Address: 4949 Houston Road, Florence, Kentucky

Grantee's Mailing Address: 708 Third Avenue, 28th Floor, New York, New York 10017

Grantor's Mailing Address: c/o Anthony J. DiNome, 708 Third Avenue, 28th Floor, New York New York 10017

Together with all the PRIVILEGES AND APPURTENANCES to the same belonging.

TO HAVE AND TO HOLD the same to The Benenson Capital Company, a New York general partnership, an undivided 98% interest, and Charles B. Benenson an undivided 2% interest, their successors, heirs and assigns, forever, in the fashion and manner stated in the conveying clause.

WITNESS the signature of said Grantor, Tineb Associates, a New York general partnership, on this 21st day of December, in the year 1997.

TINEB ASSOCIATES, a New York general partnership

BY: \_\_\_\_\_

BY: *James S. [Signature]*

- Prior instrument reference:  
Deed Book #411 page  
124 Boone County, Kentucky  
Records

RECORDED  
NOV 11 AM 11:49  
JERRY W. ROUSE  
BOONE COUNTY CLERK  
11/5/97

RETURN TO:

New York Land Services  
630 Third Avenue, 5th Floor  
New York, New York 10017  
Attn: Jamaica L. Neelome

Exhibit "A"

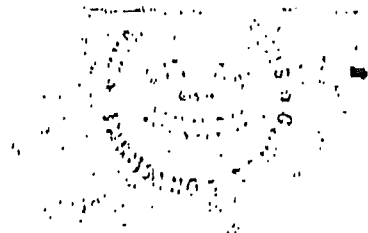
BOOK 502 PAGE 275

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

On this December 17, 1992, before me, the undersigned, a Notary Public in and for the County and State aforesaid, duly commissioned and sworn, personally appeared THOMAS J. TISCH and JAMES S. TISCH to me known to be general partners of TINEB Associates, a New York general partnership, and acknowledged said instrument to be the free and voluntary act and deed of said general partnership, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

*Carol M. [Signature]*  
NOTARY PUBLIC

CAROL DOKTORCZ  
NOTARY PUBLIC, State of New York  
No. 304720618  
Qualified in Nassau County  
Cert. Filed in New York County  
Commission Expires June 30, 1994



BOOK 502 PAGE 276

DEED CERTIFICATION

WE, TINEB Associates do hereby certify, pursuant to KRS Chapter 382, that the above-stated consideration in the amount of \$6,720,836.41, is the true, correct and full consideration paid for the property herein conveyed. We further certify our understanding that falsification of the stated consideration or sale price of the property is a Class D felony, subject to one to five years imprisonment and fines up to \$10,000.

TINEB ASSOCIATES

BY: [Signature]  
Partner

BY: [Signature]  
Partner

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

On this December 18, 1992, before me, the undersigned, a Notary Public in and for the County and State aforesaid, duly commissioned and sworn, personally appeared THOMAS J. TISCH and JAMES S. TISCH to me known to be general partners of TINEB Associates, a New York general partnership, and acknowledged said instrument to be the free and voluntary act and deed of said general partnership, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

[Signature]  
NOTARY PUBLIC

This instrument prepared by:

[Signature]

David M. Kaufman, Esq.  
Goldfarb & Fleece  
345 Park Avenue  
33rd Floor  
New York, New York 10154

CAYCE DOKTORSKI  
NOTARY PUBLIC, State of New York  
No. 204770114  
Qualified in New York County  
1981. Resided in New York County  
Commission Expires June 30, 1994

A:24QUIT

BOOK 502 PAGE 277

DEED CERTIFICATION

WE, CHARLES B. BENENSON and THE BENENSON CAPITAL COMPANY do hereby certify, pursuant to KRS Chapter 382, that the above-stated consideration in the amount of \$6,720,836.41, is the true, correct and full consideration paid for the property herein conveyed. We further certify our understanding that falsification of the stated consideration or sale price of the property is a Class D felony, subject to one to five years imprisonment and fines up to \$10,000.

*Charles B. Benenson*

CHARLES B. BENENSON

THE BENENSON CAPITAL COMPANY, a New York General Partnership

By: The Charles B. Benenson Family Trust, a general partner

*Charles B. Benenson*

By: Charles B. Benenson, Trustee

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

On this February 9<sup>th</sup>, 1993, before me, the undersigned, a Notary Public in and for the County and State aforesaid, duly commissioned and sworn, personally appeared CHARLES B. BENENSON to me known to be a trustee of The Charles B. Benenson Family Trust, known to me to be a general partner of THE BENENSON CAPITAL COMPANY, a New York general partnership, and acknowledged the foregoing Deed Certification to be the free and voluntary act and deed of said general partnership, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

*R. J. Yarnall*  
Notary Public

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

NOTARY PUBLIC IN  
New York  
Qualified in  
Boone County  
August 94

The foregoing instrument was acknowledged before me this February 9<sup>th</sup>, 1993, by CHARLES B. BENENSON.

*R. J. Yarnall*  
Notary Public

NOTARY PUBLIC IN  
New York  
Qualified in Boone County  
Commission Expires August 30, 1994  
August

BOOK 502 PAGE 278

EXHIBIT A

1908

Lot 13-A of Parkway Business Park Subdivision recorded as Plat 51-A of the Boone County Court Clerk's Records at Burlington, Kentucky.

Together with all rights and benefits accruing to Grantee under a certain Reciprocal Easement Agreement and Declaration of Covenants and Restrictions dated June 15, 1989 by and between TAP Associates, Tineb Associates and Wal-Mart Stores, Inc. and

Together with an easement of ingress to and egress from Houston Road for pedestrian and vehicular traffic over a parcel of land lying on the northwesterly side of Houston Road in Florence, Boone County, Kentucky and being more particularly described as follows:

BEGINNING at a point in the northwesterly right-of-way line of Houston Road, said point also being S 17-02-27 W - 488.87 feet from the southwesterly right-of-way line of Thoroughbred Boulevard and running thence:

- S 17-02-27 W, along the northwesterly right-of-way line of Houston Road, a distance of 18 feet, to a point, thence
- N 32-56-33 W, a distance of 127.55 feet, to a point, thence
- Northwestwardly, along a curve toward the west, a chord bearing of N 77-37-14 W, a chord distance of 83.65 feet, an arc distance of 70.70 feet (radius of 48 feet), to a point, thence
- S 17-02-08 W, a distance of 219.04 feet, to a point, thence
- N 30-56-33 W, a distance of 21 feet, to a point, thence
- N 58-03-77 E, a distance of 281.50 feet, to a point, thence
- S 78-56-32 E, a distance of 40.28 feet, to a point, thence
- S 32-56-22 E, a distance of 158 feet, to the place of beginning, and containing 0.17 acres more or less.

State of Kentucky, County of Boone  
 JERRY M. ROUSE, Clerk of the Boone County Court, do certify that the foregoing deed was on the 11th day of Feb 1908 at Florence, Boone County, Kentucky in my office for record, and that it has been duly recorded in my said office, together with this and the certificate thereon endorsed.  
 Witness under my hand this 11th day of Feb 1908

JERRY M. ROUSE, CLERK  
 By Harold J. Taylor S.C.

May 18, 2000

Diane E. Whalen, Mayor  
City of Florence, Kentucky  
8100 Ewing Boulevard  
Florence, KY 41042

In re: Request of Carlson Consulting Engineers (Applicant) for Benenson Capitol Co. (Owner) for a Change in Concept Development Plan for a 14.65 Acre Site Located at 4949 Houston Road, Florence, KY

Dear Mayor Whalen:

As you know the above application is presently before Florence City Council for action upon a unanimous recommendation by the Boone County Planning Commission for approval, with conditions.

On May 16<sup>th</sup> in a meeting with the Zoning Committee of the Florence City Council and also during a caucus session of Florence City Council, certain additional conditions were discussed in connection with this application. This will advise that we hereby consent to and agree to abide by the following conditions in connection with this application:

- A 6" raised curb/sidewalk will be provided along the sidewalk on the southern (left elevation) side of the building. The raised area will delineate the area between the driving surface and the pedestrian walkway. The raised curb/sidewalk will extend the entire length of the south side (left elevation) and wrap around the radius of the east side (front elevation) of the building.
- Proposed signage will not exceed the current total square footage of existing signage.
- The applicant agrees to enhance the facade of the building with some of the following elements: use of pilasters, varying roof heights, using brick and block construction materials, eliminate continuous red horizontal stripe, and

EXHIBIT "c"

May 18, 2000  
Page Two (2)

enhance the overhead doors for carts with architectural treatments. We understand that Council strongly supports condition #3 of the Boone County Planning Commission Committee Report and that this requirement is not intended to replace the condition, but to enhance it.

- All existing Boone County Planning Commission conditions and regulations remain in full force and must be met.

We request that the Council approve our application with the addition of these conditions.

Sincerely yours,

DEAN CARLSON  
Carlson Consulting Engineers, Applicant

CHARLES B. BENENSON, Chairman  
Benenson Capitol Co., Owner

May 18, 2000

Diane E. Whalen, Mayor  
City of Florence, Kentucky  
8100 Ewing Boulevard  
Florence KY 41042

In re: Request of Carlson Consulting Engineers (Applicant) for Benenson Capitol Co. (Owner) for a Change in Concept Development Plan for a 14.65 Acre Site Located at 4947 Houston Road, Florence, KY

Dear Mayor Whalen:

As you know the above application is presently before Florence City Council for action upon a unanimous commendation by the Boone County Planning Commission for approval, with conditions.

On May 16<sup>th</sup> in a meeting with the Zoning Committee of the Florence City Council and also during a caucus session of Florence City Council, certain additional conditions were discussed in connection with this application. This will advise that we hereby consent to and agree to abide by the following conditions in connection with this application:

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- Proposed signage will not exceed the current total square footage of existing signage.
- The applicant agrees to enhance the facade of the building with some of the following elements: use of pilasters, varying roof heights, using brick and block construction materials, eliminate continuous red horizontal stripe, and

Exhibit "C"

May 16 2000  
Page Two (2)

enhance the overhead doors for carts with architectural treatments. We understand that Council strongly supports condition #3 of the Boone County Planning Commission Committee Report and that this requirement is not intended to replace the condition, but to enhance it.

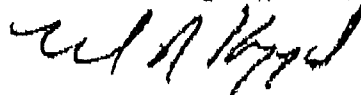
All existing Boone County Planning Commission conditions and regulations remain in full force and must be met.

We request that the Council approve our application with the addition of these conditions.

Sincerely yours,



DEAN CARLSON  
Carlson Consulting Engineers, Applicants



CHARLES B. BENENSON, Chairman  
Benenson Capital Co. Owner

as agent for Benenson  
Capital Co.  
Leonard S. Kneppo