

APPLICATION FORM

CHANGE IN CONCEPT DEVELOPMENT PLAN
OR
UTILIZATION OF AN UNDERLYING ZONE IN PLANNED DEVELOPMENT
(CONCEPT DEVELOPMENT PLAN)
BOONE COUNTY PLANNING COMMISSION

F G H V
JUL - 3 2001

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

1. Check One:

- Change in Concept Development Plan
 - Utilization of An Underlying Zone in Planned Development
 - a) Public Hearing Submittal (Concept Dev. Plan) _____
 - b) Long Range Planning Committee Review _____
- (As stated in the Houston-Donaldson Study)

2. Name of Project B.P. FOOD MART / FIFTH THIRD BANK - TURN LANES
3. Location of Project LOT #1 of DANIELS BUSINESS PARK AND LOT #10
4. Total Acreage of Site 2.00 ACRES
5. Current Zoning C-4
6. Date of Previous Zoning Map Amendment or Approved Concept Development Plan (if applicable) 5-1-96
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) NO
8. Proposed Uses (please specify each use) N/A
9. Proposed Building Intensities (please specify) N/A
10. Have you submitted a Concept Development Plan? YES
11. Are you also applying for:
 - NO Conditional Use Permit
 - NO Dimensional Variance
12. Name of Applicant(s) A. William Erpenbeck, Jr.
- Phone Number 606-331-8090 Fax No. 606-331-9158
13. Address of Applicant(s) 927 Dudley Rd.
- Edgewood KY 41017
- City State Zip
14. Name of Property Owner(s) A. WILLIAM ERPENBECK JR. & GLENN D. FEAGAN (BIG HOLDING, LLC)
- Phone Number 331-8090 Fax No. _____
15. Address of Property Owner(s) 321 MT. ZION ROAD
- BOONE COUNTY KY 41042
- City State Zip
16. Are there any existing buildings on the site? NO
- How many? _____
17. Deed Book ① 631/115 ~~Deed Book~~ ② 718/152,158 Group No. 2058
18. Have you had a pre-application meeting with BCPC Staff? YES

②

Matt Rowekamp (over)
5/3 Bank
M/D# 10ATA1 38 Fountain Square Plaza

Cincinnati, OH 45263
Telephone (513) 744-8695
Fax (513) 744-5880

EXHIBIT

“A”

STAFF REPORT

Request of A. William Erpenbeck, Jr. (applicant) for A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third Bank c/o Matt Rowekamp (owners) to consider a Change in Concept Development Plan for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky. The request is for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone to allow a right-in/right out curb cut on Mt. Zion Road.

July 26, 2000

REQUEST

This request is for a Change in Concept Development Plan for Lots 1 and 10 of Daniels Business Park Subdivision. The applicant is seeking to modify an existing condition which limits the subdivision to one access point along Mt. Zion Road, which is the now existing Demia Way.

The applicant's submitted Concept Development Plan shows the creation of a 30' wide right-in/right out turn lane along the property lines of lots 1 and 10. An 80' tapered, deceleration lane is shown within the Mt. Zion Road right-of-way. The proposed right-in/right out lane is located 200' from the centerline of Demia Way and 167' from the proposed centerline of Investment Way.

SITE CHARACTERISTICS

Lot 1 contains a BP food market, gasoline pumps, and a Rally's restaurant with a drive-thru window. Lot 10 is currently vacant, but there is a temporary sign on the property which indicates that it will be the future home of Fifth Third Bank. A new 50' wide public right-of-way, Investment Way, is currently under construction along the western boundary of lot 10.

SITE HISTORY

In 1996, lot 1 was involved in a Zoning Map Amendment request. The request was to change the zoning of a 10.75 acre tract from Suburban Residential One (SR-1) to Commercial Four (C-4). The applicants, W & D Investments, did not submit a Concept Development Plan because they did not have specific uses in mind. The Planning Commission recommended approval of the request, with several conditions. One of these conditions states that "there shall be only one access point along Mt. Zion Road for the applicant's site.

In 1997, Bayer Becker Engineers filed a Change in Concept Development Plan to modify the signage and access conditions that were imposed by the Planning Commission and Fiscal Court for Daniels Business Park. The proposed access change was to allow a right-in, right-out only turning lane along the northwestern property line of lot 1. On May 21, 1997, the Planning Commission voted 9 to 4 to deny the request. On August 12, 1997, the Boone County Fiscal Court passed an ordinance which denied the right-in, right-out turn lane but approved a sign variance.

In 1998, PBS & J filed a Zoning Map Amendment for 1.94 acres of land, which later became lot 10 of Daniels Business Park. The request was to change the zoning classification from Suburban Residential One (SR-1) and Commercial Services (C-3) to Commercial Four (C-4). On September 28, 1998, the Boone County Fiscal Court passed a resolution approving the zone change (see Committee Report attached to Staff Report).

ADJACENT LAND USES AND ZONING

North: Mt. Zion Road & Mt. Zion Crossing Shopping Center (C-4).
South: Vacant lots within Daniels Business Park (C-4/CD).
East: Demia Way and a Valvoline Oil Change & Car Wash facility (C-4/CD).
West: Fleet Tire and Auto (C-4/CD).

RELATIONSHIP TO COMPREHENSIVE PLAN

The 1995 Boone County Comprehensive Plan's "2020 Land Use Plan" designates the site in question for "Commercial" uses. This designation is described as "retail, corporate and professional office, interchange commercial, indoor commercial recreation, restaurants, services, etc."

The Land Use Element (Area D-5: Mt. Zion Area, p. 229) states the following regarding this proposal:

"Commercial activity associated with this interchange should be concentrated on the east side of the interstate. Access for these commercial uses should be located a sufficient distance from the interchange to avoid traffic congestion."

The "Future Land Use Development Guidelines" found in the Land Use Element make the following statements which relate to this proposal:

- A. Developments in Boone County must recognize the potential impacts of associated traffic on adjoining properties and transportation systems. The need exists to protect the capacity of the existing roadway network, and to plan improvements to accommodate new development and travel patterns. Access management provisions include the coordination of curb cuts, adequate corner clearance and site distance for access points, adequate space between access points, shared access points and parking facilities, and provisions for access connections to adjoining properties, and dedication of public right-of-way. ("Access Management" p. 211).
- B. Development along existing arterials and collector roadways should not have direct driveway access, but be served by a local street. Appropriate road connections should be constructed to provide alternate routes for traffic to and through specific projects and to enhance the capacity of specific streets. Parallel and frontage roads should be used to minimize impacts of individual sites on collector and arterial roadways. Appropriate pedestrian networks should be incorporated into the design of the developments which will generate or experience significant pedestrian use. These networks should not only provide internal paths, but should provide connections to adjoining uses where appropriate. ("Transportation and Pedestrian Network" p. 211).

The "Areas of Future Commercial Activity" found in the Business Activity Element makes the following statement that relates to this project:

- A. "The I-75/Mt. Zion Road Interchange should have commercial activity concentrated to the east of I-75 and along U.S. Highway 25. The type of commercial activity northeast of the interchange should serve the growing residential areas on Mt. Zion Road and along Dixie Highway and the Northern Kentucky Industrial Park."

The 2000 Boone County Comprehensive Plan Goals and Objectives include the following pertinent statements:

- A. Proper design principles shall be applied in development ("Overall," Objective 3).
- B. Future growth shall be accompanied by adequate infrastructure and services. Existing infrastructure and services shall be maintained or improved as needed ("Overall," Objective 4).
- C. Priority shall be given toward maintaining, protecting and improving the capacity and safety of the existing road system ("Transportation," Objective 11).

- D. Proper access to adjoining property shall be provided and/or retained when a property develops or redevelops ("Transportation," Objective 3).

STAFF COMMENTS

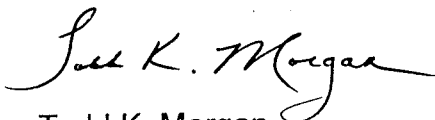
1. Staff is concerned about the spacing of the proposed turning lane from Demia Way and Investment Way. Section 3216 of the Boone County Zoning Regulations requires 230' of separation between the proposed turn lane and the centerline of Investment Way and 115' of separation between the proposed turn lane and the centerline of Demia Way. The Concept Development Plan shows that the proposed turning lane is 167' from the centerline of Investment Way and 200' from the centerline of Demia Way.
2. Staff received a letter from Etta M. Reed, P.E., regarding the location and spacing of the proposed turn lane from Sam Neace Drive and Investment Way. Ms. Reed's letter is attached to the Staff Report.
3. Staff recommends that the BP Food Market and the proposed Fifth Third Bank site should have their parking areas linked together for access purposes. By tying the two parking lots together customers or service vehicles for BP Food Market or Fifth Third could use either Demia Way or Investment Way to access either site. Staff recommends this as a preferred scenario over the turning lane.

CONCLUSION

This request needs to be evaluated by the Boone County Planning Commission and the Boone County Fiscal Court in terms of the three criteria necessary for approving a Concept Development Plan as stated in Article 3, "Amendment" of the Boone County Zoning Regulations.

The Future Land Use Map will not need to be amended if the Planning Commission and Boone County Fiscal Court approve the Change in Concept Development Plan request.

Respectfully submitted,

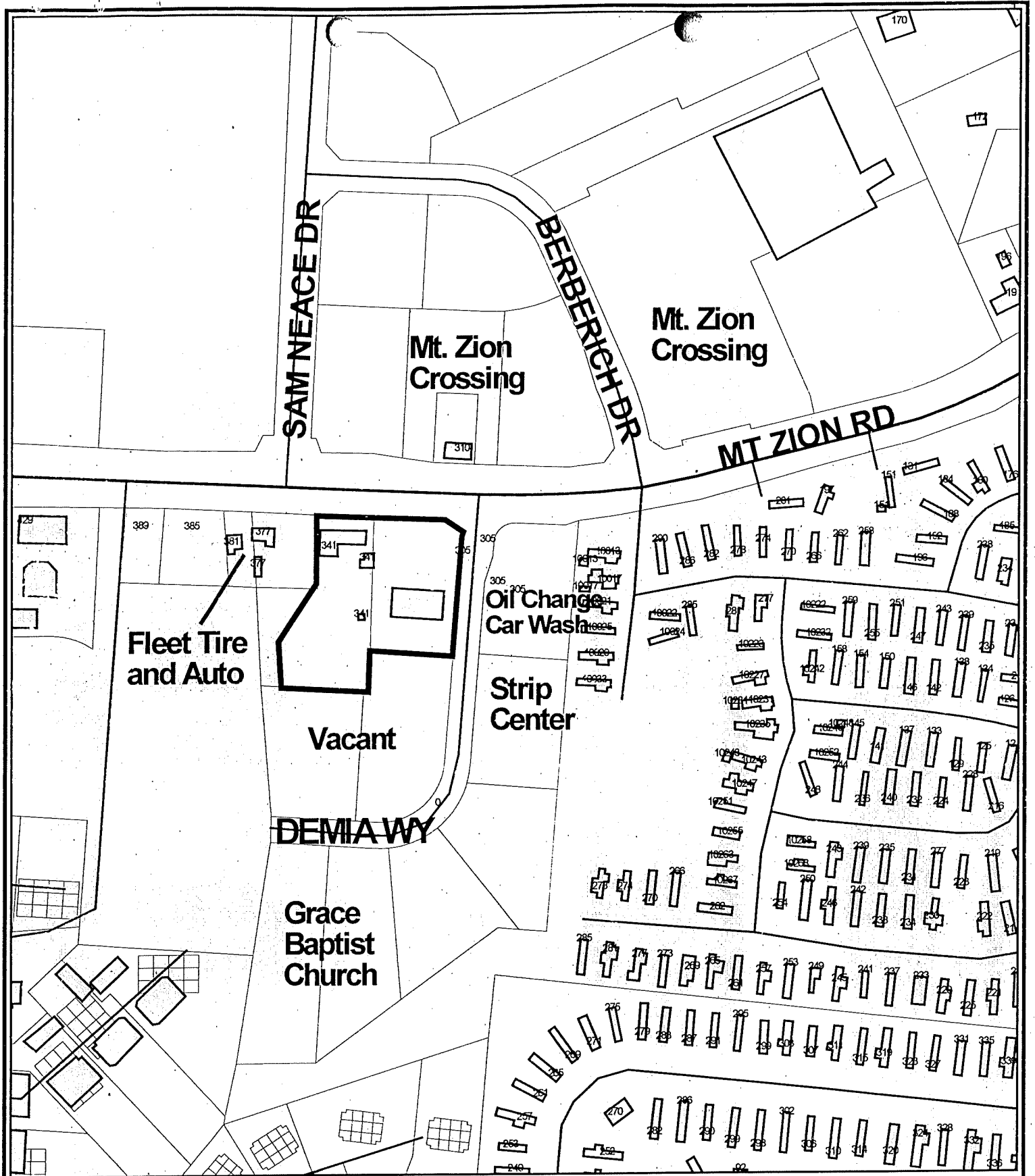


Todd K. Morgan
Planner

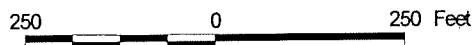
TKM/pr

Attachments:

- Site Vicinity Map
- Zoning Map
- Future Land Use Map
- Topographical Map
- Concept Plan
- Letter From Etta M. Reed
- 2/21/96 Committee Report for W & D Investments Application
- 4/30/97 Boone County Planning Commission Meeting Minutes
- 8/5/98 Committee Report for PBS & J Application

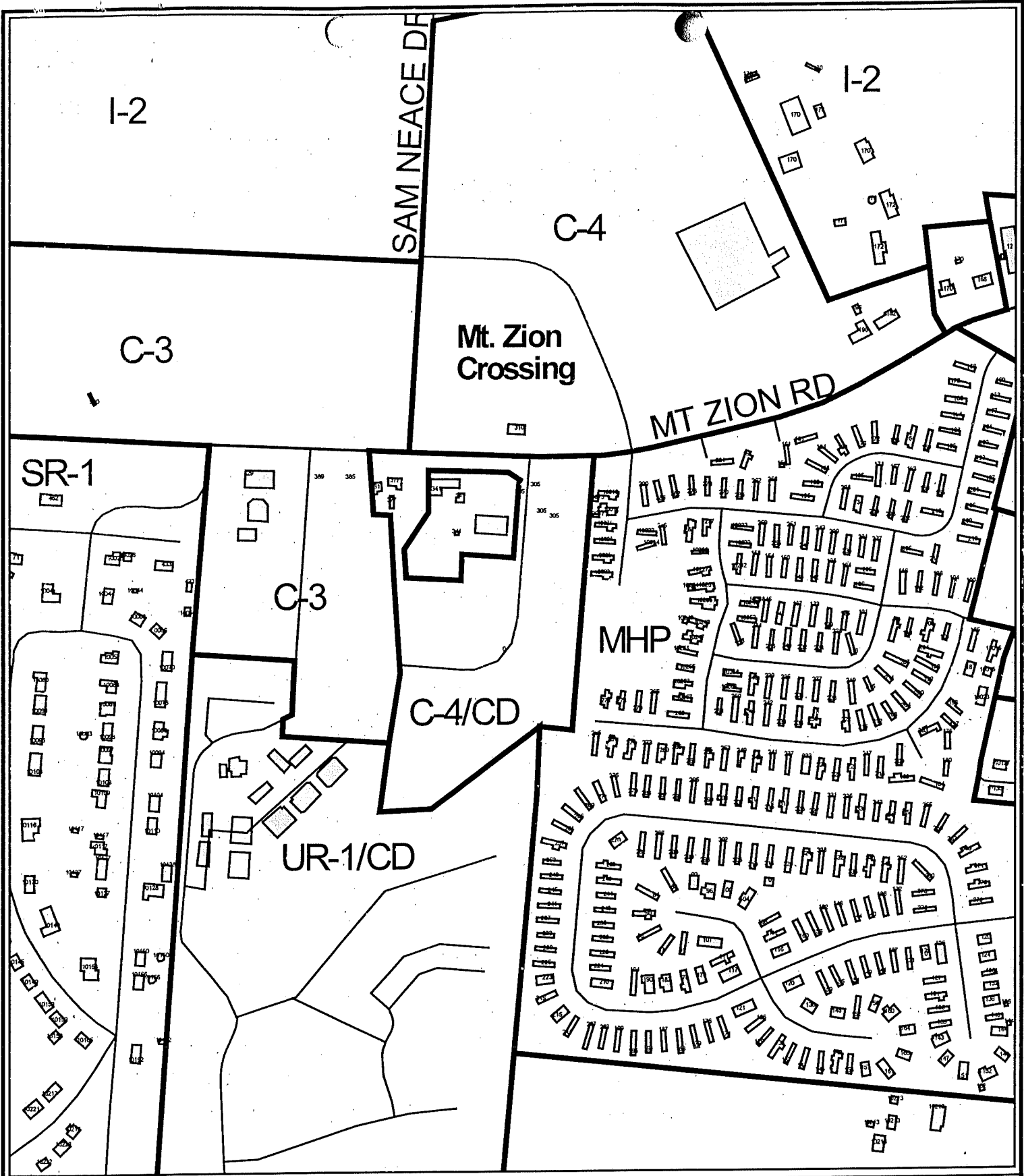


Daniels Business Park
Lots 1 & 10
Site Vicinity Map

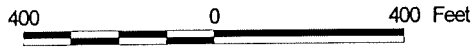


1 inch equals 250 feet
 Produced by the
 Boone County Planning Commission
 GIS Services Division
 June 23, 2000

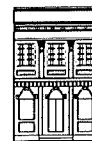


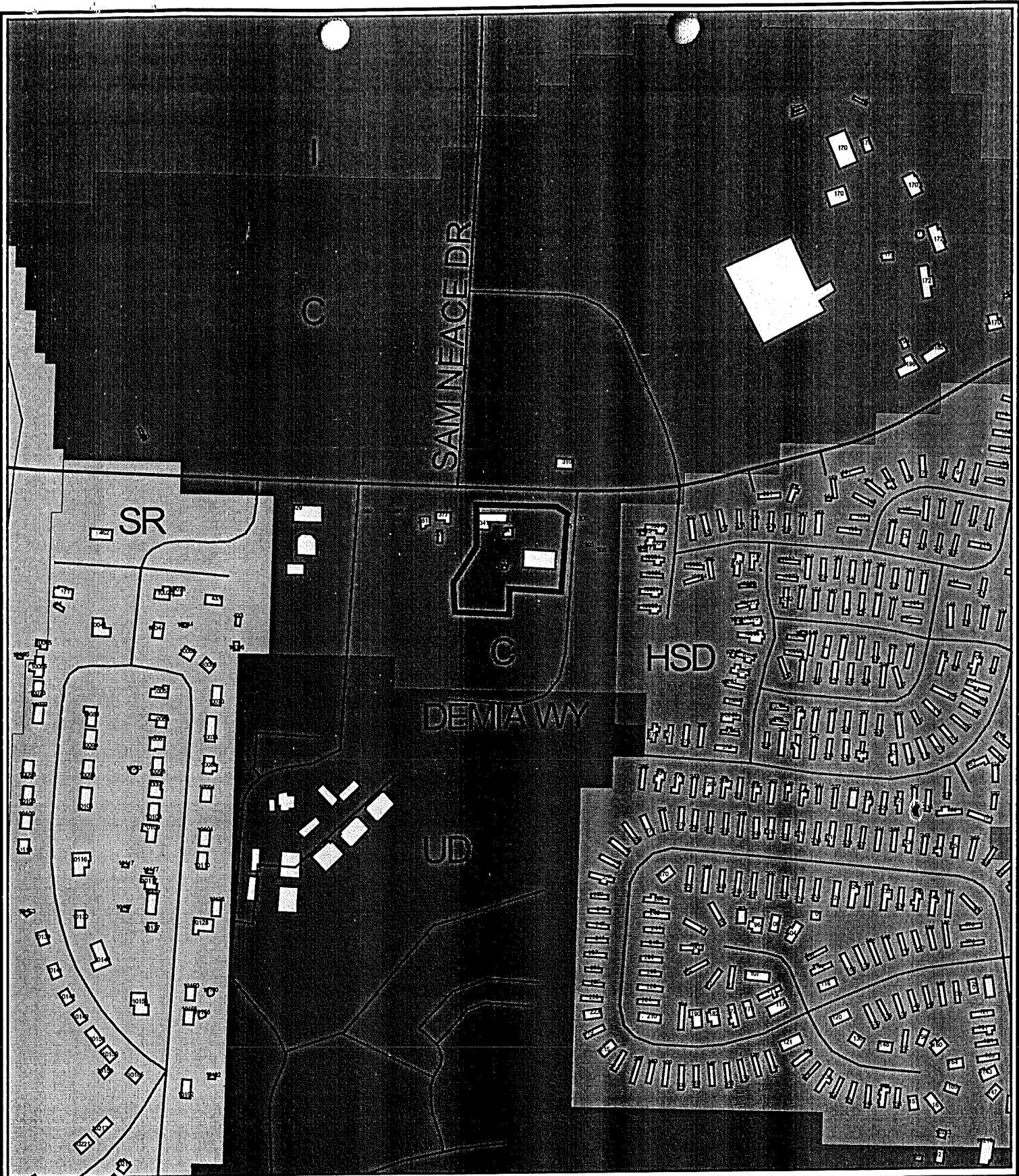


Daniels Business Park
Lots 1 & 10
Zoning Map

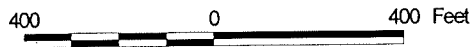


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 June 23, 2000





Daniels Business Park
Lots 1 & 10
Future Land Use Map

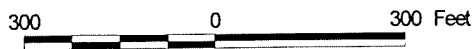


1 inch equals 400 feet
 Produced by the
 Boone County Planning Commission
 GIS Services Division
 June 23, 2000





Daniels Business Park
Lots 1 & 10
Topographical Map



1 inch equals 300 feet
Produced by the
Boone County Planning Commission
GIS Services Division
June 23, 2000

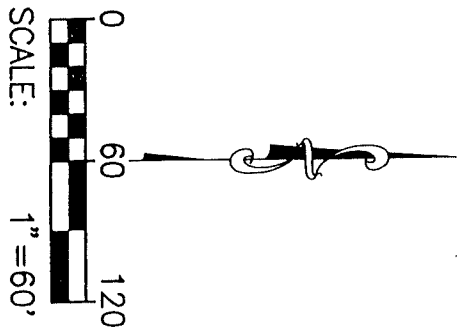
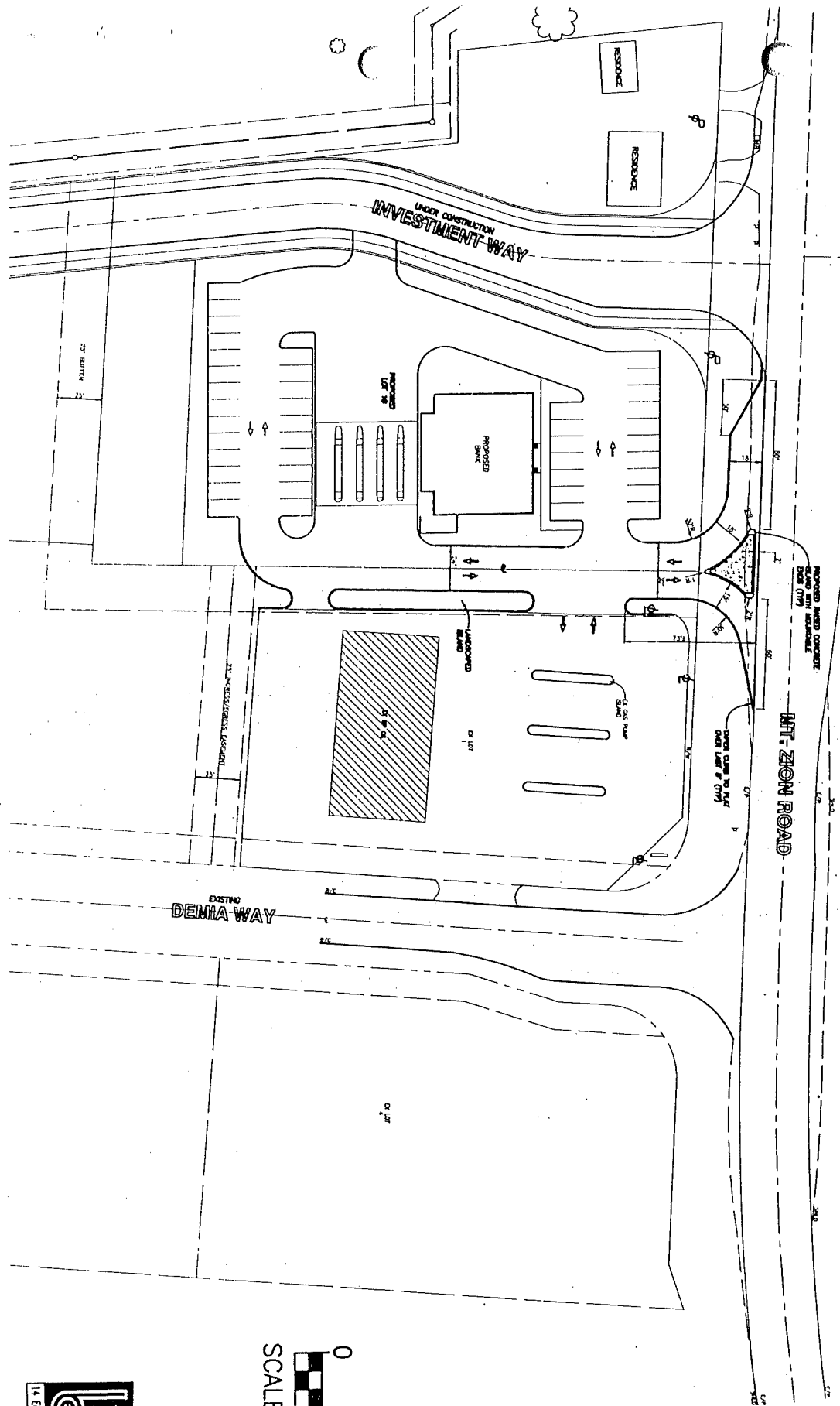
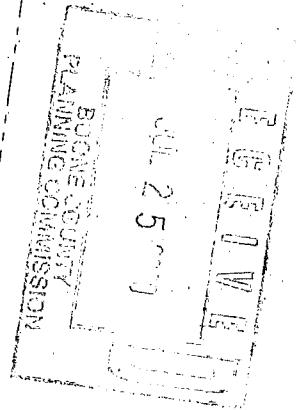


REVISED CONCEPT PLAN
FOR

LOTS 1 & 10 of

DANIELS BUSINESS PARK

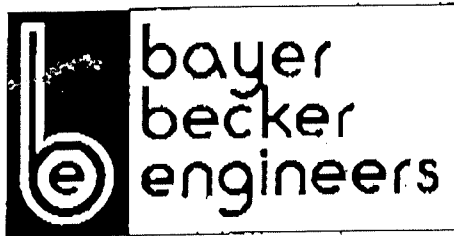
MT. ZION ROAD (KY S.R. 536)
BOONE COUNTY
KENTUCKY



**bayer
becker
engineers**

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architect
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July 21, 2000

Mr. Kevin Wall
Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

Re: Daniels Business Park

Dear Mr. Wall,

On July 7, 2000 a plan was submitted for a joint drive on Mt. Zion Road for Lots 1 & 10 of the Daniels Business Park. This letter serves to support that request.

Currently, lot 1 contains a BP Oil station without access on Mt. Zion Road, while lot 10 previously contained a church with 2 full movement drives. Plans are being developed to construct a bank on lot 10. The proposed bank desires to have access to both Future Investment Way and Mt. Zion Road.

Our proposal calls for a right in/right out only drive along the property line between lots 1 & 10. Said drive will be constructed with a raised concrete island, which will prohibit left turns in and out of the drive. The proposed drive will service both the bank and the BP Oil station. A right in/right out only drive is an ideal way to provide safe and efficient access to properties. With the deceleration lane, vehicles are able to slow down out of the main stream of traffic and make a safe turn.

Backups onto Mt. Zion Road with a right in are less likely then the backup of cars waiting to turn left into the bank from Investment Way. Individuals wishing to turn left into the bank off Investment Way must wait for a gap in northbound traffic to make their turn. Should northbound vehicles be stopped at the traffic signal, bank patrons could backup along Investment Way onto Mt. Zion Road. The proposed right in/right out will alleviate this problem.

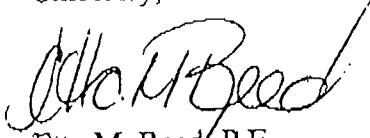
Providing separate access points to both these lots would be unsafe and poor Access Management. Sound Access Management calls for the sharing of drives and installing drives in safe locations. Installing a full movement drive in close proximity to a signalized intersection could result in numerous accidents. With a right in/right out this hazard is drastically reduced.

Mt. Zion Road (KY 536) is classified as an arterial roadway in the Boone County Zoning Regulations. 1997 traffic counts received from the Kentucky Transportation Cabinet, show daily traffic volumes of 14,400 vehicles

Section 3216 of the Boone County Zoning Regulations states that a driveway on an arterial roadway shall be located 230' from a signalized intersection and 115' from an unsignalized intersection. The proposed right in/right out is 167' from Investment Way (signalized) and 200' from Demia Way (unsignalized), measured centerline to centerline. The fact that the plan does not meet the 230' required spacing from a signalized intersection is offset by the proposed limitation of turning movements. The proposed drive location exceeds the 115' spacing from Demia Way, an unsignalized intersection. The proposed location allows the drive to service both parcels. Should the drive be shifted east, to obtain the required spacing, the drive would only service BP Oil.

Should you have any questions, please contact us.

Sincerely,



Etta M. Reed, P.E.

Cc: Bill Erpenbeck
Jeff Klump, Klump & Associates

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Fred Burch, Chairman

DATE: February 21, 1996

RE: Request of **W & D Investments (applicants)** for **Helen Scott (owner)** for a Zoning Map Amendment for a 10.75 acre tract located at 305 Mt. Zion Road, Boone County, Kentucky. The request is for a zone change from Suburban Residential One (SR-1) to Commercial Four (C-4).

REMARKS:

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

Findings of Fact

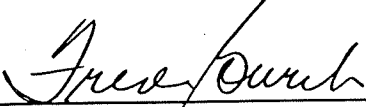
1. The Committee recognizes that the Future Land Use Map of the 1995 Boone County Comprehensive Plan indicates that less than half of the applicant's site is shown as Commercial. However, the Committee believes that this map is intended to be a general, rather than specific guide for where a future land use designation should be located. Therefore, the Committee believes that the proposed zone change is appropriate because it conforms with the existing commercial district to the west. In addition, the Committee believes that the buffer area which will be retained along with the other conditions will ensure an appropriate development for the area as well as provide needed services for the growing residential population within the area.
2. The Committee believes that the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate.

Conditions

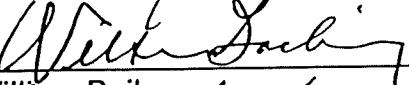
The applicant and owner are being asked to agree to and include these items as part of the Zoning Map Amendment and to address questions and comments at the Public Hearing:

1. There shall be only one access point along Mt. Zion Road for the applicant's site. In addition, a frontage road shall be developed to connect with the property to the west and east of the applicant's site. The location of this frontage road shall be determined at the Preliminary Plat Review stage. A connection shall also be made to the Commercial Services (C-3) property to the west or Sherwood Lakes property to the south. Again this shall be reviewed at the Preliminary Plat stage to determine the best location for the connection. The property to the south and west was rezoned in June of 1988 and was required to provide a connection to the applicant's property.
2. All signs permitted within the site shall be of a monument design and shall not exceed 13 feet in height. Features such as landscaping and stone bases shall be encouraged for each monument sign proposed.
3. Article 10, Section 1041, Item 10 which principally permits recreation centers, gymnasiums, clubs and similar athletic uses shall be permitted as indoor uses only. Outdoor facilities will not be permitted.
4. The existing tree line along the perimeter of the property shall be retained and supplemented with evergreen trees within the areas where a 25 feet buffer is required. The southern end of the applicant's site shall be retained as an undeveloped buffer (See Attached Map). A road connection to the Sherwood Lakes property to the south shall be permitted within the buffer area.
5. All lighting for the applicant's site shall not exceed twenty (20) feet in height and shall be directed straight down with shields to prevent spill over lighting into the adjoining residential properties.


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.



Fred Burch, Chairman




William Bailey



Michael McKinney
did not agree



Phil Damstrom



Barry Neltner

Arnold Caddell

PUBLIC HEARING ITEM NO. 2:

Commission members present: Mr. Brown, Mr. Caddell, Mr. McKinney - Chairman, Mr. Millay, Mr. Neltner, Mr. Ries - Vice Chairman, Mr. White, and Mr. Viox.

The Chairman introduced the last item on the Agenda:

1. Applicant: Bayer Becker Engineers for A. William Erpenbeck, Jr. and Glenn D. Feagan (owners)

Request: Change in Concept Development Plan

The request of Bayer Becker Engineers (applicant) for A. William Erpenbeck, Jr. and Glenn D. Feagan (owners) to consider a Change in Concept Development Plan and a Variance for an approximate one-acre site known as Lot 1, Daniels Business Park, located at the intersection of Mt. Zion Road and Demia Way, Boone County, Kentucky. The request is for a change in the approved Concept Development Plan relative to access and signage conditions and a Variance for the size and height of a freestanding sign.

Staff Member John Huth presented the Staff Report which included a slide presentation (see Staff Report).

The Chairman asked for the applicant's presentation.

Mr. Bill Erpenbeck, one of the owners of the property, stated that they purchased this property in June, 1996 and at that time, Gene Daniels had already been through a site approval process. Mr. Erpenbeck stated that they did not know the sign ordinance had changed. He stated the Shell station next door has a 35-foot sign, and they had a 35-foot sign on their plan for site approval. Shell is right next door and they have to be able to compete with Shell. They should do \$10,000 - \$15,000 a day and they are only doing \$3,000 a day. Shell is getting business off the expressway. He stated that they have a real problem -- they cannot live with a 13-foot sign -- they are not getting business and are begging the Planning Commission for relief. Shell next door has a 35-foot sign. He emphasized that they are in a bad way and they need a larger sign. He stated that they did not do their homework, but they had no way of knowing -- other than to call -- that the sign ordinance had changed. They are literally right next door to the Shell station and they have the same situation.

Mr. Erpenbeck stated that they are getting a lot of heat from their suppliers because they have to come onto Demia Way and either back into their site or back out -- they cannot circle around to get out. He stated that they are asking for right in/right out. Shell has left-in/left-out/right-in/right-out, which is not a good situation. He stated that they want right-in/right-out which is not a safety hazard. These issues

are big to them -- the signage is a huge issue. They could not have presumed that the sign ordinance had changed. The sign ordinance was not changed until after they purchased the property. He asked for help in regard to these two issues -- the signage and the access.

Mr. Jay Bayer, Bayer Becker Engineers, submitted a handout showing a chronology of events: On 6/7/96 W & D Investments sold the property to Erpenbeck and Feagan; on 8/25/96 Site Plan for Lot 1 was submitted; on 10/2/96 Site Plan for Lot 1 was approved; and on 10/8/96 Boone County Fiscal Court approved new C-4 text. Mr. Bayer stated that W & D Investments committed to a condition exceeding the C-4 Zone at that time when they agreed to a condition that would only allow a monument sign. The Site Plan was submitted in August, 1996 and approved in October, 1996 -- and a letter was sent to the applicant in September, 1996 advising that they would not be allowed to have a sign that is allowed in the C-4 Zone because the previous subdivider agreed to the condition. Mr. Erpenbeck found this out in September, after purchasing the property in June. He thought he was purchasing a C-4 zoned lot -- but it had a condition -- and then Boone County Fiscal Court changed the sign code six days after the Site Plan was approved. He stated that their Site Plan came in under the old text and there was a condition that they could not have the sign. He agreed that they did not do their homework, and they are asking for relief. They want the type of sign they would have had in that zone at the time their Site Plan was approved.

Mr. Bayer stated that the other item is the issue of ingress/egress. The previous developer agreed to only one access point, but the people who deliver gas to the site have stated that their movements in and out of the site are backing movements -- which is a dangerous situation. The drivers do not like backing the tankers in to deliver gas. They want the tankers to be able to drive forward all the time, which is the basis for their request for right-in/right-out egress. He stated that having a gas station with only one entrance creates a dangerous movement situation.

Mr. McKinney asked if the applicant had any further comments.

Mr. Bill Erpenbeck stated that they are in a tough situation and really need help. The signage is a severe problem and they have no other avenue but to come to the Planning Commission.

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

Mr. Roger Embry who lives in the house across the street from BP, stated that the BP driveway faces his mother's driveway. He questioned if there is a regulation against a sign being next to a house across the street.

Mr. Huth advised that signs are based on the zoning, and the house across the street is also zoned Commercial. There is nothing in the regulations that would further stipulate this sign here because there is a house across the street. The C-4 Zone is intended for neighborhood scale, which is the reason for the monument sign with a maximum height of 15 feet.

Mr. McKinney 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.

Ms. Jane Hembrey, a resident of Mt. Zion Road, stated that the traffic is wall-to-wall cars, concrete trucks, and huge semis. She does not know how the trucks get in to get gasoline. She questioned where the entrance would be. Would it be near the church?

Mr. Erpenbeck responded "yes".

Ms. Hembrey stated that she can hardly get in and out of her driveway. She stated that she is not opposed to the sign, but she is concerned about the traffic. She feels that someone is going to get killed.

Mr. McKinney stated that traffic is a problem all over the county.

Ms. Hembrey stated that she is not opposed to the business, but it is a dangerous situation. It is also dangerous at Shell.

Mr. Glenn Feagan stated that they are trying to alleviate the problem by asking for a right-in/right-out turn lane. He stated that it is a dangerous situation for the tankers to back out onto Mt. Zion Road. The traffic is bad and they need this relief in order not to create extra hazard.

Mr. McKinney asked if there was anyone else 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 Commissioners.

Mr. Viox agreed with Ms. Hembrey that there is a lot of traffic on Mt. Zion Road. He stated that the neighborhood has changed to a commercial area. He stated that he drives that road a lot and the right-in/right-out access into BP would improve the situation. What is happening now is that people come down there and, because they do not realize BP is there and that Demia Way is there, they come to a stop and turn into Demia Way. He stated that there is already an entrance into the church and there is a decel lane at the church. There is a curb cut in that location. He stated that allowing the traffic to swing into BP rather than clogging the intersection is an improvement -- particularly with the trucks and other activity coming out of Demia Way. There are nine commercial lots on Demia Way and there will be a lot of activity coming out of there causing a traffic snarl. There would be a little relief with the right-in/right-out access. In regard to the sign, he stated that on a road like Mt. Zion, which has commercial activity, there needs to be a sign at least high enough to recognize where the use is -- rather than coming up on a monument sign and having to make a last minute decision.

Mr. Ries stated that W & D Investments sold the property to Mr. Erpenbeck, but nothing was planned at the time -- he asked if they knew there was going to be a gas station there.

Mr. Bayer advised that they proposed the gas station. W & D Investments subdivided and created the nine lots and had agreed to a condition on the signage. W & D Investments purchased the 10+ acre tract and subdivided it into nine lots. When they purchased Lot #1, they proposed the gas station.

Mr. Ries questioned that they did not know there were restrictions on the lot.

Mr. Bayer stated that they purchased the property knowing that it was a C-4 lot and thinking that they could have a full size sign. They were not aware of the previous conditions. They did not do their homework and were not aware of the conditions. The Site Plan was submitted, and then Fiscal Court changed the C-4 text relative to signs. He stated that without the previously approved condition, they would have been okay with the signage.

Mr. Erpenbeck stated that they did not know about the conditions when they purchased the lot. By the time they found out that they could not have the right-in/right-out access, they had invested \$600,000. They felt that they would go ahead and built it and throw themselves on the Planning Commission. He stated that he sold the lot to Shell down the street and was familiar with what was allowed in C-4 -- and he had no reason to believe that something had changed in that short period of time. There was no way to know -- other than to call and ask if anything had changed.

Mr. McKinney stated that the signage requirement for this lot has nothing to do with the signage requirement for the other C-4 Zone. He stated that they were aware there was a condition on Lot #1 in regard to the signage. Mr. Erpenbeck responded, "No, I was not aware of that." Mr. McKinney stated that they submitted a Site Plan and they knew at that time. Mr. Erpenbeck stated that he did not know about the signage at that point, and that is when he found out about the right-in/right-out. He then found out that he had to have a different permit for the signage and when he found out about the signage he already had a 35-foot sign on the site. The sign is sitting out there now. He did not know about the signage until he went for the sign permit.

Mr. McKinney asked if there was any discussion with Staff about the signage when they submitted their Site Plan in August, 1996. Mr. Erpenbeck stated that the Site Plan was approved. Mr. Costello stated that when an attorney does a title search, the conditions are recorded through a Certificate of Land Use Restriction. He stated that the Planning Commission denied the Shell station several years ago, and that decision was overturned by Fiscal Court. One of the critical reasons for the Planning Commission's denial was the access on Mt. Zion Road. He stated that by state law, the Planning Commission is obligated to record a Land Use Restriction on the application for a Zoning Map Amendment. It is recorded in Jerry Rouse's office and provides notice that there is something attached to the property.

Mr. Bayer stated that they looked at the Land Use Restrictions and the only one they found was on Lot #5 and it was recorded on April 17, 1997. Mr. Erpenbeck stated that they did a title search and the restriction was

not recorded until recently. Mr. Costello stated that by law, we have to file for the original zone change application. He stated that he will look this information up and submit it to the Committee.

Mr. McKinney stated that when they submitted their Site Plan, they submitted egress/ingress off Demia Way and now they are saying that it is dangerous. He stated that they knew at that time that they would have trailer trucks coming in and out of the property. He asked why this was not considered at that time.

Mr. Erpenbeck stated that it was considered. He stated that he had \$600,000 invested and came with the presumption that they could get it approved. He felt that the same people who thought Shell was a good thing would have the same opinion about this. He stated that the approved plan from the Planning Commission has the 35-foot sign on it. He stated that when they went for the sign permit, they were not aware that they could not have a 35-foot sign or he would not have the sign setting out there now.

Mr. McKinney stated that the BP proposal on KY 18 was seeking a larger sign and there was a lot of concern about it, and it was not possible to get a larger sign. It was indicated in the Staff Report that regional visibility is not intended for the area. He asked if the applicant believes the Staff Report is wrong.

Mr. Erpenbeck stated that they are in direct competition with Shell and they are not doing 30% of the business they should be doing, which is a severe problem.

Mr. McKinney stated that it is inappropriate and a bad situation to have ingress/egress that touches ingress/egress for the church next door. He stated that when you turn from KY 18 onto Camp Ernst Road there is an entrance there for the Soil Conservation District and there is nearly a rear-ended accident everyday. It is poor planning and this is too. He stated that these things should have been known to the applicant at the time the Site Plan was submitted and the applicant chose to do it anyway believing he could come back later and get a change.

Mr. Erpenbeck responded that that is not correct in regard to the signage.

The Chairman asked if there were any further comments or questions.

Mr. Bayer submitted a letter from the Transportation Cabinet stating that they would be in agreement with the right-in/right-out curb cut.

Mr. Erpenbeck stated that they had a stamped plan with a 35-foot sign on it so, obviously, they did not know about the sign.

Mr. Caddell stated that he was on the Committee that looked at the original zone change request for the approximate 10-acre site and one of the issues at that time was that the applicant had no uses to show the Committee as far as what might potentially happen there. He stated that

it was the intent to make it as restrictive as the conditions indicate because they did not have any idea of what was coming in there. He added that he does not think there is a decel lane to Demia Way.

Mr. Bayer advised that there is a shoulder.

Mr. Caddell stated that they considered a decel lane to this property at the Committee level and he believes that they were told at that time that 8 or 9 uses would not qualify and the applicant did not feel a decel lane was needed.

Mr. McKinney stated that he was also on the Zone Change Committee and remembers expressing surprise that a zone change was allowed without the plan being submitted with it.

Mr. Brown questioned the location of the access to the Thriftway property directly across the street. Mr. Huth advised that the access is on a new street that connects Mt. Zion Road with Sam Neace. He does not believe there is access to Thriftway from Mt. Zion Road, but he can look at the Site Plan in this regard.

In regard to the right-in/right-out access, Mr. Erpenbeck stated that they would have no problem in giving an easement to the church. He stated that the church is for sale. They would be agreeable to putting this easement in the deed. They are willing to put it in the corner of their property and let them come in and out. He stated that a curb cut will occur there and possibly we could kill two birds with one stone because it could then connect all the way out to Demia Way.

Mr. Brown questioned if the curb cut could be right-in only and barrier style as opposed to right-in/right-out. Mr. Erpenbeck stated that that would be fine. Mr. Brown stated that there would be a barrier so that no one could make a left turn out. Mr. Costello stated that the curb cut could be designed for right-turn-in only and vehicles would not be able to pull out there. It is designed to be extremely difficult to pull out. He noted that this has been done before.

Mr. Viox suggested that the Committee go out to the site and look at Mt. Zion Road again and view the property coming from I-75 in terms of getting into the site and identification of the site. He believes the site does have an identification problem. He does not want a traffic snarl because we have not reviewed the site well enough to see that they need a sign higher than 13 feet.

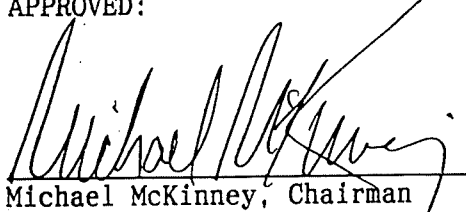
Mr. Neltner questioned the width of the lot. Mr. Erpenbeck advised that it is 180' wide by about 210'. Mr. Neltner stated that a tractor trailer is 60 feet long. He questioned why a tractor trailer could not pull in and go around the front and pull out when the site is three times the length of the tractor trailer. Mr. Erpenbeck stated that with the building and the pumps, that is literally impossible. Mr. Bayer reviewed the plan with Mr. Neltner in regard to the restrictions on the movements of tractor trailers. Mr. Feagan advised that they spent half a day out

there with a truck trying to figure out how they could pull in and pull out, but they could not make the turn.

There being no further comments, Mr. McKinney stated that the Committee Meeting for this item will be on May 12, 1997 at 5:30 P.M. in the second floor conference room. This item will be on the Agenda for the Business Meeting on May 21, 1997 at 7:30 P.M..

The Chairman closed this Public Hearing.

APPROVED:


Michael McKinney, Chairman

Attest:


Jan Hancock, Recording Secretary

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Barry Neltner, Chairman

DATE: August 5, 1998

RE: Request of PBS & J (applicant) for Daniels Investments (owner) to consider a Zoning Map Amendment from Suburban Residential One (SR-1) and Commercial Services (C-3) to Commercial Four (C-4) for a 1.94 acre tract located at 377 Mt. Zion Road, Boone County, Kentucky. The request is for a zone change to allow uses permitted in the C-4 zone.

Remarks:

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

Findings of Fact:

1. The Committee has determined that the proposed Zoning Map Amendment and the accompanying Concept Development Plan is appropriate for the property located at 377 Mt. Zion Road, Boone County, Kentucky. The Committee's decision is based on the fact that the applicant's request is in agreement with the Boone County Comprehensive Plan and the Future Land Use Map.
2. The Committee has concluded that the following conditions are necessary for the purpose of satisfying the Goals, Objectives, and Policies stated in the 1995 Boone County Comprehensive Plan and the mitigation of any foreseeable impacts that may be created by the proposal. The Applicant has signed a letter of agreement with these conditions and understands that the submitted Concept Development Plan along with these conditions serves as a basis for this recommendation.

Conditions:

1. The driveway that runs through the site from Demia Way to Sam Neace Drive shall be developed as a publically dedicated street.
2. The portion of the site located west of the street will be limited in its use to parking unless additional land is acquired which would allow this portion of land to be developed with a principal use in conformance with the setback requirements set forth in the Boone County Zoning Regulations.

3. The applicant shall actively pursue the signalization of the Mt. Zion Road/Sam Neace Drive intersection with the Kentucky Transportation Cabinet. The applicant shall conduct a traffic study of this intersection, including the estimated traffic to be generated from this new development, and submit it to the Boone County Planning Commission and the Kentucky Transportation Cabinet. If the Kentucky Transportation Cabinet determines that this intersection warrants signalization as a result of this development, the applicant will agree to pay one quarter of the cost to signalize this intersection.

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

Barry Neltner, Chairman			
For	___	Against	___
Abstain	___	Absent	___

<i>Arnold Caddell</i>			
Arnold Caddell			
For	<input checked="" type="checkbox"/>	Against	___
Abstain	___	Absent	___

<i>Phil Damstrom</i>			
Phil Damstrom			
For	<input checked="" type="checkbox"/>	Against	___
Abstain	___	Absent	___

<i>Don McMillian</i>			
Don McMillian			
For	<input checked="" type="checkbox"/>	Against	___
Abstain	___	Absent	___

Bill Viox Chairman
[Signature] (FOR)

TOTAL:	<u>4</u>	FOR	<u>0</u>	AGAINST	<u>0</u>	ABSTAIN	<u>0</u>	ABSENT
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Condition

④ The street will be completed in construction and dedicated before occupancy of the building

Public Hearing Item No. 3:

Commission Members Present: Mr. Caddell – Chairman, Mr. Hicks, Mr. McMillian, Mrs. Poston, Mr. Schwenke, Mr. White, Mrs. Wilson, and Mr. Zimmer.

Staff Members Present: Mr. Kevin Costello, AICP, Executive Director; Ms. Jan Hancock, Secretary; and Mr. Todd Morgan.

Legal Counsel Present: Mr. Dale Wilson

The Chairman introduced the third item on the Agenda:

3. **Applicant:** **A. William Erpenbeck, Jr. for
A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third
Bank c/o Matt Rowekamp (owners)**

Request: **Concept Development Plan**

The request of **A. William Erpenbeck, Jr. (applicant) for A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third Bank c/o Matt Rowekamp (owners)** to consider a Change in Concept Development Plan for an approximate two-acre site at 321 Mt. Zion Road and the adjoining vacant lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky. The request is for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone to allow a right in/right out curb cut on Mt. Zion Road.

Staff Member Todd Morgan presented the Staff Report which included a slide presentation (see Staff Report).

The Chairman asked for the applicant's presentation.

Attorney Tim Theissen with Strauss & Troy, representing Bill Erpenbeck, stated that this is a joint application by Bill Erpenbeck (owner and operator of the BP station) and Fifth Third Bank. The bank plans to develop on the property next door. The request is critical to the success of the two businesses that will be served by the curb cut. He introduced Bill Erpenbeck; Matt Rowekamp, Manager of Architecture and Construction for Fifth Third Bank; Jeff Klump, architect and President of Klump and Associates Architects; and Jay Bayer with Bayer Becker Engineers.

Mr. Theissen stated that when Bill Erpenbeck bought the property, the Certificate of Land Use Restriction (CLUR) had not been filed. It was filed later than it should have been under the statute. He stated that this property has been treated differently than all of the other properties in the immediate vicinity, some of which developed before and some of which developed after this development. There is also an issue of the importance of this curb cut for safety.

Mr. Bill Erpenbeck asked the Planning Commission to consider safety and fairness. There is a Steak & Shake and a Sunoco on the other side of the road and a Shell Station, then further down on the right is the BP Station, and directly across the street is the Bank of Kentucky and a strip center. He submitted pictures of the number of curb cuts on Mt. Zion Road now. The Shell Station has a full service curb cut and right across the street from the Sunoco is a full service curb cut. There is a curb cut on Biltmore and a third curb cut on Sherwood Lake Drive. The Bank of Kentucky has three curb cuts right across the street from his site and only have painted arrows to show which way traffic should go – they do not have an island. Every business there has curb cuts onto Mt. Zion Road except his site. He stated that he is in the gas station/convenience store business and the biggest problem is for the tanker trucks to get in and service the fuel. He reviewed the slide and explained how a fuel truck comes in on Demia Way. An employee has to come out and stop the traffic for the tanker to back in – then they have to hold the traffic up again for the tanker to back out. He explained the turning movements they have tried, including backing the tankers in and then having them pull out across the street and then back into their site again before pulling out. They end up having to get three employees to come out – and they get fuel every two or three days. He stated that none of the other developments built turn lanes or decel lanes. They are offering a true island and true right-in/right-out movements – and the vehicles will not be able to go any other way. He explained that the tankers could come in on Mt. Zion Road and go around inside the site and come back out on the new road. The bank does not want to deal with gas trucks coming through their site. He feels that what they are proposing makes sense from a safety standpoint. It is a situation advantageous to them and to the bank. He explained that almost never does a gas station not have two ways in because they have to get big trucks in and out and be able to sell gas to all kinds of trucks. At this time, they cannot sell to trucks because trucks have no way to get into the site. It is a very difficult situation and it is killing them from a business perspective. He commented that the Planning Commission approved three full service curb cuts for the Shell Station.

Mr. Matt Rowekamp stated that their only entrance into the property at this time is the curb cut on Investment Way. There is a traffic signal there and, if there is any stacking of traffic, vehicles cannot get in. The proposed curb cut would allow vehicles to come immediately in and circulate through the property. The right-turn out gives the advantage of keeping the congestion off Investment Way. It would be their customers who would be backing up the traffic and blocking the

traffic light. He stated that the proposed curb cut would be a win-win situation for them and for the BP station. He does not want gas trucks doing loops around his building.

Mr. Jeff Klump stated that he has worked with Fifth Third for about ten years. He stated that the interior flow of traffic is critical for bank sites. There has to be access to the drive-through and parking and this application will work better for their internal flow. Traffic flow all around the branch is critical to the bank.

Mr. Jay Bayer reviewed the Comprehensive Plan in relation to this project. He stated that the Land Use Element on Page 229 says that "Commercial activity associated with this interchange should be concentrated on the east side of the interstate. Access for these commercial uses should be located a sufficient distance from the interchange to avoid traffic congestion." He quoted from Page 82 from the Business Activity Section that the I-75/Mt. Zion interchange should have commercial activity concentrated to the east of I-75 and along U.S. 25 and the commercial activity northeast of the interchange should serve the growing residential areas . . .". He explained that Mr. Erpenbeck is having a difficult time serving the general public with gas. Most gas stations have more than one curb cut. He presented the Site Plan submitted in 1997. He noted the access for the site and stated that the Planning Commission voted to turn down their request – which they now know was a wise move since and there would have been six curb cuts in the vicinity. There was no Concept Development Plan and they were conditioned to the curb cut, but today there is more information. They have reduced the six curb cuts down to three. In 1997, they did not have access to the property next to them and were limited by the amount of property they had. With the new plan, Fifth Third Bank will provide an 80-foot decel lane and a 60-foot accel lane, and there will be a triangular island to prohibit left turn movements. He stated that Access Management includes coordination of curb cuts. They have a much better vision today than they did in 1996 when there were no proposed tenants. They are proposing joint access for the joint use of the bank and the gas station/convenience store. He reviewed the Transportation Element (Page 14, Objective #3) stating that access to adjoining property should be provided and retained when property develops or redevelops. He stated that they are providing joint access between the two sites. He reviewed the Goals and Objectives Element under Business Activity in the Commercial Section (#1). He stated that they do not have effective access at this time, and this plan provides a safe and effective access point. They are limiting only eastbound traffic to enter and exit their site.

Mr. Theissen stated that Mr. Erpenbeck bought the property not knowing about the limitation of the access on Mt. Zion Road. The Certificate of Land Use Restriction was filed the week after he bought the property – even though Fiscal Court had granted the zone change and imposed the condition back in March. KRS 100.3681 requires the CLUR to be filed within 30 days.

Mr. Costello explained that we have to wait for official correspondence from Fiscal Court. He noted that Subsection 4 says that the failure to file on time or complete the CLUR properly or accurately does not affect its validity or enforceability. Any improper filing may be corrected by a subsequent proper filing – which occurred. He believes Mr. Erpenbeck has admitted that he should have received the information from the seller.

Mr. Theissen agreed and stated that he would have made those comments. He asked for fairness. He stated that his firm did the title search and Mr. Erpenbeck would have known about the restriction by the normal method if the CLUR had been filed. He stated that the Planning Commission is justified and legally permitted to consider this issue as a factor in determining if it is fair to consider modifying the condition as they propose. It is not a basis for overturning the condition, but it is an issue of fairness. This developer had a Development Plan that showed a curb cut but, after he was in construction, he was told he could not have the curb cut. At that time, there was no idea of what would be on this property or the Fifth Third property and it was logical to try and limit the number of curb cuts on Mt. Zion Road. Depending on what uses went on the lots, they may not have needed an additional curb cut. Office buildings and some commercial uses do not demand higher traffic and quick ins and outs, and the second curb cut would not have been as important. We now know that the uses are a gas station and a bank and the citizens of Boone county will be regularly pulling in and out of these lots – not like a dentist office where people go in and stay an hour – but, stopping for five minutes. Those types of businesses need easier access. What they are proposing is not what adjacent developers have – they have full exclusive curb cuts on Mt. Zion Road. He stated that they are asking for a right-in/right-out curb cut to restrict the traffic movements. There is a significant safety issue with the trucks and there are the needs of the customers. There is no way to get the trucks on and off the site without doing backing movements, which are dangerous – particularly with kids running around getting food and people walking to the restrooms. He noted a detailed report submitted by Etta Reed that is attached to the Staff Report and contains traffic engineering information supportive of this application.

The Chairman 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 in opposition to the request or having questions. There was no response.

The Chairman asked for comments and questions from the Commissioners.

Mrs. Wilson questioned potential changes to KY 237 and KY 536. Mr. Costello responded that there is a study underway for the cross county connector that includes this stretch of road. He explained the history of Mt. Zion Road from when it was two lanes and widened to three lanes. The Planning Commission has looked at limiting access on that road. He stated that in the Staff Report there is

reference to when the Planning Commission turned down the Shell Station, which was overturned by Fiscal Court. As part of the reconstruction of the road, agreements were made between the state and the property owners along that stretch. Mr. Toebben had a number of curb cuts that were approved as part of the overall agreement to widen the road. When Sunoco went in, we tried to work with the state and the developer to limit the number of curb cuts. What is out there, or planned, is a reduction. He explained that part of the frustration is that the state has not dealt with that stretch of road the way we think they should and has allowed what is currently out there by encroachment permits. He stated that we have worked with Bill Erpenbeck and representatives of Fifth Third Bank to see what could be done. There were two different sites and both were interested in right-hand turns in and out. It was on the advice of Staff that we asked them to get together and look at the possibility of shared access, knowing there was a condition placed on both properties. This is the design they came up with. He stated that a study is being done and the state may upgrade the road.

Mrs. Wilson questioned what will happen to the turning movements of the trucks if the road is widened to five lanes. Mr. Theissen responded that there is still enough space for the curb cut if the road is widened to five lanes. Mr. Costello explained that the fifth lane would function as the turn lane for the developments along that corridor. Mr. Theissen stated that the developers of these two sites anticipate approval from the state for this curb cut.

Mr. Zimmer questioned where the frontage road is that was promised to be built. Mr. Morgan responded that it is the easements behind the site. Mr. Zimmer asked if the frontage road concept has been abandoned. Mr. Morgan responded that they agreed to the easements behind the two lots at the Preliminary Plat stage.

Mr. Costello questioned where the new road connects. Mr. Theissen indicated the road under construction and stated that it will eventually go to Demia Way and there will be a frontage road. Mr. Zimmer commented that it is a road behind the lots. Mr. Theissen stated that it provides an alternative way to get to other sites and back out to the road. Mr. Zimmer questioned when the frontage road was eliminated. Mr. Morgan indicated the frontage road, which was two pieces of road linked together, and stated that in talking with Mr. Wall he did not define it as a frontage road – but it was the agreement reached. One piece of the road is behind the BP site and the other is behind the proposed bank site. Mr. Costello stated that the road could still occur. Mr. Morgan agreed, but commented that he is not sure it could be called a frontage road.

Mr. Zimmer questioned how we got a BP station that nobody wants to go to, including the delivery trucks. Mr. Costello responded that there was no specific use identified for the parcel. Mr. Zimmer questioned what engineer designed a gas station that you cannot get fuel trucks into.

Mr. Erpenbeck stated that an architect designed it. He explained that they did a title search and the restriction was not on the title. They hired a law firm to do a title search and it came up with the land use restrictions they have, but not the access restriction. He stated that Fiscal Court passed the Land Use Restriction three months before, but it was not filed. He purchased the site, designed it and layed it out – he had \$500,000 in it and had to design it as best he could. Mr. Bayer presented the original plan showing how the site was originally envisioned by Mr. Erpenbeck. Mr. Costello asked the applicant to bring the original Concept Plan to the Zone Change Committee meeting to show exactly how things occurred.

Mr. Zimmer stated that the letter from Bayer Becker Engineers dated July 21, 2000 says that the Investment Way construction is not going to allow for patrons of the bank to come down Investment Way and turn left into the lot because of stacking with people trying to leave Investment Way going north. He questioned what engineer designed Investment Way without the ability to get in and out of parcels zoned for C-3 uses. He asked if there can be any relief for this situation. He stated that this can be discussed in Committee.

Mr. Costello asked that all of the plans and engineering drawings for the road be brought to the Committee Meeting. Mr. Zimmer asked if there will be an expert consultant to help determine the best solution to this problem. Mr. Costello responded “yes”.

The Chairman offered the applicant rebuttal time. Mr. Theissen stated that they had no further comments.

There being no further discussion, the Chairman stated that the Committee Meeting for this item will be on August 2, 2000 at 4 P.M. in the Fiscal Courtroom on the second floor. This item will be on the Agenda for the Business Meeting on August 16, 2000 at 7:30 P.M..

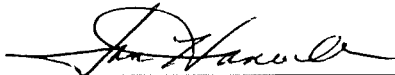
The Chairman closed this Public Hearing.

APPROVED:



Arnold Caddell, Chairman

Attest:



Jan Hancock, Recording Secretary

**BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
COURTROOM 3A
BUSINESS MEETING
September 6, 2000
7:00 P.M.**

Mr. Arnold Caddell, Chairman, called the meeting to order at 7:00 P.M..

COMMISSION MEMBERS PRESENT:

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

COMMISSION MEMBERS NOT PRESENT:

Mr. Mark Hicks
Mr. Richard Knock

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin Costello, AICP, Executive Director
Ms. Jan Hancock, Secretary
Mr. Todd Morgan, Planner
Mr. Kevin Wall, AICP, CDT – Director, Zoning Services

Mr. McMillian moved that the salaries, benefits, and bills due be approved and paid as presented; and indicated approval of those items which have been paid. Mr. Ries seconded the motion. A vote on the motion found all voting members in favor. Chairman Caddell abstained due to his relationship with Heritage Bank. The motion carried.

ACTION ON PLAN REVIEWS:

1. Concept Development Plan

The request of A. William Erpenbeck, Jr. (applicant) for A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third Bank c/o Matt Rowekamp (owners) to consider a Change in Concept Development Plan for an approximate two-acre site at 331 Mt. Zion Road and the adjoining vacant lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky. The request is for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone to allow a right in/right out curb cut on Mt. Zion Road.

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

There being no discussion, Mr. Ries moved by resolution to Boone County Fiscal Court that the request be approved based on the Staff and Committee Reports. Mr. White seconded the motion. A roll call vote on the motion found Mrs. Arnett, Mr. Barlow, Chairman Caddell, Mr. Chaney, Mr. Newman, Mrs. Poston, Mr. Reynolds, Mr. Ries, Mr. Schwenke, Mr. White, Mrs. Wilson, and Mr. Zimmer in favor. Mr. McMillian was opposed. The motion carried by a vote of 12 to 1.

NEW BUSINESS:

Agenda Item

No.

2

Change in Concept Development Plan and Variance

The request of G. Sharpco Inc. (applicant) for Mt. Zion Properties Inc. (owner) to consider a Change in Concept Development Plan in a Commercial Four (C-4) zone for a 0.33 acre lot on the southwest corner of the Mt. Zion Road/Investment Way intersection, Boone County, Kentucky. The request is for a Change in Concept Development Plan to allow a retail building and a Variance for reduction in the side yard setback.

EXHIBIT
"B"

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: David Zimmer, Chairman

DATE: September 6, 2000

RE: Request of A. William Erpenbeck, Jr. (applicant) for A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third Bank c/o Matt Rowekamp (owners) to consider a Change in Concept Development Plan for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky. The request is for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone to allow a right-in/right-out curb cut on Mt. Zion Road.

REMARKS:

We, the Committee, recommend conditional approval of the above referenced Change in Concept Development Plan application based on the following findings of fact and with the following conditions.

FINDINGS OF FACT:

1. The Committee has concluded that the request is in general agreement with the 1995 Boone County Comprehensive Plan for the following reasons:
 - A. The Land Use Element (Area D-5: Mt. Zion Area, p. 229) states that "commercial activity associated with this interchange should be concentrated on the east side of the interstate. Access for these commercial uses should be located a sufficient distance from the interchange to avoid traffic congestion."
 - B. The Future Land Use Development Guidelines (pp. 210 - 212) found in the Land Use Element states that "developments in Boone County must recognize the potential impacts of associated traffic on adjoining properties and transportation systems. The need exists to protect the capacity of the existing roadway network, and to plan improvements to accommodate new development and travel patterns. Access management provisions include the coordination of curb cuts, adequate corner clearance and site distance for access points, adequate space between access points, shared access points and parking facilities, and provisions for access connections to adjoining properties, and dedication of public right-of-way. ("Access Management" p. 211).

2. 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. The Committee has also concluded that the attached condition is necessary to mitigate any foreseeable community impacts that may be created by the development. The property owners have signed a letter demonstrating agreement with this condition.

CONDITION:

1. The proposed right-in/right-out curb cut will comply with the comments and recommendations of Jerry Mills, PE, of Woolpert LLP. Mr. Mill's comments and recommendations are addressed in the attached letter.

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. Attached is the signature page for the Zone Change/Concept Plan Committee Vote.

ALG 7

August 15, 2000

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

**RE: Review of Fifth Third Bank / Erpenbeck Project Entrance
Mt. Zion Road, Boone County, KY.**

Dear Mr. Costello:

I have reviewed the proposed entrance and have the following comments and recommendations:

- With any turning movement it is necessary to provide the proper turning radius to prevent a vehicle from running over curb or other areas outside of the pavement. The 30 feet turning radius for both inbound and outbound at the proposed location does not allow the daily tanker trucks that visit the BP Oil station to make the maneuver without the wheels running over the proposed curb. I recommend that the preferred design vehicle that replicates the tanker truck be used for designing the proper radius. With the change in radii the island may need to be increased in size.
- A "No Left Turn or Right Turn Only" regulatory sign needs to be placed in the concrete island to inform motorist that the turning movement is restricted and allows for enforceability.
- Also, the island that is noted as being 73 feet +or - from the south edge of Mt. Zion Road needs to be also checked to assure that end of this island will also not be impacted by the left turn of the daily tanker trucks for BP Oil.

In general the use of a well designed right in and right out channelizing island allows for good access management and improves safety. If you have any questions or require additional information, please contact me at 272-8300.

Sincerely,

WOOLPERT LLP


Jerry Mills, PE
Associate Partner
Group Manager, Transportation



WOOLPERT LLP
4141 Rosslyn Drive
Cincinnati, OH 45209-1183
513.272.8300
Fax: 513.272.8301
www.woolpert.com

Public Hearing Item No. 3:

Commission Members Present: Mr. Caddell – Chairman, Mr. Hicks, Mr. McMillian, Mrs. Poston, Mr. Schwenke, Mr. White, Mrs. Wilson, and Mr. Zimmer.

Staff Members Present: Mr. Kevin Costello, AICP, Executive Director; Ms. Jan Hancock, Secretary; and Mr. Todd Morgan.

Legal Counsel Present: Mr. Dale Wilson

The Chairman introduced the third item on the Agenda:

3. **Applicant:** **A. William Erpenbeck, Jr. for
A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third
Bank c/o Matt Rowekamp (owners)**

Request: **Concept Development Plan**

The request of **A. William Erpenbeck, Jr. (applicant) for A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third Bank c/o Matt Rowekamp (owners)** to consider a Change in Concept Development Plan for an approximate two-acre site at 321 Mt. Zion Road and the adjoining vacant lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky. The request is for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone to allow a right in/right out curb cut on Mt. Zion Road.

Staff Member Todd Morgan presented the Staff Report which included a slide presentation (see Staff Report).

The Chairman asked for the applicant's presentation.

Attorney Tim Theissen with Strauss & Troy, representing Bill Erpenbeck, stated that this is a joint application by Bill Erpenbeck (owner and operator of the BP station) and Fifth Third Bank. The bank plans to develop on the property next door. The request is critical to the success of the two businesses that will be served by the curb cut. He introduced Bill Erpenbeck; Matt Rowekamp, Manager of Architecture and Construction for Fifth Third Bank; Jeff Klump, architect and President of Klump and Associates Architects; and Jay Bayer with Bayer Becker Engineers.

Mr. Theissen stated that when Bill Erpenbeck bought the property, the Certificate of Land Use Restriction (CLUR) had not been filed. It was filed later than it should have been under the statute. He stated that this property has been treated differently than all of the other properties in the immediate vicinity, some of which developed before and some of which developed after this development. There is also an issue of the importance of this curb cut for safety.

Mr. Bill Erpenbeck asked the Planning Commission to consider safety and fairness. There is a Steak & Shake and a Sunoco on the other side of the road and a Shell Station, then further down on the right is the BP Station, and directly across the street is the Bank of Kentucky and a strip center. He submitted pictures of the number of curb cuts on Mt. Zion Road now. The Shell Station has a full service curb cut and right across the street from the Sunoco is a full service curb cut. There is a curb cut on Biltmore and a third curb cut on Sherwood Lake Drive. The Bank of Kentucky has three curb cuts right across the street from his site and only have painted arrows to show which way traffic should go – they do not have an island. Every business there has curb cuts onto Mt. Zion Road except his site. He stated that he is in the gas station/convenience store business and the biggest problem is for the tanker trucks to get in and service the fuel. He reviewed the slide and explained how a fuel truck comes in on Demia Way. An employee has to come out and stop the traffic for the tanker to back in – then they have to hold the traffic up again for the tanker to back out. He explained the turning movements they have tried, including backing the tankers in and then having them pull out across the street and then back into their site again before pulling out. They end up having to get three employees to come out – and they get fuel every two or three days. He stated that none of the other developments built turn lanes or decel lanes. They are offering a true island and true right-in/right-out movements – and the vehicles will not be able to go any other way. He explained that the tankers could come in on Mt. Zion Road and go around inside the site and come back out on the new road. The bank does not want to deal with gas trucks coming through their site. He feels that what they are proposing makes sense from a safety standpoint. It is a situation advantageous to them and to the bank. He explained that almost never does a gas station not have two ways in because they have to get big trucks in and out and be able to sell gas to all kinds of trucks. At this time, they cannot sell to trucks because trucks have no way to get into the site. It is a very difficult situation and it is killing them from a business perspective. He commented that the Planning Commission approved three full service curb cuts for the Shell Station.

Mr. Matt Rowekamp stated that their only entrance into the property at this time is the curb cut on Investment Way. There is a traffic signal there and, if there is any stacking of traffic, vehicles cannot get in. The proposed curb cut would allow vehicles to come immediately in and circulate through the property. The right-turn out gives the advantage of keeping the congestion off Investment Way. It would be their customers who would be backing up the traffic and blocking the

traffic light. He stated that the proposed curb cut would be a win-win situation for them and for the BP station. He does not want gas trucks doing loops around his building.

Mr. Jeff Klump stated that he has worked with Fifth Third for about ten years. He stated that the interior flow of traffic is critical for bank sites. There has to be access to the drive-through and parking and this application will work better for their internal flow. Traffic flow all around the branch is critical to the bank.

Mr. Jay Bayer reviewed the Comprehensive Plan in relation to this project. He stated that the Land Use Element on Page 229 says that "Commercial activity associated with this interchange should be concentrated on the east side of the interstate. Access for these commercial uses should be located a sufficient distance from the interchange to avoid traffic congestion." He quoted from Page 82 from the Business Activity Section that the I-75/Mt. Zion interchange should have commercial activity concentrated to the east of I-75 and along U.S. 25 and the commercial activity northeast of the interchange should serve the growing residential areas". He explained that Mr. Erpenbeck is having a difficult time serving the general public with gas. Most gas stations have more than one curb cut. He presented the Site Plan submitted in 1997. He noted the access for the site and stated that the Planning Commission voted to turn down their request – which they now know was a wise move since and there would have been six curb cuts in the vicinity. There was no Concept Development Plan and they were conditioned to the curb cut, but today there is more information. They have reduced the six curb cuts down to three. In 1997, they did not have access to the property next to them and were limited by the amount of property they had. With the new plan, Fifth Third Bank will provide an 80-foot decel lane and a 60-foot accel lane, and there will be a triangular island to prohibit left turn movements. He stated that Access Management includes coordination of curb cuts. They have a much better vision today than they did in 1996 when there were no proposed tenants. They are proposing joint access for the joint use of the bank and the gas station/convenience store. He reviewed the Transportation Element (Page 14, Objective #3) stating that access to adjoining property should be provided and retained when property develops or redevelops. He stated that they are providing joint access between the two sites. He reviewed the Goals and Objectives Element under Business Activity in the Commercial Section (#1). He stated that they do not have effective access at this time, and this plan provides a safe and effective access point. They are limiting only eastbound traffic to enter and exit their site.

Mr. Theissen stated that Mr. Erpenbeck bought the property not knowing about the limitation of the access on Mt. Zion Road. The Certificate of Land Use Restriction was filed the week after he bought the property – even though Fiscal Court had granted the zone change and imposed the condition back in March. KRS 100.3681 requires the CLUR to be filed within 30 days.

Mr. Costello explained that we have to wait for official correspondence from Fiscal Court. He noted that Subsection 4 says that the failure to file on time or complete the CLUR properly or accurately does not affect its validity or enforceability. Any improper filing may be corrected by a subsequent proper filing – which occurred. He believes Mr. Erpenbeck has admitted that he should have received the information from the seller.

Mr. Theissen agreed and stated that he would have made those comments. He asked for fairness. He stated that his firm did the title search and Mr. Erpenbeck would have known about the restriction by the normal method if the CLUR had been filed. He stated that the Planning Commission is justified and legally permitted to consider this issue as a factor in determining if it is fair to consider modifying the condition as they propose. It is not a basis for overturning the condition, but it is an issue of fairness. This developer had a Development Plan that showed a curb cut but, after he was in construction, he was told he could not have the curb cut. At that time, there was no idea of what would be on this property or the Fifth Third property and it was logical to try and limit the number of curb cuts on Mt. Zion Road. Depending on what uses went on the lots, they may not have needed an additional curb cut. Office buildings and some commercial uses do not demand higher traffic and quick ins and outs, and the second curb cut would not have been as important. We now know that the uses are a gas station and a bank and the citizens of Boone county will be regularly pulling in and out of these lots – not like a dentist office where people go in and stay an hour – but, stopping for five minutes. Those types of businesses need easier access. What they are proposing is not what adjacent developers have – they have full exclusive curb cuts on Mt. Zion Road. He stated that they are asking for a right-in/right-out curb cut to restrict the traffic movements. There is a significant safety issue with the trucks and there are the needs of the customers. There is no way to get the trucks on and off the site without doing backing movements, which are dangerous – particularly with kids running around getting food and people walking to the restrooms. He noted a detailed report submitted by Etta Reed that is attached to the Staff Report and contains traffic engineering information supportive of this application.

The Chairman 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 in opposition to the request or having questions. There was no response.

The Chairman asked for comments and questions from the Commissioners.

Mrs. Wilson questioned potential changes to KY 237 and KY 536. Mr. Costello responded that there is a study underway for the cross county connector that includes this stretch of road. He explained the history of Mt. Zion Road from when it was two lanes and widened to three lanes. The Planning Commission has looked at limiting access on that road. He stated that in the Staff Report there is

reference to when the Planning Commission turned down the Shell Station, which was overturned by Fiscal Court. As part of the reconstruction of the road, agreements were made between the state and the property owners along that stretch. Mr. Toebben had a number of curb cuts that were approved as part of the overall agreement to widen the road. When Sunoco went in, we tried to work with the state and the developer to limit the number of curb cuts. What is out there, or planned, is a reduction. He explained that part of the frustration is that the state has not dealt with that stretch of road the way we think they should and has allowed what is currently out there by encroachment permits. He stated that we have worked with Bill Erpenbeck and representatives of Fifth Third Bank to see what could be done. There were two different sites and both were interested in right-hand turns in and out. It was on the advice of Staff that we asked them to get together and look at the possibility of shared access, knowing there was a condition placed on both properties. This is the design they came up with. He stated that a study is being done and the state may upgrade the road.

Mrs. Wilson questioned what will happen to the turning movements of the trucks if the road is widened to five lanes. Mr. Theissen responded that there is still enough space for the curb cut if the road is widened to five lanes. Mr. Costello explained that the fifth lane would function as the turn lane for the developments along that corridor. Mr. Theissen stated that the developers of these two sites anticipate approval from the state for this curb cut.

Mr. Zimmer questioned where the frontage road is that was promised to be built. Mr. Morgan responded that it is the easements behind the site. Mr. Zimmer asked if the frontage road concept has been abandoned. Mr. Morgan responded that they agreed to the easements behind the two lots at the Preliminary Plat stage.

Mr. Costello questioned where the new road connects. Mr. Theissen indicated the road under construction and stated that it will eventually go to Demia Way and there will be a frontage road. Mr. Zimmer commented that it is a road behind the lots. Mr. Theissen stated that it provides an alternative way to get to other sites and back out to the road. Mr. Zimmer questioned when the frontage road was eliminated. Mr. Morgan indicated the frontage road, which was two pieces of road linked together, and stated that in talking with Mr. Wall he did not define it as a frontage road – but it was the agreement reached. One piece of the road is behind the BP site and the other is behind the proposed bank site. Mr. Costello stated that the road could still occur. Mr. Morgan agreed, but commented that he is not sure it could be called a frontage road.

Mr. Zimmer questioned how we got a BP station that nobody wants to go to, including the delivery trucks. Mr. Costello responded that there was no specific use identified for the parcel. Mr. Zimmer questioned what engineer designed a gas station that you cannot get fuel trucks into.

Mr. Erpenbeck stated that an architect designed it. He explained that they did a title search and the restriction was not on the title. They hired a law firm to do a title search and it came up with the land use restrictions they have, but not the access restriction. He stated that Fiscal Court passed the Land Use Restriction three months before, but it was not filed. He purchased the site, designed it and layed it out – he had \$500,000 in it and had to design it as best he could. Mr. Bayer presented the original plan showing how the site was originally envisioned by Mr. Erpenbeck. Mr. Costello asked the applicant to bring the original Concept Plan to the Zone Change Committee meeting to show exactly how things occurred.

Mr. Zimmer stated that the letter from Bayer Becker Engineers dated July 21, 2000 says that the Investment Way construction is not going to allow for patrons of the bank to come down Investment Way and turn left into the lot because of stacking with people trying to leave Investment Way going north. He questioned what engineer designed Investment Way without the ability to get in and out of parcels zoned for C-3 uses. He asked if there can be any relief for this situation. He stated that this can be discussed in Committee.

Mr. Costello asked that all of the plans and engineering drawings for the road be brought to the Committee Meeting. Mr. Zimmer asked if there will be an expert consultant to help determine the best solution to this problem. Mr. Costello responded “yes”.

The Chairman offered the applicant rebuttal time. Mr. Theissen stated that they had no further comments.

There being no further discussion, the Chairman stated that the Committee Meeting for this item will be on August 2, 2000 at 4 P.M. in the Fiscal Courtroom on the second floor. This item will be on the Agenda for the Business Meeting on August 16, 2000 at 7:30 P.M..


The Chairman closed this Public Hearing.

APPROVED:



Arnold Caddell, Chairman

Attest:



Jan Hancock, Recording Secretary

ZONE CHANGE/CONCEPT PLAN COMMITTEE VOTE

TO: Boone County Planning Commission

FROM: David Zimmer, Committee Chairman

DATE: August 16, 2000


RE: Request of A. William Erpenbeck, Jr. (applicant) for A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third Bank c/o Matt Rowekamp (owners) to consider a Change in Concept Development Plan for an approximate two acre site located at 321 Mt. Zion Road and the adjoining vacant lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky. The request is for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone to allow a right in/right out curb cut on Mt. Zion Road.

REMARKS:

We, the Committee Members were present at the Committee Meeting and voted on the above request or else were absent from voting. Further, based upon the vote, the Committee directs the Staff to draft the findings of fact and conditions if deemed necessary in order to complete the Committee Report.

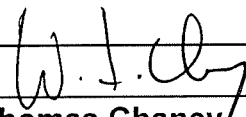
ZONE CHANGE/CONCEPT PLAN COMMITTEE VOTE
August 16, 2000

Erpenbeck/Fifth Third Bank
321 Mt. Zion Road



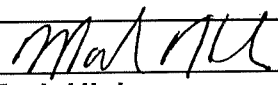
David Zimmer, Chairman

For _____ Against _____
Abstain _____ Absent _____
Deferred _____



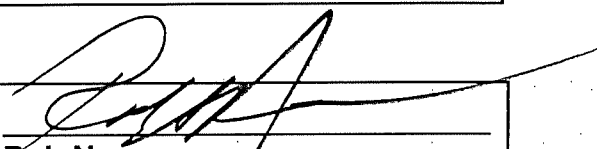
W. Thomas Chaney

For _____ Against _____
Abstain _____ Absent _____
Deferred _____



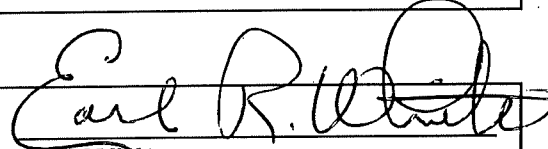
Mark Hicks

For _____ Against _____
Abstain _____ Absent _____
Deferred _____



Bob Newman

For _____ Against _____
Abstain _____ Absent _____
Deferred _____

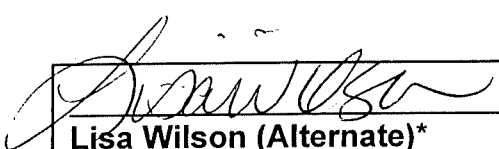


Earl White

For _____ Against _____
Abstain _____ Absent _____
Deferred _____

Bob Schwenke (Alternate)*

For _____ Against _____
Abstain _____ Absent _____
Deferred _____



Lisa Wilson (Alternate)*

For _____ Against _____
Abstain _____ Absent _____
Deferred _____

Don McMillian (Alternate)*

For _____ Against _____
Abstain _____ Absent _____
Deferred _____

TOTAL: _____ DEFERRED 6 FOR _____ AGAINST _____ ABSTAIN
_____ ABSENT

ZONE CHANGE/CONCEPT PLAN COMMITTEE VOTE

TO: Boone County Planning Commission

FROM: David Zimmer, Committee Chairman


DATE: August 2, 2000

RE: Request of A. William Erpenbeck, Jr. (applicant) for A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third Bank c/o Matt Rowekamp (owners) to consider a Change in Concept Development Plan for an approximate two acre site located at 321 Mt. Zion Road and the adjoining vacant lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky. The request is for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone to allow a right in/right out curb cut on Mt. Zion Road.

REMARKS:

We, the Committee Members were present at the Committee Meeting and voted on the above request or else were absent from voting. Further, based upon the vote, the Committee directs the Staff to draft the findings of fact and conditions if deemed necessary in order to complete the Committee Report.

ZONE CHANGE/CONCEPT PLAN COMMITTEE VOTE
Erpenbeck/Mt. Zion Road
August 2, 2000

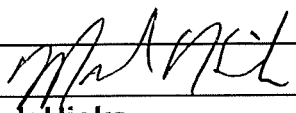


David Zimmer, Chairman

For _____ Against _____
Abstain _____ Absent _____
Deferred

W. Thomas Chaney

For _____ Against _____
Abstain _____ Absent _____
Deferred _____

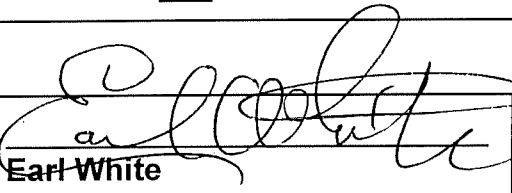


Mark Hicks

For _____ Against _____
Abstain _____ Absent _____
Deferred

Bob Newman

For _____ Against _____
Abstain _____ Absent _____
Deferred _____

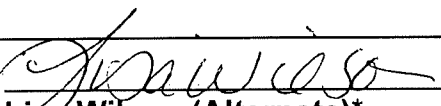


Earl White

For _____ Against _____
Abstain _____ Absent _____
Deferred

Bob Schwenke (Alternate)*

For _____ Against _____
Abstain _____ Absent _____
Deferred _____



Lisa Wilson (Alternate)*

For _____ Against _____
Abstain _____ Absent _____
Deferred

Don McMillian (Alternate)*

For _____ Against _____
Abstain _____ Absent _____
Deferred _____

TOTAL: 4 DEFERRED 1 FOR 1 AGAINST 1 ABSTAIN
1 ABSENT

SUPPORTING INFORMATION

BOONE COUNTY PLANNING COMMISSION



August 29, 2000

2995 Washington Street • Burlington, KY 41005

www.boonecountyky.org

Phone: (859) 334-2196

Fax: (859) 334-2264

E-mail: plancom@boonecountyky.org

Mr. Matt Rowekamp
Fifth Third Bank
38 Fountain Square Plaza
M/D# 10ATA1
Cincinnati, OH 45263

RE: Request of **A. William Erpenbeck, Jr. (applicant)** for **A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third Bank c/o Matt Rowekamp (owners)** to consider a Change in Concept Development Plan for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky. The request is for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone to allow a right-in/right out curb cut on Mt. Zion Road.

Dear Mr. Rowekamp:

The following represents the condition of approval as agreed to by the Boone County Planning Commission's Zone Change Committee. If you, as representative for one of the owners, agree to the following condition, please indicate so by signing the spaces provided below. Please return this signed letter to the Boone County Planning Commission office by 5:00 P.M., on September 5, 2000.

Condition

1. The proposed right-in/right-out curb cut will comply with the comments and recommendations of Jerry Mills, PE, of Woolpert LLP. Mr. Mill's comments and recommendations are addressed in the attached letter.

Sincerely,

Todd K. Morgan
Planner

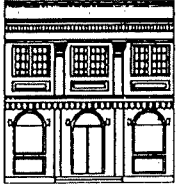
TKM\pr

I, Matt Rowekamp, representative for one of the property owners, hereby agree to the listed condition of approval for a Change in Concept Development Plan for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky

Mr. Matt Rowekamp

9/01/2000
Date

BOONE COUNTY PLANNING COMMISSION



2995 Washington Street • Burlington, KY 41005

www.boonecountyky.org

Phone: (859) 334-2196

Fax: (859) 334-2264

E-mail: plancom@boonecountyky.org

August 30, 2000

Mr. A. William Erpenbeck, Jr.
Mr. Glenn D. Feagan
130 Dudley Road
Edgewood, KY 41017

RE: Request of **A. William Erpenbeck, Jr. (applicant)** for **A. William Erpenbeck, Jr., Glenn D. Feagan and Fifth Third Bank c/o Matt Rowekamp (owners)** to consider a Change in Concept Development Plan for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky. The request is for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone to allow a right-in/right out curb cut on Mt. Zion Road.

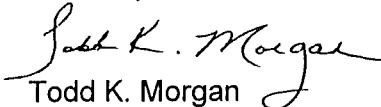
Dear Mr. Erpenbeck & Mr. Feagan:

The following represents the condition of approval as agreed to by the Boone County Planning Commission's Zone Change Committee. If you, as two of the property owners, agree to the following condition, please indicate so by signing the spaces provided below. Please return this signed letter to the Boone County Planning Commission office by 5:00 P.M., on September 5, 2000.

Condition

1. The proposed right-in/right-out curb cut will comply with the comments and recommendations of Jerry Mills, PE, of Woolpert LLP. Mr. Mill's comments and recommendations are addressed in the attached letter.

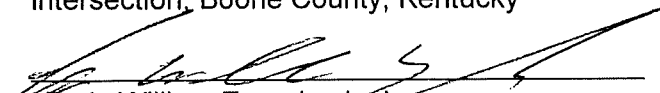
Sincerely,


Todd K. Morgan
Planner

TKM\pr

Mr. A. William Erpenbeck, Jr.
Mr. Glenn D. Feagan
August 30, 2000
Page 2

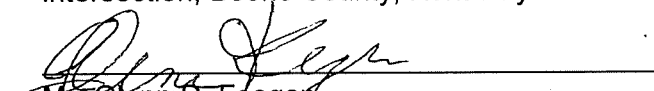
I, A. William Erpenbeck, Jr., property owner, hereby agree to the listed condition of approval for a Change in Concept Development Plan for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky



Mr. A. William Erpenbeck, Jr.

9-11-00
Date

I, Glenn D. Feagan, property owner, hereby agree to the listed condition of approval for a Change in Concept Development Plan for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining lot to the west on the southeast corner of the Mt. Zion Road/Sam Neace Drive intersection, Boone County, Kentucky



Mr. Glenn D. Feagan

9-11-00
Date

RECEIVED
SEP 2 2000

BOONE COUNTY PLANNING COMM
AUG 17 2000

August 15, 2000

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



WOOLPERT

**RE: Review of Fifth Third Bank / Erpenbeck Project Entrance
Mt. Zion Road, Boone County, KY.**

Dear Mr. Costello:

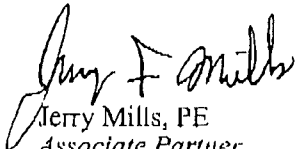
I have reviewed the proposed entrance and have the following comments and recommendations:

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- Also, the island that is noted as being 73 feet +/- from the south edge of Mt. Zion Road needs to be also checked to assure that end of this island will also not be impacted by the left turn of the daily tanker trucks for BP Oil.

In general the use of a well designed right in and right out channelizing island allows for good access management and improves safety. If you have any questions or require additional information, please contact me at 272-8300.

Sincerely,

WOOLPERT LLP


Jerry Mills, PE
Associate Partner

Group Manager, Transportation

WOOLPERT LLP

4141 Rosslyn Drive

Cincinnati, OH 45209-1183

513.272.8300

Fax: 513.272.8301

www.woolpert.com

KNOW ALL MEN BY THESE PRESENTS:

That A. WILLIAM ERPENBECK, JR., 1/2 interest and ^{JEAN FEAGAN and} GLENN D. FEAGAN, 1/2 interest, as tenants in common, Grantors, for and in consideration of One Dollar (\$1.00) and other good and valuable considerations to them paid by the Grantee herein, the receipt of which is hereby acknowledged, do bargain, sell and convey to:

B & G HOLDINGS, LLC, a Kentucky Limited Liability Company, its heirs and assigns forever, the following described real estate: in the County of Boone, and Commonwealth of Kentucky, to-wit:

GROUP NUMBER: 2058
PLAT NUMBER: _____
PIDN NUMBER: _____

Present Street Address: 321 Mt. Zion Road, Boone County, KY
Mailing Address: Same

A parcel of land lying on the southern side of Mt. Zion Road in Boone County, Kentucky and being more particularly described as follows:

Beginning at an iron pin in the southern right of way for Mt. Zion Road, said point being a common corner between Grace Baptist Church and W & D Investments; Thence with said right of way S 87° 20' 10" E, 133.75 feet to a set iron pin; Thence with a curve to the right 64.05 feet (R=40.00') to a set iron pin; Thence S 4° 24' 20" W, 222.48 feet to a set iron pin; Thence N 85° 30' 45" W, 161.82 feet to a set iron pin; Thence N 1° 30' 00" E, 258.50 feet to the place of beginning, and containing 1.00 acres.

Being part of the same property conveyed to A. William Erpenbeck, Jr., 1/2 interest and Glenn D. Feagan, 1/2 interest, as tenants in common, Grantors herein, by deed dated June 7, 1996 and recorded in deed book 612, page 282 in the Boone County Clerk's records in Burlington, Kentucky, and recorded in the Boone County Courthouse in Burlington, Kentucky.

Together with all the PRIVILEGES AND APPURTENANCES to the same belonging. TO HAVE AND TO HOLD the same to the said B & G HOLDINGS, LLC, a Kentucky limited liability company, its heirs and assigns forever.

IN WITNESS WHEREOF, the said Grantors, ^{JEAN FEAGAN and} GLENN D. FEAGAN and A. WILLIAM ERPENBECK, JR., hereunto set their hands, this 26th day of November, 1996.

After recording, please return to:
ARBER, PABST & WERTS, P.S.C.
400 Greenup Street, P.O. Box 678
Covington, KY 41012-0678
Phone: 606/431-6106

RETURN TO:

COMMITMENT

SCHEDULE A

Case No. 1088

Beginning at an existing ½ inch iron pin on the south right-of-way line of Mt. Zion Road, said iron pin also being on the northwest corner of Lot No. 1 of the Daniels Business Park Subdivision as recorded on Plat Slide 459.A ; thence with the east line of Lots 1 and 2 of said subdivision, South 1 degree 30 minutes 00 seconds West, 288.22 feet to a set iron pin; thence with new divisions lines through the property conveyed to said Mt. Zion Properties, LLC the following six calls; North 87 degrees 29 minutes 21 seconds West, 165.12 feet to a set iron pin; thence North 4 degrees 32 minutes 20 seconds West, 60.07 feet to a set iron pin; thence northeasterly along an arc of a curve deflecting to the right, having a radius of 125.00 feet, for a distance along said arc of 51.75 feet to a set iron pin, chord of said curve bears North 7 degrees 19 minutes 21 seconds East, 51.39 feet; thence North 19 degrees 11 minutes 01 seconds East, 117.84 feet to a set iron pin; thence North 2 degrees 14 minutes 26 seconds East, 24.43 feet to a set iron pin; thence northeasterly along an arc of a curve deflecting to the right, having a radius of 40.00 feet, for a total distance along said arc of 63.09 feet to a set iron pin; chord of said curve bears North 47 degrees 25 minutes 35 seconds East, 56.75 feet; thence with the south right of way line of Mt. Zion Road, 50 feet south of and parallel with the centerline, South 87 degrees 23 minutes 17 seconds East, 89.33 feet to the Point of Beginning, containing 1.000 acres of land.

All pins referred to as set are 5/8 inch by 30 inch steel re-bar with a plastic cap reading "Lansdale KY 3200" affixed to the top.

The basis of bearing for the above survey is Plat Slide #459A, using pins found along the east line of the subject property and the west line of Daniels Business Park Subdivision as field control, said line bears North 1 degree 30 minutes 00 seconds East.

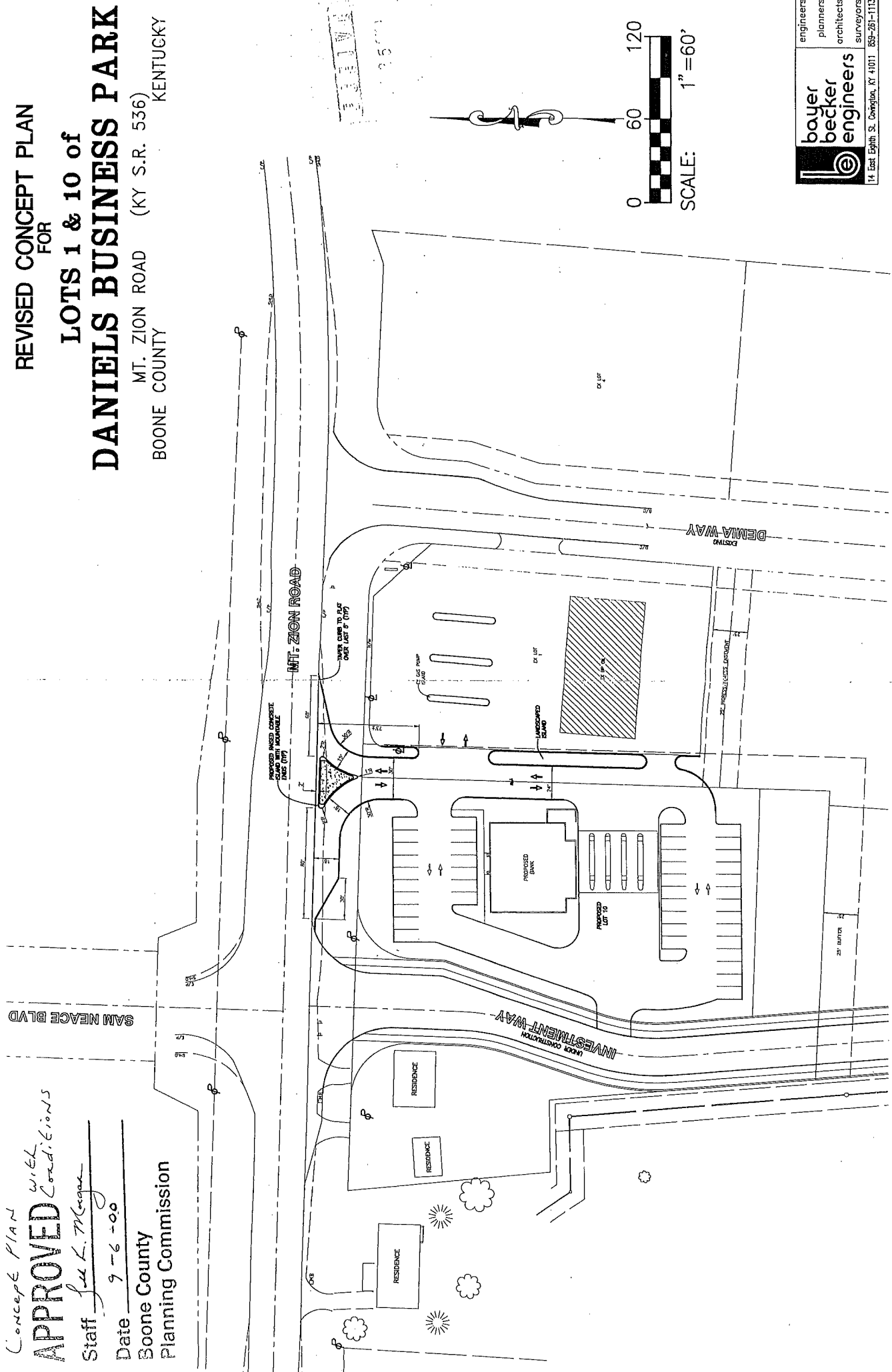
The above legal description being taken from a survey and plat by Lansdale Surveying, Inc. under the supervision of Mark P. Scott, Kentucky Registered Land Surveyor No. 3011, said survey being dated January, 2000.

This commitment is invalid unless the Insuring Provisions and Schedules A and B are attached.

Schedule A consists of 2 page(s)

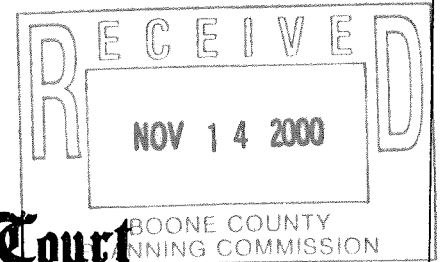
Concept Plan *with Conditions*
APPROVED
 Staff *Lee L. McGehee*
 Date *9-6-00*
 Boone County
 Planning Commission

REVISED CONCEPT PLAN
 FOR
LOTS 1 & 10 of
DANIELS BUSINESS PARK
 MT. ZION ROAD (KY S.R. 536)
 BOONE COUNTY KENTUCKY



bayer becker engineers
 engineers
 planners
 architects
 surveyors
 14 East Eighth St., Covington, KY 41011 859-261-1113

**Ordinance
Of
The Boone County Fiscal Court**



Ordinance No. 2000-28

AN ORDINANCE OF THE BOONE COUNTY FISCAL COURT RECOMMENDING APPROVAL FOR A REQUEST OF A. WILLIAM ERPENBECK, JR., (APPLICANT) FOR A. WILLIAM ERPENBECK, JR., GLENN D. FEAGAN AND FIFTH THIRD BANK C/O MATT ROWEKAMP (OWNERS) FOR A CHANGE IN AN APPROVED CONCEPT DEVELOPMENT PLAN, WITH ONE CONDITION, IN A COMMERCIAL FOUR (C-4) ZONE FOR AN APPROXIMATE 2 ACRE SITE LOCATED AT 321 MT. ZION ROAD AND THE ADJOINING VACANT LOT TO THE WEST ON THE SOUTHEAST CORNER OF THE MT. ZION ROAD / SAM NEACE DRIVE INTERSECTION, BOONE COUNTY, KENTUCKY, AS RECOMMENDED BY THE BOONE COUNTY PLANNING COMMISSION (12-1), VIA RESOLUTION NO. R-00-021-A.

WHEREAS, the Boone County Fiscal Court received a request for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining vacant lot to the west on the southeast corner of the Mt. Zion Road / Sam Neace Drive Intersection, Boone County, Kentucky, which is more particularly described below; and,

WHEREAS, the Boone County Planning Commission as the planning unit for the unincorporated areas of Boone County, Kentucky, was requested to and has conducted a Public Hearing serving as a due process trial-type hearing and made findings recommending approval for a change in an approved Concept Development Plan, with one condition, in a Commercial Four (C-4) zone for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining vacant lot to the west on the southeast corner of the Mt. Zion Road / Sam Neace Drive intersection, Boone County, Kentucky.

NOW, THEREFORE, BE IT ORDAINED BY THE BOONE COUNTY FISCAL COURT AS FOLLOWS:

SECTION I

That the request for a change in an approved Concept Development Plan for the real estate which is more particularly described below shall be and is hereby recommended for approval, with one condition, in a Commercial Four (C-4) zone for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining vacant lot to the west on the southeast corner of the Mt. Zion Road / Sam Neace Drive intersection, Boone County, Kentucky. The real estate which is the subject of this request for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone is more particularly described in DEED BOOKS 631, 718 & 718, PAGE NOS. 115, 152 & 158, respectively (as supplied by the applicant) as recorded in the Boone County Clerk's office.

Ordinance
Of
The Boone County Fiscal Court

Ordinance No. 2000-28

SECTION II

That as a basis for the recommendation of approval for a change in an approved Concept Development Plan, with one condition, in a Commercial Four (C-4) zone for an approximate 2 acre site located at 321 Mt. Zion Road and the adjoining vacant lot to the west on the southeast corner of the Mt. Zion Road / Sam Neace Drive intersection, Boone County, Kentucky, the findings of fact of the Boone County Planning Commission as set forth in its minutes and official records for this request shall be and are hereby incorporated by reference as if fully set out in this Ordinance and marked as "Exhibit A".

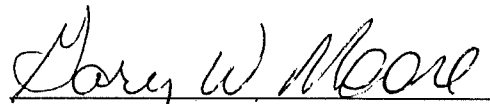
The Committee recommended approval for this request based on the findings of fact and one condition as set forth in the Committee Report and marked as "Exhibit B".

SECTION III

That this Ordinance shall take effect and be in full force when passed, published and recorded according to law.

Introduced and given First Reading on the 3rd day of October, 2000.

Adopted by the Fiscal Court of Boone County after Second Reading at a regular meeting on the 24th day of October, 2000, and on the same occasion signed in open session by the County Judge-Executive as evidence of his approval, attested by the County Fiscal Court Clerk and declared to be in full force and effect.




GARY W. MOORE
BOONE COUNTY JUDGE-EXECUTIVE

ATTEST:



ROBYN R. COBB
FISCAL COURT CLERK



LARRY CRIGLER
BOONE COUNTY ATTORNEY

11-2-00

DATE PUBLISHED