

STAFF REPORT

#1

REQUEST OF ZOLLARS, INC. FOR A ZONING MAP AMENDMENT ON A 1.6 ACRE SITE OWNED BY DR. HOWARD RAVENSCHRAFT

MAY 24, 1989
7:00 P.M.

This is a request of Zollars Inc. for a Zoning Map Amendment from Suburban Residential Two (SR-2) to Commercial Services (C-3) to allow an Alamo Auto Rental Center. The 1.6 acre site is located at the northwest corner of KY 20 and Riverview Drive, Boone County, Kentucky. The site contains lots 81 through 84 and part of lot 85 of Riverview Estates Subdivision.

History of Site

On April 1, 1981, the Boone County Planning Commission approved a Zoning Map Amendment request of Commercial One (C-1) for a one acre tract on the northeast corner of KY 20 and Riverview Drive. On May 5, 1981, the Boone County Fiscal court denied the above request. On April 1, 1981, the Boone County Planning Commission denied a Zoning Map Amendment request of Commercial One (C-1) for a 1.6 acre tract (the same site under review tonight) on the northwest corner of KY 20 and Riverview Drive. On May 5, 1981, the Boone County Fiscal court upheld the Planning Commission's denial of the above request.

Surrounding Land Uses and Zoning

The Riverview Estates Subdivision lies to the north and east and is zoned Suburban Residential Two (SR-2). South of the site, across KY 20 is the existing Val-Air commercial parking lot and auto rental facility, which is zoned Commercial Services (C-3). West of the site is the existing Airport Fast Park and Thrifty Car Rental, similar businesses that are also zoned Commercial Services (C-3).

Characteristics of the Site

The site slopes gradually toward KY 20 and contains mostly grass cover with some trees along the west property line.

Relationship to Comprehensive Plan

The 1986 Future Land Use Map depicts the site and property directly north and east as future Medium Density Residential with all property to the west and south recommended to be commercial.

The Goals and Objectives of the Business Activity element recommends that compact, efficient development patterns be encouraged by maintaining buffer space between uses and that future commercial development occur in compact aggregations having an integrated design. The objectives also recommend that commercial uses be developed at strategic locations relative to their trade areas with direct access, but located in such a way as not to congest traffic movements.

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The Business Activity element makes the following forecast of the I-275 airport interchange area:

"The I-275 airport interchange will experience additional commercial growth. This will be primarily of airport and highway related nature because of the projected slow population increase of the area. The commercial growth will cluster north of the interchange along KY 20."

The Goals and Objectives of the Housing element recommend that residential areas be protected from incompatible land uses.

The Goals and Objectives of the Transportation element call for access management to reduce vehicular traffic congestion wherever possible.

The text of the Land Use element generally describes the airport interchange area:

"Land to the north of the airport interchange lies directly under two of the airport's flight paths and, therefore, is restricted primarily to commercial or industrial uses related to the airport. The existing residential areas in this land area should remain but not continue to enlarge. Land between the airport property and I-275 and west of KY 20 will become airport property."

The submitted Concept Development Plan proposes two curb cuts on KY 20 and two access drives onto Riverview Drive. A car rental building and bus drop-off area are shown at the front of the site. A car storage area and employee parking are shown at the north end of the site adjacent to the existing residential area.

Staff Concerns

1. With the anticipated growth of the Greater Cincinnati Airport, Staff is of the opinion that the I-275 / KY 20 Airport Interchange area will become, at some point in time, more suited towards airport related office / hotel / convention facilities. The staff feels that the proposed use and other similar uses in the area are transitional and that any development that occurs within this area should be designed so as not to discourage these other types of future development.
2. The proposed driveways onto Riverview Drive would alter the residential function of that cul-de-sac street.
3. The current conditions along this stretch of KY 20 are very confusing and dangerous to motorists. This is a result of the numerous and poorly spaced access driveways in existence serving the existing commercial parking facilities. In staff's opinion, the proposed Concept Development Plan would aggravate these conditions further with its two proposed driveways onto KY 20 and not directly aligning with the Val-Air driveways. The proposed access closest to Riverview Drive does not meet the minimum corner clearance requirements of the Access Management Regulations and neither driveway on KY 20 meets the minimum spacing requirements.

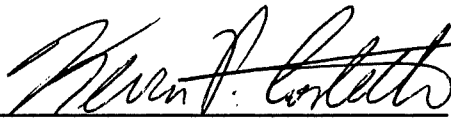
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4. The proposed Concept Development Plan contains no provisions for buffering the adjacent residential area. A minimum 25 foot buffer yard is required in a Commercial Services (C-3) zone when adjoining a residential zone. This includes the frontage along Riverview Drive. In addition, no plans for landscaping, lighting, and signage for the site along KY 20 have been provided.

5. Staff has been advised of deed restrictions that limit development on the site to residential uses.

Conclusion

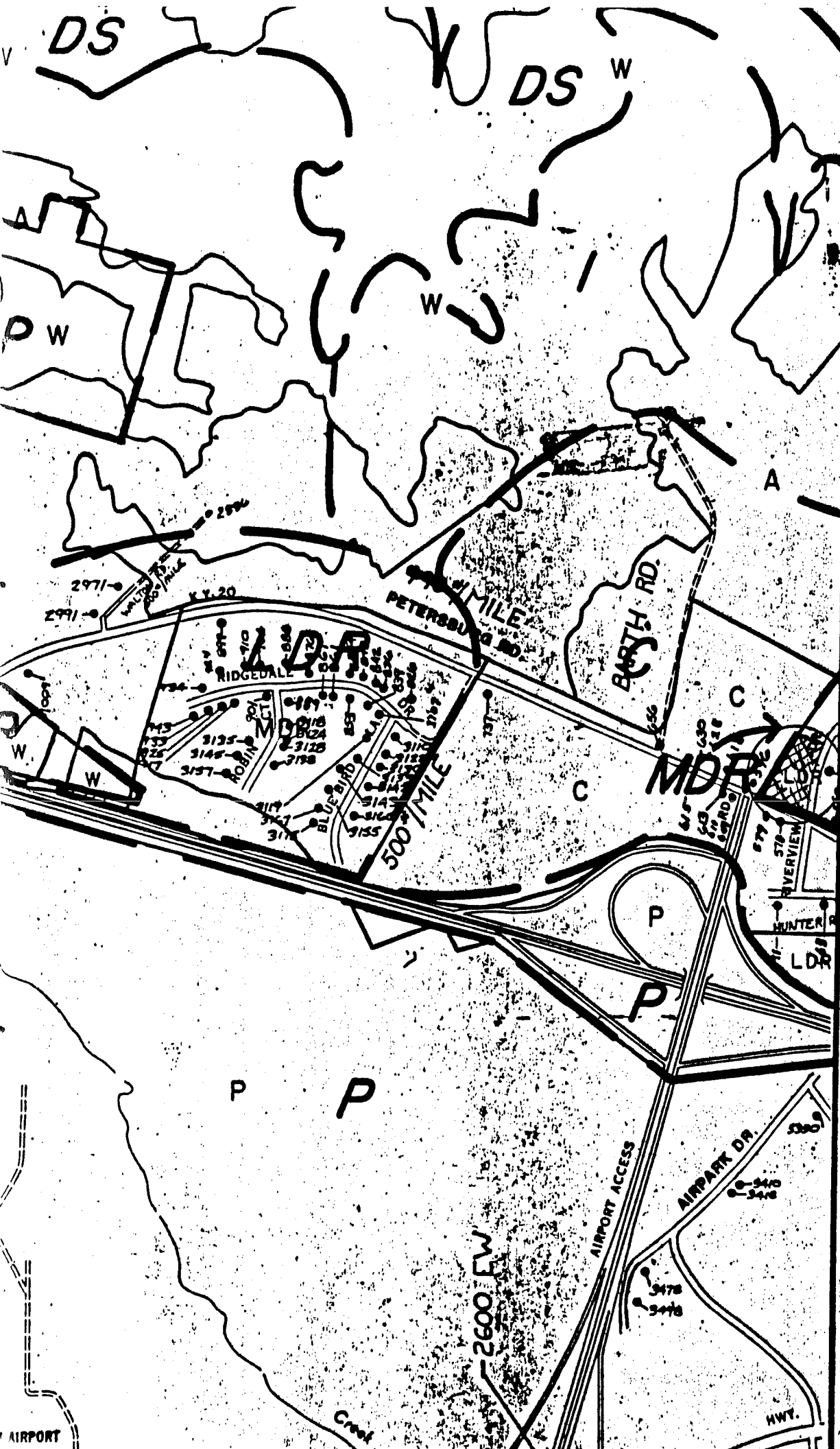
The Planning Commission needs to review this request in terms of the three criteria necessary for finding a zoning map amendment. Should this request be approved, the 1986 Future Land Use Map would need to be adjusted.



Kevin P. Costello
Asst. Director/Sr. Planner

David A. Geohegan
Planner/Plans Examiner

KPC/DAG:jdh

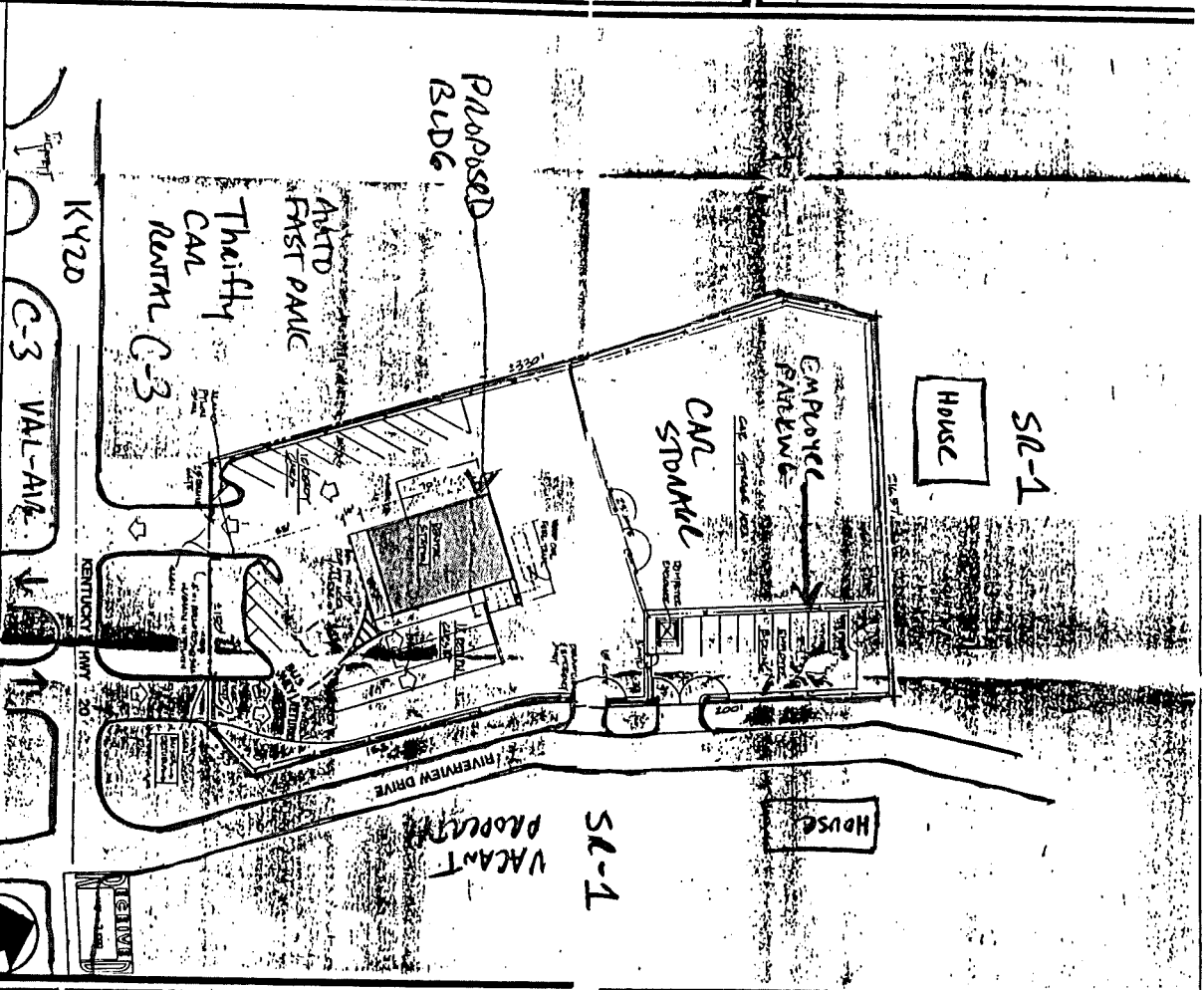
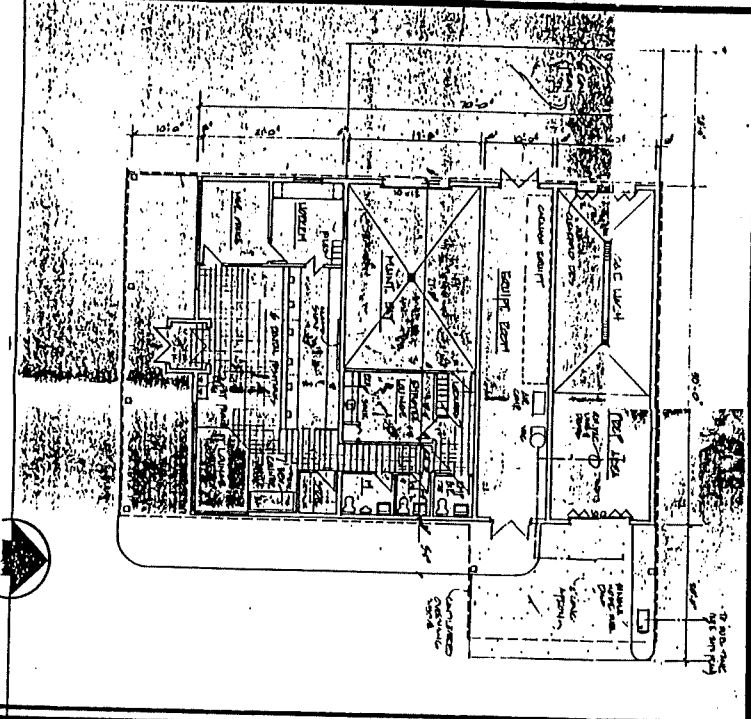
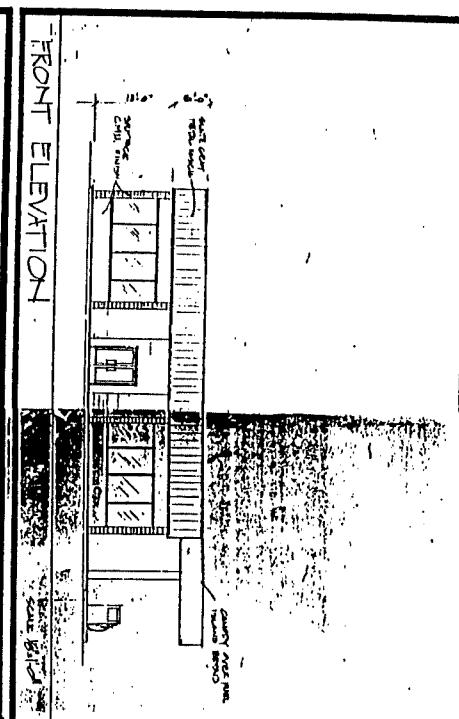


1886-0568

LAKES RIVERVIEW

AIRPORT

200 LANS ZONING MAP AMENDMENT
 5/24/89



FIESTA LIQUORS

KRY20

C-3 VAL-AIR

VACANT PROPERTY

ECONO PARK

HUNTER

DKBERT ASS PLANNERS & DEVEL The 110 Tower, 110 Southeast 8th Street, Fort Lauderdale, Florida	OC PERS. 1301 (304) 783-2000		Site Plan Proposed
			KENTUCKY

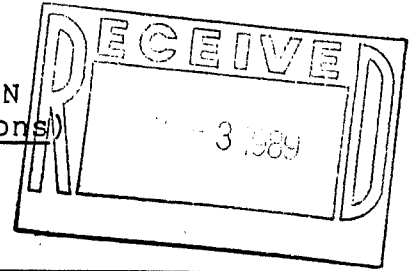
* Contact person
Larry Dunavant
371-2372

REVIEW NO. _____

APPLICATION FORM

ZONING MAP AMENDMENTS

BOONE COUNTY PLANNING COMMISSION
(See Boone County Zoning Regulations)



SECTION A (To be completed by applicant)

1. Name of Development Zollars/Riverview
2. Location of Development KY 20 & Riverview Dr.
3. Total Acreage of Site 1.6 A
4. Current Zoning S R 2
5. Proposed Zoning (classification being requested) C-3
6. Proposed Uses (please specify each use) _____
Auto Rental Center
7. Name of Applicant(s) Zollars, Inc.
Phone Number(s) (606) 689-7891
8. Address of Applicant(s) 579 Petersburg Rd.
Hebron KY 41048
City State Zip
9. Name of Property Owner(s) Dr. Howard Ravenscraft/Zollars, Inc. optionee
Phone Number(s) (606) 689-4311
10. Address of Property Owner(s) 1789 Petersburg Rd.
Hebron KY 41048
City State Zip
11. Proposed Building Intensities (please specify) _____
One Building Only
12. Are there any existing buildings on the site? NO
How many? _____
13. Deed Book _____ Page No. _____ Group No. _____
14. Have you had a pre-application meeting with BCPC staff? YES
15. Please check the following organizations/agencies which you have discussed the proposed development with in the last several months:

- _____ Boone County Water and Sewer District
- _____ Florence Water and Sewer Commission
- _____ Union Light Heat and Power
- _____ Cincinnati Bell
- _____ Owen County Rural Electric
- _____ Boone County Road Department
- _____ Kentucky Transportation Cabinet
- _____ City of Florence Public Works Department
- _____ City of Walton Public Works Department
- _____ Northern Kentucky Health District
- _____ U.S. Soil Conservation Service
- _____ Local School District
- _____ Local Fire District
- _____ Other: _____

(COMPLETE OTHER SIDE OF APPLICATION)

16. Are you also applying for:
 Conditional Use Permit
 Dimensional Variance
17. Applicant's Signature: C.T. Zallan
18. Property Owner's Signature: C.T. Zallan (Owner)
19. Have you submitted a Concept Development Plan? YES

SECTION B (To be completed by BCPC Staff)

1. Date Received 5-3-89
2. Fee Received \$395.40 R# 801115
3. Check what has been submitted:
 Application Fee Legal Description
 Concept Development Plan Addresses of Adjoining Property Owners
- 5 No. of copies of plan received**
4. Is application complete? Yes No
5. Staff Reviewer D. Gehegan
6. Committee Chairman Carol Smith
7. Scheduled Public Hearing Date 5/24/89
8. Boone County Planning Commission Action:
 Approval
 Approval With Conditions 6/21/89
 Disapproval
9. Other: _____

** FIVE (5) COPIES ARE REQUIRED

BCPC:7/11/88

B.M. 6-21-89
P.H. 5-24-89

COPIES NEEDED FOR RESOLUTIONS:

1. Legal description - Exhibit "A" (in review folder)
(none for text amendments)
2. Public Hearing Minutes - Exhibit "B" (only pages regarding that request - no front page necessary) (in white minutes folder)
3. Business Meeting Minutes - Exhibit "B" (pages regarding that request and front page with attendance roll) (in white minutes folder)
4. Committee Report - Exhibit "C" (original in Business Meeting folder)
5. Staff Report - "Other Supporting Information" (original is in Public Hearing folder)
6. Application - "Other Supporting Information" (do not copy our information on the bottom [fees]) (in review folder) (none for text amendments)
7. Concept Development Plan - "Other Supporting Information" (in review folder) (none for text amendments) (only need 2 copies, 1 for our resolution file and 1 for the county/city/if only 1 copy give it to county/city, there are reductions in all staff reports)
8. Any other pertinent information (booklets, studies, petitions, etc. - applicant should have provided sufficient copies)

Number of copies required:

Boone County - 9 (1 for our file single-sided) (the other 8 duplexed)

All Others - 2 (1 for our file) All single-sided!!! (Paper clip together instead of staples.)

EXHIBIT "A"

ZOLLARS/RIVERVIEW

Description of Property

All of lots 81 through 84 and part of lot 85 of Riverview Estates Subdivision as platted in Plat Book 6, Page 23 in the Boone County Clerks Office, Burlington, Kentucky and recorded in Deed Book 169, Page 313 with the exception of that portion of lot 85 described in Highway Deed Book 7, Page 591.

Group 2009

EXHIBIT "B"

BOONE COUNTY PLANNING COMMISSION

May 24, 1989
7:00 P.M.

PUBLIC HEARING

Mr. William Viox, Chairman, called the meeting to order at 7:05 P.M.. Following an explanation of the public hearing process, the Chairman advised that the following item will be on the Agenda for the Business Meeting on June 7, 1989 at 8 P.M.:

Applicant: Zollars, Inc. for Dr. Howard Ravenscraft/Zollars, Inc. (owners by option)
Request: Zoning Map Amendment

This was a Public Hearing on the request of Zollars, Inc. for a Zoning Map Amendment for Dr. Howard Ravenscraft/Zollars, Inc. (owners by option) to allow an Auto Rental Center. The request is to rezone the property from Suburban Residential Two (SR-2) to Commercial Services (C-3). The 1.6-acre site is located at KY 20 and Riverview Drive, Boone County, Kentucky.

Assistant Director, Kevin Costello, presented the Staff Report which included a slide presentation (see Staff Report).

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

Mr. Ray Boguki, attorney representing Mr. Zollars, introduced Mr. Larry Dunovan the architect; Mr. Abergast of Alamo, which is the proposed use for the site; and Mr. and Mrs. Zollars.

Mr. Boguki stated that in regard to the deed restrictions (Staff Concern #5), there was an injunction granted in 1982 upholding the deed restrictions. If this becomes an issue again, they will go to the Circuit Court. He stated that a change in zoning would not affect the restrictive covenants. He stated that the issue before the Commission is whether the zone change fits the 1986 Comprehensive Plan and whether the current zoning is inappropriate and the proposed zoning more appropriate. Using a large drawing, he stated that they feel the proposed zoning is appropriate as the land to the north of the airport interchange lies under the flight patterns, which restricts its use. He quoted from the text of the Land Use Element, as contained in the Staff Report, and stated that residential areas should not enlarge. Mr. Boguki stated that they will do whatever the regulations

require. The property is undeveloped and the north/south runway is under construction. People do not want to reside under flight patterns due to the noise levels. Therefore, it is inappropriate to put a residence on the lot. The people living in the subdivision are in negotiations with the airport in regard to their residences. On the drawing, Mr. Boguki indicated the location of the Thrifty site and the temporary site for Alamo across the street. He stated that one curb cut on Riverview Drive would be sufficient. The curb cut would be restricted to employee parking and a service vehicle which picks up the used oil. There will be ten employees. Hours of operation are 6 a.m. to 12 a.m.. The employees are staggered over these hours, having no significant impact on the traffic. There will be signage to indicate employee-only parking. The existing berm between the site and the subdivision would remain. The applicant will provide necessary screening. Mr. Boguki stated that the Franklin vs. Moates case would bear on the deed restrictions and that the north/south runway is a major change which would be considered by the court. He stated that injunctions can be relitigated. He stated that the current Alamo operation is across the street. The servicing of the vehicles is done by the Staff and the service vehicles do not come daily. In regard to Staff Concern #1, he stated that the site is 1.6 acres and a hotel or convention facility would not fit on the site. The site is appropriate for an airport-related function. On a bad day they have 50 transactions and on a good day, they have 120 transactions at Alamo, which is an average of about 80, which is 40 trips in and 40 trips out. He stated that this computes to 3.6 vehicles per hour on KY 20. Peak hours are 10 a.m. until 9 p.m.. He stated that the use is appropriate due to the north/south runway and it is inappropriate to put another residence on the site.

The Chairman asked if anyone else wished to speak in favor of the request.

Dr. Ravenscraft, stated that he was one of the original developers of Riverview Estates. They platted the subdivision in the 1960's, and in the 1970's KY 20 was relocated coming through the subdivision leaving a part of Riverview Estates on what is now Mr. Zollars property and Alamo parking. This was Lot #88 and part of Lot #87. In 1981, the Commission voted to approve the change from residential to C-3. The vote was 10 to 2. He stated that the north/south runway will be operational in the Fall of 1990. The noise level will be so high on the 1.6-acre site that it will be totally unsuitable for residential use. No one would buy the property for residential use.

Mr. Larry Dunovan, architect, stated that according to the original plat of the subdivision, it did not indicate any lots occurring before 300 feet from Old KY 20, therefore, there was inference that there would be something else occurring. He gave the Chairman an overlay as an example of their request.

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

Mr. Don Garman, 2717 Riverview Estates, stated that he also owns the lot adjacent to his residence and 12 or 13 acres from Riverview Estates to Route 8. The land is dormant due to the runway. He questioned Mr. Boguki's comment that 80 cars per day is only 40 in and 40 out. He stated that there is only a flashing light at the intersection and questioned the traffic. He added that there should be a light there. The deed restrictions are being weighed for profit, not the

benefit of the county. He has had to live with the deed restrictions. He asked that the Commission wait on this request until the airport decides whether they are going to buy their properties. He asked that if the zoning is going to be changed, that the entire street be changed so that the residents can take advantage of the zoning.

The Chairman asked Counselor Wilson to comment in regard to the deed restrictions.

Counselor Wilson advised that the Commission is neither for nor against the application, but holds the Public Hearing to gather findings. The decision is based on land use factors, and private deed restrictions imposed by a developer are separate and independent of that. Deed restrictions are not zoning regulations and are not administered or enforced by the Commission. The Commission cannot base a decision on the deed restrictions.

Mr. Robert Burns, 2937 Riverview Drive, the adjacent property owner to the site, questioned the 1982 findings of the Commission in favor of the zone change.

Mr. Costello advised that he reviewed the record of this site and the recommendation of the Commission was for denial. The recommendation for the site across the street was for approval, but it was denied by the Fiscal Court.

Mr. Burns stated that the architect's comments were erroneous in that the subdivision ran all the way from KY 20 to the cul-de-sac. He quoted from a 1979 article entitled, "Zollars Zone Zapped by Fiscal Court", noting that the request for an Interchange Zone was denied by the Fiscal Court. There was vehement opposition from the residents of Riverview Estates. The basis for the motion to deny the zone change, according to the article, was that there had not been any change in the area to warrant a zone change. He stated that this is still true today. Mr. Burns stated that in the article Mr. Lucas had indicated that the zone change would result in irreversible damage to the residents of the area and cited the traffic hazards at KY 20 and KY 212. Mr. Burns noted that many people do not pause at the flashing light. He stated that there have been two more curb cuts since the article was written. In 1981 the request, which was denied, was taken to the Circuit Court and a permanent injunction granted to prohibit any purpose other than residential on the site. He quoted the deed restrictions and stated that Restriction #4 is that no business of any kind will be conducted on the lots. Mr. Burns continued to read from the article and stated that until recently it was the intention of the developer to restrict the lots to residential use. He stated that many of the purchasers of the lots had relied on the deed restrictions and the developers oral presentation that all the lots were to be used exclusively for residential purposes. Continuing to quote from the article, Mr. Burns stated that the defendants indicated that the character of the area had changed from residential to commercial, but the court concluded that in spite of the change in character of the area adjacent to the subdivision and the two lots used for commercial purposes, the residential character of all remaining lots continues unchanged and should be protected. Mr. Burns stated that the lawyer proved to the judge that Moates vs. Moates is just the opposite of what this lawyer says. Mr. Burns stated that this use would compound the traffic problem.

Counselor Wilson advised that Kentucky Court of Appeals Case #83-CA-184-MR will be a part of the record.

The Chairman asked if there were any comments from the Commission.

Mr. McMillian questioned the number of transactions mentioned by Mr. Boguki.

Mr. Abergast, Manager of Alamo, stated that their average is about 80 total turnarounds per day, which is 40 cars checking in and 40 cars checking out. These figures indicate total pieces of business.

Mr. McMillian questioned if the curb cut on Riverview Drive was in addition to the one on KY 20.

Mr. Boguki stated that it was, but they are willing to modify the request to one curb cut on Riverview Drive for employee parking and service vehicles. This would be directly across from a dedicated right-of-way. Riverview Drive is a dedicated street.

Mr. Dunovan stated that the District Six Highway Office reviewed the traffic engineering and did not find any problems. He noted that there is a dedicated right-of-way that did not show up on the plans, but was shown on the papers he submitted to the Chairman. He stated that the curb cut directly aligns with the dedicated right-of-way.

Mr. Damstrom questioned how the people who rent the cars get to their place of business.

Mr. Abergast stated that they come by shuttle from the airport and there may be as many as four or five people on the van. Mr. Boguki advised that 96% of the business comes from the airport via shuttle and 4% are local people brought in by someone to rent a car.

Mr. Damstrom commented that if you have 25 separate transactions, that would be 50 trip generations.

Mr. Neltner questioned if the curb cut on the side street could be eliminated and the employees access the parking through the lot.

Mr. Dunovan advised that it is a security matter to keep the employees cars separate. He stated that Alamo had not been familiar with the local customs, and could consolidate the access points. Mr. Boguki stated that keys are left in the rental cars and indicated how they could be backed out of the site on a drawing. He added that the traffic lane within the site is wide enough for the service vehicle, but it would be easier for it to come in where the fuel tank and leftover oil are in the back of the facility.

In response to a question from Mr. Neltner, Mr. Boguki stated that there will be a six-foot chainlink fence around the site. It will not have barbed wire at the top.

In response to questions from Mr. Moore, Mr. Newton advised that he believes this site to be in the 75 LDN, or at least the 70 LDN. He stated that there is no doubt that the property will be greatly impacted by the noise. If there is new development in the area, there are sound reduction measures that can be used. At 75 LDN or greater, the area is not recommended for residential development.

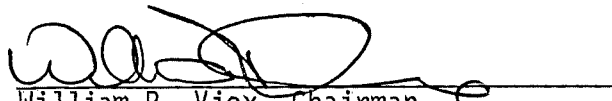
Mr. Sharp questioned the distance from Riverview Drive to the first curb cut and the distance between the curb cuts.

Mr. Costello advised that it is about 120 feet from the first curb cut to KY 20 and there is approximately 90 to 100 feet between the curb cuts.

Mr. Burns commented on a serious fire involving propane tanks and Mr. Boguki advised that there will be no propane on the site.

There being no further discussion, the Chairman advised that this item will be on the Agenda for the Business Meeting on June 7, 1989 at 8 P.M. and closed this Public Hearing.

APPROVED:


William R. Viox, Chairman

Attest:


Jan Hancock, Recording Secretary

BOONE COUNTY PLANNING COMMISSION

BUSINESS MEETING

June 21, 1989

8:00 P.M.

Mr. Fred Burch, Vice Chairman, called the meeting to order at 8:05 P.M..

COMMISSION MEMBERS PRESENT:

Mr. Fred Burch, Vice Chairman
Mrs. Rita Bushelman
Mr. Phil Damstrom
Mr. Melvin DeLong
Mr. R. N. Greene
Mr. Rector Jones
Mr. Don McMillian
Mr. Charles Moore
Mr. Barry Neltner
Mr. Ralph Rush
Mr. Floyd Sharp
Mrs. Carol Smith

COMMISSION MEMBERS NOT PRESENT:

Mr. Larry Barnett
Mr. Lawrence Collins
Mr. William Viox, Chairman

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

Mr. Burch noted that each member had received a copy of the Minutes of the Public Hearings and the Business Meeting of June 7, 1989 and asked if there were any comments or corrections.

There being no changes to the Minutes, Mr. McMillian moved that they be approved as mailed. Mr. Jones seconded the motion and it carried unanimously.

REPORTS:

Mr. Gerald Newton, Director, read the report from the Zoning Enforcement Committee Meeting of June 12, 1989 as submitted by Mr. Collins. A copy of the report is available in the Staff Office.

Mr. Burch noted that the Zoning Enforcement Officer's Report, the Building Inspector's Report, and the Statement of Income for the Period Ended May 31, 1989 had been distributed for the Commission members to review.

There being no discussion of the reports, Mr. Burch proceeded to the items on the Agenda:

BUSINESS MEETING AGENDA

UNFINISHED BUSINESS:

1. Zoning Map Amendment

The request of Zollars, Inc. (applicant) for a Zoning Map Amendment for Dr. Howard Ravenscraft (owner) to allow an Auto Rental Center. The request is to rezone the property from Suburban Residential One (SR-1) to Commercial Services (C-3). The 1.6-acre site is located at KY 20 and Riverview Drive, Boone County, Kentucky.

Mr. Gerald Newton, Director, read the Committee Report which recommended approval of the request based on the findings of fact, but subject to conditions (see Committee Report). He stated that Mr. Larry Dunavant had signed the letter agreeing to the conditions in behalf of the applicant.

Mr. Burch asked if there was anyone present who wished to comment in regard to this request.

Mr. Robert Burns, an adjacent property owner, stated that there are restrictive covenants on the property. The judge had stated that the property would be permanently residential. He questioned how the Commission could change the zoning of property that by law is to be permanently residential.

Counselor Wilson advised that deed restrictions are independent of zoning regulations and the Commission has no authority in regard to the deed restrictions. A decision in regard to the deed restrictions could be made in another forum.

Mr. Begucki, attorney, agreed with Counselor Wilson's comments.

In response to questions from Mr. Jones and Mrs. Bushelman regarding the airport's position, Mr. Newton stated that he had heard from the residents and had read in the newspapers that the airport has offered a purchase assurance program. The airport has not identified this as an area they will acquire, but in the event that the residents cannot sell their homes, the airport will buy them, insulate them, and put them back on the market.

Mr. McMillian moved that the request be approved based on the Committee Report, including the findings of fact and the conditions. Mr. Neltner seconded the motion.

Mr. Burch asked for a roll call vote on the motion which found Mr. Burch, Mr. Damstrom, Mr. McMillian, Mr. Neltner, Mr. Rush, and Mrs. Smith in favor. Mrs. Bushelman, Mr. DeLong, Mr. Greene, Mr. Jones, and Mr. Sharp were opposed. Mr. Moore abstained. The motion carried 6-5-1.

2. Annexation Request by the City of Walton

The request of the City of Walton (applicant) to determine the impact of annexation upon the current zoning of Agricultural Estate (A-2) on a 28-acre tract owned by Gilbert and Janice Turner located off Percival Road and Church Street, Boone County, Kentucky.

Mr. Gerald Newton, Director, read the Committee Report which recommended that the current zoning of Agricultural Estate (A-2) not be changed based on the findings of fact (see Committee Report).

There being no one present for the City of Walton, Mr. Burch asked if the property owner wished to comment.

Mr. Turner questioned the Conditional Use Permit process which Mr. Newton explained for him.

Mr. Gary Edmondson, attorney for the Messers and other neighbors, stated that they support the Committee Report and that the Board of Adjustment is the appropriate place to consider the proposed use of the site.

Mr. McMillian moved that the Committee Report be approved. Mr. DeLong seconded the motion and it carried unanimously.

3. Utilization of an Underlying Zone in Planned Development

The request of GBBN (applicant) for Buchanan Development Corporation and Newport Steel Corp. (owners) for the Utilization of an Underlying Zone in Planned Development on a 101-acre site located south of Houston Road, north of I-75 and east of Woodspoint Drive, Florence, Kentucky. The site is currently zoned Office Two/Commercial Two/Planned Development (O-2/C-2/PD).

Mr. Gerald Newton, Director, read the Committee Report which recommended deferral of the request until the July 5, 1989 Business Meeting (see Committee Report).

Mr. Jones moved that the request be deferred until the July 5, 1989 Business Meeting based on the Committee Report. Mr. Neltner seconded the motion and it carried unanimously.

EXHIBIT "C"

COMMITTEE REPORT

#1

TO: Boone County Planning Commission

FROM: Carol Smith, Chairwoman

DATE: June 21, 1989

RE: Request of Zollars, Inc. (applicant) for a Zoning Map Amendment for Dr. Howard Ravenscraft (owner) to allow an Auto Rental Center. The request is to rezone the property from Suburban Residential ~~One~~ (SR-1) to Commercial Services (C-3). The 1.6 acre site is located at KY 20 and Riverview Drive, Boone County, Kentucky.

REMARKS:

We, the Committee, recommend approval of the request based upon the following Findings of Fact and with the following conditions.

FINDINGS OF FACT

1. Although the 1986 Future Land Use Map indicates Medium Density Residential for the site, the text of the Boone County Comprehensive Plan supports commercial usage of the site. Specifically, the Business Activity Element and its Goals and Objectives recommend that commercial uses be developed at strategic locations relative to their trade areas. This element also specifically notes additional commercial growth around the I-275 airport interchange, primarily airport and highway-related uses clustered along KY 20. Specific references to the Boone County Comprehensive Plan are made in the May 24, 1989 Staff Report.
2. The existing zoning of Suburban Residential One (SR-1) is inappropriate on this site because of the combination of forecasted airport-related noise impacts, KY 20 vehicular traffic, and the visual impact of adjacent parking and rental facilities that make the site, in the Committee's opinion undesirable for low or medium density residential usage. The proposed zoning of Commercial Services (C-3) is appropriate to reflect the overall airport-related commercial usage of this portion of KY 20 and can, if properly designed, provide a land use transition into the existing residential subdivision on Riverview Drive. The Committee believes that even though the site lies outside the updated 1990 projected 65 LDN noise contours for the airport, the site will be affected not only by single-event noise, but will continue to be impacted visually by adjacent airport-related commercial activities and associated traffic.

CONDITIONS

The applicant is being asked to agree to include these items as part of the Concept Development Plan in order to clarify the plan presented at the May 24, 1989 Public Hearing. Further, these conditions are intended to clarify the suitable uses and development for the presented plan.

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1. No access to the development shall occur from Riverview Drive.
2. Access from KY 20 shall be consolidated into one curb cut. This curb cut shall be located directly across from an existing cut on the opposite side of KY 20. The exact design and location of this access point shall be determined at Site Plan Review.
3. The north property line shall contain a 25 foot buffer yard including an upgrading of the existing berm and pine tree plantings. The eastern border of the site, along Riverview Drive, shall be screened with mixed deciduous shrubs and pine trees. All chain link fence shall be black plastic-coated to minimize its visual impact. The location of fencing along Riverview Drive shall be moved approximately 10 feet away from the right-of-way to allow sufficient space for the plantings outside the fence. The fence along the north property line shall be located on top of the berm to allow space for plantings between the fence and adjacent residence.
4. At Site Plan Review, a detailed lighting plan shall be submitted that shows light intensities throughout the site as well as around the perimeter. Lights shall not glare on adjacent residential areas or onto streets.
5. A detailed landscaping plan for the site entrance area shall be submitted at Site Plan Review.

Carol Smith
Carol Smith, Committee Chairwoman

Larry Barnett

Fred Burch
Fred Burch

Phil Damstrom

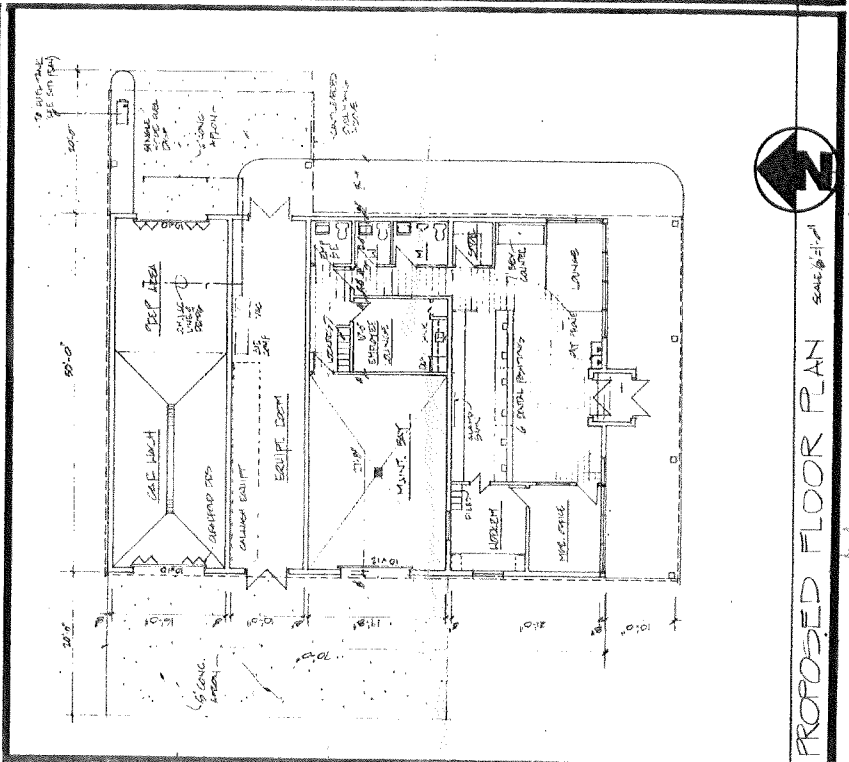
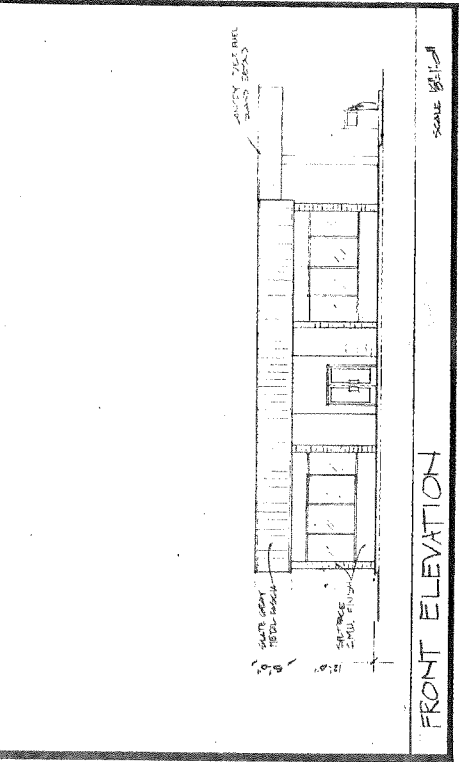
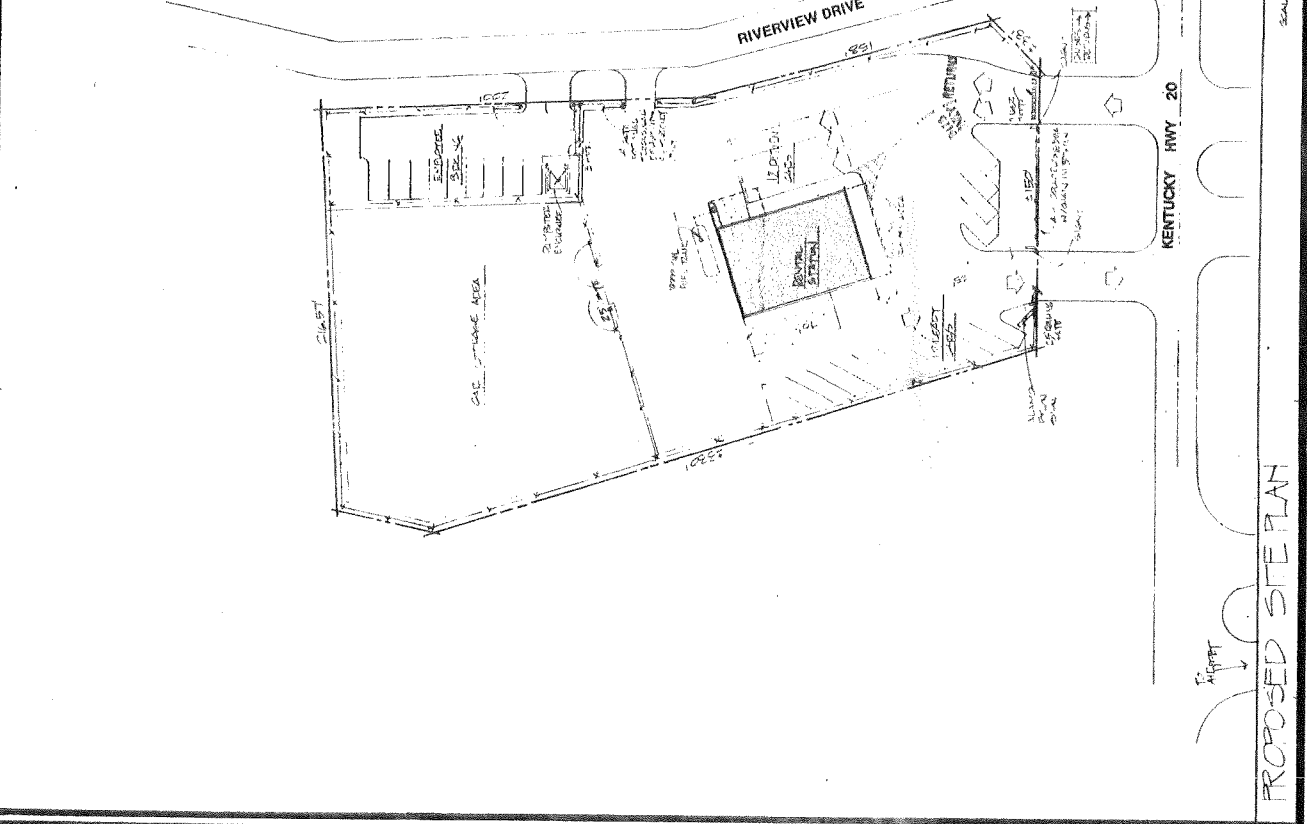
Rector Jones

Barry Neftner
Barry Neftner

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REVISIONS

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ORDINANCE 920.184

THE BOONE COUNTY FISCAL COURT AT ITS MEETING TO BE HELD TUESDAY, NOVEMBER 21, 1989, AT 5:30 P.M., THIRD FLOOR COURTROOM, ADMINISTRATION BLDG., BURLINGTON, KY., WILL GIVE SECOND READING AND ADOPTION CONSIDERATION TO THE FOLLOWING ORDINANCE.

AN ORDINANCE OF THE BOONE COUNTY FISCAL COURT FOR A ZONING MAP AMENDMENT TO THE BOONE COUNTY, KY ZONING MAP, AMENDMENT BEING A ZONE CHANGE FROM SUBURBAN RESIDENTIAL ONE (SR-1) TO COMMERCIAL SERVICES (C-3) FOR A 1.6 ACRE SITE GENERALLY LOCATED AT KY 20 AND RIVERVIEW DRIVE BOONE COUNTY, KY AS REQUESTED BY ZOLLARS, INC. (APPLICANT) FOR DR. HOWARD RAVENSCRAFT (OWNER).

I HEREBY CERTIFY THAT THE ABOVE SUMMARY OF SAID ORDINANCE HAS BEEN WRITTEN IN SUCH A MANNER AS TO INFORM THE PUBLIC OF THE CONTEXT FO SAME. A COPY OF SAID ORDINANCE IS ON FILE IN THE OFFICE OF THE COUNTY JUDGE-EXECUTIVE AND MAY BE REVIEWED BETWEEN THE HOURS OF 8:00 A.M. AND 5:00 P.M., MONDAY THROUGH FRIDAY, AT THE ADMINISTRATION BLDG., SECOND FLOOR, BURLINGTON, KY.

CAROLYN RUDICILL
COURT CLERK

BRUCE FERGUSON
JUDGE-EXECUTIVE

Boone Co. Recorder 11-1-89

FILED

AUG 4 1982

MABEL BLNSON
CLERK BOONE CIRCUIT COURT
BY KH D.C.

BOONE CIRCUIT COURT

LEE SCHAFSTALL, ET AL

PLAINTIFFS

VS.

OPINION AND JUDGMENT

NO. 79-CI-344

1979
CASE

HOWARD L. RAVENSCRAFT, ET AL

DEFENDANTS

UPHELD
RIVERVIEW EST.
Res ZONING

* * * * *

This is an action by certain owners of residential property in Riverview Estates Subdivision for a permanent injunction to prohibit the subdivision developer from using any lots in the subdivision for business purposes, or for any other purpose except residential.

Defendants herein are Riverview Estate, Inc., developer of the subdivision, and Howard L. and Joyce Ravenscraft, husband and wife, who own all of the stock in the corporation. The corporation owns all of the remaining unsold lots in the subdivision.

This action was precipitated by defendants' attempt to have certain unimproved lots within the subdivision rezoned for business use.

The subdivision was originally platted January 26, 1962, by plat recorded in the Boone County Clerk's Office. The plat contains no restrictions on its face.

Since 1962, many of the lots have been sold, all in an unimproved state. A good many, but not all, of the deeds of conveyance executed by the developer contained the following language:

"The above real estate is subject to the following restrictions which shall run with the land:.....4. No business of any kind shall be conducted on any of the above lots".

At the present time, all improved lots in the subdivision are being used for single family residential purposes, except as hereinafter noted.

Despite the contrary testimony of defendant, Howard L. Ravenscraft, the Court finds that until very recently it was the intention of the developer to restrict the use of all lots in the subdivision to residential purposes. Furthermore, many of the purchasers of lots relied upon the deed restriction hereinbefore quoted. Other purchasers, whose deeds contained no written restrictions, relied upon the developer's oral representation that all lots in the subdivision were to be used exclusively for residential purposes.

The access road to Riverview Estates is Kentucky Highway 20, which runs generally in an East/West direction. When the original subdivision plat was recorded in 1962, Ky. 20 was located about 300 feet south of the subdivision. About 1974, Ky. 20 was relocated, and it now intersects the subdivision.

In order to relocate Ky. 20, the Highway Department acquired title to the following lots in the subdivision: most of Lot 1; most of Lot 2; a small part of Lots 3 and 85; all of Lot 86; more than half of Lot 87, and a small tip of Lot 88. After the taking by the Highway Department, all of the remaining lots in the subdivision lie North of Ky. 20, except the remaining parts of Lots 87 and 88 which are on the South side of Ky. 20.

Since the relocation of the highway, the developer has sold the remaining parts of Lots 87 and 88, and these lots are now being used as commercial parking lots. The remaining lots on the North side of Ky. 20 continue to be used for residential purposes only.

The residents of the subdivision have not objected to the use of Lots 87 and 88 for commercial purposes because the highway, as relocated, forms a barrier between the commercial activities on Lots 87 and 88 and the remainder of the subdivision.

Defendants introduced a wealth of evidence to show that the area adjacent to the subdivision has changed in character from residential to commercial. This change, which is clearly established by the proof, has been primarily brought about by the construction of Interstate Highway 275 and the relocation of certain access roads to Greater Cincinnati Airport, which is located a short distance from the subdivision in question.

The Court concludes that in spite of the change from residential to commercial in the character of the area adjacent to the subdivision, and despite the fact that two lots in the subdivision are now used for commercial purposes, the residential character of all of the remaining lots in the subdivision continues unchanged and should be protected.

The facts in this case are similar to the facts in Robbins V. Cornell, Ky., 311 S.W. 2d 543 (1958), wherein the Court of Appeals held that even though property owners were estopped from opposing commercial uses of lots on one street in a subdivision, they were not estopped from opposing commercial use of a lot on another street in the subdivision, where the second street retained its residential character.

Other cases relied on by the Court are: Franklin V. Moots, Ky. 273 S.W. 2d 812 (1954); Cochran V. Long, Ky. 294 S.W. 2d 503 (1956); and Smith V. Tygrett, Ky., 302 S.W. 2d 604 (1956).

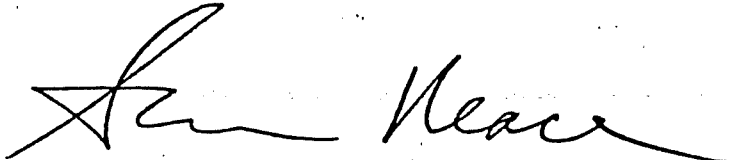
On the first day of hearings in this case, defendant's motion to consolidate this action with Civil Case No. 81-CI-338 was sustained. The latter case is an action by the defendants herein against the Boone County Fiscal Court to compel the Fiscal Court to rezone certain lots within Riverview Estates from residential to commercial. In view of the judgment to be entered in the case at hand, all of the issues in the latter case have become moot and are not decided by the trial court.

JUDGMENT

IT IS ORDERED AND ADJUDGED BY THE COURT that the defendants, Riverview Estates, Inc., and Howard L. and Joyce Ravenscraft, be and they are hereby permanently enjoined from the use of any and all lots within Riverview Estates Subdivision, except Lots 87 and 88, for business purposes, or for any purpose other than residential use; costs are assessed against the defendants.

The Boone Circuit Clerk shall serve notice of entry hereof pursuant to CR 12.06.

Dated this 4th day of August, 1982.



JUDGE, BOONE CIRCUIT COURT

Copies to: Hon. Robert E. Ruberg
Hon. Howell W. Vincent

NOTICE

All parties will take notice that this order was entered in office of The Boone Circuit Court Clerk on the 4th day of August, 1982

MABEL BENSON
BOONE CIRCUIT COURT
Kindred, W. Va. D.C.

CERTIFICATE

I, Mabel Benson, Clerk of The Boone Circuit Court, hereby certify that I have mailed a copy the foregoing order and notice to all parties hereto at their last known addresses or to their counsel of record this 4th day of August, 1982

MABEL BENSON
BOONE CIRCUIT COURT
Kindred, W. Va. D.C.

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Commonwealth Of Kentucky

Court Of Appeals

NO. 83-CA-184-MR

*appeal
up held
Lower Courts
FINDINGS*

HOWARD L. RAVENSCRAFT AND JOYCE ANN
RAVENSCRAFT; RIVERVIEW ESTATES, INC.,
A Kentucky Corporation

APPELLANTS

v.

APPEAL FROM BOONE CIRCUIT COURT
HONORABLE SAM NEACE, JUDGE
ACTION NOS. 79-CI-344 & 81 CI-3386

LEE SCHAFSTALL AND BETTY SCHAFSTALL;
ROBERT BYRNS AND MARY BYRNS; JAMES W.
SWEENEY AND JANIS SWEENEY; CHARLES
KARLOSKY AND RITA KARLOSKY; EUGENE
FIGHTMASTER AND LORRAINE FIGHTMASTER;
and MARIAN PEDICONE

APPELLEES

AFFIRMING

* * * * *

BEFORE: WHITE, GUDGEL and LESTER, Judges.

WHITE, JUDGE. This appeal is from a Boone Circuit Court
determination by which a permanent injunction was issued to
preclude lots within Riverview Estates Subdivision from any
but residential use.

Concisely presented the facts are as follows. Kentucky Highway 20 was rerouted to encroach upon certain lots of the Subdivision. The land below the new highway was rezoned commercial without objection, and similar changes were sought for a 1.6-acre tract and a one-acre tract north of the road. These lots sit west and east, respectively, of the intersection of Kentucky 20 and Riverview Drive.

In September 1979, the Boone County Planning and Zoning Commission voted in favor of the switch for the 1.6-acre tract. Its recommendation was then passed to the Boone County Fiscal Court. In April 1981, the Planning Commission also reported its belief in the commercial suitability of the one-acre section.

In May 1981, the Fiscal Court, with three members and the County Judge-Executive as chairman present, considered the matter. Upon a 2-1 vote (the Judge-Executive's abstaining) the issue was approved. Subsequent to that, at the same meeting, upon motion the matter was reconsidered. This time it was rejected 2-1.

Thereupon appellants filed a complaint, asserting the arbitrariness and illegality of the Fiscal Court's action and asking that it be declared void. At trial this was consolidated with a declaration of rights action previously filed by appellees in which acknowledgement of certain alleged deed restrictions on the lots was sought. After a full hearing the permanent injunction was entered.

Appellants' first issue challenges the lower court's

determination that there was an intent to limit the full subdivision tract to residential use. Rieger v. Wessel, Ky., 319 S.W.2d 855, 858 (1958), puts forth the rule that "intention to impose a general plan of development on a subdivision must be determined as of the time the subdivision was platted and lots were first sold therein."

Conflicting testimony was heard on the issue of intent. Appellants relied on the recorded plat, which carried no restrictions, and the testimony of Dr. Ravenscraft, who disavowed any intent to restrict the entire tract. Larry Dunavant, an architect, attempted to support this position; however, it is to be noted that he was not associated with the project "as of the time the subdivision was platted and lots were first sold therein."

Appellees offered several deeds from within the subdivision which did carry specific use restrictions and presented landowners who stated that they had relied upon the developer's oral representations that the property would be for residential use only.

As pointed out by First Security National Bank & Trust Company of Lexington v. Peter, Ky., 456 S.W.2d 46 (1970), the issue is one of fact. Having weighed the evidence, the lower court found that "until very recently it was the intention of the developer to restrict the use of all lots in the subdivision to residential purposes," i.e., the intent had existed from the start.

The Court's Opinion continued by suggesting that this

change of intent had been brought about by other commercial uses in the area. Nevertheless, Robbins v. Cornell, Ky., 311 S.W.2d 543 (1958), was referred to in support of the position that despite certain changes in adjacent property, the residential character of the subdivision should be maintained and protected. Although appellants argued otherwise, the change was found not so great as to offset the benefits of maintaining the use restriction. Franklin v. Moats, Ky., 273 S.W.2d 812 (1954).

Having reviewed the record and the evidence therein, we can find no error in the lower court's findings or conclusions on the question of negative reciprocal restrictions.

Appellants also urge that the Fiscal Court's action in reversing its own zoning vote was arbitrary. Although this was an issue before the lower court through the consolidation of appellants' and appellees' actions below, no ruling was made thereon. Specifically, the Opinion of the Circuit Court stated, ". . . all of the issues in the latter case [re: the Fiscal Court] have become moot and are not decided by the trial court." Issues not resolved below are not appropriate for appellate review. CR 52.02.

For all the aforementioned reasoning the Opinion and Judgment of the Boone Circuit Court is affirmed.

ALL CONCUR.

ATTORNEYS FOR APPELLANTS:

Michael J. McMain
30 Shelby Street
Florence, Kentucky 41042

Howell W. Vincent
130 Park Place
P. O. Box 2010
Covington, Kentucky 41012

ATTORNEYS FOR APPELLEES:

Robert E. Ruberg
Gary J. Sergent
O'Hara, Ruberg & Taylor
209 Thomas More Park
Suite C
P. O. Box 17411
Covington, Kentucky 41017

Larry J. Crigler
County Attorney

Elizabeth M. Blincoe
Assistant County Attorney
1 East Washington Street
P. O. Box 114
Burlington, Kentucky 41005