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RECEIVE

REVIEW NO. _____

APPLICATION FORM

**CHANGE IN CONCEPT DEVELOPMENT PLAN
OR
THE UTILIZATION OF AN UNDERLYING ZONE IN PLANNED DEVELOPMENT**

BOONE COUNTY PLANNING COMMISSION
(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

1. Check one:

- ~~XXXXXXXX~~ Concept Dev. Plan
- Utilization of an Underlying Zone in Planned Development

- 2. Name of Development Richwood Farms
- 3. Location of Development Eab Drive
- 4. Total Acreage of Site 21 +/-
- 5. Current Zoning EPD
- 6. Date of Zone Change or Approved Concept Development Plan (if applicable) _____
- 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) General Retail

- 9. Name of Applicant(s) North American Properties
Phone Number(s) (513) 721-2744

- 10. Address of Applicant(s) 212 East Third Street, Suite 300
Cincinnati, Ohio 45202
City State Zip

- 11. Name of Property Owner(s) Thomas Bischoff
Phone Number(s) (606) 485-4702

- 12. Address of Property Owner(s) 1120 Paddock Drive
Walton, Kentucky 41094
City State Zip

- 13. Proposed Building Intensities (please specify) NA

- 14. Are there any existing buildings on the site? yes
How many? 5

- 15. Deed Book 254 Page No. 295 Group No. _____

- 16. Have you had a pre-application meeting with BCPC staff? yes

(COMPLETE OTHER SIDE OF APPLICATION)

EXHIBIT "A"

STAFF REPORT

NOVEMBER 18, 1992

REQUEST OF BOONE COUNTY FISCAL COURT TO CONSIDER REZONING AN APPROXIMATELY 30 ACRE SITE OWNED BY TOM BISCHOFF AND LOCATED ON THE NORTH SIDE OF RICHWOOD ROAD AND EAST OF PADDOCK DRIVE, BOONE COUNTY, KENTUCKY. THE REQUEST IS TO CONSIDER A ZONING MAP AMENDMENT FROM EMPLOYMENT PLANNED DEVELOPMENT (EPD) TO SUBURBAN RESIDENTIAL ONE (SR-1).

This is a request by the Boone County Fiscal Court to reconsider the zoning of the property owned by Thomas Bischoff and located on the north side of Richwood Road and east side of Paddock Drive, Boone County Kentucky. The request is to consider a Zoning Map Amendment from Employment Planned Development (EPD) to Suburban Residential One (SR-1).

Site History

On November 20, 1991 the Boone County Planning Commission approved the Zoning Map Amendment as part of a Zoning Map Update of the Boone County Zoning Regulations to change the zoning of Mr. Bischoff's property from SR-1 to EPD. The Boone County Fiscal Court adopted the Zoning Map Update on January 20, 1992. On January 30, 1992 they asked the Boone County Planning Commission to reconsider the Bischoff property zoning of EPD to revert back to SR-1.

The Comprehensive Planning Committee then reexamined the intent of the Employment Planned Development district. The committee felt that applying those requirements in the proper manner will insure that all land uses, both on and in the vicinity of the Bischoff property, will be compatible, transportation systems will be efficient and new and innovative designs for land utilization and building layout will be realized. The Committee felt that because the land use element of the Comprehensive Plan indicates commercial usage for that location, EPD could allow a transition from commercial to residential. With sufficient buffering and the uses held to office, research or light service for commercial and light fabrication applications, the Committee felt that EPD is the ideal zoning classification.

On December 2, 1992 a concept development plan will be presented which shows commercial development for the 22 acres of EPD.

Site Characteristics

The site contains rolling topography which generally slopes down to Richwood Road and a large lake which is located on the site. There are many areas with steep slopes located primarily around the lake and the southeast corner of the site. The highest elevation on this site is 907 feet which is located near the horse barn along the northern property line, while the lowest point is 863 feet which is located at the driveway into the site. The elevation at Mr. Bischoff's horse barn is 901 feet. This elevation then drops 27 feet to 874 feet at the intersection of Paddock Drive and Stirrup Lane.

The northern property line has a continuous row of dense vegetation consisting of bushes and shrubs approximately 6-10 feet in height following an existing fence row. This vegetation is located on a earthen mound approximately 10 feet in height which currently screens the houses located on Stirrup Lane from the Bischoff's property. Sewer and water services are available from Richwood Road and Paddock Drive.

Surrounding Land Uses and Zoning

North	Heritage Trials Subdivision which contains single-family detached houses and is zoned Suburban Residential One (SR-1).
South	Commercial uses consisting of fast food restaurants, gas stations and a liquor store. This area is zoned Commercial Four (C-4) and Commercial Three (C-3).
East	Commercial uses consisting of Day's Inn and Red Carpet Inn and a large portion of vacant undeveloped land. The zoning is Commercial Four (C-4) and Commercial Three (C-3).
West	Paddock Drive which has vacant frontage of approximately 500 feet on either side until one enters into Heritage Trials Subdivision which has single-family houses on the west side of Paddock Drive. This area is zoned Suburban Residential One (SR-1). Approximately 160 feet from the intersection of Richwood Road and Paddock Drive is Triple Crown Subdivision which is zoned Suburban Residential Two (SR-2).

Relationship to Comprehensive Plan

The approximately 22 acre site is depicted on the 1990 Future Land Use Map as Commercial. The surrounding land uses where shown as Commercial to the north and south around the KY 338/I-75 Interchange and Suburban Density where Heritage Trials and Triple Crown Subdivisions are currently located.

The Future Land Use Text notes the commercial development around the interchange is expected to remain and expand to serve local residents, in addition to highway-related services. It states that commercial developments should be adequately screened from residential areas and should serve the developing residential uses in the Richwood-Union area.

The Goals and Objectives section of the Comprehensive Plan indicate that commercial uses shall be encouraged, whenever practical to occur in the form of shopping centers or other compact aggregations having an integrated design.

Staff Concerns

- 1) Development on this site should be sensitive to the site features and characteristics and the surrounding residential areas. Also, any development should provide substantial buffering between adjoining residential and other uses.
- 2) The highway commercial uses surrounding the 22 acre site to the south and east are not ideal for a single-family residential use because of the heavy amount of traffic and noise associated with highway-related services.
- 3) The Employment Planned Development District was established to allow an applicant the opportunity to design and construct a planned development, which ties more closely with all of the Elements of the Boone County Comprehensive Plan and encourages cluster development where convenience is the result of different uses locating next to each other.
- 4) The Zoning Map Amendment is not in agreement with the adopted comprehensive plan.

Conclusion

The Planning Commission at the request of the Fiscal Court has been asked to reconsider the zoning of the property previously approved for EPD to revert back to SR-1. Should the request be approved, the Future Land Use Map and Zoning Map would need to be revised.

Respectfully Submitted,



Jeffrey F. Hayes
Planner I

JFH:par



KENNETH R. LUCAS
County Judge-Executive
(606) 334-2240

LARRY J. CRIGLER
County Attorney
(606) 586-9950

IRENE PATRICK
Commissioner
District 1

SHIRLEY MEIHAUS
Commissioner
District 2

DONALD A. DAVIS
Commissioner
District 3

OFFICES OF THE FISCAL COURT

P.O. Box 900
Burlington, KY 41005
FAX (606) 334-3105

November 3, 1992

The Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005

Attention: Mr. William Fromm
Director

Re: Public Hearing
November 18th
Bischoff Property

Dear Mr. Fromm:

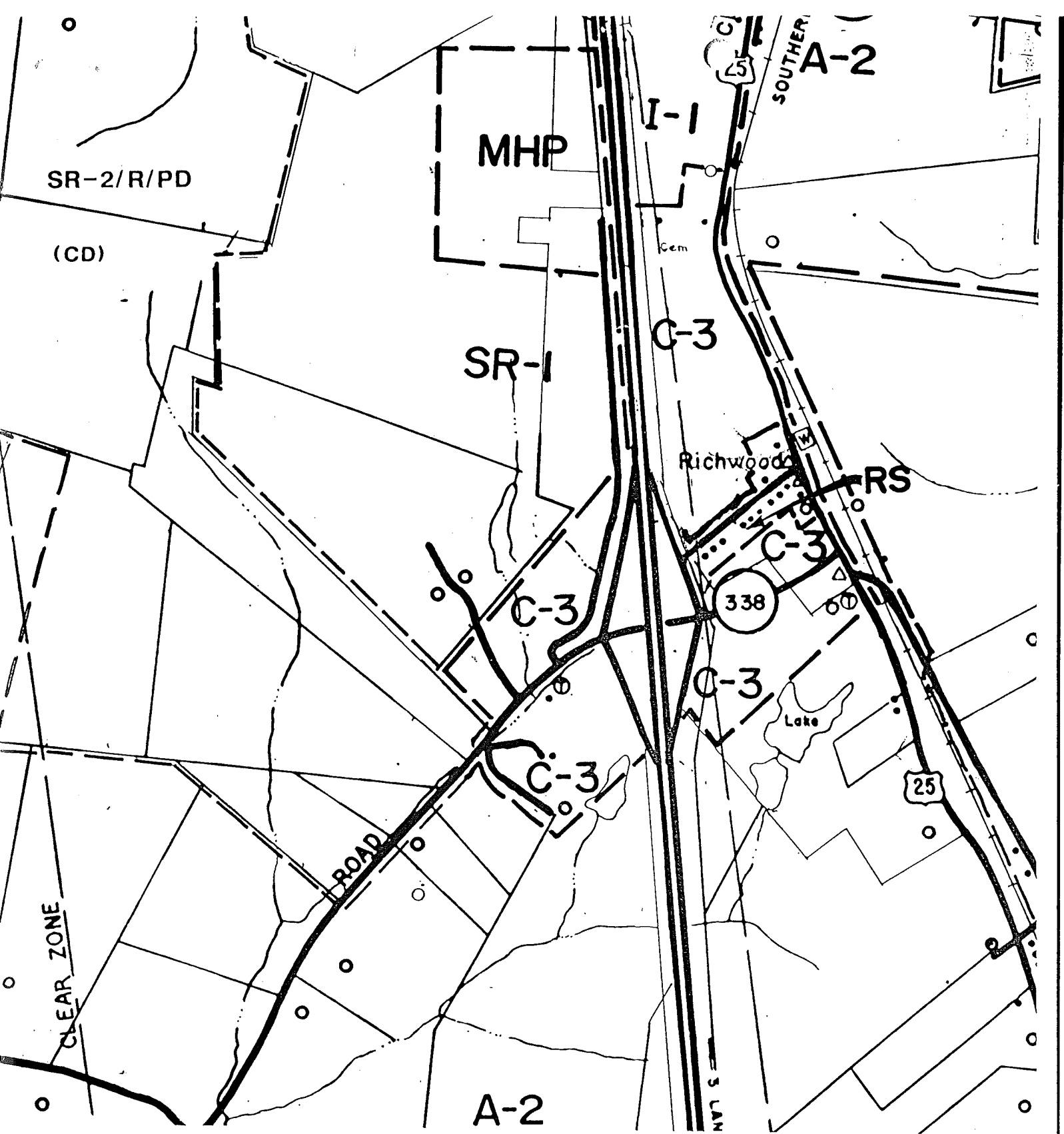
We regret that we cannot attend the Public Hearing scheduled for November 18, 1992, regarding the Bischoff Property at Richwood, Kentucky. The Kentucky Association of Counties is meeting at the same time and we will be out of town. We feel the Public Hearing is important and would like to be present, however, due to this conflict we cannot.

Therefore, we would respectfully request this letter to be entered as part of the minutes of the Public Hearing.

Sincerely,

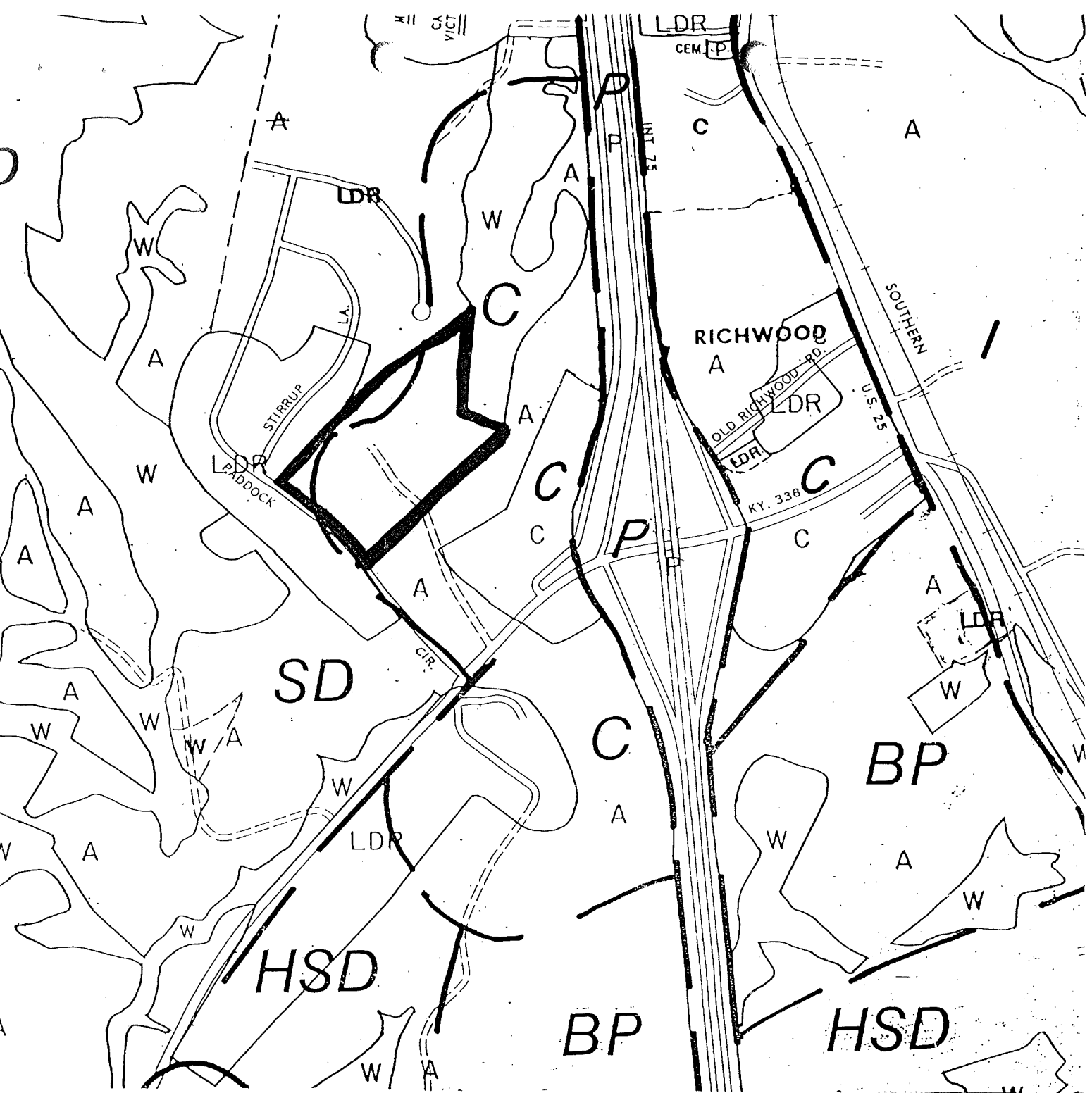
Donald A. Davis
Commissioner

Shirley Meihaus
Commissioner



1986 ZONING MAP

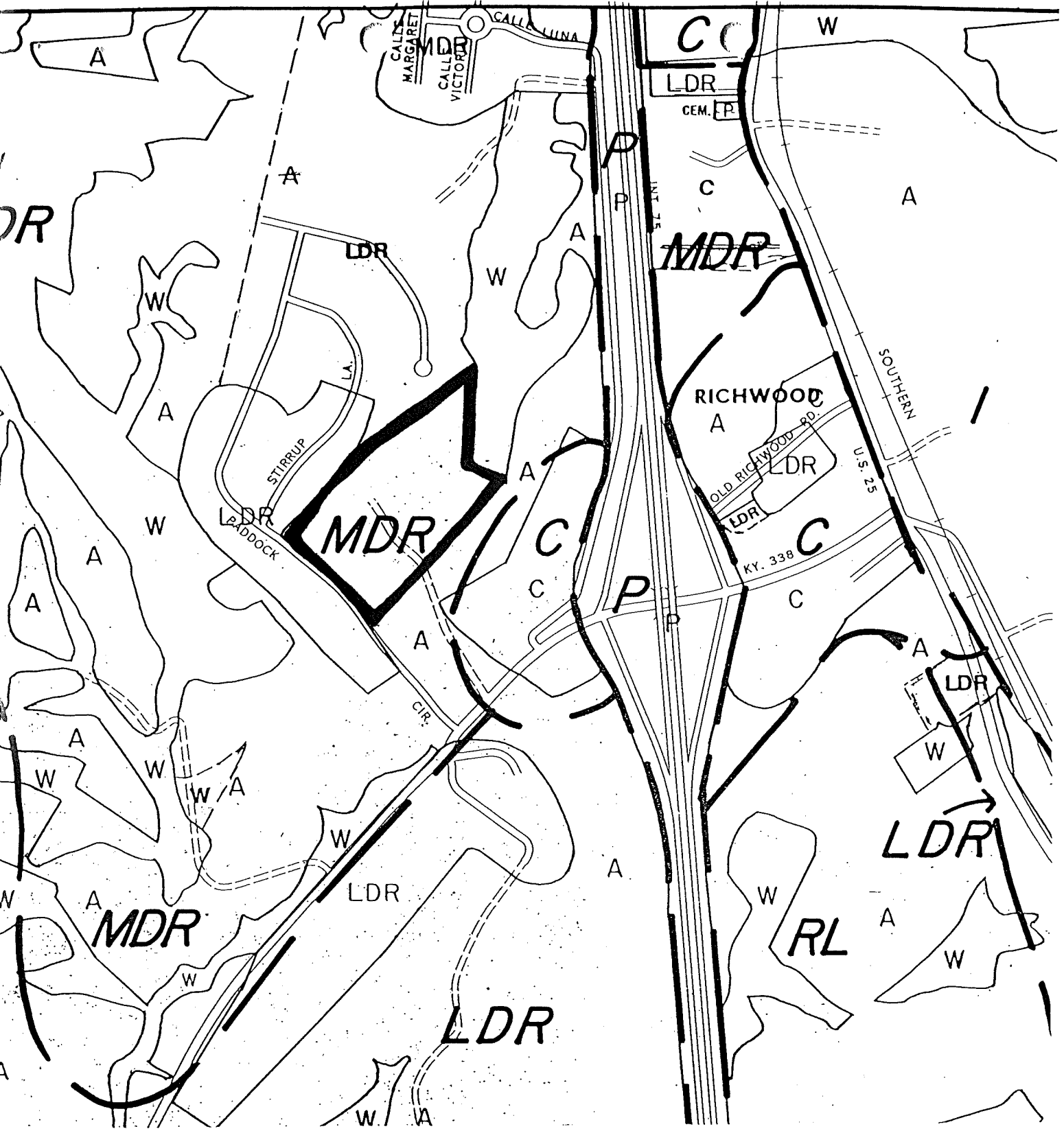




1990 LAND USE MAP

— SITE





1986 LAND USE MAP

— SITE



Following the recess, Mr. Neltner called the meeting back to order at 9:10 P.M. and introduced the second item on the Agenda:

2. The request of the Boone County Fiscal Court to consider rezoning an approximate 22-acre site owned by Tom Bischoff and located on the north side of Richwood Road, east of Paddock Drive, Boone County, Kentucky. The request is to consider a Zoning Map Amendment from Employment Planned Development (EPD) to Suburban Residential One (SR-1).

Mr. Neltner read a letter from the Fiscal Court dated November 3, 1992, addressed to Mr. William Fromm, Director, signed by Commissioner Donald A. Davis and Commissioner Shirley Meihaus, indicating that they are unable to attend the Public Hearing this evening. (See EXHIBIT A, 11/18/92). He noted that Commissioner Irene Patrick was present.

Staff Member Jeff Hayes presented the Staff Report which included a slide presentation (see Staff Report).

Mr. Neltner stated that forms had been filled out by some of those present indicating that they wished to speak. He stated that he would call on those people first who had submitted forms, beginning with Mr. Robert Porter.

Mr. Robert Porter, 12679 Hutton Drive, Richwood, Kentucky, stated that he has been a builder/developer in the area since 1976. When they started developing two-acre estate-type lots, there was opposition from the farmers and larger land owners. Later on, the people who were against them said the development was decent and turned out nice. There was opposition when they developed Bedinger's Landing and people said they were destroying the habitat. He stated that in any area where there is change, there is opposition. He stated that since he owns property next to the subject property and his property is zoned commercial, this gains him no benefit. The less commercial property there is in Richwood, the more valuable his property will be. If the site is changed from EPD to residential, it aids the encroachment of commercial development down Richwood Road. He indicated the boundaries of Richwood to be from Dixie Highway to Beaver Road and from U.S. 25 to U.S. 42. In this area there will be hundreds of thousands of homes in the future and there will then be a need for a significant number of commercial acres to provide services to support the development. The closer to the service road and expressway that commercial development can be kept, the better off the area is. He believes that the amount of commercially zoned property in the Five-Year Plan in Richwood is short and more will be needed. The developers want the western side of the expressway to have quality commercial development. There is an opportunity to have a Montgomery or Blue Ash type area in Richwood. If the subject site is zoned back to residential, the pressures for commercial development in the future will be horrendous. People will be leaving Richwood when there are no services. He stated that when water and sewer came to Richwood, the dye was cast that development would follow. The Richwood area is going to grow unbelievably and, if there is

not enough commercial land, it will thwart the growth. There are hundreds of people living there with not enough services.

John Ellison, 11080 Paddock Drive, stated that they are opposed to any use of the property for anything other than single-family residences comparable to those in Heritage Trails. The negatives would be decreased home values, increased trash and crime, and it would be an eyesore. He stated that there was a unanimous home owners meeting last night for SR-1 zoning. They bought into Heritage Trails for quality of life and country living. They do not mind driving 3 to 5 miles for groceries and conveniences. He stated that the developers will see the light of day and build on the east when they see that there is no need to cram the commercial in with nice residences. The Commission and Fiscal Court have an obligation to serve the majority of the citizens, not the few that plan to benefit at the expense of 92+ home owners in Heritage Trails. He asked that the Commission reject anything other than SR-1 zoning for the property. Mr. Ellison stated that he was speaking as a home owner and member of the association, but not as a spokesperson for the Home Owners Association.

Patty Wolff, 10988 Appaloosa Drive, agreed with Mr. Ellison. She stated that homes on Paddock Drive at higher elevation would look down on the development. There is no berm tall enough to buffer those homes. There is significant traffic in the area and any big commercial development would cause a gridlock at the interchange.

Donald Veraff, 1114 Stirrup Lane, (corner of Stirrup and Paddock), stated that he is at the lowest elevation in Heritage Trails. A number of his neighbors look down into the subject property. He stated that the perspective of the slides shown was deceiving. He moved to Northern Kentucky from California by choice and picked Richwood for the rural setting. He was looking to get away from commercial development in his back yard.

Mr. Gerry Dusing, attorney, stated that he is a resident of Florence and owns two properties in Richwood, but he is representing Tom Bischoff, the property owner, at this time. Mr. Dusing stated that the land owner questions this procedure. He stated that he understands that this is being done in response to a request from the Fiscal Court, but does not know if it is by formal application. It is not a zone change procedure as we generally know it. When it is a legislative body that requests a zone change procedure, it is to accommodate a particular development that is not part of a Five-Year Plan. He stated that no single-family development is proposed for this property. He questioned why 22 acres of EPD is being requested to be looked at by the Fiscal Court to be rezoned for single-family development, when there is other EPD in the vicinity and this property is insignificant in comparison to the 300 acres of EPD across the street and on the east side of I-75. They do not know why they were singled out.

Mr. Dusing stated that the majority of the people in this area are not opposed to this type of development on this property. The people who are opposed to it are the people in the subdivision adjacent to it, but this does not represent the will of Richwood. Mr. Dusing stated that the

notice for this Public Hearing is accurate, but the letter that went out with it says that the Planning Commission makes a recommendation based on findings of fact collected at the Public Hearing and the applicant's presentation. There is no "applicant's presentation" and they do not know what to rebut. There is no applicant present.

Mr. Dusing stated that a change has to be based on land use impacts and has to be in accord with the three criteria of Article 3 of the Zoning Regulations. He stated that "land use impacts" are everything that has to do with the merits and demerits, pros and cons, of the land use of this tract. There have been many hearings, Public Hearings, committee meetings, comments both written and oral with regard to the Comprehensive Plan Land Use Update -- which was put in place after a comprehensive procedure. The land use impacts have been presented and detailed, subjected to Public Hearings and public comments, and "beaten to death". The result of the studies and analyses over the twenty months is the Comprehensive Plan map and text calling for commercial development of this tract and neighboring tracts, across the street and adjacent. The Comprehensive Plan specifically addressed the I-75/Richwood Road interchange.

Mr. Dusing stated that the three tests for a zone change in Article 3 are the same three tests verbatim that state law adopts in Chapter 100. He reviewed the three tests: (1) Is the zone change request in agreement with the Comprehensive Plan? He replied "no, it could not be other than EPD -- Employment District uses that generate employment and single-family residential". (2) Have there been any major changes of a social, demographic, or topographic nature, i.e., infrastructure and population type things, that have occurred since the Comprehensive Plan was adopted. He replied "hardly" and noted that the Comprehensive Plan was just adopted in late 1991. (3) Is the existing zoning inappropriate and the requested zoning appropriate? He stated that the existing zoning could not be inappropriate and the requested zoning appropriate unless there was a mistake in the process, which is not true unless you want to ignore twenty months of what we have been through on the Comprehensive Plan. He stated that he did not think the procedure was flawed, so you cannot say the existing zoning is inappropriate. Mr. Dusing stated that the map of the Comprehensive Plan dictates commercial for the Bischoff property. They were frustrated with the Land Use Plan map adopted by the Fiscal Court to overlay on the map. The Comprehensive Plan map is the ideal use and public policy as to what they want to see happen on the property. The text of the Comprehensive Plan was a twenty-month process. He stated that this information is on Page 224 of the Comprehensive Plan adopted in 1991. It is a 12-part Plan that looks not only at land use, but also at population trends, locations, environmental concerns, integrating development with existing development, traffic, etc.. Taking them into consideration, what does the Comprehensive Plan say for this quadrant that contains the Bischoff property? It says "commercial uses in the northeast quadrant". Mr. Dusing stated that the Comprehensive Plan says commercial development northwest of the intersection will expand along the interstate and this expansion can occur with the improvement and extension of Eve Drive or realignment and reconstruction of the frontage road, which is what is happening. The Plan also says the area to the north (which is where the Bischoff property is located) and south of the mobile home park

should develop as commercial use; commercial development along Richwood Road should be screened from the roadway and serve the developing residential uses in the Richwood/Union area. He stated that that is why commercial is appropriate for the Bischoff property. Mr. Dusing questioned how, taking politics out of it, anybody can propose that single-family residential development occur on this 22-acre stub of property behind McDonald's, Chevron, a liquor store, the Waffle House, truck stops and motels on I-75 and Richwood Road, which is an arterial street. He stated that the next developed intersection south where the population has the highest residential demand is the vicinity to support the commercial services. The arguments why EPD should not exist next to single-family residential apply to why single-family residential should not exist next to the highway commercial uses he enumerated. The site is inappropriate for single-family residential development with the projected commercial development along its boundary.

Mr. Dusing stated that the zoning is passed. It is not what they wanted. They wanted commercial, but got EPD. There are no allowable uses under EPD. He stated that the Fiscal Court indicated in response to some residents -- not 92 residents -- that they wanted this revisited. He stated that the Planning Commission staff again restudied the property and discussed it. He does know that the Planning Commission communicated with the Fiscal Court and the conclusion was "EDP is the ideal zoning classification for the Bischoff property". He stated that nothing has changed since June, but they are back here with another procedure. From a professional planning/Comprehensive Plan point of view, this property has always been earmarked for commercial development and has been concluded through the process for EPD type uses. He thinks the process is politicized, but does not think the Planning Commission had any part of it. The process is a political reaction to the abutting neighbors and it is an emotional issue. There are baseless assertions that property values will decrease. Baseless observations are being made about the type of development and the screening, which will be addressed on December 2. For over two years there has been reaffirmation after reaffirmation that EPD is the proper zone. When zoning occurred for the first time in 1964, the Bischoff property was earmarked for B-6/PD, which was "all business uses". It has had a commercial type use zone since the beginning of zoning in Boone county. Mr. Dusing stated that residential development in the Richwood area has grown steadily since the early 1970's and through the 1980's, and this type of zoning was in place and called for "business associated with interstate highway traffic, regional sales area, and heavy traffic volumes, sales services -- accommodations catering to the needs of highway travelers, retail sales areas, etc. He stated that this was also what was originally envisioned for the Bischoff property as residential development was occurring in the Richwood area. In 1979, after Heritage Trails was being developed, the whole corridor was zoned PD. Mr. Dusing submitted the official zoning map for 1977 and 1979 as part of the record. He stated that all of the Bischoff property that had not been developed in Heritage Trails was earmarked for Planned Development for commercial uses. He questioned what has changed. He stated that there is single-family development in Heritage Trails. While Heritage Trails was developing, Mr. Bischoff presented a commercial development. There has been significant extra expense in developing the Highway Commercial uses on the frontage of Mr. Bischoff's property to accommodate future commercial development on

the subject property. In the mid 1960's, the Bischoff property was one of the two finalists for Northern Kentucky University, which would have included all of the accessory uses that a major university would require. He questioned what changed. Mr. Dusing stated that in September, 1980 in *Creative Display, Inc. vs. Florence*, the Supreme Court of Kentucky threw out all zoning in the county. The Planning Commission and Fiscal Court were responsive in trying to rectify the situation and a plan was thrown together in the 1980's by KZF to meet short deadlines to get a planning scheme back on the books so that no one could build a plant next to a home since no zoning existed. In those days, property owners did not get notice of a zone change on their property.

Mr. Dusing stated that after twenty years of being earmarked for commercial development, the Bischoff property was rezoned to C-3, MHP (Mobile Home Park), and SR-1 without regard to any property lines. When Mr. Bischoff found out about this and questioned it in 1985 or 1986, he had no specific development plans for the back -- which was not required, but strongly encouraged -- and the response from the Director was "they are not going to change anything -- there is no water and no sewer -- when the infrastructure comes, that is the time to get it rectified". He stated that when Triple Crown and Duro Bag provided the infrastructure, Mr. Bischoff got in tune with the zoning process. Mr. Bischoff's property was never a controversial topic in the Comprehensive Plan process. He stated that Mr. Bischoff's property was zoned by this Commission and the Fiscal Court in the Comprehensive Plan as being earmarked for commercial. There was controversy with adjoining property, but not with the Bischoff property. Then, all of a sudden, the Bischoff property was earmarked for EPD -- a new form of commercial zoning that is not quite commercial. He stated that to rezone the property SR-1 would be wrong, illegal, and a travesty not based on a single planning principle.

Mr. Dusing stated that the Comprehensive Plan text forecasts Richwood Road and Chambers Road to experience one of the largest population increases in Boone County. Commercial services are in dire need in the Richwood area. It is not everyone's preference to drive 3 or 5 miles for basic neighborhood services like the EPD zone accommodates. It exacerbates the traffic problems. The scheme of the zoning plan is that Commercial is going to happen -- keep it up against the interstate with adequate screening and berming, and keep it from getting strung all the way up and down Richwood Road and Chambers Road.

Mr. Dusing stated that they think the Bischoff property is a sacrificial lamb because adjoining property owners have concerns, but there is no factual basis for those fears. It is a fear of change. He stated that this is true in the comments that were presented from this subdivision in the Land Use Plan process -- they wanted the property to be a CO Zone, a wildlife preserve. They wanted no development. He stated that if this property is zoned single-family residential, it will never develop because of the Highway Commercial in front and the need for a transitional zone. He stated that the people want the property to stay a horse farm and single-family residential will cause no development on the property. The property is not going to stay a horse farm.

Mr. Bill Woodruff, a resident of Appaloosa Drive in Heritage Trails, stated that they followed the process. The Plan worked and the Commission made its recommendations, but that was only one step in the process. The next step is to go to the Fiscal Court. Evidence was presented and the Fiscal Court came to a recommendation that they did not feel that the zoning of EDP was necessary. The Fiscal Court adopted the Plan but made an exception. Mr. Woodruff asked to introduce a video tape as evidence (the tape was not able to be played and Mr. Woodruff stated that he would present a summary of what is on the tape). He also submitted the Minutes of the Fiscal Court meeting of January 21, 1992 (see EXHIBIT B, 11/18/92). He stated that there are discrepancies in the minutes of the Fiscal Court Meeting of January 21, 1992. He noted that the minutes say the Public Hearing closed at 8:20 P.M., but it did not close until later. He quoted from the minutes noting that on Page 6 the minutes say "The motion died for lack of a second.", which was not true. He stated that the meeting went into disarray because of the threat of a lawsuit. The Fiscal Court did not know how to handle the threat of the lawsuit. He stated that there were errors in the minutes. He noted that three of the four members of the Fiscal Court said this property should be SR-1 throughout the Public Hearing process.

Mr. Woodruff submitted a petition with 123 signatures (see EXHIBIT C, 11/18/92). The caption on the petition reads, "We, the under-signed are opposed to the "EPD" zoning and commercial development of the "Bischoff Farm Property". (338 - behind McDonald's)". He noted that the addresses of the people that signed are not all in Heritage Trails. Mr. Woodruff stated that the slides show the perspective of standing on the farm and he submitted a copy of an aerial photograph as evidence of another perspective. The aerial view is southeast to northeast across the Bischoff property. He noted that there is some buffering from the highway. He reviewed the aerial photograph noting the roadways in the area. He asked that the Commission look at how the subdivision is laid out and stated that the subdivisions are separated by a farm. The farm could be developed residentially. He stated that there is no view of the commercial uses down the road from his house. The Bischoff property is ideal for housing and even has a lake front. The negative is that there are a couple of high-rise signs. He indicated the lake and stated that there are several acres tied up in the water. They do not yet know if the lake can be drained and developed, but there is not enough remaining land for the minimum developable area of 20 acres in EPD. He referred to Article 16 in this regard. He stated that what Mr. Dusing said was right, but applied to the wrong property. The Comprehensive Plan does not talk about the Bischoff parcel. The property the Comprehensive Plan refers to is already zoned C-4 and there is buffer. The argument against EPD is that it infringes on the property value, but there are also safety concerns with the traffic and school busses. He stated that there is property across the road zoned EPD and plenty on the east side of the interstate. They do not want EPD within a few hundred feet of their backyards.

Mr. Mike Shouns, 11121 Paddock Drive, indicated areas of commercial development on the map. He stated that they have two truck stops, McDonald's, Wendy's, Waffle House, a hotel, Averitt Express which is a

trucking company, and the flea market. They cannot get off the freeway on Tuesday or Saturday without getting run over by trucks. He cannot understand how a two-lane road can absorb this development. He indicated where more commercial development is planned. He stated that the homes on Paddock Drive will lose value if they are looking down on a parking lot or a store. His property will decline in value. His neighbors will hear the noise, have the trash and truck traffic, and there will be more truck traffic coming off the freeway.

Jenni Woodruff, 11012 Appaloosa Drive in Heritage Trails, submitted a copy of the map she used in her presentation. She reviewed the topography and the properties in the area. She stated that the orange color indicates existing commercial properties. The area is saturated now and the traffic is horrendous. It is a two-lane road with four truck stops on it. Community services are needed but should be somewhere to lessen the impact. The elevation on the EPD section is 865 feet at its lowest point and on the other side it is 865 to 897 feet. On Stirrup Lane, the residences are 75 feet from the property line and the elevation goes to 885 feet. On Appaloosa they look down on the property and see the lake, which is a beautiful view. She indicated elevation of 900+ feet on her street. She stated that currently all of the water runoff drains into the lake. The water could continue across the Bischoff property and onto Richwood Road. In order to avoid a problem on KY 338, they will have to grade the property down and she questioned what the elevation of the property would then be in relation to the property surrounding it. She questioned Mr. Fromm if findings of fact are required to substantiate zone changes and if new studies were required to substantiate the EPD Zone.

Mr. Fromm advised that the process went on for twenty months and there were many studies made throughout the county.

Ms. Woodruff asked if there were traffic studies. Mr. Fromm replied "not specifically". Counselor Wilson explained that this rezoning was part of the Comprehensive Plan process and the studies that were done were part of that process.

Ms. Woodruff asked if the Fiscal Court directed Planning & Zoning to reconsider this property and made a recommendation that it go back to SR-1. She asked who has the burden of proof to substantiate the change to SR-1 and if there are findings of fact that need to be presented.

Counselor Wilson advised that there have to be findings of fact if the property is rezoned SR-1 as it is not part of the Comprehensive Plan Update. Those findings are to be specific.

Ms. Woodruff questioned what the process is for accepting applications and considerations of Concept Development Plans if the zoning issue on this property is not resolved. She noted that there is a date set for a hearing on a Concept Development Plan. She questioned how the Commission can look at the Concept Development Plan without knowing the outcome of the zoning issue.

Counselor Wilson advised that the Fiscal Court asked the Planning Commission to conduct a hearing and that is what is being done. He

explained that the Commission has a duty to accept any application that comes before it and cannot refuse to accept someone's application. He stated that he believes the Commission can objectively go about its duties.

Ms. Woodruff stated, "You can accept and look at the Concept Development Plan because of the current zoning.". Counselor Wilson responded "yes".

Ms. Woodruff presented pictures from the Post, October 21, 1992, of the Richwood church where they have been holding meetings. She stated that it is peaceful and tranquil, which is the reason she moved there. She stated that services are needed but should be done with preservation in mind. She quoted from Article 16 of the Comprehensive Plan and stated that the zoning should not be EPD because of the adverse impacts on the immediately adjacent residential area. She asked that the Commission consider SR-1 zoning.

Beverly Woods, 11065 Stirrup Lane, had no comments.

Charles Woods, 11065 Stirrup Lane, noted Mr. Dusing's comments about a 20-month study of the EPD property. Mr. Woods stated that the map was modified during the 20-month period and the SR-1 area was changed to EPD about six months before the hearing. The six months would allow less time for negative input. He reviewed the history of the land in Heritage Trails. He stated that in 1978 there was a declaration of restrictions with regard to what was community property, which included riding trail easements (see EXHIBIT D, 11/18/92). He indicated one of the easements on the Bischoff side of the road and stated that at that time (1978) the property belonged to Paddock developers. In 1979 Mr. Bischoff bought back a 1,534-foot strip of property between the road and the fence line, but received the property with certain restrictions. He read the deed restrictions on the property. He stated that when Heritage Trails became a subdivision there were certain common properties and when Berling sold the property, they all had a vested interest in the community properties. The Home Owners Association of Heritage Trails has maintained the Bischoff property and they have an interest in the bridle path. His interest in the bridle path would be destroyed by the EPD. Mr. Woods stated that Mr. Berling sold the property because if he ever changed the use from a horse farm, it would be to single-family residences and Mr. Bischoff accepted the property with those restrictions. He stated that the easement is on the plat.

Mr. Larry Brizbilski, a resident of Stirrup Lane, questioned what professional planning principles allowed the mish/mash of garbage now on a strip of land several hundred feet from an interstate. He stated that a truck stop was allowed to be rebuilt outside the entrance to a subdivision. He is concerned about the safety of his family. He stated that in 1988 this was scenic, high-priced property -- but if you take away the lake and the scenic view, you lose the value. He indicated how the trucks cause traffic to back up on the expressway. Trucks do not go fast when getting off the expressway and that causes a problem. He questioned who is responsible when someone gets killed there.

Jon Whitney, 11201 Paddock Road, disagreed with Mr. Dusing's comments. He stated that when the Fiscal Court voted on the Comprehensive Plan, Mr. Dusing came across with a good bluff and that is why they are here. He stated that a compromise is to minimize the impact the uses have on each other and the way to do that is to minimize the area where they adjoin. He indicated the existing houses on a drawing and stated that when they were built, the Comprehensive Plan said that most of the commercial development should be on the other side of I-75. He indicated the existing commercial uses in the area. Mr. Whitney stated that they are working on "something like a Kroger store" for the Bischoff property. There will then be a group of houses surrounded by commercial, which is not good planning. He referred to Page 224 of the Comprehensive Plan in regard to the Richwood area noting that "commercial areas need to be buffered from the existing residential area". He suggested that the Staff's slide presentation may not have shown the whole picture or the different elevations in the area. He stated that a 50' or 60' buffer is not practical. He noted that everyone moved into the area knowing that there was no grocery store or bakery there.

Mr. Whitney stated that Mr. Bischoff has said he is considering a Kroger super store and there was a traffic consultant at the church meeting who said there would be approximately 8,000 additional cars per day in the area off of Richardson Road. He indicated how traffic getting off the southbound exit of the expressway backs up, and part of this problem is caused by the small commercial establishments each having their own access onto Richwood Road. Richwood Road is a state highway and a traffic light would back up the traffic at the exit even more. If the commission approves the EPD zoning, some one will be killed at the exit.

Daniel Hallforth, 11076 Stirrup Lane, lives directly behind the Bischoff farm. He urged the Commission to change the zoning to SR-1. The Bischoff property is beautiful and was zoned SR-1 in 1987 when he moved there. He does not believe a buffer zone can be built to eliminate the view from his home.

Don Udy had no comments.

Jeff Dearlinger, 11045 Appaloosa Drive, stated that his property is 25' to 30' above the Bischoff property. A 12-foot berm would not protect his driveway. He sees no way the property can be effectively buffered. The Bischoff property is surrounded by residences. It is a buffer zone for the residences. He questioned protecting property values if there is a Kroger super store on the property. The leading real estate agent in Northern Kentucky suggested that they list their property below its value because of the zoning issue.

Tammy Squires, 11045 Appaloosa Drive, asked that the Bischoff property go back to SR-1 or similar zoning. She stated that EPD is improper zoning for the property because of (1) property values -- they have had their home for sale and no one has looked at it because of the zoning issue; (2) insufficient infrastructure -- the infrastructure does not accommodate existing development; (3) crime increase and drug dealing -- she fears for the safety of her son; and (4) lighting from commercial development will illuminate the skies and night time as they know it will not exist. Ms.

Squires questioned (1) is Planning & Zoning ignoring KRS law which requires development of private property in the most appropriate relationships and how does the Commission view Heritage Trails and the Bischoff property as EPD being an appropriate relationship? (2) Have the guidelines of EPD in Article 16 been ignored to accommodate the wants of one against the needs of many? (3) What studies were done to substantiate a 20-acre minimum for EPD zoning when Article 16 states that zoning encourages the use of open space with any development?

Antonio Zappa, a resident of Appaloosa Drive, stated that if the property is developed SR-1, there is a buffer. He stated that there would not be 20-acres of developable land if they keep the wetlands. He suggested that the minimum requirement for development be changed to 50 acres. He questioned if the property qualifies for EPD.

Mr. Tim Gruber, 11110 Stirrup Lane, is opposed to any commercial development on the west side of I-75. His commercial needs are satisfied in Walton, Union, or Florence.

Cindy Morris, Vice President of Bedinger's Landing Home Owners Association, stated that almost everyone is opposed and agrees that the commercial should be on the east side of the interstate. There should be purely residential west of the interstate and possibly some of the zoning should be changed. She stated that it is nothing to drive ten minutes to go to Florence to shop.

John Ellison stated that at \$30,000 per lot, the Bischoff property could make \$1.2 million as SR-1. He will be first to buy a lake front lot.

Ms. Squires asked that her questions be answered. Counselor Wilson advised that they are part of the record and the Committee will look at them and, if there is a response, that would be the time for it.

Don Berretts asked the Commission members to drive to Heritage Trails and look at the lay of the land.

There being no further comments from the audience, Mr. Neltner asked if there were any comments from the Commission.

Mr. Ries advised that he believes the Staff did the best they could with the slides. He advised that the Commissioners are familiar with the property.

Mr. Neltner asked if there were any further comments from the audience or the Commission.

Gloria Reker, 11211 Paddock Drive, stated that we should go back to what Shirley Meihaus said at the Fiscal Court. She stated that Mrs. Meihaus thought that twenty acres was too small and suggested a minimum of 50 acres. Mrs. Reker stated that she can hear people ordering at McDonald's from her house. She questioned how a piece of property in the middle of a subdivision can be commercialized. She stated that the Bischoff property is right across the street from her house and it is part of the

subdivision. It is in the center of the subdivision, not in the outlying area.

Sandra Slusher, 11037 Appaloosa, stated that people will drive right up in their subdivision to get to this commercial. She is one house away from the Bischoff property. If the developer knew the property had always been designated as commercial, then he was going to build a house (in the subdivision) next to a commercial property with no buffer zone.

Mr. Larry Brizbilski noted that none of the area residents had spoken favorably.

Mr. Dusing stated that they will address the specifics of the development on December 2. He questioned if the meeting to get a recommendation to Fiscal Court would be after December 2 so that they can both go at the same time. He stated that if there is a Public Hearing on December 2 on the pending application and it goes to a Business Meeting, it would seem to make sense to have both recommendations dealt with at the same meeting so that they go to Fiscal Court at the same time. Mr. Fromm agreed. Counselor Wilson stated that after the Public Hearing on December 2, both recommendations will go to the Fiscal Court at the same time.

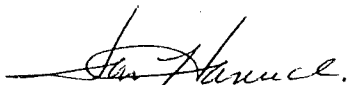
There being no further comments or questions, Mr. Neltner closed this Public Hearing at 11:30 P.M..

APPROVED:



Barry Neltner,
Temporary Presiding Officer

Attest:



Jan Hancock, Recording Secretary

BOONE COUNTY PLANNING COMMISSION
BUSINESS MEETING

January 6, 1993 - 8:00 P.M.

Mr. William Viox, Chairman, called the meeting to order at 8:10 P.M..

COMMISSION MEMBERS PRESENT:

Mrs. Judy Arnett
Mr. Fred Burch, Vice Chairman
Mr. Phil Damstrom
Mr. Melvin DeLong
Mr. R. N. Greene
Mr. Robert Kirby, Jr.*
Mr. Gayle McElroy
Mr. Don McMillian
Mr. Thurman Owens
Mr. Robert Ries
Mr. Ralph Rush
Mrs. Carol Smith
Mr. William Viox, Chairman

*arrived during Agenda Item #1

COMMISSION MEMBERS NOT PRESENT:

Mr. William Bailey
Mr. Barry Neltner

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

Chairman Viox advised that Mrs. Smith has been reappointed to the Commission, and Mrs. Judy Arnett has been appointed as a new member of the Commission. Mrs. Arnett was sworn in by Counselor Wilson prior to the meeting.

Site Plan. Therefore, the Commission would still have an opportunity to make sure that the use fits into the existing situation. However, since there would not be a Public Hearing, the Commission would not have the opportunity to make them contribute to some things. If the intent is that the land be zoned industrial, why not go ahead and do it?

There being no further comments, Mr. Burch asked for a vote on the motion made by Mr. Owens with the change indicated by Mr. Damstrom. The vote found Mr. Burch, Mr. Damstrom, Mr. Greene, Mr. McElroy, Mr. McMillian, Mr. Owens, Mr. Rush and Mrs. Smith in favor. Mr. DeLong, Mr. Kirby, and Mr. Ries were opposed. Mrs. Arnett abstained. Chairman Viox did not participate and did not vote. The motion carried by a vote of 8 to 3 with one abstention.

Chairman Viox chaired the meeting at this time.

2. Zoning Map Amendment

The request of Boone County Fiscal Court to consider rezoning an approximate 22-acre site owned by Tom Bischoff and located on the north side of Richwood Road and east of Paddock Drive, Boone County, Kentucky. The request is to consider a zoning Map Amendment from Employment Planned Development (EPD) to Suburban Residential One (SR-1).

Mr. Damstrom, Committee Chairman, read the Committee Report which recommended that the zoning continue as EPD (see Committee Report).

Mr. Kirby moved by resolution to the Boone County Fiscal Court that the Committee Report be adopted. Mrs. Smith seconded the motion.

Mr. Ries stated that he was concerned that this property was ever zoned EPD. He is also concerned about the proper notification that the people were given in regard to this change. He stated that it was obvious by the large crowd of people that attended that when they were notified of the change to the commercial property, there was a large outcry against it. Some of the people were notified of the change to EPD about two days before the Public Hearing. He is concerned about the people who bought homes knowing that the property bordering them was zoned SR-1. He stated that the area is congested now and is at the point now that the State of Kentucky should evaluate the intersection. He recommended that the zoning go back to SR-1.

There being no further comments, Chairman Viox asked for a vote on the motion made by Mr. Kirby which found Mr. Burch, Mr. Damstrom, Mr. Greene, Mr. Kirby, Mr. McElroy, Mr. McMillian, Mr. Owens, Mr. Rush, Mrs. Smith, and Chairman Viox in favor. Mr. DeLong and Mr. Ries were opposed. Mrs. Arnett abstained. The motion carried by a vote of 10 to 2 with one abstention.

EXHIBIT "B"

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Phil Damstrom, Chairman

DATE: January 6, 1993

RE: Request of **Boone County Fiscal Court** to consider rezoning an approximately 22 acre site owned by **Tom Bischoff** and located on the north side of Richwood Road and east of Paddock Drive, Boone County, Kentucky. The request is to consider a zoning Map Amendment from Employment Planned Development (EPD) to Suburban Residential One (SR-1).

REMARKS:

At the request of the Boone County Fiscal Court, we have reconsidered the zoning for the property owned by Thomas Bischoff. After reviewing all testimony and information that was presented at the November 18, 1992 Public Hearing and all previous information from the Comprehensive Plan Committee for the 1991 Zoning Update, it remains the recommendation of the Committee that the zoning continue as Employment Planned Development (EPD).

The Committee believes that the use of the EPD in sensitive areas can mean even more control than using the standard approach in permissive categories because of the required Public Hearing process. In addition, the EPD zone is more stringent as to open space, infrastructure, buffering and other requirements.


Therefore, the Committee feels that because the land use element of the Comprehensive Plan indicates commercial usage for this location, EPD would allow a transition from commercial to residential. With sufficient buffering and selective uses we feel that this EPD zoning for this property is the ideal zoning classification.

Findings of Fact

1. The current zoning of EPD conforms with the Boone County Comprehensive Plan in that the 1990 Future Land Use Map indicates commercial to the north and south around the interchange and Suburban Density where Heritage Trails and Triple Crown Subdivisions are currently located.

2. The Future Land Use Text notes the commercial development around the interchange is expected to remain and expand to serve local residents, in addition to highway related services. It states that commercial developments should be adequately screened from residential areas and should serve the developing residential uses in the Richwood-Union area.

3. The Goals and Objectives section of the Comprehensive Plan indicates that commercial uses shall be encouraged, whenever practical to occur in the form of shopping centers or other compact aggregations having an integrated design.

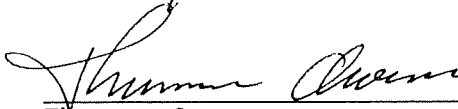


Phil Damstrom, Chairman

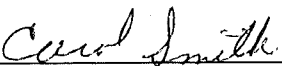


Fred Burch

Barry Neltner



Thurman Owens



Carol Smith

:par

Following the recess, Mr. Neltner called the meeting back to order at 9:10 P.M. and introduced the second item on the Agenda:

2. The request of the Boone County Fiscal Court to consider rezoning an approximate 22-acre site owned by Tom Bischoff and located on the north side of Richwood Road, east of Paddock Drive, Boone County, Kentucky. The request is to consider a Zoning Map Amendment from Employment Planned Development (EPD) to Suburban Residential One (SR-1).

Mr. Neltner read a letter from the Fiscal Court dated November 3, 1992, addressed to Mr. William Fromm, Director, signed by Commissioner Donald A. Davis and Commissioner Shirley Meihaus, indicating that they are unable to attend the Public Hearing this evening. (See EXHIBIT A, 11/18/92). He noted that Commissioner Irene Patrick was present.

Staff Member Jeff Hayes presented the Staff Report which included a slide presentation (see Staff Report).

Mr. Neltner stated that forms had been filled out by some of those present indicating that they wished to speak. He stated that he would call on those people first who had submitted forms, beginning with Mr. Robert Porter.

Mr. Robert Porter, 12679 Hutton Drive, Richwood, Kentucky, stated that he has been a builder/developer in the area since 1976. When they started developing two-acre estate-type lots, there was opposition from the farmers and larger land owners. Later on, the people who were against them said the development was decent and turned out nice. There was opposition when they developed Bedinger's Landing and people said they were destroying the habitat. He stated that in any area where there is change, there is opposition. He stated that since he owns property next to the subject property and his property is zoned commercial, this gains him no benefit. The less commercial property there is in Richwood, the more valuable his property will be. If the site is changed from EPD to residential, it aids the encroachment of commercial development down Richwood Road. He indicated the boundaries of Richwood to be from Dixie Highway to Beaver Road and from U.S. 25 to U.S. 42. In this area there will be hundreds of thousands of homes in the future and there will then be a need for a significant number of commercial acres to provide services to support the development. The closer to the service road and expressway that commercial development can be kept, the better off the area is. He believes that the amount of commercially zoned property in the Five-Year Plan in Richwood is short and more will be needed. The developers want the western side of the expressway to have quality commercial development. There is an opportunity to have a Montgomery or Blue Ash type area in Richwood. If the subject site is zoned back to residential, the pressures for commercial development in the future will be horrendous. People will be leaving Richwood when there are no services. He stated that when water and sewer came to Richwood, the dye was cast that development would follow. The Richwood area is going to grow unbelievably and, if there is

not enough commercial land, it will thwart the growth. There are hundreds of people living there with not enough services.

John Ellison, 11080 Paddock Drive, stated that they are opposed to any use of the property for anything other than single-family residences comparable to those in Heritage Trails. The negatives would be decreased home values, increased trash and crime, and it would be an eyesore. He stated that there was a unanimous home owners meeting last night for SR-1 zoning. They bought into Heritage Trails for quality of life and country living. They do not mind driving 3 to 5 miles for groceries and conveniences. He stated that the developers will see the light of day and build on the east when they see that there is no need to cram the commercial in with nice residences. The Commission and Fiscal Court have an obligation to serve the majority of the citizens, not the few that plan to benefit at the expense of 92+ home owners in Heritage Trails. He asked that the Commission reject anything other than SR-1 zoning for the property. Mr. Ellison stated that he was speaking as a home owner and member of the association, but not as a spokesperson for the Home Owners Association.

Patty Wolff, 10988 Appaloosa Drive, agreed with Mr. Ellison. She stated that homes on Paddock Drive at higher elevation would look down on the development. There is no berm tall enough to buffer those homes. There is significant traffic in the area and any big commercial development would cause a gridlock at the interchange.

Donald Veraff, 1114 Stirrup Lane, (corner of Stirrup and Paddock), stated that he is at the lowest elevation in Heritage Trails. A number of his neighbors look down into the subject property. He stated that the perspective of the slides shown was deceiving. He moved to Northern Kentucky from California by choice and picked Richwood for the rural setting. He was looking to get away from commercial development in his back yard.

Mr. Gerry Dusing, attorney, stated that he is a resident of Florence and owns two properties in Richwood, but he is representing Tom Bischoff, the property owner, at this time. Mr. Dusing stated that the land owner questions this procedure. He stated that he understands that this is being done in response to a request from the Fiscal Court, but does not know if it is by formal application. It is not a zone change procedure as we generally know it. When it is a legislative body that requests a zone change procedure, it is to accommodate a particular development that is not part of a Five-Year Plan. He stated that no single-family development is proposed for this property. He questioned why 22 acres of EPD is being requested to be looked at by the Fiscal Court to be rezoned for single-family development, when there is other EPD in the vicinity and this property is insignificant in comparison to the 300 acres of EPD across the street and on the east side of I-75. They do not know why they were singled out.

Mr. Dusing stated that the majority of the people in this area are not opposed to this type of development on this property. The people who are opposed to it are the people in the subdivision adjacent to it, but this does not represent the will of Richwood. Mr. Dusing stated that the

notice for this Public Hearing is accurate, but the letter that went out with it says that the Planning Commission makes a recommendation based on findings of fact collected at the Public Hearing and the applicant's presentation. There is no "applicant's presentation" and they do not know what to rebut. There is no applicant present.

Mr. Dusing stated that a change has to be based on land use impacts and has to be in accord with the three criteria of Article 3 of the Zoning Regulations. He stated that "land use impacts" are everything that has to do with the merits and demerits, pros and cons, of the land use of this tract. There have been many hearings, Public Hearings, committee meetings, comments both written and oral with regard to the Comprehensive Plan Land Use Update -- which was put in place after a comprehensive procedure. The land use impacts have been presented and detailed, subjected to Public Hearings and public comments, and "beaten to death". The result of the studies and analyses over the twenty months is the Comprehensive Plan map and text calling for commercial development of this tract and neighboring tracts, across the street and adjacent. The Comprehensive Plan specifically addressed the I-75/Richwood Road interchange.

Mr. Dusing stated that the three tests for a zone change in Article 3 are the same three tests verbatim that state law adopts in Chapter 100. He reviewed the three tests: (1) Is the zone change request in agreement with the Comprehensive Plan? He replied "no, it could not be other than EPD -- Employment District uses that generate employment and single-family residential". (2) Have there been any major changes of a social, demographic, or topographic nature, i.e., infrastructure and population type things, that have occurred since the Comprehensive Plan was adopted. He replied "hardly" and noted that the Comprehensive Plan was just adopted in late 1991. (3) Is the existing zoning inappropriate and the requested zoning appropriate? He stated that the existing zoning could not be inappropriate and the requested zoning appropriate unless there was a mistake in the process, which is not true unless you want to ignore twenty months of what we have been through on the Comprehensive Plan. He stated that he did not think the procedure was flawed, so you cannot say the existing zoning is inappropriate. Mr. Dusing stated that the map of the Comprehensive Plan dictates commercial for the Bischoff property. They were frustrated with the Land Use Plan map adopted by the Fiscal Court to overlay on the map. The Comprehensive Plan map is the ideal use and public policy as to what they want to see happen on the property. The text of the Comprehensive Plan was a twenty-month process. He stated that this information is on Page 224 of the Comprehensive Plan adopted in 1991. It is a 12-part Plan that looks not only at land use, but also at population trends, locations, environmental concerns, integrating development with existing development, traffic, etc.. Taking them into consideration, what does the Comprehensive Plan say for this quadrant that contains the Bischoff property? It says "commercial uses in the northeast quadrant". Mr. Dusing stated that the Comprehensive Plan says commercial development northwest of the intersection will expand along the interstate and this expansion can occur with the improvement and extension of Eve Drive or realignment and reconstruction of the frontage road, which is what is happening. The Plan also says the area to the north (which is where the Bischoff property is located) and south of the mobile home park

should develop as commercial use; commercial development along Richwood Road should be screened from the roadway and serve the developing residential uses in the Richwood/Union area. He stated that that is why commercial is appropriate for the Bischoff property. Mr. Dusing questioned how, taking politics out of it, anybody can propose that single-family residential development occur on this 22-acre stub of property behind McDonald's, Chevron, a liquor store, the Waffle House, truck stops and motels on I-75 and Richwood Road, which is an arterial street. He stated that the next developed intersection south where the population has the highest residential demand is the vicinity to support the commercial services. The arguments why EPD should not exist next to single-family residential apply to why single-family residential should not exist next to the highway commercial uses he enumerated. The site is inappropriate for single-family residential development with the projected commercial development along its boundary.

Mr. Dusing stated that the zoning is passed. It is not what they wanted. They wanted commercial, but got EPD. There are no allowable uses under EPD. He stated that the Fiscal Court indicated in response to some residents -- not 92 residents -- that they wanted this revisited. He stated that the Planning Commission staff again restudied the property and discussed it. He does know that the Planning Commission communicated with the Fiscal Court and the conclusion was "EDP is the ideal zoning classification for the Bischoff property". He stated that nothing has changed since June, but they are back here with another procedure. From a professional planning/Comprehensive Plan point of view, this property has always been earmarked for commercial development and has been concluded through the process for EPD type uses. He thinks the process is politicized, but does not think the Planning Commission had any part of it. The process is a political reaction to the abutting neighbors and it is an emotional issue. There are baseless assertions that property values will decrease. Baseless observations are being made about the type of development and the screening, which will be addressed on December 2. For over two years there has been reaffirmation after reaffirmation that EPD is the proper zone. When zoning occurred for the first time in 1964, the Bischoff property was earmarked for B-6/PD, which was "all business uses". It has had a commercial type use zone since the beginning of zoning in Boone county. Mr. Dusing stated that residential development in the Richwood area has grown steadily since the early 1970's and through the 1980's, and this type of zoning was in place and called for "business associated with interstate highway traffic, regional sales area, and heavy traffic volumes, sales services -- accommodations catering to the needs of highway travelers, retail sales areas, etc. He stated that this was also what was originally envisioned for the Bischoff property as residential development was occurring in the Richwood area. In 1979, after Heritage Trails was being developed, the whole corridor was zoned PD. Mr. Dusing submitted the official zoning map for 1977 and 1979 as part of the record. He stated that all of the Bischoff property that had not been developed in Heritage Trails was earmarked for Planned Development for commercial uses. He questioned what has changed. He stated that there is single-family development in Heritage Trails. While Heritage Trails was developing, Mr. Bischoff presented a commercial development. There has been significant extra expense in developing the Highway Commercial uses on the frontage of Mr. Bischoff's property to accommodate future commercial development on

the subject property. In the mid 1960's, the Bischoff property was one of the two finalists for Northern Kentucky University, which would have included all of the accessory uses that a major university would require. He questioned what changed. Mr. Dusing stated that in September, 1980 in *Creative Display, Inc. vs. Florence*, the Supreme Court of Kentucky threw out all zoning in the county. The Planning Commission and Fiscal Court were responsive in trying to rectify the situation and a plan was thrown together in the 1980's by KZF to meet short deadlines to get a planning scheme back on the books so that no one could build a plant next to a home since no zoning existed. In those days, property owners did not get notice of a zone change on their property.

Mr. Dusing stated that after twenty years of being earmarked for commercial development, the Bischoff property was rezoned to C-3, MHP (Mobile Home Park), and SR-1 without regard to any property lines. When Mr. Bischoff found out about this and questioned it in 1985 or 1986, he had no specific development plans for the back -- which was not required, but strongly encouraged -- and the response from the Director was "they are not going to change anything -- there is no water and no sewer -- when the infrastructure comes, that is the time to get it rectified". He stated that when Triple Crown and Duro Bag provided the infrastructure, Mr. Bischoff got in tune with the zoning process. Mr. Bischoff's property was never a controversial topic in the Comprehensive Plan process. He stated that Mr. Bischoff's property was zoned by this Commission and the Fiscal Court in the Comprehensive Plan as being earmarked for commercial. There was controversy with adjoining property, but not with the Bischoff property. Then, all of a sudden, the Bischoff property was earmarked for EPD -- a new form of commercial zoning that is not quite commercial. He stated that to rezone the property SR-1 would be wrong, illegal, and a travesty not based on a single planning principle.

Mr. Dusing stated that the Comprehensive Plan text forecasts Richwood Road and Chambers Road to experience one of the largest population increases in Boone County. Commercial services are in dire need in the Richwood area. It is not everyone's preference to drive 3 or 5 miles for basic neighborhood services like the EPD zone accommodates. It exacerbates the traffic problems. The scheme of the zoning plan is that Commercial is going to happen -- keep it up against the interstate with adequate screening and berming, and keep it from getting strung all the way up and down Richwood Road and Chambers Road.

Mr. Dusing stated that they think the Bischoff property is a sacrificial lamb because adjoining property owners have concerns, but there is no factual basis for those fears. It is a fear of change. He stated that this is true in the comments that were presented from this subdivision in the Land Use Plan process -- they wanted the property to be a CO Zone, a wildlife preserve. They wanted no development. He stated that if this property is zoned single-family residential, it will never develop because of the Highway Commercial in front and the need for a transitional zone. He stated that the people want the property to stay a horse farm and single-family residential will cause no development on the property. The property is not going to stay a horse farm.

Mr. Bill Woodruff, a resident of Appaloosa Drive in Heritage Trails, stated that they followed the process. The Plan worked and the Commission made its recommendations, but that was only one step in the process. The next step is to go to the Fiscal Court. Evidence was presented and the Fiscal Court came to a recommendation that they did not feel that the zoning of EDP was necessary. The Fiscal Court adopted the Plan but made an exception. Mr. Woodruff asked to introduce a video tape as evidence (the tape was not able to be played and Mr. Woodruff stated that he would present a summary of what is on the tape). He also submitted the Minutes of the Fiscal Court meeting of January 21, 1992 (see EXHIBIT B, 11/18/92). He stated that there are discrepancies in the minutes of the Fiscal Court Meeting of January 21, 1992. He noted that the minutes say the Public Hearing closed at 8:20 P.M., but it did not close until later. He quoted from the minutes noting that on Page 6 the minutes say "The motion died for lack of a second.", which was not true. He stated that the meeting went into disarray because of the threat of a lawsuit. The Fiscal Court did not know how to handle the threat of the lawsuit. He stated that there were errors in the minutes. He noted that three of the four members of the Fiscal Court said this property should be SR-1 throughout the Public Hearing process.

Mr. Woodruff submitted a petition with 123 signatures (see EXHIBIT C, 11/18/92). The caption on the petition reads, "We, the under-signed are opposed to the "EPD" zoning and commercial development of the "Bischoff Farm Property". (338 - behind McDonald's)". He noted that the addresses of the people that signed are not all in Heritage Trails. Mr. Woodruff stated that the slides show the perspective of standing on the farm and he submitted a copy of an aerial photograph as evidence of another perspective. The aerial view is southeast to northeast across the Bischoff property. He noted that there is some buffering from the highway. He reviewed the aerial photograph noting the roadways in the area. He asked that the Commission look at how the subdivision is laid out and stated that the subdivisions are separated by a farm. The farm could be developed residentially. He stated that there is no view of the commercial uses down the road from his house. The Bischoff property is ideal for housing and even has a lake front. The negative is that there are a couple of high-rise signs. He indicated the lake and stated that there are several acres tied up in the water. They do not yet know if the lake can be drained and developed, but there is not enough remaining land for the minimum developable area of 20 acres in EPD. He referred to Article 16 in this regard. He stated that what Mr. Dusing said was right, but applied to the wrong property. The Comprehensive Plan does not talk about the Bischoff parcel. The property the Comprehensive Plan refers to is already zoned C-4 and there is buffer. The argument against EPD is that it infringes on the property value, but there are also safety concerns with the traffic and school busses. He stated that there is property across the road zoned EPD and plenty on the east side of the interstate. They do not want EPD within a few hundred feet of their backyards.

Mr. Mike Shouns, 11121 Paddock Drive, indicated areas of commercial development on the map. He stated that they have two truck stops, McDonald's, Wendy's, Waffle House, a hotel, Averitt Express which is a

trucking company, and the flea market. They cannot get off the freeway on Tuesday or Saturday without getting run over by trucks. He cannot understand how a two-lane road can absorb this development. He indicated where more commercial development is planned. He stated that the homes on Paddock Drive will lose value if they are looking down on a parking lot or a store. His property will decline in value. His neighbors will hear the noise, have the trash and truck traffic, and there will be more truck traffic coming off the freeway.

Jenni Woodruff, 11012 Appaloosa Drive in Heritage Trails, submitted a copy of the map she used in her presentation. She reviewed the topography and the properties in the area. She stated that the orange color indicates existing commercial properties. The area is saturated now and the traffic is horrendous. It is a two-lane road with four truck stops on it. Community services are needed but should be somewhere to lessen the impact. The elevation on the EPD section is 865 feet at its lowest point and on the other side it is 865 to 897 feet. On Stirrup Lane, the residences are 75 feet from the property line and the elevation goes to 885 feet. On Appaloosa they look down on the property and see the lake, which is a beautiful view. She indicated elevation of 900+ feet on her street. She stated that currently all of the water runoff drains into the lake. The water could continue across the Bischoff property and onto Richwood Road. In order to avoid a problem on KY 338, they will have to grade the property down and she questioned what the elevation of the property would then be in relation to the property surrounding it. She questioned Mr. Fromm if findings of fact are required to substantiate zone changes and if new studies were required to substantiate the EPD Zone.

Mr. Fromm advised that the process went on for twenty months and there were many studies made throughout the county.

Ms. Woodruff asked if there were traffic studies. Mr. Fromm replied "not specifically". Counselor Wilson explained that this rezoning was part of the Comprehensive Plan process and the studies that were done were part of that process.

Ms. Woodruff asked if the Fiscal Court directed Planning & Zoning to reconsider this property and made a recommendation that it go back to SR-1. She asked who has the burden of proof to substantiate the change to SR-1 and if there are findings of fact that need to be presented.

Counselor Wilson advised that there have to be findings of fact if the property is rezoned SR-1 as it is not part of the Comprehensive Plan Update. Those findings are to be specific.

Ms. Woodruff questioned what the process is for accepting applications and considerations of Concept Development Plans if the zoning issue on this property is not resolved. She noted that there is a date set for a hearing on a Concept Development Plan. She questioned how the Commission can look at the Concept Development Plan without knowing the outcome of the zoning issue.

Counselor Wilson advised that the Fiscal Court asked the Planning Commission to conduct a hearing and that is what is being done. He

explained that the Commission has a duty to accept any application that comes before it and cannot refuse to accept someone's application. He stated that he believes the Commission can objectively go about its duties.

Ms. Woodruff stated, "You can accept and look at the Concept Development Plan because of the current zoning.". Counselor Wilson responded "yes".

Ms. Woodruff presented pictures from the Post, October 21, 1992, of the Richwood church where they have been holding meetings. She stated that it is peaceful and tranquil, which is the reason she moved there. She stated that services are needed but should be done with preservation in mind. She quoted from Article 16 of the Comprehensive Plan and stated that the zoning should not be EPD because of the adverse impacts on the immediately adjacent residential area. She asked that the Commission consider SR-1 zoning.

Beverly Woods, 11065 Stirrup Lane, had no comments.

Charles Woods, 11065 Stirrup Lane, noted Mr. Dusing's comments about a 20-month study of the EPD property. Mr. Woods stated that the map was modified during the 20-month period and the SR-1 area was changed to EPD about six months before the hearing. The six months would allow less time for negative input. He reviewed the history of the land in Heritage Trails. He stated that in 1978 there was a declaration of restrictions with regard to what was community property, which included riding trail easements (see EXHIBIT D, 11/18/92). He indicated one of the easements on the Bischoff side of the road and stated that at that time (1978) the property belonged to Paddock developers. In 1979 Mr. Bischoff bought back a 1,534-foot strip of property between the road and the fence line, but received the property with certain restrictions. He read the deed restrictions on the property. He stated that when Heritage Trails became a subdivision there were certain common properties and when Berling sold the property, they all had a vested interest in the community properties. The Home Owners Association of Heritage Trails has maintained the Bischoff property and they have an interest in the bridle path. His interest in the bridle path would be destroyed by the EPD. Mr. Woods stated that Mr. Berling sold the property because if he ever changed the use from a horse farm, it would be to single-family residences and Mr. Bischoff accepted the property with those restrictions. He stated that the easement is on the plat.

Mr. Larry Brizbilski, a resident of Stirrup Lane, questioned what professional planning principles allowed the mish/mash of garbage now on a strip of land several hundred feet from an interstate. He stated that a truck stop was allowed to be rebuilt outside the entrance to a subdivision. He is concerned about the safety of his family. He stated that in 1988 this was scenic, high-priced property -- but if you take away the lake and the scenic view, you lose the value. He indicated how the trucks cause traffic to back up on the expressway. Trucks do not go fast when getting off the expressway and that causes a problem. He questioned who is responsible when someone gets killed there.

Jon Whitney, 11201 Paddock Road, disagreed with Mr. Dusing's comments. He stated that when the Fiscal Court voted on the Comprehensive Plan, Mr. Dusing came across with a good bluff and that is why they are here. He stated that a compromise is to minimize the impact the uses have on each other and the way to do that is to minimize the area where they adjoin. He indicated the existing houses on a drawing and stated that when they were built, the Comprehensive Plan said that most of the commercial development should be on the other side of I-75. He indicated the existing commercial uses in the area. Mr. Whitney stated that they are working on "something like a Kroger store" for the Bischoff property. There will then be a group of houses surrounded by commercial, which is not good planning. He referred to Page 224 of the Comprehensive Plan in regard to the Richwood area noting that "commercial areas need to be buffered from the existing residential area". He suggested that the Staff's slide presentation may not have shown the whole picture or the different elevations in the area. He stated that a 50' or 60' buffer is not practical. He noted that everyone moved into the area knowing that there was no grocery store or bakery there.

Mr. Whitney stated that Mr. Bischoff has said he is considering a Kroger super store and there was a traffic consultant at the church meeting who said there would be approximately 8,000 additional cars per day in the area off of Richardson Road. He indicated how traffic getting off the southbound exit of the expressway backs up, and part of this problem is caused by the small commercial establishments each having their own access onto Richwood Road. Richwood Road is a state highway and a traffic light would back up the traffic at the exit even more. If the commission approves the EPD zoning, some one will be killed at the exit.

Daniel Hallforth, 11076 Stirrup Lane, lives directly behind the Bischoff farm. He urged the Commission to change the zoning to SR-1. The Bischoff property is beautiful and was zoned SR-1 in 1987 when he moved there. He does not believe a buffer zone can be built to eliminate the view from his home.

Don Udy had no comments.

Jeff Dearlinger, 11045 Appaloosa Drive, stated that his property is 25' to 30' above the Bischoff property. A 12-foot berm would not protect his driveway. He sees no way the property can be effectively buffered. The Bischoff property is surrounded by residences. It is a buffer zone for the residences. He questioned protecting property values if there is a Kroger super store on the property. The leading real estate agent in Northern Kentucky suggested that they list their property below its value because of the zoning issue.

Tammy Squires, 11045 Appaloosa Drive, asked that the Bischoff property go back to SR-1 or similar zoning. She stated that EPD is improper zoning for the property because of (1) property values -- they have had their home for sale and no one has looked at it because of the zoning issue; (2) insufficient infrastructure -- the infrastructure does not accommodate existing development; (3) crime increase and drug dealing -- she fears for the safety of her son; and (4) lighting from commercial development will illuminate the skies and night time as they know it will not exist. Ms.

Squires questioned (1) is Planning & Zoning ignoring KRS law which requires development of private property in the most appropriate relationships and how does the Commission view Heritage Trails and the Bischoff property as EPD being an appropriate relationship? (2) Have the guidelines of EPD in Article 16 been ignored to accommodate the wants of one against the needs of many? (3) What studies were done to substantiate a 20-acre minimum for EPD zoning when Article 16 states that zoning encourages the use of open space with any development?

Antonio Zappa, a resident of Appaloosa Drive, stated that if the property is developed SR-1, there is a buffer. He stated that there would not be 20-acres of developable land if they keep the wetlands. He suggested that the minimum requirement for development be changed to 50 acres. He questioned if the property qualifies for EPD.

Mr. Tim Gruber, 11110 Stirrup Lane, is opposed to any commercial development on the west side of I-75. His commercial needs are satisfied in Walton, Union, or Florence.

Cindy Morris, Vice President of Bedinger's Landing Home Owners Association, stated that almost everyone is opposed and agrees that the commercial should be on the east side of the interstate. There should be purely residential west of the interstate and possibly some of the zoning should be changed. She stated that it is nothing to drive ten minutes to go to Florence to shop.

John Ellison stated that at \$30,000 per lot, the Bischoff property could make \$1.2 million as SR-1. He will be first to buy a lake front lot.

Ms. Squires asked that her questions be answered. Counselor Wilson advised that they are part of the record and the Committee will look at them and, if there is a response, that would be the time for it.

Don Berretts asked the Commission members to drive to Heritage Trails and look at the lay of the land.

There being no further comments from the audience, Mr. Neltner asked if there were any comments from the Commission.

Mr. Ries advised that he believes the Staff did the best they could with the slides. He advised that the Commissioners are familiar with the property.

Mr. Neltner asked if there were any further comments from the audience or the Commission.

Gloria Reker, 11211 Paddock Drive, stated that we should go back to what Shirley Meihaus said at the Fiscal Court. She stated that Mrs. Meihaus thought that twenty acres was too small and suggested a minimum of 50 acres. Mrs. Reker stated that she can hear people ordering at McDonald's from her house. She questioned how a piece of property in the middle of a subdivision can be commercialized. She stated that the Bischoff property is right across the street from her house and it is part of the

subdivision. It is in the center of the subdivision, not in the outlying area.

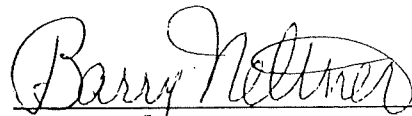
Sandra Slusher, 11037 Appaloosa, stated that people will drive right up in their subdivision to get to this commercial. She is one house away from the Bischoff property. If the developer knew the property had always been designated as commercial, then he was going to build a house (in the subdivision) next to a commercial property with no buffer zone.

Mr. Larry Brizbilski noted that none of the area residents had spoken favorably.

Mr. Dusing stated that they will address the specifics of the development on December 2. He questioned if the meeting to get a recommendation to Fiscal Court would be after December 2 so that they can both go at the same time. He stated that if there is a Public Hearing on December 2 on the pending application and it goes to a Business Meeting, it would seem to make sense to have both recommendations dealt with at the same meeting so that they go to Fiscal Court at the same time. Mr. Fromm agreed. Counselor Wilson stated that after the Public Hearing on December 2, both recommendations will go to the Fiscal Court at the same time.

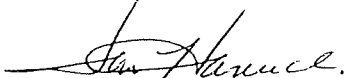
There being no further comments or questions, Mr. Neltner closed this Public Hearing at 11:30 P.M..

APPROVED:



Barry Neltner,
Temporary Presiding Officer

Attest:



Jan Hancock, Recording Secretary

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Phil Damstrom, Chairman

DATE: March 3, 1993

RE: Request of North American Properties (applicant) for Thomas Bischoff (owner) for approval of a Concept Development Plan on a ± 21 acre site located off Eab Drive and east of Paddock Drive, Boone County, Kentucky. The site is currently zoned Employment Planned Development (EPD), and a retail center is planned.

REMARKS:

We the Committee, recommend approval on the proposed Concept Development Plan presented at the December 2, 1992 Public Hearing, based upon the following findings of fact and with the following conditions:

Findings of Fact

1. The proposed use of a grocery outlet with related shopping uses is consistent with the 1990 Boone County Comprehensive Plan, which calls for commercial north and south around the interchange of KY 338/I-75 and includes a commercial designation for the property in question. The plan points out that such commercial developments should be adequately screened from residential areas and the plan encourages such commercial uses to be in shopping center or other compact aggregations having an integrated design.
2. The planned development generally conforms to the adopted Comprehensive Plan with respect to type, character and intensity of use and impact on public facilities, services and road network.
3. The planned development efficiently utilizes the site, and protects and attempts to preserve the scenic assets and natural features by incorporating existing trees, and topographic features into the site design. The development includes permanent open space.
4. The planned development does not hinder nor deter development of surrounding undeveloped properties in accordance with the adopted Comprehensive Plan.

5. The planned development is located in an area in which transportation, police and fire protection, other public facilities and public utilities, including sanitary sewerage are provided, or will be available and adequate for the uses proposed. The applicant has made provision for such facilities or utilities which are not presently available or shall construct such facilities for the eventual connection into a public system.

Conditions

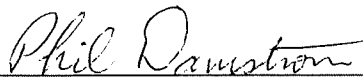
The following conditions are required of the applicant:

1. The Boone County Comprehensive Plan recommends that Eab Drive be connected with the existing frontage road or realignment and reconstruction of the frontage road and the road extended to Frogtown Road. The applicant is required to improve and dedicate Eab Drive into the property and to dedicate and rough grade a 50 foot right-of-way to the Burch-Porter property to the east.
2. A minimum of ten feet of berm shall be provided along Paddock Drive and the north boundary of ~~the property during~~ Phase I.
WBT 3/31/93
3. Necessary I-75/Richwood Road Interchange improvements shall at a minimum be under construction when the user obtains a building occupancy permit or occupies the proposed building. These improvements will also solve existing and potentially larger traffic congestion problems at this interchange for the user of this site, the residents in the area and the businesses and residents that will locate in the area in the future.
4. Air conditioning units shall be painted to blend in with the roof of the building.
5. All landscaping shall be provided during Phase I for Phase I and II. Planting of evergreen trees shall be six (6) feet in height and fifteen (15) foot on center.
6. The berm to the north and west shall be at a 2.5 to 1 ratio.
7. Institute the following:
 - a. Subject to available right-of-way, construct a westbound right turn deceleration lane on Richwood Road at Eab Drive.
The deceleration lane should be approximately 100 feet in length.
 - b. Subject to available right-of-way, construct a new westbound traffic lane on Richwood Road between Eab Drive and Clay Drive and a new westbound taper/return lane west of Clay Drive.
The taper/return lane should be 80 feet in length.


- c. Eab Drive and Clay Drive should be at least three (3) lanes wide to provide for center left-turn movements to adjacent developments on both sides of these roadways.
- d. Construction of the above improvements should occur during the first phase of the development. *But not EAB Dr. to East. (with 3-3-93)*

When the above recommendations are implemented, and normal State design standards are followed as required by the Kentucky Transportation Cabinet, the impact generated by this development will be fully mitigated and the public interest and safety protected.

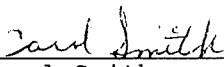
A copy of the Public Hearing minutes accompanies the findings and recommendation serving as a summary of the evidence and testimony presented by the proponents and opponents of this request.



Phil Damstrom, Chairman



William R. Viox



Carol Smith

Barry Neltner



Thurman Owens

BOONE COUNTY PLANNING COMMISSION

PUBLIC HEARINGS

December 2, 1992 - 7:00 P.M.

Mr. William Viox, Chairman, called the meeting to order at 7:00 P.M..

Counselor Wilson explained the Public Hearing process and advised that a recommendation will go from the Commission to the Fiscal Court for their final action. There will be no action taken this evening.

Chairman Viox introduced the first item on the Agenda:

1. Applicant: North American Properties for
Thomas Bischoff (owner)
Request: Concept Development Plan

The request of North American Properties (applicant) for Thomas Bischoff (owner) for approval of a Concept Development Plan on a 21+ acre site located off Eab Drive and east of Paddock Drive, Boone County, Kentucky. The site is currently zoned Employment Planned Development (EPD) and a retail center is planned.

Chairman Viox read a letter received from Mr. Fred Burch, Vice Chairman. In his letter, Mr. Burch advised that he would not participate or vote in regard to this application as he has ownership in a nearby parcel of land with similar zoning that would allow this use. He has met with this developer concerning the acquisition of his property for this use and, should this application be turned down, the developer could pursue purchasing Mr. Burch's property.

Mr. William Fromm, Director, presented the Staff Report which included a slide presentation (see Staff Report). Mr. Fromm advised that a Traffic Report was received after the Staff Report was prepared.

Chairman Viox asked for the applicant's presentation.

Mr. Jerry Dusing, attorney representing North American Properties under contract with the owner, Mr. Thomas Bischoff, advised that Mr. Bischoff was ill and is being represented by his friend, Sonny Brinkman, who has been involved in the property for years. Mr. Dusing also introduced Ms. Laurie Wendling of North American Properties; Bruce Merilease of Hixson and Associates Architects and Engineers; Jack Gehrum, traffic engineer, with Pflum, Klausmeier and Gehrum; and Dick Holzworth from Kroger's. Mr. Dusing stated that Kroger's has not made a commitment to the project, but

it is designed for Kroger's use and they believe the deal can be worked out.

Mr. Bruce Merilease, architect with Hixson and Associates, stated that they have been working with North American Properties since the 1970's. They did Florence Mall and other developments throughout the country. Mr. Merilease stated that this is the first phase of the planned development. The first phase will probably last 3 to 5 years, and the second phase is planned 4 to 5 years out, depending on the market conditions. There will be 439 parking stalls in the front, a 50,000 sq. ft. Kroger's store with 10,000 sq. ft. of adjacent retail space for uses such as specialty golf, a card store, or a dry cleaning operation.

Mr. Merilease stated that the Grading Plan keeps the same general terrain of the property. The high point of the property is to the northwest sloping to the south and to the northeast. The proposed Kroger's store is in the smaller range of a Kroger's store and showed a picture to indicate what the building may look like, i.e, brick masonry with sloped glazing and plaster accents. The adjacent retail space will have the brick accent to match the Kroger's store and will have plaster applied in the design. The architectural treatment will be similar to Village at the Mall, which was done by his firm. He stated that the bulk of Kroger's trash is handled by compactors that are attached to the building. They are not free-standing units. The pond on the property will become one acre. They will keep all of the existing deciduous plantings along the perimeter of the property and add evergreen trees spaced 10 to 15 feet apart and staggered on center. This will create a dense screening in 4 to 5 years. There will be a ten-foot high berm in the back. Using an overlay on the his drawing, Mr. Merilease showed the potential development in 4 to 5 years with smaller "B" shops and 470 more parking spaces. He stated that as the site slopes off to the east, the berm does not perform any function and there is a natural slope there on which they would place evergreen trees 10 to 15 feet apart at the top of the hill in from of the existing shrubs, which would remain. He indicated on the drawing where they would put more densely spaced evergreen trees in the future at the end of the proposed retail development.

Using a drawing showing cross sections at the rear of the property, Mr. Merilease indicated the trees that would be put in. He stated that the trees will fill out and densely screen the residential property behind their property. He stated that the closest residence is already screened on the first floor, and it will take a few years for the second floor to be screened. He indicated the Kroger's store on the cross-section and stated that it is about 18' high. He stated that they are spending more money on lighting fixtures because of the concern to keep the light off the adjacent properties. The fixtures have a cut off to prevent the lights from going onto adjacent properties. The lights on the building are 20 feet up and shine down. In the first phase, there are light poles on the west and in front of the store. No light shines toward Paddock Drive.

Mr. Merilease reviewed the second cross-section on the drawing in relation to Stirrup Drive. He noted that the evergreen trees would be on top of the slope and the homes will also be screened by the grading.

Mr. Merilease stated that the intensity of the development is 9,300 sq. ft. per acre, which is less than what is allowable. The floor area ratio is 22%. The landscape/open space ratio is 26%. They have not developed the site as densely as is permitted. The setbacks exceed all commercial and retail zones in the Boone County regulations. The landscaping in the parking lot would be per the Boone County regulations.

Chairman Viox questioned the outparcels shown in green on the drawing, as well as the parcels on the ends of the building.

Mr. Merilease advised that Kroger's requires the option to put an addition on their store (the parcels on the ends of the building). The parcels indicate future growth. He advised that the outlots (shown in green on the drawing) could become banks, fast food restaurants, etc.. Chairman Viox asked if those values are included in the impervious services and in the legend. Mr. Brinkman advised that they are.

Mr. Fromm stated that since they are figuring the 80,000 square foot use in their ADT count, they must have some idea of a specific user, if not a specific client, since they are talking about a specific traffic count.

Ms. Wendling stated that they do not have a specific user in mind. The traffic assumptions are based on general retail, which has a higher count, to be sure that they are covered for the future.

Using a drawing showing the configuration of the existing roadway, Mr. Jack Gehrum presented the traffic study. He noted that Eab Drive and Clay Drive are the major access points into the shopping area. He stated that they did 24-hour traffic counts. He used a graph to show the traffic patterns throughout the day. The traffic count on a typical Wednesday was 5,708. In the AM peak hour the traffic would be about 300 eastbound. In the PM peak, which is a two-hour period, it is about 250 to 260 westbound. Travel throughout the day diminishes with a high around noon time at the restaurants. They added the general retail of 80,000 sq. ft. and assumed the 20,000 sq. ft. expansion would be in place. In addition to using a retail type hardware use, they also used 100,000 sq. ft. of retail. Their study addresses Phase I, and then complete development, with the first phase being the Kroger's store. The traffic projections were about 7,500 using the ITE data, but in working with Kroger's they find that their specific patronage would be about 4,400. They are using a worst case scenario. The traffic distribution is about 50/50 from the east and the west in terms of access. In using the existing and forecasted traffic at the PM peak time when traffic conditions would be at their worst, they did a turning movement analysis and a level of service analysis for Phase I and Phase II. (LEVEL OF SERVICE: "A" is best and "F" is worst). In Phase I for Clay Drive the level of service is "B" and "A" for the various movements and when you add Phase I and Phase II together the level of service is "C" and "A". In Phase I for Eab Drive the level of service is "B" and "A", and when you add Phase I and Phase II together, the level of service is "D" and "A". He stated that those levels of service are generally accepted levels without the need for any major type of signalization. Need for signalization is dictated by warrants. In looking beyond this period, there may be a warrant meeting.

Mr. Gehrum indicated the proposed 100 feet of lane on the east side of Eab Drive and the new lane on the north side for right turns into the project. They also propose a new lane the full length between Eab and Clay to provide one additional west bound lane and there is a short "escape" lane on the other side of Clay towards Paddock. They also looked at the truck traffic that currently occurs in the area between Paddock Drive and the interstate ramp and found that, while there are trucks, the total value is about 10% (ten percent), which is within what is found on most arterials.

Chairman Viox asked if they assigned a value to the service road coming out. Mr. Gehrum replied "no" and added that they had a count for the existing traffic, but not for the future traffic. Chairman Viox stated that, since it is zoned C-4 and he believes that the ultimate end of the service road will be at Mt. Zion Road, he is surprised that they did not assign a value to the service road or provide access. Mr. Gehrum stated that when they get into the second phase, it is likely they will be talking about warrants from other activities. Chairman Viox stated that a Site Plan could be turned in tomorrow and there would be another use because of the existing zoning. He noted that Mr. Gehrum had indicated that the acceleration lane between Clay Drive and Paddock Drive was short. He questioned why they do not take the lane all the way to Paddock Drive instead of having people merging out into the traffic again. Mr. Gehrum stated that there was a meeting with the residents and a road was proposed, but it was indicated to them that the residents did not want that access. The residents want the traffic on the main street and do not want the connection. He advised that there is a possibility of connecting in the future. The developer is willing to do this, but the residents did not seem to like it. Chairman Viox noted that the new mall ramp has a lane that goes up so that you do not merge with the traffic to go into Lazarus. Mr. Gehrum stated that a continuance lane would provide that, but a person that did not want to go that way would end up transferring beyond Paddock Drive. The developer can only control property that goes to a point and if you take the lane that far, you would have to have an escape lane.

Chairman Viox asked if they looked at the I-75 exit ramp in their traffic study. Mr. Gehrum replied "yes" and added that the ramp and the total geometrics need major improvement, including grading, and possibly a signal, but he does not know at what point that would be attributed to traffic turning right. The problem may have to do with a signal and the trucks. He emphasized that there is a problem and it definitely needs improvements.

Mr. Ries asked if a level of service value such as "A", "B", "C", etc. was assigned to Richwood Road. Mr. Gehrum advised that it is difficult to assign a value to just the roadway because there is no obstruction to the road. Level of service is typically calculated at an intersection

Chairman Viox asked if there is a value to the C-4 zoning district marked "Bischoff". Mr. Gehrum stated that he does not know what the value is.

Mr. Damstrom questioned if the 10% truck traffic includes the additional truck traffic that would be generated by the Kroger's store. Mr. Gehrum

stated that Kroger's has indicated 10 to 12 to 14 trucks per day for deliveries in varying sizes and that traffic is included. Mr. Damstrom stated that that figure seems low. He questioned the truck access to the Kroger's store. He noted that Clay Drive would provide more direct access to the rear of the store, but they would not be able to force a bread truck to go in there. He added that he believes Clay Drive would be a more logical choice for tractor trailer traffic. Mr. Damstrom questioned if the level of service would be adequate in terms of the 1,000+ homes in Triple Crown.

Mr. Gehrum stated that if traffic continues to rise over a period of time, Richwood Road has to be improved and will probably end up being four moving lanes plus turning lanes. Mr. Damstrom asked if Mr. Gehrum was aware of any projected upgrades by the state. Mr. Gehrum stated that no one at the state could indicate any particular program in place that would cause an improvement.

Mr. Kirby questioned how are into the future they have to predict other people's traffic. He noted that they have no control over the traffic on the service road if it is connected. Chairman Viox stated that they have to do enough of a study to interact with the traffic that is there. He questioned if there is a regulation as to how far into the future they have to project. Mr. Fromm advised that there is no regulation in this regard.

Mr. Ries questioned the average truck traffic at the intersection. He questioned if it was figured as a normal intersection or one with four truck stops. Mr. Gehrum stated that the trucks will be west of the ramp. The truck traffic coming off the interstate goes left to the truck stops and they did not analyze that.

Mr. DeLong noted that the traffic study was done on Wednesday and stated that he believes that would be a low time and the count would be higher on another day of the week.

Mr. Bailey noted that Mr. Gehrum mentioned a total daily traffic count of 5,708. He asked if that included everything. Mr. Gehrum stated that 5,708 is the existing daily traffic count without the development. They added the proposed traffic primarily during the peak hours for their analysis. He then stated that "it is the addition of the existing and proposed traffic".

Mr. Bailey asked if Mr. Gehrum could estimate a figure for the traffic when this is fully developed. Mr. Gehrum stated that he did not have a total daily count. They designed for the peak hour and, because that is the worst scenario, they presume the other problems are covered. He stated that the Highway Department uses 1.5% growth per year and you could take the 5,708 at 1.5% for as many years as you wish to get a general idea.

Mr. Ries asked if they included the two potential additions on each side of the Kroger's store and the outparcel in the front in their figures. Mr. Gehrum replied "yes".

Mr. Jerry Dusing stated that this is not a zone change. The plan is appropriate under EPD. The property has historically been commercial in part. He stated that you have to understand how EPD zoning occurred on the site because all of the criteria for what type of development is appropriate in an EDP Zone is specific in the zoning of the property pursuant to the Comprehensive Plan Five-Year Update process and the overlay of an EPD land use map zone on the Comprehensive Plan designation, which is commercial. The property has been zoned as intense as Highway Commercial since zoning began in Boone County. The property was zoned PD Commercial in the mid 70's for several years after Heritage Trails Subdivision, which abuts the property, was there and the objection to the plan is basically concerns of the subdivision that they are adversely impacted by it. He stated that there was a major court case that threw out all of the zoning and there was a hurry-up rezoning. The property was first zoned Residential in 1981 in response to a Master Plan as there was no zoning for about a year after the court case. He stated that the Bischoff property got carved up; and in 1986 Mr. Bischoff's representative came to Planning & Zoning and questioned how the property got changed to three classifications. The response was that the property was not going to be changed because the infrastructure was not there and they should come back when the infrastructure is there. In 1989, the Comprehensive Plan was revised in regard to the most appropriate land use for the property and this took into account nine elements -- compatible land uses, traffic, population growth, service demands, environmental, etc.. After consideration of all of the elements over approximately two years, the conclusion was that the best use -- the ideal use -- was Commercial for this property and that zoning was put in place when the amended Comprehensive Plan was adopted in February, 1991. Between February, 1991 and November, 1991, the Land Use Map was to be adopted and overlaid on the Comprehensive Plan and in that process, which included many public hearings, committee meetings, meetings with the staff, etc., the Land Use Map was issued and their property was changed to a new zone called "EPD". The purpose of EPD, as indicated in the text and explained in the process, was to accommodate Employment Planned Development, Light Industrial, Neighborhood Service Commercial, and Office. It then went to the Fiscal Court and the Plan was adopted after a meeting of Fiscal Court in January, 1992. Mr. Dusing stated that EPD has no Permitted Uses if you are a pessimist, and all Permitted Uses if you are an optimist -- it is flexible to have high densities and unique characteristics. He stated that they are here with an EPD plan that has less density, less land use, and more landscaping than the most intensely regulated zone. Shortly after the Fiscal Court adopted the map, they asked that the Planning Commission review two properties, including the Bischoff property. He stated that the Planning Commission did that and, unbeknownst to them, in June, 1992 the Commission issued its report to the Fiscal Court that EPD is the ideal zoning classification for the Bischoff property because of the obvious step down from intense Highway Commercial up front where the residents now look at a motel, Waffle House, Chevron, etc. -- it is an ideal zone for transition from the Light Industrial/Neighborhood Commercial against the Residential. He reviewed the Commission's report noting that to be granted approval of a Concept Development Plan in EPD, the developer must demonstrate four things: 1) That the Concept Development Plan conforms to the Comprehensive Plan. He commented "which it does, text and map". 2) That it does not hinder or deter development of surrounding properties.

He commented "which it does not, and three sides are already developed more intensely than this". 3) That it efficiently uses the site; and 4) that it protects the scenic aspects of the site and takes into account development on neighboring properties. Mr. Dusing stated that he would address #3 and #4. In regard to #4, he stated that the building intensity is dictated by the ordinance and they are below that. They are nine-fifteenths, which they did to accommodate the requirements. He stated that the square footage under roof requirements dictate how many parking spaces they have to have. He stated that much of Article 16 on EPD is not objective criteria to which you can put a yardstick. It uses language like "compatibility" which is subjective. They only used nine-fifteenths of what they were allowed to use and that dictated the number of parking spaces. Everything else is open space. They dictated the open space to be around the neighbors because that is what they need to be compatible with. They maximized the buffer zones. They had proposed access on Paddock Drive so that the residents would not have to come out on Richwood Road and turn left. They had a meeting to familiarize the neighborhood with the project and the neighborhood did not like the access. The access accomplishes what EPD talks about in its compatibility criteria because the elimination of the access isolates the site. He questioned how they could affect the residential neighborhood in the rear since you cannot get there from the site. They have provided screening and berming. Their access is limited to existing access on commercial property on an arterial highway and there is no possibility of intermingling their intersection with the residential development.

Mr. Dusing stated that the residents cannot see the building. He stated that they should not have to meet this criteria, but they do. They have lowered the building. The existing topo at the rear of the property is 902' above sea level and it is being lowered to 892'. The berm is ten feet high and there will be six-foot high evergreens planted. They will be as dense as the landscape ordinance requires. This provides twenty feet of difference plus the six-foot trees. Using the cross-section drawing on which lines of sight were shown, Mr. Dusing stated that they used the closest house as a worst case scenario and from the first floor they cannot see the Kroger's. From the second floor window, it would be arguable as to whether they can see the top brick of the Kroger's store or that they cannot see it at all. They did the same analysis for Phase II and the results were the same. In regard to noise, he stated that there is nothing statistically significant compared to existing expressway noise. The berm will reduce noise and visibility. The development is pushed forward as far as possible and less dense. He questioned how it can be argued that people in the subdivision a block or two away are affected and they can only be affected by general concerns that any development would bring whether commercial, EPD, or under any zone that is compatible with the Comprehensive Plan. The people next to the site are the people with objective concerns. Their view now is the existing commercial along Richwood Road and, after this development, their view would be the berm.

Mr. Dusing showed a picture of Drug Emporium of 27,000 sq. ft. plus 40,000 sq. ft. and stated that the issue with this store was the impact on houses on Montgomery Road. Those houses are basically on grade with the evergreens. It is a successful development that has not impacted the

houses. Mr. Dusing indicated the houses on Paddock Drive that are across the street and sit higher. He stated that they will have to look at something besides the horse farm. He stated that the people on Stirrup and Appaloosa will look at an earthen berm and evergreens instead of the McDonalds, Waffle House, etc. development and signs that they now see. He stated that their development is self-contained and does not intermingle with the residential development.

Mr. Dusing referred to the zoning text on EPD and stated that there are nine objectives:

1. Commercial services to achieve a balanced community. They are in agreement with this.
2. To provide an orderly arrangement of land uses in relation to each other and the entire community. They meet this.
3. To allow a mixture of uses based on existing and planned road networks to insure safe and efficient transportation patterns. They meet this.
4. To allow more efficient use of development resulting in a network of utilities and streets. Since 1988 or 1989, they finally have public water and public sewer, which is spurring development. Utilities are being extended through the right-of-way of Eab Drive to the specific sources. Eab Drive will be three lanes with a center turning lane, which they will build.
5. To provide flexibility in building intensity and density of developable land. He stated that under EPD, development is allowed to be more intense than any other zone, but theirs is nine-fifteenths as intense as it could be.
6. Building layout would be more efficient than would be possible under strict application of the zoning regulations. He stated that they meet this and have larger buffer zones and less intensity.
7. To provide functional, aesthetic, and beneficial uses of open space. He stated that the intensity under roof dictates parking and they would put all the open space next to anyone that could be affected. They have isolated the development.

Mr. Dusing referred to the concern that the development is not compatible and will negatively affect property values. He stated that they will not nearly as negatively impact property values as other commercial uses allowed under the Comprehensive Plan for the site. In similar cases, such as the Fort Mitchell interchange of I-75, the property values have grown faster than most areas of Northern Kentucky because of location, school district, a nice neighborhood, etc., which are the same characteristics as this neighborhood. In Buckingham Woods, where there is none of the buffer and protection because it is from an earlier era, the properties were built after Kroger's was there and the ratio of appreciation is the same as other general economic conditions. He noted that there is existing

berming and hedges along Paddock Drive. Mr. Dusing referred to McAlpin's in Crestview Hills with the backyards of the adjacent houses up against that development, as well as the houses in College Park, which are more impacted than what they are proposing here, and stated that there is no significant impact on property values because property values are dictated by neighborhood and location.

Mr. Dusing read a letter from Joy Toelke, a leading real estate broker in Northern Kentucky, in regard to the proposed plan for a Kroger's. Her letter indicated that she has reviewed their plan. She stated that the residents have all the signage and traffic negatives, but the area has no convenient multi-choice shopping which is of prime importance to the quality of life in a residential community. If the topo, berming and landscaping remain as they have been described to her in the plan, she feels the development will be advantageous to present and future residents of the subdivision.

Mr. Dusing stated that a person cannot locate 500 feet from the exit of an interstate with undeveloped land with the history of zoning that has been on this property, and expect it to remain green.

In regard to traffic, Mr. Dusing noted Mr. Gehrum's analysis based on a worst case scenario. He agreed that Richwood Road is inadequate for what is going on there, but this is not a zone change request. They are making traffic improvements. They are told that the existing right-of-way is 60 feet wide. He stated that if Richwood Road is three lanes from Eab Drive to Clay Drive, with an additional taper as an escape past Clay Drive, people can get into their development and get out and the problem there is greatly improved. The only place now to pick up groceries on your way home is to go into Shell and BP, which causes the backup of traffic; but there will be a pass-through to bypass this bottleneck. He stated that the results the traffic study came to are a lot worse than what they expect from the Kroger's. The general retail used was also a worst case scenario. They asked Kroger's for a transaction count. Shell does a traffic count based on their register tapes. Kroger's transaction count was 2,000 (two thousand) per day at a typical store of this size based on receipt tapes. Many people who come to Kroger's come in the same car. If you assume the worst case, one car in and one car out for every receipt tape, it is 2,000 per day. They asked Kroger's to look at their receipts in regard to peak times so that they could consider that in relation to the traffic. Peak times for traffic are 7 AM to 8 AM and 4 PM to 6 PM. Kroger's peak time is Saturday and Sunday from 4 PM to 6 PM, Monday thru Thursday from 6 PM to 8 PM, and Friday from 5 PM to 7 PM. He noted that Friday overlaps the peak hour traffic by one hour. He stated that most of the shopping is not done during rush hour and will not be a significant impact. He noted that a trip is one car in and the same car out, and you would cut the figure in half.

Mr. Dusing stated that the central theme of the opposition to this project is on their petitions, "We don't mind driving 4 or 5 miles to shop -- it is a small price to pay for quality of life and safety.". He stated that almost all, if not all, the traffic is existing traffic that is going up and down Richwood Road already and the traffic will be able to turn right and go into Kroger's instead of having to stop and turn left into BP or

Shell. He stated that it is not a legitimate consideration of the Planning Commission to say "let the traffic be Florence's problem" and "as long as it is not in our backyard, it is okay". We are one community. He stated that the Comprehensive Plan specifically says that these kinds of uses need to be up against the interchange and that it is why it is a designated site and ideal for this kind of use. There will have to be a hospital or some other use to provide the warrants to allow the Highway Department to put a light there. They want a light there, but the Highway Department will not give it to them.

He stated that the site is now grass and when they build this, it will be a shopping center and parking lot. Anything they do on the property is going to affect grass and horses being out there. If this is a criteria to turn them down, it is not legal. The guiding principle is what is best for the community as a whole. This type of use is in demand, and wanted and needed in the Richwood area. They meet the law.

Mr. Dusing submitted their petition with the caption "The undersigned support the location of a proposed supermarket and retail shopping center on the Thomas Bischoff property off I-75 at Route 338 at Eab Drive behind Chevron and McDonald's." He stated that there are 364 signatures on the petitions and all but 22 of them have mailing addresses of Walton or Union, because there is no Richwood mailing address. He added that they are already through to Frogtown Road through Triple Crown. The people on the petition already shop the local Chevron station. He noted that the opposing petition was posted across the street at BP where there is concern about competition and lower prices from this Kroger's store.

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

Mr. John Marr, Crown Point Drive, Union, stated that he and thirty of his neighbors support the development of an EPD compatible supermarket on the Bischoff property. With the availability of sewer and water, residential development will accelerate and the need for consumer services will accelerate. He believes this plan meets that need.

At this time, Chairman Viox called for a short recess. Following the recess, the Chairman asked for comments from those in opposition to the request.

Mr. Charles Woods, 11065 Stirrup Lane, stated that there are deed restrictions on portions of the Bischoff property restricting the use of that land and, therefore, there are not 21 acres for consideration as EPD. He referred to his comments at the November 18, 1992 Public Hearing regarding the deed restrictions that allow only horse farm, single-family residential development, and bridle path. He stated that the subdivision came into being on October 6, 1978. According to Jim Berling at their Home Owners Association meeting, Mr. Bischoff was so impressed with their neighborhood that he wanted to be part of it and asked if they would sell him a piece of land (which Mr. Woods indicated on the map) to put in a driveway and access the bridle path that goes around the subdivision. The restrictions were in the deed at that time. They sold Mr. Bischoff the property for \$500. Mr. Bischoff allowed the Home Owners Association to do

100% of the upkeep of the strip of land. He referred to Book 92, Pages 8 through 13, and read the deed restrictions. He questioned that if Mr. Bischoff did not become part of the subdivision, why did he allow them to take care of his property? In regard to Mr. Dusing's comments, Mr. Woods stated that they did not have twenty months to review the Comprehensive Plan in this regard. The property was zoned SR-1 until it was proposed by Tom Bischoff that it become commercial, and 6 to 8 weeks before the Comprehensive Plan was adopted, this area was added. Only two people are left in the neighborhood that were part of the original neighborhood and knew the true history of the deed restrictions. He was in Arizona at the time and the other person did not get a certified letter. He had only a day to prepare when he returned and the change went through. He is now trying to reverse it. He noted that Mr. Dusing said the closest home is 100 feet away and would look over the roof of the Kroger's building. He stated that the closest house is also the lowest in the neighborhood and would naturally have a line of sight over top of the building, but everything else in the neighborhood does not.

Mr. Jon Welte, 11019 Stirrup Lane, stated that they do not have an attorney and the Planning Commission is their representative. He stated that the traffic study was strictly from the west side, but there has been a significant amount of work on the overpass due to the road sinking from the truck traffic. The study was done on a Wednesday, which is probably the slowest day of the week. He asked that the study be done on a Saturday or a Sunday. He stated that there are currently three truck stops and the fourth one is shut down. The trucks have a hard time getting in and out of the Pilot station. He can foresee the trucks parking at Kroger's over night. He stated that cars exit the expressway and go left on Route 338, and there is a line of trucks so that they cannot make a left turn. The new traffic will be from west to east and they will not be able to turn. If there are 2,000 more cars per day, the residents will have to come over the berm with their shopping carts. They have an existing serious traffic problem. He asked that the Commission consider that the studies are flawed and biased. He stated that the plan is attractive, but the area does not accommodate it.

Cindy Morris, a resident of Gainsway, reviewed the 1991 accidents in the area and stated that out of 450 accidents, 27% happened on Richwood Road on the exit or interstate ramps. The same statistics hold true for 1992 up to May 21 when data is available. This does not include the state police reports. She submitted this information to the Commission. She referred to the petition submitted by Mr. Dusing and stated that there is a rumor in the area that if the Kroger's does not go in, then low income housing is going in, which is why a lot of people signed the petition. They prefer the Kroger's to low income housing.

Mr. Roger Osborne, Paddock Drive, indicated his home on the map to be across from the proposed development. He does not agree that the trees will be fully grown in 3 to 5 years so that he will not see the building. He stated that Wednesday is not a good day to be indicative of the traffic. He disagrees that there are ten trucks per hour. He would like a traffic study done on a Friday, Saturday, or Sunday. Last Wednesday (the day before Thanksgiving) was an example of how bad the traffic is. He disagrees that property values will increase. He stated that they now

have a volunteer fire department in Walton and questioned if there would be a regular fire department because of this development and a better police department. The neighbors do not have complaints about how often they patrol the area. He noted that Walton and Union were mentioned in conjunction with this application and stated that Walton is 3.5 miles away and Union is 5 or 6 miles away. He questioned if they would come to this Kroger's.

Gloria Reker, 11211 Paddock Drive, stated that there is commercial zoning in Triple Crown now and then this area is being commercialized. Her property is very high and cannot be buffered. She can hear people ordering at McDonald's now. She stated that at least part of the proposed development is in the subdivision and directly across from her house. She noted Mr. Dusing's examples of commercial uses abutting a subdivision, but those uses are not in the middle of the subdivisions. She stated that anything after the horse statue is inside Heritage Trails. The Bischoff property is part of the subdivision. She noted that the Crestview Hills McAlpin's is across a major highway and the houses butt up against the back. She is not across the highway from the proposed development. Using the drawing to indicate the houses on Paddock Drive and the commercial areas, she questioned why their houses are sandwiched in between the commercial areas and why their houses are not zoned commercial. She questioned why the areas are zoned commercial around their houses. She questioned why Kroger's does not go on top of the hill where it is zoned Commercial, and they can put in a turn lane for the commercial traffic to turn left. She asked that the area be looked at again as to why their street is left residential with commercial around it. She noted that she can hear McDonald's and questioned what she would hear from this development. She noted that it was a selling point for Triple Crown that there would be a Kroger's and they can put it there, if they want it.

Tammy Squires, 11045 Appaloosa Drive, does not see how the added lanes can help the backup on the exit ramp to Richwood Road. They sit on the exit ramp waiting to get off. People will likely turn left and cause the ramp to back up even more. When Pilot first built there six years ago, state police records showed 994 semi's with hazardous material in a 24-hour period. An additional 2,000 cars would add more danger and more potential for accidents with trucks. The buffer cannot protect them from lighting at night or crime. It has been in the news that there were armed robberies at Kroger's. There have been drug deals at McAlpin's. The danger to their families would be increased. Anyone involved in crime would have quick access to I-75. In her research she found that many times developers have no trouble finding reasons why they cannot provide the promised amenities. She noted a newspaper article about the lack of enforcement officers and questioned how the residents can be sure the requirements would be enforced. She questioned the hours of operation of the Kroger's store. She questioned what tenants would be allowed to go in the vacant buildings and if there could be a strip joint or a bar.

Pat Rowhaner, a resident of Triple Crown, stated that she is opposed to the development because it sits in the middle of the subdivision. She is a realtor and was one of the first to purchase a lot in Triple Crown. She was never advised about this development, nor were her associate realtors, and they were not advising people of this if they bought in Triple Crown.

Mrs. Rowhaner is opposed to this development based on the traffic and people coming and going on the expressway.

Mrs. Thelma Castellini stated that she understands that at the same time a recommendation is also being made to the Fiscal Court on the zone change request for the same piece of property.

Counselor Wilson stated that it is not known how the Committee will handle the two requests.

Mrs. Castellini noted that Mr. Dusing and others made numerous references to the Zoning Regulations concerning EPD, but the EPD Zone is specifically exempt from every other paragraph in the Zoning Regulations. The square footage and green space requirements do not even apply to EPD. She stated that when you are in a one lane exit off the expressway side-by-side with a second lane that has developed, and the tail of your car is in the southbound lane of I-75 while you are waiting to get off at Richwood, it is too much no matter how many cars are there.

Tony Zappa questioned when the traffic study was done. Mr. Gehrum advised that it was done on October 21. Mr. Zappa stated that this was prior to Pilot opening up. Pilot is the only truck stop west of the exit and the 10% trucks is prior to the truck stop opening up. Mr. Gehrum stated that the traffic count was taken on November 18 and Pilot was open.

Mr. Zappa stated that there was not twenty months of study of this in the Comprehensive Plan because it was at the tail end of the study. He referred to the proposed berm, and questioned if moving ten feet of earth makes the land compatible for EPD.

Mr. Jon Whitney, Paddock Drive, stated that they already have four truck stops at the Richwood interchange area and two gas stations. For years he has not gone through the Richwood interchange without seeing one semi truck on the road, and sometimes 3 or 4 semi's. There is a huge amount of semi traffic there now. The additional traffic will clog the road beyond belief. The Richwood flea market draws in a lot of people on Tuesdays and Saturdays. The left turns are very dangerous. On Friday afternoons and evenings there is a lot of traffic on I-75 with people getting out of the Cincinnati area. Many people stop at the gas station before they leave town. Using a drawing, he indicated I-75 in relation to the proposed development. He indicated the frontage road. He indicated the accesses across Richwood Road, for the Shell station, storage facilities, a bank, Wendy's, etc.. He indicated the entrances onto Richwood Road and the proposed added lanes and stated that left turns to the other side of the road will block them. He questioned how there could be a safe situation without frontage roads on both sides of the street and noted that it is a state highway. He advised that Forrest Rankin said that there is nothing in the Six-Year Plan concerning Richwood Road. There will be fatalities. Using a second drawing, he indicated the proposed buffering. He stated that the developer picked a house and angles (in regard to line of sight) that would be the easiest to buffer. There are houses on Paddock Drive at 900+ elevation. He stated that Kroger's would be at 900+ elevation and it is twenty feet tall, with lights 30 feet tall. He drew the line of sight in orange on his drawing. He stated that the buffer gets down to about 35

feet and there would only be about five feet of earth for a mound because there would be too much erosion. Using an orange line, he indicated that the road is lower than the houses on Paddock and the Kroger's and stated that the buffer would not do anything. He finds it difficult to get a definition of what adequate buffering is. He stated that the trees do not buffer sound, but a pile of dirt does. He stated that the semi's are probably going to make deliveries behind Kroger's in the middle of the night because the man from Kroger's advised them of that at a meeting at the church. The trucks will grind their gears backing into the loading dock and the trees will not help them much with the sound. There would have to be a buffer of dirt about 25 feet tall to buffer the noise of the gears. To buffer out the lights, there would have to be another line of ten-foot tall evergreen trees in a dense row, which is not practical. Anything else would not be much of a buffer.

Kathy Votey, 473 Mustang, moved to Richwood to get away from Florence and for her children to grow up where there are trees. She is opposed to the application.

Bill Woodruff, Appaloosa Drive, stated that everyone knows about the last Public Hearing, but the records are not yet official. A lot of those facts pertain to the Concept Plan. He submitted a draft of the Minutes from the last Public Hearing to be sure that those findings are entered into this record. He asked that any changes be incorporated into the record. Mr. Woodruff questioned the acreage of the site.

Ms. Wendling advised that the acreage might be 20.93. They have an exact survey, but she does not know the figure.

Mr. Woodruff stated that they will take action in regard to the easements. He referred to Article 16 and stated that there are 22 points that need to be covered in the plan. He asked if anything is proposed in regard to the easement on the property.

Ms. Wendling stated that the area of the easement is a green area and is not being used as horse farm or residential.

Mr. Woodruff stated that there are only two intended uses in the easement. It can be used as a horse farm or single-family residence; and it can be a bridle path if it becomes a subdivision so that those people would have access to Heritage Trails bridle path.

Ms. Wendling stated that they do not intend to build any of their buildings on that portion of the property.

Counselor Wilson stated that the easement is not created by the Zoning Regulations and is a private easement between the two property owners. The change in the zone would not affect the private easement. He advised that deed restrictions are independent of zoning and would be an issue between the property owners.

Mr. Woodruff stated that what they are proposing is as close to C-2 as any other zone. It is a regional draw type zoning and is not what was

intended in the area. Small type services were intended. He questioned how they count cars for the traffic analysis.

Mr. Gehrum stated that sometimes they count and sometimes they use a machine, which is a hose. They use two hoses for two directions, which is what they did in this case. The hoses were supposed to be put across from the McDonald's.

Mr. Woodruff stated that the hoses were laid across Paddock Drive and measured residential traffic, not the commercial traffic on Richwood Road. The data is invalid because of where the measurement was taken. He offered to supply pictures showing where the hoses were put. He stated that the hoses were across Richwood Road on the left and right sides of Paddock Drive. The numbers do not pertain to the traffic on Richwood Road at the intersection of Clay and Eab. He questioned the validity of the statistics. He stated that if Kroger's goes in, it will be a regional draw with people from Walton, Union, and possibly as far as Warsaw. He stated that a comment was made that a lot of traffic that goes into BP might go into Kroger's, but that is not factual. People go to BP for a quick stop, but they do not go to Kroger's for a quick stop. It will not be a store to serve the local community and he will not shop there. He submitted a petition in opposition with signatures of local people, with only a few signatures from outside the area.

Mr. Zappa stated that the easement was part of the 20.9 acres and, taking the easement out, there is less than 20 acres.

Gary Lane, Appaloosa Drive, stated that the road that now stops will go all the way around to Frogtown Road and will pass a lot of traffic, which is why Kroger's wants to locate there. He noted the location of the Pilot station and stated that there will be people using the same exit with the trucks to go to Kroger's. The school buses also run through there.

Kathy Votey suggested that the Kroger's go to KY 25.

Cindy Marks stated that she is opposed to this being on the other side of the interstate. The infrastructure is inadequate and they are saturated. She suggested that Kroger's go to Mt. Zion Road.

Mike Shouns, Paddock Road, noted that at the last meeting Mr. Dusing mentioned that this is the fastest growing area in the county. He stated that if the projected growth rate is assumed to be 15% to 20%, then the traffic study basing increases on 1.5% per year is absurd and that figure includes all of the depressed areas of the state. He noted that there are no plans to increase Richwood Road and the traffic may be quadrupled in 5 or 6 years without any type of improvements. He noted that the Regulations say the area has to be able to support this. He counted 12 trucks between Paddock Road and the entrance ramp when he was coming here this evening. He does not believe the infrastructure can support this development based on the projected growth rate.

Mr. Fromm advised that the projected growth rate is not broken down to Richwood specifically and includes Walton and Union. The rate was about 30% between 1980 and 1990. It is one of the highest growth rate areas.

Mike Shouns stated that the traffic study needs to be really done. It needs to look at the intersection and almost as far as Walton and Mt. Zion Road. He asked that the big picture be considered in light of the growth factors.

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

Mr. DeLong noted that there are two entrances into the project and questioned if it could be limited to one so as not be so close to Paddock Drive. He is concerned about the amount of buffering. He is concerned about access management from this project to the other projects and asked if there could be access available on the eastern side. He questioned the lighting on the building going out and suggested that the developer look at having the lighting go in toward the building. He commented that down lighting with a shield would be feasible. He questioned the air-conditioning and other mechanics on the roof being covered and shielded. He noted a green space on the project that looks like a "T" and questioned its purpose. He questioned the smaller parcels that are set aside. He asked if it is possible to make sure that there are not outside speakers so that the residents would not hear them. He noted that outside banks have speakers. He noted that the project looks similar to other commercial developments and this zone requires a little more creativity than what is shown. He noted that grocery stores and some other developments require more parking and he asked that the statutes be reviewed in regard to the number of green areas in the parking lot.

Mr. Kirby questioned the building elevation (the finished grade of the floor). Mr. Merilease advised that it is 891.

Mr. Kirby stated that this Concept Plan is not as intense as what the straight C-3 or C-4 Zoning could allow. He stated that there is a problem with traffic, but until something else goes there and makes the problem worse, they will not be in the Six-Year Plan. Problems bring results. He stated that the Commission's position is to think about the future of the county and the future of the area, not personal preferences for the moment, but what the area will be like in 10 or 20 years.

Mr. Damstrom asked if they took the outparcels into account when they calculated the parking spaces.

Mr. Brinkman replied "the numbers shown there include the green spaces that are shown. It does not include additional green spaces."

Mr. Damstrom stated that he is concerned about the parking for the outparcels if they develop. He is concerned about the traffic on the road and the traffic study. He stated that the Committee will take a long hard look at the calculations and get assistance from the Staff.

Mr. Bailey stated that the buffering on Paddock Drive is not as intense as it is behind the development. They do not show berm or pine trees in the lower area. He would like the Committee to consider buffering in this area.

Chairman Viox asked if there were any further comments.

Mr. Dusing stated that in regard to questions about increased traffic, it is not 2,000 additional trips per day or 14,000 additional trips per day. They picked Wednesday, October 21, because they hired Pflum, Klausmeier and Gehrum and asked them to get out there as soon as possible. They picked the house in the back because it was closest, not because of any significant difference in topo. He added that the Kroger's could be open 24 hours and that depends on the operator.

Chairman Viox questioned the uses of the other buildings.

Mr. Dusing stated that they will be typical neighborhood retail -- bakery, dry cleaning, soft goods. Mr. Merilease advised that Kroger's has strict requirements in its leases and bars cannot locate next to their stores. X-rated book stores would not be permitted. Mr. Dusing stated that the outparcel lots would have to be self-contained and whatever use would go in would have to consider the number of parking spaces within that lot per the ordinance. A big sitdown restaurant could not go there because there is not enough space for parking. He added that EPD allows 15,000 square feet under roof per Article 16.

Mr. Woods questioned what they proposed to do with the building in the bridle path. Mr. Dusing stated that they are bound by the restriction that runs with the land. Chairman Viox stated that private deed restrictions are outside the Commission's jurisdiction.

Mr. Jon Whitney stated that Page 7 of their proposal shows 14,000 trips per day under the column "ADT 24 hour". Mr. Gehrum stated that while that is projected trips, it would be in total. There are a lot of trips already on the road and trips that will occur because people are going to Kroger's and the store next door, and that is a double count. They adjusted the figures and it works out to 9,000 per day, but that is not all new trips. People in the area go to the grocery store now and, if they go to this Kroger's, it would be a replacement trip. This would create new trips to replace old trips.

Mr. Don Veraps, who lives at the corner of Paddock Drive and Stirrup, questioned the time that deliveries would be made to the store. Mr. Holzworth from Kroger's stated that Kroger's has not made a decision on the site and has not determined a delivery schedule. Many stores get 24 hour deliveries and some do not. They try to find a solution that makes them compatible neighbors.

Tammy Squires questioned "How is this viewed with the intensity of this as transitional?"

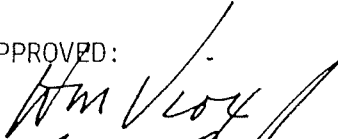
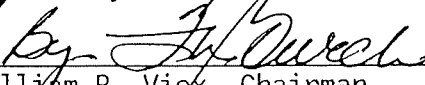
Mr. Dan Halfort stated that he lives in the house used in the topo (line of sight) study. His house is the easiest to buffer because there is a hill in the back. His house is the closest, but he would probably suffer least.

Mr. Richard Reker, 11211 Paddock Drive, stated that Paddock Drive cannot be buffered and, therefore, the development would not fit in there properly.

Mr. Woodruff stated that they need to study the buffering of Appaloosa.

There being no further comments, Chairman Viox stated that this item will be on the Agenda for the Business Meeting on January 6, 1993 at 8 P.M. and closed this Public Hearing.

APPROVED:

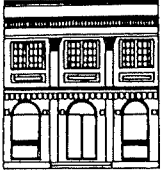
William R. Viox, Chairman

Attest:



Jan Hancock, Recording Secretary

BOONE COUNTY PLANNING COMMISSION



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

February 16, 1993

Mr. Thomas Bischoff
11200 Paddock Drive
Richwood, Kentucky 41094

RE: Conditions of Approval for Thomas Bischoff Property

Dear Mr. Bischoff:

The following represents possible conditions being discussed by the Zone Change Committee. If you, as the applicant, will agree to these conditions, please indicate so by signing your name at the end of this form and returning it to our office.

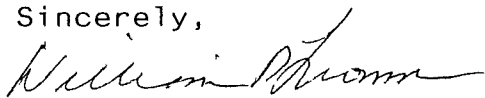
1. The Boone County Comprehensive Plan recommends that Eab Drive be connected with the existing frontage road or realignment and reconstruction of the frontage road and the road extended to Frogtown Road. The applicant is required to improve and dedicate Eab Drive into the property and to dedicate and rough grade a 50 foot right-of-way to the Burch-Porter property to the east.
2. A minimum of ten feet of berm shall be provided along Paddock Drive and the north boundary of ~~the property during~~ ^{LOW} Phase I.
3. Necessary I-75/Richwood Road Interchange improvements shall at a minimum be under construction when the user obtains a building occupancy permit or occupies the proposed building. These improvements will also solve existing and potentially larger traffic congestion problems at this interchange for the user of this site, the residents in the area and the businesses and residents that will locate in the area in the future.
4. Air conditioning units shall be painted to blend in with the roof of the building.
5. All landscaping shall be provided during Phase I for Phase I and II. Planting of evergreen trees shall be six (6) feet in height and fifteen (15) foot on center.
6. The berm to the north and west shall be at a 2.5 to 1 ratio.
7. Institute the following:
 - a. Subject to available right-of-way, construct a westbound right turn deceleration lane on Richwood Road at Eab Drive. The deceleration lane should be approximately 100 feet in length.

Mr. Thomas Bischoff
March 3, 1993
Page 2

- b. Subject to available right-of-way, construct a new westbound traffic lane on Richwood Road between Eab Drive and Clay Drive and a new westbound taper/return lane west of Clay Drive.
The taper/return lane should be 80 feet in length.
- c. Eab Drive and Clay Drive should be at least three (3) lanes wide to provide for center left-turn movements to adjacent developments on both sides of these roadways.
- d. Construction of the above improvements should occur during the first phase of the development.

*Not EAB connection to EAST
cost at this time
LOW*

Sincerely,



William D. Fromm, AICP
Director

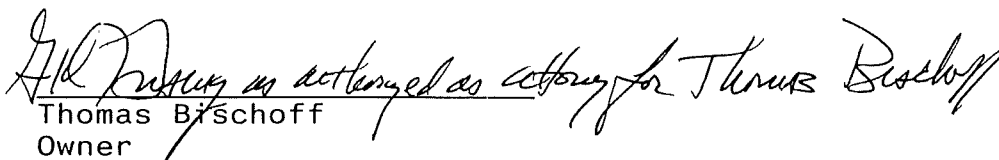
WDF:par

I, the applicant, agree to the above listed conditions for approval of my request for Thomas Bischoff Property.



North American Properties,
Applicant

I, the owner, agree to the above listed conditions for approval of my request for Thomas Bischoff Property.



Thomas Bischoff
Owner

OTHER SUPPORTING INFORMATION

FEB 3 1992



COMMONWEALTH OF KENTUCKY
OFFICE OF THE COUNTY ATTORNEY

6024 ROGERS LANE

P. O. BOX 169

BURLINGTON, KENTUCKY 41005

(606) 586-9950

BOONE COUNTY ATTORNEY
LARRY J. CRAIGLER

ASSISTANT COUNTY ATTORNEYS
GWEN C. VICE
ELIZABETH M. BLINCOE
HOWE E. BAKER
C. J. VICTOR

January 30, 1992

Boone County Planning Commission
William Viox, Chairman
2995 Washington Street
Burlington, Kentucky 41005

RE : Adoption of Ordinance No. 920.232
Approving zoning or land use regulations,
including a zoning map and a directive from
the Fiscal Court to the Commission to consider
changes in said zoning, regulations and zoning map.

Dear Bill :

At its January 21, 1992 meeting, the Boone County Fiscal Court passed the following motion relating to zoning or land use regulations and a zoning map for Boone County, Kentucky :

Commissioner Meihaus then moved, seconded by the Chair, to approve on second reading Ordinance No. 920.232, an ordinance of the Boone County Fiscal Court adopting and approving zoning or land use regulations, including a Zoning Map for Boone County, Kentucky, such zoning or land use regulations and zoning map having been prepared and recommended (on a vote of 12-1) by the Boone County Planning Commission via Resolution No. R-91-022-A; and, 1) to direct the Boone County Planning Commission to consider the Employment Planned District (EPD) zoning for the Hossman Road property and also directing the Boone County Planning Commission to look at the land use map for this area, 2) to direct the Boone County Planning Commission to reconsider the zoning of the Bishoff property (that would now become EPD) to go back to SR-1; and 3) to direct the Boone County Planning Commission to reevaluate the twenty (20) acre minimum to a fifty (50) acre minimum in the EPD zone.

This letter is the formal request of the Fiscal Court for Boone County Planning Commission to proceed with the directives and request of the Fiscal Court relative to the above referred motion, namely :

1) to direct the Boone County Planning Commission to consider the Employment Planned District (EPD) zoning for the Hossman Road property and also directing the Boone County Planning Commission to look at the land use map for this area,

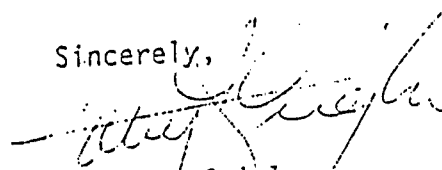
2) to direct the Boone County Planning Commission to reconsider the zoning of the Bishoff property (that would now become EPD) to go back to SR-1; and

3) to direct the Boone County Planning Commission to reevaluate the twenty (20) acre minimum to a fifty (50) acre minimum in the EPD zone.

The Fiscal Court would appreciate your earliest attention and full consideration to this request.

I remain,

Sincerely,



Larry J. Crigler
Boone County Attorney

cc : Bill Fromm
Dale Wilson
Kevin Costello
Ken Lucas
James Collins

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permit fees to be assessed for all new commercial construction for which building permits are issued are issued. Judge Lucas called for a vote of the motion, ALL PRESENT VOTING AYE. Exhibit "O"

ORDINANCE NO. 920.246 - HOSSMAN ROAD AREA

Judge Lucas declared a Public Hearing open at 5:45 p.m. for the purpose of receiving comments concerning the Ordinance 920.246.

Commissioner Patrick said she is disappointed that the Planning Commission looked at 1200 acres in the Hossman Road area, as she thought they were only going to look at land near Route 20.

Judge Lucas advised the action at this time is second reading of the ordinance and will allow for a text amendment that could permit property owners to apply for a zone change individually if they so choose.

Hearing no comments from anyone present, Judge Lucas declared the Public Hearing closed at 5:47 p.m.

Attorney Crigler advised there was an error in the advertising of the second reading of this ordinance and, therefore, it will be necessary for the Court to declare an emergency to pass the ordinance because of the 90 day time constraint of Planning & Zoning.

Commissioner Davis moved, seconded by Commissioner Melhaus, to declare an emergency due to the time constraint and take action on this ordinance. Judge Lucas called for a vote of the motion, Commissioner Patrick voted NO, Commissioner Melhaus voted AYE, Commissioner Davis voted AYE and Judge Lucas voted AYE.

Commissioner Melhaus moved, seconded by Commissioner Davis, to approve, as an emergency due to the time factor, on Second Reading Ordinance No. 920.246, an ordinance of the Boone County Fiscal Court adopting amendments to the 1990 Comprehensive Plan and recommending that no amendments be made to the 1991 Boone County Zoning Regulations or the Boone County Zoning Map for an approximately 1200 acre area generally located along Hossman Road, Kentucky 20 and Elijah's Creek Road; south of I-275, east of Limaburg Road and east of Conner Road, Boone County, Kentucky as recommended by a vote of 8 to 3 by the Boone County Planning Commission via Resolution R-93-001-A. Judge Lucas called for a vote of the motion, Commissioner Patrick voted NO, Commissioner Melhaus voted AYE, Commissioner Davis voted AYE and Judge Lucas voted AYE. Motion carried. Exhibit "P"

Commissioner Davis then moved, seconded by Commissioner Melhaus, that a letter be sent to the Boone County Planning Commission requesting they waive the filing fees for the Bowlins' zone change request contingent on their having paid all prior fees due the Planning Commission. Judge Lucas called for a vote of the motion, ALL PRESENT VOTING AYE.

ORDINANCE NO. 920.247 - BISCHOFF PROPERTY

Judge Lucas declared a Public Hearing open at 5:55 p.m. for the purpose of receiving comments regarding the zone change request outlined in Ordinance No. 920.247.

Ms. Ginny Woodruff said that she would like to bring to light something that occurred at the Fiscal Court meeting on March 9th. Ms. Woodruff said that on Monday, March 8th, she and her husband called a meeting at the Richwood Presbyterian Church to inform local residents of the facts of what's been going on pertaining to the zoning in the area. Ms. Woodruff said on Tuesday at the March 9th meeting Mr. Davis made a statement at the Fiscal Court meeting "Again last night I attended another meeting. They made comments, for instance, the exit ramps at the Richwood interchange and informed the people at that particular meeting of what was going on and they were wrong. They were so wrong with everything they said, but kept I'm right, I know I'm right and all that kind of thing and it's a shame how people will do things like and make an otherwise very attractive or very good project look bad".

Ms. Woodruff said that she and her husband had called that meeting to present the facts to them, to inform them what was going on and said she takes great personal offense at Mr.

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Davis' comment and said she felt it made them look like they didn't have a clue as to what they were speaking about.

Commissioner Davis said he has spoken with Ms. Woodruff by phone and talked to her husband as well. Commissioner Davis said he felt then, and feels now, that Ms. Woodruff understands his comments were not directed toward Ms. Woodruff, but she feels the public didn't know of whom he was speaking. Commissioner Davis said his comments had nothing to do with the meeting itself or of the project of proposed zone change that is before the court at this time. Commissioner Davis said his comments had to do with an entirely different project that was before the court at that time. Commissioner Davis said it had to do with the sheet metal project that was on the floor at the time his comments were made. Commissioner Davis said there are meetings that he attends where people stand up and make statements that are just absolutely not true and his comments were relating to the sheet metal plant because the comments were directed toward in his opinion, a demeaning manner to the Fiscal Court. Commissioner Davis said that is the reason he made those comments because the person who made those comments was wrong. Commissioner Davis said it had nothing to do with the Woodruff meeting and said he apologized to Ms. Woodruff at the time and has reviewed the tape since then, and while he views it somewhat differently than Ms. Woodruff, he does apologize again to Ms. Woodruff if she mistook his comments in any way to reflect upon their meeting. Commissioner Davis said it happened at their meeting, but had nothing to do with their meeting.

Ms. Woodruff thanked Commissioner Davis for his apology and said she thinks Commissioner Davis can understand where some people may gotten the wrong idea.

Mr. Charles Woods, resident at 11065 Stirrup Lane, said when the zone change was first applied for, the facts were not able to be put forth because the zoning change was put forth at the last moment. Mr. Woods said that Mr. Dusing referred to two years of comprehensive planning and that anyone had a chance for two years to review everything in hand when, in fact, it was approximately six to seven weeks prior to the hearing that the proposed change concerning the Bischoff farm zoning occurred. Mr. Woods said there were certain deed restrictions that Planning & Zoning say they cannot attend to because it is a civil matter, but the zoning restrictions prohibit Bischoff's land from being anything other than a horse farm, single family residence or being carved up into single family residency. Mr. Woods said this was not brought forth at the original hearing. Mr. Woods said he feels this is partly because the last change (the Bischoff farm change) was brought in as a comprehensive change when it should have been approached as a zone change by the parties involved. Mr. Woods said that while it may have been procedural thing to slip it in at the last minute, it has caused a lot of problems for the residents and the fiscal court and the planning committee. Mr. Woods said this matter should be looked at as an example of what not to do in the future. Mr. Woods said he was in Colorado for four weeks prior to the hearing and probably he was only one of two remaining residents in Heritage Trail that knew of the deed restriction. Mr. Woods said he was not able to present that information because of the time and while he has now forwarded the deed restrictions to the court and the planning committee, it is too little too late, and now there is a quandary as to what to do other than everybody winding up in civil court over the matter. Mr. Woods encouraged the court to take time to review procedures to avoid a last minute deal.

Judge Lucas said this whole issue preceded his time as he became County Judge/Executive in January of 1992 and wound up in the middle of a firestorm that had already been brewing. Judge Lucas said that while he is not personally familiar with those things that happened prior to that time, he knew it was a controversial issue in January.

Mr. Jeff Gorman, 11043 Stirrup Lane, said he moved into Heritage Trails in 1987 and he feels if this zone change request is granted, it will have a devastating affect on the quality of life, it will generate more traffic in an area already overburden and cited litter problems already exist. Mr. Gorman said it may save residents from having to travel five miles to Florence, but the convenience will not balance the detriment this project will have to the area.

Mr. John Ellison, 11080 Paddock Drive, said he is opposed to the EPD zoning for the Bischoff property and encouraged the court to revert the property to SR-1. Mr. Ellison said the rural setting is what attracted his family to the area and they don't mind driving the five miles for shopping conveniences. Mr. Ellison said his Realtor has assured him the value of his home will go down and the only question is to what degree. Mr. Ellison also expressed concerns about the traffic because of the number of accidents that already

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occur there and said any additional traffic will just add to the problem. Mr. Ellison said with all the vacant land in Boone County, why cram development into this small parcel of land. Mr. Ellison said it was time for the court to make sure that a few select individuals don't benefit at the expense of ninety-two homeowners in Heritage Trails. Mr. Ellison said Mr. Bischoff could make a great deal of money by selling the lots as residential rather than commercial. Mr. Ellison said he will go on record again that he will be one of the first to buy a lake front lot in that plat of land if it's zoned SR-1. Mr. Ellison urged the court to protect their lives and their assets by reverting this property to SR-1.

Mr. Kyle Reagan, 10932 Appaloosa Drive, said he is already concerned about safety considerations when mixing semis and cars in a 45 m.p.h. area and feels this is already conducive to accidents. Mr. Reagan said there will be potential for pedestrian/children problems if this is changed to EPD with any sort of commercial development. Mr. Reagan said another concern is the fire safety issue. He said there is approximately 10 miles between fire stations in this area and there is no developed place within the county where the distance is this great. Mr. Reagan said there are only two paid personnel at the fire house and the remaining are volunteers. Mr. Reagan said this area is unwise for EPD until fire protection is brought up to what it should be.

Mr. Larry Przybylski, Stirrup Lane, Heritage Trails, said he has attended numerous meetings of the Fiscal Court as well as the Planning & Zoning Commission and he would like to share some of his observations. Mr. Przybylski said each meeting has drawn enough public attention and support by area residents, not only from Heritage Trails homeowners, but homeowners as far away as Beddingers Landing and the overwhelming majority that attend these meetings expressed concern about any changes that will impact this area and neighborhood. Mr. Przybylski said very few proponents of the plan express any comments in favor of this development unless they had a special interest in it. He said that he has observed (as a compliment) the attention given the Fiscal Court and Planning & Zoning members at these meetings aside from a couple of members of the Zoning Commission that had to be reminded when a person is talking they really should listen. Mr. Przybylski said he doesn't know if all alternatives have been considered in making a decision on the zoning of this property that really benefit the community or stir involvement in a community. Mr. Przybylski said he thinks this would have been a less controversial subject had the property change gone forward if something such as a park or a church, or maybe even a firehouse as suggested by his neighbor, were made available for this property. He encouraged the Court to make a decision based on the facts and evidence submitted that has corrected some of the facts as they've been portrayed in the minutes over the last year and a half, whether it's been corrections or video tape. Mr. Przybylski said he would like to see the Court make their decision based on hearing the continuing plea of this community to not allow development to border up to this neighborhood. He said he hopes the Fiscal Court doesn't make a decision based on any type of self serving financial interest by any associate of the court or the Planning & Zoning Commission. He said he would hate to think that position influence in Boone County might compare with what's public going on in Frankfort nowadays.

Ms. Chris Vesper, 11084 Stirrup Lane, said this development will be at her back yard and she does not understand how a development this large can be placed in the middle of a subdivision. Ms. Vesper said she wants to go on record opposing the zone change request.

Ms. Thelma Castillini, Dixie Highway, Richwood, said this is the first incident where EPD has been brought into play since it was introduced last January with the Comprehensive Plan. Ms. Castillini said at that time there was opposition to the EPD because they did not know anything about it and did not receive a very good explanation as to what it would be, however, the dissertation given at that time enumerated many benefits for the county, primarily flexibility, and an overall much nicer plan than anything that had been seen so far. Ms. Castillini said this proposed project is carrying flexibility to the limit. Ms. Castillini said she wanted to remind court members that EPD was sold to this court as being "the best thing since the wheel" and said she has not seen evidence in any plan presented to date that the EPD zone actually belongs in the County.

Mr. Daniel Hallforth, 11076 Stirrup Lane, said his home is directly behind the farm and is actually the closest to the proposed Kroger store that Planning & Zoning has recommended. Mr. Hallforth said when he purchased his property he was informed that the Bischoff property was zoned SR-1 and that only the front of his property that borders Richwood Road was zoned commercial. Mr. Hallforth said he assumed this would

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provide him with an adequate buffer or transition zone between his home and any commercial development should Mr. Bischoff sell his farm. Mr. Hallforth said his assumption was wrong. Mr. Hallforth said his home was broken into (along with two others in Heritage Trails) and robbed, therefore, his concern is one of safety. Mr. Hallforth said there is no buffer zone between the homes and any commercial development. He said since there is no buffer zone with the EPD, his home and others will become an even easier prey for the undesirables. Mr. Hallforth said he wants to go on record as being very much opposed to this change and encourage the Court to retain the SR-1 zone.

Mr. Bill Woodruff, 11012 Appaloosa Drive, said he is dead set against EPD for this property. Mr. Woodruff referred to January 21st of last year and said he thought it was very clear as to Fiscal Court's intent that night in that they felt EPD was inappropriate for this piece of property. Mr. Woodruff said that's why he and others are present at this meeting because fourteen months have passed and they're right back where they were. Mr. Woodruff said he's not sure he knows where they're at right now and he will get into that in a minute.

Mr. Woodruff again referred to the meeting of January 21st and said that Shirley Meihaus stated during the meeting that the Bischoff property "is right in the middle of the neighborhood, right across the street you have residential homes" and later one she says "I think the safety valve of an EPD zone would be as compatible to adjoining property and I believe this one is not, I would like to see it go back to SR-1 zoning". Mr. Woodruff said the intent is very clear on the part of Shirley.

Mr. Woodruff said that Don Davis also spoke during the meeting and he said, "I believe as Shirley as indicated that the property should remain as it is (as it is being SR-1). To change that to EPD I think that would have an adverse affect and I would like to see that withdrawn from this so that it will go back (meaning that it go back to SR-1)".

Mr. Woodruff said two commissioners have made it very clear that they felt EPD was inappropriate and that's after going through a lot of process, public hearings and basically that's what the Court said.

Mr. Woodruff then refers to the transcript of the meeting and what was said and stated he is befuddled by this. "Mr. Lucas said, what I think would be an appropriate motion would be that we pass the second reading of this ordinance (this is adopting the Comprehensive Plan, by the way,) and if I'm understanding the commissioners, with the exception of the Bischoff property, that we would deny in affect, the EPD zone, thereby it reverts back to its prior zone and that we would direct the Planning & Zoning Commission to look at the Hossman Road area, recommending from this body that it be considered for EPD zone and they should also study the land use map at that time"; and went on and made a couple of additions to that motion. Shirley Meihaus stated, "I make that motion, Judge". Mr. Lucas said "Shirley makes that motion and I second it, whatever it is, or I recognize a second which is me, okay, should we have any more discussion. We've had 3 hours, 2 1/2 hours, I know this is an important issue, I don't mean to make light of it".

Mr. Woodruff stated that was what was said, there was clearly a motion and a second. Mr. Woodruff then referred to the minutes and said this is where he has a problem as it says Commissioner Meihaus moved to approve the ordinance which is the adoption of the plan it states basically what was said there. Mr. Woodruff stated there is no mention of a second in the minutes and it goes so far as to later in the minutes to say the motion died for lack of a second. Mr. Woodruff said he did not understand this and questioned the inaccuracy of the records.

Attorney Crigler said he didn't get through the transcript probably as carefully as Mr. Woodruff did, but indicated that he and Mr. Woodruff had discussed this at a meeting, and said while he doesn't know if it necessarily died from a lack of a second, however, he thinks that was the motion that a vote was never taken on. Mr. Crigler said the minutes may have incorrectly reflected that it died for a lack of second, but, nonetheless, the motion didn't pass because a vote was never taken as he recalls. Mr. Crigler said it's difficult to say if the transcript's was correct or if the minutes were correct, although either way, there was no vote and the motion didn't pass. Mr. Crigler said he doesn't know if this helps anybody understand the issue.

Mr. Woodruff said he wanted to point this out and make it a part of the record for tonight. Mr. Woodruff said that he and Mr. Crigler have met on these issues along with Ms. Vice

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and Mr. Collins because he had written a letter to Mr. Collins with regards to some of the issues.

Mr. Woodruff said it appears that the minutes of this meeting have been altered and altered purposely to reflect a proper meeting, which this meeting was not. Mr. Woodruff said he asked about a state statute and then he found KRS 67.100, Records of the Fiscal Court, says that the Fiscal Court is a court of record and said he contends that the records are in error and he questions whether this is a violation of that statute and that's for the court to make judgment on at some point and time.

Mr. Woodruff referred to a letter to Mr. Collins, a letter which he wrote to Mr. Collins, and said Mr. Collins recommended the Court consider dropping EPD from the Comprehensive Plan completely. Mr. Woodruff then said Mr. Davis diverted this consideration by saying that a lot of land in Boone County would be affected and Mr. Fromm got up and agreed and said there is a lot of land and to quote what Mr. Fromm said, "There are acres and acres that would have to revert back to their original zoning". Mr. Woodruff then quoted Mr. Collins from the transcript of the meeting, "Does it not make sense and is it more legally sound just to reject all EPD zones, let them revert back and then direct the Planning & Zoning Commission to go and look at all of those, then that way we're not zeroing in on any particular developer, any person or anything like that?"

Mr. Woodruff continued quoting from the transcript, Commissioner Meihaus said, "That's a good idea". Miss Patrick, "I agree with Mr. Collins". Mr. Davis spoke and said, "My comment would be that I can't tell you how much EPD land mass there would be in the county, but I have a feeling there is an awful lot you're going to affect. Mr. Woodruff said he has problem with this because his research revealed there are only three parcels of land in the entire County; one parcel of land is the Bischoff property which has about twenty one acres, there is another parcel of land north of 275 at Mineola Pike with about thirty five acres, and then there's over three hundred acres that are owned by the Davis family. Mr. Woodruff said that he thinks Mr. Davis was out of line by saying something and that is a conflict because he swayed the court where he is the beneficiary of having a commercial type zone instead of letting it revert back. Mr. Woodruff said he does not think anything should have been said at that time.

Mr. Woodruff again referred to the transcript and the actual motion that was made that got everyone where they're at tonight. Mr. Woodruff said Judge Lucas stated "The motion should be that we pass the second reading of the ordinance directing Planning & Zoning to consider the EPD zone for the Hossman Road property and that area and also directing them to look at the Land Use Map for that area and also direct Planning & Zoning to reconsider the zoning of the Bischoff property that is presently, that would now become EPD and we are recommending that we go back to SR-1. I think that would be the proper intent to do that. Mr. Woodruff said the key phrase is "we are recommending that we go back to SR-1" and when he picked up the rest of the documents that have been conveyed to Planning & Zoning he could see nothing that talks about recommending and that was the proper intent of this Court at that time as the Court recommended SR-1. Mr. Woodruff said he sees nothing that has come before the Fiscal Court addressing the issue of SR-1 which was the direction of the Fiscal Court. Mr. Woodruff says his question is where are the facts to substantiate or deny the SR-1 request that the Fiscal Court made as a body as Planning & Zoning has only supplied facts as to why EPD is appropriate and he has a lot of questions about the Planning & Zoning's Findings of Fact which he will discuss in a minute.. Mr. Woodruff said that he believes Planning & Zoning has not fulfilled the court's request, that the zone for the property be SR-1. Mr. Woodruff read the public notice that was in the paper "Notice is hereby given that the Boone County Planning Commission will hold a Public Hearing regarding a request by Boone County Fiscal Court. The request is for a change from the present zoning district of Employment Planned Development (EPD) to Suburban Residential One (SR-1)". Mr. Woodruff said the notice goes on to say "The Boone County Comprehensive Plan including its Land Use Plan Map will be reviewed to determine whether the request, if approved, will be consistent with the Comprehensive Plan".

Mr. Woodruff said that he doesn't know if what has become before the Court really addresses that issue.

Mr. Woodruff then referred to Issue #6 in the letter and said at the Public Hearing he had administered some evidence into the Planning & Zoning Public Hearing and that evidence was a video tape pertaining to the direction the Fiscal Court wanted regarding the zoning. Mr. Woodruff said Mr. Fromm had stated to he and two other people after the

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Planning & Zoning Business Meeting where they voted on the EPD, that he still had the video tape and it had not been viewed by anybody, including the committee. Mr. Woodruff said he has a real problem with he, or anyone else, administering evidence when it is accepted by Planning & Zoning and then it does not get to the proper parties for review as factual evidence in the case.

Mr. Woodruff said at the Planning & Zoning Business Meeting, Mr. Burch, who is Vice Chair of the Planning & Zoning, voted on the zoning of the Bischoff property and then later on he abstained from voting on the Concept Plan to develop the Bischoff property. Mr. Woodruff stated that Mr. Burch is co-owner of adjoining property already zoned Commercial Four and having the Bischoff property zoned EPD, a commercial type zone, would only improve the marketability of his property. Mr. Woodruff said he thinks there is a conflict here and cited an example that has already come before Planning & Zoning, that being the Kroger Concept Plan and even though that issue is not being discussed at this meeting, it is public fact as it's already been administered. Mr. Woodruff said a road has been put in the Kroger Plan that is connected right into Mr. Burch's property and said it is his contention that by using the Comprehensive Plan and voting on this property Mr. Burch has already influenced in getting a road that comes into his property.

Mr. Woodruff then referred to the EPD zone itself and the Finding of Fact that came from Planning & Zoning revolve around why the property should be EPD and reiterated that he did not know why their facts were that way because the Fiscal Court's request was a request for a zone change from EPD to SR-1. He said he thought the Findings of Fact should be either to accept or deny the request for SR-1, therefore, he questioned where were the facts to substantiate why SR-1 was inappropriate because he felt evidence was entered at the Public Hearing as to why SR-1 is appropriate.

Mr. Woodruff said he even has a problem with their Finding of Facts and referred to #2, the Committee Report from Planning & Zoning, which says the future Land Use Text notes the commercial development around the interchange is expected to remain and expand to serve local residents in addition to highway related services. Mr. Woodruff said this is not what's in the Comprehensive Plan, the Comprehensive Plan is talking about the area around the interchange and goes on to say highway related services should not impact the low density residential uses on the west and be limited to the east side of I-75. Mr. Woodruff said in their Findings of Fact, it states that commercial development should be adequately screened from residential areas and should serve the developing residential uses in the Richwood-Union area. Mr. Woodruff said their fact is in error.

Mr. Woodruff said he does not understand this as the Comprehensive Plan says that commercial development along Richwood Road should be screened from the roadway (talking about an area down to the south) and serve the developing residential uses in the Richwood-Union area, so they've selectively used words out of the plan, but selectively also omitted words and what they state as facts are not what the plan says. Mr. Woodruff said he feels the plan actually supports the use of residential in this area and the plan says that commercial development northwest of the intersection will expand and extend along the interstate; this expansion can occur with the improvement/extension of Eab Drive connecting the existing Frontage Road and this is going through the Burch property. Mr. Woodruff said he looked up the definition of "along the interstate" and it is in a "line parallel with the length or direction of" and when he looked at the map it's the Burch property running up to the Mobile Home Park and does not have anything to do with the Bischoff property. It says commercial areas need to be adequately buffered from the existing residential areas and care must be taken to mitigate any of the adverse impact of commercial development due to the proximity of the interstate and residential uses. Mr. Woodruff said the plan is supporting residential. Stipulation as to the Bischoff property, he feels it has a right to be a commercial type zone which EPD is.

Mr. Woodruff said it has been a difficult process working on this matter for the past two years, but at the same time an educational one. Mr. Woodruff said he has a good deal of respect for the court even though he has said some negative things. Mr. Woodruff said the Fiscal Court has gone the extra mile to say the EPD zone is inappropriate and it should go back to SR-1. Mr. Woodruff said all he is asking now is the court stand behind its word.

Mr. John Whitney, Paddock, said that Mr. Woodruff had brought up several points about legal issues, but he wanted to bring up just three points 1) Should it be EPD, because

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that's what the Court will be voting on as the basic premise of Land Use Planning is having some buffering as nobody wants to have a house in the middle of an industrial park or a stamping mill in the middle of a group of houses, so you start looking at some sort of buffering. Mr. Whitney referred to Article 16 of the Boone County Zoning Regulations, Employment Planned Development which reads: Briefly, Employment Planned Development (EPD) is a zoning district which depicts a major employment center and may consist of industrial, office or commercial uses in a planned development setting. To a limited extent, residential uses may be permitted in an Employment Planned Development District. Mr. Whitney said the EPD zone is mainly the industrial, office or commercial and very limited residential. He said the twenty acres being discussed is nestled between residential areas and it's not an easy place for building and buffering, with a ridge on one side that overlooks the whole area and the other side dips down with another rise. Mr. Whitney said he has a hard time understanding how someone can say that EPD is a logical zone for this land. Mr. Whitney said his second point is that there are already traffic problems in the area and the county has very little control over state highways. Mr. Whitney said the court's decision will affect traffic and related problems in the area.

Mr. Whitney said his third concern has to do with buffering. He said on the west side of the land in question as there is a peninsula of houses that has commercial on one side and now EPD is being proposed for the area other side of this peninsula. He said it's difficult for him to understand how a group of intelligent people who are supposed to be planning can have a peninsula of ten houses surrounded by a mainly commercial area.

Mr. Jerry Dusing, Attorney representing Mr. Tom Bischoff, introduced Mr. Bischoff and the representative of North American Properties. Attorney Dusing said the Court has heard from several adjacent property owners who are against the EPD zoning and have been for several years. Mr. Dusing said that Mr. Bischoff and his family have owned this property for fifty years, not the last five, three, two or one and further stated this is relevant because of the criteria for a zone change. Attorney Dusing said the property is zoned EPD and has been zoned EDP since the inception of that zoning, that was a compromise from commercial to begin with which he and his client did not like. Mr. Dusing said the property historically has been commercial and properly that's what it should be. Mr. Dusing said that while this is "water over the dam" now, he wants to put things in proper context.

Mr. Dusing said in order to justify changing this property back to SR-1 from EPD has to meet certain criteria. Mr. Dusing said two of the criteria are simply "black & white" and it's open and shut. Mr. Dusing said the first criteria is that the proposed Map Amendment has to be in agreement with the Comprehensive Plan and said he is assuming that Findings of Fact and recommendations have been forwarded to the Fiscal Court, and they are now part of the public record. Mr. Dusing said he will not reiterate all of that. Mr. Dusing said certain facts are in dispute and that is the property is Commercial on the Comprehensive Plan and the whole scheme of zoning or the intent of zoning is that the actual map allow the use zone that is supposed to conform to the Comprehensive Plan zone, because the Comprehensive Plan zone is defined as the ideal zone based on collective wisdom of staff, Planning Commission and Fiscal Court, based on the five year update process. Attorney Dusing said this property is zoned Commercial on the Comprehensive Plan Map and cannot be changed to SR-1 from EPD, which is a conforming use with Commercial because it allows commercial underlying uses. Mr. Dusing said it cannot be changed to residential because it would not conform to the Comprehensive Plan Map.

Mr. Dusing said there is one exception and that is if the existing zone map classification is inappropriate and the proposed classification is appropriate. Mr. Dusing cited from a court case of 1991 and said this means "any amendment must be consistent with the Comprehensive Zoning Plan of the community unless the Comprehensive Plan is found to be inapplicable". Mr. Dusing said in order to make this SR-1, it would be necessary to go back to 1991 and decide the whole process was in appropriate and inapplicable. Mr. Dusing said this cannot be justified.

Attorney Dusing stated the Comprehensive Plan says this property is Commercial and the Land Use Map says it's EPD, therefore, it can allow commercial uses. Attorney Dusing said he respectfully disagreed with the history that has been related to the Fiscal Court previously. Mr. Dusing said EPD was never initiated by Tom Bischoff or his representative, Jerry Dusing, nor was it ever slipped in at the last minute within six or seven weeks of the zoning. Mr. Dusing said the process was in 1989 the Comprehensive Plan Five Year Update was set off into motion and this is the first one Boone County has

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ever had. Mr. Dusing said the law is clear that the Comprehensive Plan is what is supposed to dictate zone changes and the Comprehensive Plan says its a product (not six or seven weeks at the end of this process) of 60 organizations, 200 individuals, professional Planning Commission staff and other various comments from public service groups. Mr. Dusing said this is a process that lasted two years.

Mr. Dusing said the Comprehensive Plan says the complete opposite 180 degrees from single family residential for this property. Mr. Dusing stated the process covers ten or twelve items, all of which are topics and areas that are incorporated into coming to conclusions for proper land use; all of which are topics that have been brought up at this meeting, i.e., traffic, public safety, aesthetics and the usual zoning topics. Attorney Dusing said the Comprehensive Plan covered ten of these items: population, environment, economy, transportation, business activity, housing, public facilities, recreation, agriculture and historic preservation. Mr. Dusing said then it went to the Goals & Objectives process and he quoted "the adopted planning goals and objectives for guiding preservation and development in the County are included in this document and are the basis for the remaining elements". Mr. Dusing said the next process was that the Comprehensive Plan was developed through a multi-state process designed to integrate the Goals & Objectives to create consistency between the various elements of the Comprehensive Plan. Mr. Dusing said the argument tonight is about the tail end of that two year comprehensive process, that being the land use element and referred to what the Comprehensive Plan said about the land use element stating it is the culmination of the preceding ten elements of the 1990 Boone County Comprehensive Plan.

Mr. Dusing said it is not SR-1 versus EPD and questioned whether the Court is going to throw away the entire process, planning, and everything that has been done for three years because there are abutting property owners who have fears and concerns about what it is going to do their property, or implement the safeguards and the built in controls that are in the EPD zone that the developer has to satisfy and which have been presented to the satisfaction of Planning & Zoning. Mr. Dusing compared throwing the zone back to SR-1 to "throwing the baby out with the bath water".

Mr. Dusing stated the Comprehensive Plan does not say what Mr. Woodruff just said, but rather the exact opposite and referred to Page 224 and said it requires commercial for the Bischoff property (Mr. Dusing noted EPD is a form of commercial) and the property fits like a glove with the criteria and the text of the Comprehensive Plan which says that commercial development northwest of the intersection (that's where this property is located) will expand and extend along the interstate; this expansion can occur with the improvement and extension of Eab Drive to connect with the existing Frontage Road for realignment and reconstruction of Frontage Road.

Mr. Dusing said the Comprehensive Plan dictates what the map should be based on proper planning principles for the whole county and again referred to the same paragraph talking about the northwest quadrant which further states the area to the north of the interstate related to the commercial area and south of the existing mobile home park should develop as commercial uses consistent in design to serve the single family residential developments in this area. Mr. Dusing said there's no doubt that the text of the Comprehensive Plan dictates under all proper planning principles commercial for the Bischoff site because the text is developed for commercial and then the map further supports it.

Mr. Dusing said the consideration of SR-1 came into the picture when the simplest part of the five year update to adopt the actual zoning map to conform with the Comprehensive Plan came about and somehow Mr. Bischoff got flipped from Commercial to a new zone called EPD. Attorney Dusing said neither he or his client liked this change and they protested both verbally and in writing, however, they were advised that EPD is in conformity with the plan and would give them an option of commercial use as long as it meets the developmental controls. Mr. Dusing said no where was SR-1 considered appropriate.

Attorney Dusing said that Richwood is the most rapidly increasing population in the County and there are thousands of undeveloped acres that are supposed to be residential in the Richwood area, while there are very few undeveloped acres of commercial property in the Richwood. Mr. Dusing said these residents did not want the Court to rezone this property to SR-1 because that's what the community needs, but rather flip it to SR-1 ignoring the whole process because it impacts houses on two streets, two of four sides of this development. Mr. Dusing said there is a dire need for neighborhood

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commercial in the Richwood-Union area and is found as a fact in the Comprehensive Plan. Mr. Dusing said the only question is where it should be.

Mr. Dusing said you can't move to a neighborhood that has thirty-five undeveloped acres 500 feet from an interchange off ramp next to McDonalds, Pilot, Waffle House, Chevron Gas Station, 2 motels and a liquor store, and have expectations that that's not going to be commercial development. Mr. Dusing said the fact is that commercial development is topped up against the interchange precisely where it should be in accordance with a plan that adopts proper planning principles. Mr. Dusing questioned if it would be better to string commercial all along Richwood Richwood or dump all the traffic on Florence in order to get basic services. Mr. Dusing said this would not be proper planning.

Mr. Dusing stated he would like to remind the Fiscal Court this has been done three times in the past three years; the Comprehensive Plan process that took two years to get through and which is the most thorough review and analysis in County history that resulted in an ideal designation as Commercial use for this property. Mr. Dusing said the Fiscal Court asked, by letter, the Planning Commission to reconsider the EPD zone and change the Bischoff property back to SR-1 and to change the minimum size zoning district for EPD from twenty acres to fifty acres. Mr. Dusing said he was not notified, nor was Mr. Bischoff notified and six months later a three page memo from the Planning Commission setting out facts and reasons with the conclusion "EPD is the ideal zoning classification" and going on to say the "twenty acre minimum for EPD size is reasonable and anything above that would be arbitrary". Mr. Dusing said in July of 1992, Fiscal Court (after finding twice commercial is appropriate, EPD is appropriate, SR-1's not appropriate) said let's have some public hearings and let all the people have their opportunity for input, present all the facts and then the Fiscal Court will review it. Mr. Dusing said that process started in August or September, the letters went out in October, public hearings in November of 1992 and all the same people with all the same comments, i.e., traffic, public safety, littering, aesthetics, were presented to the Planning Commission; there were committee meetings, questions from Planning & Zoning and the Planning Commission sent and passed (Mr. Dusing said he thought it was unanimous) adopting Findings of Fact that it should stay EPD and SR-1 was inappropriate. Mr. Dusing said to overturn the three separate processes over three years requires some kind of new facts, something that was not known before and nothing like that has been heard at this meeting.

Mr. Dusing said to understand how everyone got here tonight, the residents of Heritage Trails do make a fair comment when they say when we bought into Heritage Trails Tom Bischoff's property was zoned SR-1. However, Mr. Dusing said he has two points to make, one being that zoning map designations aren't in stone, they change every five years, they change on the law of changing dynamics, economic criteria, social, physical, topographical and public improvements; they are all subject to change and residents cannot move five hundred feet from an interchange off ramp with a horse farm surrounded by the tremendous pressure in Richwood and what's happening there with development, and not reasonably calculate that if there's going to be commercial development, it's going to be up next to all the rest of the commercial development.

Attorney Dusing then gave a brief history (and said he would like to enter the documents as part of the record of tonight's meeting) from his client's perspective stating that in 1964, when zoning first came to Boone County, the entire Bischoff property was zoned Business 6, which provides for businesses associated with interstate highway traffic, regional sales areas or otherwise associated with heavy traffic volumes. Mr. Dusing said this land was one of the original options for Northern Kentucky University; In 1969, Mr. Bischoff's property presented and was approved for a Commercial Subdivision, not just a portion but the entire piece of property for commercial, highway uses; In 1979, the revised Zoning Map (1964 revised in 1979), the Bischoff property was zoned PD, Commercial PD. Mr. Dusing said the point he wants to make is that in 1977 or 1978 is when Heritage Trails was first developed and approved by the Planning Commission and a zone change to residential was needed to get the property bought; and the first Homarama was in 1978 with Paddock and Stirrup. Mr. Dusing said that property (that which is being discussed at this meeting) was zoned Commercial BP. Attorney Dusing said the real story is how it ever got to be single family residential that his client has had to live with it for ten years. Mr. Dusing said the real story is in 1980, after Heritage Trails was up and running for two or three years, the case of Displays, Inc. versus the City of Florence was a case before the Kentucky Supreme Court that threw out all of the zoning in Boone County on a technicality and a consulting firm was hired to get zoning in place; In 1981 the Bischoff property was flipped to an amalgamation of three different things

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as property lines were not followed, therefore, his property ended up C-3 Interchange Commercial, Mobile Home Park and SR-1. Mr. Dusing said the property owner received no notice back then if it was a five year update and Mr. Bischoff did not know that his property had changed from Commercial and part to Mobile and SR-1 until publicity about the five year update occurred in 1985; at that time Mr. Bischoff and Mr. Brinkman, his associate, went to the Planning Commission and the director told them nothing would be changed in that quadrant until public sewer and improvements were there and suggested they come back and talk to him when the infrastructure is in place; Consequently, that is when he and his client showed up in 1989 at the next five year update because the infrastructure was there and got involved with the Comprehensive Plan process that lasted for two years, not six weeks.

Mr. Dusing said he and his client were not happy with the EDP zoning when the property had been historically zoned Commercial, even while Heritage Trails was developing, and now they're faced with going all the way back to 1980 SR-1. Mr. Dusing said this matter has been too politicized and he has not heard any real criteria for appropriate zoning except from the Comprehensive Plan that designated Commercial on the map, but rather what has been heard are people against and this is an election year. Mr. Dusing said there are 355 people in the Richwood area for this zoning and only 128 people against it and 92 of those 128 are from Heritage Trails. Mr. Dusing said these services are needed and the proper place to put them are up against the interchange with the rest of the commercial. Mr. Dusing said traffic cannot be an issue since the Simpson Plant just went through and it generates 70 to 100 semi tractors a day.

Mr. Dusing said the objections basically he has heard are traffic and visibility. Mr. Dusing said if this were the criteria, which it is not, there would be no commercial development anywhere if it could be turned down because it could be seen. Attorney Dusing said the facts are the demand is there, the criteria is there and the Comprehensive Plan requires it, dictates it, results in a Map use, and they asked for Commercial and his client gets EPD based on P& Z text, not theirs. Mr. Dusing referred to the Comp Plan where it states "this area is earmarked as one of the zones forecast to experience the largest population increase" and the answer his client gets is "yes, but they can all drive to Florence for neighborhood commercial services". Mr. Dusing said this is not in the best interest of the County. Mr. Dusing said as far as the traffic is concerned, EPD gives the Fiscal Court & the Planning Commission an opportunity to have improvements at Richwood at the developer's expense, not public expense.

Mr. Dusing said petitions and popularity are discouraging and shouldn't have anything to do with this issue, because the right thing should be done based on the criteria, but if in fact petitions are considered, then it is still three to one in favor of the development at this specific location. In conclusion, Mr. Dusing said the whole process dictates Commercial and to flip this to SR-1 would require the Fiscal Court to ignore the three year process, the Findings of Fact that have been made in three separate forums over three separate processes and three separate sets of public officials. Mr. Dusing said to do this means there is no Plan.

Judge Lucas said with all due respect to Mr. Dusing and everyone that has spoken, he does not think anything new has been presented. Judge Lucas said he realizes the importance of the issue and appreciates everyone present and at this time he would like to confine the discussion to the Fiscal Court members.

Judge Lucas declared the Public Hearing closed at 7:18 p.m. and asked for comments from the commissioners.

Commissioner Meihaus said the current zone EPD is not appropriate because of the sensitivity of the area to the north and west where there are upscale single family homes. Commissioner Meihaus said she would like to repeat what EPD stands for and said it allows a major employment center with industrial, office or commercial uses. Commissioner Meihaus said these are not compatible with the surrounding SR-1 properties as the Comprehensive Plan clearly states that care must be taken to mitigate any adverse impact of commercial development in residential uses. Commissioner Meihaus said that she agrees with Mr. Dusing that the SR-1 zone is probably not an appropriate zone. Commissioner Meihaus said she thinks there is an alternative that has not been discussed. Commissioner Meihaus said she knows that single family homes cannot be placed next to C-4 Commercial properties as no one would be willing to build a nice home there, so SR-1 is not a viable choice at this time. She said the other alternative is a new zone that has not even been discussed or even thought of and it is

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actually the flip side of EPD, it's RPD which is Residential Planned Development. She said where EPD allows heavy commercial development with a smattering of residential, RPD allows more residential with the phasing in of commercial. Commissioner Meihaus said she believes both parties can be pleased with a compromising zone such as this, where there can still be multi-family homes and for clarification she quoted from the text, "residential planned development is a zoning district which compromises a significant residential population and may consist of a variety of housing types, such as but not limited to single family detached lots, apartments, townhouses, landminiums, condominiums and duplexes in a planned development setting. To a limited extent, office, commercial and recreational uses may be permitted in this RPD zone". Commissioner Meihaus said she would like to reiterate that RPD is conforming to the Comprehensive Plan because it does allow commercial development.

Commissioner Meihaus said this type of zone will allow Mr. Bischoff a realistic use of his land, not restricting him to single family homes, which she agrees should not be C-4 zoning. Commissioner Meihaus said she agrees there is a dire need for commercial services in the Richwood area and the RPD allows these uses to serve the local residents.

Commissioner Meihaus quoted from the minutes of a Public Hearing held November 18, 1992, "That the majority of the people in the area are not opposed to this type of development on this property. The people who are opposed to it are the people in the subdivision adjacent to it, but this does not represent the will of Richwood". Commissioner Meihaus said she begs to differ with that statement as the Zoning Regulations and the Comprehensive Plan were adopted to protect the will of the adjoining property owners from uses that are offensive and incompatible. Commissioner Meihaus said these people have to live every day of their lives with whatever development is permitted there and EPD zone is not appropriate for this property. Commissioner Meihaus said she would like to see an RPD zone considered as it would be a compromise between the property owner and the adjoining neighbors.

Commissioner Davis said he agrees with Commissioner Meihaus that the property is not conducive to SR-1 and said the Court has the opportunity to formulate a transitional zone. Commissioner Davis stated EPD is described in Article 16 as a transitional zone and that's what's being considered, however, its counterpart is the RPD and has been sorely overlooked in this entire process. Commissioner Davis said he feels everyone has centered on the employment planned development and the name employment has scared everyone and started the problem. Commissioner Davis said to take this property back to SR-1 moves the problem to a neighbor. Commissioner Davis said he thinks the problem needs to be resolved by protecting the people in the area as the Comprehensive Plan suggests, as the map suggests and even as the report suggests. Commissioner Davis said even when looking at the surrounding land uses, the Comprehensive Plan does talk about the land adjacent to the interstate on the northwest quadrant which is the so called Burch property, but he doesn't feel that it extends that far. Commissioner Davis said to say that a major retail type of development (not necessarily Krogers) should be adjacent to a residential neighborhood is not appropriate for this area in his opinion.

Commissioner Davis said it is difficult to know what to do about it because the court does not have the ability at this meeting to just arbitrarily say it's RPD as the court has to say it's EPD or single family residence. Commissioner Davis said with that in mind, these are the only two things the court can consider, the Court cannot come up with a new zone at this meeting, it can only ask to do that in the future.

Judge Lucas then asked Attorney Crigler for direction.

Attorney Crigler said the first two options the court has would be 1) pass the ordinance before the court as is recommended by the Planning & Zoning Commission and this would make the zone an EPD. Attorney Crigler said 2) if the Court denies the ordinance the property would still be zoned EPD and the fact that the ninety days will expire on the recommendation and the Planning & Zoning Commission would, in fact, be the zoning.

Attorney Crigler said the third option would be, since there were public hearings with regard to EPD and SR-1 and the recommendation is for it to stay EPD, but SR-1 was considered, then the Fiscal Court could determine its own Finding of Facts, if there are any, to have the property zoned SR-1. Attorney Crigler said the Court would have to come up with Finding of Facts and comply with the statute.

Judge Lucas asked for further clarification on the third option.

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Attorney Crigler said it would be to deny the ordinance and come back with a second motion to make the property SR-1, but certain statutory requirements that the Court must develop its own Finding of Facts.

Attorney Crigler said the fourth option would be either if the Court passed or defeated the ordinance as it is, to come back with an additional motion to refer this back to the Planning Commission requesting that it be zoned RPD. Attorney Crigler said this will require a separate motion.

Judge Lucas asked the Court if they wished to make a motion or offer any other options.

Commissioner Melhaus moved to reject the recommendation of the current EPD zoning of the subject property.

Commissioner Patrick seconded the motion.

Attorney Crigler suggested Judge Lucas read the ordinance in title for the minutes and the record.

Judge Lucas read in title Ordinance No. 920.247, an ordinance of the Boone County Fiscal Court recommending that the current zoning of the subject property continue as a result of a request from Boone County Fiscal Court for a Zoning Map Amendment, such Zoning Map Amendment being a zone change from Employment Planned Development (EPD) to Suburban Residential One (SR-1) on an approximate 22 acre site owned by Tom Bischoff generally located on the north side of Richwood Road east of Paddock Drive, Boone County, Kentucky as recommended by the Boone County Planning Commission On A 10-2 vote via Resolution R-93-002-D.

Commissioner Melhaus moved to reject the recommendation that the current zone EPD continue on the said property. Commissioner Patrick seconded the motion.

Judge Lucas asked Attorney Crigler if knowing the intent of Commissioner Melhaus, was this a properly worded motion and Attorney Crigler said he is being extra careful and asked Commissioner Melhaus if she was moving to defeat the ordinance and not have it pass. Commissioner Melhaus said that was her intent.

Judge Lucas asked if the motion was clear and Attorney Crigler confirmed.

Judge Lucas stated there is a motion on the floor to reject the recommendation on the subject property where the recommendation is for the property to remain EPD and asked for a vote of the motion to reject the recommendation on the subject property , ALL PRESENT VOTING AYE.

Judge Lucas questioned the appropriate action of the Court based on the intent of Commissioner Melhaus to move toward an RPD zone and Attorney Crigler said if this is what Commissioner Melhaus wants to do she can make a motion to that effect.

Commissioner Melhaus moved that the Fiscal Court ask the Planning Commission to review a possible zone change to RPD and hold a public hearing. Commissioner Davis seconded the motion.

Judge Lucas said for clarification purposes, it needs to be stated the Fiscal Court is talking about the subject property, the Bischoff property and asked Attorney Crigler if this needs to be referred to in any other manner.

Attorney Crigler said it should refer to the Bischoff property that was the subject matter of the previous Public Hearing of Ordinance 920.247 and said he thought it would also be helpful based on what has been done to clarify that it is the Court's recommendation that it be RPD and that the Planning Commission consider this.

Commissioner Shirley confirmed that was her motion.

Judge Lucas then asked for a vote of the motion, ALL PRESENT VOTING AYE.

Attorney Crigler said once again for clarity, since the Court turned down the recommendation of the Planning Commission, the property in question will remain EPD.