

APPLICATION FORM
ZONING MAP AMENDMENT

APR 7 1993

BOONE COUNTY PLANNING COMMISSION
(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

1. Name of Project N/A
2. Location of Project 3132 Hossman Road
3. Total Acreage of Site 15.47
4. Current Zoning of Site Suburban Residential One
5. Proposed Zoning (Classification being requested) Industrial One
6. Proposed Uses (please specify each use) Business Park Development
7. Names of Applicant(s) Joseph J. Dehner
Phone Number 513/651-6949 Fax No. 513/651-6981
8. Address of Applicant(s) 2500 PNC Center
Cincinnati, Ohio 45202
City State Zip
9. Name of Property Owner(s) Harold W. and Janet R. Bowlin
Phone Number (812) 926-4468 Fax No. _____
10. Address of Property Owner(s) 6633 Lipscomb Drive
Lawrenceburg, IN 47025
City State Zip
11. Proposed Building Intensities (please specify) Not to exceed 25,000 square feet gross floor area per acre
12. Are there any existing buildings on the site? Yes
How many? House, garage and outbuildings
13. Deed Book 199 Page No. 114 Group No. Boone County
14. Are you also applying for:
no Conditional Use Permit
no Dimensional Variance
15. Have you submitted a Concept Development Plan? no
16. Have you had a pre-application meeting with BCPC Staff? Yes
17. Please check the following organizations/agencies which you have discussed the proposed development with in the last several months: N/A

Boone County Water and Sewer District
Florence Water and Sewer Commission
Union Light Heat and Power
Cincinnati Bell
Owen County Rural Electric
Boone County Public Works Department

(over)

EXHIBIT "A"

STAFF REPORT

Request of Joseph J. Dehner (applicant)
for Harold W. and Janet R. Bowlin (owners)
to consider a Zoning Map Amendment to the Boone County
Zoning Map for a 15.47 acre site located at 3132 Hossman
Road, Boone County, Kentucky.

May 26, 1993

This is a request for a Zoning Map Amendment on a 15.47 acre site to rezone the site from Suburban Residential One (SR-1) to Industrial One (I-1). The applicant is requesting that all Industrial One zone uses be permitted on the site.

HISTORY OF SITE

- * 1989 request of Neyer Inc. (applicant) for the Bowlins for a zoning map amendment from SR-1 to I-1. The request was denied by the Planning Commission and Fiscal Court in early 1990.
- * 1990 update of the Boone County Comprehensive Plan and 1991 Boone County Zoning Regulations and Zoning Map. The Bowlin property was adopted as Suburban density (SD) residential on the Future Land Use Map and remained zoned as Suburban Residential One (SR-1).
- * January 30, 1992 Directive from Fiscal Court to the Planning Commission to reexamine the Hossman Road area in terms of the Comprehensive Plan and the Zoning Map.
- * June 19, 1992 response from the Planning Commission that much of the area along Hossman Road and KY 20 was suitable for future Business Park land uses with appropriate infrastructure.
- * The Fiscal Court then directed the Planning Commission to go ahead and hold a public hearing to consider Comprehensive Plan and Zoning changes in the Hossman Road Corridor. A hearing was held November 18, 1992, and a resolution was later forwarded by the Planning Commission to Fiscal Court. The Committee Report found that areas within the projected 1991, Near Term 70 LDN contour is suitable for future Business Park land uses as long as certain infrastructure and buffering needs are addressed. The report recommended that the Future Land Use Map and Element of the Comprehensive Plan be changed to reflect this conclusion. The report also recommended that the current zoning of SR-1 remain until these needs are addressed. The Fiscal Court upheld this recommendation on March 23, 1993, but requested the Planning Commission to waive fees for an individual zone change request on the Bowlin property.

SURROUNDING LAND USES AND ZONING

The site adjoins the Greater Cincinnati and Northern Kentucky Airport on the east. The existing north-south runway flight path is approximately 800 feet to the east, and noise associated with other airport operations is audible on the site. To the south along Hossman Road is additional, undeveloped airport property. At one time, Hossman Road proceeded to the east toward Donaldson Highway, but has been reconstructed to intersect with KY 20. Airport property in the area carries an Airport Zoning District.

To the west along Hossman Road are several single-family residences, zoned Suburban Residential One (SR-1). Two of these residences have been constructed in recent years. The area along the adjacent stretch of KY 20 is also single-family in character with zoning of SR-1.

Interstate 275 lies approximately 600 feet to the north. Airport property separates the site from I-275. There is no existing or planned interchange at KY 20 and I-275 at this time.

SPECIFIC SITE CHARACTERISTICS

The 15.47 acre site is roughly rectangular in shape with frontage on both Hossman Road and KY 20. Several residential properties to the west form a triangular shape bonded by the site, Hossman Road, and KY 20.

The southern and eastern portions of the site are generally level topography while the northern portion of the site contains Elijah's Creek and associated steep embankments. The west property line area contains some rough topography. The southern half of the site is mostly clear with a residential structure and accessory structures. The northern half of the site supports mature woodland.

Soils present on the site include Jessup Silty Clay Loam (JsD3), usually found on severely eroded slopes of 12-20 percent, two types of Rossmoyne Silt Loam (RSB and RsC), usually found on 0-12 percent slopes, and Newark Silt Loam (Nk) found in level, low flood plain areas such as along Elijah's Creek. The JsD3 soils present a clear hazard of erosion on the northern portion of the site. The Rossmoyne Silt Loam soils present some hazard of erosion, if disturbed, while the Newark Silt Loam presents little hazard of erosion.

RELATIONSHIP TO COMPREHENSIVE PLAN

The 1990 Future Land Use Map indicates future Business Park (BP) land uses for the request site and some adjacent non-airport property to the south, west, and north. This land use was the result of the ordinance passed in 1993 upon recommendation by the Planning Commission. Much of the area west of the site along KY 20 remains under the Suburban Density (SD) residential classification. The text of the Land Use Element of the Comprehensive Plan calls for rapid growth in the overall Hebron area. This growth will contain commercial, residential, and industrial development. The Plan recognizes the major growth impacts as the I-275 interchanges, the airport, and KY 237.

The text of the Land Use Element recommends the Hossman Road corridor as a Business Park district that reflects an office campus environment. Such development would require reconstruction of Hossman Road near KY 20. The Plan recommends that any such development be sensitive to existing or proposed residential uses through design and buffering.

The Land Use text was modified, as stated above, to include the following passage:

The planned land uses in the Hossman Road area are a 25 year projection, and may not be suitable based on the current condition of roadways. Specifically, the sharp curves on Hossman Road, and the width of that road are not suitable to carry significant amounts of traffic or to support truck traffic. The recommended business park land uses on Hossman Road should have access only to KY 20 or be accompanied by improvements to Hossman Road that would enable the road to safely carry significant truck traffic and/or higher traffic volumes.

The 1990 Objectives of the Business Activity Element state:

1. Industries shall be organized in clusters or similarly grouped to permit benefits of agglomeration and reduce traffic congestion in other areas.
2. Industrial development shall be encouraged to locate near railroads, highways, and airports. New industrial park sites shall be located in close proximity to limited access highways.
3. Amenity for industrial uses and a favorable relationship with adjoining uses should be fostered by means of design. Industrial nuisances such as smoke, dust, noise, and odor shall be kept at a minimum, and site development be carefully coordinated with necessary approvals of other regulatory agencies.

The Goals and Objectives of the Environment Element recommend that an inventory of physical site features be conducted, and that existing topography and vegetation be utilized in site design of new development.

The Goals and Objectives of the Transportation Element recommend that roadways be widened and improved where appropriate.

STAFF CONCERNS

1. Hossman Road contains two right-angle curves near the site. These curves would create a dangerous situation when the amount of traffic is increased, and especially when industrial truck traffic is placed on the road. The roadway between the subject site and KY 20 is approximately 20.5 feet wide. The radius of the curved section of Hossman Road near KY 20 is approximately 180 feet. The Subdivision Regulations would require a 28 foot pavement width and a 200 foot radius for new industrial development in general. In staff's opinion, these measurements, along

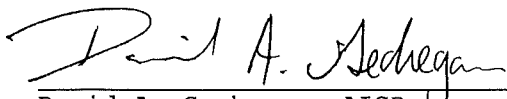
with the presence of a high ground on the inside of the curve, make this portion of Hossman Road unsuitable for truck traffic. Should this request be approved, any proposed entrance onto Hossman Road would need to be accompanied by road improvements including widening and straightening of Hossman Road, as well as turning lane provisions at its intersection with KY 20. Any proposed KY 20 access near the I-275 overpass would also require some turning lane provisions because of the potential number of vehicles and the travel speed on KY 20. Without a definite description of proposed uses or site layout, traffic generation and impact cannot be accurately evaluated.

2. The airport noise contour information presented for the November 18, 1992 Staff Report on the area rezoning request indicates a LDN of within 70 for current operations, 65 LDN for 1997, and outside the 65 LDN for the year 2003. Should the proposed extension of the adjacent north-south airport runway get final approval and be constructed, the area will likely experience much greater noise impact from nighttime cargo departures. Even though the Business Park future land use classification is a twenty-five year projection, residential usage of the site in the short run may be undesirable.
3. Without seeing a definite development plan for the 15.79 acre site, Staff must assume that most of the existing topography and vegetation site would need to be leveled to enable light industrial development. The site supports some significant perimeter woodland and contains some steep grades and sensitive soils, which should be respected with any development of the site.
4. Without a development plan, the applicant should commit to specific buffering measures to address impact on adjacent residential uses. Much of the existing woodland on the periphery of the site has either been removed, or has matured to the point that it is ineffective as a buffer.

CONCLUSION

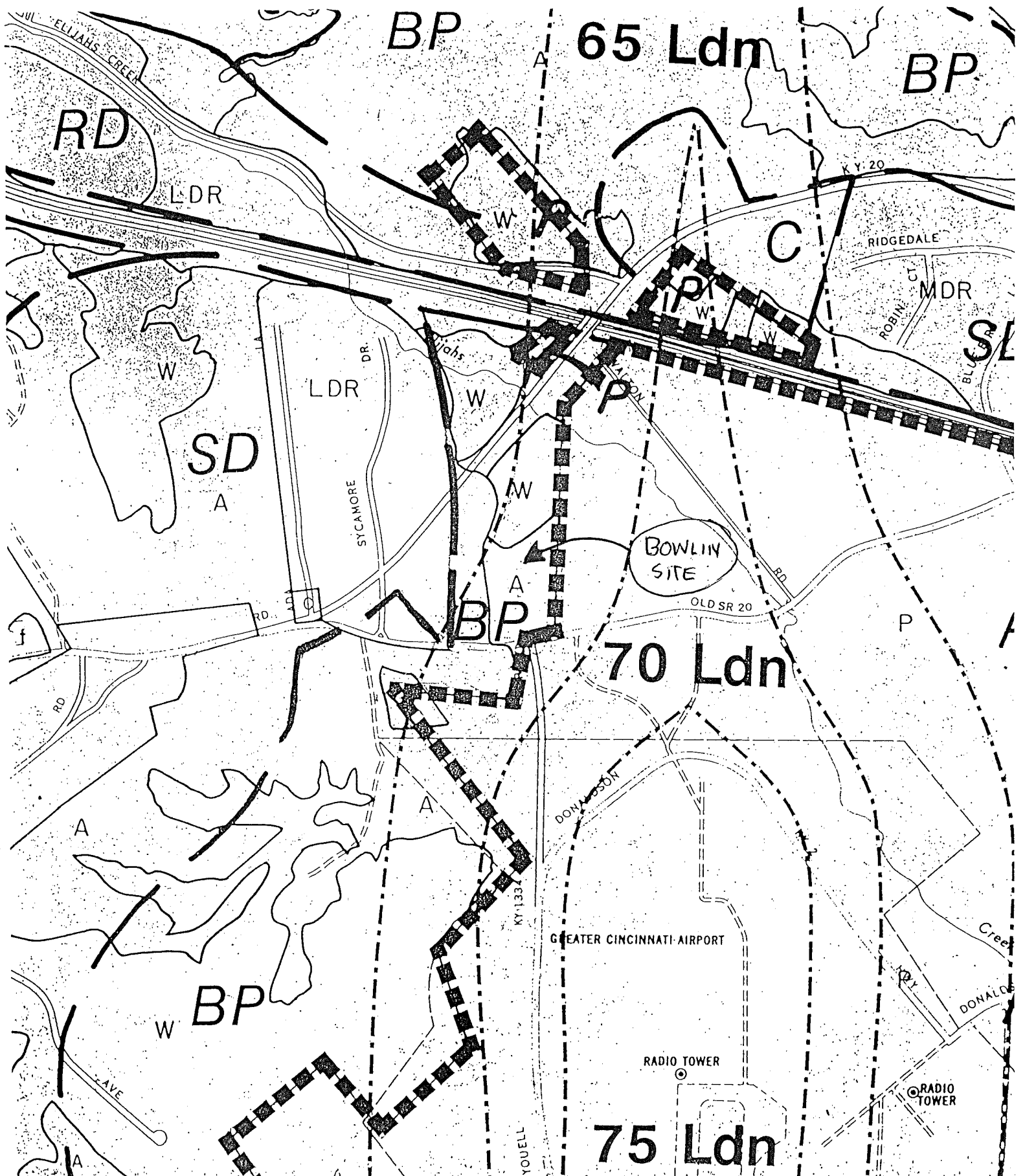
The Boone County Planning Commission and Boone County Fiscal Court need to consider this request in terms of the three criteria necessary for a Zoning Map Amendment, and in terms of the proposed development's potential impact on the existing and planned uses in the area. Should this request be approved, the 1990 Boone County Comprehensive Plan would not need to be changed.

Respectfully Submitted,



David A. Geohegan, AICP
Senior Planner

1990 BOONE COUNTY FUTURE LAND
USE MAP - AS APPROVED 3/23/93 BY
FISCAL COURT.



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May 6, 1993

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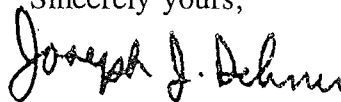
Re: Bowlin Property

Dear David:

On behalf of the Bowlins, owners of the property located at 3132 Hossman Road, I write to confirm that we will not be submitting a formal concept development plan as part of our rezoning request. The owners' intentions are to sell the property once it is zoned in a manner that could interest a buyer. The present zoning precludes that. With I-1 zoning, the intention is to market the property aggressively to a developer committed to adding tax base and a fine development to the County. That developer would work with your office, the Commission and the Fiscal Court on issues pertaining to the specifics of the development.

Thanks for your assistance in moving this matter forward.

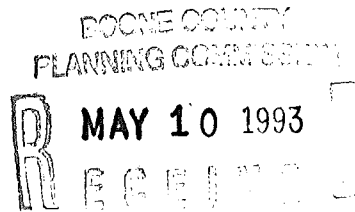
Sincerely yours,



Joseph J. Dehner

JJD/

cc: Harold and Jan Bowlin



I. SUMMARY

The Applicant Joseph J. Dehner, Esq., hereby applies for a zoning map amendment on a 15.47 acre parcel of land owned by Harold W. and Janet R. Bowlin, located at 3132 Hossman Road, Boone County, Kentucky (the "Bowlin Property"). The request is to rezone the Bowlin Property from Suburban Residential One (SR-1) to Industrial One (I-1) to permit development of light industrial uses. The existing zoning is no longer appropriate and there is a compelling need for a zoning map amendment.

The Bowlin Property abuts the Cincinnati/Northern Kentucky International Airport (the "Airport") along its eastern and part of its southern property line. The aircraft noise level on the Property exceeds the level recommended for residential uses and has caused physical injury, psychological stress and property damage to the Bowlins. The Bowlins lived on the property from July, 1972 to May, 1992. They moved to Indiana in May solely because of the aircraft noise level on the Property.

Rezoning of the Bowlin Property from SR-1 to I-1 is in complete agreement with the text of the 1990 Comprehensive Plan for Boone County (the "1990 Comprehensive Plan") which calls for industrial uses of property located near airports and highways. On March 23, 1993, the Boone County Fiscal Court amended the land use element and future land use map of the 1990 Comprehensive Plan to indicate that Business Park uses are appropriate for the Bowlin Property. The Fiscal Court, however, made no changes to the zoning on the Bowlin property. The most appropriate zoning for the Property is light industrial.

II. ZONING HISTORY

A. Present Zoning

The 15.47 acre site is roughly rectangular in shape with frontage on both Hossman Road and KY 20. The southern and eastern portions of the Property are generally level topography. The house and several outbuildings are located in the southern portion of the Property. Elijah Creek abuts the northern portion of the Property. The northern half of the Property supports mature woodland. The western portion includes one small gully. Eighty percent of the Property is developable. A copy of the deed description is attached at Tab A.

The Bowlin Property is presently zoned Suburban Residential One (SR-1). This zoning classification permits residential development at an intensity of use of four (4) single family detached units per acre. The present zoning of the Bowlin Property has been the subject of county review five times:

1. Al Neyer, Inc. request for a zoning map amendment to rezone the Bowlin Property from SR-1 to I-1 (1989);
2. 1990 Comprehensive Plan hearing and approval process;
3. 1991 Zoning Update hearing and approval process;
4. 1992 Hossman Road Corridor Plan; and
5. 1993 amendment of land use map of Comprehensive Plan.

Each of these matters are discussed below as they relate to the zoning of the Bowlin Property. At each review, questions were raised as to the appropriateness of the residential zoning of the Bowlin Property. In the June 3, 1992 Hossman Road Corridor Plan, the Boone County Planning Commission (the "Planning Commission") finally concluded that residential zoning of the Property was inappropriate and recommended "business activity land uses." In

March of 1993, the Boone County Fiscal Court (the "Fiscal Court") amended the 1990 Comprehensive Plan to designate business park land uses for the Hossman Road area. The Bowlin property is located in the Hossman Road area.

**B. Al Neyer, Inc. Request
For A Zoning Map Amendment**

In 1989, Al Neyer, Inc. ("Neyer") submitted a request for a zoning map amendment to rezone the Bowlin Property from Suburban Residential One to Industrial One. Neyer had entered into a purchase contract with the Bowlins for the Property contingent on the rezoning. A copy of the purchase contract is attached at Tab B. The Planning Commission denied the request. In a committee report to the Planning Commission dated December 20, 1989, the committee acknowledged that Neyer "has shown that the existing zoning of Suburban Residential One (SR-1) may be inappropriate on the site." (emphasis added) A copy of the report is attached at Tab C. The committee recommended denial of the Neyer rezoning application because of its belief that the proposed industrial uses were not appropriate for the Bowlin Property. Tab C. As discussed in Section III.B.2 of this Application, industrial uses are in fact the most appropriate uses for the Bowlin Property. The committee was right, however, in recognizing that the Bowlin Property is not appropriate for residential use.

**C. Land Use Designation Under 1990
Boone County Comprehensive Plan**

The 1990 Comprehensive Plan designated the future land use of the Bowlin Property as Low Density Residential (LDR). The LDR designation restricts the future use of the Bowlin Property to essentially the same residential uses as permitted under the SR-1 classification.

In the course of drafting the 1990 Comprehensive Plan, the staff of the Planning Commission originally designated the Bowlin Property as Business Park (BP). Affidavit of Janet Bowlin at Tab D. As explained in Mrs. Bowlin's Affidavit, she attended a public workshop in March, 1990, conducted by the Planning Commission. Revised land use maps were displayed at the workshop that classified the Bowlin Property as Business Park. Sometime between March, 1990 and approval of the 1990 Comprehensive Plan by the Planning Commission, the designation was changed from Business Park to Low Density Residential for the Bowlin Property and the adjoining Hossman Road property. The rest of the proposed Business Park designation in the area remained as originally proposed. Mrs. Bowlin attempted to obtain a copy of the maps that had been presented at the workshop but was told that the maps were not available and probably had been destroyed. Tab D.

Quite obviously, the staff of the Planning Commission concluded in March, 1990 that a residential designation was inappropriate for the Bowlin Property and that a business park use was appropriate. That same conclusion occurred to the Fiscal Court when it was presented with the 1990 Comprehensive Plan.

During the public hearing process prior to adoption of the 1990 Comprehensive Plan, the Fiscal Court questioned the appropriateness of the residential zoning of the Bowlin Property. In a letter to the Director of the Planning Commission dated September 5, 1990, the Fiscal Court recommended that the Planning Commission review that portion of the 1990 Comprehensive Plan that dealt with the Bowlin Property. A copy of the letter is attached at Tab E. In the letter, Bruce Ferguson, Boone County Judge-Executive, stated in part, that:

The [Fiscal] court members were somewhat perplexed by the fact that [the Bowlin Property] was zoned residential in an otherwise business and industrial region.

In response to the Fiscal Court's request, the Comprehensive Plan Committee (the "Plan Committee") reviewed the Bowlin Property residential designation. The Plan Committee recommended to the Planning Commission that the Bowlin Property retain the residential classification. A copy of the recommendation is attached at Tab F. The Planning Commission adopted the Plan Committee's recommendation and in a letter dated November 29, 1990 to the Fiscal Court recommended that the future land use for the Bowlin Property be designated residential. A copy of the letter is attached at Tab G.

The Planning Commission gave three reasons for recommending that the future land use designation of the Bowlin Property not be changed from LDR to BP:

1. Air traffic was expected to decrease on the runway adjacent to the Bowlin Property;
2. No sewage and water improvements were planned in the future for the area; and
3. No road improvements were planned for Hossman Road to make the route conducive to commercial/industrial traffic.

Tab G.

None of these reasons warrant denial of this application for a zoning map amendment. There has been no appreciable decrease of usage of the north-south runway adjacent to the Bowlin Property. To the contrary, the runway is being extended, which will reduce the distance from the end of the runway to the Bowlin Property from 3,000 feet to 1,500 feet.

The Planning Commission's concerns about water and sewage improvements are improper bases for denying a zoning map amendment for the Bowlin Property. Adequate water

and sewer facilities now exist or will soon exist to serve the proposed industrial uses. There is an existing 12-inch water line that runs along the front of the Bowlin Property abutting Hossman Road. Maps of the Boone County Water and Sewer District showing a 12-inch water main running along Hossman Road are attached at Tab H. The maps were sent to counsel for the Bowlins by Kathy Woodsmall of the Boone County Water and Sewer District. The 12-inch water line has more than sufficient capacity to serve the proposed light industrial uses of the Bowlin Property.

The sewage needs of the Bowlin Property as rezoned industrial will be served by the new Elijah Creek sewer. Construction is nearly complete of a force main sewer line running along KY 8 from the Dry Creek treatment plant in Kenton County to Tanner Road in Boone County. A 24-inch sewer line will then be constructed from Tanner Road up Elijah Creek to KY 20. Correspondence from Boone County Water and Sewer District and Sanitation District No. 1 of Campbell and Kenton Counties confirming the planned construction of the Elijah Creek sewer is attached at Tab I. The Planning Commission stated in its January 6, 1993 report on Hossman Road that "sanitary sewerage of much of the Hossman Road and KY 20 area is now a reality, with the lines currently under construction." A copy of the report is attached at Tab J.

The Elijah Creek sewer will also be used by Hemmer Airpark International, a 264.40 acre business park which is located just north of the Bowlin Property, on the north side of I-275 (the "Hemmer Business Park"). In 1991, the Planning Commission recommended rezoning of the Hemmer property from Agricultural Estate to Industrial One and Commercial Two. In a letter dated December 19, 1990, the owner of the Hemmer Business Park informed the Planning

Commission of the utilities available for the development. A copy of the letter is attached at Tab K. According to that letter, the sewage needs would be served by a tap into the Elijah Creek sewer. At the time the letter was written, construction was projected to be completed in December of 1992. The Boone County Water and Sewer District approved the use of a holding tank until the Elijah Creek system is available. Tab K. If the 264.40 acre Hemmer Business Park can use a holding tank until the Elijah Creek sewer is available, there is no reason that the 15.47 acre Bowlin Property cannot also use a holding tank.

With regard to the Planning Commission's concern about road improvements and access, the Bowlin Property has double frontage along KY 20 and Hossman Road. The primary access to the Bowlin Property when developed will be from KY 20. The Kentucky Transportation Cabinet concluded in January of 1990 that a permit could be issued for access to KY 20 from the Bowlin Property. Attached at Tab L is a letter from the Transportation Cabinet. KY 20 is presently an underutilized two-lane arterial highway that is in excellent condition according to an independent transportation study prepared for the Hemmer Business Park. A copy of the relevant portions of the study are attached at Tab M. The findings of the transportation study show that KY 20 is capable of handling considerably higher traffic volumes than will be generated by the Hemmer Business Park.

The Planning Commission's recommendation to retain the residential designation of the Bowlin Property was unwise and unsound. The Commission ignored the Fiscal Court's observation that residential zoning "in an otherwise business and industrial region" is cause for concern. Tab E.

D. 1991 Zoning Update

The Planning Commission informed the Bowlins in a letter dated November 18, 1991 that the Planning Commission had recommended to the Fiscal Court that the current SR-1 zoning be retained as part of the 1991 Zoning Update, a process to conform current zoning to the 1990 Comprehensive Plan. A copy of the letter is attached at Tab N.

In the letter to the Bowlins, the Planning Commission stated that zoning other than residential was inappropriate "at this time due to an inadequate road system and the unavailability or commitment to a public sanitary sewer system." Tab N. This statement is factually incorrect. As discussed above, the Bowlin Property has double frontage road along KY 20 and Hossman Road. KY 20 is capable of handling an increase in traffic. The Transportation Cabinet envisions issuance of a permit for access to KY 20 from the Bowlin Property. Tab L. The concern about sewer facilities is equally baseless. A sewer line is to be constructed to Elijah Creek located on the northern boundary of the Bowlin Property.

On January 21, 1992, the Bowlins and their counsel attended a public meeting before the Fiscal Court and opposed the Planning Commission's recommendation that the current SR-1 zoning be retained. While the Fiscal Court agreed with the Bowlins that their property should not be zoned residential, it did not grant the Bowlins' request to rezone their property. The Fiscal Court questioned whether it had the legal authority to rezone the Bowlin Property in the context of the 1991 Zoning Update. Rather, the Fiscal Court directed the Planning Commission to review the zoning of "the Hossman Road area," which includes the Bowlin Property, and consider whether the area might be included in the new Employment Planned Development District.

E. 1992 Hossman Road Corridor Plan

In response to the Fiscal Court's directive, on June 3, 1992, the Long Range Planning Committee submitted to the Planning Commission a draft of its Hossman Road Corridor Plan (the "Hossman Road Plan"). A copy of the Hossman Road Plan is attached at Tab O. The Bowlin Property is located in the Hossman Road corridor and was part of the study area. On June 17, 1992, the Planning Commission sent the Hossman Road Plan to the Fiscal Court.

The scope of the study was as follows:

[T]o re-examine future land use and zoning for the Study Area, both in response to the directive from Fiscal Court, and to provide the first part of the future Airport Environs Study, an on-going planning analysis anticipated by the Planning Commission. Major issues that impact the Study Area include airport noise, current access, planned access, utility plans, and compatibility of residential and business uses.

Tab O.

The committee made the following recommendation based on its analysis of the study area and the land use factors:

Because of the many utility plans, noise impacts, and advantageous location of the Study Area with respect to the Cincinnati Metropolitan area, the Airport, and the interstate system, the Study Area is recommended for business activity land uses. Because of these same factors, much of the area is no longer suitable for residential uses.

Tab O.

The Hossman Road Plan concluded that "the Hossman Road Corridor is ideally suited for future business activity development, as modified by the recommendations in this plan."

Tab O. Those planning recommendations are shown on Figures 4, 5 and 6 of the report.

Figure 4 is a map of the study area with recommended roads. Figure 5 recommends that the land use category for most of the Hossman Road corridor, including the Bowlin

Property, be changed to Business Park. Figure 6 recommends that the zoning for most of the study area, including the Bowlin Property, be changed to the new Employment Planned Development District (EPD).

The Planning Commission's recognition of the appropriateness of Business Park usage for the Bowlin Property and the inappropriateness of residential use has been a long time coming but is most welcome. The recommendation, however, that the Property be zoned EPD is ill-advised. The EPD zoning classification was enacted in 1991 to apply to properties with unique characteristics which would benefit from cluster development. The EPD district regulations are set forth in Article 16 of the Boone County Zoning Regulations (the "Regulations"). A copy of Article 16 is attached at Tab P. The EPD district is intended to provide flexibility to a developer who wants to vary from the strict requirements of a non-planned district. It allows a developer to place structures, utilities and roads in close proximity to each other, which is normally not permitted under conventional zoning regulations. This unique type of development usually occurs as a result of the size of a parcel of land, the existing topography, the high cost of public improvements, or other natural conditions of a parcel. Section 1604 of the Regulations requires that the minimum size of an EPD area be twenty acres.

A property owner must meet specific standards in order to be granted approval for development of property zoned EPD. Those standards are set forth in Section 1601 of the Regulations and require that the planned development conform to the Comprehensive Plan, protect the natural features of the area, provide land for public facilities if appropriate, not hinder development of surrounding properties and be located in an area in which transportation,

police and fire protection, and other public facilities and utilities are provided or will be available for the proposed uses. The property owner is required to submit a Concept Development Plan for approval before development of an EPD is allowed. Tab P, Section 1602.

Section 1601 of the Regulations states as follows:

To be granted either one of the two types of planned development zoning districts, the property owner or developer must demonstrate the achievement of the above objectives and standards. ... Proposed developments that cannot be shown to meet these standards may be more appropriately developed under conventional zoning districts

The Bowlin Property can be developed more appropriately under conventional zoning districts. The Property does not meet the minimum size requirement for an EPD. In addition, the Bowlins are not in a position to present a Concept Development Plan for the Property. They are not developers and do not have a concept of how the Property will be developed. Once the Property is rezoned and sold, the purchaser will be required to submit a preliminary development plan to the Planning Commission for its review and approval.

The result of imposing EPD zoning on the Property would be to put the Property in a never-never-land status. The official zoning map could not be changed to reflect the EPD zoning until a Concept Development Plan was approved. The Bowlins cannot submit a Concept Development Plan. Thus, it is entirely unclear what the zoning of the property would be -- the present residential classification or EPD.

The proper solution to this zoning morass is simply to rezone the property I-1. In the event that a developer wanted to develop an employment planned development district on the Property, it would have the right to apply for EPD zoning and present a Concept Development Plan. If the developer could not show to the satisfaction of the legislative body that its Concept

Development Plan achieves the performance standards of the EPD district regulations, it could still develop the Property under conventional zoning. That right does not exist unless the Bowlin Property is first rezoned I-1.

F. 1993 Amendment of Comprehensive Plan

The Fiscal Court responded to the Hossman Road Plan by instructing the Planning Commission to hold a public hearing and evaluate the study area. A public hearing was held on November 18, 1992. The Planning Commission recommended revisions to the land use element and future land use map of the 1990 Comprehensive Plan to designate the Hossman Road area, including the Bowlin Property, as Business Park. Tab J. The Fiscal Court approved the change on March 23, 1993. The zoning, however, remains Suburban Residential One.

The Bowlins are entitled to a zoning map amendment at this time. As discussed below, the Bowlins satisfy the legal criteria for a map amendment and also satisfy the criteria set forth by the Planning Commission, namely, road, water and sewage facilities.

III. THE BOWLINS SATISFY THE CRITERIA FOR A ZONING MAP AMENDMENT

K.R.S. 100.213 governs consideration of a map amendment. The statute requires that only one of three findings be made for a zoning map amendment to be granted:

1. The map amendment is in agreement with the adopted comprehensive plan;
2. The existing zoning classification is inappropriate and the proposed zoning classification is appropriate;
3. There have been major changes of an economic, physical or social nature not anticipated in the adopted comprehensive plan that substantially alter the area's character.

K.R.S. 100.213

Boone County has adopted the requirements of K.R.S. § 100.213 in Section 308 of the Boone County Zoning Regulations. Section 308 adds as a criteria to be considered whether the map amendment is in agreement with "any specific study designed to further detail the Boone County Comprehensive Plan."

The Bowlins satisfy each of the criteria for a zoning change. Rezoning is consistent with the 1990 Comprehensive Plan, the residential designation is inappropriate and industrial use is appropriate, and the Airport has changed the area's character such that residential use is infeasible.

**A. The Proposed Amendment For The
Bowlin Property Is In Agreement
With The Adopted Comprehensive Plan**

The proposed zone change from SR-1 to I-1 is in complete agreement with the 1990 Comprehensive Plan. The land use map has been amended to designate the Bowlin Property appropriate for business park uses. Such a designation is consistent with the goals and objectives of the 1990 Comprehensive Plan. The Comprehensive Plan makes the following policy statements and findings relevant to the Bowlin Property (referenced pages of the Plan are attached at Tab Q):

1. "The Hossman Road Area between KY 20 and KY 237 is planned for a Business Park district that should reflect an office campus environment." (Tab Q, p. 212)
2. "Industrial development shall be encouraged to locate near railroads, highways, and airports. New industrial park sites shall be located in close proximity to limited access highways." (Tab Q, p. 5)

3. "The most important land use impact of the Airport's operations and planned improvements is noise." (Tab Q, p. 79)

4. ". . .residential land uses in close proximity to the new [north-south] runway were and are today discouraged due to the expected noise levels associated with aircraft and airport operations." (Tab Q, p. 79)

5. "With the cooperation of the Boone County Planning Commission, zoning and land use planning can exclude certain types of development in the areas most affected by aircraft noise." (Tab Q, p. 81)

The 1990 Comprehensive Plan envisioned industrial uses near airports and highways. Tab Q, p. 5. The Bowlin Property adjoins the Airport along its eastern and southern property lines. The Property is located just south of I-275, and has approximately 550 feet of road frontage on KY 20. The appropriate use of the Bowlin Property is clearly industrial given its proximity to both an airport and highways.

The Comprehensive Plan's concern about airport noise supports designation of the Bowlin Property as industrial. The Bowlin Property lies in an area most affected by aircraft noise. The center line of the Airport's 18R north-south runway flight path is only 850 feet from the edge of the Bowlin's eastern property line. The end of the 18R north-south runway is within 3,000 feet of the Bowlin Property and will be reduced to only 1,500 feet when the runway extension presently underway is completed. The 18L north-south runway is less than one mile from the Property.

As part of the approval process to expand the Airport, the Airport conducted a study known as the Part 150 Study to assess the noise impact of all of the Airport's operations. The

Part 150 Study contains noise contour maps which show the estimated areas of noise intrusion from aircraft flights. Noise impact is estimated based on such variables as the estimated number and time of flights, flight-track use and type of aircraft. The noise impact is represented by Day-Night Average Sound Levels (Ldn). The Part 150 Study noise contour map for the Bowlin Property is attached at Tab R. Residential use is not compatible in areas with an Ldn of 65 and above. Attached at Tab S is the Land Use Compatibility Table from the Part 150 Study.

The Bowlin Property lies within the noise contour of 70 Ldn. Planes fly directly over the Bowlins' house. Departing pilots are instructed to head west at the end of the runway, to continue downriver as opposed to flying straight in the direction of Delhi, a suburb of Cincinnati. The Bowlins are directly under this flight path and suffered daily from the aircraft noise until they moved to Indiana in May, 1992. The ground noise and back thrust from the airplanes warming up, taking off, hitting the ground upon landing and reversing engines upon landing causes the house to vibrate and has cracked the foundation and patio. Tab D. While they lived there, the Bowlins were awakened in the night by airplanes flying only several hundred feet over their house. Mr. Bowlin has suffered health problems, including hearing loss as a result of the noise and the stressful living environment. Affidavit of Harold Bowlin at Tab T. Mrs. Bowlin felt tense and stressed because of the noise, the impact of departing aircraft and the inability to sell the property. Tab D. Her health has also been affected. Tab D. The situation has driven them from their home. Clearly, a compelling need exists to rezone the property.

Rezoning the Bowlin Property from SR-1 to I-1 is consistent with the 1990 Comprehensive Plan's amended land use map and land use goals, objectives and policies. The 1990 Comprehensive Plan specifically recommends that the Boone County Zoning Map be updated to conform with the noise contour maps of the Part 150 Study. (Tab Q, p. 79). Moreover, a residential designation in a 70 Ldn area does not comport with the Part 150 Study.

B. The Existing Residential Zoning Classification Of The Bowlin Property Is Inappropriate And The Proposed Industrial Zoning Classification Is Appropriate

1. The Present Zoning Is Inappropriate According To The 1990 Comprehensive Plan, The Part 150 Study And The Boone County Zoning Regulations

The existing residential zoning classification of the Bowlin Property permits residential development at an intensity of use of four (4) single family detached dwelling units per acre. The present zoning on the 15.47 acre Bowlin parcel would permit development of approximately 61 single family homes. As discussed above, residential development of the Bowlin Property is clearly inappropriate according to the text and land use map of the 1990 Comprehensive Plan, the Part 150 Study and the 1992 Hossman Road Plan.

The Boone County Zoning Regulations also discourage residential development in areas impacted by the 70 Ldn sound levels. Article 13 of the Regulations establishes an Airport Environs Overlay District (AEO). This District was "established as a geographic area of the County where special consideration of the relationship between land use and airport generated noise is recommended." Article 13 is attached at Tab U. An FAA land use compatibility table, the same table incorporated in the Part 150 Study, is included in Article 13 to assist the

Planning Commission in considering zone change requests in the AEO. The table identifies the land uses that are "normally compatible" or "noncompatible" with various levels of noise exposure. Residential use is noncompatible with a 65-70 Ldn according to the table. Tab U. Clearly, even if the Bowlins wanted to develop their property as currently zoned, they could not do so according to the Boone County Zoning Regulations, the Part 150 Study and the 1990 Comprehensive Plan. The land use compatibility table, however, shows that industrial uses are appropriate within a 65-70 Ldn noise level.

The inappropriateness of the residential classification is also demonstrated by the Bowlins' inability to sell the Property as currently zoned. Jim Huff Realty, Inc. listed the Property for sale for approximately two years. During that time, no offers were made nor was any interest shown in purchasing the Property as it is currently zoned. Letter of James R. Day, attached at Tab U. Four commercial development companies expressed interest in the Property contingent on it being rezoned to light industrial. Tab V.

The Airport has offered to purchase the Bowlin Property for \$190,000 as part of the Purchase Assurance Program (the "Purchase Program"). The Kenton County Airport Board initiated the Purchase Program to deal with the plight of homeowners in specific areas exposed to continued aircraft overflights and noise. A letter to the Bowlins from the Airport explaining the Purchase Program is attached at Tab W. The purpose of the Purchase Program is to provide eligible homeowners with several options, including sale of their home to the Airport at fair market value. Tab W. The Bowlins were interested in selling their home to the Airport and informed the Airport in September, 1990 that the fair market value of their property was at least \$400,000. A copy of the Bowlins' letter to the Airport is attached at Tab X. The Airport,

however, valued the Bowlin Property at \$190,000 because of the residential zoning.

Correspondence from the Airport is attached at Tab Y. Residential development of the Bowlin Property is clearly infeasible. The Bowlins cannot live in their home nor sell their property for what it is worth because it is saddled with a zoning use that is inappropriate by all standards.

2. Industrial Development Is The Only Appropriate Use For The Bowlin Property

The theoretical zoning options available to the Bowlins other than residential are (a) agricultural, (b) commercial, (c) office/industrial and d) employment planned development. The most appropriate zoning for the Bowlin Property is industrial.

Agricultural districts are designed to preserve viable agricultural areas from premature encroachment of suburban development. Because the Bowlin Property adjoins a metropolitan regional airport in the center of a developing area, agricultural zoning is not appropriate.

Retail commercial zoning is not an appropriate land use for the Bowlin Property because of the parcel's lack of direct access to the Airport's main passenger terminal area. In addition, the Bowlin Property is not suited for retail and commercial service uses because it is not located within Boone County's residential population centers. Residential development within this sector is being replaced by expanding business park and industrial uses.

The employment development district proposed in the Hossman Road Plan is not appropriate for the Bowlin Property for several reasons. First, the property is not of sufficient size to benefit by the design flexibility provided by EPD zoning. The minimum area for an EPD district is 20 acres. The Bowlins have only 15 acres.

Second, imposing EPD zoning on the Bowlin Property would take away the Bowlins' option of developing the Property under conventional zoning standards. EPD zoning is

contingent upon approval by the legislative body of a required Concept Development Plan.

Because EPD zoning can only be designated upon approval of a Concept Development Plan and because no Concept Development Plan exists for the Property, it is unclear what the Bowlins' development rights would be under EPD zoning. It appears that the Property would remain zoned residential.

Given the geographic location of the Bowlin Property adjacent to the Airport, its direct access to KY 20 and Hossman Road, and its proximity to the Interstate 275/KY 20 interchange, industrial zoning is appropriate. The appropriateness of such rezoning is demonstrated by the interest shown in the Property by developers. Tab U. Al Neyer, Inc., the company that offered \$360,000 for the Bowlin Property in 1989, has continued to express interest in purchasing the property contingent on rezoning. A letter from Neyer is attached at Tab Z.

Many light industrial uses, are appropriate for the Bowlin Property, including those suggested in the three Concept Development Plans submitted by Neyer with his 1989 application for rezoning. Each plan is a variation on an office/warehouse development theme with a fifty foot wide green belt. These plans demonstrate the potential light industrial uses of the Bowlin Property. The purpose of the Industrial One district is to allow different types of small to large light manufacturing, warehouse, distribution and related service uses. The uses can range from mixed office/warehouse/distribution to light manufacturing.

The areas immediately north and south of the Bowlin Property are designated as Industrial One. The Hemmer Business Park, immediately north of the Bowlin Property, was rezoned from Agricultural Estate to Industrial One and Commercial Two. The Hemmer Business Park when fully developed will produce approximately two million square

feet of floor space which is nearly 17 times the building floor area that can be produced on the Bowlin Property. Both the Hemmer and Bowlin properties are located in the same general area, share the same natural drainage area and are served by the same basic infrastructures, including the same road system, the same public water and sewer system, and the same gas, electric and telephone utilities. Both properties are adversely impacted by the Airport (though the Bowlins are more adversely affected) and both properties have generally the same topography, soil composition and geological makeup. No facts exist to justify the special treatment of the Hemmer Business Park. If the most appropriate use for the Hemmer Property is industrial, then the most appropriate use for the Bowlin Property must also be industrial.

Such recent office/industrial developments as the Airport Exchange Business Park, the Northern Kentucky Business Center, Olympic Boulevard Office Center, the Mineola Business Center, CirclePort, South Park Business Center, Wagstaff Engineering, The Holiday Inn Complex, and the Hemmer Business Park demonstrate the appropriateness of designation of the Bowlin Property as industrial. All these business park developments except Wagstaff are located along the I-275 corridor, north of the Airport. The Bowlin Property is strategically located near the center of this development pattern adjacent to the Airport, just south of I-275. Industrial use of the Bowlin Property will promote the welfare of Boone County as a whole by providing employment opportunities.

**C. There Have Been Major Changes
Of An Economic, Physical And Social
Nature Not Anticipated In The Adopted
Comprehensive Plan That Substantially
Alter The Area's Character**

The 1990 Comprehensive Plan addressed the major changes affecting the area's character including the expansion of the Airport and its attendant aircraft noise. Even though the 1990 Plan designated the areas around the Bowlin Property as Business Park, it failed to classify the Bowlin Property in accordance with the changes in the area's character. The 1993 Amendment to the land use map of the Comprehensive Plan righted this wrong by designating the Property as Business Park.

IV. CONCLUSION

Substantial evidence supports rezoning the Bowlin Property from Suburban Residential One to Industrial One. The Bowlin Property lies to the west of the Airport and north and south of areas designated as Business Parks on the 1990 Comprehensive Plan. The 1990 Comprehensive Plan, the Part 150 Study and the Boone County Zoning Regulations do not contemplate residential development zoning in areas impacted by the level of aircraft noise to which the Bowlin Property is subjected. The Planning Commission itself acknowledged in the 1992 Hossman Road Plan the appropriateness of the Business Park designation for much of the Hossman Road corridor, including the Bowlin Property. In 1993, the Fiscal Court amended the land use map of the Comprehensive Plan to designate the Bowlin Property as Business Park.

The proposed I-1 zone change is consistent with the land use map and goals of the 1990 Plan, the Part 150 Study and the Boone County Zoning Regulations to locate industry near

airports and to reduce residential developments in those areas. For these reasons, the Bowlin Property should be rezoned from SR-1 to I-1.

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Thomas H. Rouse

ATTORNEY AND COUNSELOR AT LAW

PROFESSIONAL ARTS BUILDING

333 MADISON AVENUE

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(606) 291-4646

ADMITTED TO PRACTICE IN
KENTUCKY AND OHIO

FAX No. 291-1289

May 17, 1993

Mr. David Geohegan, Sr. Planner
Boone County Planning Commission
2995 Washington St.
Burlington, KY 41005

MAY 19 1993

RE: Bowlin matter

Dear Mr. Geohegan;

As in the past, I represent Bill and Linda Viox regarding planning matters affecting their residence on Ky 20 in Hebron. I am advised that there is an application pending for the rezoning of the Bowlin property next door. My clients have lived there since 1971 during which time it and the surrounding lands have been zoned residential.

Bill and Linda generally favor development so long as it is done in a way that is compatible with neighboring lands. Buffers and other aesthetic measures can be used to allow different types of uses to abut. If the proposed change is considered, my clients ask that the Commission be consistent and require the same buffering and restrictions as required of other zone change requests along I-275. Corporex at Mineola, Holiday Inn - Hooker Development at Mineola, Southpark at North Bend and Hemmer - Wagner at Ky 20 are examples of facilities that have enhanced the surrounding neighborhoods and Boone County while employing buffers and restrictions.

The recently approved Hemmer - Wagner zone change along Ky 20 and the others previously mentioned included provisions for fountains, mounding, signage and other aesthetic amenities as well as restrictions placed by the Commission and Fiscal Court (landscaping, materials, colors, pedestrian ways, boulevard streets, etc.) These features should be included in the consideration of the current application. My clients seek consistency.

There was a previous application from Bowlin in 1989 which included a concept plan by the Neyer Company. Metal warehouse spec buildings were proposed. It was and is my clients' position that this type of development is not in the best interests of their property, the entrance to Hebron, or Boone County in general.

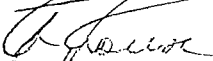
As you are aware, there is no federally approved plan regarding airport noise for the Ky 20 area. It was recently

announced that the FAA has 180 days from April 28, 1993 to approve or disapprove programs recommended by the recent Supplemental Part 150 Study. The Bowlin and Viox properties are both within the same proposed program of Purchase Assurance. If this proposal is approved, it means that each affected homeowner can choose to remain and have the house sound insulated or sell at the market price, at which time the airport will insulate the house. The properties stay on the property tax rolls of the County as residences. The Federal Government has opined that houses within the applicable sound contours are appropriate, as is residential life. If the plan is not approved, however, there will be no runway extension or preferential nighttime departure routes, requiring no change to the neighborhood.

Regarding the fee waiver and concept development plan waiver, my clients and I think that the Commission has set a dangerous precedent in accepting a private zone change request without these items. Bill can not think of the Commission ever supporting a private zone change of this magnitude without a concept plan. Why does this applicant deserve special treatment? Again, my clients seek consistency.

Due to prior commitments, I will be unable to attend the May 28 public hearing. Please enter this communication into the record and advise me of the date of the committee meeting in June.

Very truly yours,


Thomas L. Rouse

TLR/rlt

c: clients

BOONE COUNTY PLANNING COMMISSION
May 26, 1993
7:00 P.M.

PUBLIC HEARINGS

Mr. Fred Burch, Vice Chairman, called the meeting to order at 7:15 P.M. and introduced the first item on the Agenda:

1. Applicant: Harold W. and Janet R. Bowlin (owners)
Request: Zoning Map Amendment

The request of Harold W. and Janet R. Bowlin (owners) to consider a Zoning Map Amendment to the Boone County Zoning Map for a 15.47-acre site at 3132 Hossman Road, Boone County, Kentucky. The request is to consider rezoning the above area from Suburban Residential One (SR-1) to Industrial One (I-1).

Staff Member Dave Geohegan presented the Staff Report (see Staff Report) which included a slide presentation and a review of the items attached to the Staff Report, which included: A copy of the 1990 Boone County Future Land Use Map as approved by the Fiscal Court on March 23, 1993; a copy of the current zoning map showing the subject parcel and the general area; a copy of a letter dated May 6, 1993 from Joseph J. Dehner, attorney, to David Geohegan indicating that the owners are not submitting a Concept Development Plan as part of the rezoning request; a summary of the current and historical issues relative to the zoning of the subject parcel; a copy of a 1972 plat of the subject property; and a letter dated May 17, 1993 from Thomas Rouse, attorney for the adjoining property owners, Bill and Linda Viox.

Mr. Burch asked for the applicant's presentation.

Mr. Joseph Dehner, attorney for the applicants, stated that Mr. and Mrs. Bowlin were present. Mr. Dave Shaw, a land use planner, was also present and would be speaking.

Mr. Dehner showed the Commission a book of data relative to this request which they have submitted. He stated that most of the people present know the history of the site. They appreciate that the Fiscal Court, the Commission, and the applicants are now in agreement that residential use is no longer appropriate for the property. He stated that the Commission invited individual property owners to submit individual applications for rezoning and that is what they are doing.

Mr. Dehner stated that the subject property is not livable in the 70 LDN and has literally caused a hearing loss to Mr. Bowlin. The property is not fit for any residential development and the only logical zoning classification for the property is I-1. The site is only 15 acres and

does not qualify for EDP, which has a 20-acre minimum requirement. Due to the 70 LDN, it is not a site for a commercial office building. By the process of elimination, the only reasonable zoning classification is I-1.

Mr. Dehner stated that Mr. Rouse and the Staff have pointed out some concerns and they can be addressed at Site Plan Review. The developer has to submit a Site Plan, which will give the Commission control over issues of design, buffering, etc.. Some of the features of the site will restrict development -- a developer will not build on a cliff. The only logical access to the property is KY 20. He stated that it does not make sense to have a development that would use Hossman Road. They are not submitting a Concept Development Plan. There was a purchaser ready to buy the property when their application was denied. Another developer is no longer interested. There are actively interested people, but no one will touch the property until it gets proper zoning. A number of developers want the property with I-1 zoning for a nice development that will add to the tax base. They are prepared to go through Site Plan Review. He stated that the Commission has approved rezoning to I-1 without a Concept Development Plan in the past.

Mr. Dave Shaw, an urban planner, stated that he has been working with Mr. Dehner on this matter for the last three years. He was asked to look into the zoning history of Boone County in regard to the rezoning of a property that was initiated either by the Planning Commission or the Fiscal Court. In the last update of the Comprehensive Plan Zoning Map, there were nearly twenty properties that were Commercial, Business Park, or Industrial properties that were rezoned without benefit of a Concept Development Plan. He also looked at a number of zoning cases approved by the Planning Commission and the Fiscal Court that were initiated by the property owner or developer that did not include a Concept Development Plan. He looked at seven cases at random and one of them did not include a Concept Development Plan. That case involved 340 acres that were rezoned from Residential to I-1 in 1991. He stated that there is a long history where the Commission has approved substantial rezoning from Residential to Industrial or Business Park without a Concept Development Plan. He stated that the Concept Development Plan began with PUD to allow a developer flexibility without saying how the whole development is going to take place and it tied the concept of the development to the piece of land; which is appropriate in those kinds of cases, but not in this case because it is conventional straight zoning. They could show a Concept Development Plan and get it approved, and then sell the property to a developer who has a completely different idea. You cannot tie a Concept Development Plan to a future property owner. He stated that in this case, a Concept Development Plan is optional. The Bowlins are not developers and choose to leave this up to a developer. The Zoning Ordinance provides enough safeguards and controls for a Site Plan approval process. Mr. Shaw referred to Chapter 30, "Criteria", and stated that this chapter refers to Site Plan approval. The requirements for Site Plan approval are more specific and more detailed than for a Concept Development Plan and give much more control. There is not a need for a Concept Development Plan at this time.

Mr Dehner offered to answer any questions. He stated that this property qualifies under all three of the bases for rezoning under Kentucky law and

the property demands a rezoning. If the property is not rezoned, then the zoning is in conflict with the approved Plan.

Mr. Burch asked if there was anyone else present who wished to speak in behalf of the application.

Mr. Richard Harmes stated that he lives next to the Summes. He has lived there for 30 years. He stated that the Bowlins have been trying for three years to get their property zoned Industrial and that is all it is good for. The airport put 50 feet of dirt there over the winter and nobody would want to live there. He is in favor of the Industrial zoning. He added that he is about to move to get away from the noise.

Mr. Burch asked if there was anyone else present who wished to speak in behalf of the request, in opposition to the request, or to ask questions. There being no response, he asked if there were any comments from the Commission.

Mr. McMillian suggested that possibly the entire area should be rezoned I-1, instead of just this property.

Mr. Mark Summe stated that his property is next to the Harmes property. He is in favor of this application. He stated that there isn't any other practical use for Hossman Road, and it has been in the airport's industrial plan for years. Except for four properties, the road is all airport property on both sides.

Mr. Ries noted that a lot of changes are needed to make the property appropriate for I-1 and asked if a developer could be required to make improvements -- such as road improvements. Mr. Geohegan stated that in the past there have been instances where there has not been a Concept Development Plan and there were conditions which were agreed to by the applicant. In the Michaels' zone change, the applicant voluntarily excluded some uses. He stated that generally there can be conditions agreed to that deal with the immediate impacts of the site, but not beyond that. Mr. Ries stated that buyers of the property need to be aware that there are a lot of things that need to be done to use the property so that they are not surprised.

Counselor Wilson explained that conditions cannot be imposed on the I-1 rezoning without the property owner agreeing to those conditions. Agreed conditions run with the land and are binding on a subsequent property owner. In The Hossman Road Study there was a concern about access to KY 20 and it was addressed by Mr. Dehner at that Public Hearing. The study was of a large area and a Concept Plan was not involved. He stated that the Committee may want to look at this again and discuss it with Mr. Dehner.

Mr. Bailey questioned the possibility, if the property is rezoned I-1, of a Permitted Use going on the site that may cause odors going to the airport. Counselor Wilson explained that if the property is zoned I-1 without any conditions limiting the Principally Permitted Uses, then those uses would be allowed as a matter of right. The Commission looks at the land use impacts and the appropriateness of the zoning. In response to

Mr. Bailey's comment regarding odors, Counselor Wilson advised that The Hossman Road Study looked at that issue in depth and suggested the future land use of Business Park.

Mr. Bailey questioned developing I-1 uses in consideration of The Hossman Road Study, which calls for favorable development for the area, and would take precedence over a Permitted Use that might not be right for the area in I-1. Counselor Wilson explained that if the property is zoned I-1 without restriction, they are entitled to any of the Permitted Uses in the I-1 Zone. Mr. Bailey stated that the Committee needs to take a hard look at the Permitted Uses. He stated that the I-1 Zone allows a lot of uses that may not be best for an area close to a neighborhood or an airport.

Mr. Ries stated that at the Public Hearing to consider all the property around the airport, the majority of the people indicated that they were not opposed to those who were impacted by the airport coming in individually for rezoning. He noted that there were a lot of people present at that Public Hearing, but there are not at this Public Hearing. Mr. Geohegan noted that the prior Public Hearing was in regard to 1,200 acres and this request is for 15 acres. He added that many of those people are not adjacent to this site and would not have been notified by mail of this application.

Mr. Burch questioned the sanitary sewer system in the area. Mr. Geohegan stated that a gravity sewer has been installed not more than a few hundred feet from the site and there are two different ways that the owner can get to that sewer. The sewer is in place, but nothing is flowing through it at this point.

There being no further comments, Mr. Burch stated that the Committee Meeting in regard to this request will be on June 7, 1993. This item will be on the Agenda for the Business Meeting on June 16, 1993 at 8 P.M..

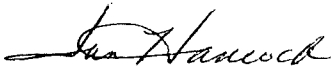
Mr. Burch closed this Public Hearing.

APPROVED:



Fred Burch, Vice Chairman

Attest:



Jan Hancock, Recording Secretary

BOONE COUNTY PLANNING COMMISSION
BUSINESS MEETING

July 7, 1993 - 8:00 P.M.

Mr. Fred Burch, Vice Chairman, called the meeting to order at 8:00 P.M..

COMMISSION MEMBERS PRESENT:

Mrs. Judy Arnett
Mr. Fred Burch, Vice Chairman
Mr. Phil Damstrom
Mr. Melvin DeLong
Mr. Robert Kirby, Jr.
Mr. Gayle McElroy
Mr. R. N. Greene
Mr. Don McMillian
Mr. Barry Neltner
Mr. Thurman Owens
Mr. Robert Ries
Mr. Ralph Rush
Mrs. Carol Smith
Mr. William Viox, Chairman (arrived during Agenda Item #8)

COMMISSION MEMBERS NOT PRESENT:

Mr. William Bailey

LEGAL COUNSEL PRESENT:

Mr. Dillon

Approval of the Minutes:

Mr. Burch stated that each Commission member had received copies of the Minutes of the Business Meeting of June 16, 1993 and the Public Hearings of June 23, 1993. He asked if there were any comments or corrections.

There being no changes to the Minutes, Mr. McMillian moved that they be approved as mailed. Mr. Damstrom seconded the motion. A vote on the motion found all those present in favor. Chairman Viox was not present. The motion carried.

UNFINISHED BUSINESS:

Mr. Burch advised that the following items are recommended for deferral:

4. Site Plan Review

The request of Boone County Board of Education (applicant) for Hebron Lutheran Cemetery, Inc. (owner) for Site Plan Review to grade a 2.86-acre area located off Limaburg Road, Boone County, Kentucky. The site is zoned Public Facilities (PF).

9. Site Plan Review

The request of Meijer, Inc. (applicant) for NS Group (owner) for Site Plan Review to construct a 215,000 sq. ft. retail/grocery store in Houston Lakes Subdivision, Florence, Kentucky. The 31.9-acre site is zoned Office Two/Planned Development and Commercial Two/Planned Development (O-2/C-2/PD).

10. Design Review

The request of Meijer, Inc. (applicant) for NS Group (owner) for Design Review to construct a 215,000 sq. ft. retail/grocery store in Houston Lakes Subdivision, Florence, Kentucky.

Mr. Kirby moved that Agenda Item #4 be deferred to the August 4, 1993 Business Meeting, and that Agenda Items #9 and #10 be deferred to the July 21, 1993 Business Meeting. Mr. Neltner seconded the motion. A vote on the motion found all those present in favor. Chairman Viox was not present. The motion carried.

1. Zoning Map Amendment

The request of Harold W. and Janet R. Bowlin (owners) to consider a Zoning Map Amendment to the Boone County Zoning Map for a 15.47-acre site at 3132 Hossman Road, Boone County, Kentucky. The request is to consider rezoning the above area from Suburban Residential One (SR-1) to Industrial One (I-1).

Staff Member Dave Geohegan read the Committee Report which recommended approval of the request based on the findings of fact, but subject to conditions (see Committee Report). Mr. Geohegan advised that the owners have signed the letter agreeing to the conditions.

Mr. Kirby moved by resolution to the Boone County Fiscal Court that the request be approved based on the Committee Report. Mr. Neltner seconded the motion. A vote on the motion found all those present in favor. Chairman Viox was not present. The motion carried.

EXHIBIT "B"

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Barry Neltner, Chairman

DATE: July 7, 1993

RE: Request of Harold W. and Janet R. Bowlin (owners) to consider a Zoning Map Amendment to the Boone County Zoning Map for a 15.47 acre site located at 3132 Hossman Road, Boone County, Kentucky. The request is to consider rezoning the above area from Suburban Residential One (SR-1) to Industrial One (I-1).

REMARKS:

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

Findings of Fact

1. The request, with the attached conditions, is in conformance with the 1990 Boone County Comprehensive Plan. The Plan recommends Business Park land uses for the site, and recommends that the condition of Hossman Road be addressed. The Committee believes that I-1 uses can be developed on the site and still meet the Comprehensive Plan's recommendations on the nature of Business Park development, contained in the Land Use Element. Since no Concept Development Plan has been submitted for this request, the Committee believes that the attached conditions are important to enable consistency with the Comprehensive Plan. Specific references to the Comprehensive Plan are made in the May 26, 1993 Staff Report.


Conditions

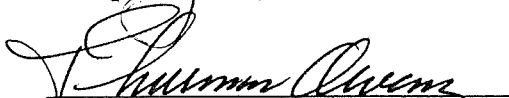
1. Primary access to the proposed I-1 development on the 15.47 acre site will be from KY 20. If found necessary for the development, secondary access can be approved to Hossman Road. In the event that no street or driveway access is planned to Hossman Road, emergency vehicle access should be considered at Hossman Road. The development shall be designed to minimize grading necessary to access KY 20. The proposed entrance at KY 20 shall contain entry features, such as fountains and/or attractive stone walls, in addition to landscaping, to be consistent with nearby planned Business Park developments.


2. The applicant agrees that the developer will provide a left-turn lane and right-turn deceleration lane on KY 20, if required by the Planning Commission and/or the Kentucky Transportation Cabinet. This will be determined at Improvement Plan or Site Plan Review, when specific use of the site is learned.
3. As indicated by the applicant, a minimum fifty (50) foot buffer will be maintained along the western border of the site as long as residential uses remain adjacent to this portion of the site. The Planning Commission may require that the existing vegetation in this buffer area be supplemented with evergreen plantings or berms at strategic locations to achieve effective screening for the adjacent residences. Should acquisition and removal of the residential uses by the airport occur by the time of development of any industrial uses on the Bowlin site, the buffer need only contain existing vegetation for the standard required width of twenty-five (25) feet.
4. Any proposed development on the site shall be consistent with the Boone County Wastewater Treatment Master Plan.
5. The development shall meet the Applicable Performance Standards for all I-1 development (section 1134 of the Boone County Zoning Regulations).


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

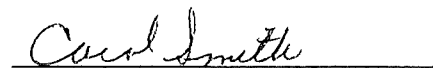

Barry Neltner, Chairman

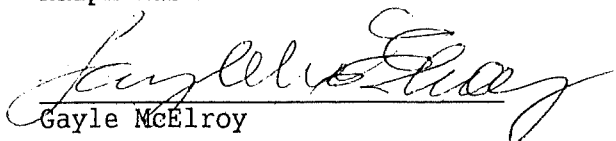

Fred Burch


Thurman Owens


Phil Damstrom


Ralph Rush


Carol Smith


Gayle McElroy

:par

BOONE COUNTY PLANNING COMMISSION
May 26, 1993
7:00 P.M.

PUBLIC HEARINGS

Mr. Fred Burch, Vice Chairman, called the meeting to order at 7:15 P.M. and introduced the first item on the Agenda:

1. Applicant: Harold W. and Janet R. Bowlin (owners)
Request: Zoning Map Amendment

The request of Harold W. and Janet R. Bowlin (owners) to consider a Zoning Map Amendment to the Boone County Zoning Map for a 15.47-acre site at 3132 Hossman Road, Boone County, Kentucky. The request is to consider rezoning the above area from Suburban Residential One (SR-1) to Industrial One (I-1).

Staff Member Dave Geohegan presented the Staff Report (see Staff Report) which included a slide presentation and a review of the items attached to the Staff Report, which included: A copy of the 1990 Boone County Future Land Use Map as approved by the Fiscal Court on March 23, 1993; a copy of the current zoning map showing the subject parcel and the general area; a copy of a letter dated May 6, 1993 from Joseph J. Dehner, attorney, to David Geohegan indicating that the owners are not submitting a Concept Development Plan as part of the rezoning request; a summary of the current and historical issues relative to the zoning of the subject parcel; a copy of a 1972 plat of the subject property; and a letter dated May 17, 1993 from Thomas Rouse, attorney for the adjoining property owners, Bill and Linda Viox.

Mr. Burch asked for the applicant's presentation.

Mr. Joseph Dehner, attorney for the applicants, stated that Mr. and Mrs. Bowlin were present. Mr. Dave Shaw, a land use planner, was also present and would be speaking.

Mr. Dehner showed the Commission a book of data relative to this request which they have submitted. He stated that most of the people present know the history of the site. They appreciate that the Fiscal Court, the Commission, and the applicants are now in agreement that residential use is no longer appropriate for the property. He stated that the Commission invited individual property owners to submit individual applications for rezoning and that is what they are doing.

Mr. Dehner stated that the subject property is not livable in the 70 LDN and has literally caused a hearing loss to Mr. Bowlin. The property is not fit for any residential development and the only logical zoning classification for the property is I-1. The site is only 15 acres and

does not qualify for EDP, which has a 20-acre minimum requirement. Due to the 70 LDN, it is not a site for a commercial office building. By the process of elimination, the only reasonable zoning classification is I-1.

Mr. Dehner stated that Mr. Rouse and the Staff have pointed out some concerns and they can be addressed at Site Plan Review. The developer has to submit a Site Plan, which will give the Commission control over issues of design, buffering, etc.. Some of the features of the site will restrict development -- a developer will not build on a cliff. The only logical access to the property is KY 20. He stated that it does not make sense to have a development that would use Hossman Road. They are not submitting a Concept Development Plan. There was a purchaser ready to buy the property when their application was denied. Another developer is no longer interested. There are actively interested people, but no one will touch the property until it gets proper zoning. A number of developers want the property with I-1 zoning for a nice development that will add to the tax base. They are prepared to go through Site Plan Review. He stated that the Commission has approved rezoning to I-1 without a Concept Development Plan in the past.

Mr. Dave Shaw, an urban planner, stated that he has been working with Mr. Dehner on this matter for the last three years. He was asked to look into the zoning history of Boone County in regard to the rezoning of a property that was initiated either by the Planning Commission or the Fiscal Court. In the last update of the Comprehensive Plan Zoning Map, there were nearly twenty properties that were Commercial, Business Park, or Industrial properties that were rezoned without benefit of a Concept Development Plan. He also looked at a number of zoning cases approved by the Planning Commission and the Fiscal Court that were initiated by the property owner or developer that did not include a Concept Development Plan. He looked at seven cases at random and one of them did not include a Concept Development Plan. That case involved 340 acres that were rezoned from Residential to I-1 in 1991. He stated that there is a long history where the Commission has approved substantial rezoning from Residential to Industrial or Business Park without a Concept Development Plan. He stated that the Concept Development Plan began with PUD to allow a developer flexibility without saying how the whole development is going to take place and it tied the concept of the development to the piece of land; which is appropriate in those kinds of cases, but not in this case because it is conventional straight zoning. They could show a Concept Development Plan and get it approved, and then sell the property to a developer who has a completely different idea. You cannot tie a Concept Development Plan to a future property owner. He stated that in this case, a Concept Development Plan is optional. The Bowlins are not developers and choose to leave this up to a developer. The Zoning Ordinance provides enough safeguards and controls for a Site Plan approval process. Mr. Shaw referred to Chapter 30, "Criteria", and stated that this chapter refers to Site Plan approval. The requirements for Site Plan approval are more specific and more detailed than for a Concept Development Plan and give much more control. There is not a need for a Concept Development Plan at this time.

Mr Dehner offered to answer any questions. He stated that this property qualifies under all three of the bases for rezoning under Kentucky law and

the property demands a rezoning. If the property is not rezoned, then the zoning is in conflict with the approved Plan.

Mr. Burch asked if there was anyone else present who wished to speak in behalf of the application.

Mr. Richard Harmes stated that he lives next to the Summes. He has lived there for 30 years. He stated that the Bowlins have been trying for three years to get their property zoned Industrial and that is all it is good for. The airport put 50 feet of dirt there over the winter and nobody would want to live there. He is in favor of the Industrial zoning. He added that he is about to move to get away from the noise.

Mr. Burch asked if there was anyone else present who wished to speak in behalf of the request, in opposition to the request, or to ask questions. There being no response, he asked if there were any comments from the Commission.

Mr. McMillian suggested that possibly the entire area should be rezoned I-1, instead of just this property.

Mr. Mark Summe stated that his property is next to the Harmes property. He is in favor of this application. He stated that there isn't any other practical use for Hossman Road, and it has been in the airport's industrial plan for years. Except for four properties, the road is all airport property on both sides.

Mr. Ries noted that a lot of changes are needed to make the property appropriate for I-1 and asked if a developer could be required to make improvements -- such as road improvements. Mr. Geohegan stated that in the past there have been instances where there has not been a Concept Development Plan and there were conditions which were agreed to by the applicant. In the Michaels' zone change, the applicant voluntarily excluded some uses. He stated that generally there can be conditions agreed to that deal with the immediate impacts of the site, but not beyond that. Mr. Ries stated that buyers of the property need to be aware that there are a lot of things that need to be done to use the property so that they are not surprised.

Counselor Wilson explained that conditions cannot be imposed on the I-1 rezoning without the property owner agreeing to those conditions. Agreed conditions run with the land and are binding on a subsequent property owner. In The Hossman Road Study there was a concern about access to KY 20 and it was addressed by Mr. Dehner at that Public Hearing. The study was of a large area and a Concept Plan was not involved. He stated that the Committee may want to look at this again and discuss it with Mr. Dehner.

Mr. Bailey questioned the possibility, if the property is rezoned I-1, of a Permitted Use going on the site that may cause odors going to the airport. Counselor Wilson explained that if the property is zoned I-1 without any conditions limiting the Principally Permitted Uses, then those uses would be allowed as a matter of right. The Commission looks at the land use impacts and the appropriateness of the zoning. In response to

Mr. Bailey's comment regarding odors, Counselor Wilson advised that The Hossman Road Study looked at that issue in depth and suggested the future land use of Business Park.

Mr. Bailey questioned developing I-1 uses in consideration of The Hossman Road Study, which calls for favorable development for the area, and would take precedence over a Permitted Use that might not be right for the area in I-1. Counselor Wilson explained that if the property is zoned I-1 without restriction, they are entitled to any of the Permitted Uses in the I-1 Zone. Mr. Bailey stated that the Committee needs to take a hard look at the Permitted Uses. He stated that the I-1 Zone allows a lot of uses that may not be best for an area close to a neighborhood or an airport.

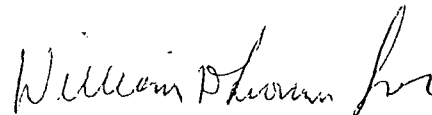
Mr. Ries stated that at the Public Hearing to consider all the property around the airport, the majority of the people indicated that they were not opposed to those who were impacted by the airport coming in individually for rezoning. He noted that there were a lot of people present at that Public Hearing, but there are not at this Public Hearing. Mr. Geohegan noted that the prior Public Hearing was in regard to 1,200 acres and this request is for 15 acres. He added that many of those people are not adjacent to this site and would not have been notified by mail of this application.

Mr. Burch questioned the sanitary sewer system in the area. Mr. Geohegan stated that a gravity sewer has been installed not more than a few hundred feet from the site and there are two different ways that the owner can get to that sewer. The sewer is in place, but nothing is flowing through it at this point.

There being no further comments, Mr. Burch stated that the Committee Meeting in regard to this request will be on June 7, 1993. This item will be on the Agenda for the Business Meeting on June 16, 1993 at 8 P.M..

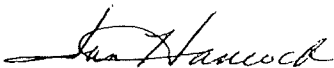
Mr. Burch closed this Public Hearing.

APPROVED:



Fred Burch, Vice Chairman

Attest:



Jan Hancock, Recording Secretary

0724

BOONE COUNTY PLANNING COMMISSION



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

July 2, 1993

Mr. Joseph Dehner, Esq.
2500 PNC Center
201 East Fifth St.
Cincinnati, OH 45202

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 2
To Jan Bowlin	From Dave Goodenow	
Co.	Co. BCPC	
Dept.	Phone # 304 2196	
Fax # 283-7209	Fax # 334 2264	

RE: Bowlin Zone Change Request On Hossman Road, Boone County, Kentucky

Dear Mr. Dehner:

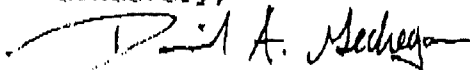
The following represents the conditions being discussed by the Zone Change Committee. If you, as the applicant will agree to these conditions, please indicate so by signing your name at the space indicated at the end of this letter and returning it to our office by 5:00 p.m. Tuesday, July 6, 1993.

1. Primary access to the proposed I-1 development on the 15.47 acre site will be from KY 20. If found necessary for the development, secondary access can be approved to Hossman Road. In the event that no street or driveway access is planned to Hossman Road, emergency vehicle access should be considered at this location. The development shall be designed to minimize grading necessary to access KY 20. The proposed entrance at KY 20 shall contain entry features, such as fountains and/or attractive stone walls, in addition to landscaping, to be consistent with nearby planned Business Park developments.
2. The applicant agrees that the developer will provide a left-turn lane and right-turn deceleration lane on KY 20, if required by the Planning Commission and/or the Kentucky Transportation Cabinet. This will be determined at Improvement Plan or Site Plan Review, when specific use of the site is learned.
3. As indicated by the applicant, a minimum fifty (50) foot buffer will be maintained along the western border of the site as long as residential uses remain adjacent to this portion of the site. The Planning Commission may require that the existing vegetation in this buffer area be supplemented with evergreen plantings or berms at strategic locations to achieve effective screening for the adjacent residences. Should acquisition and removal of the residential uses by the airport occur by the time of development of any industrial uses on the Bowlin site, the buffer need only contain existing vegetation for the standard required width of twenty-five (25) feet.

Mr. Joseph Dehner, Esq.
July 2, 1993
Page 2

- 4. Any proposed development on the site shall be consistent with the Boone County Wastewater Treatment Master Plan.
- 5. The development shall meet the Applicable Performance Standards for all I-1 development (section 1134 of the Boone County Zoning Regulations).

Sincerely,



David A. Geohegan, AICP
Senior Planner


DAG\par

I, the applicant, agree to the above listed conditions for approval of my request for the Bowlin Zone Change Request on Hossman Road.



Mr. Joseph Dehner, Esq.
Applicant

We, the owners, agree to the above listed conditions for approval of my request for the Bowlin Zone Change Request on Hossman Road.



Harold Bowlin
Owner



Janet Bowlin
Owner

Boone County Recorder

August 25, 1993

LEGAL SUMMARY
ORDINANCE NO. 92(262

The Boone County Fiscal Court at its meeting held Tuesday, August 17, 1993, at 5:00 P.M., Second Floor Courtroom, Administration Building, Burlington, Kentucky, gave Second Reading and adopted the following ordinance.

AN ORDINANCE OF THE BOONE COUNTY FISCAL COURT RECOMMENDING APPROVAL FOR A REQUEST OF HAROLD W. AND JANET R. BOWLIN (OWNERS) FOR A ZONING MAP AMENDMENT, SUCH ZONING MAP AMENDMENT BEING A ZONE CHANGE FROM SUBURBAN RESIDENTIAL ONE (SR-1) TO INDUSTRIAL ONE (I-1) FOR A 15.47 ACRE SITE LOCATED AT 3132 HOSSMAN ROAD, BOONE COUNTY, KENTUCKY, AS RECOMMENDED UNANIMOUSLY BY THE BOONE COUNTY PLANNING COMMISSION VIA RESOLUTION R-93-029-A.

I hereby certify that the above summary of said Ordinance has been written in such a manner as to inform the public of the context of same. A copy of said Ordinance is on file in the office of the County Judge/Executive and may be reviewed between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, at the Administration Building, second floor, Burlington, Kentucky.

ATTEST:

CAROLYN A. RUDICILL
FISCAL COURT CLERK
P.O. #FC 68742

KENNETH R. LUCAS
COUNTY JUDGE/EXECUTIVE

LARRY CRIGLER
COUNTY ATTORNEY