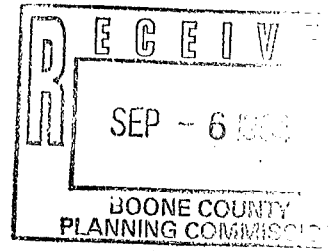


APPLICATION FORM  
**ZONING MAP AMENDMENT**

BOONE COUNTY PLANNING COMMISSION  
(See Boone County Zoning Regulations)



SECTION A (To be completed by applicant)

1. Name of Project TURFWAY APARTMENT Homes
2. Location of Project CAVALIER BLVD. FLORENCE KY 41042
3. Total Acreage of Site 23.5 ACRES
4. Current Zoning of Site C-3 PD / O-2 PD / SR-2 PD
5. Proposed Zoning (Classification being requested) UR-1 PD

6. Proposed Uses (please specify each use)  
Approximately 360 Apartments (see attached)

7. Names of Applicant(s) PINNACLE REALTY GROUP  
Phone Number 606-263-7368 Fax No. 606-263-5564

8. Address of Applicant(s) PO Box 22741  
LEXINGTON KY 40522  
City State Zip

9. Name of Property Owner(s) TURFWAY DEVELOPMENT COMPANY  
Phone Number 513-733-3000 Fax No. \_\_\_\_\_

10. Address of Property Owner(s) 4350 GLENDALE-MINFORD RD  
CINCINNATI OHIO 45242  
City State Zip

11. Proposed Building Intensities (please specify)  
Approximately 15 units / acre (see attached)

This Application covers lots No 8 & 9 of the TURFWAY Commercial Park

12. Are there any existing buildings on the site? No  
How many? N/A

13. Deed Book 336 Page No. 26 Group No. 2034-A

14. Are you also applying for:  
No Conditional Use Permit  
No Dimensional Variance

15. Have you submitted a Concept Development Plan? YES

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:

\_\_\_\_\_  
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 Pinnacle Realty Group (applicants) for Turfway Development Company (owner) for a Zoning Map Amendment for a 23.5 acre site located off of Cavalier Boulevard in Turfway Commercial Park, Florence, Kentucky. The request is to rezone the site from Commercial Services/Planned Development, Office Two/Planned Development, Suburban Residential Two/Planned Development (C-3/PD, O-2/PD, SR-2/PD) to Urban Residential One/Planned Development (UR-1/PD) in order to construct 366 apartment units.

September 28, 1994

The Turfway Commercial Park located at the southwest quadrant of the KY 18 and the Turfway Road intersection has been subject to several Concept Development Plans and Zoning Map Amendment approvals, and is subject to the Turfway Interchange Land Use Impact Study, approved in 1985. The Commercial Park has developed many uses since the adopted 1986 Concept Development Plan. Those uses include two motels with a third under construction, a restaurant, a sports complex and a supermarket currently under construction.

The Zoning Map Amendment request would affect lots number 8 and 9 of the 1986 Concept Development Plan (See Sheet #1) on which a 98 unit Executive Apartment development and professional office were proposed. In 1990, a change was made to the previous Concept Development Plan for lot #9 which actually lessens the square footage of the proposed building from 175,000 square feet of office space to 127,000 square feet of office-flex space.

### Surrounding Zoning and Land Uses (See Sheet #2)

- Northwest: Interstate 75/71, lot #7 currently vacant zoned Suburban Residential Two/Planned Development and the Fairfield Inn zoned Office Two/Planned Development (O-2/PD)
- Northeast: Boone County High School zoned Public Facilities (PF), Sports of All Sorts and apartments zoned Office Two/Planned Development (O-2/PD)
- Southwest: Single-family residences along Claxon Drive zoned Residential One Family (R1F)
- Southeast: Single-family residences along JoAnn Drive zoned Residential One Family (R1F)

### Site Characteristics

The site is comprised of 23.5 acres of which approximately seven (7) acres is densely wooded. The wooded area also contains a large drainage swale which collects stormwater from the adjoining residential and commercial subdivisions. This water flows south along the interstate and eventually crosses and empties into the lake within the City of Florence Golf Course. The site is flat because of the rough grading which was done on the site during the development of the Turfway Commercial Park. In addition, a regional detention system was installed with the construction of the subdivision which is located in the southern portion of the site. The existing wooded area is currently heavily used by the surrounding residential neighborhood and has many trees which are two feet in diameter or greater.

Approximately one third (1/3) of the site is currently located within the 65 Ldn noise contour of the Northern Kentucky Cincinnati International Airport (See Sheet 3). The Part 150 Study conducted for the airport noise mitigation program indicates that in 1997 the site will be entirely outside of the 65 Ldn noise contour (See Sheet #4).

### Relationship to the Comprehensive Plan and the Turfway Road Interchange Study

The request must be reviewed on the basis of its relationship to the 1990 Boone County Comprehensive Plan and the 1995 Goals and Objectives. The Future Land Use Map indicates the applicant's site as Urban Density Residential which would permit residential densities of 12 units or less and Commercial (See Sheet #5). The Land Use Element of the Comprehensive Plan indicates on Page 220 that:

Higher density residential development should only occur where it can serve as a buffer between industrial or commercial intrusion on single-family residential areas or where it is easily accessible. Overall, the existing residential communities must be protected from inappropriate infilling and remain buffered from the increasing industrial and commercial development within the city.

The Housing Element indicates on Page 115 that:

High density residential areas should be located sufficiently near and with convenient access to major streets, highways, shopping, and public facilities. Between high density and low density there should be a gradation or a buffer. Existing vegetation should be retained as much as possible to provide buffer strips.

The 1995 Goals and Objectives of the Housing Element indicates that:

Mixed use, higher density neighborhoods shall be encouraged to be located at proposed mass transit stations with commercial districts and public facilities and also have convenient access to major streets and highways.

Airport noise levels are among those legitimate land use impacts to be evaluated when new residential development is proposed. New residential development should not occur in areas with existing or proposed noise levels of 65 Ldn or higher as identified on official Noise Exposure Maps adopted and approved by the Kenton County Airport Board and the Federal Aviation Administration, unless acceptable measures are taken by builders to reduce adverse noise impacts.

The Turfway Road Interchange Study recommended that development within the study area be required to follow a planned development approach and establish the proposed zoning of Suburban Residential Two (SR-2), Urban Residential Two and Office Two (See Sheet #6). The study indicated the environmental importance of the swale and heavy vegetation that separates the existing residential development along Claxon Drive and JoAnn Drive and indicated that this area should be retained. Also, the Study discouraged any connections to the existing residential subdivision.

#### Planned Development

The intent of this article is to provide a permissive and alternative zoning procedure for innovative, mixed use residential, commercial, industrial or other type development or physical design proposals capable of proving substantial value to the community over the conventional districting and other regulations prescribed as normal course in this order but requiring unique consideration, disposition, control and approval. Planned Development (PD) is a special overlay zoning district, which allows some variety among land uses and densities in return for imaginative designs. The Planned Development is intended to encourage the following:

1. A maximum choice of living environments by allowing a variety of housing and building types and permitting a reduction in lot dimensions, yards, building setbacks, and area requirements;
2. A more useful pattern of open space and recreation areas and, if permitted as part of the project, more convenience in the location of accessory commercial uses and services;
3. A development pattern which preserves and utilizes natural topography and geological features, scenic vistas, trees and other vegetation, and prevents the disruption or natural drainage patterns;
4. A more efficient use of land than is generally achieved through conventional development resulting in substantial savings through shorter utilities and streets;
5. A development pattern in harmony with land use density, transportation facilities, community facilities, and objectives of the comprehensive plan;
6. A signage package in harmony with the objectives of the Planned Development.

### Concept Development Plan

The applicant's Concept Development Plan proposes an apartment development of 366 units with an intensity of 15.57 units per acre (See Sheet #7). The development encompasses 23.5 acres of land and will provide 734 parking spaces. Lot number 8 which comprises 12.5 acres will contain 96 units while lot number 9 which is 11 acres will contain 270 units. Approximately 16.5 acres of the proposed development is located within the Urban Density land use classification while approximately 7 acres is located within the Commercial land use classification indicated on the Future Land Use Map (See Sheet #5). Of the 366 proposed units 192 of the units are proposed within the Commercial land use classification.

The development will preserve approximately seven (7) acres of the site as open space which is primarily located within lot number 8. This open space includes the existing mature vegetation and would provide an approximately 200 foot setback from the rear property lines of the houses along Claxon and JoAnn Drive. Access to the development would be from Cavalier Boulevard via Burlington Pike where a traffic light will be installed once the intersection meets the necessary warrants. In addition, the Plan indicates that an emergency access would be provided to the development via Rebel Drive which currently serves as the access for the existing residential apartments. Public utilities currently exist on the site or can be brought to the site to facilitate the water and sanitary sewer needs of the development. The plan does not indicate any buffering being provided along the interstate, lots 7 or 10. The development is proposing amenities to include a pool, club house, fitness facilities and tennis court. The proposed development will have 192 two and three bedroom apartments and 174 one bedroom apartments.

The existing Suburban Residential Two/Planned Development zone on lot number 8 could permit twelve (12) dwelling units per acre with an approved Concept Development Plan. The requested Urban Residential One (UR-1) zone would permit twelve (12) dwelling units per acre of which the Planned Development (PD) Overlay allows up to a fifty (50) percent increase in the density. Therefore, the requested zoning district could permit a density of eighteen (18) dwelling units per acre.

The proposed apartment development with 366 units will generate approximately 2411 average trips per day. This is comparable to the amount of trips that could have been generated by the uses as proposed in 1986 on lots 8 and 9. Lot number 8 on which 98 executive apartments were previously proposed would have generated 647 average daily trips while the office use on lot number 9 would have generated 2152 average trips daily. A change was made in 1990 to the size and type of use on lot #9, however this reduction in size created only a minimal change in the projected trips per day. Therefore, the proposed use and the previously approved uses are projected to have similar numbers with regards to the expected trips generated per day.

Staff Concerns

1. Staff believes the approximately seven (7) acre buffer area could be used as a passive park and would recommend that this option be explored with the City of Florence. Public parking and access should be explored from Cavalier Boulevard as well. The site could be used in much the same way as the Florence Nature Park.
2. Staff questions whether the applicant will have an internal sidewalk network for the development and how this pedestrian network will connect with Boone County High School.
3. The applicant's site is currently located within the 65 Ldn noise contour. However, the 1997 map indicates that the site will be outside the 65 Ldn. Therefore, if the applicant's intentions were to build before 1997 then the apartments would require noise insulation to comply with the 1995 Housing Element Objective. If the apartments were to be built after 1997 staff believes that airport noise would still be an issue and would recommend that measures be taken by the applicant to reduce airport noise within the apartment buildings.
4. Staff believes that if the Concept Development Plan is approved that a grading limit line should be established and measures taken to protect the trees during the construction phase of the development.
5. Staff is unclear whether additional stormwater detention area will be needed for the proposed development beyond that of the existing detention structure which is located within the buffer area. If additional detention area is needed the impact upon the existing vegetation within the buffer area should be considered.
6. The Planned Development Overlay allows an applicant a greater flexibility with regard to densities, setbacks, and uses in return for imaginative and innovative designs. Therefore, staff believes that the applicant should address how the proposed development will address the six items encouraged within the Planned Development zone.
7. All proposed curb cuts should align with any existing curb cut located on Cavalier Boulevard.
8. The proposed development could have a significant impact on the overcrowded school system if only half of the two and three bedroom units would have school age children. Therefore, because the majority of the apartments are to be two and three bedroom units the concept of phasing should be explored as a way of mitigating the potential impacts.
9. Staff believes that a landscaped buffer area should be explored where the proposed development abuts the interstate, and lots number 7 and 10. The Zoning Regulations would require that a 25 feet buffer be provide where the use adjoins an Office Two (O-2) use, but not where the use adjoins the interstate nor do the regulation define what is required within the buffer.

Conclusion

In conclusion, the proposed Zoning Map Amendment is in partial agreement with the 1990 Boone County Future Land Use Map which indicates this area as Urban Density Residential. However, approximately seven (7) acres of the site is indicated as having a Future Land Use of Commercial. Therefore, when determining the applicant's request the Planning Commission should consider the findings necessary for a Zoning Map Amendment as well as the relationship and compatibility with the Turfway Road Interchange Study and Article 15, Planned Development District. Should the request be approved by the City of Florence, a change will be necessary to the 1990 Boone County Comprehensive Plan Future Land Use Map from Commercial to Urban Density.

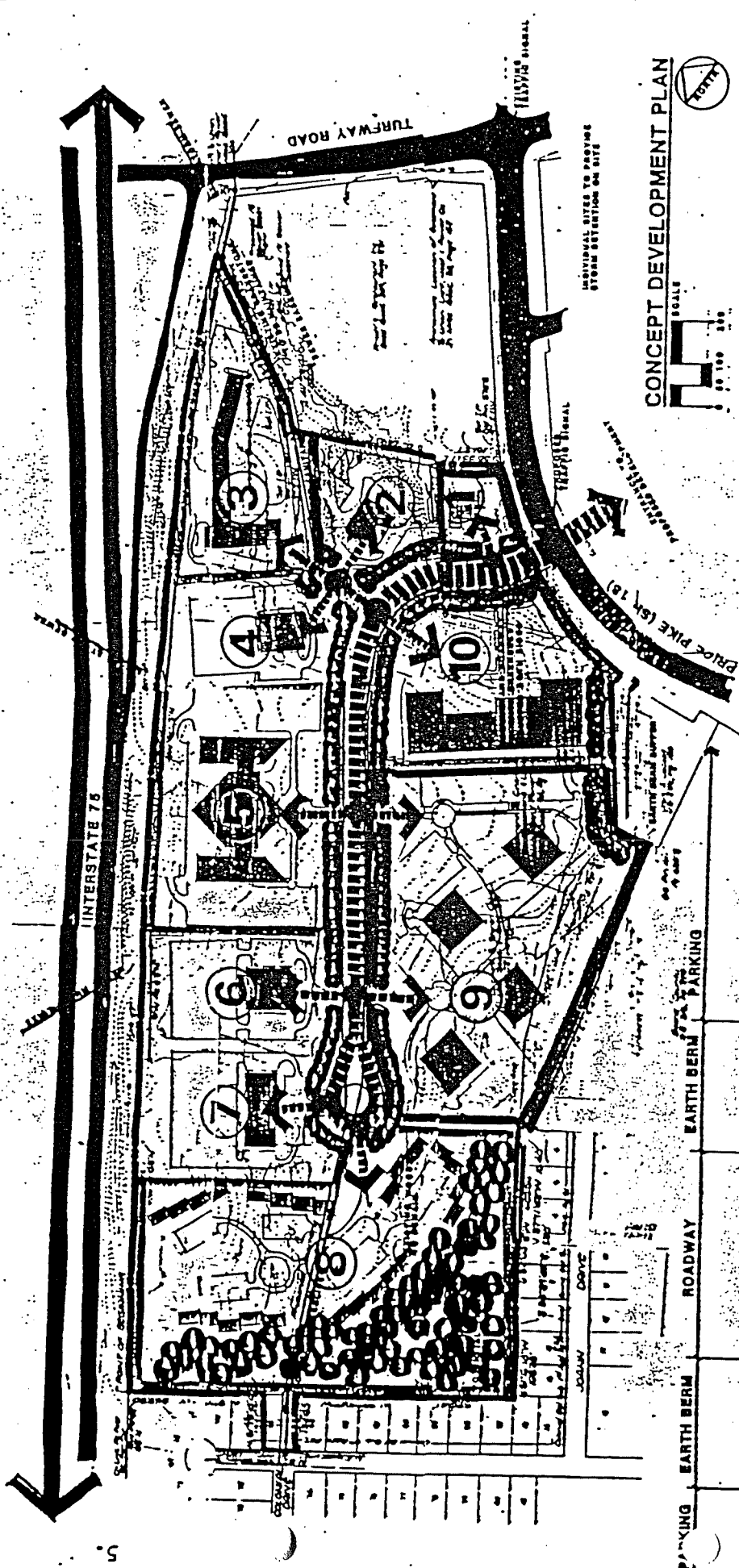
Respectfully Submitted,



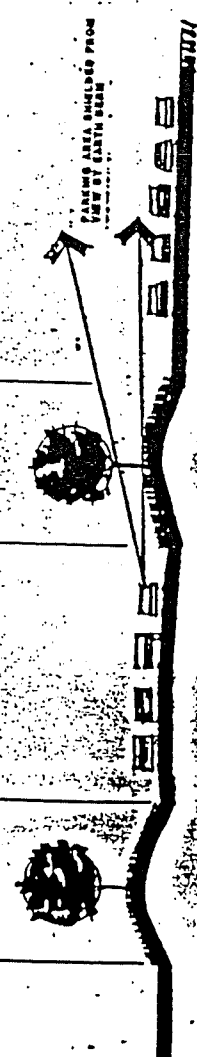
Jeffrey F. Hayes  
Planner

JFH\par

# SHEET #1



PARCEL #	AREA (Acres)	LAND USE	CAPACITY
1	1.2	BANK	8000 SF
2	1.9	RESTAURANT	200 CARS / 9000 SF
3	3.76	MOTEL	125 GUESTROOMS
4	2.65	RESTAURANT	200 CARS / 12,000 SF
5	6.85	HOTEL	250 GUESTROOMS
6	2.65	RESTAURANT	200 CARS / 12,000 SF
7	3.5	RESTAURANT	200 CARS / 15,000 SF
8	12.5	EXECUTIVE APT.'S	98 D.U., 7.8/ACRE
9	11.0	PROFESSIONAL OFF.	175,000 SF
10	5.2	RETAIL	88,000 SF

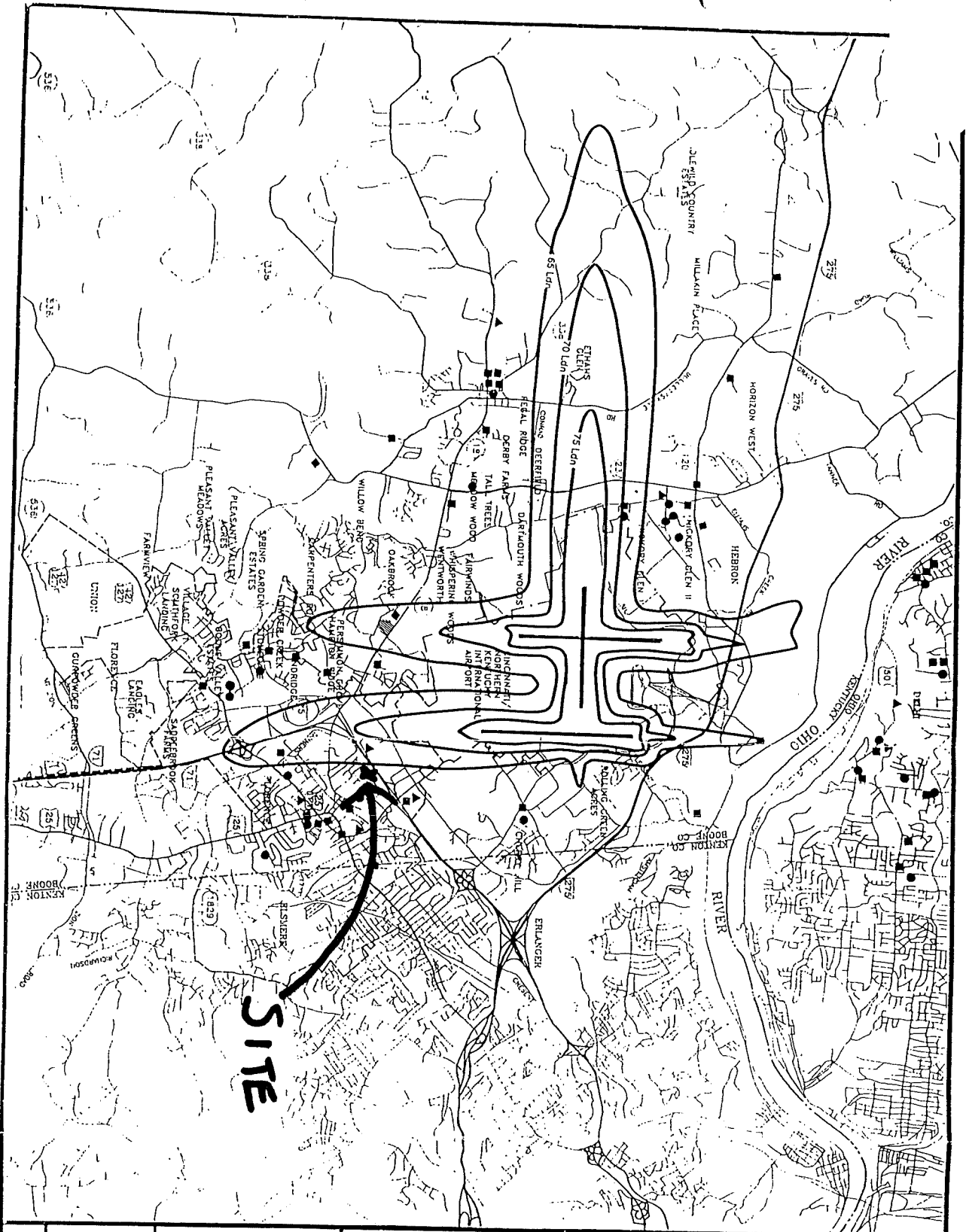


# 1986 CONCEPT PLAN





# SHEET # 4

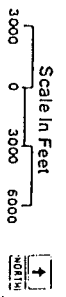


- Existing Residential Development
- Existing Schools
- Existing Churches
- ▲ Existing Hospitals, Nursing Homes, Libraries

**LEGEND**

- OP-2 OP-3 OP-4 OP-5 OP-6
  - OP-8 (From Short-term Plan)
  - OP-1 Runway 18R/36L Extension 1500' North
  - OP-7 Mid-92 Runway 27 Day Departure Percentage
  - OP-10 Night Arrival Stepdown 9/27/ 36L/18R
  - OP-11 Night Departure Stepdown 27/36L/9/18R
  - OP-12 Runway 9/27 Extension 2,200' West
- Modelled for 1997 Operational Levels

--- Airport Boundary  
 - - - City Limits  
 ... County Boundary



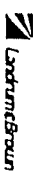
Rev. October 20, 1992



**Cincinnati/  
 Northern Kentucky  
 International Airport**

EXHIBIT 7-2

Long-Term  
 Noise Abatement  
 Plan-1997

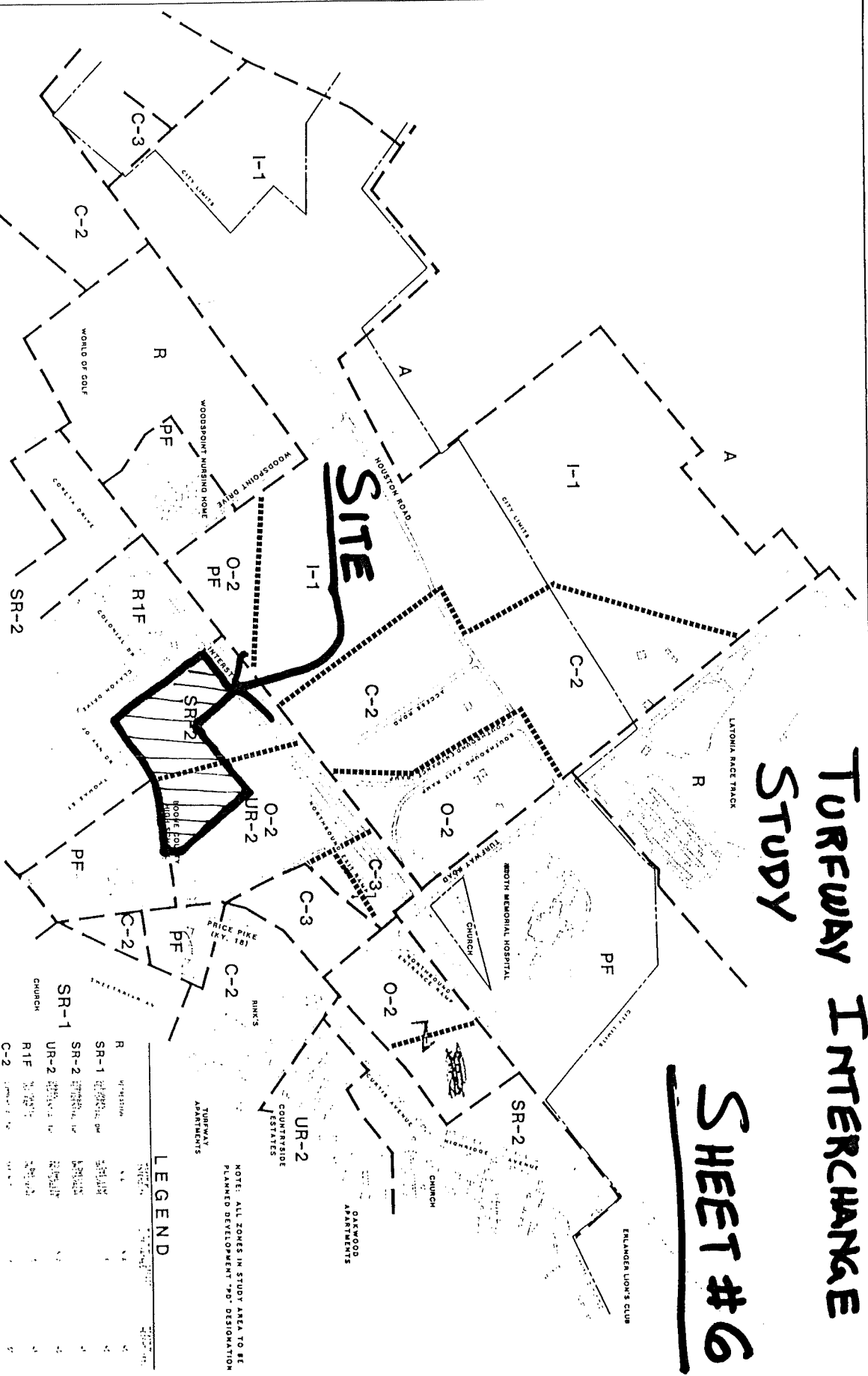




# TURFWAY INTERCHANGE STUDY

## SHEET #6

### PROPOSED LAND USE



#### LEGEND

Code	Description	Notes
R	Residential Single-Family	
SR-1	Residential Single-Family Medium Density	
SR-2	Residential Single-Family High Density	
R1F	Residential Single-Family Medium Density (Future)	
UR-2	Urban Residential Medium Density	
C-2	Community Office	
C-3	Community Office Medium Density	
O-2	Office Medium Density	
I-1	Industrial Medium Density	
PF	Professional Office	
A	Arts and Entertainment	

NOTE: ALL ZONES IN STUDY AREA TO BE PLANNED DEVELOPMENT "PD" DESIGNATION

# SHEET # 7

## CONCEPT PLAN

URBAN DENSITY

COMMERCIAL

URBAN DENSITY

COMMERCIAL

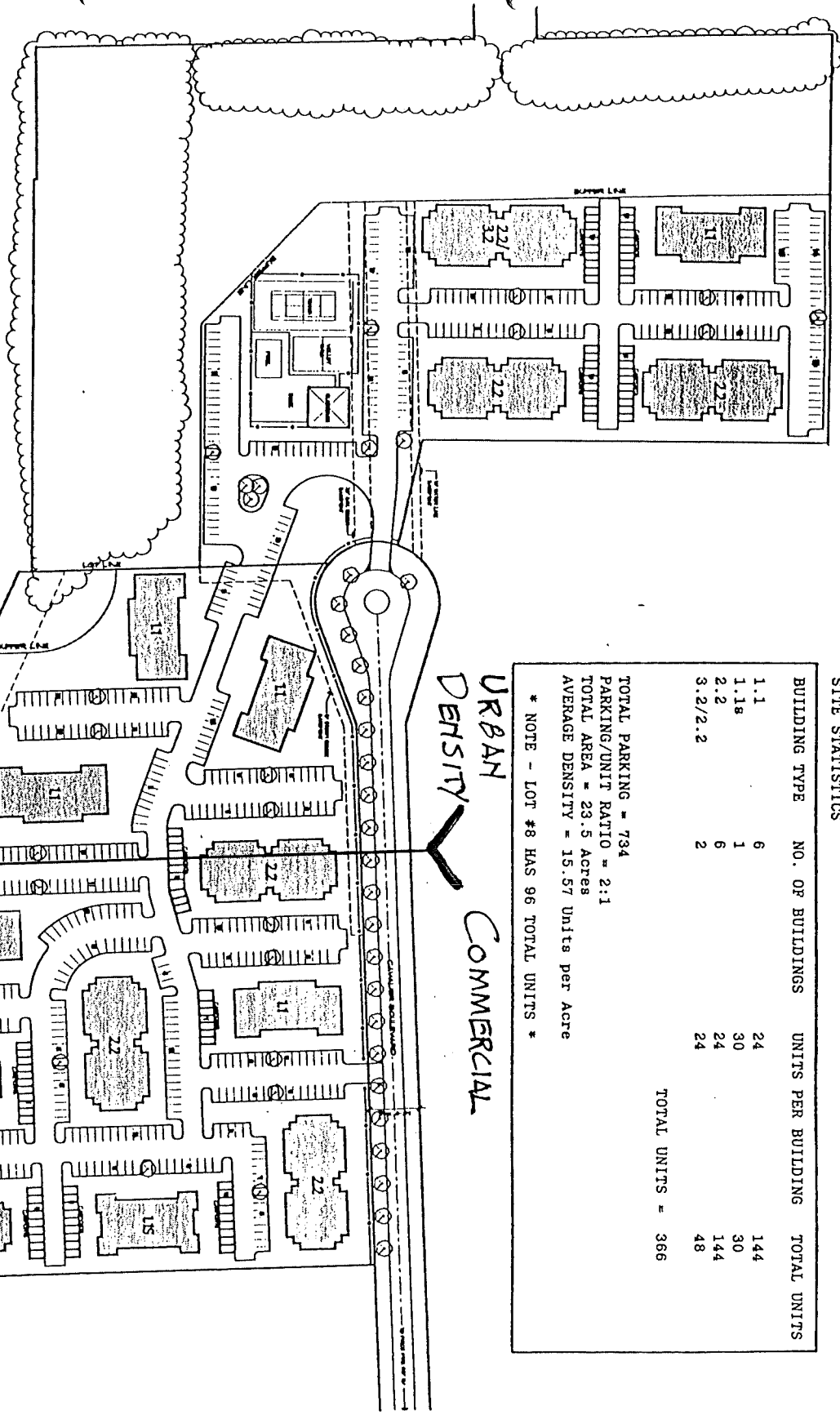
EMERGENCY ACCESS

**SITE STATISTICS**

BUILDING TYPE	NO. OF BUILDINGS	UNITS PER BUILDING	TOTAL UNITS
1-1	6	24	144
1-1s	1	30	30
2-2	6	24	144
3-2/2-2	2	24	48
			<b>TOTAL UNITS = 366</b>

TOTAL PARKING = 734  
 PARKING/UNIT RATIO = 2:1  
 TOTAL AREA = 23.5 Acres  
 AVERAGE DENSITY = 15.57 Units per Acre

\* NOTE - LOT #8 HAS 96 TOTAL UNITS \*



SITE DEVELOPMENT PLAN



**SD-1**

DATE: \_\_\_\_\_

SCALE: \_\_\_\_\_

PROJECT: \_\_\_\_\_

OWNER: \_\_\_\_\_

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

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

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

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

*Steven Carter Barnhart*

**PARTNERS IN ARCHITECTURE**

11500000 FINANCE CENTER - SUITE 1800 - 200 E. WARRIOR - LEONIA, MI 48047 - 313-486-1811

**SITE DEVELOPMENT PLAN**

**TURFWAY APARTMENTS**

\_\_\_\_\_

PUBLIC HEARING ITEM NO. 3:

Commission members present: Mrs. Arnett, Mr. Bailey, Mr. Damstrom, Mr. McMillian, Mr. Neltner, Mr. Owens, Mr. Ries, Mr. Rush, Mrs. Schaffer, Mrs. Smith - Secretary/Treasurer, Mr. Viox - Chairman, and Mr. White.

Following a short recess, Chairman Viox called the meeting back to order and introduced the third item on the Agenda:

3. Applicant: Pinnacle Realty Group for  
Turfway Development Company (owner)  
Request: Zoning Map Amendment

The request of Pinnacle Realty Group (applicant) for Turfway Development Company (owner) for a Zoning Map Amendment for a 23.5-acre site located off Cavalier Boulevard in Turfway Commercial Park, Florence, Kentucky. The request is to rezone the site from Commercial Services/Planned Development Office Two/Planned Development Suburban Residential Two/Planned Development (C-3/PD O-2/PD SR-2/PD) to Urban Residential One/Planned Development (UR-1/PD) in order to construct 366 apartment units.

Mr. Kevin Costello, Executive Director, presented the Staff Report prepared by Staff Member Jeff Hayes (see Staff Report). He advised that the application is in regard to Lots 8 and 9. There are a number of conditions on Lots 7 and 8 agreed to by C. W. Henne and the City of Florence. No use was assigned to Lot 8 and any proposed use for Lot 8 would have to go through the Public Hearing process. The site is subject to the Turfway Study.

Chairman Viox referred to Sheet #7 and stated that the line shown does not appear to be the line between Lot 8 and Lot 9. Mr. Costello advised that Mr. Hayes, who should be arriving shortly, will have to explain why the line was drawn that way. He noted that the Turfway Study indicated Lot 8 as Urban Density.

Mr. Costello presented slides of the site and adjacent areas.

Chairman Viox asked for the applicant's comments.

Mr. Tom Nienaber, attorney representing Bud Schneider of Pinnacle Realty, the developer of the project, distributed booklets to the Commission in regard to the project. He advised that everything they will say is included in the booklet, along with photos of other projects they have done.

Mr. Nienaber stated that there has been a lot of controversy over this site. The 6.5 - 7 acre greenbelt area that separates this site from Claxton and JoAnn Drive will not be disturbed. They propose to develop Lot 8 and Lot 9. He indicated the Boone County High School football field on an exhibit. He stated that there is access from Claxton to the wooded area, but the curb cut was never put in. There is no street there. The

development will include 96 units on Lot 8. There will be a tennis court, volleyball, a clubhouse, and a pool on that lot. The Turfway Development conditions of zoning approval, which have been recorded in the Clerk's Office, provide for 98 executive apartments to be developed on Lot 8. Using the exhibit, he stated that Lot 9 corresponds with the line at the end of Cavalier Boulevard and originally provided for 175,000 square feet, which was reduced to 127,000 square feet in 1980. They intend to build 270 apartments on Lot 9. The density they are asking for is 15.5. The allowable density is 12 units per acre and that is why they have the PD. Of the 366 units, there will be 24 3-bedroom units because they provide for transitional housing for someone building a house and moving from one house to another. The 3-bedroom units do not involve permanent housing. Other than the 3-bedroom units, the development is 50% one-bedroom units and 50% two-bedroom units. The exact distribution of apartments by size, rent, and square footage is indicated in the packet and will comply with the zoning conditions of record when the development was approved in 1986. All of the amenities are included in the packet.

Chairman Viox questioned Lot 8 being approved. Mr. Nienaber stated that in the booklet is an approved Committee Report dated March 5, 1986 that sets forth the different lots 1 - 10 and it has for Parcel 8 ninety-eight executive apartments on 12.5 acres. Chairman Viox stated that it goes to the City of Florence. Mr. Nienaber stated that that is when they entered into planned development approvals signed off by everyone and in Paragraph 21 it says that the following restrictions shall apply to land shown on Exhibit B, which is Lot 8: Any building on said parcel shall contain executive suites with less than 850 gross square feet for two-bedroom or 450 gross square feet for one-bedroom, and shall be no more than 98 total suites, one- or two-bedroom on this parcel.

Mr. Costello advised that there is a signed agreement between C. W. Henne and the City of Florence that they do not have -- it should have provided to them by Henne. Mr. Hayes advised that the agreement stated that there were four lots, Lot 8 being one of them, and that the use was not approved. The zone was approved, but the use was not. The concept was not approved and they would have to come back before the Planning Commission and the city for an approved use for that property. Counselor Wilson advised that he has seen the agreement and will provide Mr. Nienaber with a copy.

Mr. Bailey stated that there was a Declaration of Protective Covenants that was part of the Concept Plan. Mr. Costello advised that that document is what Mr. Nienaber was reading.

Chairman Viox questioned what the line on Sheet #7 represents. Mr. Hayes advised that it is a physical measurement from the 1990 Land Use Map. He was not here when that map was drawn. When he scaled it off, there was about a 1,000 foot distance of the urban density, so he drew the line. It did not follow the property line. The actual distance falls where the line is. Mr. Costello advised that this will have to be checked as it may be that Mr. Henne came in after the Land Use Plan was updated.

Mr. Nienaber stated that the quality of the project is substantial. The rent for a two-bedroom unit is considerably higher than a number of units in the Northern Kentucky area. They are 18% higher than Highland Ridge in Highland Heights, 16% higher than Mitchell Park, about 30% higher than the Vineyards, and 18% higher than the Crossings of Oakbrook. The development has brick and wood siding. They had a traffic study done and agree with the conclusion drawn in the Staff Report. The use they are proposing will not generate any additional traffic for this area. The numbers they have were shown on an exhibit based on 175,000 square feet and, if you break it down to 127,000 square feet, which is what the 1990 Concept Plan is, there is no difference in total traffic generated. Apartments vs. office that was proposed for Lot 9 lowers the peak hours significantly. He reviewed the traffic figures, which are contained in the booklet, for the two tracts being developed as originally anticipated at 127,000 square feet. He stated that there is a significant reduction in the peak hours of traffic with their proposal versus what is presently on the Concept Development Plan of 127,000 square feet and 98 apartment units. He noted that the full traffic study is in the booklet.

Mr. Nienaber stated that another major advantage to the proposal is in the open space/grass area. Lot 8 with their proposal is 75% open space and 25% driveways, parking lots, and rooftops. On Lot 9 it is 49% open space and 51% parking lots, rooftops, and driveways. The open space being preserved is significant. The green space/wooded area will not be affected. He presented an exhibit showing the relationship of the trees and open areas to the apartments. He stated that they will comply with all regulations regarding stormwater detention and retention and do not believe it is a problem. They will use significantly fewer parking spaces with their proposal versus what was originally proposed.

Mr. Nienaber stated that there is some concern in the Staff Report about this project creating an unreasonable demand on the school system. He stated that Mr. Schneider has a similar project in Louisville in terms of rents and family mix. Based on 241 units (due to vacancies, some corporate units, and units for the labor, which leaves 241 units) this study, which was done within the last 90 days, shows that there were 11 children, six of which were newborns to four years old. He stated that this project will not create any unreasonable demand on the school system. If the numbers were projected out to 366 units, there would not be any more than a maximum of 20 children for the entire complex.

Mr. Nienaber stated that the emergency access is part of the plan. One of the concerns was the noise contours. The map in the packet is a 1992 map. He asked if there was a 1994 map.

Mr. Hayes advised that he did not have a 1994 map. He noted that the 1992 contour goes through one-half to two-thirds of the site. In 1997, the site is out of the noise contour according to the airport's maps. There is not a 1994 contour map in the Part 150 Study.

Mr. Nienaber stated that there is some concern, which they discovered today, and they talked to a noise engineer/architect. If it becomes a major problem, they will be prepared to report at the Committee Meeting in regard to the noise contours. He stated that this project will take 18

months to a couple of years to build out and in 1997 it will be completely out of the noise contour.

Mr. Nienaber stated that in regard to buffering, one of the Staff's concerns was about separating the development from Lot 10, and they will do anything reasonable in this regard including putting in trees. Mr. Nienaber indicated a 20-foot utility easement and stated that it would be difficult to do anything there, but they will do anything that is reasonable to meet the buffering requirements. In relation to I-75, they are 12 feet or so below the tree line and he does not believe there is a problem there. They have no problem with pedestrian access to Boone County High School at the emergency exit.

Mr. Nienaber stated that the Staff cited in the Staff Report what he had copied from the Comprehensive Plan that high density residential development should occur where it can serve as a buffer between industrial or commercial intrusion on single-family residential areas or where it is easily accessible -- and that is what they have proposed. He stated that they would like to extend the apartment buffer around. The Comprehensive Plan says that multi-family high density residential development should occur in areas near the Turfway interchange and that is where they are. There are two interstate accesses left to Turfway and right to KY 18. Demand on the road system by this project is a reduction. It will spread out what traffic is there.

Mr. Nienaber referred to the Staff Concerns. In regard to Staff Concern #1, he stated that they would be more than happy to talk to the City of Florence and negotiate some type of arrangement where this would be developed for some type of passive park or walking. They do not want to disturb the trees or have them die. An office project is not economically feasible and that is why they are proposing this development they way they are, while protecting the green space. In regard to Staff Concern #2, he stated that they agree to internal sidewalks and will connect them at the emergency access. In regard to Staff Concern #3, Mr. Nienaber stated that he has addressed the noise. In regard to Staff Concern #4, he stated that they have no problem with marking a certain area to help protect the tree stand that is there. In regard to Staff Concern #5, he stated that he believes that with the open space the project will have, the demand on the stormwater detention/retention will be significantly less than that which is presently approved of 127,000 square feet. They will comply with the existing stormwater detention/retention ordinance in Florence. In regard to Staff Concern #7, he stated that they are flexible to realigning the curb cuts and will put them wherever they are wanted. In regard to Staff Concern #8, he stated that the number of school age children in the project is minimal. In regard to Staff Concern #9, he stated that this has been covered and they will do anything reasonable -- berms, white pines, whatever -- in the area indicated. He indicated significant mature tree stands on the exhibit.

In regard to Staff Concern #6 and the elements of the Comprehensive Plan, Mr. Nienaber stated that they have preserved the green space and are willing to work with the City of Florence to do whatever they can to make it a passive park. They do not want it to be an active park as that may destroy the wooded area.

Mr. Nienaber stated that they have taken a piece of property that has been a subject of controversy and finally gotten a proposal in everyone's best interest. Financing is all but in place. The development will not create any additional demand on the road system or the school system and protects the residential integrity on Claxton and JoAnn Drive.

Mr. Bud Schneider stated that he is from Lexington, Kentucky. He is a third generation in the building and development business. He owns Pinnacle Realty group, which specializes in apartments. They do not do offices or industrial. He stated that there is a need for high quality apartments in Florence and these are very nice apartments. He stated that a lot of the apartment development going on now is tax credit abatements, which is somewhat government subsidized. This project is privately funded and the financing has been secured. He stated that it is good planning to have a buffer between the single-family residential and the commercial developments. They would like to put in that buffer. Their residents will walk and use the services in the area. He stated that if services are in close proximity people will walk. Mr. Schneider showed slides of some of his other projects in Lexington and Louisville to show the quality of the developments. In regard to the impact on the school system, he stated that a member of his staff looked at the development in Louisville, where the residents would be similar to the residents in this project -- the average age being 31 years and the average income being \$50,600 -- and there are 11 children in that project. Half of those children are less than school age. He stated that they will try to maximize the open space. Combining Lot 8 and Lot 9, the lot coverage is 37.5% and 62% open space. The single-family neighborhood will be protected with the greenbelt. They have talked about a passive park -- walking trails, and picnic areas. They are on the end of a cul-de-sac so their traffic is not affecting the single-family area. They did a traffic study and a man who worked for the Kentucky Department of Transportation for 8 years ran figures based on a traffic generation booklet. He noted a chart showing A.M. and P.M. peak times. The utilities are in place. There is not a problem with the sanitary sewer or the stormwater. He requested approval.

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

Evelyn Baker questioned the number of parking spaces and how the cars would enter and exit. Mr. Nienaber advised that there would be 734 parking spaces and the entrance/exit is through Cavalier Boulevard.

Mrs. Baker questioned why they would put 366 apartments less than 6,000 feet from the end of the runway. She questioned how the noise could go away unless the runway is eliminated. She stated that Mr. Grooms bought a lot on Claxton for a roadway or a pumping station and the newspaper says he cannot put a road there, so she believes there will be a pumping station there.

Ruth Turner stated that she is opposed. She stated that they all had attorneys and agreed to this years ago and she agreed to the Concept Development Plan and the covenants.

Mr. Joe Cochran, speaking as a property owner and taxpayer, stated that he can see the tax burden getting heavier. He stated that whoever did the survey of 366 units and no more traffic is out of his mind. He stated that with earnings of \$50,000 per year, there will be two cars per unit. With the average age of 31, which are the more productive years, it is not known how many children will be there unless it is an adult community. He stated that rental property attracts less responsible people than property ownership.

Mr. Bill Hodges, 121 JoAnn Drive, stated that he is concerned about the covenant signed by Mr. Henne concerning the buffer zone. The covenant was signed to protect the homeowners, not to help the people building there. He questioned how far the covenant extends. He stated that his understanding is that it went from beyond the end of JoAnn Drive east and covered part of the school property, property that Henne owns, and beyond the drainage ditch -- but the developer's understanding is that it ends at JoAnn Drive. He referred to Sheet #7 and noted that it showed the buffer zone going east of JoAnn Drive, but it was not shown that way on the exhibit presented. He stated that the airport intends to build more runways and if they build another north/south runway, that will probably push the present takeoffs and landings on the north/south runway further east. He stated that when the cars exit to go to work in the morning and come back in the afternoon there will be a major problem there. There is Boone County High School and emergency exit on Rebel Drive, then there is Cavalier Drive, then a driveway for Frisch's, and across the street is Lee's Chicken. Winn Dixie will come out Cavalier. There will be a major inflow/outflow of traffic there. He stated that there may be 10 children the first year, but ten years from now there will be a lot more children in the apartments. He would like to see an 8-foot chainlink fence put around the buffer zone. He stated that if he was a child he would want to play in the woods, but it is dangerous. He is afraid of a fire. He does not believe the project will be an asset to anybody.

Mr. Bill Truitt, 120 JoAnn Drive, cannot believe that the best commercial area left would be given up for apartments. There are more apartments now than can be controlled. He noted the 700+ parking spaces and stated that if those people go out in the morning they will be back in the afternoon. He noted that one child per family would be 366 children, and just about everybody has at least two children. He has seen boys and girls go into the woods together. There is dope there and trails from four-wheelers and motor bikes. They need at least an 8-foot high chainlink fence from I-75 joining the Boone County fence at the football field to keep the 366 children out of the woods. He questioned if anyone would like a public park in their backyard. He asked that their homes be protected.

Mr. Jim Speigel, a resident of 116 JoAnn Drive for about 25 years, questioned public safety. He stated that there is a 24-hour public safety requirement for fire, police, and ambulance and the Florence police department is so overtaxed that the business owners have to hire their own

range guards because the police cannot do anything with the kids. He questioned what another approximate 1000 people in Florence would do. He asked that the request be denied and that an 8-hour establishment be put in. He noted that the applicant said there would be no impact on traffic, but they are making plans for a traffic light.

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

Mr. Bailey stated that he was on Council in the mid-1980's when this was approved and they went around and around with it over a long period of time. There were drainage problems on Claxton that were corrected. They agreed to go along and let several acres there be used as green space. It was his understanding that Lot 8 would be held to this, which is why he questions protective covenants. He asked that the Staff check with the City of Florence in regard to the protective covenants that go along with the Concept Plan. They are specific as to what is to be developed on each of the lots. He stated that the City of Florence has already reached a point of having more than its share of apartments. It was in the paper recently that they have more apartments than any other city in Northern Kentucky. The ratio of apartments to single-family development is about 50/50 -- which is very high. Florence has 34% of the population in Boone County and 66% of the apartments. He questioned if it is fair to the citizens of Florence to continue to build apartments to where there is an unfair ratio of apartments to single-family development.

Mr. Rush stated that they did not plan ingress/egress from Claxton Drive and asked if they plan any other access into the subdivision. Mr. Nienaber advised that other than Cavalier Drive and the emergency access onto Rebel Drive, there is no other access. He added that one of the conditions was that Claxton Drive access not be made.

Mr. Schneider advised that it was in the covenants that Cavalier Boulevard not be a connection. There is a right-of-way through there and there is spacing between the houses for a right-of-way, but they have no intention of using that unless they start discussing a park area. He stated that they offered the park thinking the neighborhood would like it. They would own all of that land, but there are deed restrictions and covenants that they can not build there. The covenants they thought applied to them have a very detailed map with dimensions on it. Looking at the map, there are no questions as to where the greenbelt is -- it is 200 feet from the back property line. They do not own the area at the end of the school and they cannot control it. They would agree to put a line there and a limit that they would not touch anything in that area, and there would be no grading and no equipment.

Mrs. Arnett questioned control of the emergency access. Mr. Schneider advised that there is a fence with a gate on it.

Mr. Costello advised that there was a condition on Lot 10. The Commission denied the second curb cut and the City of Florence restored it. There is a brand new curb cut that crosses Lot 10 that is supposed to connect to Lot 9 that is not shown on the plan. It was a condition of the original report. Mr. Nienaber replied "no problem".

Mr. Schneider stated that the two other lots are vacant and, if they start developing first, they will probably set the access point and the people across the street will have to match them.

Mr. Nienaber stated that the answer to Mrs. Arnett's question about control of the emergency access is a break-away gate.

Mr. Damstrom stated that there was a recent project where the Commission was concerned about noise insulation because it was the same LDN as this project and there was testimony from Dale Huber that it would be more like 2003 before those levels are achieved and Mr. Huber's comment to the Commission was that was the date that should be looked at. He stated that the Commission should look at 2003, not 1997, in which case noise reduction/insulation should be considered for their project.

Mrs. Schaffer questioned the conditions being recorded. Counselor Wilson stated, speaking from memory, that he believes the people who live in the subdivision had their own lawyers and they developed private deed restrictions. There were conditions agreed to by the city which incorporated the private deed restrictions. Mr. Costello advised that the restrictions are on file and will be provided to the Committee.

Mr. Nienaber stated that their project does not violate those conditions.

Mr. White asked if the applicant would consider an 8-foot chainlink fence around the project to preserve the woods.

Chairman Viox stated that the applicant can respond to Mr. White after his comments. Chairman Viox stated that he has been on the Commission since 1979 and was part of the whole process of the Henne Brothers development. One concern he has had from the very beginning is that he does not think they have quite lived up to any of the promises they made in the beginning. The city and the Commission have bowed to "market changes", but originally there was supposed to be high-rise office buildings, a convention center, a sitdown restaurant, and the apartments discussed were more executive residence inn type units for executives to stay for 3 or 4 days. The concept was provided to the Commission that they would lease a lot of them to possibly P & G for out of town long-term employees. They have never quite lived up to the original promises. Other developers have lived up to what they promised. He stated that he did not want to see any of the greenbelt taken away and is not sure that he is willing to give up on the offices. Office buildings are still being built in greater Cincinnati. People have come to the Commission and said that they cannot build offices any more -- and then one goes up across the street.

Mr. Nienaber stated that he does not believe that this project in any way breaks any promises that anybody has made. They have agreed to continue the greenbelt and the seven acres as a park. He does not know if it is breaking a promise or asking for a change; but if you look historically at Florence, there has been a lot of change over the last ten years and it was always demand/supply driven. He stated that Mr. Fessinger said that the insurance company has taken back the buildings Mr. Carroll started and the whole project is gone. In the Houston-Donaldson Study it was to be

apartments and multi-family and now we have Bigg's and other commercial. There is a lot of change on Houston Road from what was originally proposed. He stated that they are asking for a down scale. He stated that he has never been here when people wanted more commercial -- they always say they have enough. He stated that they are providing an opportunity to put in apartments and not violate any promise. They want to develop the property in an economically reasonable manner. They are not violating any ordinance for detention/retention. He noted that Henne asked for changes because if he didn't, there would not be one thing built there now. He noted that a lawsuit had to be filed to get Ryan Steakhouse there. He questioned who would have thought Fairfield Inn would be there. He noted that a lawsuit had to be filed against the City of Florence.

Counselor Wilson agreed that a lawsuit was filed for at least one of those uses. Mr. Nienaber stated that it was a joint deal and they were together.

Mr. Nienaber questioned what promise they are breaking. Chairman Viox stated that the area is part of the area that was going to be offices. Mr. Nienaber stated that that is not breaking a promise. They are asking for a change. He added that in regard to the traffic, the Staff's numbers and their numbers are off by 100 cars per day. He stated that the A.M. peak and P.M. peak is spread out much more for apartments than for office. The traffic is not a problem. He stated that the numbers are in the booklet.

Mr. Schneider advised that they had a traffic engineer do the traffic numbers. If they build 98 apartments on the site like what was approved and 175,000 square feet of office space, in the morning there will be 338 people coming in or out between 7 A.M. to 9 A.M.. If they build 96 apartments and the balance of apartments, they will have 161 people coming in and out in the same two-hour period. He stated that they are almost 50% less than an office building on the site. They are putting more traffic on the road, but an office building would have even more people on the road. The office and residential in a 24-hour period is almost the same amount of trips, but the office is very concentrated -- everyone goes in at the same time, goes to lunch at the same time, and leaves at the same time. With apartments, there are people working first shift, second shift, and third shift, and people come and go at all hours of the day. The traffic impact on Cavalier Boulevard would be less with this project. The traffic light was a condition of Winn Dixie.

Mr. Costello added "and Mr. Henne".

Mr. Schneider stated that Mr. Henne does still own the project. He wants to purchase it, but will not buy it unless he gets the zone change. He stated that they want to build a quality project. There is a demand for the apartments. He stated that the project will pay in excess of \$150,000 a year in property taxes.

There being no further comments, Chairman Viox stated that the Committee Meeting for this item will be on October 10, 1994 at 4 P.M. in the Ferguson Room at the Extension Office. This item will be on the Agenda for the Business Meeting on October 19, 1994 at 8 P.M..

The Chairman closed this Public Hearing.

APPROVED:



William R. Viox, Chairman

Attest:

  
Jan Hancock, Recording Secretary

BOONE COUNTY PLANNING COMMISSION  
BUSINESS MEETING  
November 2, 1994  
8:00 P.M.

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

COMMISSION MEMBERS PRESENT:

Mrs. Judy Arnett  
Mr. William Bailey  
Mr. Fred Burch, Vice Chairman  
Mr. Phil Damstrom  
Mr. Robert Kirby, Jr.  
Mr. Gayle McElroy  
Mr. Don McMillian  
Mr. Barry Neltner  
Mr. Thurman Owens  
Mr. Robert Ries  
Mr. Ralph Rush  
Mrs. Linda Schaffer  
Mrs. Carol Smith, Secretary/Treasurer  
Mr. William Viox, Chairman  
Mr. Earl White

All members were present.

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin Costello, AICP, Executive Director  
Mr. Jeff Hayes  
Ms. Jan Hancock, Secretary  
Mr. Robert Jonas  
Mr. Kevin Wall

Chairman Viox introduced the first item to be heard this evening:

1. Zoning Map Amendment

The request of Pinnacle Realty Group (applicant) for Turfway Development Company (owner) for a Zoning Map Amendment for a 23.5-acre site located off Cavalier Boulevard in Turfway Commercial Park, Florence, Kentucky. The request is to rezone the site from Commercial Services/Planned Development Office Two/Planned Development Suburban Residential Two/Planned Development (C-3/PD O-2/PD SR-2/PD) to Urban Residential One/Planned Development (UR-1/PD) in order to construct 366 apartment units.

Staff Member Jeff Hayes read the Committee Report which recommended approval of the request based on the findings of fact, but subject to conditions (see Committee Report). He advised that the applicant has signed the letter agreeing to the conditions.

Counselor Wilson explained that the Commission's action is a recommendation only. There will be findings to support the recommendation -- approval or denial -- and the recommendation will go to the City of Florence for their final action. The city can have its own Public Hearing, adopt the Commission's recommendation, or override the recommendation.

Mr. Bailey, Committee Chairman, stated that he will vote against the application for the reasons stated at the Public Hearing.

Mr. Kirby moved by resolution to the City of Florence that the request be approved based on the Committee Report. Mr. Owens seconded the motion.

Mr. Kirby questioned Condition #3 and asked if the apartments are currently located within the 65 LDN. Mr. Hayes advised that they are currently within the 65 LDN, but the 1997 map published by the airport shows them to be outside of the contour at that time. In response to a question from Mr. Costello, Mr. Hayes advised that approximately 50% of the units will be located within the 65 LDN. Mr. Kirby stated that the report is saying it is okay to build contrary to the Comprehensive Plan if there is insulation. Mr. Hayes agreed.

Mr. Kirby stated that he is in favor of the request, but noted that two other requests have been turned down because they were in the 65 LDN -- and they would insulate. Chairman Viox advised that there were other reasons why they were turned down. He stated that if the apartments Mr. Kirby was referring to had been approved, they would still have been in the 65 LDN, but these apartments will be out of the 65 LDN. Mr. Kirby commented "if the map is correct and the schedule followed". He stated that the 65 LDN was 50% of the reason why they were turned down.

Mrs. Schaffer stated that the Committee did a good job on the conditions. She is not in favor of the request. She referred to the conditions and stated that she is not satisfied with the majority of the adjoining property owners having to make a determination that a fence has to be required. She stated that the adjoining property owners are not present and not aware of this. She questioned how the adjoining property owners are going to know that if they complain they can make the applicant install a fence in two years. She does not want to put the burden on the residents. In regard to noise, she stated that if they insulate, the windows are shut and cannot be opened -- so something will have to be running so that they do not have a "sick" house. If this site is outside the 65 LDN, then they would not have to have the soundproofing. She stated that if you step on the other side of the noise contour line, you will have the same amount of noise, and she is not sure how far outside the 65 LDN they have to be. She asked if Condition #4 refers to the existing greenbelt and the covenants. Mr. Hayes advised that it does.

Mrs. Schaffer stated that she is opposed to the application because it is not in conformance with the Comprehensive Plan. The Comprehensive Plan was done in 1990, which was before the opening of the new north/south runway. This site is just about a mile off the end of the north/south runway, which is too close. She stated that we are bound by the 1991 Noise Exposure Map -- the 1997 and 2003 maps are what they hope to have, but they can be changed. They are just guidelines. She believes there will be an impact on the schools, especially with two- and three-bedroom homes. She does not think that Florence Elementary or Boone County can handle a large increase in students. The area is designated as Turfway Commercial Park and if it is a commercial park, residential uses are not appropriate. It is an ideal place for an office and quality office space is needed. She referred to the executive apartments and noted that it was brought up in the Public Hearing that someone would find out if they are for sure. They are an alternative that gives Florence a variety of housing types.

Mr. White stated that on Page 8, Paragraph 3, of the Public Hearing minutes Mr. Damstrom brought up that Mr. Huber had advised the Commission to look at 2003 instead of 1997 for the noise levels change.

There being no further comments, Chairman Viox asked for a roll call vote on the motion made by Mr. Kirby which found Mr. Burch, Mr. Damstrom, Mr. Kirby, Mr. McElroy, Mr. McMillian, Mr. Neltner, Mr. Owens, Mrs. Smith, and Chairman Viox in favor. Mrs. Arnett, Mr. Bailey, Mr. Ries, Mr. Rush, Mrs. Schaffer, and Mr. White were opposed. The motion carried by a vote of 9 to 6.

**EXHIBIT "B"**

## COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: William Bailey, Chairman

DATE: November 2, 1994

RE: Request of Pinnacle Realty Group (applicants) for Turfway Development Company (owner) for a Zoning Map Amendment for a 23.5 acre site located off of Cavalier Boulevard in Turfway Commercial Park, Florence, Kentucky. The request is to rezone the site from Commercial Services/Planned Development, Office Two/Planned Development, Suburban Residential Two/Planned Development (C-3/PD, O-2/PD, SR-2/PD) to Urban Residential One/Planned Development (UR-1/PD) in order to construct 366 apartment units.

### REMARKS:

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

#### Findings of Fact

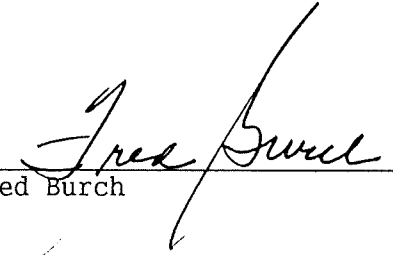
1. The Committee believes that the proposed Zoning Map Amendment is generally in agreement with the 1990 Boone County Comprehensive Plan Future Land Use Map which indicates the applicant's site as Urban Density Residential. The Text of the Comprehensive Plan indicates that higher density residential development should only occur where it can serve as a buffer between industrial or commercial intrusion on single-family residential areas or where it is easily accessible.
2. The Committee believes that the submitted Concept Development Plan provides a useful pattern of open space which preserves the natural vegetation within the site. In addition, the proposed recreation amenities and quality of the apartment units proposed will provide a needed housing type for Boone County.
3. The Committee believes that the proposed density is in agreement with the Housing Element of the Comprehensive Plan which indicates that high gross density development should be encouraged to locate in areas with immediate or convenient access both to major streets or highways and to significant commercial areas and public facilities. The proposed development borders and has convenient access to the interstate and is in close proximity to the commercial services within the City of Florence.

Conditions

The applicant is being asked to agree to and include these items as part of the Zoning Map Amendment request:

1. The applicant shall install an eight (8) foot high fence along the southeast corner where JoAnn Drive and the Boone County High School property adjoin the applicant's property. This fence shall replace the section of the fence which allows people to enter the applicant's site from the high school and the end of JoAnn Drive. The fence shall be installed during the first phase of construction. In addition, the applicant will be required to install a fence along the rear property line which adjoins JoAnn Drive and Claxton Drive. The installation of this fence shall be required only if within two years after the construction of the apartments the majority of the adjoining property owners agree that the fence should be installed. The location of the fence shall also be determined at this time to the satisfaction of the Planning Commission.
2. To assure the quality of design of the apartments the applicant shall be required to undergo Design Review with the Technical Committee of the Planning Commission. The examples of existing apartment complexes developed by the applicant and presented at the Public Hearing shall represent a minimum standard for the design of the apartments. The design and amenities of the apartments shall be to the Planning Commissions satisfaction.
3. The apartments shall be constructed to provide an outdoor to indoor Noise Level Reduction (NLR) of 30db (decibels) as recommended by the Supplemental Part 150 Study conducted for the Airport. The applicant shall provide proof at the Site Plan Review procedure that the buildings will provide a 30db Noise Level Reduction. In addition, the applicant will not be required to provide a 30db Noise Level Reduction if proof can be provided to the satisfaction of the Planning Commission that the applicant's site is outside of the 65ldn at the time of construction for the apartments.
4. The open space shall be preserved as required by the covenants established as part of the 1986 Zoning Map Amendment and as presented at the Public Hearing. In addition, the applicant shall identify the existing vegetation and establish a grading limit which shall be identified on the Site Plan. This limit shall serve to protect the existing vegetation during construction.
5. The applicant shall provide an internal sidewalk network within the development as well as provide an emergency access to Rebel Drive as indicated on the Concept Development Plan.
6. The applicant shall provide a landscaped buffer area along the area where the applicant's site adjoins lot number 7 and 10. This buffer shall be designed to the satisfaction of the Planning Commission at the Site Plan Review procedure.

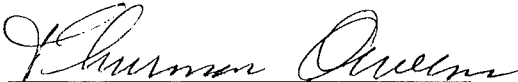
A copy of the Public Hearing minutes accompanies the findings and recommendation serving as a summary of the evidence and testimony presented by the proponents and opponents of this request.

  
\_\_\_\_\_  
William Bailey, Chairman

Fred Burch

  
\_\_\_\_\_  
Phil Damstrom

Gayle McElroy

  
\_\_\_\_\_  
Thurman Owens

Barry Neltner

JFH\par

## SUPPORTING INFORMATION



# PINNACLE REALTY GROUP

## TELECOPIER TRANSMITTAL FORM

TO: JEFF HAYES

DATE: 11/17/94

BOONE CO. PLANNING COMMISSION

NUMBER OF PAGES (including  
transmittal form): 5

TELECOPIER NUMBER: (606) 334-2264

FROM: F. W. SCHNEIDER, JR.

901 Prosperous Place, Suite 190  
Lexington, Kentucky 40509  
Teletypewriter Number: (606) 263-5564  
Telephone Number: (606) 263-7368

MESSAGE: LEGAL DESCRIPTION FOR TURNWAY PER YOUR REQUEST

If you do not receive all pages as indicated above, or if this facsimile  
is illegible, please contact our office at the phone number listed above.

TIME SENT: \_\_\_\_\_

ORIGINAL:  To Follow via U. S. Mail;  No Original to Follow

### CONFIDENTIALITY NOTICE

The information contained in this facsimile message is legally privileged  
and confidential information intended only for the use of the individual  
initially named above. If the reader of this message is not the intended  
recipient, you are hereby notified that any dissemination, distribution or copy  
of this telecopy is strictly prohibited. If you receive this telecopy in  
error, please notify us by telephone and return the original message to  
us at the address above via the United States Postal Service. Thank You.

COMMITMENT FOR TITLE INSURANCE  
SCHEDULE A

1. Effective Date: October 11, 1994 at 7:30 A.M.

Case No.: Q-2004  
PINNACLE REAL

2. Policy or policies to be issued:

(a)  ALTA Owner's Policy - (4-6-90) Amount \$1,450,000.00

ALTA Residential Title Insurance Policy - (6-1-87)

Proposed Insured: PINNACLE REALTY GROUP, INC., A KENTUCKY CORPORATION

(b) ALTA Loan Policy - (4-6-90)

Amount \$

Proposed Insured:

(c)

Amount \$

Proposed Insured:

3. Title to the ~~THE~~ SIMPLE estate or interest in then held described or referred to in this Commitment is at the effective date hereof vested in:

TURFWAY DEVELOPMENT CO., AN OHIO GENERAL PARTNERSHIP

4. The Land referred to in this Commitment is described as follows:

DESCRIPTION TO BE FURNISHED  
(UNRECORDED LOTS 8 AND 9 TURFWAY COMMERCIAL PARK)

Countersigned at: CINCINNATI, OHIO  
LAWYERS TITLE OF CINCINNATI, INC.

*Mary Ann Schut*  
Authorized Officer or Agent

Commitment No.: Q-2006  
Schedule A - Page 1

TELEPHONE - 513-401-6440

Form No. 91-50 (SCH A.)  
035-1-038-0001/7

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

SCHEDULE B - Section 1  
Requirements

Case No.: G-2045

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

1. SATISFACTORY DEED SIGNED BY ALL PARTNERS TO PINNACLE REALTY GROUP, INC., A KENTUCKY CORPORATION.  
NOTE: IF ANY PARTNER IS A CORPORATION OR PARTNERSHIP, THIS COMPANY REQUIRES SATISFACTORY EVIDENCE OF AUTHORIZATION BY SUCH CORPORATION OR PARTNERSHIP FOR EXECUTION OF THE DEED.
2. RELEASE OF INSURED PREMISES FROM MORTGAGE FROM TURFWAY DEVELOPMENT CO. TO CITIZENS FIDELITY BANK & TRUST COMPANY DATED SEPTEMBER 26, 1985 RECORDED SEPTEMBER 26, 1985 IN MORTGAGE BOOK 390 PAGE 29, SECURING \$3,000,000.00 AND RE-RECORDED NOVEMBER 13, 1985 IN MORTGAGE BOOK 393 PAGE 312.  
ASSIGNMENT OF RENTS AND LEASES IN MISC. BOOK 174 PAGE 319 AND RE-RECORDED IN MISC. BOOK 177 PAGE 25.  
MORTGAGE MODIFICATION AGREEMENT RECORDED APRIL 24, 1989 IN MISC. BOOK 253 PAGE 50.  
MORTGAGE MODIFICATION AGREEMENT RECORDED JANUARY 24, 1990 IN MISC. BOOK 270 PAGE 260.  
AMENDMENT TO MORTGAGE MODIFICATION AGREEMENT RECORDED JANUARY 3, 1991 IN MISC. BOOK 298 PAGE 67.  
UCC-1 NO. 127236 AND NO. 116862.
3. SUBDIVISION PLAT CREATING THE LOTS COMPRISING INSURED PREMISES MUST BE APPROVED AND FILED.
4. PAYMENT OF STATE AND COUNTY AND CITY OF FLORENCE TAXES FOR THE YEAR 1994.
5. THE COMPANY MAY MAKE OTHER REQUIREMENTS OR EXCEPTIONS UPON ITS REVIEW OF THE PROPOSED DOCUMENTS CREATING THE ESTATE OR INTEREST TO BE INSURED OR OTHERWISE ASCERTAINING DETAILS OF THE TRANSACTION.

STATE AND COUNTY TAXES ARE \$4111.01 PER YEAR ON INSURED AND MORE LAND.  
CITY OF FLORENCE TAXES ARE \$1214.96 PER YEAR ON INSURED AND MORE LAND.

Schedule B - Section 1 - Page 1 - Commitment No.: G-2045

Form No. 91-88 (B-1)  
035-1-008-0001/7

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

LEGAL DESCRIPTION

BOOK 192 PAGE 328

54.651 ACRE TRACT

Situate in the City of Florence, Boone County, Kentucky and being more particularly described as follows:

beginning at the intersection of the southeasterly right-of-way line of Interstate Route 75 and the northeasterly line of Colonial Estates Subdivision as recorded in Plat Book 7, Page 18 of the County Clerk's Records at Burlington, Kentucky; thence North  $52^{\circ} 10' 21''$  East along said southeasterly line of Interstate Route 75, 1689.81 feet; thence continuing along said southeasterly line, North  $59^{\circ} 14' 21''$  East, 644.49 feet; thence continuing along said southeasterly line, North  $65^{\circ} 41' 13''$  East, 396.35 feet; thence along the lands of Frisch's Restaurants, Inc. as described in Deed Book 309, Page 231, the following courses and distances;

South  $25^{\circ} 09' 02''$  West, 199.57 feet;  
 South  $28^{\circ} 31' 17''$  West, 174.55 feet;  
 South  $41^{\circ} 38' 04''$  West, 82.00 feet;  
 South  $26^{\circ} 31' 56''$  East, 390.00 feet and  
 South  $38^{\circ} 41' 03''$  East, 151.46 feet to a point in  
 the westerly line of Price Pike (State Route 18);

thence southwardly along said westerly line on a curve deflecting to the left, having a radius of 766.20 feet, a distance of 62.90 feet (the chord of said curve bearing South  $35^{\circ} 56' 09''$  West, 62.88 feet); thence continuing along said westerly line, South  $33^{\circ} 50' 49''$  West, 89.25 feet; thence continuing along said westerly line on a curve deflecting to the left, having a radius of 623.00 feet, a distance of 477.36 feet (the chord of said curve bearing South  $16^{\circ} 53' 43''$  West, 419.03 feet); thence North  $82^{\circ} 07' 40''$  West, 37.09 feet to a point in the northwesterly line of Tract 1 of the Elliott Tract as recorded in Plat Book 10, Page 11 of the Boone County Clerk's Records at Burlington; thence South  $50^{\circ} 04' 54''$  West along said northwesterly line, 344.42 feet; thence South  $14^{\circ} 38' 46''$  East, 95.38 feet to a point in the southerly line of said Tract 1 of the Elliott Tract; thence South  $75^{\circ} 21' 14''$  West along said southerly line, 712.08 feet to a point in the northeasterly line of East Town Estates Subdivision; thence North  $36^{\circ} 42' 26''$  West along said northeasterly line, 15.40 feet; thence South  $51^{\circ} 47' 56''$  West along the northwesterly line of said East Town Estates and Colonial Estates Subdivisions, 650.28 feet to a corner of said Colonial Estates Subdivision; thence North  $39^{\circ} 19' 42''$  West along the northeasterly line of said subdivision, 952.15 feet to the place of beginning. Containing 54.651 acres of land.

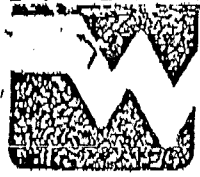
December 18, 1984

Prepared by: John J. Duffy & Associates  
 Ewin & Endicott Streets  
 Cincinnati, OH 45218

84-246

Exhibit A (Page 1 of 2)

AJK



WOOLPERT

BOOK 195 PAGE 224

CELEBRATING OUR 75TH YEAR • 1911-1986

Description of Property  
 City of Florence, Kentucky  
 3.738 Acre Tract  
 September 22, 1986

Situated in The City of Florence, Boone County, Kentucky and being part of the property conveyed to Turfway Properties as recorded in Deed Book 336, Page 26 of the Boone County Deed Records and being more particularly described as follows:

Commencing at the northeasterly corner of Colonial Estate Sub-division, 5th Addition, as the same is recorded in Plat Book 7, page 18, of the Boone County Clerk's Records, said point also being on the easterly right of way of Interstate 75,

thence along said easterly line the following two (2) courses:

1) N 52°10'21" E for 1683.47';

2) N 59°17'01" E for 271.05' to the TRUE POINT OF BEGINNING for the land herein described;

thence continuing along the last mentioned line N 59°17'01" E for 377.85';

thence N 65°57'55" E for 195.63';

thence leaving said easterly right of way line S 30°15'57" E for 131.39';

thence S 28°39'03" W for 88.02';

thence N 61°20'57" W for 27.00';

thence S 28°39'03" W for 20.00';

thence S 61°20'57" E for 27.00';

thence S 28°39'03" W for 30.00';

thence S 41°52'41" W for 69.10';

thence S 6°31'43" E for 114.48';

thence S 50°00'00" W for 209.94';

thence S 82°05'41" W for 81.14';

thence N 40°00'00" W for 356.65' to the POINT OF BEGINNING and containing 3.738 acres of land more or less and being subject to all covenants, conditions, restrictions, reservations, and easements of present or future conditions of record.

Exhibit B



FLORENCE CITY COUNCIL

MINUTES - REGULAR MEETING

DECEMBER 13, 1994

The City Council of the City of Florence, Kentucky met in Regular Session on Tuesday, December 13, 1994 at 7:30 p.m. in the Florence Municipal Building with Mayor Evelyn Kalb presiding in the Chair.

Mayor Kalb called the meeting to order and declared the Regular Session to be open for the presentation of all City business.

The roll was called and the following members registered present: Mel Carroll, Robert O. Hay, Carl Howard, William Hudson, Dr. Ferd Metzger and David A. Osborne.

Also present were City Coordinator Roger Rolfes, City Attorney Hugh O. Skees, Finance Director Ronald Epling, Assistant Police Chief Thomas Kathman, Public Services Director Jeffrey Koenig, Public Services Project Manager Rodney Crice, Fire/EMS Chief Richard Albers, and City Clerk Betsy R. Conrad.

Mayor Kalb called for a motion to approve the minutes of the November 15, 1994, Special Meeting of Council. Councilmember Carroll so moved, with second from Councilmember Hudson, and unanimous approval of Council.

Mayor Kalb called for a motion to approve the minutes of the November 22, 1994, Regular Meeting of Council. Councilmember Hay so moved, with second from Councilmember Metzger, and unanimous approval of Council.

Mayor Kalb presented the following Ordinance for first reading:

**ORDINANCE NO. 0-36-94: AN ORDINANCE AMENDING ORDINANCE NO. 0-34-82 TO CHANGE THE LIST OF ALCOHOLIC BEVERAGE LICENSES ISSUABLE BY THE CITY AND THE LICENSE FEES IMPOSED FOR EACH AS AUTHORIZED BY THE 1994 AMENDMENT TO K.R.S. 243.070.**

Councilmember Hudson moved, with second from Councilmember Carroll, that Ordinance No. 0-36-94 be approved on first reading and held for the second and final reading at next meeting of Council. Council approved by unanimous vote.

Mayor Kalb presented a consideration of recommendation from the Boone County Planning Commission in regard to the request of Pinnacle Realty Group (applicant) for Turfway Development Company (owner) for a Zoning Map Amendment on a 23.5 acre site generally located off Cavalier Boulevard in Turfway Commercial Park, Florence, Kentucky. The request is to rezone the site from Commercial Services/Planned Development, Office Two/Planned Development and Suburban Residential Two/Planned Development (C-3/PD, O-2/PD and SR-2/PD) to Urban Residential One/Planned Development (UR-1/PD) in order to construct 366 apartment units.

Councilmember Metzger moved, with second from Councilmember Hay that this request be placed on the Agenda for action. Council approved by unanimous vote.

Mayor Kalb recognized Attorney Skees, who stated that it was his understanding that Council had elected to consider this matter and make a decision based upon the record from the Boone County Planning Commission as reviewed by Council.

Mr. Skees advised that Council has two alternatives (1) to approve or (2) to disapprove the recommendations of the Boone County Planning Commission and noted that the City Clerk has both an Ordinance which would approve the Planning Commission's

recommendation of approval and a document entitled, "Findings for Denial" which are from the Planning Commission records, which would justify denial.

Mr. Skees advised that Council needed to make a motion to either adopt the Ordinance or to adopt and approve the "Findings for Denial" and proceed on that basis.

Councilmember Metzger moved and Councilmember Carroll seconded the motion that Council disapprove the recommendation of the Boone County Planning Commission based on the Council's review of the records and based on the "Findings for Denial" and the "Findings of Fact." Roll call vote was taken. Voting Yes: Councilmembers Howard, Carroll, Hudson, Metzger, Hay and Osborne. Voting No: None. Council voted unanimously to disapprove the recommendation of the Boone County Planning Commission based on the "Findings for Denial" and the "Findings of Fact" as set out in the attached document.

Mayor Kalb presented the following Municipal Order for consideration:

**MUNICIPAL ORDER NO. MO-14-94:** A MUNICIPAL ORDER APPROVING THE SALE OF CERTAIN SURPLUS EQUIPMENT NAMELY, A 1987 FORD LTD CROWN VICTORIA CRUISER TO CRITTENDEN VOLUNTEER FIRE DEPARTMENT, AND A 1988 FORD LTD CROWN VICTORIA CRUISER TO GALLATIN COUNTY FIRE DEPARTMENT, AND AUTHORIZING THE EXECUTION OF PURCHASE AND SALE AGREEMENTS WITH RESPECT THERETO.

Councilmember Metzger moved, with second from Councilmember Osborne that Municipal Order No. MO-14-94 be approved. Council approved by unanimous vote. (Sale of surplus property - two vehicles)

Mayor Kalb noted that she had received a letter from the Department of Local Government regarding the acceptance of the City Ethics Ordinance.

Mayor Kalb recognized Betsy Conrad, City Clerk for the City of Florence, who spoke in regard to a letter mailed to the Mayor and the City from the Kentucky Municipal Clerks Association, who is hosting Kentucky's first International Municipal Clerks Association Convention to be held Louisville this coming May. The Kentucky Municipal Clerks Association is requesting monetary support from each Kentucky City who has a participating Clerk. Betsy requested one thousand dollars (\$1,000) from the City of Florence to help support the Kentucky Clerks in this endeavor.

Councilmember Hudson moved, second by Councilmember Metzger that the City support the Kentucky Municipal Clerks Association in their endeavor by donating one thousand dollars (\$1,000). Roll call vote was taken. Voting Yes: Councilmembers Howard, Carroll, Hudson, Metzger and Osborne. Voting No: Councilmember Hay. Motion passed by a vote of five (5) to one (1).

**MAYOR'S REPORT:**

Mayor Kalb requested a Motion to provide a fifty dollar (50.00) Christmas Bonus for each City employee. Councilmember Carroll so moved, seconded by Councilmember Hudson and unanimously approved by Council.