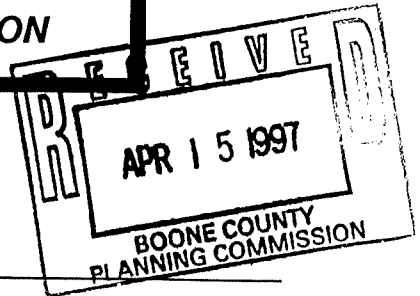


APPLICATION FORM

**ZONING MAP AMENDMENT  
BOONE COUNTY PLANNING COMMISSION**



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

1. Name of Project The Harms Property
  2. Location of Project Limaburg Road, Hebron, KY
  3. Total Acreage of Site 15.6
  4. Current Zoning of Site A-2 and SR 1
  5. Proposed Zoning (Classification being requested) SR-2
  6. Proposed Uses (please specify each use) Subdivision
- 
7. Names of Applicant(s) Steven P. Harms and Tonia R. Harms  
Phone Number 689-7819 Fax No. \_\_\_\_\_
  8. Address of Applicant(s) 3634 Limaburg Road  
Hebron KY 41048  
City State Zip
  9. Name of Property Owner(s) Steven P. Harms and Tonia R. Harms & Bermac Corp  
Phone Number 689-7819 Fax No. 525-1475 1385 Beacon Hill
  10. Address of Property Owner(s) 3634 Limaburg Road Ft. Wright, Ky.  
Hebron KY 41048  
City State Zip
  11. Proposed Building Intensities (please specify) Units - 51; Density 3.27
  12. Are there any existing buildings on the site? Yes  
How many? One
  13. Deed Book 386 Page No. 263 Group No. 2020  
567 136
  14. Are you also applying for:  
 Conditional Use Permit  
 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 within 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  
 Kentucky Transportation Cabinet  
 City of Florence Public Services Department  
 Boone County Building Department

**EXHIBIT "A"**

## STAFF REPORT

Request of **Steven P. Harms and Tonia R. Harms (applicants)** for **Steven P. Harms, Tonia R. Harms, and Bermac Corporation (owners)** to consider a Zoning Map Amendment for a 15.6 acre tract located immediately west of Orchard Estates Subdivision near Conner Road and Limaburg Road, Boone County, Kentucky. The request is for a zone change from Agricultural Estate (A-2) and Suburban Residential One (SR-1) to Suburban Residential Two (SR-2) to allow a residential subdivision for fifty-one lots.

May 28, 1997

### **Location**

The site is located immediately west of the Orchard Estates Subdivision and approximately 1,000 feet east of Limaburg Road in unincorporated Boone County, Kentucky (see Location Map).

### **Request/Concept Development Plan**

The applicant is proposing to rezone the 15.6 acre tract of land from Agricultural Estate (A-2) and Suburban Residential One (SR-1) to Suburban Residential Two (SR-2). A Concept Development Plan has been submitted (see Concept Development Plan). The applicant proposes a single-family residential development of fifty-one (51) lots at a density of 3.27 houses per acre. Even though this requested density conforms to the Suburban Residential One (SR-1) Zone, the applicant is proposing the Suburban Residential Two (SR-2) Zone to reduce lot sizes to 6,500 feet and lot widths to fifty (50) feet (compared to the 8,000 square foot minimum lot size and 65-foot minimum lot width which is permitted in the SR-1 Zone). This proposed residential development would be accessed through the proposed extension of Delicious Court in the Orchard Estates Subdivision. The Concept Development Plan indicates two (2) cul-de-sac streets, one extending off of Delicious Court at a length of 1,200 feet and another extending off of it at a length of 250 feet.

### **Zoning**

The majority of the site is zoned Agricultural Estate (A-2) and a small strip of land immediately adjacent to the Orchard Estates Subdivision is zoned Suburban Residential One (SR-1). The requested Suburban Residential Two (SR-2) Zone principally permits detached single-family dwelling units, duplex dwelling units and townhouse dwelling units. The purpose of the Suburban Residential Two (SR-2) Zone is to provide a more compact, but essentially single-family residential environment. Such district will be located on suitable lands within established or proposed urban entities where adequate infrastructure facilities and services are available or proposed. The maximum intensity of a Suburban Residential Two (SR-2) Zone district shall not exceed eight (8) dwelling units per acre.

**Surrounding Zoning and Land Uses** (see Zoning Map)

- North: North of the site, extending to Conner Road, is the Orchard Estates Subdivision and a farm zoned Suburban Residential One (SR-1). On the north side of Conner Road is a single-family residential development zoned Rural Suburban (RS).
- South: South of the site is vacant land owned by the Kenton County Airport Board zoned Agricultural Estate (A-2).
- East: East of the site is the Orchard Estates Subdivision and vacant land owned by the Kenton County Airport Board zoned Agricultural Estate (A-2).
- West: West of the site, extending to Limaburg Road, exists several single-family residential dwellings and farmland. This land is zoned Rural Suburban (RS). A large portion of this land is owned by the Kenton County Airport Board.

**Site Characteristics**

The site in question contains one (1) single-family residential dwelling. The majority of the site either is vacant or being used for agricultural purposes. The site is relatively flat and open. Current access into the site is gained through an existing driveway off of Limaburg Road.

**Relationship to the Comprehensive Plan**

The Boone County Comprehensive Plan's Future Land Use Map indicates the majority of site and land located to the south and east of the site as Transportation (see Land Use Plan Map). The Transportation Land Use Classification is defined as "Airports, major four lane roads, interstates, and interchanges." A smaller portion of the site and land located to the north and west of the site is identified as Suburban Residential which is defined as "Single-family housing of up to four units per acre. This classification also includes any low density or estate residential developed as a formal subdivision."

The 1995 Boone County Comprehensive Plan identifies the site as split between the Burlington - KY 18 Area and the Hebron Area, but contains no language about the site specifically. The 1995 Boone County Comprehensive Plan states the following regarding future development in the area just south of the site (Burlington - KY 18 Area):

The airport property comprises the majority of the eastern half of this section, and greatly influences the appropriateness of various land uses surrounding the airport. Due to the impacts of noise, industrial uses are recommended along the east side of Limaburg Road, from Hossman Road south to KY 18.

The 1995 Boone County Comprehensive Plan states the following regarding future development in the area just north of the site (Hebron Area):

The Hebron area will be dramatically affected by a planned 3rd north-south airport runway. This runway is described in detail in the 1995 Airport Master Plan and is shown on the Future Land Use Map. Construction of this runway will displace existing residential land uses, impact public land uses, relocate or close roadways, and will cause the 1995 Future Land Use Map to be significantly different from the 1990 Future Land Use Map.

Objective #7, page 8, under the Housing Goal in the 1995 Boone County Comprehensive Plan states the following:

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 1995 Future Land Use Map and the Recommended Long Term Noise Abatement Plan - Years 1997, 2003, and 2011 identify the site within the 65 Ldn (see Figure 11.5. - 1994 Airport Master Plan Runway Alternative 17). The Deputy Director of Aviation identifies the site located within the 65-70 DNL noise contour (1997 NCP Plan contour) but not in the 2003 predictive noise contour and states that development within the noise contour is not considered to be a compatible land use.

Objective #8, page 8, under the Housing Goal in the 1995 Boone County Comprehensive Plan states the following:

The interior street system of new residential developments shall insure continuity with adjacent built or planned neighboring areas. Residential developments shall be encouraged to provide interconnections between sections of their developments and with adjacent developments to promote safe and easy transportation access and a sense of neighborhood interaction.

The submitted Concept Development Plan indicates that access into the proposed subdivision will be gained exclusively through the existing Orchard Estates Subdivision (see Concept Development Plan).

The Housing Element of the 1995 Boone County Comprehensive Plan on page 105, states the following regarding Airport Noise Impacts on New Residential Development:

Since the opening of the new north/south Runway 18L-36R in 1991, airport noise impact on existing residential development has been a topic of continuing controversy between the airport and the community. The Supplemental PART 150 Study's Noise Mitigation Program was approved in 1994, and it addresses the noise impacts generated by the new runway and the extension to the east/west runway. New development continues in the county, and the airport is now developing its 1995 Master Plan (which is now completed), where it has proposed the construction of yet another new runway at a threshold level of airport activity.

It is therefore appropriate that the construction of new residential development, that would be built in areas impacted by high airport noise levels (65 Ldn plus), should have stipulations that would mandate that these developments construct their buildings with materials that would reduce excess noise from the outside. The general guidelines for new residential construction within 65 Ldn or greater is that it should be built with enough sound insulation to provide an outdoor to indoor Noise Level Reduction (NLR) of at least 30 decibels, and 35 decibels if the outside area is within 70 Ldn.

The Transportation Element of the 1995 Boone County Comprehensive Plan on page 182, states the following regarding a possible new north/south runway:

The proposed runway would be another north/south runway located 4,300 feet to the west of the present Runway 18R/36L (the original north/south runway) and north of Runway 9/27 (the east/west runway) . . . The Airport's consultants predict the earliest need for this new runway would be by the year 2003. The airport estimates that over 1,210 acres, 222 homes and ten (10) businesses would have to be acquired to enable the building of this runway. A portion of Kentucky Highway 20 would also have to be relocated, and Hossman Road, Conner Road, and Limaburg Road would be discontinued as through routes.

### **Staff Concerns and Comments**

1. The proposed Zoning Map Amendment from Agricultural Estate (A-2) and Suburban Residential One (SR-1) to Suburban Residential Two (SR-2) is not in agreement with the Boone County Comprehensive Plan's Future Land Use Map. The Future Land Use Map indicates the majority of the site, including the southern portion, as Transportation. A small northern portion of the site and land north of the site is identified as Suburban Density Residential.

2. The proposed Zoning Map Amendment is not in agreement with Objective #7 under the Housing Goal in the 1995 Boone County Comprehensive Plan because it states the following:

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.

3. Staff is concerned about the possibility of a new north/south runway and the additional noise impact it would have on the site in question. This future runway would be located approximately 2,500 feet east of the site in question.
4. If the Boone County Planning Commission recommends approval and the Boone County Fiscal Court approves this zoning map amendment, the new residential development located in noise levels of 65 Ldn plus, should be constructed with materials that would reduce excess noise from the outside. The general guidelines for new residential construction within 65 Ldn or greater is that it should be built with enough sound insulation to provide an outdoor to indoor Noise Level Reduction (NLR) of at least 30 decibels, and 35 decibels if the outside area is within 70 Ldn.
5. The approved Preliminary Plat for the Orchard Estates Subdivision identifies 208 single-family lots. An Improvement Plan has been approved for the Orchard Estates Subdivision identifying Delicious Court ending in a cul-de-sac. If the Boone County Planning Commission recommends approval and the Boone County Fiscal Court approves this zoning map amendment, the approved Orchard Estates Improvement Plan will have to be modified to accommodate this proposed development.
6. Staff is concerned about the permitted uses in the Suburban Residential Two (SR-2) Zone, specifically duplex dwelling units and townhouse dwelling units. Although the Concept Development Plan indicates a density of 3.27 dwelling units per acre, duplexes and townhouses do not relate to the existing single-family dwelling units existing and proposed for the Orchard Estates Subdivision. Furthermore, it is important that the proposed density of 3.27 dwelling units remain or be lowered since the only access into this proposed development is through an existing development (Orchard Estates) which contains approximately four (4) dwelling units per net acre. Thus, the applicant should commit to single-family residences only with at a maximum density of 3.27 dwelling units per net acre.

**Conclusion**

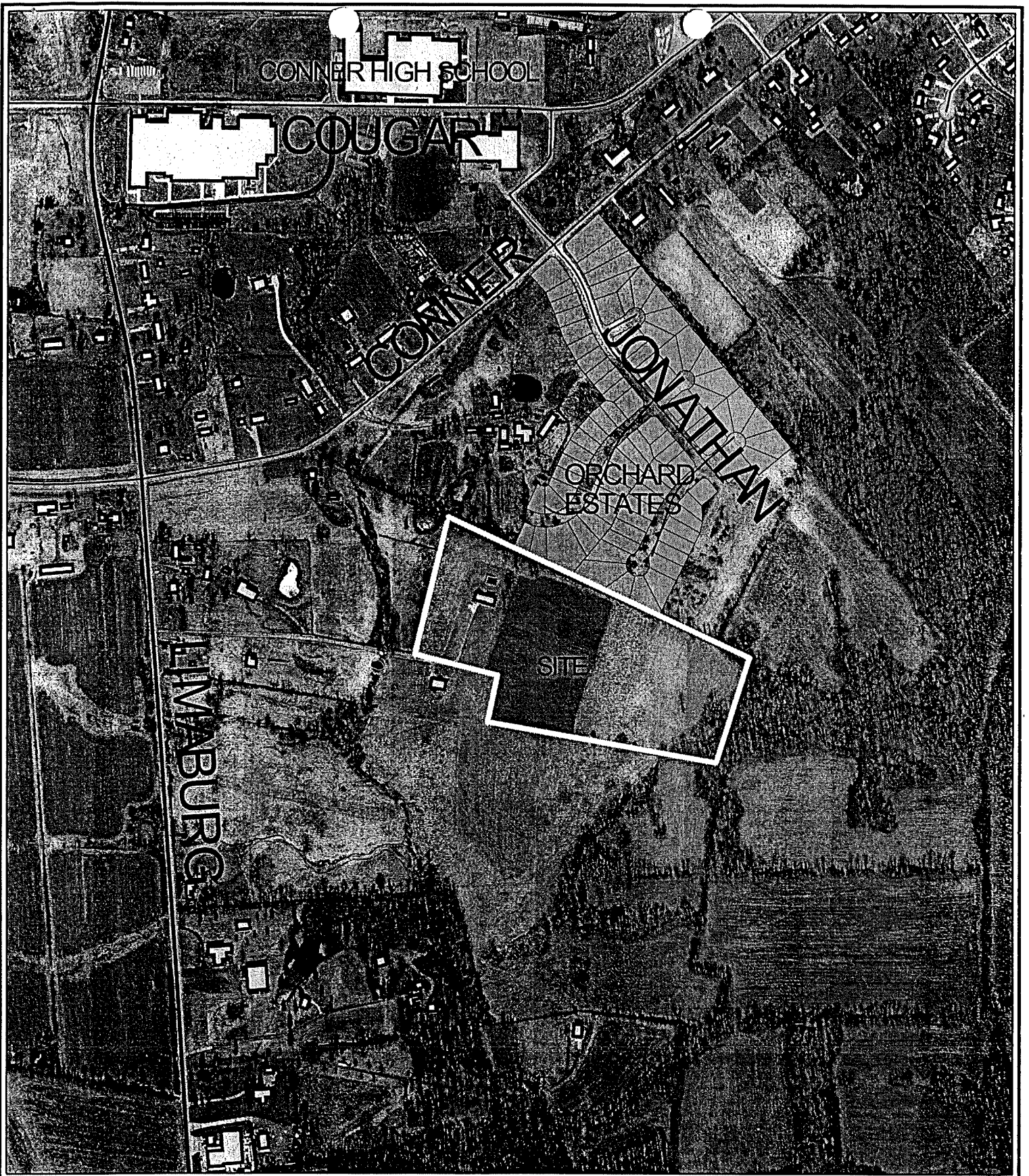
Should the Planning Commission recommend, and the Boone County Fiscal Court approve this request for a Zoning Map Amendment, the Boone County Comprehensive Plan's Future Land Use Map will need to be changed to reflect the residential use.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John Huth", with a long horizontal flourish extending to the right.

John Huth  
Planner

JH\par

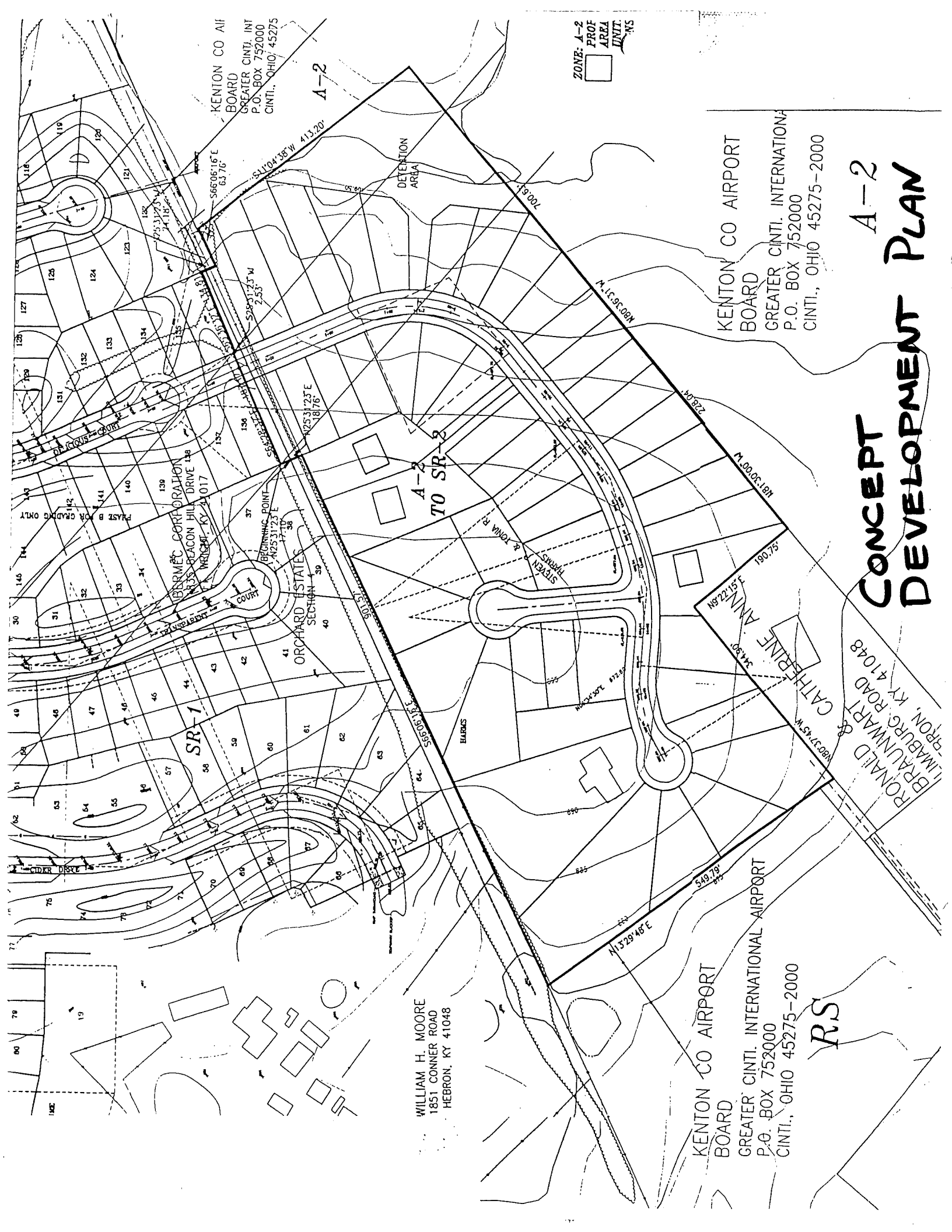


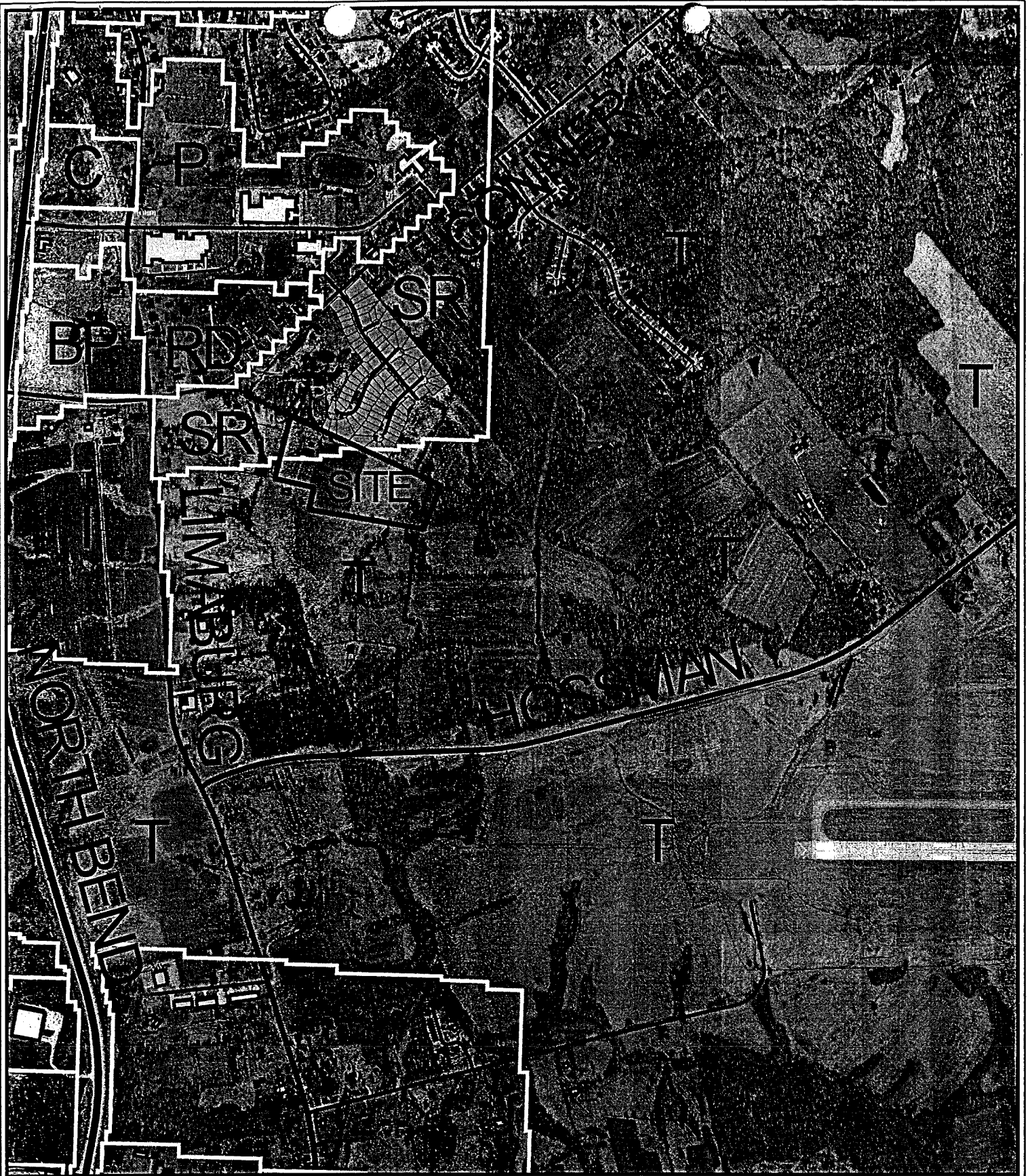
# HARMS ZONE CHANGE LOCATION MAP

500 0 500 Feet

1 inch equals 500 feet  
Produced by the  
Boone County Planning Commission  
GIS Services Division  
May 20, 1997





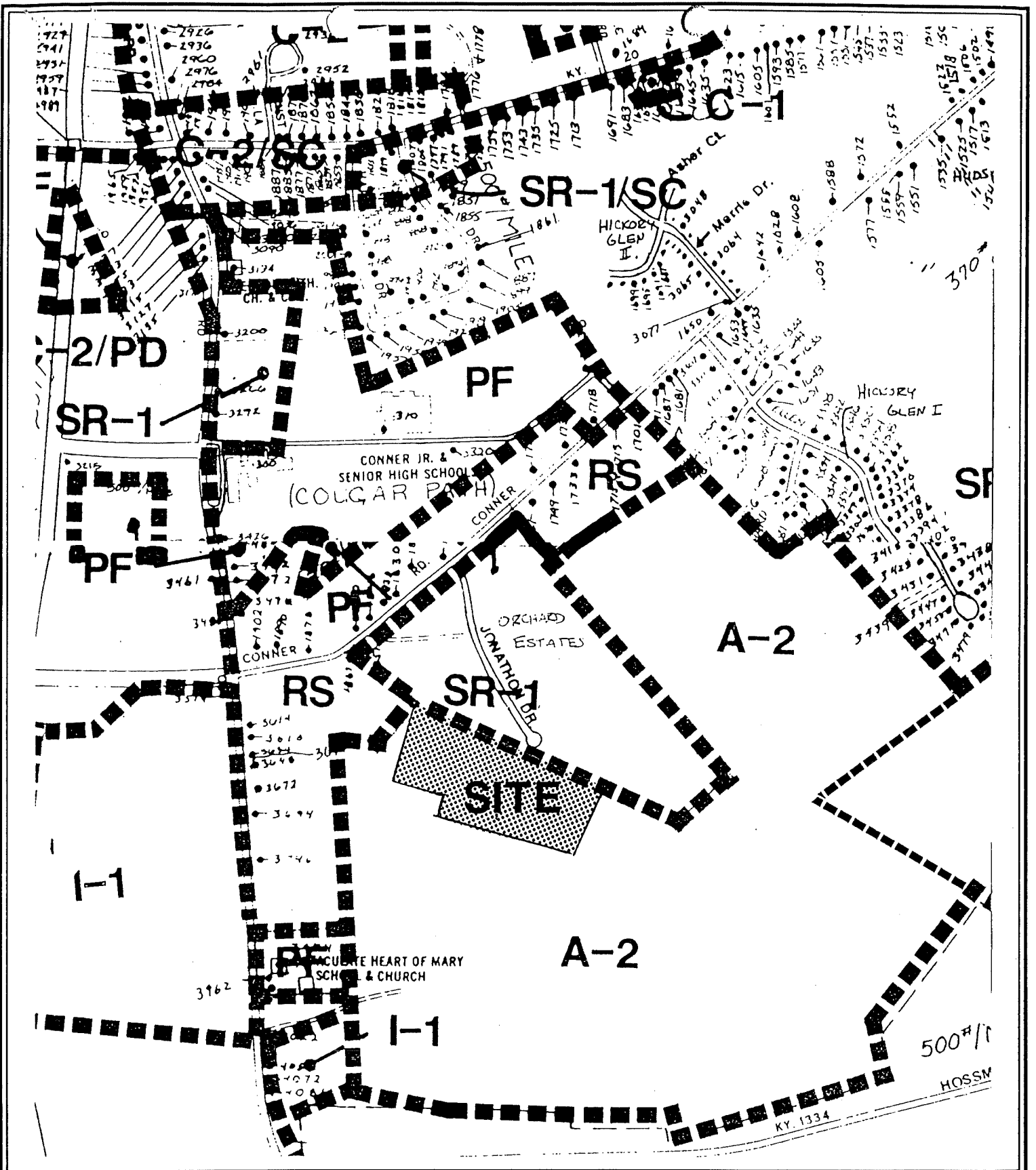


# HARMS ZONE CHANGE 2020 LAND USE PLAN MAP



1 inch equals 1100 feet  
Produced by the  
Boone County Planning Commission  
GIS Services Division  
May 22, 1997

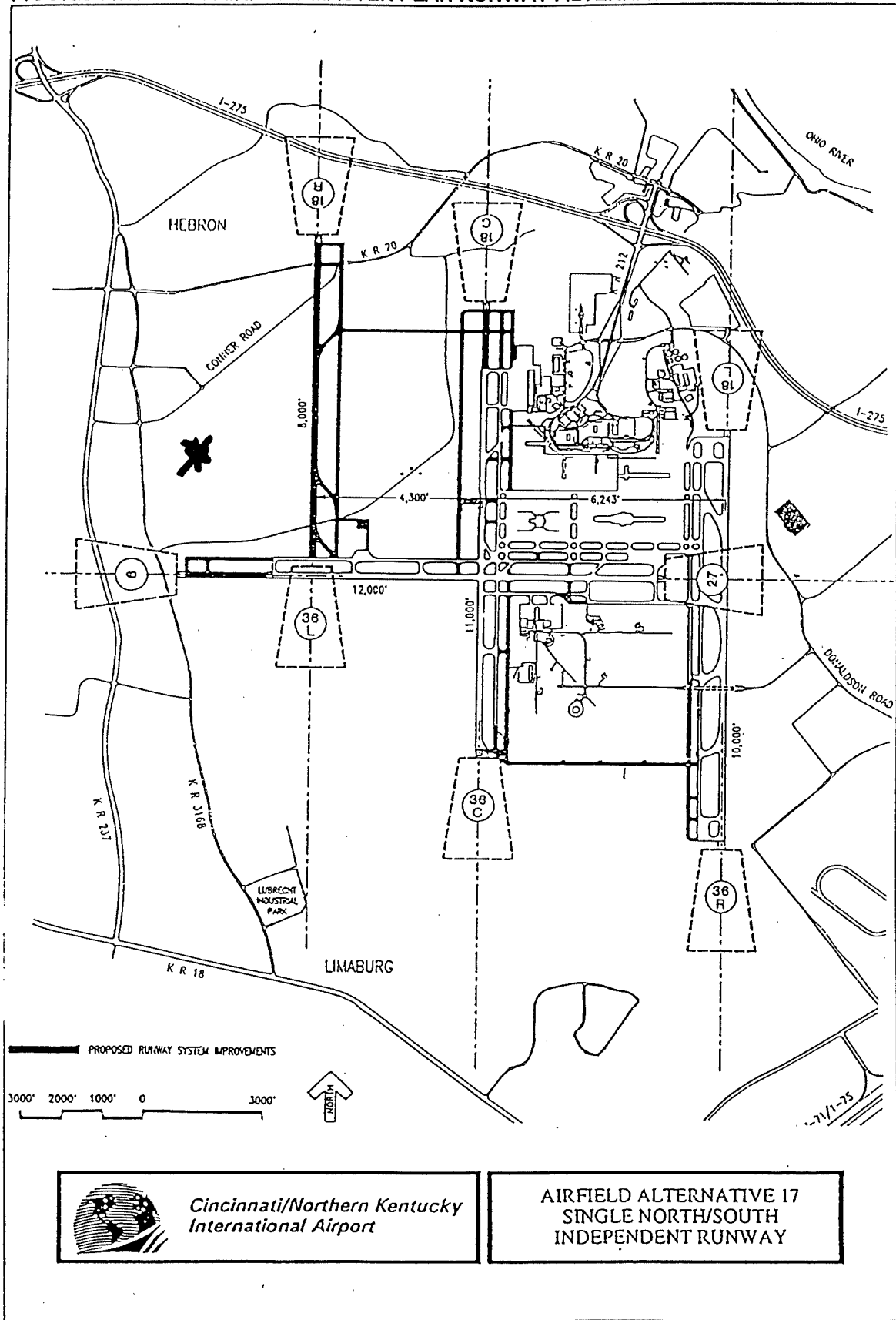




# HARMS ZONE CHANGE ZONING MAP



FIGURE 11.5. 1994 AIRPORT MASTER PLAN RUNWAY ALTERNATIVE 17.



PUBLIC HEARING ITEM NO. 2:

Commission members present: Mrs. Arnett - Secretary/Treasurer, Mr. Brown, Mr. Caddell, Mr. McKinney - Chairman, Mr. McMillian, Mr. Millay, Mr. Neltner, Mr. Ries - Vice Chairman, and Mr. Rush.

Following a short recess, the Chairman introduced the second item on the Agenda:

2. Applicant: Steven P. Harms and Tonia R. Harms for  
Steven P. Harms, Tonia R. Harms, and Bermac  
Corporation (owners)

Request: Zoning Map Amendment

The request of Steven P. Harms and Tonia R. Harms (applicants) for Steven P. Harms, Tonia R. Harms, and Bermac Corporation (owners) to consider a Zoning Map Amendment for a 15.6 acre tract located immediately west of Orchard Estates Subdivision near Conner Road and Limaburg Road, Boone County, Kentucky. The request is for a zone change from Agricultural Estate (A-2) and Suburban Residential One (SR-1) to Suburban Residential Two (SR-2) to allow a residential subdivision of fifty one lots.

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

The Chairman asked for the applicant's presentation.

Attorney Ann McBee, representing the applicants, Mr. and Mrs. Steve Harms, introduced Steve and Tonia Harms who are also the owners of the majority of the property, and their parents Richard and Mary Harms, as well as Chris Harms who is a resident near the property, and Cathy who has a residence in front of the property. Ms. McBee stated that the property has historically been agricultural and has now become residential. She stated that the present agricultural zoning is inappropriate for this piece of land because it is too small to use as a major farm and people are living there. She stated that the Concept Plan is in the packet. The request is for an extension of Orchard Estates Subdivision, which has been there a long time. She stated that part of the property is indicated in the Comprehensive Plan for transportation -- but for a private property owner that is not a use they can use -- an individual cannot build an interstate or an airport and these people are being zoned out of the use of their property. She stated that part of the property is zoned Residential, which would be more appropriate.

Ms. McBee stated that there is a letter in the packet which Staff received from the airport objecting to the application because of the noise level, but they admit in the letter that in the year 2003 it will not be a problem and the property will be below 65 LDN because the planes will be quieter. She does not feel that this will be a problem because it takes time to develop property. She stated that Mr. and Mrs. Harms have contacted the airport and been advised that the airport is not interested

in this property -- they may be interested in the residence and one-quarter acre, but not the rest unless they can get it below market value. The airport has indicated to Bermac and the Harms that they are not interested in this property. She stated that the other Staff Concern is the possibility of a new north/south runway, which Mr. and Mrs. Richard Harms can address. She stated that Mr. and Mrs. Richard Harms were advised by the airport in 1977 that there was a possibility of a new north/south runway and they are still living on their property and have never been contacted by the airport until this possibility. She stated that denying an application on a possibility would be unfair.

Ms. McBee read from the Staff Report that "residential development should be constructed from materials that would reduce excess noise from the outside" and stated that she was not prepared to address this because the builders were not present, but it can be addressed at the Committee Meeting or at a future date. In regard to the cul-de-sac, she stated that the entrance to this property would be from Conner Road, not from the private driveway to the Braunwart property. The cul-de-sac would be expanded, which is why Bermac is the co-applicant. She stated that to be more conducive to this request, they had to get a zone change for two lots bringing that road back into this development. She does not think modifying the Orchard Estates Improvement Plan would be a problem and this can be addressed at the Committee Meeting.

Ms. McBee noted that Staff is concerned about the Permitted Uses in the SR-2 Zone -- but they are Permitted Uses and that is what they are asking for. She stated that this can be addressed at the Committee Meeting.

Ms. McBee stated that Mrs. Braunwart is present, but is reluctant to speak. Mrs. Braunwart wants proper buffering between this property and the subdivision and Ms. McBee has assured her that the buffering will be addressed at the Committee Meeting. That is Mrs. Braunwart's only concern.

Ms. McBee stated that she believes the application is clear, and the family is available for questions. She stated that the adjoining property owner is supportive of the project. A representative from Bermac is also present to answer questions.

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

Mr. Steve Harms, the applicant, stated that the airport approached him about two years ago and told him he was on the border line of being bought out. He stated that the airport was not interested in the land and was not going to make an offer on his house because by 2003 they would not be concerned. He stated that the airport did make them an offer for their house, but did not want their land. He told them it was a package deal and the airport said that they were told not to buy the land. He refused their offer. The airport did not even make an offer to his brother for his property at the beginning of the street. He stated that the airport has had two years to get his property, but they have no interest. He has a child in a wheelchair and his two-story house does not work with the wheelchair. He emphasized that the airport is not interested in buying his property.

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

Attorney Leonard Rowekamp representing William H. and Mary Moore who own the property to the north and to the east, stated that they are not really in opposition but have questions. They hope that three points will be addressed by the Planning Commission and will be conditions if the request is approved: 1) He referred to Staff Concern #3 and stated that the Orchard Estates development was sold to Bermac Corporation by the Moores and they retained a 12-acre tract along Conner Road that is zoned SR-1. They would like to see that this project is also developed as single-family residences with a maximum density of 3.27, which is what the applicant is proposing. They ask that this be a condition. 2) The proposed plan for the Moore development called for a cul-de-sac and not an additional entrance onto Conner Road. He questioned, with the entrance into Orchard Estates Subdivision and this development, would one come off Jonathan Drive? He stated that the Moores are concerned that there not be any requirement in the future development of their property for a second access onto Conner Road and that they be able to continue as a cul-de-sac. There is a ravine there and they do not want to have to breach the ravine for additional access onto Conner Road. They would like this issue clarified. 3) As part of the development of Orchard Estates Subdivision, the pumping station was sized to accommodate the Orchard Estates Development and the Moore development of 12 - 15 acres. The Moores ask that if there is any necessity for upgrading the pumping station as a result of the proposed development, that it be the responsibility of this developer so that the originally planned capacity will remain intact.

The Chairman asked if there were any further comments from the audience.

Ms. McBee introduced Mr. Von Martin, one of the adjoining property owners. She stated that the proposal would make available affordable housing and is conducive to the neighboring property. She asked that the application be approved.

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

Mr. Caddell questioned the minimum lot size for the existing development this property will come off. Mr. Huth advised that Orchard Estates Subdivision is zoned SR-1 with a minimum lot size of 8,000 square feet, and minimum lot width of 65 feet. The requested SR-2 zoning would have a minimum lot size of 6,500 square feet with a minimum lot width of 50 feet. Mr. McKinney stated that that is about a 25% decrease. Mr. Huth agreed.

Mr. Ries stated that his concern is in regard to Page 3 of the Staff Report and the letter regarding the 1995 Future Land Use Map and the Recommended Long Term Noise Abatement Plan for 1997, 2003, and 2011. He noted that Mr. Huber first stated that this site is not in the 65 LDN, and then he states that in 2003 it will not be in the 65 LDN -- but, in 2005, they are going to build a new runway within a quarter mile of this property. He stated that he lives within two miles of the airport and

sometimes he cannot sleep. He cannot imagine living within a quarter mile of the new runway.

Mr. Huth stated that the property is right on the border of the 65 LDN in 2003 and 2011 and the noise concern is there.

Mr. Ries stated that he has been following the Part 150 Study for a long time and the contours have not been anywhere close to where the airport said they would be. He stated that his house is not supposed to be anywhere near the 65 LDN, but he is in 70 LDN. He has challenged the airport to check the contours, but they will not do it. He stated that the new runway will be unbearable for residential use. He noted that there was a news report about a week ago that berated Boone County for doing things like this -- building residential near the 65 LDN and new runways and having future buyouts by the airport. He is concerned about supporting that happening with this piece of property.

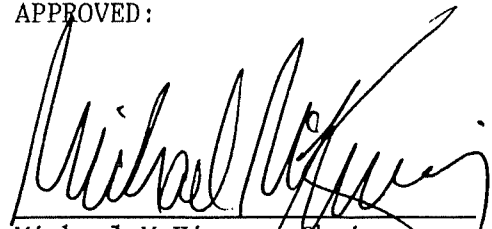
Mr. McKinney noted the Staff Concern relative to single-family residences and asked Ms. McBee if her client would be willing to commit to only single-family units in the event the request would be approved.

Ms. McBee advised that they would respond to this question at the Committee Meeting. She stated that they just received the Staff Report prior to the meeting and she wants the opportunity to discuss this with her client. In regard to the airport, she stated that Mr. and Mrs. Harms have lived in Hebron all their lives and this threat from the airport has been there all the time.

Mr. McKinney asked if there were any further comments or questions. There being no response, he stated that the Committee Meeting for this item will be on June 9, 1996 at 4 P.M. in the second floor conference room. This item will be on the Agenda for the Business Meeting on June 18, 1997 at 7:30 P.M..

The Chairman closed this Public Hearing.

APPROVED:

  
Michael McKinney, Chairman

Attest:

  
Jan Hancock, Recording Secretary

BOONE COUNTY PLANNING COMMISSION  
BOONE COUNTY ADMINISTRATION BUILDING  
COURTROOM 3A  
BUSINESS MEETING  
June 18, 1997  
7:30 P.M.

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Mr. Michael McKinney, Chairman, called the meeting to order at 7:30 P.M..

COMMISSION MEMBERS PRESENT:

Mrs. Judy Arnett, Secretary/Treasurer  
Mr. Larry Brown  
Mr. Fred Burch  
Mr. Arnold Caddell  
Mr. Phil Damstrom  
Mr. Mike McKinney, Chairman  
Mr. Don McMillian  
Mr. Bob Millay  
Mr. Barry Neltner  
Mr. Robert Ries, Vice Chairman  
Mr. Ralph Rush  
Mrs. Linda Schaffer  
Mrs. Carol Smith  
Mr. William Viox  
Mr. Earl White, Temporary Presiding Officer

All members were present.

LEGAL COUNSEL PRESENT:

Mr. Larry Dillon

STAFF MEMBERS PRESENT:

Mr. Kevin Costello, AICP, Executive Director  
Ms. Jan Hancock, Secretary  
Mr. John Huth  
Mr. Mitch Light

There being no further comments, Mr. McKinney asked for a vote on the motion made by Mr. Caddell and it carried unanimously.

3. Zoning Map Amendment

The request of Steven P. Harms and Tonia R. Harms (applicants) for Steven P. Harms, Tonia R. Harms, and Bermac Corporation (owners) to consider a Zoning Map Amendment for a 15.6 acre tract located immediately west of Orchard Estates Subdivision near Conner Road and Linaburg Road, Boone County, Kentucky. The request is for a zone change from Agricultural Estate (A-2) and Suburban Residential One (SR-1) to Suburban Residential Two (SR-2) to allow a residential subdivision for fifty one lots.

Mr. Viox stated that he had a conflict of interest in regard to this item and left the room at this time.

Staff Member John Huth presented the Committee Report which recommended approval of the request based on the findings of fact but subject to conditions (see Committee Report). Mrs. Schaffer was against the Committee Report.

Mr. Millay moved by resolution to the Boone County Fiscal Court to approve the request based on the Committee Report. Mr. McMillian seconded the motion.

Mr. Ries stated that it was indicated in the Public Hearing Minutes that in the years 1997, 2003, and 2011 this property would be in a noise impacted area -- but with the new runway planned for 2005, he believes it will be back in the noise contour. He noted that the Planning Commission turned down th Escue property about a year ago and it was in a less impacted area than this property. He questioned why a site so close to a future runway and in a noise impacted area at this time should be approved.

Mrs. Schaffer stated that the proposed project is not in agreement with the Comprehensive Plan and does not meet the criteria for a zone change. She noted that Staff says it is in agreement with the Comprehensive Plan. She stated that the zoning is not appropriate because of the noise and there have been no changes of an economic, physical, or social nature to change this site into a residential area. The site is less than 25 feet from the east/west runway and all of the planes at night come in there and take off from there. She does not know that many people visit homes at 4 A.M. to see how they are impacted by the noise. The north/south runway is within one-half mile or 2500 feet from this property. She stated that the airport buying this property should not be an issue with the Planning Commission. The Planning Commission should see that it is in agreement with the Comprehensive Plan or meets the other two criteria. She stated that this is not an appropriate use for this property and would not be fair to the people who would live there.

Mr. McMillian stated that the Escue property was turned down because of an inadequate entrance. He stated that this property will have to meet all the noise level reduction and insulation requirements. He stated that it will be close to the noise zones, and that was discussed in Committee. The Committee felt that if it met all of the requirements for the zone change, it was okay to build the houses there.

There being no further discussion, the Chairman asked for a vote on the motion made by Mr. Millay to approve the request. The vote found Mr. Burch, Mr. Caddell, Mr. Damstrom, Mr. McKinney, Mr. Millay, Mr. Rush, and Mrs. Smith in favor. Mrs. Arnett, Mr. Brown, Mr. McKinney, Mr. Neltner, Mr. Ries, Mrs. Schaffer and Mr. White were opposed. The vote was a tie with 7 in favor and 7 opposed. Mr. Viox was not present and did not vote.

Counselor Dillon advised that because the motion for approval did not receive the required majority of the quorum to pass, does not mean that the request is automatically denied. Another vote would have to be made for denial and it would have to receive a passing vote of the majority. It may be possible that neither vote would pass and more discussion could take place to see if a majority vote could be reached. If not, the matter can be placed on the Agenda for the next Business Meeting. He stated that the Planning Commission may consider the matter for 30 days and, if a decision still cannot be made, then the matter goes to the legislative body without a recommendation from the Planning Commission.

Mrs. Schaffer moved to deny the request because it is not in compliance with the Comprehensive Plan and there has been no testimony to the contrary. Mr. Ries seconded the motion.

Mr. Damstrom asked if there needs to be a Committee Report for denial. Mr. Costello advised that there should be findings of fact for denial, but there is no written Committee Report. Mrs. Schaffer restated the finding that it is not in compliance with the Comprehensive Plan.

The Chairman asked for a vote on the motion to deny the request which found Mrs. Arnett, Mr. Brown, Mr. McKinney, Mr. Neltner, Mr. Ries, Mrs. Schaffer, and Mr. White in favor. Mr. Burch, Mr. Caddell, Mr. Damstrom, Mr. McMillian, Mr. Millay, Mr. Rush, and Mrs. Smith were opposed, resulting in a tie vote with 7 in favor and 7 opposed.

Mr. Caddell moved to send the matter to the Fiscal Court with no recommendation from the Planning Commission. Mr. McMillian seconded the motion. Mr. Caddell stated that he was considering the time factors of the applicant and he feels that if the Planning Commission discusses it again at the next business meeting, one person may change their vote to "for" and one may change to "against" -- but he does not feel that it will affect the final action by the Fiscal Court.

Mrs. Smith asked if there would be another Public Hearing if this matter was on the Agenda for the next Business Meeting. Mr. McKinney advised the time would allow more opportunity to review the reports, but there would not be another Public Hearing. Mrs. Smith stated that there would not be further information provided or another Public Hearing. Mr. McKinney agreed.

Mr. Costello stated that the next Business Meeting is on July 2, 1997 and we are within the time limitations.

There being no further discussion, the Chairman asked for a vote on the motion made by Mr. Caddell which found Mrs. Arnett, Mr. Brown, Mr. Burch, Mr. Caddell, Mr. Damstrom, Mr. McMillian, Mr. Millay, Mr. Ries, Mr. Rush, Mrs. Smith, and Mr. White in favor. Mr. McKinney, Mr. Neltner, and Mrs. Schaffer were opposed. The motion carried by a vote of 11 to 3.

4. Concept Development Plan

The request of Vinu J. Patel (applicant) for Krispy Kreme Doughnut Corporation (owner) to consider a Change in Concept Development Plan for a 1.1 acre lot known as Lot 3, Saratoga Square Subdivision, located at the intersection of Hansel Avenue and Turfway Road, Florence, Kentucky. The request is for a change in the approved Concept Development Plan to allow a motel in a Commercial Two/Planned Development (C-2/PD) Zone.

Mr. Viox returned to the meeting at this time.

The Chairman advised that Item #4 is recommended for deferral to the July 16, 1997 Business Meeting at 7:30 P.M. Mr. Millay so moved. Mr. Caddell seconded the motion and it carried unanimously.

5. Houston-Donaldson Study Review

The request of Laser Quest Corporation - Houston Lakes Subdivision.

The Chairman advised that Item #5 has been withdrawn.

NEW BUSINESS:

The Chairman asked that Public Hearings be scheduled for the following items:

Agenda Item  
No.

6 Walton Main Street

The request of the City of Walton to consider a series of text and map amendments to the Boone County Zoning Regulations and the Walton Zoning Map. The proposed amendments affect property fronting on both sides of Main Street (U.S. 25) in Walton north of Old Beaver Road and just south of Depot Street. The request is to change the current zoning of the above properties from Commercial Two (C-2) to Walton Downtown District (WD).

EXHIBIT "B"

**Committee Report read but motion to approve resulted  
in a tie vote. Motion and report fails.**

#3

## **COMMITTEE REPORT**

**To:** Boone County Planning Commission

**From:** Robert Millay, Chairman

**Date:** June 18, 1997

**Re:** Request of **Steven P. Harms and Tonia R. Harms (applicants)** for **Steven P. Harms, Tonia R. Harms, and Bermac Corporation (owners)** to consider a Zoning Map Amendment for a 15.6 acre tract located immediately west of Orchard Estates Subdivision near Conner Road and Limaburg Road, Boone County, Kentucky. The request is for a zone change from Agricultural Estate (A-2) and Suburban Residential One (SR-1) to Suburban Residential Two (SR-2) to allow a residential subdivision for fifty-one lots.

### **Remarks:**

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

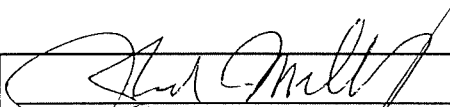
### **Findings of Fact:**

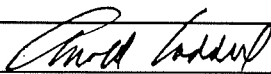
1. The Committee finds that a portion of the site is in general conformance with Boone County Comprehensive Plan's Land Use Plan Map indicating approximately one-fourth (1/4) of the site as Suburban Density Residential which is defined as single-family housing of up to four units per acre.
2. The Committee finds that the Suburban Residential Two (SR-2) zone district, which permits residential development, is appropriate for the entire 15.6 acre tract of land and that the Agricultural Estate (A-2) zone district is not appropriate due to the following reasons: the site is immediately adjacent to the Orchard Estates Subdivision and the site in question is an extension of that subdivision; the site contains adequate public water and sanitary sewer service and; the site is in close proximity to the existing Hebron commercial area.
3. The Committee has concluded that even though a portion of the site is in the 65-70 DNL 1997 NCP Plan Noise Contour, this noise contour is planned to be removed from the subject property by the year 2003. The applicant has agreed to sound proof all of the houses on the 15.6 acre tract of land according to FAA noise level production guidelines as stated in Article 31 of the Boone County Zoning Regulations. This is also consistent with objective #7 of the Housing Goal and the Housing Element of the Boone County Comprehensive Plan.

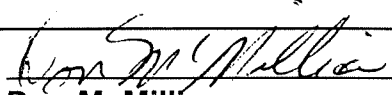
**Conditions:**

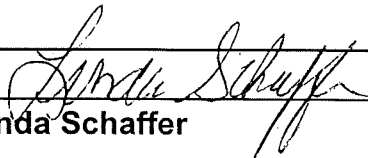
1. The proposed development is limited to single-family detached dwelling units.
2. The proposed development is limited to fifty-one (51) lots.
3. The proposed development must meet the Sanitation District No. 1's requirements for using the existing pump station located at the Orchard Estates Subdivision.
4. The approved preliminary plat and improvement plan for the Orchard Estates Subdivision must be revised to show Delicious Court extending and providing the only access into this proposed development.
5. The residences within the development must be built with enough sound insulation to provide an outdoor to indoor Noise Level Reduction (NLR) of at least 30 decibels as stated and meeting the requirements in Sections 3912, 3195 and 3196 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.

			
<b>Robert Millay, Chairman</b>			
For	<input checked="" type="checkbox"/>	Against	<input type="checkbox"/>
Abstain	<input type="checkbox"/>	Absent	<input type="checkbox"/>

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

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

			
<b>Linda Schaffer</b>			
For	<input type="checkbox"/>	Against	<input checked="" type="checkbox"/>
Abstain	<input type="checkbox"/>	Absent	<input type="checkbox"/>

<b>TOTAL:</b>	<u>3</u>	<b>FOR</b>	<u>1</u>	<b>AGAINST</b>	<u>    </u>	<b>ABSTAIN</b>	<u>    </u>	<b>ABSENT</b>
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PUBLIC HEARING ITEM NO. 2:

Commission members present: Mrs. Arnett - Secretary/Treasurer, Mr. Brown, Mr. Caddell, Mr. McKinney - Chairman, Mr. McMillian, Mr. Millay, Mr. Neltner, Mr. Ries - Vice Chairman, and Mr. Rush.

Following a short recess, the Chairman introduced the second item on the Agenda:

2. Applicant: Steven P. Harms and Tonia R. Harms for Steven P. Harms, Tonia R. Harms, and Bermac Corporation (owners)

Request: Zoning Map Amendment

The request of Steven P. Harms and Tonia R. Harms (applicants) for Steven P. Harms, Tonia R. Harms, and Bermac Corporation (owners) to consider a Zoning Map Amendment for a 15.6 acre tract located immediately west of Orchard Estates Subdivision near Conner Road and Limaburg Road, Boone County, Kentucky. The request is for a zone change from Agricultural Estate (A-2) and Suburban Residential One (SR-1) to Suburban Residential Two (SR-2) to allow a residential subdivision of fifty one lots.

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

The Chairman asked for the applicant's presentation.

Attorney Ann McBee, representing the applicants, Mr. and Mrs. Steve Harms, introduced Steve and Tonia Harms who are also the owners of the majority of the property, and their parents Richard and Mary Harms, as well as Chris Harms who is a resident near the property, and Cathy who has a residence in front of the property. Ms. McBee stated that the property has historically been agricultural and has now become residential. She stated that the present agricultural zoning is inappropriate for this piece of land because it is too small to use as a major farm and people are living there. She stated that the Concept Plan is in the packet. The request is for an extension of Orchard Estates Subdivision, which has been there a long time. She stated that part of the property is indicated in the Comprehensive Plan for transportation -- but for a private property owner that is not a use they can use -- an individual cannot build an interstate or an airport and these people are being zoned out of the use of their property. She stated that part of the property is zoned Residential, which would be more appropriate.

Ms. McBee stated that there is a letter in the packet which Staff received from the airport objecting to the application because of the noise level, but they admit in the letter that in the year 2003 it will not be a problem and the property will be below 65 LDN because the planes will be quieter. She does not feel that this will be a problem because it takes time to develop property. She stated that Mr. and Mrs. Harms have contacted the airport and been advised that the airport is not interested

in this property -- they may be interested in the residence and one-quarter acre, but not the rest unless they can get it below market value. The airport has indicated to Bermac and the Harms that they are not interested in this property. She stated that the other Staff Concern is the possibility of a new north/south runway, which Mr. and Mrs. Richard Harms can address. She stated that Mr. and Mrs. Richard Harms were advised by the airport in 1977 that there was a possibility of a new north/south runway and they are still living on their property and have never been contacted by the airport until this possibility. She stated that denying an application on a possibility would be unfair.

Ms. McBee read from the Staff Report that "residential development should be constructed from materials that would reduce excess noise from the outside" and stated that she was not prepared to address this because the builders were not present, but it can be addressed at the Committee Meeting or at a future date. In regard to the cul-de-sac, she stated that the entrance to this property would be from Conner Road, not from the private driveway to the Braunwart property. The cul-de-sac would be expanded, which is why Bermac is the co-applicant. She stated that to be more conducive to this request, they had to get a zone change for two lots bringing that road back into this development. She does not think modifying the Orchard Estates Improvement Plan would be a problem and this can be addressed at the Committee Meeting.

Ms. McBee noted that Staff is concerned about the Permitted Uses in the SR-2 Zone -- but they are Permitted Uses and that is what they are asking for. She stated that this can be addressed at the Committee Meeting.

Ms. McBee stated that Mrs. Braunwart is present, but is reluctant to speak. Mrs. Braunwart wants proper buffering between this property and the subdivision and Ms. McBee has assured her that the buffering will be addressed at the Committee Meeting. That is Mrs. Braunwart's only concern.

Ms. McBee stated that she believes the application is clear, and the family is available for questions. She stated that the adjoining property owner is supportive of the project. A representative from Bermac is also present to answer questions.

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

Mr. Steve Harms, the applicant, stated that the airport approached him about two years ago and told him he was on the border line of being bought out. He stated that the airport was not interested in the land and was not going to make an offer on his house because by 2003 they would not be concerned. He stated that the airport did make them an offer for their house, but did not want their land. He told them it was a package deal and the airport said that they were told not to buy the land. He refused their offer. The airport did not even make an offer to his brother for his property at the beginning of the street. He stated that the airport has had two years to get his property, but they have no interest. He has a child in a wheelchair and his two-story house does not work with the wheelchair. He emphasized that the airport is not interested in buying his property.

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

Attorney Leonard Rowekamp representing William H. and Mary Moore who own the property to the north and to the east, stated that they are not really in opposition but have questions. They hope that three points will be addressed by the Planning Commission and will be conditions if the request is approved: 1) He referred to Staff Concern #3 and stated that the Orchard Estates development was sold to Bermac Corporation by the Moores and they retained a 12-acre tract along Conner Road that is zoned SR-1. They would like to see that this project is also developed as single-family residences with a maximum density of 3.27, which is what the applicant is proposing. They ask that this be a condition. 2) The proposed plan for the Moore development called for a cul-de-sac and not an additional entrance onto Conner Road. He questioned, with the entrance into Orchard Estates Subdivision and this development, would one come off Jonathan Drive? He stated that the Moores are concerned that there not be any requirement in the future development of their property for a second access onto Conner Road and that they be able to continue as a cul-de-sac. There is a ravine there and they do not want to have to breach the ravine for additional access onto Conner Road. They would like this issue clarified. 3) As part of the development of Orchard Estates Subdivision, the pumping station was sized to accommodate the Orchard Estates Development and the Moore development of 12 - 15 acres. The Moores ask that if there is any necessity for upgrading the pumping station as a result of the proposed development, that it be the responsibility of this developer so that the originally planned capacity will remain intact.

The Chairman asked if there were any further comments from the audience.

Ms. McBee introduced Mr. Von Martin, one of the adjoining property owners. She stated that the proposal would make available affordable housing and is conducive to the neighboring property. She asked that the application be approved.

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

Mr. Caddell questioned the minimum lot size for the existing development this property will come off. Mr. Huth advised that Orchard Estates Subdivision is zoned SR-1 with a minimum lot size of 8,000 square feet, and minimum lot width of 65 feet. The requested SR-2 zoning would have a minimum lot size of 6,500 square feet with a minimum lot width of 50 feet. Mr. McKinney stated that that is about a 25% decrease. Mr. Huth agreed.

Mr. Ries stated that his concern is in regard to Page 3 of the Staff Report and the letter regarding the 1995 Future Land Use Map and the Recommended Long Term Noise Abatement Plan for 1997, 2003, and 2011. He noted that Mr. Huber first stated that this site is not in the 65 LDN, and then he states that in 2003 it will not be in the 65 LDN -- but, in 2005, they are going to build a new runway within a quarter mile of this property. He stated that he lives within two miles of the airport and

sometimes he cannot sleep. He cannot imagine living within a quarter mile of the new runway.

Mr. Huth stated that the property is right on the border of the 65 LDN in 2003 and 2011 and the noise concern is there.

Mr. Ries stated that he has been following the Part 150 Study for a long time and the contours have not been anywhere close to where the airport said they would be. He stated that his house is not supposed to be anywhere near the 65 LDN, but he is in 70 LDN. He has challenged the airport to check the contours, but they will not do it. He stated that the new runway will be unbearable for residential use. He noted that there was a news report about a week ago that berated Boone County for doing things like this -- building residential near the 65 LDN and new runways and having future buyouts by the airport. He is concerned about supporting that happening with this piece of property.

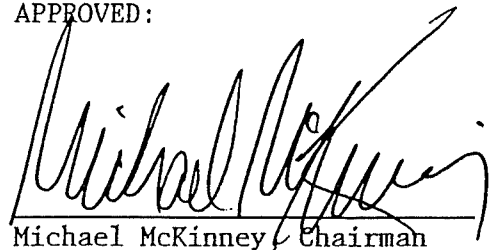
Mr. McKinney noted the Staff Concern relative to single-family residences and asked Ms. McBee if her client would be willing to commit to only single-family units in the event the request would be approved.

Ms. McBee advised that they would respond to this question at the Committee Meeting. She stated that they just received the Staff Report prior to the meeting and she wants the opportunity to discuss this with her client. In regard to the airport, she stated that Mr. and Mrs. Harms have lived in Hebron all their lives and this threat from the airport has been there all the time.

Mr. McKinney asked if there were any further comments or questions. There being no response, he stated that the Committee Meeting for this item will be on June 9, 1996 at 4 P.M. in the second floor conference room. This item will be on the Agenda for the Business Meeting on June 18, 1997 at 7:30 P.M..

The Chairman closed this Public Hearing.

APPROVED:



Michael McKinney, Chairman

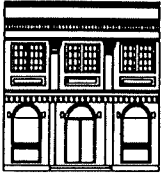
Attest:



Jan Hancock, Recording Secretary

SUPPORTING  
INFORMATION

# BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005

606-334-2196

FAX 606-334-2264

E-Mail plancom@one.net

June 13, 1997

Mr. Stephen P. Harms and Tonia R. Harms  
3634 Limaburg Road  
Hebron, KY 41048

RE: Recommended Conditions of Approval for the Zoning Map Amendment Application for the Harms Project

Dear Mr. and Mrs. Harms:

The following represents potential conditions of approval as agreed by the Boone County Planning Commission's Zone Change Committee. If you, as the applicant will agree to the following conditions, please indicate so by signing at the space provided at the end of this letter and returning it to the Planning Commission office.

Conditions of Approval:

1. The proposed development is limited to single-family detached dwelling units.
2. The proposed development is limited to fifty-one (51) lots.
3. The proposed development must meet the Sanitation District No. 1's requirements for using the existing pump station located at the Orchard Estates Subdivision.
4. The approved preliminary plat and improvement plan for the Orchard Estates Subdivision must be revised to show Delicious Court extending and providing the only access into this proposed development.
5. The residences within the development must be built with enough sound insulation to provide an outdoor to indoor Noise Level Reduction (NLR) of at least 30 decibels as stated and meeting the requirements in Sections 3912, 3195 and 3196 of the Boone County Zoning Regulations.

Sincerely,

  
John Huth  
Planner

JH\par

Mr. Stephen P. Harms and Tonia R. Harms  
June 13, 1997  
Page 2

We, the applicants, agree to the above listed conditions for approval of the request for the Harms  
Property zone change.

Stephen P. Harms  
Mr. Stephen P. Harms (Applicant)

Tonia R. Harms  
Tonia R. Harms (Applicant)

**MINUTES**  
**BOONE COUNTY FISCAL COURT**  
**August 26, 1997**  
**5:30 P.M.**

Commissioner Patrick moved, seconded by Commissioner Meihaus, to approve on Second Reading Ordinance No. 07-97-01, an ordinance establishing the minimum regulations governing the safeguarding of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices; and from conditions hazardous to life or property in the use or occupancy of buildings or premises; known as the Fire Prevention Code. Judge Lucas called for a vote of the motion, ALL PRESENT VOTING AYE. Exhibit "B"

**ORDINANCE NO. 920.350 - HARMS/BERMAC CORPORATION**

Judge Lucas read a summary of Ordinance No. 920.350 and declared a Public Hearing open at 5:40 p.m. Following a very brief discussion, Judge Lucas declared the Public Hearing closed at 5:45 p.m.

Commissioner Patrick moved, seconded by Commissioner Meihaus, to approve on Second Reading Ordinance No. 920.350, an ordinance of the Boone County Fiscal Court to consider the request of Steven P. Harms and Tonia R. Harms (Applicants) for Steven P. Harms, Tonia R. Harms and Bermac Corporation (Owners) for a Zoning Map Amendment on a 15.6 acre site located west of Orchard Estates Subdivision to rezone the site from Agricultural Estate (A-2) and Suburban Residential One (SR-1) to Suburban Residential Two (SR-2), based on the Findings Of Fact and Conditions (agreed to by the applicant) outlined in the Boone County Planning Commission Committee Report dated June 18, 1997. Judge Lucas called for a vote of the motion, ALL PRESENT VOTING AYE. Exhibit "C"

**ORDINANCE NO. 920.351 - GRACE PROPERTIES/WENTZ/RIDDELL/WOHRLEY**

Judge Lucas read a summary of Ordinance No. 920.351 and declared a Public Hearing open at 5:50 p.m. Hearing no objection, Judge Lucas declared the Public Hearing closed at 5:51 p.m.

Commissioner Meihaus moved, seconded by Commissioner Patrick, to approve on Second Reading Ordinance No. 920.351, an ordinance of the Boone County Fiscal Court to consider the request of Grace Properties, LLC c/o Richard E. Wentz (Applicant) for Lina Mae Riddell, Marion Riddell and Adelia Wohrley (Owner) for a Zoning Map Amendment, such Zoning Map Amendment being a zone change from Agricultural Estate (A-1) to Industrial One (I-1) and Commercial Two (C-2) on a 15 acre site generally located on the north side of KY 20, approximately 1/4 mile west of KY 212, Boone County, Kentucky, recommended unanimously by the Boone County Planning Commission via Resolution No. R-97-014-A. Judge Lucas called for a vote of the motion, ALL PRESENT VOTING AYE. Exhibit "D"

**RESOLUTION NO. R-08-26-97-01 - OLD MERRELL ROAD/QUITCLAIM DEED**

Commissioner Patrick moved, seconded by Commissioner Meihaus, to approve Resolution No. R-08-26-97-01, a resolution authorizing the Boone County Judge/Executive, Kenneth R. Lucas, to execute the Quitclaim Deed(s) to the owners of adjoining parcels to the right-of-way vacation of Old Merrell Road on behalf of the Boone County Fiscal Court. Judge Lucas called for a vote of the motion, ALL PRESENT VOTING AYE. Exhibit "E"

**ITEM VI.**

**PERSONNEL MATTERS**

Commissioner Meihaus moved, seconded by Commissioner Patrick, to approve the appointments of Bill Hueser and Dave Slayback to the position of Golf Course Seasonal Equipment Operators at the Grade/Step of 3/A, \$7.10 per hour, and the appointments of Lenny Beck and Adam Sebastian to the