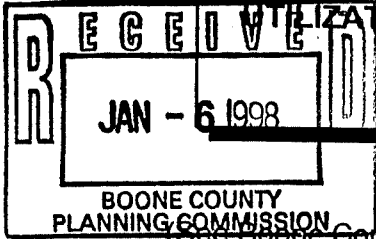


APPLICATION FORM

CHANGE IN CONCEPT DEVELOPMENT PLAN
OR

UTILIZATION OF AN UNDERLYING ZONE IN PLANNED DEVELOPMENT
(CONCEPT DEVELOPMENT PLAN)

BOONE COUNTY PLANNING COMMISSION



(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

1. Check One:

- Change in Concept Development Plan
 - Utilization of An Underlying Zone in Planned Development
 - a) Public Hearing Submittal (Concept Dev. Plan) _____
 - b) Long Range Planning Committee Review _____
- (As stated in the Houston-Donaldson Study)

2. Name of Project Circleport I
3. Location of Project Olympic Blvd. and west side of Mineola Pike
4. Total Acreage of Site 33.56
5. Current Zoning I-1 / PD
6. Date of Previous Zoning Map Amendment or Approved Concept Development Plan (if applicable) August, 1995
7. Is the site subject to a specialized Land Use Study approved by the Boone County Planning Commission? (If so, indicate the name of the Study) No
8. Proposed Uses (please specify each use) I-1/PD; Luxury Hotel, Residence Inn, Courtyard Hotel, office building, retail, bank, restaurant, gas.
9. Proposed Building Intensities (please specify) 300 m. 9 story Luxury Hotel, 150 m. Residence Inn, 125 m. Courtyard Hotel, 159,000 sf 5 story office building, 3,600
10. Have you submitted a Concept Development Plan? Yes / sf bank, 36,800 sf retail,
11. Are you also applying for: 8,000 restaurant/retail, 4,600
 - Conditional Use Permit sf gas/drive thru restaurant.
 - Dimensional Variance (19,660 sf per acre average intensity)
12. Name of Applicant(s) Comporex Parks of Kentucky, Inc.
- Phone Number (606) 292-5500 Fax No. (606) 292-5599
13. Address of Applicant(s) 655 Eden Park Drive, Suite 250
- Cincinnati, Ohio 45202
- City State Zip
14. Name of Property Owner(s) Same
- Phone Number _____ Fax No. _____
15. Address of Property Owner(s) _____
- City State Zip
16. Are there any existing buildings on the site? Yes
- How many? Two
17. Deed Book 280, 328, 364, 609 Page No. 94, 177, 210 Group No. 2022
18. Have you had a pre-application meeting with BCPC Staff? 213 Yes

(over)

EXHIBIT "A"

STAFF REPORT

Request of Corporex Parks of Kentucky, Inc. (owner) to consider a Change in Concept Development Plan for approximately 33.5 acres, located along both sides of Olympic Boulevard and along the west side of Mineola Pike, in Circleport I Subdivision, Boone County, Kentucky. The request is for a change in the approved Concept Development Plan to allow hotel, office, retail, bank, and restaurant uses in an Industrial One/Planned Development (I-1/PD) zone.

January 28, 1998

PROPOSAL

This request is for a change in the approved Concept Development Plan for a 33.5 acre site in Circleport I Subdivision that is located on both sides of Olympic Boulevard, along the west side of Mineola Pike, and along the south side of I-275 (the southwest quadrant of the I-275/Mineola Pike interchange).

A Concept Development Plan has been submitted with this request. The plan shows the following uses:

- A. The existing/approved Residence Inn hotel in the southwest corner of the site (phase 1 has been constructed, the phase 2 building is proposed to have up to 5,500 square feet more than currently approved, but would contain the same number of rooms that are currently approved - 96 rooms in phase 1, 54 rooms in phase 2).
- B. A four story, 66,000 square foot, 125 room, "Courtyard" hotel in the approximate center of the site along the west property line.
- C. The existing five story office building in the northwest corner of the site (former Citicorp building) with a proposed five story, 60,000 to 69,000 square foot addition.
- D. A one story, 31,000 to 36,800 square foot retail structure; a one story, 7,000 to 8,000 square foot building for restaurant and/or retail uses; a one story, 2,700 to 3,600 square foot bank; and, a one story 4,000 to 4,600 square foot building for retail/drive-through restaurant uses (i.e., convenience store and drive-through fast food restaurant with retail fuel sales), all within the northeast quadrant of the site that is bound by I-275, Mineola Pike, and Olympic Boulevard.

- E. A nine story, 235,000 to 270,250 square foot, 300 room hotel that is located in the southeast corner of the site in an area that is bound by Mineola Pike, Olympic Boulevard, and Circleport Drive.

The following table outlines the differences in the scope of the proposed land uses from the approved Concept Development Plans (two Concept Development Plans currently apply to the site - a 1995 plan for the Residence Inn lot and a 1986 plan for the remainder of the site; the Committee Reports for both of these applications are attached). With the exception of the proposed convenience store/drive through restaurant with retail fuel sales, all of the proposed land uses are approved in some manner in the current Concept Development Plans (condition #2 of the 1986 Concept Development Plan approval prohibits drive-through restaurants).

<u>use</u>	<u>approved size/scope</u>	<u>proposed size/scope</u>	<u>difference</u>
hotel	420 rooms	575 rooms	+155 rooms
office	195,000 sf	159,000 sf	-36,000 sf
commercial/ restaurant	50,000 sf	49,400 sf	-600 sf
bank	8,000 sf	3,600 sf	- 4,400 sf

A total of ten structures, plus the significant addition for the former Citicorp building, have been proposed. The green space area calculated by the applicant totals approximately 38 percent of the site area, and the maximum proposed building intensity is approximately 20,691 square feet of building area per acre (approximately 47.5% of the site area excluding the street rights-of-way as currently proposed). An approximate 0.5 acre out parcel that is zoned I-1 and that was not part of the original plan is now shown for parking for the nine story hotel.

Access to the individual sites within the development are proposed to be provided from Olympic Boulevard or Circleport Drive. No access points other than Olympic Boulevard itself are proposed from Mineola Pike (condition #6 of the 1986 Concept Development Plan approval required Olympic Boulevard to be the only access point on Mineola). A 35 foot wide "road widening easement" is shown for Mineola Pike between Olympic Boulevard and the southern end of the site (southeast corner of the site for the nine story hotel - this easement was required through condition #3 of the 1986 Concept Development Plan approval). In addition, a 50 foot wide "greenbelt" easement is shown adjacent to the 35 foot road widening easement so that a landscaped setback that is at least 50 feet wide will be provided along this portion of Mineola Pike. No new public streets are proposed, and

a street connection (boulevard style street similar to the existing Olympic Boulevard) between the Olympic/Circleport intersection and the western boundary of the site that is illustrated on the approved Concept Development Plan has been proposed to be eliminated.

Illustrative examples of the proposed building designs are attached to this report as well as general architectural covenants that are proposed. The Concept Development Plan illustrates street frontage landscaping along the public streets as well as internal parking lot landscaping within all of the parking lots and around all of the structures. The application materials state that the proposal will follow the Special Sign District that was previously approved for the development. Exceptions have been requested with this application to permit the nine story hotel (maximum building height in the I-1 zone is 50 feet) and for the front yard setback of the proposed bank structure (50 feet minimum normally required, proposed setback scales to approximately 18 feet on the plan). A brief traffic analysis was also submitted with this application (attached).

SITE HISTORY

- 1981 A Zoning Map Amendment was approved for the entire 75 acre Circleport I site from SR-1 to I-1.
- 1982 The applicant requested a Change in Concept Development Plan. Action was postponed at the request of the applicant pending completion of the final drawings for the Mineola interchange.
- 1986 The above mentioned Change in Concept Development Plan was conditionally approved by the Planning Commission and the Boone County Fiscal Court. In addition, a zone change from I-1 to I-1/PD was approved for the area subject to the current application.
- 1995 A Change in Concept Development Plan was approved by the Planning Commission and Fiscal Court for the 4.8 acre lot in the southwest corner of the subject site (Lot 9). This approval permitted a change from multi-level office with multi-level parking to the current Residence Inn hotel use.
- 1996 A Special Sign District was approved by the Planning Commission and Fiscal Court for the site in question. This Special Sign District permits the following:
- A. A 50 foot high, 300 square foot, column style Circleport identification sign at the I-275/Mineola interchange (existing).

- B. A 30 foot high, 540 square foot sign monument style sign along I-275 near the former Citicorp building which advertises development within the sign district boundary or the use on Lot 9 (Residence Inn) (existing).
- C. A 30 foot high, 180 square foot directory sign for the various uses within the development at the Olympic Boulevard/Mineola Pike intersection.
- D. Low profile, ground mounted freestanding signs for the vehicular entrances and along roadways and driveways for the individual sites within the development. These signs may be either column style (10' high, 30 square feet) or monument style (4' high, 40 square feet).
- E. Differing schemes of building mounted signs are permitted for commercial/hotel uses and for office uses.

ADJACENT LAND USES

The uses adjacent to the subject site include the following:

- A. A relatively large, undeveloped area is located to the west (Gallenstein tract) and Rolling Green Acres Subdivision is located to the west and southwest (I-1).
- B. I-275 runs along the northern boundary of the site. Airport Exchange Business Park is located across I-275 from the subject site (I-1/O-2/C-3/PD).
- C. A single family residence is located to the east of the northern portion of the site across Mineola Pike (between Olympic Boulevard and I-275; RS). A row of suburban density, detached single family residences on frontage lots are located to the east of the southern portion of the site across Mineola Pike (to the south of Olympic Boulevard; RS). Circleport III Subdivision is located further to the east of these residences (I-1).
- D. "Clean" industrial and "back office" uses are located to the south along Circleport Drive in the largely developed portion of Circleport I Subdivision (I-1).

SITE CHARACTERISTICS

As stated previously, the site contains approximately 33.5 acres. The site has approximately 1,360 feet of frontage along Mineola Pike and approximately 930 feet of frontage along I-275. The topography of the site is fairly level overall, although the site does noticeably slope downward in the northeast corner of the site adjacent to the

interchange. The site is accessed by the existing four way, signalized intersection of Mineola Pike and Olympic Boulevard, and by Circleport Drive, which intersects with Mineola Pike at the south end of the existing Circleport I Subdivision. Although the site is largely open, there is some existing tree cover in the southeast corner of the site (area proposed for the nine story hotel and along the adjoining Mineola Pike frontage) and a tree line exists along the western boundary of the site. Two developments exist on the site - the former Citicorp building that is located in the northwest corner of the site and phase 1 of the Residence Inn hotel development. Soil types on the site include Avonburg silt loam (Av), Jessup silt loam (JeD), and Rossmoyne silt loam (RsB and RsC).

RELATIONSHIP TO COMPREHENSIVE PLAN

The 1995 Boone County Comprehensive Plan's 2020 Land Use Plan designates the site as "Business Park." This designation is described by the Plan as "a mixture of office warehouse, research, office, and light industrial uses in a park light setting with large building setbacks, low floor area ratio, integrated pedestrian and recreation facilities, constant architectural and signage theme, extensive landscaped areas, and attractive entrance treatment."

The Land Use Element (Area D-3, Turfway-Mineola Area, pg. 226) states "the Mineola Interchange area has experienced, and should continue to experience, significant Business Park Development. The Airport Exchange Business Park and Circleport Industrial Parks should continue to develop. As a result of this growth, the residential uses along Mineola Pike and Booneland Trail should likewise eventually redevelop as industrial uses. Rolling Green Acres should likewise eventually redevelop as industrial uses. The extension of Turfway Road to I-275 has opened new areas for development. Because of increasing development, the road network in this section should be improved, including the widening of Mineola Pike and road connections across airport property to KY 18 and/or Limaburg Road."

In addition to identifying the site for "industrial development" on the "Future Industrial and Commercial Development" map (Figure 5.3, page 87), the Business Activity Element makes the following statements regarding commercial and industrial development at the Mineola interchange, and around the Airport and Airport owned property ("Areas of Future Commercial Activity" pg. 83, and "Areas of Future Industrial and Office Activity," pg. 84).

- A. Additional commercial growth based upon the expansion of the airport; and subsequent industrial growth, will be located at the Mineola/I-275 Interchange as evidenced by the Airport Exchange Business Park and the Circleport Industrial Park.

- B. The I-275 and KY 237 and Mineola Pike Interchanges will experience continued industrial development, in addition to the previous commercial/office development. The mixture of the varying uses should be carefully designed and planned to minimize negative impacts. The existing and future residential uses must be adequately buffered from the new development in these two interchange areas.
- C. The area surrounding the Airport and Airport property should be closely examined to explore industrial and office development opportunities.

The Transportation Element makes the following statements that pertain to multi-modal transportation facilities and development that is dependent exclusively on the automobile for travel and accessibility ("The Future: Integrating Transportation and Land Use," pp. 201 and 202; and, "Transit Oriented Development [TODs]," pg. 203).

- A. If Boone County continues to develop in this same low-density, dispersed form of development, which only accommodates travel by the automobile, it would almost certainly guarantee chronic traffic congestion, increased air pollution problems and a waning quality of life for residents of the County.
- B. These Transit-Oriented Developments will not replace typical residential, commercial, or industrial development. However, with the appropriate siting of these developments, the existing land use pattern of dispersed, low-density development could be rewoven into a more "transportation sensitive" land use pattern. This "transportation-sensitive" land use pattern would give more options (i.e., transit, bicycle, walking) for travel than just the automobile for all the residents of the community.

The Land Use Element states the following relative to appropriate buffering between differing land uses and the retention of open spaces and wooded areas ("Buffering," pg. 210).

- A. Developments in Boone County must recognize the potential impacts upon adjoining land uses and incorporate a transition of land uses, building setbacks, and/or landscaping to minimize these impacts. Potential impacts include visual, noise or vibrations, odors, dust, smoke, and light. Buffering to mitigate these impacts should be an integral part of the design of proposed projects; existing site features should be used in meeting this guideline. Developments should provide buffering along public roadways, to soften the visual impact. Appropriate wooded areas and stream valleys should remain as greenbelts and open space within developments and between developments.

The Land Use Element states the following regarding the provision of adequate landscaping and buffering, particularly along public roadways and to improve compatibility between differing land uses ("Landscaping," pp. 210 and 211).

- A. Development in Boone County must include landscaping to accompany the proposed project. This landscaping should be designed to improve the public view of a development, and should be incorporated into parking lots and other vehicle circulation areas as well as within open spaces and around structures. Landscaping is intended to minimize the visual impacts of the development from adjoining properties and roadways.

Developments along major roadways in Boone County must include landscaping and/or the use of berms between the development and the right-of-way in order to promote the aesthetic appearance from the roads and to facilitate the compatibility of differing land uses.

The Land Use Element states the following relative to the provision of street connections ("Transportation and Pedestrian Network," pg. 211).

- A. Developments in Boone County must be designed, where appropriate, to improve the County's transportation network, hierarchical system of classification and function must be used in the planning for and designing of new developments. Collector roadways should be extended and developed to provide for the safe movement of traffic through and between subdivisions. Developments along existing arterials and collector roadways should not have direct driveway access, but be served by a local street. Appropriate road connections should be constructed to provide alternate routes for traffic to and through specific projects and to enhance the capacity of existing streets. Parallel and frontage roads should be used to minimize impacts of individual sites on collector and arterial roadways. Appropriate pedestrian networks should be incorporated into the design of developments which will generate or experience significant pedestrian use. These networks should not only provide internal paths, but should provide connections to adjoining uses where appropriate. Public open space and recreation sites should be connected by bicycle and pedestrian paths where appropriate.

The Land Use Element provides the following comments about the overall design of a project ("Design, Signs, and Historic Preservation," pg. 211).

- A. Developments in Boone County should give consideration to the overall design of the project. Design should be a primary concern at the early stages of the development, with an emphasis on the aesthetic impact of the proposed use.

- B. The proper application of these guidelines help, in part, to achieve an overall objective of this Comprehensive Plan. This goal states that proper future growth management for Boone County is implemented. As a minimum, proper design and development must include the consideration and application of the above guidelines.

The 1995 Boone County Comprehensive Plan Goals and Objectives include the following pertinent statements.

- A. Development issues shall be viewed in terms of promoting overall quality of life. Mixing of residential and other land uses shall be encouraged, but only in appropriately planned and designed neighborhood developments ("Overall," Objective 2).
- B. Proper design principles shall be applied in development ("Overall," Objective 3).
- C. Boone County shall strive to achieve a diversity and balance in competing land uses ("Overall," Objective 6).
- D. The needs of Boone County's population base are accommodated through the provision of orderly growth ("Population," Goal).
- E. New development or redevelopment within Boone County is designed, constructed and operated in such a way that the quality of the existing physical environment and social environment are protected and enhanced. Development within Boone County preserves and promotes a better quality of life while allowing a reasonable economic return ("Environment," Goal).
- F. New development or redevelopment shall attempt to design sites utilizing existing topography and encourage preservation of the existing character of the land. New development shall be designed in harmony with the physical environment in such a way that each site's existing physical assets are used beneficially where possible ("Environment," Physical Objective 2).
- G. Existing vegetation shall be considered as both an important site characteristic and a community resource ("Environment," Social Objective 4).
- H. Commercial uses shall be limited to strategic locations serving trade areas and neighborhood needs and shall have safe and effective access and ample parking space ("Business Activity," Commercial Objective 1).

- I. The large scale mixing of commercial and non-commercial uses shall occur in planned developments or in areas where consideration has been given to assure compatibility with surrounding land uses. The location of large scale commercial uses shall take into consideration existing or planned infrastructure conditions so as to protect the existing and future population and businesses. Small scale mixing of commercial uses adjacent to residential areas shall be carefully assessed and properly placed so as to enhance the neighborhood ("Business Activity," Commercial Objective 2).
- J. Highway commercial uses shall be in close proximity to highway interchanges for maximum convenience and economy to the traveling public, while minimizing impact to the community in terms of traffic congestion, local commuting patterns and access ("Business Activity," Commercial Objective 3).
- K. Industrial development shall be encouraged to locate near railroad lines, highways, the Ohio River, the Airport and on Airport owned land. Industrial districts shall be properly located in advance and thereby lessen any detrimental impact on future adjacent development ("Business Activity," Industrial Objective 1).
- L. Effective site placement, architectural design and landscape design for industrial uses shall be encouraged to enable a favorable relationship with adjoining uses. Industrial nuisances such as smoke, dust and odor shall be kept at a minimum and site development and enforcement of such nuisances shall be carefully coordinated with necessary approvals of other regulatory agencies ("Business Activity," Industrial Objective 1).
- M. Transportation opportunities for pedestrians and bicyclists shall be provided by the development of a network of sidewalks, pathways and roadway lanes ("Transportation" Objective 10).
- N. Priority shall be given toward maintaining, protecting and improving the existing road system ("Transportation," first goal, Objective 11).
- O. New connector streets shall be developed where needed and feasible thus lessening the total dependence on arterial streets. Existing connector streets shall be improved where needed ("Transportation," second goal, Objective 2).
- P. Proper access to adjoining property should be provided and/or retained when a property develops or redevelops ("Transportation," second goal, Objective 3).

STAFF CONCERNS

1. Overall, the orientation of the Concept Development Plan has changed with a substantially greater emphasis on hotel uses, especially the nine story hotel which will be the dominant structure in the area. This particular portion of the site is currently approved for a one story structure. In addition, the immediate interchange area which is approved for two hotels is now proposed for standard highway/interchange style commercial uses (strip retail, convenience store with a drive through fast food restaurant and retail gas sales, and a low rise restaurant) - the hotel uses have been basically reversed on the site with the commercial uses (commercial uses were located away from the immediate interchange area). This point is reinforced by the fact that condition #2 of the 1986 approval states "the applicant shall not be granted permission to build any drive-through restaurants on the site."

Further, it is implied in the Concept Development Plan that the Courtyard hotel will share surface parking with the adjoining office building (labeled as "shared parking synergism between uses" on the plan). This scheme should be explained further to ensure that adequate parking is provided. As a comparison, the approved plan included some multi-level parking in lieu of all surface parking as shown on the proposed plan.

2. Concept Development Plan proposals within a Planned Development shall be primarily evaluated against the standards in section 1514 "Planned Development Standards" of the Boone County Zoning Regulations. The following is a discussion of how the current proposal relates to these standards.

1. Mixed Use Development and Pedestrian Orientation: The proposal has something of a mixed use orientation, especially when comparing this development with the surrounding land uses in the area (adjacent uses, except for the adjoining residences, have largely a business/office park character). The proposal has an overall automobile orientation and no particular emphasis has been given to pedestrian movement within the development. Given the types of uses proposed and the relative close proximity of the structures to one another (i.e., whole site is only 33.5 acres and it adjoins existing uses that would also be served by this development), regular pedestrian movement can be expected and a tangible pedestrian system should be considered.

2. Compatibility of Uses: As mentioned previously, the retail and convenience uses at the interchange itself will change the business park orientation of the interchange. The Commission will need to evaluate moving these uses back to the south side of Olympic Boulevard where the retail and restaurant uses are already approved, and

maintaining the higher rise hotels adjacent to the interchange. Relative to the nine story hotel itself, although a 12 foot high berm is proposed along this portion of Mineola Pike, this berm will only soften the immediate ground level floors and surface activities from the adjoining properties; the structure will still tower substantially above all other structures and uses and will not have the benefit of the "anchoring" effect that it would at the interchange itself.

3. Open Space: As mentioned previously, 12.74 acres of the site (according to the applicant's calculations) is proposed for green space. However, this standard also mentions open space amenities such as plazas, arcades, trails, etc. Along these lines, the approved plan included several water features (fountains and lakes). These have been eliminated in the proposed plan and it shows no other such amenities.

4. Multi-Modal Transportation System: As mentioned above, the development has a decisive automobile orientation, although a meaningful pedestrian system could be easily created within this development. Staff would note that TANK buses can and do already run through the development.

5. Preservation of Existing Site Features: Due to previous development activity, few natural site features currently exist on the site. However, the existing tree lines along the west boundary of the site (adjoining the Gallenstein property) and trees along the southern frontage of Mineola Pike (adjoining the nine story hotel site) should be considered for preservation.

6. Landscaping: On a conceptual basis, generous landscaping has been provided. As an informational note, the development will need to meet the minimum landscaping requirements of the Boone County Zoning Regulations in addition to any landscaping commitments shown on the Concept Development Plan. The applicant has provided general landscaping covenants, however, these are general in nature and basically just leave landscaping for individual sites up to the approval of the developer.

7. Architecture: As mentioned previously, a number of conceptual building elevations have been submitted with this request. As most of these building designs are reasonable design solutions when viewed individually, when taken together, they largely do not correlate to one another. This particular guideline states "a consistent architectural theme shall be provided in planned developments. The theme shall largely use traditional, regionally influenced architectural forms and elements and shall allow variations within it. The architectural theme shall also relate to existing structures on the project site and adjacent sites, especially if such

existing structures are historic. The use of architectural guidelines is required for multi-phased projects." Although general architectural covenants have been submitted, they are like the landscape covenants in the regard that they are very general in nature and largely just leave architectural design matters up to the approval of the developer.

8. Historic and Prehistoric Features: No known historic or prehistoric features are on the project site.

9. Signage: The application materials state that the development will follow the approved Special Sign District.

10. Transportation Connections and Entry Points: Entry features are existing at the Mineola Pike/Olympic Boulevard intersection. Relative to transportation connections, this standard states that "the provision of transportation connections (street connections, pedestrian paths and sidewalks, bicycle facilities) shall be provided in all planned developments unless physically unfeasible or undesirable due to land use characteristics." As noted earlier, the street connection between the Circleport Drive/Olympic Boulevard intersection and the west boundary of the site has been eliminated from the plan, and staff can not identify any rationale as to how such a street connection is physically unfeasible, how it is undesirable due to land use characteristics (the adjoining tract shares the same zone as the underlying zone for this project), nor has staff identified any other tangible route for a street connection between this project and the adjoining property. In addition, similar requirements are stated in Section 305.P "Temporary Dead End Streets and Street Connections to Adjoining Tracts or Areas" of the Boone County Subdivision Regulations. The connection is shown on the approved 1986 Concept Development Plan, is mentioned in the staff report for the 1986 proposal, is referenced in a letter from Tom Banta to Kevin Costello dated August 22, 1986, and is shown on other conceptual plans that relate to the project. In addition, there is no mention of any contingencies upon which this connection is based in the original Public Hearing minutes (8/27/86).

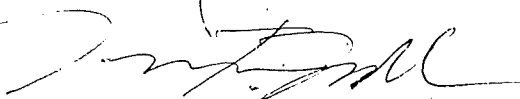
Thus, a street connection must be provided based upon this standard and the requirements of the Boone County Subdivision Regulations. There are several options for providing this connection, such as full construction of the street and dedication of the right-of-way, or dedication of the right-of-way within a specified period of time (two years from Planning Commission approval of the Concept Development Plan was used for the Corporex/Boh property project), or by the time a Certificate of Occupancy is granted for the proposed Courtyard Hotel site (i.e., it is the last development adjoining the street connection alignment; phase 1 of the Residence Inn on the other side of the alignment is already constructed).

11. Conformance with Comprehensive Plan: A discussion on the Comprehensive Plan is provided earlier in this report.

CONCLUSION

This request needs to be evaluated by the Boone County Planning Commission and the Boone County Fiscal Court in terms of the provisions of Article 15, "Planned Development District" of the Boone County Zoning Regulations, particularly the standards in Section 1514, and the potential impacts on the existing and planned uses in the area. The Future Land Use Map will not need to be amended if the Planning Commission and Fiscal Court approve this request.

Respectfully submitted,

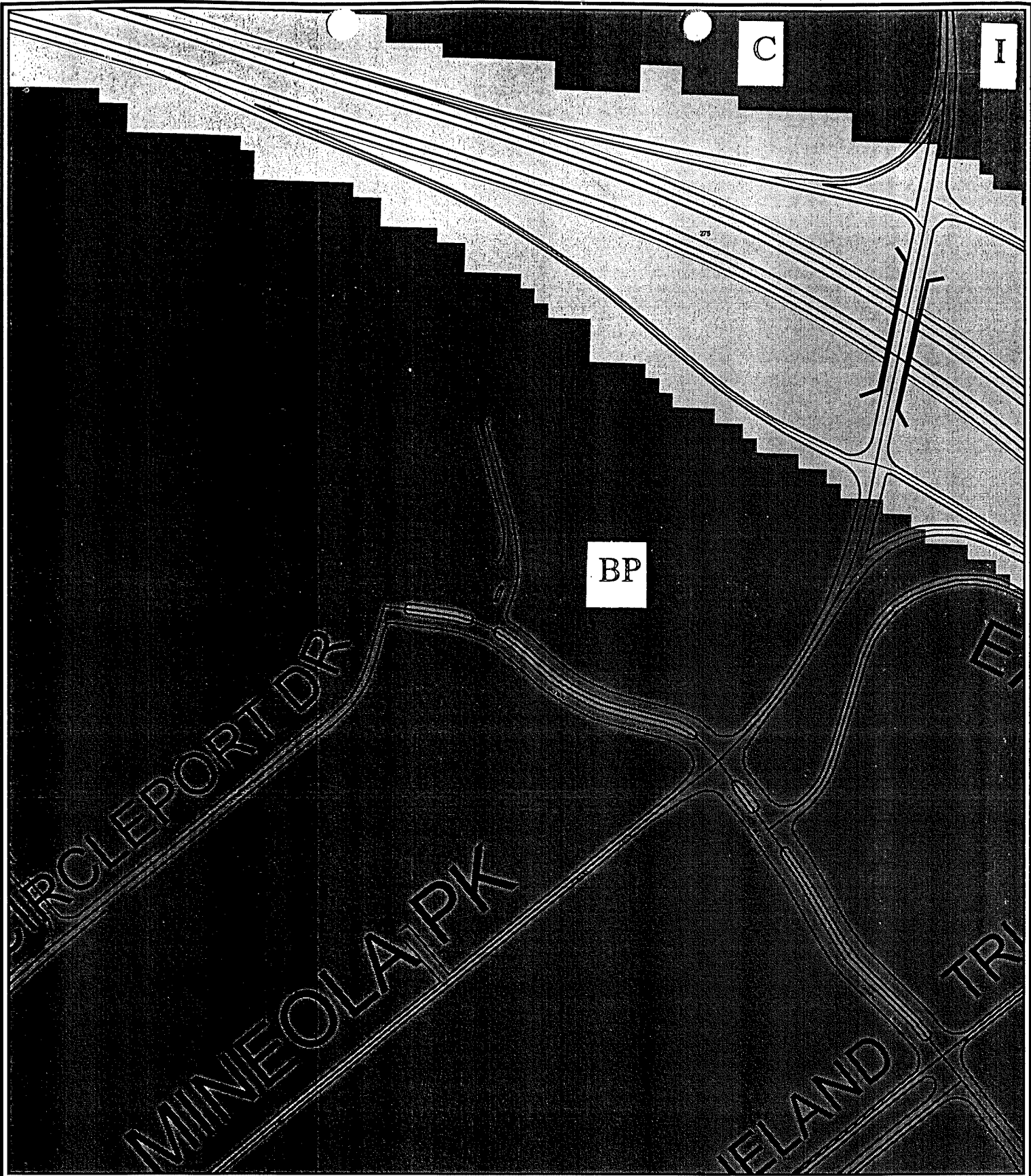


Kevin T. Wall, AICP CDT
Director, Zoning Services

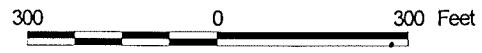
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attachments:

- * Future Land Use Map excerpt
- * air photo
- * Zoning Map excerpt
- * 1986 Committee Report and Concept Development Plan
- * 1995 Residence Inn Committee Report and Concept Development Plan
- * application and Concept Development Plan materials



Circleport I - land use



1 inch equals 300 feet
 Produced by the
 Boone County Planning Commission
 GIS Services Division
 January 26, 1998



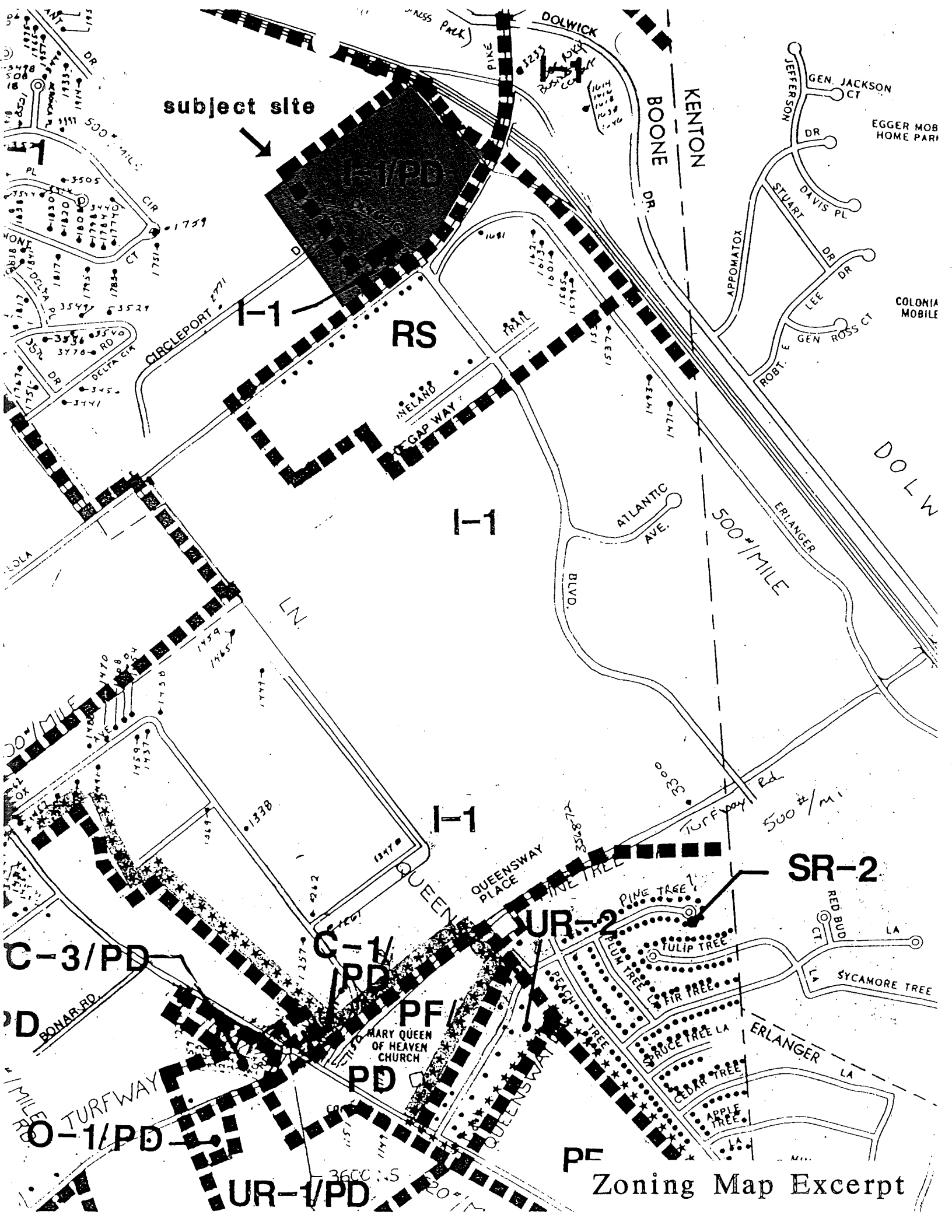


Circleport I - air view

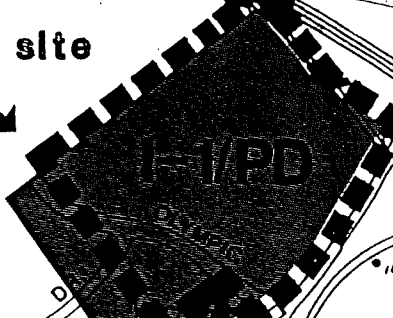
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Boone County Planning Commission
GIS Services Division
January 26, 1998





subject site



RS

I-1

SR-2

UR-2

PF

PD

UR-1/PD

C-3/PD

O-1/PD

Zoning Map Excerpt

MARY QUEEN OF HEAVEN CHURCH

PINE TREE 1

TULIP TREE

ELM TREE

FIR TREE

SPRUCE TREE LA

CEDAR TREE

APPLE TREE

SYCAMORE TREE

ERLANGER LA

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Committee Report

TO: Boone County Planning Commission

FROM: Larry Barnett, Chairman

DATE: September 17, 1986

RE: Request of Corporex Parks of Kentucky, Inc. (owner) for a Zoning Map Amendment for a 32.505 acre site. The property located west of Mineola Pike, north of Donaldson Road and south of I-275 is presently zoned Industrial One, I-1 and is being proposed to be zoned Industrial One/Planned development Overlay, I-1/PD Overlay.

REMARKS:

We, the Committee, recommend approval based upon the following findings of fact and subject to the following conditions.

Findings of Fact

- 1) The proposed zoning map amendment is in agreement with the adopted Comprehensive Plan (the Land Use Element of the 1980 Comprehensive Plan, the first 9 Elements of the 1986 Comprehensive Plan and the Goals and Objectives of the 1986 Comprehensive Plan).

Reference to the 1980 and the 1986 Comprehensive Plan are made in the staff report. The proposed zoning map amendment is consistent with the Land Use Element of the Business Activity Element (p. B-15) and the Goals and Objectives section (p. G-3) of the 1986 Comprehensive Plan.

- 2) In summary, the proposed zoning map amendment and submitted Concept Development Plan demonstrates a unique approach to mixing both industrial and commercial land uses in Planned Development in order to provide related services such as two lodging facilities, a bank, restaurants, and a retail center. The office space also adds a different dimension to the project.

Conditions

- 1) The applicant shall be required to develop the 32.505 acre site according to submitted Concept Development Plan. The types of land use and the total building square footage indicated on the Concept Development Plan are regarded as maximum intensities for development of the site.
- 2) The applicant shall not be granted permission to build any drive-thru restaurants on the site.
- 3) The applicant shall be required to dedicate land or provide a 35 foot easement for road widening from the southwest lot line along Mineola Pike to the main entrance of the site. At the appropriate time, the applicant shall be required to provide a traffic signal at the intersection of Mineola Pike and both entrances for Circleport I and Circleport III (Circleport Distribution Park).

- 4) The applicant shall be required to develop the proper storm water runoff system for the site. Storm water shall be detained for 20 minutes. Storm water runoff shall be controlled so that peak flows from the development site shall not exceed peak flow from the undeveloped site.
- 5) The applicant shall be required to provide an adequate landscaped buffer for the area located between the commercial building parking lot and Mineola Pike. This buffer should include types of trees sufficient in size at planting to serve as a screen between the proposed development and the residences along Mineola Pike. The buffer should be dense and may include the utilization of existing vegetation and the creation of a berm. If the applicant does not obtain the out parcel in the area, a dense buffer should be created or maintained surrounding the lot lines of the site and the out parcel.
- 6) The Committee prefers that the applicant combine driveway aisles and parking lots, and provide vertical parking structures where appropriate in order to create larger buffer and landscaped open space area. The Committee would also recommend that there may be a need to expand the main entrance to the commercial/office park in order to allow better turning movement both in and out of the development. This entrance is the only permitted entrance on Mineola Pike and it should be carefully aligned with Pleasant Drive across Mineola Pike.
- 7) Any change in the Concept Development Plan shall be reviewed by the Zone Change Request Committee or the Technical Committee to decide whether it is a major or minor change. Any change that is determined to be major shall require a new application and public hearing.


Conclusion

In conclusion, the submitted Concept Development Plan demonstrates an innovative design for a 32.5 acre site and offers a variety of support services to an existing industrial center. The proposed zone change is consistent with the intent of the Comprehensive Plan and with the spirit of Planned Development. If approved by Boone County Fiscal Court, the future land use map would not have to be changed.

Larry Barnett, Chairman

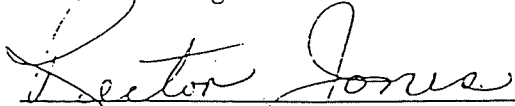


Fred Burch

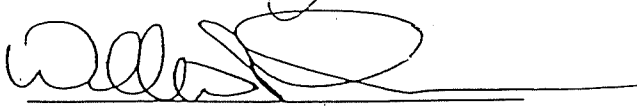


Donald Davis

Melvin Delong

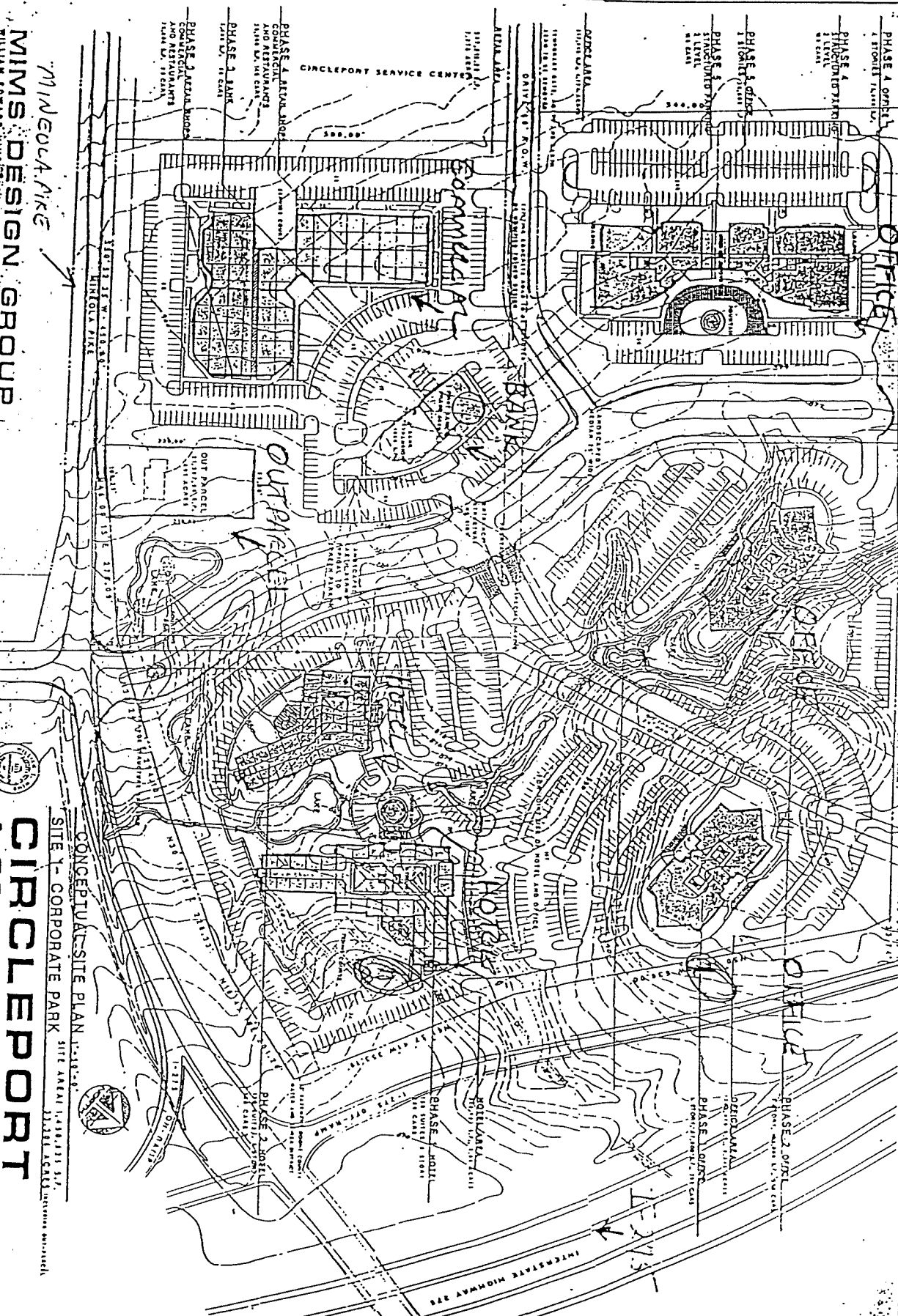


Rector Jones



William Viox

Circleport I Concept Development Plan
8/27/86



MINDOCHA PIKE
MIMS DESIGN GROUP

CONCEPTUAL SITE PLAN
SITE 1 - CORPORATE PARK
CIRCLEPORT
A CORPorex DEVELOPMENT
NORTHERN KENTUCKY AT GREATER CINCINNATI: AIRPORT

Pleasant Lane

200 25 110

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Robert Millay, Chairman

DATE: July 19, 1995

RE: Request of Corporex Parks of Kentucky, Inc. (owner) for a Change in Concept Development Plan for Lot 9, Circleport I, Boone County, Kentucky. The request is to allow an "extended stay hotel" on a 4.8 acre site in a Industrial One/Planned Development (I-1/PD) District.

REMARKS:

We, the Committee, recommend approval of the requested Change in Concept Development to allow an "extended stay hotel" on Lot 9 as shown on the Concept Development Plan received by the Planning Commission on July 10, 1995. This Change in Concept Development Plan is limited to changing the use for Lot 9 from its prior approved use as part of the 1986 zone change and its approved Concept Development Plan for the approximate 32.5 acre Circleport I development. This recommended Change in Concept Development Plan being so limited to a change in use for Lot 9 does not alter, change, modify, remove or otherwise affect the 1986 approved zone change or its development plan, with the addition of the condition noted herein. In all other respects the 1986 approved Concept Development Plan for Circleport I comprising 32.5 acres remains in full force and effect in its entirety.

For clarity, the Change in Concept Development Plan Committee recommends for approval is superimposed on a duplicate of the approved 1986 Concept Development Plan and is attached to this Committee Report. This recommendation is based on the following findings and with the following condition:

FINDINGS OF FACT

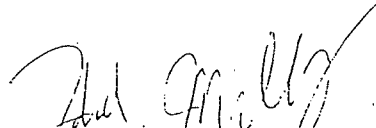
1. The proposed change in use for Lot 9 to an "extended stay hotel" is consistent with and does not change the character or nature of the development approved in the 1986 zone change for Circleport I as shown on its accompanying 1986 Concept Development Plan approved as part of that zone change, particularly when considering that other hotels were part of the original approval.
2. This proposed change in use for Lot 9 affects only a 4.8 acre part of the approved 1986 Circleport I Concept Development plan which totals 32.5 acres.
3. Except for the mere change in use for Lot 9, the Circleport I 1986 Concept Development Plan approved as part of the zone change then occurring remains in full force and effect in its entirety, with the addition of the condition noted herein.

4. The proposal is in agreement with the Boone County Comprehensive Plan which designates the site as "Business Park."
5. The attached condition is necessary to achieve consistency with the Boone County Comprehensive Plan, Article 15 "Planned Development District" of the Boone County Zoning Regulations, and to mitigate foreseeable community impacts that would be created by the proposal that would affect the uses on the project site and the varying uses adjacent to the project site. The applicant has signed a letter agreeing to this condition.

CONDITION

1. To help maintain the wooded character of the site, the existing vegetation shall be maintained along the south and west property lines of the site. Further, groups of large trees shall be provided along the street frontage(s) and a variety of large trees shall be provided within the interior of the site. In addition, the proposal shall be subject to all landscaping requirements provided in Article 31 of the Boone County Zoning Regulations.

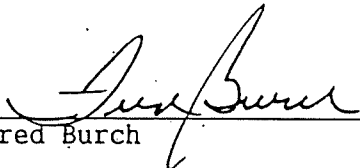
A copy of the Public Hearing minutes accompanies the findings and recommendation serving as a summary of the evidence and testimony presented by the proponents and opponents of this request.



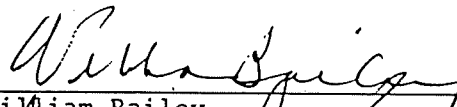
Robert Millay, Chairman



Donald McMillian



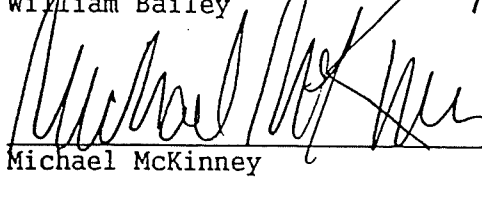
Fred Burch



William Bailey



Barry Neltner



Michael McKinney

Phil Damstrom

CHANGE IN CONCEPT DEVELOPMENT PLAN
OR

UTILIZATION OF AN UNDERLYING ZONE IN PLANNED DEVELOPMENT
(CONCEPT DEVELOPMENT PLAN)
BOONE COUNTY PLANNING COMMISSION

RECEIVED
JAN - 6 1993

BOONE COUNTY
PLANNING COMMISSION

(See Boone County Zoning Regulations)

SECTION A (To be completed by applicant)

1. Check One:

- Change in Concept Development Plan
- Utilization of An Underlying Zone in Planned Development
 - a) Public Hearing Submittal (Concept Dev. Plan) _____
 - b) Long Range Planning Committee Review _____
 (As stated in the Houston-Donaldson Study)

- 2. Name of Project Circleport I
- 3. Location of Project Olympic Blvd. and west side of Mineola Pike
- 4. Total Acreage of Site 33.56
- 5. Current Zoning I-1 / PD
- 6. Date of Previous Zoning Map Amendment or Approved Concept Development Plan (if applicable) August, 1995
- 7. Is the site subject to a specialized Land Use Study approved by the Boone County Planning Commission? (If so, indicate the name of the Study) No

8. Proposed Uses (please specify each use) I-1/PD; Luxury Hotel, Residence Inn, Courtyard Hotel, office building, retail, bank, restaurant, gas.

9. Proposed Building Intensities (please specify) 300 m. 9 story Luxury Hotel; 150 m. Residence Inn, 125 m. Courtyard Hotel, 159,000 sf 5 story office building, 3,600

10. Have you submitted a Concept Development Plan? Yes / sf bank, 36,800 sf retail,

11. Are you also applying for: 8,000 restaurant/retail, 4,600
 Conditional Use Permit sf gas/drive thru restaurant.
 Dimensional Variance (19,660 sf per acre average intensity)

12. Name of Applicant(s) Corporex Parks of Kentucky, Inc.
 Phone Number (606) 292-5500 Fax No. (606) 292-5599

13. Address of Applicant(s) 655 Eden Park Drive, Suite 250
Cincinnati, Ohio 45202
 City State Zip

14. Name of Property Owner(s) Same
 Phone Number _____ Fax No. _____

15. Address of Property Owner(s) _____

 City State Zip

16. Are there any existing buildings on the site? Yes
 How many? Two

17. Deed Book 280, 328, 364, 609 Page No. 94, 177, 210, Group No. 2022

18. Have you had a pre-application meeting with BCPC Staff? 213 Yes

(over)

19. 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
- Kentucky Transportation Cabinet
- City of Florence Public Services Department
- Boone County Building Department
- Northern Kentucky Health District
- U.S. Soil Conservation Service
- Local School District
- Local Fire District
- Other: _____

20. Concept Development Plan Jurisdiction/Location

- Unincorporated Boone County
- Florence
- Walton Union

21. Applicant's Signature(s) Thomas Bunt SNR. U.P.

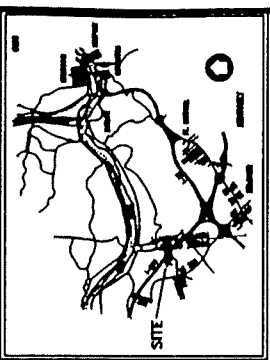
22. Property Owner's Signature(s) Thomas Bunt SNR. U.P.

SECTION B (To be completed by BCPC Staff)

1. Date Received Jan 6, 98 Fee Received 1521.60 R# 15592
 2. Check what has been submitted:
 - Application Fee Legal Description
 - Concept Development Plan Addresses of Adjoining Property Owners
 - No. of copies of plan received **
 3. Is application complete? YES NO
 4. Staff Reviewer KEDIE WALL
 5. Committee Chairperson _____
 6. Scheduled Public Hearing Date _____
 7. Boone County Planning Commission Action:
 - Approved
 - Approved With Conditions
 - Denied
 8. Other: _____
- ** Five (5) Copies Required

Boone County Planning Commission
2995 Washington Street
Burlington, Kentucky 41005
(606) 334-2196 Phone
(606) 334-2264 Fax

Note: See Boone County Planning Commission Fee Schedule for Concept Development Plan Fees. An application consists of all fees paid in full, submitted drawings and a completed application form.
BCPC:11/96



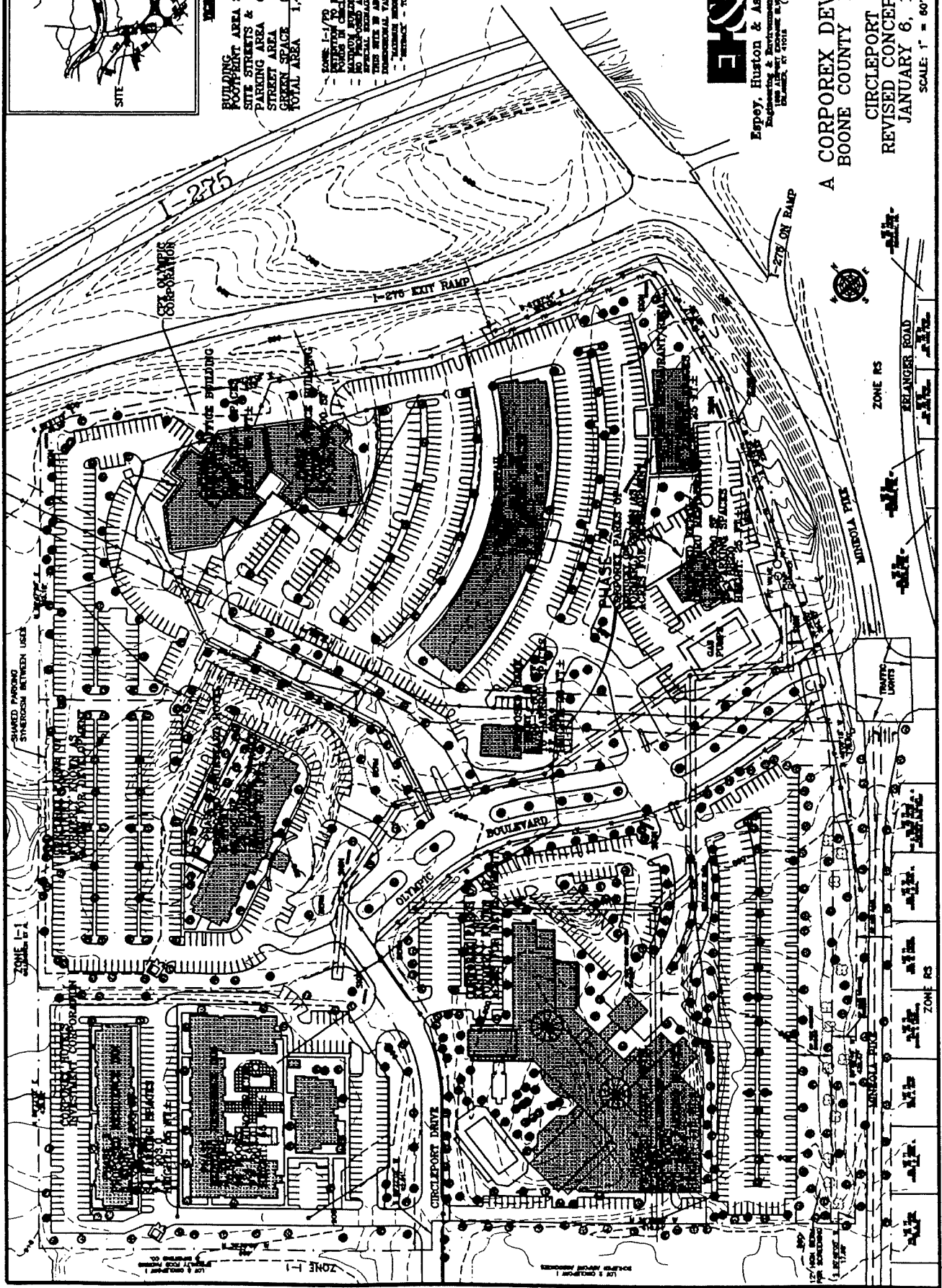
VERTICAL PLAN

BUILDING FOOTPRINT AREA 212,708 SF/4.81 AC.
 SITE STREETS & PARKING AREA 696,447 SF/14.61 AC.
 STREET AREA 57,667 SF/1.32 AC.
 GREEN SPACE 564,659 SF/12.74 AC.
 TOTAL AREA 1,461,708 SF/33.56 AC.

- ZONE I-1 TO BE PROVIDED BY 3 EXISTING UTILITIES IN CIRCLEPORT IN CONJUNCTION WITH THIS DEVELOPMENT. ALL UTILITIES AND PIPES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
- THIS SITE IS ABOVE THE FLOOD PLAIN
 - ALL UTILITIES AND PIPES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
 - ALL UTILITIES AND PIPES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
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EPA
 Espey, Huston & Associates, Inc.
 Engineering & Environmental Consultants
 1000 W. 10th St., Suite 100
 Louisville, KY 40203 (502) 581-1000

A CORPorex DEVELOPMENT
BOONE COUNTY KENTUCKY
CIRCLEPORT ONE
REVISED CONCEPT PLAN
JANUARY 6, 1998
 SCALE: 1" = 60'



Circleport I Concept Plan Satisfaction of Article 15 requirements and standards:

1. Mixed Use Development and Pedestrian Orientation: The development provides a functional mix of uses including restaurants, hotels, gas and fast food, a bank, office space and retail. A sidewalk network through landscaped areas, to be detailed during the site plan approval stage, will provide for pedestrian needs.
2. Compatibility of Uses: The concept plan is compatible both internally and externally. Landscaping and berms are used to provide buffers and transitions between uses.
3. Open Space: Extensive open space is provided throughout the park by the incorporation of landscaped islands, exaggerated building setbacks and orientation.
4. Multi-Modal Transportation System: The width of Olympic Boulevard and its' landscaped islands is conducive to cars, buses, delivery vehicles, and taxis. The proximity of the park with the airport makes it ideal for the business traveler.
5. Preservation of Existing Site Features: A 50-foot wide greenbelt easement along Mineola Pike has previously been dedicated to insure preservation of natural buffers. Additionally, the north and east side of the site is bordered by KDOT property containing existing trees that will be preserved.
6. Landscaping: Substantial landscaping is being provided along all roadways and parking lots. In addition, landscaping on the 50-foot wide greenbelt along Mineola Pike provides more buffering from adjacent properties.
7. Architecture: The architecture will carry a consistent and compatible theme throughout the park. The park will employ uniform architectural restrictions.
8. Historic and Prehistoric Features: There are no historic or prehistoric features that need to be maintained on this site.
9. Signage: A special sign district has been approved for this site and no revisions are being requested at this time.
10. Transportation Connections and Entry Points: The development has 2 access points onto Mineola Pike. Mineola Pike has been widened from I-275 to the intersection of Olympic Boulevard. Traffic signals and left turn storage lanes have been constructed at this intersection. Olympic Boulevard is of sufficient width to serve all of the proposed facilities. Existing roadways within the development adequately meet all current and future needs.
11. Conformance with Comprehensive Plan: The proposed concept is in conformance with the comprehensive plan.

CIRCLEPORT I CONCEPT PLAN

Relationship of Proposed Zone Change with Comprehensive Plan:

The text of the Land Use Element of the 1995 Boone County Comprehensive Plan specifically discusses the I-275/Mineola Pike interchange area, and recognizes Circleport I as a major development in this section. The comprehensive plan says, “[t]his section of the county should experience a wide variety of substantial growth” (pg. 225). The subject tract is identified on the map for “Business Park”. The proposed change in concept plan conforms with the comprehensive plan and planned development zoning. The proposed concept plan conforms with the expected growth outlined for the Mineola area and compliments the existing developments. It has a positive affect on the area by providing a wide variety of new services and opportunities while incorporating extensive green space and unique design. Therefore, the proposed plan is in agreement with the comprehensive plan (Boone County Zoning Ordinance, section 308).

The proposed concept development plan demonstrates a unique approach to mixing both industrial and commercial land uses in a planned development in order to provide related services such as lodging facilities, a bank, restaurants, and a retail center. The office space also adds a distinctive dimension to the project.

11.01 acres of Circleport I have previously been developed with a 5-story office building and a Residence Inn. The Concept Development Plan demonstrates an innovative design for the remaining 22.55 acres of the site and offers a variety of support services to the existing industrial center. The proposed zone change is consistent with the intent of the Comprehensive Plan and with the spirit of Planned Development.

TRAFFIC ANALYSIS

Circleport I at Mineola Pike

Circleport I is located in the southwest corner of I-275 and Mineola Pike. Two access points from Circleport I to Mineola Pike are provided by Olympic Boulevard and Circleport Drive.

Mineola Pike provides direct access to I-275 and was recently widened with a center turn lane provided in both directions. Additionally, traffic signals were placed at the intersection of Olympic Boulevard and Mineola Pike. The KDOT plans for the Mineola Pike widening project were based upon a design criteria for a 1995 average daily traffic of 12,000 vehicles and a predicted year 2015 average daily traffic of 24,000 vehicles with a design hour volume of 3,900 vehicles. The widening project occurred after development had begun in Circleport and took into account future expansion of Circleport.

The anticipated weekday peak hour average vehicle trip ends expected to be generated by Circleport I; based upon the Institute of Transportation Engineers Manual for Trip Generation, are shown below. These peak hour volumes are acceptable for the proposed design volume for Mineola Pike. While the revisions to the concept plan will produce minimal change in trip generations, major improvements have occurred to Mineola Pike. The improvements to Mineola Pike have given development in Circleport I the ability to have minimal impact on traffic.

<u>Rooms</u>	<u>Sq. Ft.</u>	<u>A.M. Peak Trip Ends</u>		<u>P.M. Peak Trip Ends</u>	
		<u>Entering</u>	<u>Exiting</u>	<u>Entering</u>	<u>Exiting</u>
150	113,050 Residence Inn	60	40	62	53
125	65,000 Courtyard Hotel	51	34	52	44
	43,700 Retail	105	105	105	105
	3,100 Bank	17	14	68	73
300	270,250 Luxury Hotel	121	811	124	105
8 Fuel Stations	4,600 Gas / Restaurant / Convenience Store	69	69	80	80
	<u>159,000 Office</u>	<u>250</u>	<u>31</u>	<u>45</u>	<u>216</u>
TOTAL:	658,700 Sq. Ft.	673	374	536	676

ARCHITECTURAL GUIDELINES**CIRCLEPORT I BUSINESS PARK, SECTION II**

The following architectural guidelines shall be utilized by the developer in the development of all lots, buildings, and related improvements within Circleport I Business Park, Section II:

1. No plans for any building, structure or other improvements to be erected, placed or altered in or upon any site shall be approved by the developer unless there shall also have been submitted separate landscape plans, satisfactory to the developer, to include plant material and landscape construction to be installed on the site.
2. The front yard setback area of each site shall be landscaped, and the side and rear setback areas of each lot not used for parking shall be seeded, except that the front yard and side yards of corner lots shall be seeded and landscaped. Landscaping is defined as an effective combination of trees, berms, grass, ground cover, and shrubbery. Landscaping shall be used to mark entrance points and parking areas. It shall be used to shield or define service areas and property divisions, and to enhance building scale and forms. Undeveloped areas proposed for future expansion shall be planted with grass and maintained in a neat, well-trimmed condition. All landscaping and screening plans shall be submitted to the developer for its prior approval.
3. Earthen berms, where required, shall have a maximum slope of three to one (3 to 1) unless otherwise approved by the developer. Such berms shall have shrubbery planting added to their lowest point in order to more fully screen off the view of loading docks and cars in parking lots. Manholes, clean outs or other points of access to utility lines shall be preserved in the design and construction of the berms.
4. A combination of evergreens and flowering crab apple trees, weeping willows, red maples, and/or rosehill white ash shall be among the specified variety of trees to be utilized within the park.
5. Landscape treatment shall not interfere with site line requirements at street or driveway intersections. All landscaping shall be designed for reasonable maintenance, and all landscaped areas shall be maintained in a quality manner at all times. Paving or terracing may be used in areas where excessive maintenance would otherwise be required.
6. Any building erected on a site shall conform to the following construction practices:
 - (a) Exterior walls shall be finished on the exterior only with one or more of the following:
 - 1) Brick or architectural masonry units;

- 2) Natural stone;
- 3) Decorative pre-cast concrete with prior written approval of the developer;
- 4) Exterior wood and wood siding with prior written approval of the developer;
- 5) Glass wall panels, provided that the developer has given its prior written approval to the exact material, use, color, and configuration of those wall panels;
- 6) Glass materials; or
- 7) Other materials if specifically approved by the developer in writing prior to use.

Exterior walls of metal are not permitted without the express written approval of the developer. Such finished building materials shall be applied to all sides of the building. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent buildings. The developer shall have the sole right to approve or disapprove materials and colors.

- (b) No temporary buildings or other improvements of a temporary nature, including trailers, incomplete buildings, tents, or shacks shall be permitted on the property. Temporary improvements used solely in connection with the construction or sale of permanent improvements shall be permitted provided that they are located as inconspicuously as possible and are removed immediately after completion of such construction or sale.
7. Signs: All exterior signs shall be first approved in writing by the developer. No exterior signs shall be erected or permitted to remain without such approval. The location, size, and construction of signs will be in keeping with the character at Circleport. Unless otherwise approved in writing by the developer, all signs must:
- (a) Be attached to a building or be ground mounted or berm mounted;
 - (b) Be installed so as to be parallel to and contiguous with the building wall and not project above the roof line of any building; and
 - (c) Not exceed the maximum area permitted by City or County sign ordinances.

Unless otherwise approved by the developer, a ground mounted sign:

- (a) Shall not be closer than three (3') feet from a driveway or parking area;
- (b) Shall not have a gross area of more than seventy-five (75) square feet;
- (c) Shall not exceed ten (10') feet in height; and

(d) Shall be connected to the ground along the base length.

Flashing or moving character signs shall not be installed. Illuminated signs shall be rear lighted or lighted from non-apparent light sources. All permitted signs shall be of a design and material consistent with the building itself.

Developer's final approval of all signs will be based not only on the above, but on reasonable architectural standards and overall balance as same applies to identification displays.

Without limiting any of the above, the developer must approve the manner in which any sign is constructed, lighted and mounted. All signs must also comply with the zoning and other regulations of Boone County, Kentucky.

8. Outside Storage:

(a) No materials, supplies or equipment shall be stored on the site, except within an enclosed building. Trash and garbage receptacles shall be stored only behind a visual screen, specifically approved in writing by the developer, which screening shall screen such areas from the view of adjoining properties and public right of ways.

(b) Garbage and refuse containers shall be concealed from the view of adjoining properties and public right of ways by means of a screening wall of materials similar to and compatible with that of the building. These screening elements shall be integral with the concept of the building plan, and shall be designed and located in the most inconspicuous manner possible.

(c) No trailer shall be used for storage purposes on any site, other than during the initial construction on the site and in such case not to exceed 10 months.

9. Architectural Review Procedures: In order for the developer to maintain the architectural and aesthetic standards required by these guidelines, each owner shall submit plans for improvements to be constructed on its site to the developer in accordance with the following procedures:

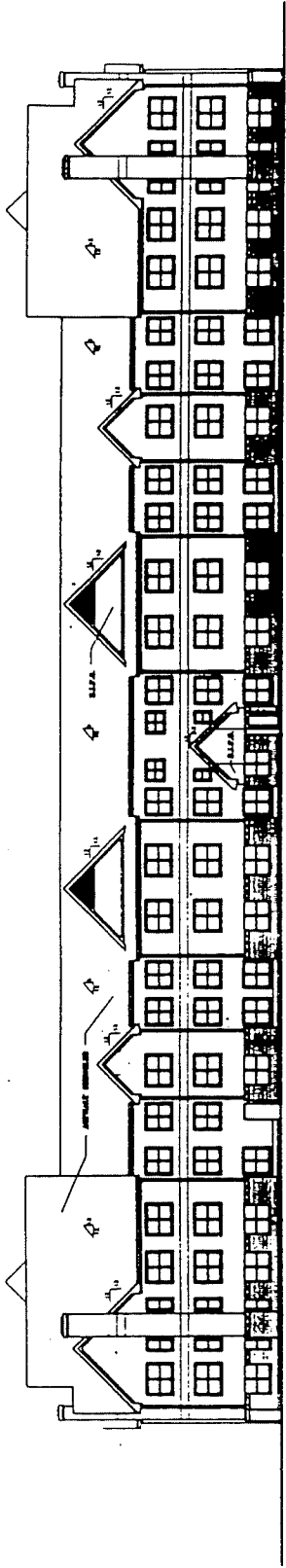
(a) Preliminary Review – before applying for a building permit and commencing the construction or alteration of any improvements (as hereinafter defined) on or to any site, the owner shall submit preliminary plans and specifications and landscape plans to the developer for its prior written approval. Such plans shall be drawn to a scale not smaller than one inch = 50 feet, with contour intervals not to exceed two feet. The developer shall review said plans and specifications and plan of development and notify the owner if such preliminary plans and specifications are not approved and the reasons therefore. Approval of such preliminary plans, specifications, and plan of development shall not constitute final approval of the plans, but is only a guide to the owner before having detailed construction drawings prepared.

(b) Final Plan and Specification Review – No improvement shall be erected, placed, altered, maintained or permitted to remain on any land until the final plans and specifications (herein "Construction Documents") have been submitted to and approved in writing by the developer, and a copy of such construction documents, as finally approved, lodged with the developer. Such Construction Documents prepared by licensed architects and engineers shall be submitted in writing over the signature of the owner of the site or its authorized agent, and shall be accompanied by the request of such owner or agent specifying for which part of such Construction Documents approval is sought. The plans and specifications to be so submitted and approved shall include the following:

- 1) A topographical plot showing existing and proposed contour, grade, site drainage, and all improvements, structures, walks, patios, driveways, fences and walls;
- 2) Exterior elevations;
- 3) Exterior materials, colors, textures, and shapes;
- 4) Structural design;
- 5) Landscaping plan, including walkways, elevation changes, watering systems, vegetation, and ground cover;
- 6) Parking areas and driveway plan, including loading and service areas;
- 7) Screening, including size, location and method;
- 8) Utility connections;
- 9) Exterior illumination, including location and method;
- 10) Fire protection system;
- 11) Signs, including size, shape, color, location, and materials.

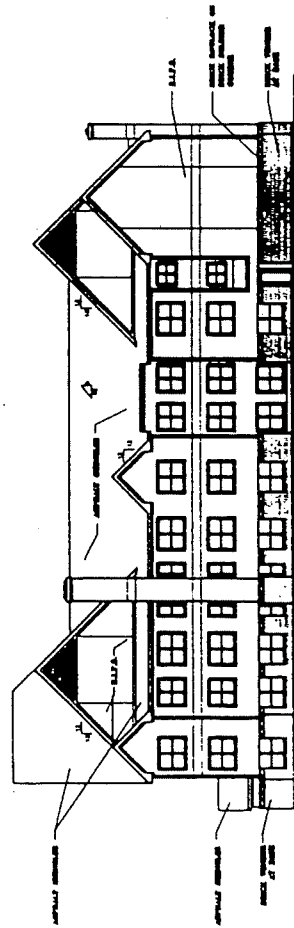
The developer shall have the right to refuse to approve any such Construction Documents or proposed use of the site for any reason which the developer, in its sole discretion, shall deem in the best interest of the property and the prospective owners of other sites therein. Developer refuses to approve such Construction Documents or proposed use. The developer shall set forth in writing the reasons for its refusal to approve.

EXISTING RESIDENCE INN



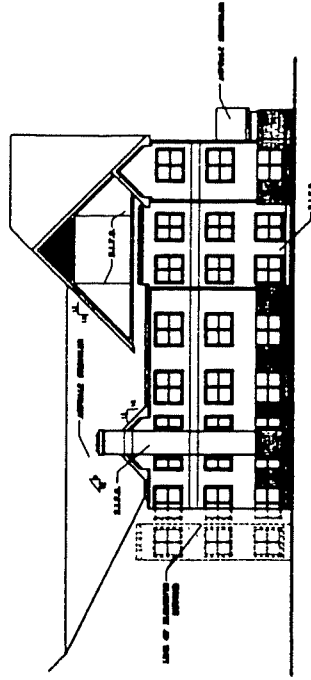
REAR/ "NORTH" GUESTHOUSE ELEVATION

1 / 16" = 1' - 0"



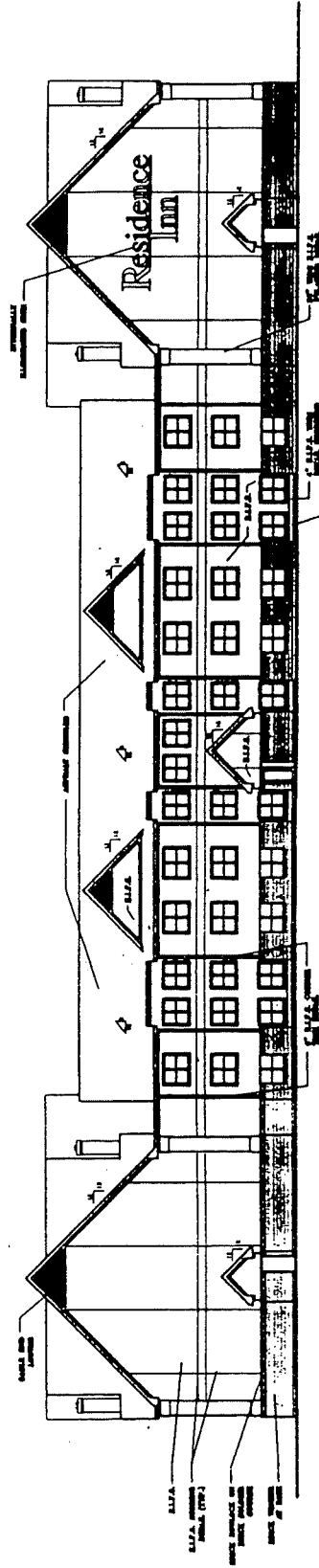
RIGHT SIDE/ "EAST" GUESTHOUSE ELEVATION

1 / 16" = 1' - 0" (LEFT SIDE ELEVATION = OPP. SIDE)



COURTYARD RIGHT SIDE GUESTHOUSE ELEVATION

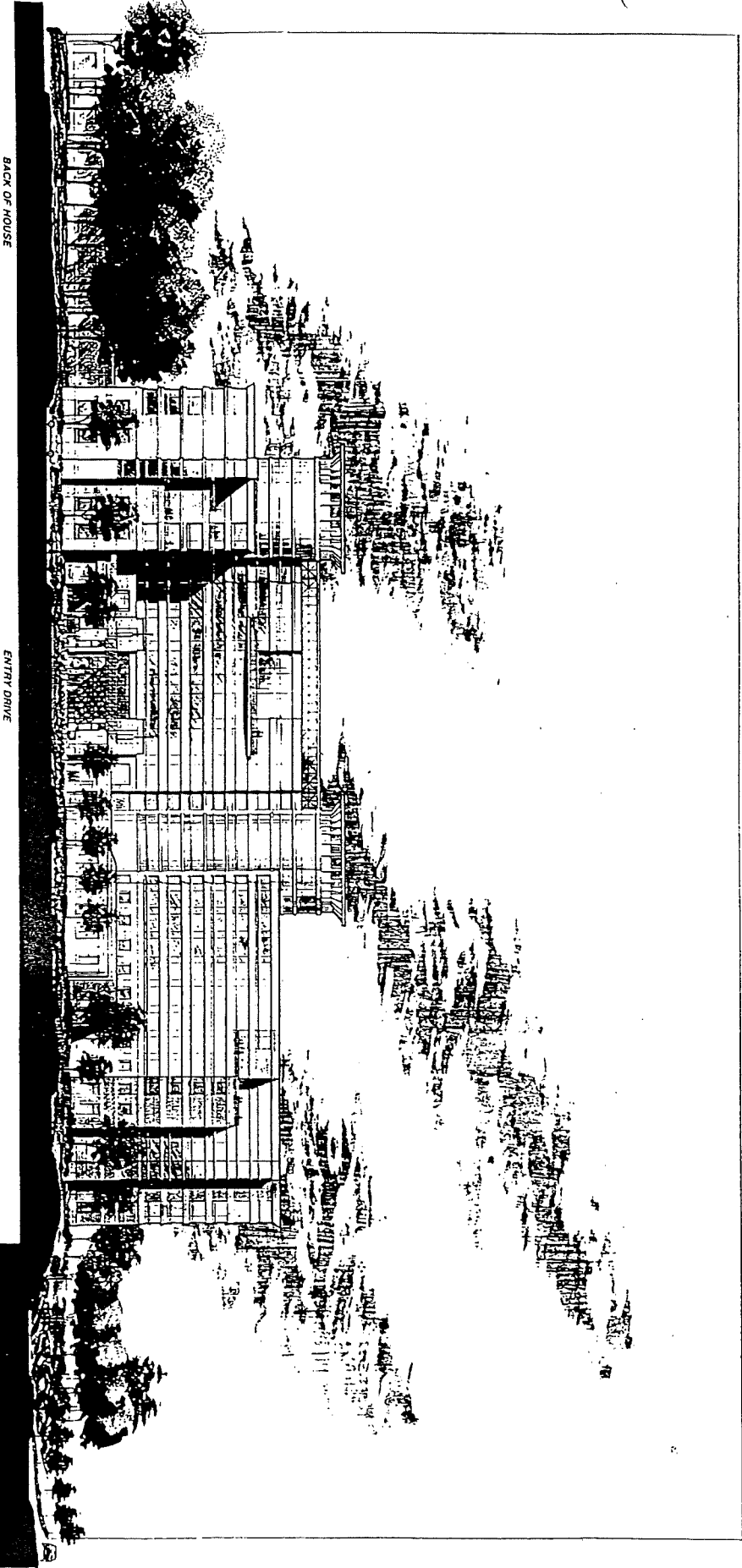
1 / 16" = 1' - 0" (COURTYARD LEFT SIDE = OPP. SIDE)



FRONT/ "SOUTH" GUESTHOUSE ELEVATION

1 / 16" = 1' - 0"

PROPOSED FULL-SERVICE HOTEL

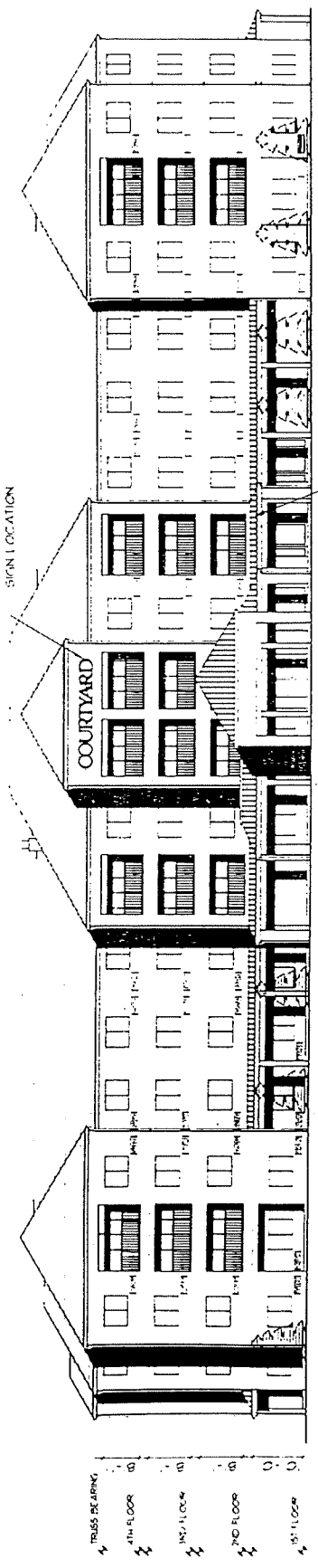


BACK OF HOUSE

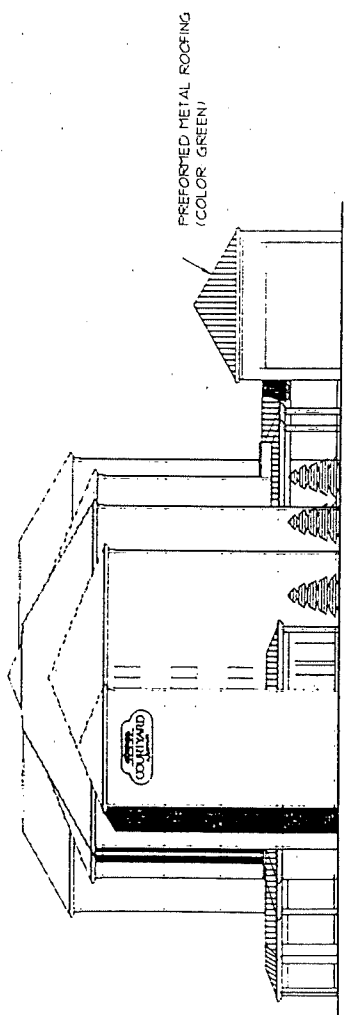
ENTRY DRIVE

EAST ELEVATION
SCALE: 1/16"

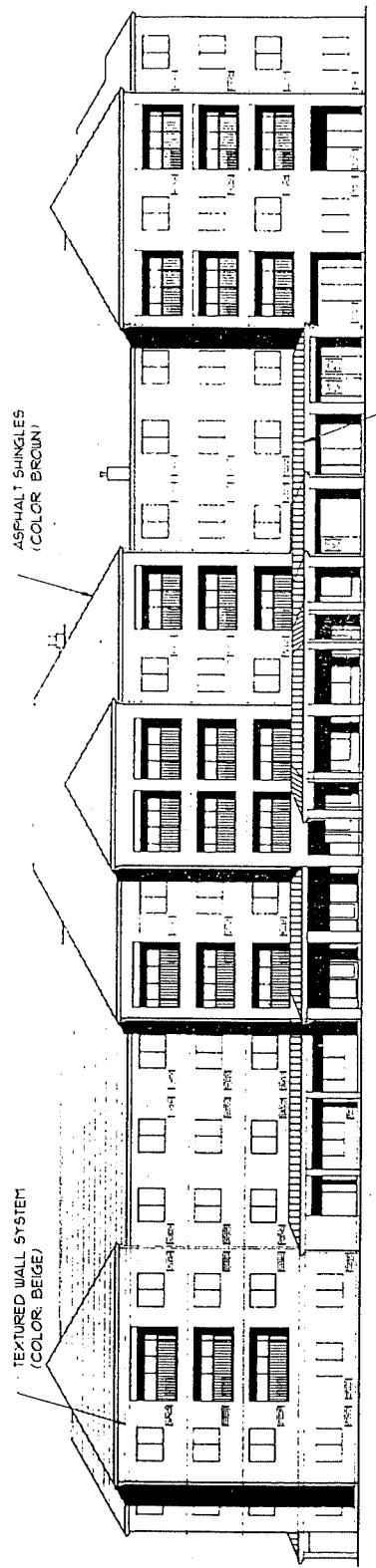
PROPOSED COURTYARD



FRONT ELEVATION



SIDE ELEVATION



REAR ELEVATION

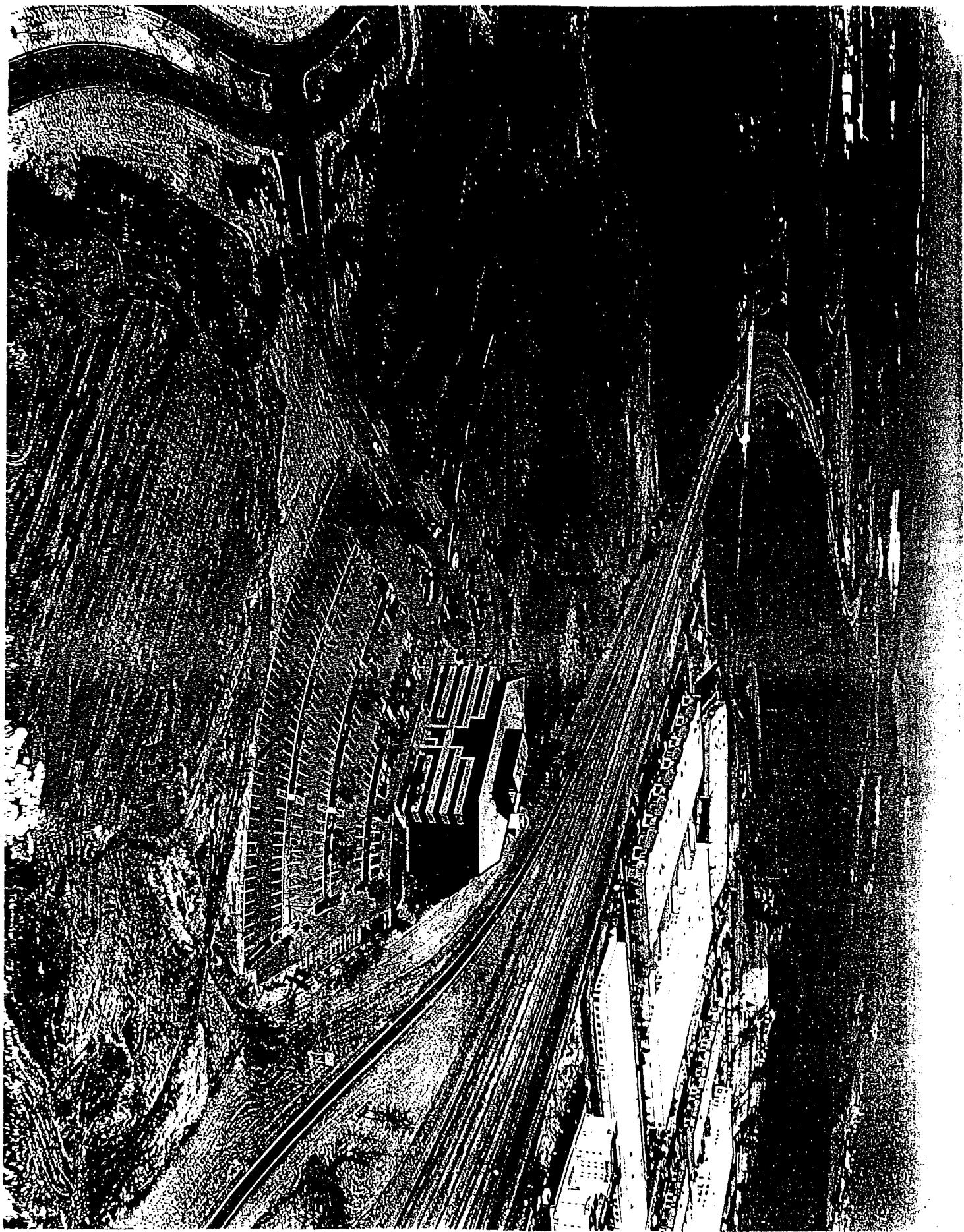
0' 4" 8" 16" 32"
GRAPHIC SCALE 1:400

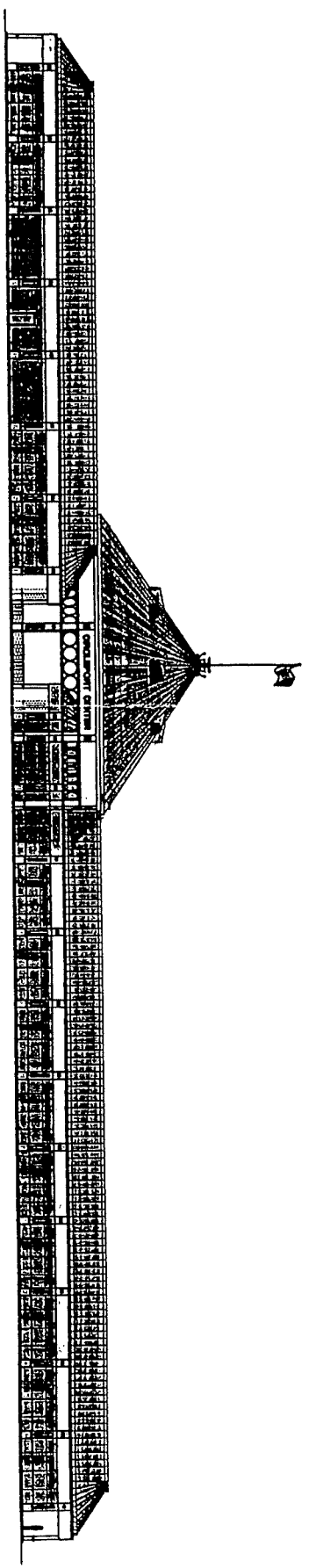
COURTYARD
by Marriott

BUILDING ELEVATIONS

122 - 4 STORY

EXISTING OLYMPIC CORPORATE CENTER





SOUTH WEST ELEVATION

SCALE . 1" = 30'



CONSTRUCTION, INC.
JULY 15, 1997

PUBLIC HEARING ITEM NO. 3:

Commission members present: Mrs. Arnett, Secretary/Treasurer, Mr. Caddell, Mr. Millay - Chairman, Mr. Neltner - Vice Chairman, Mr. Ries, Mr. Rush, Mrs. Schaffer, Mrs. Smith, and Mr. White - Temporary Presiding Officer.

Chairman Millay introduced the third item on the Agenda:

3. Applicant: Corporex Parks of Kentucky, Inc. (owner)

Request: Change in Concept Development Plan

The request of Corporex Parks of Kentucky, Inc. (owner) to consider a Change in Concept Development Plan for approximately 33.5 acres along both sides of Olympic Boulevard and along the west side of Mineola Pike, in Circleport I Subdivision, Boone County, Kentucky. The request is for a Change in the Approved Concept Development Plan to allow hotel, office, retail, bank, and restaurant uses in an Industrial One/Planned Development (I-1/PD) Zone.

Staff Member Kevin Wall provided the Commissioners with a full-size copy of the Concept Development Plan. Mr. Wall presented the Staff Report which included a GIS presentation (see Staff Report).

Chairman Millay asked for the applicant's presentation.

Mr. Tom Banta, Senior Vice President, Corporex Parks of Kentucky, Inc., stated that Mr. Wall indicated what had happened eleven years ago -- but a lot has changed since then. He stated that they only saw the Staff Concerns for the first time this evening, but they are in agreement with many of them and they can be worked out at the Committee level. He does not feel that they will be a major issue. Mr. Banta reviewed the Concept Development Plan and stated that part of the request for the change is market driven. Office has not developed in this area as fast as they would have liked. He stated that they are in the process of filling a 59,000 square foot vacancy in the building left by CitiCorp. There has been a lesser demand for office space in the marketplace and a higher demand for hotel space. He stated that the overall development is 650 acres. There is a strong demand for service businesses (such as coffee shops) to service the businesses in the area and the hotel. Approval has been received for the planned Marriott Courtyard Hotel, and that is prompting their request for the change in the plan. They would like to start the hotel immediately after approval of the Concept Plan. He stated that the other major change in the plan is the flipping of the hotel space with the retail space, and part of the reasoning for that is market driven. The retailers want to be by the interstate and the hotel does not mind being back from the interstate. It is a major high-end hotel and conference center with 300 rooms -- it is a first class

facility. He stated that they have tried to pick up the architecture of the Toyota building.

Mr. Banta indicated the existing residential houses and stated that the retail will have the greater impact on the residences. Retail traffic is in-and-out and heavier than traffic for a hotel -- which is more residential in nature. Initially there was a retail building about 200 feet from the nearest house, and the retail is now more than 400 feet from the nearest house. He noted that the house sits low and the retail site sits high and the residents will not see the retail -- which is a positive change. He stated that they are seeing a strong demand for restaurants in the area. There are no restaurants in the area except for the one at the Holiday Inn. There is no gas service from the other side of I-75 out to KY 237. He stated that most people now opt for the combo stores -- such as a BP and Wendy's combination. He indicated where the free-standing restaurant is proposed and where the retail type shops are proposed. He stated that they can work out the pedestrian walkway. They want walkways from the offices to the hotel and will incorporate them. He noted that there is mention in the Staff Concerns that they got rid of some of the natural water features on the site, which is true. He noted that they have not shown the fountains and other features and this can be worked out. He stated that since they submitted the last plan for Circleport III, a young boy walked out on the ice and nearly drowned in front of Sterling Cut Glass. Since that incident, the company has backed away from standing bodies of water. He stated that they have set the hotel as far back as the site will allow. They have a 35-foot road widening easement and a 50-foot greenbelt. He stated that he believes this plan will have a lesser impact on the residents than the previously approved plan.

Mr. Banta stated that another major change is that the road that went to the Gallenstein property has been eliminated. At the time of the previous plan, Corporex was in the process of on and off talks with the Gallensteins about acquiring the property, which is why they showed the road. There is no benefit to this development to have that road if they do not have the Gallenstein property, and no public need would be served by that road. They have set their buildings back so that if in the future a public use is determined for a road connection, there is room for a right-of-way through there that would not impact any of the buildings or uses.

Mr. Banta stated that they would be happy to work with the Committee in regard to the Staff Concerns.

Chairman Millay 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.

Mr. Dave Foltz, a property owner on Mineola, stated that he believes he is also speaking for the other property owners. He questioned how far the road widening would extend. He stated that the traffic on Mineola

Pike is horrendous and asked the Commissioners to come out and look at it. He stated that this request will increase traffic. He stated that they are talking about widening the road from I-275 to the first entrance to the businesses, which will ease the traffic coming off I-275 -- but it will not help with the traffic that is on Mineola. He asked that the traffic impact be considered. Mr. Foltz stated that he rents out the house he grew up in there and he loves the property. He feels that there will be a serious increase in traffic flow. He stated that Corporex has done a wonderful job of landscaping. He questioned how far up Mineola this goes and how close it will be to the houses. He agreed with Mr. Banta that service businesses are needed in the area, but he is concerned about a gas station there and the safe delivery of gas to the station on a road like Mineola. There have been quite a few accidents at the entrance on Mineola and he does not want an accident with a tanker carrying 20,000 gallons of gasoline. He is also concerned about the retail. He questioned the zoning of The Gap. The amount of traffic The Gap brings on Saturdays and in the evenings is horrendous and, if there is more retail, there will be more traffic. He is offended by comments in regard to the nature and character of the residences along Mineola Pike, which have been there for fifty years -- they may be small compared to Corporex, but they try and maintain their properties and they are being encroached on. He is concerned about the traffic. He asked where the 12.4 acres of green space will be -- will it be on Mineola or is it spread around? He is concerned about the impact of the noise and construction traffic on the residents. He is concerned about dirt in their yards from the signs and the road widening. He questioned the idea of retail -- particularly heavy retail -- up against the residences. He asked the Commissioners to visit the site and see the effect on the residences.

Mr. Banta stated that as part of the rezoning of the entire Circleport I to I-1, they gave the 35-foot easement that runs all the way down to The Gap. He stated that he does not know beyond the last warehouse across from The gap, but he thinks it is airport property other than one or two private residences. He stated that he does not know what plans or timetable the county has for widening, but the land was provided by Corporex. He stated that they agree with some of Mr. Foltz' comments regarding the traffic and pushed hard with CitiCorp lobbying the state. The traffic light there has helped.

Mr. Banta stated that he hopes it was not his comments about the houses that disturbed Mr. Foltz. He believes they have shared a good relationship with most of the residents there. He stated that Corporex tries to minimize the impact of construction traffic and most of the construction traffic will come down into the subdivision and not use Mineola more than it has to. In regard to the question about green space, Mr. Banta stated that the area along the residences will be heavily landscaped with a 12-foot high earthen berm. He stated that they try to err on the high side of landscaping standards. The green space is spread throughout the development, but the largest area is on Mineola Pike. He stated that from the edge of Mineola Pike to the edge of their

parking lot, would be just in excess of 100 feet before the road is widened and about 70 feet after it is widened. The building is back another 160 feet from the edge of the parking.

Chairman Millay asked if there was anyone else present who wished to speak in opposition.

Attorney James A. Dressman, III, representing the Gallenstein family, submitted a Position Statement. He stated that they were before the Planning Commission in 1995 and the Position Statement reflects what they set forth at that time in regard to the extension of Olympic Boulevard to the Gallenstein tract. He stated that to support a Change in Concept Development Plan, there has to be a change in circumstances. If he heard correctly, the change is that they no longer have an interest in the Gallenstein tract -- or they no longer have negotiations underway -- but that is not a consideration of the Planning Commission. It was not a consideration in 1986 when the extension was required and is not a consideration when extensions or roadways are required to adjoining tracts on a regular basis in similar situations that have come before the Planning Commission. He stated that Mrs. Gallenstein came before the Planning Commission in regard to the Airport Exchange Boulevard project across the road and one of the conditions was the extension of Airport Exchange Boulevard to Point Pleasant Road -- which did not derive benefit to Airport Exchange development -- but facilitated development off Point Pleasant Road. He stated that the intention of planners is an extension of a parallel route along I-275 to provide alternate routes to the development that will occur around the airport. The Airport's Long-Range Plan provides for a rerouting of Route 20 and an extension from Route 20 along a route similar to Olympic Boulevard. He stated that in regard to the extension to the Gallenstein property, there is a long-term public benefit to be derived. A number of Comprehensive Plan Elements would be violated if the Olympic Boulevard extension is removed, most of which were presented by Mr. Wall, and their Position Statement covers any Mr. Wall may have missed. He stated that this is an attempt by Corporex Parks to horde the benefits of a nice interchange. By closing off Olympic Boulevard, they effectively preclude access to the interchange that was paid for by tax dollars and was intended to be a regional access point. It would preclude access to a large section of Boone County lying west of this project. He stated that everything else is in the Position Statement (see Exhibit 1).

Chairman Millay asked if there was anyone else present who wished to speak in opposition to the request. There being no response, he asked if there were any comments or questions from the Planning Commission.

Mr. McMillian asked if they would consider a Park & Ride for the transit authority there since this is retail uses. Mr. Banta stated that he could not respond at this time as he had not considered this.

Mr. Neltner asked if the local fire district has a ladder truck that can go up 100 feet. Mr. Banta responded "no". He stated that Covington does

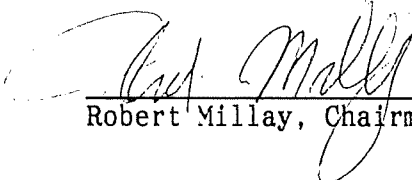
not have one either to go up to the building at River Centre, and nor does any other municipality. He stated that they have ladder trucks that go to the fifth floor of the office building. He stated that with the higher levels it is a whole different Building Code -- the stairwells have to have smoke evaluation systems, sprinklers, etc., which are intended to compensate for the fact that a ladder will not get that high. He added that the difference may not be as great as it seems since with an office building the floor heights are generally 13.6 feet, but with a hotel they are 8.6 to 8.7 feet -- so there are more floors for the same building height equivalent. The hotel will be bigger than the office building, but not as much as it sounds.

Mr. Neltner asked if the roads in Circleport are dedicated. Mr. Banta responded that all the roads in the Boone County portion are dedicated, except a section of Olympic Boulevard which has not been dedicated but they are preparing to take it through the dedication process now. The roads in Kenton County were build by Erlanger through a Bond Issue and are publicly dedicated.

There being no further comments, Chairman Millay stated that the Committee Meeting for this item will be on February 9, 1998 at 4 P.M.. This item will be on the Agenda for the Business Meeting on February 18, 1998 at 7:30 P.M..


The Chairman closed this Public Hearing.

APPROVED:



Robert Millay, Chairman

Attest:



Jan Hancock, Recording Secretary

POSITION STATEMENT

TO: Boone County Planning Commission

FROM: James A. Dressman, III, attorney for M. Lee Gallenstein

SUBJECT: Request of Corporex Parks of Kentucky, Inc. for a Change in Concept Development Plan

DATE: January 28, 1998

Pending before the Planning Commission is a request of Corporex to modify radically its previously approved Concept Plan. As an adjoining property owner, M. Lee Gallenstein (through Judy Terlau, Power of Attorney) is not opposed to this proposed change in uses. However, she is concerned with changes in the design.

This Position Statement is written to help ensure that there is no substantial change in provisions for roadways and utilities. In particular, the Concept Plan which was approved by this Commission on September 17, 1986, clearly indicate the extension of the Olympic Boulevard right-of-way from Mineola Pike to the Gallenstein property line. Any change for the project should continue to require the extension of the street for the proper development of the area. Also, the road extension should be within a publicly dedicated right-of-way. Finally, the pavement and properly sized utilities should also be brought to the common property line. These requests are proper for the following reasons:

I. Good Planning

A. Comprehensive Plan

An Objective of the Transportation Element of the 1995 Boone County Comprehensive Plan is that "[p]roper access to adjoining property should be provided and/or retained when a property develops or redevelops." (p. 14). The current Concept Plan relative to the extension of Olympic Boulevard complies with this Objective.

Another Objective of this Element is that "[n]ew connector streets shall be developed where needed and feasible thus lessening the total dependence on arterial streets." (p. 14). This principle is reflected in the Airport's Master Plan, which calls for a "frontage road" to be constructed parallel to I-275 from Mineola Pike to a relocated KY 20 (as reported at p. 187 of the Comprehensive Plan). The extension of Olympic Boulevard to the Gallenstein property is a crucial link in this planned frontage road. It will provide an alternate means of access to the airport as it expands, and will allow a better flow of traffic through the growing industrial area northeast of the airport.

The Land Use Element of the Plan indicates the future use of both the Corporex and Gallenstein properties to be Business Park. The text explains that "[t]his section of the County should experience a wide variety of substantial growth." (p. 225). Also, the text states that the Rolling Green Acres subdivision, which is adjacent to both Circleport and the Gallenstein property, should eventually redevelop as an industrial area. Because of the increasing growth, "the road network in this section should be improved." (p. 226). These comments are consistent with the Development Guidelines found within the Land Use Element, namely:

The need exists to protect the capacity of the existing roadway network, and to plan improvements to accommodate new developments and travel patterns. Access management provisions include . . . provisions for access connections to adjoining properties, and dedication of public right-of-way. (p. 211).

Collector roadways should be extended and developed to provide for the safe movement of traffic through and between subdivisions. . . . Appropriate road connections should be constructed to provide alternate routes for traffic to and through specific projects and to enhance the capacity of existing streets. Parallel and frontage roads should be used to minimize impacts of individual sites on collector and arterial roadways. (p. 211)

Many Objectives from the Public Services and Facilities Element support the extension of properly sized utilities to the Gallenstein property:

1. Existing infrastructure and services (e.g. systems and facilities for: water treatment and distribution, wastewater collection and treatment, natural gas distribution, communication lines, police and fire services and associated municipal buildings, schools, public roads and storm water management) shall be utilized efficiently. The phasing of proposed development shall be examined as a means of addressing significant impacts on existing infrastructure and services.
2. New infrastructure systems shall be built to definite planned and balanced capacities and for definite urban forms.
3. Priorities for growth within any individual infrastructure system shall be based on the predicted needs of specific areas as prescribed by the future land use projections of this plan. No infrastructure system shall commit the county to excessive growth by the system's expansion. (pp. 11 - 12).

As stated above, the future land use for the adjacent property owned by Gallenstein is Business Park. The remaining area between the interstate and the airport is also planned for industrial uses. Sound planning principles require the proper extension of all utilities for future developments.

B. Airport Exchange Example

In February 1988, this Commission approved a Zoning Map Amendment for property owned by M. Lee Gallenstein and located on the north side of I-275, west of Mineola Pike, and across the interstate from Circleport I (ie. the Airport Exchange Business Park).¹ As conditions of approval, the applicants and owners (including M. Lee Gallenstein) agreed to the following conditions:

1. The applicant shall be required to make the following road improvements:
 - b. Make intersection improvements at Airport Exchange Boulevard and Point Pleasant Road in order to have proper turning movements at the park's second entrance.
 - c. Widen Point Pleasant Road to approximately 22 - 25 feet in width from the intersection of Airport Exchange Boulevard to the I-275 bridge.
4. The applicant shall be required to extend the proposed sanitary sewer line towards the western lot line, or at a minimum, place the manhole which serves Lot A in the street right-of-way, in order to possibly serve future growth west of Point Pleasant Road. The applicant shall negotiate with the Boone County Water and Sewer District to determine the final design size of the proposed sanitary line.

The precedent for sound planning has been set in this part of the county. These requirements for roadway and utility improvements were clearly made to facilitate the orderly growth of property to the west of the Airport Exchange Business Park. Since that time, these requirements have paid off with the Neyer development on the west side of Point Pleasant. These improvements were made at the expense of no entity but the applicants. Similar

¹ In fact, the Airport Exchange Business Park was built on only part of the old Gallenstein property, after it was split by the interstate. The other part of the Gallenstein tract is adjacent to the Corporex property in question.

requirements are needed to facilitate the orderly growth of the industrial area on the airport side of I-275.

II. Legal Considerations

The initial concept plan submitted by Corporex with its application for the Residence Inn contained what can be called either a "spite strip," "devil strip," or "dead man's strip." (please refer to a detail of the plan, attached hereto). Approximately ten (10) feet wide, this small piece of ground had as its sole purpose the separation of the adjoining undeveloped property from the Olympic Boulevard right-of-way.

Such attempts at land-locking a neighbor's property are prohibited by Kentucky case law. In Lotze v. Garrene Realty & Development Co. 309 S.W.2d 750 (Ky., 1958), the state's highest court ruled that upholding such actions

... would put a stamp of approval upon a practice which could *produce havoc in the planning and development of subdivisions*. When an improvement is made upon property it may enhance the value of adjacent lands, but adjacent landowners should not be forced to pay for a public roadway built by a subdivider any more than they should be forced to pay for the shade contributed by a neighbor's trees. The subdivider builds upon his own initiative, and for his own benefit and should not be allowed to require his incidental beneficiaries to pay for their unsought gains. Id. at 752.

In that case (copy attached), the developer attempted to purchase adjacent property from Clarence Lotze. When Mr. Lotze refused, the developer platted a street extension to within six inches from Mr. Lotze's property line. The Court found that the public rights and interests required a finding that the "devil strip" had been dedicated for public use.

In the case before the Planning Commission, the request of the adjoining property owner is to avoid "havoc in the planning and development of subdivisions." Clearly, the Gallenstein property is land-locked for industrial development (for which it is zoned) without adequate access to Mineola Pike. The planning for the use of this land (and other adjacent properties without direct access to Mineola) will be seriously hampered if the roadway and utility extensions are not required. Finally, nothing is being requested that has not already been approved --- the provision for the extension of the right-of-way is part of the current Concept

Plan. The adjoining property owner requests that this provision be specifically mandated by any change to the plan, and that the approval require the actual construction of the roadway pavement and utilities to the property line.

III. True Plans of Corporex

As in the Lotze case, Corporex has been negotiating for the purchase of the Gallenstein property for a number of years. These negotiations, however, have been fruitless.

By letter dated May 24, 1995 (copy attached), Mr. William P. Butler explains that, but for access through Circleport, the Gallenstein property is land-locked. He further explains that Corporex has exclusive control over water and sanitary sewer extensions to adjoining properties and that Corporex will prevent access by anyone except itself to the Gallenstein property through Circleport. In fact, he states that "any value which has been created in the neighborhood" has been created by Corporex, and the Corporex holds "the rights to that value." This attitude flies in the face of good planning and the decision in Lotze.

Corporex also prepared for the Gallensteins a supplemental graphic depiction of its "business plan" for the area. (reduced copy attached). It depicts the construction of a four level parking garage at what is labeled "The Former Proposed Road Extension." Of course, this plan in no way complies with either the approved Concept Plan or the 1995 Boone County Comprehensive Plan. Doubtless, this plan was never shared with the Planning Commission or its Staff (although it was made an attachment to the undersigned's report submitted to the Commission on May 31, 1995).

IV. Conclusion

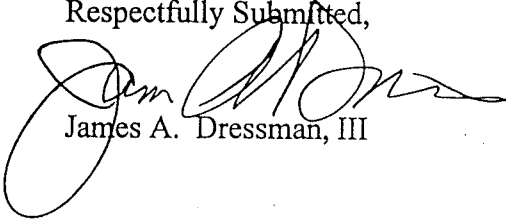
Again, M. Lee Gallenstein is not opposed to this proposed change in uses. She is concerned, however, with changes in the design. For the reasons stated above, Mrs. Gallenstein respectfully requests that approval for the change in Concept Plan be conditioned upon the following:

1. The extension of Olympic Boulevard within a publicly dedicated right-of-way to the Gallenstein property line.
2. The physical and actual extension of roadway pavement to the Gallenstein property line, within a specific time frame.

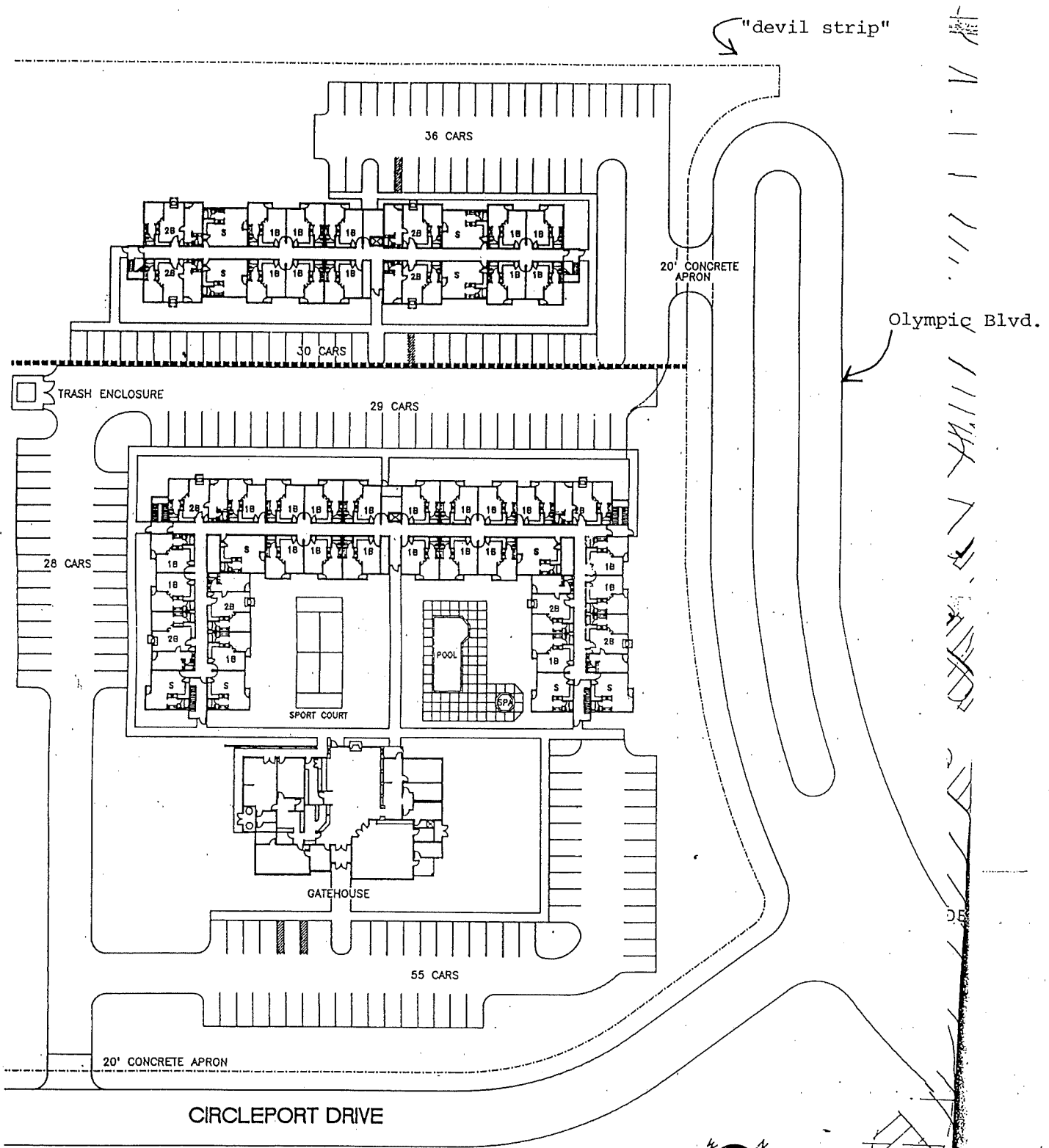
3. The physical extension of all utilities, either within the publicly dedicated right-of-way or appropriate easements, to the Gallenstein property line, within a specific time frame.

In a nutshell, she asks that the Planning Commission make the same requirements of Corporex as were made of her for the Airport Exchange Business Park. Thank you.

Respectfully Submitted,


James A. Dressman, III

Initial Concept Plan submitted by Corporex with this application



PRELIMINARY SITE PLAN

SCALE: 1" = 50'-0"



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in drawing the paper but he must be a party to, or his name must appear in, the instrument as one to be benefited thereby. The fact that he may have a pecuniary interest therein, will not suffice to relieve him from the charge of unauthorized practice of law in drawing a legal paper.

We end this opinion as we did in the Trevathan case by saying that as respondent acted innocently and in good faith, we think ample punishment is a fine of \$1 and the cost of this court, and we will not place upon him the expense the Bar Association incurred in making the investigation of the charges against him.

It is therefore ordered that respondent, W. J. Brien, Jr., be, and he is now, held in contempt of this court for the unauthorized practice of law and his punishment is fixed at a fine of \$1 and the cost of the proceedings in this court.



Clarence LOTZE, Appellant,

v.

GARRENE REALTY & DEVELOPMENT COMPANY, Inc., and Louisville & Jefferson County Planning & Zoning Commission, Appellees.

Court of Appeals of Kentucky.

Dec. 5, 1957.

Rehearing Denied Feb. 28, 1958.

Action to enjoin the defendant from interfering with the plaintiff and the public in passing over a six inch strip of land between a road and the plaintiff's land and to require a zoning commission to rescind its approval of a subdivision or order a realty company to revise its subdivision plans so as to include for public use the six inch strip. From the judgment in the Circuit Court, Chancery Branch, Second Division, Jefferson County, Stuart E. Lampe, J.,

the plaintiff appeals. The Court of Appeals, Cammack, J., held that the dedicator was estopped from asserting that dedication of a road did not include the six inch strip in dispute.

Judgment reversed with directions.

1. Dedication ⇨46

Dedication to public use by plat is a common method and in its interpretation, all doubts as to the intention of the owner are resolved most strongly against him.

2. Dedication ⇨19(3)

Generally an open or vacant space is devoted to the public use where from its position on and relation to the plat such appears to have been the intention of the owner.

3. Dedication ⇨39

Where there was no express reservation of a six-inch strip of land lying between a road and the land of plaintiff and the plat did not indicate the existence thereof nor could it be said that the plat showed the intention of the dedicator to reserve the strip and the zoning commission was not notified of any attempted reservation, the dedicator was estopped from asserting that the dedication of the road did not include the six inch strip.

Michael M. Hellmann, Stephen P. Smith, Jr., Louisville, for appellant.

Allen Schmitt, James L. Taylor, Louisville, for appellees.

CAMMACK, Judge.

This action was instituted in April, 1954, by the appellant, Clarence Lotze. He sought (1) a judgment against the appellee, Garrene Realty & Development Company, Inc., estopping and enjoining it from interfering with him and the public in general in passing over a six-inch strip of land between Plymouth Road and the appellant's land; or (2) a mandatory injunction requiring the other appellee, Louisville & Jef-

erson County Planning & Zoning Commission to (a) rescind and revoke its approval of the Garrene Village subdivision, or (b) order the Garrene Realty & Development Company to revise its subdivision plan so as to include for public use the six-inch strip of land in question. The trial judge entered a judgment in accord with the following language of his able opinion:

"I think the equitable result in this case is a holding that Garrene Realty & Development Co. will be estopped from denying the dedication of the six-inch strip upon one condition. That condition is that the plaintiff be first required to pay to the Garrene Realty Company an amount equal to one-half of the reasonable cost of the construction of Plymouth Road at the time it was constructed, calculated upon the number of running feet that the remaining land of Mr. Lotze fronts thereon. In other words, the cost to Mr. Lotze shall represent one-half of the cost of the road in front of his vacant land. * * *"

Lotze is appealing from both phases of the judgment. The Zoning Commission has filed a brief in support of the position of Lotze, insofar as the judgment denies a dedication of the six-inch strip and requires payment by Lotze to the Realty Company. Since the questions are so closely related, and affect the public interest, we will discuss them together.

On April 23, 1952, the Planning & Zoning Commission approved a plat filed by the Realty Company, which included the following provision:

"The undersigned owner of the property shown on the foregoing plan do hereby acknowledge the same to be the plan of 'Garrene Village' subdivision and do hereby dedicate the public use the roads and avenues, and the 23.5' added to Breckinridge Lane, all enclosed by red lines as shown hereon."

Unfortunately, the photostatic copy of this plat which has been made a part of the

record has no markings in red, but it does have a double line marking the edge of Plymouth Road in front of Lotze's land where the attempted six-inch reservation is alleged to have been located. The plat fails to disclose the owner of the land adjacent to this double line as required by KRS 100.088.

The Realty Company, through its agent, Mr. Garrene, attempted to buy Lotze's land prior to the time the plat was filed, but Lotze refused to sell. Thereupon Garrene notified Lotze that he would reserve ownership in a six-inch strip between Lotze's land and Plymouth Road in order to prevent use of the road by Lotze. There is evidence that Garrene then had the surveyor's stakes moved in an attempt to accomplish the six-inch reservation. The evidence is conflicting as to whether Lotze knew the stakes were being moved to accomplish that purpose. Since we believe there was a dedication of the six-inch strip to public use, it is unnecessary to discuss the question of notice.

[1,2] The trial commissioner to whom the case was first assigned cited *Cassell v. Reeves*, Ky., 265 S.W.2d 801, as authority for the proposition that a dedication of the six-inch strip had been made by the Realty Company. In the *Cassell* case we said that dedication to public use by plat is a common method and in its interpretation all doubts as to the intention of the owner are resolved most strongly against him. We said also that generally an open or vacant space may be held devoted to public use where from its position on and relation to the plat such appears to have been the intention of the owner. See also 16 Am.Jur., *Dedication*, sections 22, 24.

[3] In the case at hand there was no express reservation of the six-inch strip. The plat does not even indicate the existence of the six-inch strip, unless the presence of a double line could be said to so indicate, nor did the required designation of the owner appear. From the position of the double line on and its relation to the plat

it can not be said that it shows the intention of the dedicator to attempt to reserve a six-inch strip of land. Furthermore, the Zoning Commission was not notified of any attempted reservation. We believe the dedicator, the Realty Company, is now estopped from asserting that the dedication of Plymouth Road did not include the six-inch strip in dispute.

The Realty Company insists that to force this dedication upon it without requiring payment from Lotze allows him to be a "free-loader"; but to hold otherwise would make it possible for subdividers to become "free-loaders" by shouldering onto others a part of the cost of roadways running along their property. Under such conditions owners of land adjacent to subdivisions could be forced to pay paving costs or forced to sell their lands to the subdivider. The case at hand is illustrative of such a situation. Then too, to uphold the actions of the Realty Company would put a stamp of approval upon a practice which could produce havoc in the planning and developing of subdivisions. When an improvement is made upon property it may enhance the value of adjacent lands, but adjacent land-owners should not be forced to pay for a public roadway built by a subdivider any more than they should be forced to pay for the shade contributed by a neighbor's trees. The subdivider builds upon his own initiative and for his own benefit and should not be allowed to require his incidental beneficiaries to pay for their unsought gains.

In discussing the case primarily from the point of view of "public interest," we have not been unmindful of the sincere efforts of the trial judge to balance the equities between the Realty Company and Lotze. Were the case confined *solely* to the interests of these two parties we would have a different question before us. But, as we have shown, public rights and interests are involved.

The judgment is reversed, with directions to set it aside, and for the entry of a judgment consistent with this opinion.

Ned TURNER, Administrator of the Estate
of Rachel Turner, Deceased, Appellant,

v.

Tug FIELDS, Appellee.

Court of Appeals of Kentucky.

Jan. 31, 1958.

Action for injuries to a pedestrian who either walked into, or was struck by, defendant's automobile. From an adverse judgment of the Perry Circuit Court, C. C. Wells, J., the plaintiff appealed. The Court of Appeals, Cullen, C., held, *inter alia*, that an 81 year old pedestrian who was undertaking to cross street in middle of a block where there was no marked cross-walk and who was injured when she either walked into or was struck by defendant's automobile on street in business section of city was contributorily negligent.

Affirmed.

1. Automobiles ⇨217(3)

An 81 year old pedestrian who was undertaking to cross street in business section of city in middle of a block where there was no marked cross-walk and who was injured when she either walked into or was struck by defendant's automobile was contributorily negligent.

2. Automobiles ⇨227(3)

In action for injuries to pedestrian who was contributorily negligent in crossing street where there was no cross-walk and in not keeping a proper lookout for oncoming traffic, there was no basis for application of last clear chance theory, where there was no evidence that motorist saw pedestrian in a position of peril with-in time to avoid striking her.

3. Automobiles ⇨244(59)

In action for injuries to pedestrian who was contributorily negligent in crossing street where there was no cross-walk and in not keeping a proper lookout for



May 24, 1995

Mr. and Mrs. John Terlau
1090 Stallion Way
Union, KY 41091

Dear John and Judy:

On several occasions, we have met personally and there have been many, many phone calls between you and Tom Banta of our company concerning the 28-acre parcel of property which is located east of our Circleport development near the existing office building. You will recall that this property was originally paid for by the Commonwealth of Kentucky and left in the name of your family. You may not be aware that this property was used as a **loose fill site** by the Kentucky Department of Transportation when they built I-275, a matter which has just come to our recollection.

You may recall that at one point in 1987, we had an option on this property at \$15,000 per acre. Appraisers have set the fair market value of this property in its current condition and situation in the range of \$10,000 to \$20,000 per acre. The property is valued as such because while it has good visibility, to put it simply, it is **land locked**. Accordingly, it is **inaccessible for commercial uses**. In addition, the property is not serviced by sanitary sewers or by domestic water, all of which were extended, at our sole cost and expense, thousands of feet in distance in order to generate business activity at our Circleport development. Accordingly, any value which has been created in the neighborhood has, in fact, been created by our firm and we hold the rights to that value and control the extension of those utilities through our property. While we would not expect any municipality to enter the situation, I can assure you we will prevent anyone from accessing your property through our land except ourselves.

We have always taken a very polite, positive, and generous approach in our overtures to you, but you have simply rejected them out of hand and have been somewhat offensive in your mannerisms. Clearly, you do not have the ability to analyze the **reality** of the situation and you are on the brink of cutting off the estate of your relatives from a significant portion of its potential income.

P.O. Box 75020
Cincinnati, Ohio 45275
50 E. RiverCenter Boulevard
Covington, Kentucky 41011
606/292-5500 Fax 606/292-5599



John and Judy Terlau
Page Two of Two
May 24, 1995

Why do I make this statement? We at Corporex are at the point where we will now demonstrate to you the severity of your error. We will move forward with a business plan which will allow us to fully develop our adjoining property without the use of any land from the Gallenstein parcel for parking use. For your information, we are enclosing a plan which illustrates the reality of the situation which you have created by your unrealistic approach. Clearly, the multi-story structures which we will construct on our land will cause an irreversible situation. Indeed, this plan demonstrates the reality of the value of the parcel of property which you own. In effect, it is worthless except for accessibility through our property.

There is a possibility that your land may be developed for a residential, multi-family use and, of course, the value associated with such are less than 50%. Accessibility will have to be from the west and, you will still have to cope with the issue of sewer and water service. In that event, we may consider selling you an easement for sewer and water for a sum of money equivalent to the increase in value that utility extensions would contribute to your acreage for that purpose.

Finally, please be advised that all previous offers are rescinded, including in particular, our most recent offer of \$50,000 per acre which you failed to execute. We are at "ground zero." Indeed, we were also foolish to be making offers in excess of Fair Market Value. We will not be making any more offers; rather, we will be moving forward with our plans. However, there is a small window of opportunity on your part to get realistic and to avoid a substantial loss which you now can anticipate. During that window, we would entertain offers on your part closer to the Fair Market Value of the property.

Very truly yours,

A handwritten signature in cursive script, appearing to read "W. P. Butler".

William P. Butler
President

Enclosure

cc: James and Sandra Gallenstein
Ms. Gail Ramler

GALLENSTEIN PROPERTY

4 level concrete parking garage

4 LEVEL CONCRETE PARKING GARAGE

HOTEL

THE FORMER PROPOSED ROAD EXTENSION

SITE WATER RETENTION

OLYMPIA

GUESTROOMS

GUESTROOMS

GATEHOUSE

SPORT COURT

CIRCLEPORT DRIVE

Corporex's "Business Plan" as outlined in May 24, 1995 letter to Mr. & Mrs. John Terlau from William P. Butler, President

BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
COURTROOM 3A
BUSINESS MEETING
March 18, 1998
7:30 P.M.

Mr. Robert Millay, Chairman, called the meeting to order at 7:30 P.M..

COMMISSION MEMBERS PRESENT:

Mrs. Judy Arnett, Secretary/Treasurer
Mr. Terry Blades
Mr. Arnold Caddell
Mr. Don McMillian
Mr. Bob Millay, Chairman
Mr. Barry Neltner, Vice Chairman
Mr. Robert Ries
Mr. Ralph Rush
Mrs. Linda Schaffer
Mrs. Carol Smith
Mr. William Viox
Mr. Earl White, Temporary Presiding Officer

COMMISSION MEMBERS NOT PRESENT:

Mr. Phil Damstrom
Mr. Mike McKinney

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin Costello, AICP, Executive Director
Mr. Ed Coleman
Mr. David Geohegan, AICP
Ms. Jan Hancock, Secretary
Mr. Mitch Light
Mr. Kevin Wall, AICP

Mr. Ries seconded the motion and it carried unanimously. Mr. Costello stated that the Committee Meeting for this request is scheduled for March 24, 1998 at 5 P.M..

4. Change in Concept Development Plan

The request of Espey, Huston & Associates, Inc. (applicant) for Daniels Investments (owner) to consider a Change in Concept Development Plan for an approximate 11-acre site known as Lot 9, Turfway Commercial Park Subdivision, Florence, Kentucky. The request is for a change in the approved Concept Development Plan to permit office, baseball field, and indoor and outdoor soccer field uses in an Office Two/Planned Development (O-2/PD) Zone.

Staff Member Mitch Light presented the Committee Report which recommended approval of the request based on the findings of fact, but subject to conditions (see Committee Report). The applicant has signed the letter agreeing to the conditions.

There being no discussion, Mr. Viox moved by Resolution to the City of Florence that the request be approved based on the Committee Report. Mrs. Smith seconded the motion and it carried unanimously.

5. Change in Concept Development Plan

The request of Corporex Parks of Kentucky, Inc (owner) to consider a Change in Concept Development Plan for approximately 33.5 acres located along both sides of Olympic Boulevard and along the west side of Mineola Pike in Circleport 1 Subdivision, Boone County, Kentucky. The request is for a change in the approved Concept Development Plan to allow hotel, office, retail, bank, and restaurant uses in an Industrial One/Planned Development (I-1/PD) Zone.

Staff Member Kevin Wall presented the Committee Report which recommended denial of the request based on the findings of fact (see Committee Report).

Mr. Costello stated that, per Mr. Lawson Walker's request, he had distributed to the Commissioners a letter from Mr. Walker dated March 16, 1998 in regard to this request (see Exhibit 1). Chairman Millay asked Counselor Wilson to comment in regard to the letter. Counselor Wilson stated that Mr. Walker requests that the letter be part of the record. Counselor Wilson stated that the letter will be part of the record when the request goes to Fiscal Court.

Mr. Caddell moved by resolution to the Boone County Fiscal Court to adopt the recommendation to deny the request based on the findings of fact in the Committee Report. Mr. McMillian seconded the motion and it carried unanimously.

EXHIBIT "B"

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Arnold Caddell, Chairman
Zone Change/Concept Development Plan Committee

DATE: March 18, 1998

RE: Request of **Corporex Parks of Kentucky, Inc. (owner)** to consider a Change in Concept Development Plan for approximately 33.5 acres, located along both sides of Olympic Boulevard and along the west side of Mineola Pike, in Circleport I Subdivision, Boone County, Kentucky. The request is for a change in the approved Concept Development Plan to allow hotel, office, retail, bank, and restaurant uses in an Industrial One/Planned Development (I-1/PD) zone.

REMARKS:

We, the Committee, recommend denial of this request based upon the following findings of fact:

Findings of Fact

The Zone Change Committee had originally agreed to recommend approval of this application subject to several conditions that are necessary to ensure reasonable agreement with the 1995 Boone County Comprehensive Plan and compliance with Article 15 "Planned Development District" of the Boone County Zoning Regulations, particularly Section 1514 "Planned Development Standards." These conditions were the result of the Committee's determinations, as well as unresolved issues related to the proposal that were identified in the Staff Report. The recommended conditions numbered 1 through 4 pertain to: the provision of an on-site pedestrian system; architectural requirements/commitments for the proposed nine story hotel structure and the four, one story retail-oriented structures; the provision of definitive landscape guidelines; and, the provision of open space amenities within the development. In addition, the Committee asked the applicant to agree to condition #5 which reads as follows:

Upon the fulfillment of the events stated below, the developer shall dedicate a minimum sixty (60) foot wide right-of-way for a future street connection between the Circleport Drive/Olympic Boulevard intersection and the west property line of the development (adjoining the "Gallenstein" property). This right-of-way shall run between the Residence Inn lot and the proposed Courtyard Hotel in the same general alignment where a street connection was indicated on the applicant's approved 1986 Concept Development Plan for the same site. This right-of-way shall be publicly dedicated on a Final Plat: after the Courtyard Hotel development (designated as "Site A" on the attached exhibit labeled "Condition #5 Exhibit"), or the nine story hotel development (designated as "Site B" on the attached exhibit labeled "Condition #5 Exhibit"), have been constructed and granted Certificates of

Occupancy; and, within three (3) months of being given constructive, written notice by the owners of the adjoining tract to the west (the "Gallenstein" property), to both the Planning Commission and the applicant, of their intent to develop their adjoining property. This constructive notice shall include the submission of the appropriate development applications to the Planning Commission which include the construction of Olympic Boulevard from its current terminus in the Circleport I development, through the adjoining property to the west, to Point Pleasant Road. Up until the time that this right-of-way dedication is made, the applicant shall not grade, alter, or improve the area for the future right-of-way in a manner which would impede, hinder, or prohibit this future right-of-way from being developed with a public street that conforms to the street construction requirements of the Boone County Subdivision Regulations.

The "Condition #5 Exhibit" mentioned above is attached to this Committee Report.

The Committee has concluded that these conditions reasonably and fairly address this proposal's impacts, and are necessary to fulfill the Planned Development Standards stated in Section 1514 of the Zoning Regulations and conform to the provisions of the Comprehensive Plan as outlined in Planned Development Standard #11 "Conformance with Comprehensive Plan" in Section 1514. Specifically, the applicant has failed to agree to condition #5 outlined above regarding the future dedication of a street right-of-way for a street connection between the existing Circleport Drive/Olympic Boulevard intersection and the west property line of the site in question. An actual, constructed, publicly dedicated street connection in the same geographic alignment now contemplated by condition #5 was part of a Concept Development Plan approval requested by this applicant for this same site in 1986.

Conditional approval was granted by the Boone County Fiscal Court for the 1986 application. Because the Planned Development District requires, both in 1986 and presently, a "plan certain" approval through the Public Hearing process as permitted by Statute which, in essence, is the "zone" for a specific development, this street connection is a requirement of the 1986 Concept Development Plan approval because it is an integral part of the Concept Development Plan itself. This "plan certain" approval also grants the applicant vested rights to develop the property in the manner illustrated on the Concept Development Plan and in conformance with any conditions of approval, regardless of subsequent changes to the Boone County Zoning Regulations. As the 1986 Concept Development Plan illustrates an actual, constructed, publicly dedicated boulevard style street connection with an extensive landscaped median that is within a one hundred foot (100') wide right-of-way, condition #5 merely requires the dedication of a sixty foot (60') wide right-of-way (the minimum width permitted by the Boone County Subdivision Regulations for the type of street in question), and no actual street construction responsibilities on the part of the applicant when, and if, certain events occur.

The 1986 commitment to provide this publicly dedicated street connection is illustrated and/or noted in the following documents:

- A. Illustrated on the approved 1986 Concept Development Plan. This plan was prepared and submitted for review by the applicant, and agreed by the applicant that following the Concept Development Plan was a condition of the Zoning Map Amendment approval. The minutes of the August 27, 1986 Public Hearing indicate that the Planning Commission was reviewing a specific Concept Development Plan proposal, and the applicant agreed to the conditional approval by the Planning Commission at the September 17, 1986 Business Meeting as noted in the minutes of said meeting.
- B. Mentioned in the Staff Report for the 1986 Concept Development Plan request.
- C. Referenced in a letter from Tom Banta to Kevin Costello dated August 22, 1986, regarding the 1986 Concept Development Plan.
- D. Illustrated on the Preliminary Development Plan for the 1986 proposal that was approved by the Planning Commission on November 5, 1986. This plan was prepared and submitted by the applicant in accordance with the approved Concept Development Plan.
- E. Mentioned in the Staff Report dated November 5, 1986 for the Preliminary Development Plan application.
- F. Mentioned in a letter from Tom Banta to Jim Sturdevant regarding the Preliminary Development Plan, dated 10/31/86. This letter states that the streets will be publicly dedicated.
- G. Illustrated on the Improvement Plan for the 1986 proposal that was approved by the Planning Commission on January 21, 1987. This plan was prepared and submitted for review by the applicant in accordance with the approved Concept Development Plan.

The purpose of the Preliminary Development Plan and Improvement Plan applications mentioned above is to review and approve land subdivisions, including subdivision improvements (e.g., utilities and roads) that will be publicly dedicated, such as the street connection shown on the 1986 Concept Development Plan and subsequent approved plans. Development on the site in accordance with the plans mentioned above; and the Boone County Subdivision Regulations, has already commenced, including the construction of all public streets shown on the 1986 Concept Development Plan with the exception of the street connection between the Circleport Drive/Olympic Boulevard intersection and the adjoining property to the west.

In addition, although the applicant mentioned an intent to acquire the adjoining property to the west in order to potentially expand the Circleport I development onto said property in the Public Hearing for the 1986 Concept Development Plan application held on August 27, 1986, there is no mention in the minutes for this Public Hearing that the provision of the street connection in question was contingent upon this applicant acquiring the immediate

adjoining property to the west, nor does the Committee consider such a contingency to be relevant to sound community-wide planning. Further, as noted in a letter from the applicant to the owner of the neighboring property to the west, the property to the west is essentially landlocked by the applicant's proposed development and the right-of-way connection contemplated by condition #5 is necessary in order for this adjacent property to reasonably develop in accordance with its Industrial One (I-1) zoning designation. The proposed development of the property in question would perpetuate, perhaps irreversibly so, the landlocked condition of the neighboring property and is a foreseeable impact of the proposed Concept Development Plan.

Although the Committee recognizes the applicant's right to seek modifications to an approved Concept Development Plan and its accompanying conditions as circumstances change over time, the Committee has not found any legitimate rationale for eliminating the street connection aspect of the plan as explained further herein. Simply, it is a necessary component of both the approved 1986 Concept Development and the current proposal. This point is particularly relevant when considering that the street connection which would be facilitated by condition #5 was deemed to be warranted in the 1986 Concept Development Plan, which has essentially the same land uses as the proposed Concept Development Plan, regardless of any negotiations with the owner of the adjoining property to the west.

Conditions agreed through Public Hearing procedures, such as the one in question, which require either the dedication of right-of-way for a future street connection between adjoining properties or the actual, physical construction of a street connection have historically been an important planning tool in Boone County. Comparable projects that were developed in accordance with such agreed conditions in Boone County include: Park West International, SouthPark, Airport Exchange Business Park, Airpark International, and Gateway International. A condition which required the dedication of a road right-of-way to an adjoining property was agreed to by this same applicant for the Gateway International development.

The provision of transportation connections between different developments or properties is required by Planned Development Standard #10 "Transportation Connections and Entry Points" as stated in Section 1514 "Planned Development Standards" of the Boone County Zoning Regulations. The pertinent portion of this standard states "the provision of transportation connections (street connections, pedestrian paths and sidewalks, bicycle facilities) shall be provided in all planned developments unless physically unfeasible or undesirable due to land use characteristics."

The Committee has not identified: any rationale as to how such a street connection is physically unfeasible, particularly since the topography of the alignment is relatively level and was previously approved in the same location; how such a street connection is undesirable due to land use characteristics when considering that the adjoining tract, that is currently vacant, shares the same zone as the underlying zone for the proposal in question; nor has the Committee identified any other tangible route for a street connection

between this project and the adjoining property. In addition, the second sentence in the introductory paragraph of Section 1514 "Planned Development Standards" of the Boone County Zoning Regulations states "the Concept Development Plan shall fulfill the following criteria unless a portion of the criteria do not apply or relate, in whole or part, to a specific proposal." The Committee has not identified any rationale as to how standard #10 does not apply or relate, in whole or part, to the Concept Development Plan request in question.

Similar requirements for the provision of street connections between developments and adjoining properties are stated in Section 305.P "Temporary Dead End Streets and Street Connections to Adjoining Tracts or Areas" of the Boone County Subdivision Regulations. Because the applicant has refused to agree to a condition of approval that would provide a right-of-way connection between the development in question and the adjoining property to the west, the Concept Development Plan request does not conform to an applicable requirement of the Boone County Subdivision Regulations. This refusal also does not conform to the intended purpose of the Transportation Management Regulations provided in Article 32 of the Boone County Zoning Regulations, as expressed in Section 3200 "Intent."

The 1995 Boone County Comprehensive Plan, the current, official Comprehensive Plan for the joint planning unit adopted pursuant to Chapter 100 of the Kentucky Revised Statutes, makes several references to the provision of street connections between adjoining tracts through the development process. These include the following:

- A. Developments in Boone County must recognize the potential impacts of associated traffic on adjoining properties and transportation systems. The need exists to protect the capacity of the existing roadway network, and to plan improvements to accommodate new development and travel patterns. Access management provisions include the coordination of curb cuts, adequate corner clearance and site distances for access points, adequate space between access points, shared access points and parking facilities, and provisions for access connections to adjoining properties, and dedication of public right-of-way. In subdividing property, arterials or collectors should not be used for direct access to lots, rather a system of local streets should feed into the collector and arterial system (Land Use Element, "Access Management," pg. 211).
- B. Developments in Boone County must be designed, where appropriate, to improve the County's transportation network, hierarchical system of classification and function must be used in the planning for and designing of new developments. Collector roadways should be extended and developed to provide for the safe movement of traffic through and between subdivisions. Developments along existing arterials and collector roadways should not have direct driveway access, but be served by a local street. Appropriate road connections should be constructed to provide alternate routes for traffic to and through specific projects and to enhance the capacity of existing streets. Parallel and frontage roads should be used to minimize impacts of individual sites on collector and arterial roadways.

Appropriate pedestrian networks should be incorporated into the design of developments which will generate or experience significant pedestrian use. These networks should not only provide internal paths, but should provide connections to adjoining uses where appropriate. Public open space and recreation sites should be connected by bicycle and pedestrian paths where appropriate (Land Use Element, "Transportation and Pedestrian Network," pg. 211).

- C. Priority shall be given toward maintaining, protecting and improving the existing road system (Goals and Objectives, "Transportation," first goal, Objective 11).
- D. Existing infrastructure and services (e.g. systems and facilities for: water treatment and distribution, wastewater collection and treatment, natural gas distribution, communication lines, police and fire services and associated municipal buildings, schools, public roads and storm water management) shall be utilized efficiently. The phasing of proposed development shall be examined as a means of addressing significant impacts on existing infrastructure and services (Goals and Objectives, "Public Services and Facilities," Objective 1).
- E. New connector streets shall be developed where needed and feasible thus lessening the total dependence on arterial streets. Existing connector streets shall be improved where needed (Goals and Objectives, "Transportation," second goal, Objective 2).
- F. Proper access to adjoining property should be provided and/or retained when a property develops or redevelops (Goals and Objectives, "Transportation," second goal, Objective 3).

Further, the Land Use Element (Area D-3, Turfway-Mineola Area, pp. 225-226) states that Circleport I and the adjoining property to the west should develop in a Business Park manner, and that Rolling Green Acres Subdivision, which adjoins both of these tracts, should develop as Industrial. This portion of the Land Use Element also states that "the road network in this section should be improved." The 1995 Boone County Comprehensive Plan is a county-wide policy plan and as such it largely does not outline specific connections between localized subdivision streets, but sets forth the community-wide policy directives noted above for creating such connections.

Because the applicant has refused to agree to a condition of approval that would provide a right-of-way connection between the development in question and the adjoining property to the west, the Concept Development Plan request does not conform to the Comprehensive Plan as is required by Planned Development Standard #11 "Conformance with Comprehensive Plan." This standard states "all planned developments shall conform to the provisions of the adopted Comprehensive Plan and take into account the limitations of an existing or planned infrastructure." Because the applicant has refused to agree to a condition of approval that would provide a right-of-way connection between the development in question and the adjoining property to the west, the Concept Development Plan request does not conform to the provisions of the 1995 Boone County Comprehensive Plan stated herein.

The Committee has concluded that the provision of a right-of-way for a future street connection as sought by condition #5 is necessary in order to serve the public interest as well as address the impacts of this development. This street connection would continue Olympic Boulevard, which already connects Turfway Road to Mineola Pike and the Mineola/I-275 interchange area, and which also acts in some manner as a frontage road for I-275. The Committee expects this street connection to eventually connect Olympic Boulevard to Point Pleasant Road when the intervening property is developed, as noted in condition #5. The street connection in question would not only facilitate vehicular movement between the uses located along Olympic Boulevard, but would also help to disperse traffic within the major road system therefore lessening the overall traffic burden during peak hours; this strategy is discussed in essence in the portions of the Comprehensive Plan outlined above.

Olympic Boulevard is classified by Article 32 "Transportation Management Regulations" of the Boone County Zoning Regulations as a collector street which is defined by that article as "streets having the dual function of providing land access and traffic circulation service within residential, commercial, and industrial areas. Collector streets provide the connecting link between local streets and the arterial network." In addition, Article 5 "Definitions" of the Boone County Subdivision Regulations states under the definition of "street, collector" that collector streets are "public thoroughfares which serve to collect and distribute traffic primarily from subcollector to arterial streets." "Collectors" is described, in part, by the Boone County Thoroughfare Plan, which is included in the 1995 Boone County Comprehensive Plan, as "county roads that are intended to carry local traffic over short distances and distribute traffic to arterials and/or local streets. (short and medium distance trips) . . ." (pg. 194). When considering the definitions noted above and the fact that the western end of Olympic Boulevard is now proposed to dead end into a parking lot, the Committee has concluded that the section of this road from Mineola Pike westward is not effectively fulfilling the role of a collector street as it was originally intended and designed.

The Committee has concluded that the street connection that would be provided within this right-of-way dedication benefits the applicant and the entire Circleport I development based on the following reasons:

- A. The street connection would provide an alternate route in and out of the Circleport I development for emergency vehicles and during periods of high traffic. Emergency access for fire and police services, emergency medical services, and other back-up, quick response emergency services, is particularly important when considering that: the area at large is growing at a steady pace; the site is near an international airport which could facilitate, or be the subject of, disasters or other emergencies of dramatic proportions; and, the site itself is proposed to be developed in a fairly intensive manner, including among other uses, a nine story hotel, a total of 575 hotel rooms, and an existing six story office building that is proposed to have a substantial addition.

Although the Circleport I development currently has two vehicular entrances into the subdivision, both of these vehicular entrances intersect with the same street, Mineola Pike. This single street could be blocked during periods of emergency. In addition, directing all vehicular traffic onto the same street during periods of high traffic does not realistically disperse traffic within the major road system, as sought by the Comprehensive Plan, as would be expected with another vehicular route that connected to another major street.

- B. The proposed Concept Development Plan includes almost 50,000 square feet of restaurant and retail-type uses which are oriented towards the I-275/Mineola Pike interchange. These uses include a freestanding convenience store and drive-through fast food restaurant that were not part of the 1986 Concept Development Plan; in fact, drive through fast food restaurants were specifically prohibited in the 1986 approval partly due to the inherent traffic characteristics of this land use. Based on the applicant's own statements in the January 28, 1998 Public Hearing for this request, these facilities are intended to provide dining, retail, and business support services for the area at large and not just the 33.5 acre tract in question; such services are now virtually nonexistent in this area of the county. The area at large includes several office/light industrial subdivisions (both developed and under development), such as the Riverview (Al Neyer, Inc.) development that was recently granted zone change approval along Point Pleasant Road. These developments in the area at large would use the restaurant and retail-type uses shown on the proposed Concept Development Plan.

For instance, access between Riverview and Circleport I via the proposed street connection, when it is eventually connected to Point Pleasant Road, would help avoid "bottle-necking" the interchange area, and therefore benefit the proposed Circleport I development by providing a more direct route to the proposed commercial services in Circleport I. The area at large also includes larger vacant areas that are currently zoned Industrial One (I-1) and that are anticipated to develop and use these services, including the neighboring Gallenstein tract to the west and Rolling Green Acres Subdivision, which would also benefit the proposed Circleport I development. This street connection, when it is eventually connected to Point Pleasant Road, would be the most expedient vehicular route between these anticipated developments and the consumer services proposed in Circleport I.

- C. The proposed Concept Development Plan includes a total of 575 hotel rooms, which is 155 more rooms than are currently approved for the site when considering the Change in Concept Development Plan approved in 1995 to permit a Residence Inn hotel. Based on figures provided in the Institute of Transportation Engineers, Trip Generation Manual, 6th Edition, these 155 additional hotel rooms would create an additional 1,382.6 average daily vehicular trips beyond the 425 hotel rooms that are currently approved for the site. When considering the number of hotel rooms between the 1986 Concept Development Plan (which includes the street connection) and the proposed Concept Development Plan, without the Residence Inn, a total of 305 more hotel rooms are proposed beyond that approved in 1986. These 305 additional hotel rooms would create an additional 2,720.6 average daily vehicular trips beyond the 270 hotel rooms that were approved in 1986.

In addition, the proposed Concept Development Plan includes a "luxury hotel," which by the applicant's description would be the only one of its type in the Cincinnati/Northern Kentucky International Airport vicinity. Because the viability of the proposed hotels is integrally related to the proximity of the site to the Airport; the street connection, when completed to Point Pleasant Road, would expedite surface transportation between this site and the Airport; and, because of the increase in the scope of the hotel uses and the integral relationship between these uses and the Airport, the street connection would provide a tangible benefit to the Circleport I development.

Also based on figures provided in the Institute of Transportation Engineers, Trip Generation Manual, 6th Edition, the proposed Concept Development Plan would generate approximately 14,263.49 average daily vehicular trips which is 2,902.83 more than the approximately 11,360.66 average daily vehicular trips that would be generated under the approved plan (figure includes the combination of the 1986 plan and the Residence Inn change approved in 1995). This represents a 25.55% overall increase.

- D. The proposed street connection provides quicker access to the Airport for the existing office and industrial uses in the Circleport II and Circleport III developments. These developments were built by the same applicant. Travel distance would be approximately 50 percent less using Olympic Boulevard through the adjoining property to Point Pleasant Road to the Airport than using the interstate system. This distance would be further reduced when the Airport relocates Donaldson Road closer to Mineola Pike in accordance with the Airport's Master Plan.

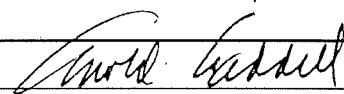
The Committee has also concluded that condition #5 is the least restrictive method on the part of the applicant for facilitating the provision of a street connection between the two properties in question. The condition does not require the applicant to wholly or even partially perform or financially participate in any actual street construction, but merely dedicate a 60 foot wide right-of-way, the minimum amount of right-of-way permitted by the Boone County Subdivision Regulations for the type of street in question; the approved 1986 Concept Development Plan illustrates a boulevard style street that would be constructed by the applicant within a 100 foot wide right-of-way. In addition, the right-of-way dedication set forth in condition #5 is not even eminent. The dedication is required only when and if a number of other events occur, including events that deal with actual, tangible development on the property in question that would eventually benefit from a street connection in the location in question, and imminent development of the neighboring property to the west. As noted above, the development on the applicant's property would have to be a hotel, which, as discussed above, has an integral relationship and need for the street connection which may eventually result from condition #5. If not all of these events specified in the condition occur, then the right-of-way dedication is not required.

The amount of land involved in the right-of-way dedication outlined in condition #5 is less than two percent (2%) of the land area included in the Change in Concept Development Plan application, and, by the applicant's own admission, is in an area that would otherwise only be used for off-street parking that is over and above the needs of the development in

question. This extra parking would be constructed at the applicant's own expense, whereas the costs of the street connection that would be facilitated by the right-of-way dedication would be accommodated by others.

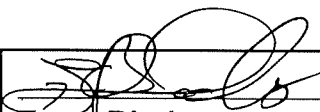
The purpose of the five conditions is to approve the revised Concept Development Plan, its change in uses and increases of intensity without effectively landlocking the adjoining Gallenstein property to the west. Approving this revised Concept Development Plan as proposed, with the conditions noted herein, provides the applicant vested rights protection, prevents landlocking the adjacent property as a result of the revised Concept Development Plan, and only requires or triggers the right-of-way dedication sought by condition #5 when reasonable to do so. In addition, the applicant may still develop the site in accordance with the approved 1986 Concept Development Plan.

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.



Arnold Caddell, Chairman

For Against _____
Abstain _____ Absent _____

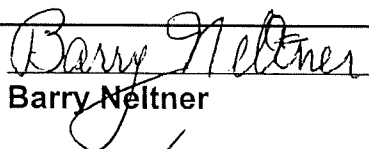


Terry Blades

For Against _____
Abstain _____ Absent _____

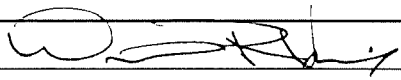
Phil Damstrom

For _____ Against _____
Abstain _____ Absent



Barry Neltner

For Against _____
Abstain _____ Absent _____

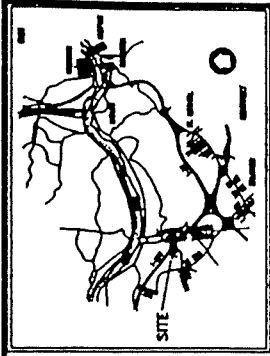


Bill Vox

For Against _____
Abstain _____ Absent _____

TOTAL: 4 FOR _____ AGAINST _____ ABSTAIN _____ / ABSENT

CONDITION #5 EXHIBIT



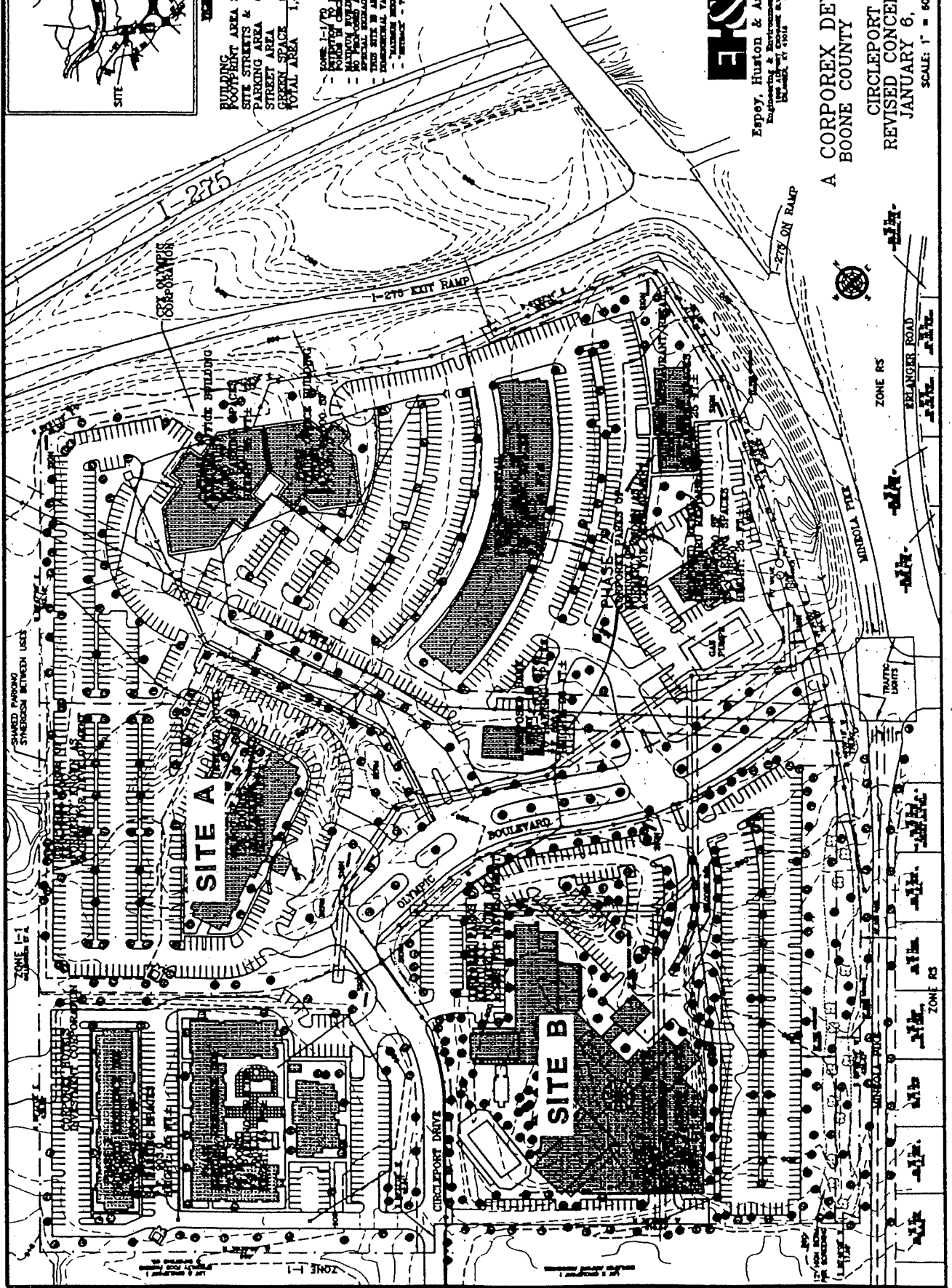
VEGETATION
 BUILDING AREA 212,708 SF/4.88 AC.
 SITE STRIPES & 698,447 SF/14.61 AC.
 PARKING AREA 67,687 SF/1.52 AC.
 STREET AREA 694,593 SF/15.74 AC.
 TOTAL AREA 1,481,700 SF/33.58 AC.

- ZONE L-1 TO BE MAINTAINED BY EXISTING
- MAINTAIN EXISTING TREES TO REMAIN
- NO TREE REMOVAL ALLOWED IN EXISTING
- SPECIAL STUDY TO BE CONDUCTED TO DETERMINE
- EXISTING TREES TO BE PRESERVED
- MAINTAIN EXISTING TREES TO REMAIN
- MAINTAIN EXISTING TREES TO REMAIN
- MAINTAIN EXISTING TREES TO REMAIN



Esk
 Espey, Huston & Associates, Inc.
 ENGINEERING & ARCHITECTURAL CONSULTANTS
 100 EAST 10TH STREET, SUITE 201
 BOONE, KY 40306 (606) 337-4441

**A CORPOREX DEVELOPMENT
 BOONE COUNTY KENTUCKY**
 CIRCLEPORT ONE
 REVISED CONCEPT PLAN
 JANUARY 6, 1998
 SCALE: 1" = 60'



PUBLIC HEARING ITEM NO. 3:

Commission members present: Mrs. Arnett, Secretary/Treasurer, Mr. Caddell, Mr. Millay - Chairman, Mr. Neltner - Vice Chairman, Mr. Ries, Mr. Rush, Mrs. Schaffer, Mrs. Smith, and Mr. White - Temporary Presiding Officer.

Chairman Millay introduced the third item on the Agenda:

3. Applicant: Corporex Parks of Kentucky, Inc. (owner)
Request: Change in Concept Development Plan

The request of Corporex Parks of Kentucky, Inc. (owner) to consider a Change in Concept Development Plan for approximately 33.5 acres along both sides of Olympic Boulevard and along the west side of Mineola Pike, in Circleport I Subdivision, Boone County, Kentucky. The request is for a Change in the Approved Concept Development Plan to allow hotel, office, retail, bank, and restaurant uses in an Industrial One/Planned Development (I-1/PD) Zone.

Staff Member Kevin Wall provided the Commissioners with a full-size copy of the Concept Development Plan. Mr. Wall presented the Staff Report which included a GIS presentation (see Staff Report).

Chairman Millay asked for the applicant's presentation.

Mr. Tom Banta, Senior Vice President, Corporex Parks of Kentucky, Inc., stated that Mr. Wall indicated what had happened eleven years ago -- but a lot has changed since then. He stated that they only saw the Staff Concerns for the first time this evening, but they are in agreement with many of them and they can be worked out at the Committee level. He does not feel that they will be a major issue. Mr. Banta reviewed the Concept Development Plan and stated that part of the request for the change is market driven. Office has not developed in this area as fast as they would have liked. He stated that they are in the process of filling a 59,000 square foot vacancy in the building left by CitiCorp. There has been a lesser demand for office space in the marketplace and a higher demand for hotel space. He stated that the overall development is 650 acres. There is a strong demand for service businesses (such as coffee shops) to service the businesses in the area and the hotel. Approval has been received for the planned Marriott Courtyard Hotel, and that is prompting their request for the change in the plan. They would like to start the hotel immediately after approval of the Concept Plan. He stated that the other major change in the plan is the flipping of the hotel space with the retail space, and part of the reasoning for that is market driven. The retailers want to be by the interstate and the hotel does not mind being back from the interstate. It is a major high-end hotel and conference center with 300 rooms -- it is a first class

facility. He stated that they have tried to pick up the architecture of the Toyota building.

Mr. Banta indicated the existing residential houses and stated that the retail will have the greater impact on the residences. Retail traffic is in-and-out and heavier than traffic for a hotel -- which is more residential in nature. Initially there was a retail building about 200 feet from the nearest house, and the retail is now more than 400 feet from the nearest house. He noted that the house sits low and the retail site sits high and the residents will not see the retail -- which is a positive change. He stated that they are seeing a strong demand for restaurants in the area. There are no restaurants in the area except for the one at the Holiday Inn. There is no gas service from the other side of I-75 out to KY 237. He stated that most people now opt for the combo stores -- such as a BP and Wendy's combination. He indicated where the free-standing restaurant is proposed and where the retail type shops are proposed. He stated that they can work out the pedestrian walkway. They want walkways from the offices to the hotel and will incorporate them. He noted that there is mention in the Staff Concerns that they got rid of some of the natural water features on the site, which is true. He noted that they have not shown the fountains and other features and this can be worked out. He stated that since they submitted the last plan for Circleport III, a young boy walked out on the ice and nearly drowned in front of Sterling Cut Glass. Since that incident, the company has backed away from standing bodies of water. He stated that they have set the hotel as far back as the site will allow. They have a 35-foot road widening easement and a 50-foot greenbelt. He stated that he believes this plan will have a lesser impact on the residents than the previously approved plan.

Mr. Banta stated that another major change is that the road that went to the Gallenstein property has been eliminated. At the time of the previous plan, Corporex was in the process of on and off talks with the Gallensteins about acquiring the property, which is why they showed the road. There is no benefit to this development to have that road if they do not have the Gallenstein property, and no public need would be served by that road. They have set their buildings back so that if in the future a public use is determined for a road connection, there is room for a right-of-way through there that would not impact any of the buildings or uses.

Mr. Banta stated that they would be happy to work with the Committee in regard to the Staff Concerns.

Chairman Millay 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.

Mr. Dave Foltz, a property owner on Mineola, stated that he believes he is also speaking for the other property owners. He questioned how far the road widening would extend. He stated that the traffic on Mineola

Pike is horrendous and asked the Commissioners to come out and look at it. He stated that this request will increase traffic. He stated that they are talking about widening the road from I-275 to the first entrance to the businesses, which will ease the traffic coming off I-275 -- but it will not help with the traffic that is on Mineola. He asked that the traffic impact be considered. Mr. Foltz stated that he rents out the house he grew up in there and he loves the property. He feels that there will be a serious increase in traffic flow. He stated that Corporex has done a wonderful job of landscaping. He questioned how far up Mineola this goes and how close it will be to the houses. He agreed with Mr. Banta that service businesses are needed in the area, but he is concerned about a gas station there and the safe delivery of gas to the station on a road like Mineola. There have been quite a few accidents at the entrance on Mineola and he does not want an accident with a tanker carrying 20,000 gallons of gasoline. He is also concerned about the retail. He questioned the zoning of The Gap. The amount of traffic The Gap brings on Saturdays and in the evenings is horrendous and, if there is more retail, there will be more traffic. He is offended by comments in regard to the nature and character of the residences along Mineola Pike, which have been there for fifty years -- they may be small compared to Corporex, but they try and maintain their properties and they are being encroached on. He is concerned about the traffic. He asked where the 12.4 acres of green space will be -- will it be on Mineola or is it spread around? He is concerned about the impact of the noise and construction traffic on the residents. He is concerned about dirt in their yards from the signs and the road widening. He questioned the idea of retail -- particularly heavy retail -- up against the residences. He asked the Commissioners to visit the site and see the effect on the residences.

Mr. Banta stated that as part of the rezoning of the entire Circleport I to I-1, they gave the 35-foot easement that runs all the way down to The Gap. He stated that he does not know beyond the last warehouse across from The gap, but he thinks it is airport property other than one or two private residences. He stated that he does not know what plans or timetable the county has for widening, but the land was provided by Corporex. He stated that they agree with some of Mr. Foltz' comments regarding the traffic and pushed hard with CitiCorp lobbying the state. The traffic light there has helped.

Mr. Banta stated that he hopes it was not his comments about the houses that disturbed Mr. Foltz. He believes they have shared a good relationship with most of the residents there. He stated that Corporex tries to minimize the impact of construction traffic and most of the construction traffic will come down into the subdivision and not use Mineola more than it has to. In regard to the question about green space, Mr. Banta stated that the area along the residences will be heavily landscaped with a 12-foot high earthen berm. He stated that they try to err on the high side of landscaping standards. The green space is spread throughout the development, but the largest area is on Mineola Pike. He stated that from the edge of Mineola Pike to the edge of their

parking lot, would be just in excess of 100 feet before the road is widened and about 70 feet after it is widened. The building is back another 160 feet from the edge of the parking.

Chairman Millay asked if there was anyone else present who wished to speak in opposition.

Attorney James A. Dressman, III, representing the Gallenstein family, submitted a Position Statement. He stated that they were before the Planning Commission in 1995 and the Position Statement reflects what they set forth at that time in regard to the extension of Olympic Boulevard to the Gallenstein tract. He stated that to support a Change in Concept Development Plan, there has to be a change in circumstances. If he heard correctly, the change is that they no longer have an interest in the Gallenstein tract -- or they no longer have negotiations underway -- but that is not a consideration of the Planning Commission. It was not a consideration in 1986 when the extension was required and is not a consideration when extensions or roadways are required to adjoining tracts on a regular basis in similar situations that have come before the Planning Commission. He stated that Mrs. Gallenstein came before the Planning Commission in regard to the Airport Exchange Boulevard project across the road and one of the conditions was the extension of Airport Exchange Boulevard to Point Pleasant Road -- which did not derive benefit to Airport Exchange development -- but facilitated development off Point Pleasant Road. He stated that the intention of planners is an extension of a parallel route along I-275 to provide alternate routes to the development that will occur around the airport. The Airport's Long-Range Plan provides for a rerouting of Route 20 and an extension from Route 20 along a route similar to Olympic Boulevard. He stated that in regard to the extension to the Gallenstein property, there is a long-term public benefit to be derived. A number of Comprehensive Plan Elements would be violated if the Olympic Boulevard extension is removed, most of which were presented by Mr. Wall, and their Position Statement covers any Mr. Wall may have missed. He stated that this is an attempt by Corporex Parks to horde the benefits of a nice interchange. By closing off Olympic Boulevard, they effectively preclude access to the interchange that was paid for by tax dollars and was intended to be a regional access point. It would preclude access to a large section of Boone County lying west of this project. He stated that everything else is in the Position Statement (see Exhibit 1).

Chairman Millay asked if there was anyone else present who wished to speak in opposition to the request. There being no response, he asked if there were any comments or questions from the Planning Commission.

Mr. McMillian asked if they would consider a Park & Ride for the transit authority there since this is retail uses. Mr. Banta stated that he could not respond at this time as he had not considered this.

Mr. Neltner asked if the local fire district has a ladder truck that can go up 100 feet. Mr. Banta responded "no". He stated that Covington does

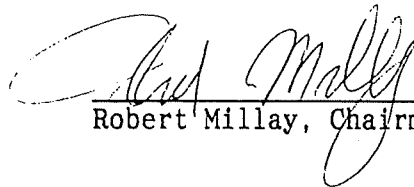
not have one either to go up to the building at River Centre, and nor does any other municipality. He stated that they have ladder trucks that go to the fifth floor of the office building. He stated that with the higher levels it is a whole different Building Code -- the stairwells have to have smoke evaluation systems, sprinklers, etc., which are intended to compensate for the fact that a ladder will not get that high. He added that the difference may not be as great as it seems since with an office building the floor heights are generally 13.6 feet, but with a hotel they are 8.6 to 8.7 feet -- so there are more floors for the same building height equivalent. The hotel will be bigger than the office building, but not as much as it sounds.

Mr. Neltner asked if the roads in Circleport are dedicated. Mr. Banta responded that all the roads in the Boone County portion are dedicated, except a section of Olympic Boulevard which has not been dedicated but they are preparing to take it through the dedication process now. The roads in Kenton County were build by Erlanger through a Bond Issue and are publicly dedicated.

There being no further comments, Chairman Millay stated that the Committee Meeting for this item will be on February 9, 1998 at 4 P.M.: This item will be on the Agenda for the Business Meeting on February 18, 1998 at 7:30 P.M..


The Chairman closed this Public Hearing.

APPROVED:



Robert Millay, Chairman

Attest:



Jan Hancock, Recording Secretary

POSITION STATEMENT

TO: Boone County Planning Commission

FROM: James A. Dressman, III, attorney for M. Lee Gallenstein

SUBJECT: Request of Corporex Parks of Kentucky, Inc. for a Change in Concept Development Plan

DATE: January 28, 1998

Pending before the Planning Commission is a request of Corporex to modify radically its previously approved Concept Plan. As an adjoining property owner, M. Lee Gallenstein (through Judy Terlau, Power of Attorney) is not opposed to this proposed change in uses. However, she is concerned with changes in the design.

This Position Statement is written to help ensure that there is no substantial change in provisions for roadways and utilities. In particular, the Concept Plan which was approved by this Commission on September 17, 1986, clearly indicate the extension of the Olympic Boulevard right-of-way from Mineola Pike to the Gallenstein property line. Any change for the project should continue to require the extension of the street for the proper development of the area. Also, the road extension should be within a publicly dedicated right-of-way. Finally, the pavement and properly sized utilities should also be brought to the common property line. These requests are proper for the following reasons:

I. Good Planning

A. Comprehensive Plan

An Objective of the Transportation Element of the 1995 Boone County Comprehensive Plan is that "[p]roper access to adjoining property should be provided and/or retained when a property develops or redevelops." (p. 14). The current Concept Plan relative to the extension of Olympic Boulevard complies with this Objective.

Another Objective of this Element is that "[n]ew connector streets shall be developed where needed and feasible thus lessening the total dependence on arterial streets." (p. 14). This principle is reflected in the Airport's Master Plan, which calls for a "frontage road" to be constructed parallel to I-275 from Mineola Pike to a relocated KY 20 (as reported at p. 187 of the Comprehensive Plan). The extension of Olympic Boulevard to the Gallenstein property is a crucial link in this planned frontage road. It will provide an alternate means of access to the airport as it expands, and will allow a better flow of traffic through the growing industrial area northeast of the airport.

The Land Use Element of the Plan indicates the future use of both the Corporex and Gallenstein properties to be Business Park. The text explains that “[t]his section of the County should experience a wide variety of substantial growth.” (p. 225). Also, the text states that the Rolling Green Acres subdivision, which is adjacent to both Circleport and the Gallenstein property, should eventually redevelop as an industrial area. Because of the increasing growth, “the road network in this section should be improved.” (p. 226). These comments are consistent with the Development Guidelines found within the Land Use Element, namely:

The need exists to protect the capacity of the existing roadway network, and to plan improvements to accommodate new developments and travel patterns. Access management provisions include . . . provisions for access connections to adjoining properties, and dedication of public right-of-way. (p. 211).

Collector roadways should be extended and developed to provide for the safe movement of traffic through and between subdivisions. . . . Appropriate road connections should be constructed to provide alternate routes for traffic to and through specific projects and to enhance the capacity of existing streets. Parallel and frontage roads should be used to minimize impacts of individual sites on collector and arterial roadways. (p. 211)

Many Objectives from the Public Services and Facilities Element support the extension of properly sized utilities to the Gallenstein property:

1. Existing infrastructure and services (e.g. systems and facilities for: water treatment and distribution, wastewater collection and treatment, natural gas distribution, communication lines, police and fire services and associated municipal buildings, schools, public roads and storm water management) shall be utilized efficiently. The phasing of proposed development shall be examined as a means of addressing significant impacts on existing infrastructure and services.
2. New infrastructure systems shall be built to definite planned and balanced capacities and for definite urban forms.
3. Priorities for growth within any individual infrastructure system shall be based on the predicted needs of specific areas as prescribed by the future land use projections of this plan. No infrastructure system shall commit the county to excessive growth by the system’s expansion. (pp. 11 - 12).

As stated above, the future land use for the adjacent property owned by Gallenstein is Business Park. The remaining area between the interstate and the airport is also planned for industrial uses. Sound planning principles require the proper extension of all utilities for future developments.

B. Airport Exchange Example

In February 1988, this Commission approved a Zoning Map Amendment for property owned by M. Lee Gallenstein and located on the north side of I-275, west of Mineola Pike, and across the interstate from Circleport I (ie. the Airport Exchange Business Park).¹ As conditions of approval, the applicants and owners (including M. Lee Gallenstein) agreed to the following conditions:

1. The applicant shall be required to make the following road improvements:
 - b. Make intersection improvements at Airport Exchange Boulevard and Point Pleasant Road in order to have proper turning movements at the park's second entrance.
 - c. Widen Point Pleasant Road to approximately 22 - 25 feet in width from the intersection of Airport Exchange Boulevard to the I-275 bridge.
4. The applicant shall be required to extend the proposed sanitary sewer line towards the western lot line, or at a minimum, place the manhole which serves Lot A in the street right-of-way, in order to possibly serve future growth west of Point Pleasant Road. The applicant shall negotiate with the Boone County Water and Sewer District to determine the final design size of the proposed sanitary line.

The precedent for sound planning has been set in this part of the county. These requirements for roadway and utility improvements were clearly made to facilitate the orderly growth of property to the west of the Airport Exchange Business Park. Since that time, these requirements have paid off with the Neyer development on the west side of Point Pleasant. These improvements were made at the expense of no entity but the applicants. Similar

¹ In fact, the Airport Exchange Business Park was built on only part of the old Gallenstein property, after it was split by the interstate. The other part of the Gallenstein tract is adjacent to the Corporex property in question.

requirements are needed to facilitate the orderly growth of the industrial area on the airport side of I-275.

II. Legal Considerations

The initial concept plan submitted by Corporex with its application for the Residence Inn contained what can be called either a "spite strip," "devil strip," or "dead man's strip." (please refer to a detail of the plan, attached hereto). Approximately ten (10) feet wide, this small piece of ground had as its sole purpose the separation of the adjoining undeveloped property from the Olympic Boulevard right-of-way.

Such attempts at land-locking a neighbor's property are prohibited by Kentucky case law. In Lotze v. Garrene Realty & Development Co. 309 S.W.2d 750 (Ky., 1958), the state's highest court ruled that upholding such actions

... would put a stamp of approval upon a practice which could *produce havoc in the planning and development of subdivisions*. When an improvement is made upon property it may enhance the value of adjacent lands, but adjacent landowners should not be forced to pay for a public roadway built by a subdivider any more than they should be forced to pay for the shade contributed by a neighbor's trees. The subdivider builds upon his own initiative, and for his own benefit and should not be allowed to require his incidental beneficiaries to pay for their unsought gains. Id. at 752.

In that case (copy attached), the developer attempted to purchase adjacent property from Clarence Lotze. When Mr. Lotze refused, the developer platted a street extension to within six inches from Mr. Lotze's property line. The Court found that the public rights and interests required a finding that the "devil strip" had been dedicated for public use.

In the case before the Planning Commission, the request of the adjoining property owner is to avoid "havoc in the planning and development of subdivisions." Clearly, the Gallenstein property is land-locked for industrial development (for which it is zoned) without adequate access to Mineola Pike. The planning for the use of this land (and other adjacent properties without direct access to Mineola) will be seriously hampered if the roadway and utility extensions are not required. Finally, nothing is being requested that has not already been approved --- the provision for the extension of the right-of-way is part of the current Concept

Plan. The adjoining property owner requests that this provision be specifically mandated by any change to the plan, and that the approval require the actual construction of the roadway pavement and utilities to the property line.

III. True Plans of Corporex

As in the Lotze case, Corporex has been negotiating for the purchase of the Gallenstein property for a number of years. These negotiations, however, have been fruitless.

By letter dated May 24, 1995 (copy attached), Mr. William P. Butler explains that, but for access through Circleport, the Gallenstein property is land-locked. He further explains that Corporex has exclusive control over water and sanitary sewer extensions to adjoining properties and that Corporex will prevent access by anyone except itself to the Gallenstein property through Circleport. In fact, he states that "any value which has been created in the neighborhood" has been created by Corporex, and the Corporex holds "the rights to that value." This attitude flies in the face of good planning and the decision in Lotze.

Corporex also prepared for the Gallensteins a supplemental graphic depiction of its "business plan" for the area. (reduced copy attached). It depicts the construction of a four level parking garage at what is labeled "The Former Proposed Road Extension." Of course, this plan in no way complies with either the approved Concept Plan or the 1995 Boone County Comprehensive Plan. Doubtless, this plan was never shared with the Planning Commission or its Staff (although it was made an attachment to the undersigned's report submitted to the Commission on May 31, 1995).

IV. Conclusion

Again, M. Lee Gallenstein is not opposed to this proposed change in uses. She is concerned, however, with changes in the design. For the reasons stated above, Mrs. Gallenstein respectfully requests that approval for the change in Concept Plan be conditioned upon the following:

1. The extension of Olympic Boulevard within a publicly dedicated right-of-way to the Gallenstein property line.
2. The physical and actual extension of roadway pavement to the Gallenstein property line, within a specific time frame.

3. The physical extension of all utilities, either within the publicly dedicated right-of-way or appropriate easements, to the Gallenstein property line, within a specific time frame.

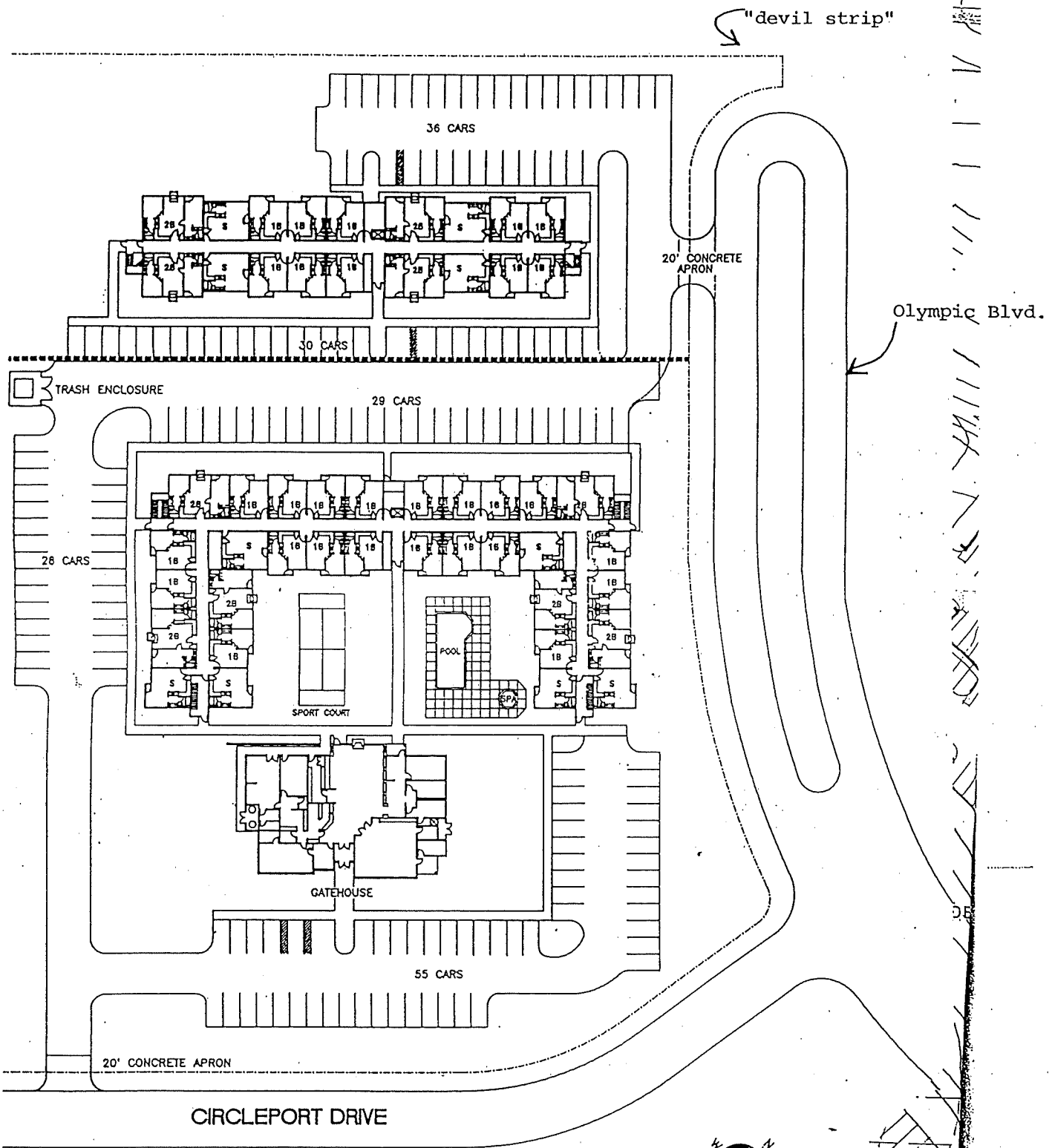
In a nutshell, she asks that the Planning Commission make the same requirements of Corporex as were made of her for the Airport Exchange Business Park. Thank you.

Respectfully Submitted,



James A. Dressman, III

Initial Concept Plan submitted by Corporex with this application



PRELIMINARY SITE PLAN

SCALE: 1" = 50'-0"



in drawing the paper but he must be a party to, or his name must appear in, the instrument as one to be benefited thereby. The fact that he may have a pecuniary interest therein, will not suffice to relieve him from the charge of unauthorized practice of law in drawing a legal paper.

We end this opinion as we did in the Trevathan case by saying that as respondent acted innocently and in good faith, we think ample punishment is a fine of \$1 and the cost of this court, and we will not place upon him the expense the Bar Association incurred in making the investigation of the charges against him.

It is therefore ordered that respondent, W. J. Brien, Jr., be, and he is now, held in contempt of this court for the unauthorized practice of law and his punishment is fixed at a fine of \$1 and the cost of the proceedings in this court.



Clarence LOTZE, Appellant,

v.

GARRENE REALTY & DEVELOPMENT COMPANY, Inc., and Louisville & Jefferson County Planning & Zoning Commission, Appellees.

Court of Appeals of Kentucky.

Dec. 5, 1957.

Rehearing Denied Feb. 28, 1958.

Action to enjoin the defendant from interfering with the plaintiff and the public in passing over a six inch strip of land between a road and the plaintiff's land and to require a zoning commission to rescind its approval of a subdivision or order a realty company to revise its subdivision plans so as to include for public use the six inch strip. From the judgment in the Circuit Court, Chancery Branch, Second Division, Jefferson County, Stuart E. Lampe, J.,

the plaintiff appeals. The Court of Appeals, Cammack, J., held that the dedicator was estopped from asserting that dedication of a road did not include the six inch strip in dispute.

Judgment reversed with directions.

1. Dedication ⇨46

Dedication to public use by plat is a common method and in its interpretation, all doubts as to the intention of the owner are resolved most strongly against him.

2. Dedication ⇨19(3)

Generally an open or vacant space is devoted to the public use where from its position on and relation to the plat such appears to have been the intention of the owner.

3. Dedication ⇨39

Where there was no express reservation of a six-inch strip of land lying between a road and the land of plaintiff and the plat did not indicate the existence thereof nor could it be said that the plat showed the intention of the dedicator to reserve the strip and the zoning commission was not notified of any attempted reservation, the dedicator was estopped from asserting that the dedication of the road did not include the six inch strip.

Michael M. Hellmann, Stephen P. Smith, Jr., Louisville, for appellant.

Allen Schmitt, James L. Taylor, Louisville, for appellees.

CAMMACK, Judge.

This action was instituted in April, 1954, by the appellant, Clarence Lotze. He sought (1) a judgment against the appellee, Garrene Realty & Development Company, Inc., estopping and enjoining it from interfering with him and the public in general in passing over a six-inch strip of land between Plymouth Road and the appellant's land; or (2) a mandatory injunction requiring the other appellee, Louisville & Jef-

erson County Planning & Zoning Commission to (a) rescind and revoke its approval of the Garrene Village subdivision, or (b) order the Garrene Realty & Development Company to revise its subdivision plan so as to include for public use the six-inch strip of land in question. The trial judge entered a judgment in accord with the following language of his able opinion:

"I think the equitable result in this case is a holding that Garrene Realty & Development Co. will be estopped from denying the dedication of the six-inch strip upon one condition. That condition is that the plaintiff be first required to pay to the Garrene Realty Company an amount equal to one-half of the reasonable cost of the construction of Plymouth Road at the time it was constructed, calculated upon the number of running feet that the remaining land of Mr. Lotze fronts thereon. In other words, the cost to Mr. Lotze shall represent one-half of the cost of the road in front of his vacant land. * * *

Lotze is appealing from both phases of the judgment. The Zoning Commission has filed a brief in support of the position of Lotze, insofar as the judgment denies a dedication of the six-inch strip and requires payment by Lotze to the Realty Company. Since the questions are so closely related, and affect the public interest, we will discuss them together.

On April 23, 1952, the Planning & Zoning Commission approved a plat filed by the Realty Company, which included the following provision:

"The undersigned owner of the property shown on the foregoing plan do hereby acknowledge the same to be the plan of 'Garrene Village' subdivision and do hereby dedicate the public use the roads and avenues, and the 23.5' added to Breckinridge Lane, all enclosed by red lines as shown hereon."

Unfortunately, the photostatic copy of this plat which has been made a part of the

record has no markings in red, but it does have a double line marking the edge of Plymouth Road in front of Lotze's land where the attempted six-inch reservation is alleged to have been located. The plat fails to disclose the owner of the land adjacent to this double line as required by KRS 100.088.

The Realty Company, through its agent, Mr. Garrene, attempted to buy Lotze's land prior to the time the plat was filed, but Lotze refused to sell. Thereupon Garrene notified Lotze that he would reserve ownership in a six-inch strip between Lotze's land and Plymouth Road in order to prevent use of the road by Lotze. There is evidence that Garrene then had the surveyor's stakes moved in an attempt to accomplish the six-inch reservation. The evidence is conflicting as to whether Lotze knew the stakes were being moved to accomplish that purpose. Since we believe there was a dedication of the six-inch strip to public use, it is unnecessary to discuss the question of notice.

[1,2] The trial commissioner to whom the case was first assigned cited Cassell v. Reeves, Ky., 265 S.W.2d 801, as authority for the proposition that a dedication of the six-inch strip had been made by the Realty Company. In the Cassell case we said that dedication to public use by plat is a common method and in its interpretation all doubts as to the intention of the owner are resolved most strongly against him. We said also that generally an open or vacant space may be held devoted to public use where from its position on and relation to the plat such appears to have been the intention of the owner. See also 16 Am.Jur., Dedication, sections 22, 24.

[3] In the case at hand there was no express reservation of the six-inch strip. The plat does not even indicate the existence of the six-inch strip, unless the presence of a double line could be said to so indicate, nor did the required designation of the owner appear. From the position of the double line on and its relation to the plat

it can not be said that it shows the intention of the dedicator to attempt to reserve a six-inch strip of land. Furthermore, the Zoning Commission was not notified of any attempted reservation. We believe the dedicator, the Realty Company, is now estopped from asserting that the dedication of Plymouth Road did not include the six-inch strip in dispute.

The Realty Company insists that to force this dedication upon it without requiring payment from Lotze allows him to be a "free-loader"; but to hold otherwise would make it possible for subdividers to become "free-loaders" by shouldering onto others a part of the cost of roadways running along their property. Under such conditions owners of land adjacent to subdivisions could be forced to pay paving costs or forced to sell their lands to the subdivider. The case at hand is illustrative of such a situation. Then too, to uphold the actions of the Realty Company would put a stamp of approval upon a practice which could produce havoc in the planning and developing of subdivisions. When an improvement is made upon property it may enhance the value of adjacent lands, but adjacent landowners should not be forced to pay for a public roadway built by a subdivider any more than they should be forced to pay for the shade contributed by a neighbor's trees. The subdivider builds upon his own initiative and for his own benefit and should not be allowed to require his incidental beneficiaries to pay for their unsought gains.

In discussing the case primarily from the point of view of "public interest," we have not been unmindful of the sincere efforts of the trial judge to balance the equities between the Realty Company and Lotze. Were the case confined *solely* to the interests of these two parties we would have a different question before us. But, as we have shown, public rights and interests are involved.

The judgment is reversed, with directions to set it aside, and for the entry of a judgment consistent with this opinion.

Ned TURNER, Administrator of the Estate
of Rachel Turner, Deceased, Appellant,

v.

Tug FIELDS, Appellee.

Court of Appeals of Kentucky.

Jan. 31, 1958.

Action for injuries to a pedestrian who either walked into, or was struck by, defendant's automobile. From an adverse judgment of the Perry Circuit Court, C. C. Wells, J., the plaintiff appealed. The Court of Appeals, Cullen, C., held, *inter alia*, that an 81 year old pedestrian who was undertaking to cross street in middle of a block where there was no marked cross-walk and who was injured when she either walked into or was struck by defendant's automobile on street in business section of city was contributorily negligent.

Affirmed.

1. Automobiles ⇄217(3)

An 81 year old pedestrian who was undertaking to cross street in business section of city in middle of a block where there was no marked cross-walk and who was injured when she either walked into or was struck by defendant's automobile was contributorily negligent.

2. Automobiles ⇄227(3)

In action for injuries to pedestrian who was contributorily negligent in crossing street where there was no cross-walk and in not keeping a proper lookout for oncoming traffic, there was no basis for application of last clear chance theory, where there was no evidence that motorist saw pedestrian in a position of peril with-in time to avoid striking her.

3. Automobiles ⇄244(59)

In action for injuries to pedestrian who was contributorily negligent in crossing street where there was no cross-walk and in not keeping a proper lookout for



May 24, 1995

Mr. and Mrs. John Terlau
1090 Stallion Way
Union, KY 41091

Dear John and Judy:

On several occasions, we have met personally and there have been many, many phone calls between you and Tom Banta of our company concerning the 28-acre parcel of property which is located east of our Circleport development near the existing office building. You will recall that this property was originally paid for by the Commonwealth of Kentucky and left in the name of your family. You may not be aware that this property was used as a **loose fill site** by the Kentucky Department of Transportation when they built I-275, a matter which has just come to our recollection.

You may recall that at one point in 1987, we had an option on this property at \$15,000 per acre. Appraisers have set the fair market value of this property in its current condition and situation in the range of \$10,000 to \$20,000 per acre. The property is valued as such because while it has good visibility, to put it simply, it is **land locked**. Accordingly, it is **inaccessible for commercial uses**. In addition, the property is not serviced by sanitary sewers or by domestic water, all of which were extended, at our sole cost and expense, thousands of feet in distance in order to generate business activity at our Circleport development. Accordingly, any value which has been created in the neighborhood has, in fact, been created by our firm and we hold the rights to that value and control the extension of those utilities through our property. While we would not expect any municipality to enter the situation, I can assure you we will prevent anyone from accessing your property through our land except ourselves.

We have always taken a very polite, positive, and generous approach in our overtures to you, but you have simply rejected them out of hand and have been somewhat offensive in your mannerisms. Clearly, you do not have the ability to analyze the **reality** of the situation and you are on the brink of cutting off the estate of your relatives from a significant portion of its potential income.

P.O. Box 75020
Cincinnati, Ohio 45275
50 E. RiverCenter Boulevard
Covington, Kentucky 41011
606/292-5500 Fax 606/292-5599



John and Judy Terlau
Page Two of Two
May 24, 1995

Why do I make this statement? We at Corporex are at the point where we will now demonstrate to you the severity of your error. We will move forward with a business plan which will allow us to fully develop our adjoining property without the use of any land from the Gallenstein parcel for parking use. For your information, we are enclosing a plan which illustrates the reality of the situation which you have created by your unrealistic approach. Clearly, the multi-story structures which we will construct on our land will cause an irreversible situation. Indeed, this plan demonstrates the reality of the value of the parcel of property which you own. In effect, it is worthless except for accessibility through our property.

There is a possibility that your land may be developed for a residential, multi-family use and, of course, the value associated with such are less than 50%. Accessibility will have to be from the west and, you will still have to cope with the issue of sewer and water service. In that event, we may consider selling you an easement for sewer and water for a sum of money equivalent to the increase in value that utility extensions would contribute to your acreage for that purpose.

Finally, please be advised that all previous offers are rescinded, including in particular, our most recent offer of \$50,000 per acre which you failed to execute. We are at "ground zero." Indeed, we were also foolish to be making offers in excess of Fair Market Value. We will not be making any more offers; rather, we will be moving forward with our plans. However, there is a small window of opportunity on your part to get realistic and to avoid a substantial loss which you now can anticipate. During that window, we would entertain offers on your part closer to the Fair Market Value of the property.

Very truly yours,

A handwritten signature in cursive script, appearing to read "W. P. Butler".

William P. Butler
President

Enclosure

cc: James and Sandra Gallenstein
Ms. Gail Ramler

GALLENSTEIN PROPERTY

4 level concrete parking garage

EVILSON GLEET PARKING GARAGE

ROUTE

THE FORMER PROPOSED ROAD EXTENSION

SITE WATER RETENTION

OLYMPI

CIRCLEPORT DRIVE

Corporex's "Business Plan" as outlined in May 24, 1995 letter to Mr. & Mrs. John Terlay from William P. Butler, President

MINUTES
BOONE COUNTY FISCAL COURT

May 19, 1998

10:00 A.M.

Commissioner Meihaus moved, seconded by Commissioner Campbell, to approve on Second Reading Ordinance No. 920.359, an ordinance of the Boone County Fiscal Court approving the request of Raymond Erpenbeck Consulting Engineers (Applicant) for Arlinghaus Builders, Inc. (Owner) for a Zoning Map Amendment, such Zoning Map Amendment being a zone change from Rural Suburban Estate (RSE) to Suburban Residential One (SR-1) for an approximate 34.5 acre site generally located at East Bend Road and Sperti Lane, Boone County, Kentucky, recommended by the Boone County Planning Commission by a vote of 11-3 via Resolution No. R-98-010-A. Judge Lucas called for a vote of the motion, ALL PRESENT VOTING AYE. Exhibit "A"

RESOLUTION NO. R-04-28-98-01-PZ - CORPOREX PARKS OF KENTUCKY, INC.

Judge Lucas read a summary of Resolution No. R-04-28-98-01-PZ and advised that approximately one and one-half hours has already been spent on this matter at the previous Caucus meeting even though a Public Hearing was not required since this is a resolution. Judge Lucas stated if there is any new information, the Fiscal Court will be glad to hear it given the magnitude of the financial consequences of the decision.

Attorney Lawson Walker, attorney representing Corporex, stated that he had asked at the Caucus meeting that Mr. Bill Butler, Chairman of the Corporation, be allowed to address the Court at this regular meeting. Attorney Lawson submitted documents (Letter dated May 19, 1998, from Law firm of Brown, Todd & Heyburn with Position Statement and History, and a Traffic Impact Analysis), advising he wished them to become part of the public record. Exhibits "B", "C" & "D"

Attorney Lawson stated that since the Planning Commission is the body recommending this denial, he is asking they make their comments first.

Mr. Kevin Costello, Director of the Boone County Planning Commission, stated the record speaks for itself as presented in the packet sent to the Fiscal Court and he is present only to answer any questions or interpretations of the recommendation or the history.

Attorney Lawson gave a very brief presentation noting the Court had been generous in allowing them the time at the Caucus meeting. Attorney Lawson stated that he does not believe the dedication or construction of the road in question was ever a condition of the original application and it was not listed on the seven conditions required by the Planning Commission, nor was a final plat ever filed. Furthermore, Attorney Lawson said the law since 1986 has very clearly demonstrated that even if the road were a condition, the requirement of the dedication of the road is a taking, both in violation of KRS 100, the Kentucky Zoning Law and the Fifth Amendment of Constitution of the United States. Attorney Lawson referred to the *Nolan* and *Dolan* decisions by the Supreme Court as the basis for what he believes to be a violation in taking if the Fiscal Court approves the resolution for denial. Attorney Lawson also referred to the case of *McGee*, filed with the Court of Appeals. Attorney Lawson said the public does not need the road nor does his client need the road, therefore, he feels the "takings clause" of the

MINUTES
BOONE COUNTY FISCAL COURT
May 19, 1998
10:00 A.M.

constitution will be violated, consequently, he feels his client will be damaged, and his client is prepared to seek redress for those grievances.

Mr. Butler stated he appreciated the Court's indulgence in allowing him the opportunity to address the Court. He further stated that he had not heard from the County's attorney regarding his findings on the underlying facts of the law and he would like to hear from him at this meeting. Mr. Butler said he is prepared to take this matter all the way to the Supreme Court if necessary, however, he thinks it would be unfortunate for a simple matter that makes as much logic among lay people.

Mr. Butler gave a brief history of his involvement in the community, noting that the Mineola Interchange and businesses located there came about through that effort.

Mr. Butler said he was present at the meeting in 1986 and there was no agreement for any road extension, any dedicated right of way, or anything of that and that's why the road is not reflected in any of the Planning Commission minutes. Mr. Butler said it appears in some correspondence where the staff asks if they will dedicate a road and Tom Banta indicated affirmatively at some time, however, Mr. Butler said between that time and the end product, there is no mention of the road in the agreements nor in the Planning Commission minutes. Mr. Butler said the reason that it is not mentioned is because he objected to it then as he is objecting to it now. Mr. Butler said that it is simply not true that there was an agreement, whether implied, verbal, written or otherwise.

Mr. Butler referred to Sections 1504 and 1517 of the 1986 Comprehensive Plan and said the Commission's approval in principle of the Concept Development Plan shall constitute a commitment to the planned land use type and intensities, noting that approval in principle shall not be construed to endorse a precise location, or mixture of uses, configuration of parcels, or arrangement of physical design, engineering feasibility for particulars. He further noted that such conditions shall be made a part of the terms under which the development is approved.

Mr. Butler said it is inappropriate for the Planning Commission to do what it did and even more inappropriate for the Fiscal Court to endorse their recommendation.

Attorney Lawson asked that the Court take judicial notice of the 1986 ordinances which governs what was and what was not done in 1986, rather than the ordinances which are in effect at this time and cited by the Planning Commission. Attorney Lawson said there is no way the road could have been required to be dedicated under the 1986 ordinances as they existed at that time. Attorney Lawson said it is a constitutional issue and reiterated the road is not needed by his client. Attorney Lawson said it is a violation of the Fiscal Court's power given to them by the public to take one person's property away from the individual for private use.

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Attorney Crigler advised he had conversations with Mr. Walker, Mr. Marty Butler, the planning council and Mr. Costello, and he further reviewed the cases cited (*Nolan, Dolan*, the *Fischer* case, and others) and he believes the circumstances and facts, or evidence as they may come to be, are not sufficiently related to the facts in *Dolan, Nolan* or *Fischer* to make this matter an unlawful or unconstitutional taking. Attorney Crigler said it is still up to the Fiscal Court to determine what course of action they wish to take as relates to this matter whether it's based on law or good planning.

Commissioner Meihaus stated she believes the obligation to dedicate the right of way of this extension is very real and well documented and, therefore, she moved, seconded by Commissioner Patrick, to approve Resolution No. R-04-28-98-01-PZ, a resolution of the Boone County Fiscal Court to deny the request of Corporex Parks of Kentucky, Inc., Owner, (based on reasons presented by the Planning Commission) for a change in an approved Concept Development Plan in an Industrial One/Planned Development (I-1/PD) zone for approximately 33.5 acres generally located along both sides of Olympic Boulevard and along the west side of Mineola Pike in Circleport 1 Subdivision, Boone County, Kentucky, recommended for denial unanimously by the Boone County Planning Commission via Resolution R-98-009-D. Judge Lucas called for a vote of the motion, ALL PRESENT VOTING AYE. Exhibit "E"

RESOLUTION NO. R-05-19-98-01 - KENTUCKY LAW ENFORCEMENT FOUNDATION PROGRAM

Commissioner Patrick moved, seconded by Commissioner Meihaus, to approve Resolution No. R-05-19-98-01, a resolution of the Boone County Fiscal Court relating to participation in the Kentucky Law Enforcement Foundation Program. Judge Lucas called for a vote of the motion, ALL PRESENT VOTING AYE. Exhibit "F"

RESOLUTION NO. R-05-19-98-01-BR - PUBLIC GOLF COURSE PROJECT, SERIES 1998

Commissioner Campbell moved, seconded by Commissioner Meihaus, to approve Resolution No. R-05-19-98-01-BR, a resolution of the County of Boone, Kentucky, directing the President of the Boone County, Kentucky Public Properties Corporation to accept the successful proposal for the purchase of approximately \$8,035,000 principal amount of Boone County, Kentucky Public Properties Corporation First Mortgage Revenue Refunding Bonds (Public Golf Course Project), Series 1998, dated JUNE 1, 1998. Judge Lucas called for a vote of the motion, ALL PRESENT VOTING AYE. Exhibit "G"

ITEM V. PERSONNEL MATTERS

Commissioner Patrick moved, seconded by Commissioner Meihaus, to approve the appointment of Anthony Morden to the position of Police Officer, as recommended by the