

APPLICATION FORM

**ZONING MAP AMENDMENT**  
**BOONE COUNTY PLANNING COMMISSION**

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

1. Name of Project Charles & Ed Massey Office Project
2. Location of Project 237 & Stahl Road
3. Total Acreage of Site 1.39 Acres
4. Current Zoning of Site R RSE
5. Proposed Zoning (Classification being requested) 0-1
6. Proposed Uses (please specify each use) \_\_\_\_\_  
\_\_\_\_\_
  
7. Names of Applicant(s) Charles E. Massey & Charles Edward Massey  
Phone Number (606) 586-8388 Fax No. (606) 426-9001
8. Address of Applicant(s) 1789 Stahl Road  
Hebron Kentucky 41048  
City State Zip
9. Name of Property Owner(s) Charles Edward Massey  
Phone Number (606) 727-3211 Fax No. \_\_\_\_\_
10. Address of Property Owner(s) 503 Edgar Ct.  
Erlanger Kentucky 41018  
City State Zip
11. Proposed Building Intensities (please specify) 1 36x50 0-1 building
  
12. Are there any existing buildings on the site? No  
How many? N/A
13. Deed Book 198 Page No. 620 Group No. 2002
14. Are you also applying for:  
\_\_\_\_\_ Conditional Use Permit  
\_\_\_\_\_ Dimensional Variance
15. Have you submitted a Concept Development Plan? Yes
16. Have you had a pre-application meeting with BCPC Staff? Yes
17. Please check the following organizations/agencies which you have discussed the proposed development within the last several months:  
 Boone County Water and Sewer District  
 Florence Water and Sewer Commission  
 Union Light Heat and Power  
 Cincinnati Bell  
 Owen County Rural Electric  
 Boone County Public Works Department  
 Kentucky Transportation Cabinet  
 City of Florence Public Services Department  
 Boone County Building Department

**EXHIBIT**  
**“A”**

## STAFF REPORT

Request of **Charles E. Massey and Charles Edward Massey (applicants)** for **Charles Edward Massey (owner)** to consider a Zoning Map Amendment from Rural Suburban Estates (RSE) to Office One (O-1) for a 1.39 acre tract located on the northeast corner of the North Bend Road/Stahl Road intersection, Boone County, Kentucky. The request is for a zone change to allow an office building.

September 29, 1999

### PROPOSAL

This request is for a Zoning Map Amendment for an approximate 1.4 acre parcel that is located on the northeast corner of the North Bend Road/Stahl Road intersection. The requested zone change is from RSE to O-1 to allow professional office uses. The lot in question has an asymmetrical shape, with a fairly "square" area directly on the corner of the intersection (with frontages on both North Bend Road and Stahl Road), and a "panhandle" of sorts which extends northward from the rear portion of the lot, behind the neighboring lot on North Bend Road.

A Concept Development Plan has been submitted with this request. The Concept Development Plan illustrates a two story building with a footprint that measures 36 feet by 50 feet (3,600 gross square feet of floor area for both floors combined). The submitted building elevations illustrate a brick building, with a clipped gabled roof, that has a walk-out design (the lower level is below grade at the front with two full exposed levels at the rear, much like a house with a walk-out basement). The plan also illustrates two small parking areas - one in front of the building and one at the rear (building entrances are proposed on both sides of the structure). Both parking areas would connect to a single curb cut on Stahl Road; no access points are proposed on North Bend Road. No "active" development is proposed in the rear "panhandle" area of the lot. No details regarding signage or landscaping have been provided.

### SITE CHARACTERISTICS

As noted above, the lot contains approximately 1.4 acres and it has an asymmetric shape. The lot has approximately 177 feet of frontage on North Bend Road and approximately 238 feet of frontage on Stahl Road. The lot is largely an open field with some trees around the perimeter and a group of evergreens in the approximate center of the site near the Stahl Road frontage. The topography of the site overall slopes from the rear to the front (from east to west toward North Bend Road), although there is a ravine that runs across the site

in a north/south manner (from the panhandle area to Stahl Road). Based on the vegetation in the ravine area, it appears to be a routinely "wet" area; a generic water course is illustrated in this area in the USDA/SCS Soil Survey, however, the ravine is not identified as any sort of blue line or intermittent blue line stream on the USGS maps. There are no structures on the site. Public water adjoins the site in both the North Bend Road and Stahl Road rights-of-way. Gravity sewer is not in the immediate vicinity.

### ADJOINING LAND USES AND ZONING

The adjoining land uses and zoning in the area include:

- A. Detached single family residences, with a few intermittent pastures, are located along both sides of Stahl Road to the east (RSE).
- B. Detached single family residences with some pasture areas are located to the north along the east side of North Bend Road (RSE). Pasture/farm areas with a few residences are located further east of the North Bend Road frontage area and the area north of Stahl Road (A-2).
- C. A combination of detached single family residences on frontage lots, two suburban style residential subdivisions (Tree Tops and Thornwilde), and a church are located to the west and north along the west side of North Bend Road (RSE, SR-1, and RPD).
- D. Detached single family residences on frontage lots, with some remaining vacant areas, are located to the south along both sides of North Bend Road (from Stahl Road down to Graves Road) (RSE). A larger lot suburban style subdivision (Parlor Grove) is located to the east of this North Bend Road frontage and the area south of Stahl Road (RSE).

### RELATIONSHIP TO 1995 BOONE COUNTY COMPREHENSIVE PLAN

The 1995 Boone County Comprehensive Plan's 2020 Land Use Plan (the "Future Land Use Map") designates the site for "Suburban Residential" (SR) uses. This designation is described as "single family housing of up to four units per acre. This classification also includes any low density or estate residential developed as a formal subdivision." The Land Use Element provides the following discussion regarding the area in question. The area is discussed in both Area C-1, Francisville Area and Area C-2 Hebron Area.

- A. In general, Suburban Residential development should be concentrated on land nearest to KY 237, as indicated on the Future Land Use Map. Through 1994 there have been no improvements to North Bend Road outside of the I-275 interchange area. Current conditions of North Bend Road in the Francisville area are not suitable for suburban traffic demands. Unlike most developing areas of Boone County, the north river area contains only one primary means of access, being North Bend Road. Although the 1995 Future Land Use Map indicates little change from the 1990 Map, additional Suburban Residential development would be suitable for much of the area, if accompanied by widening and straightening of impacted portions of KY 237. The Boone County Thoroughfare Plan offers some solutions to this problem.

Residential development east of KY 237, between Rivershore Farms and Parlor Grove subdivision need to provide street and pedestrian connections between developments

Without the above suggested improvements, the remaining acreage in this section is suitable only for Rural Density residential growth because of the existing residential character of the area, Developmentally Sensitive stream valleys, and the existing condition of KY 237. In the planning of this growth, and in the development of all other areas within this section of the county, care must be taken to avoid potential negative impacts to the Developmentally Sensitive hillsides. ("Area C-1: Francisville Area," pp. 217 and 218).

- B. The Southpark project should represent the northern-most limit of industrial uses on North Bend Road. The Elijah's Creek valley should remain in its current state to serve as a greenbelt that visually separates industrial development from future residential uses east of the valley. The northwest quadrant of the I-275 and KY 237 interchange is an ideal location for Business Park uses. Supporting commercial and office uses could provide a suitable entrance to this development. This area is adjacent to land suitable for High Suburban Density Residential development, which will provide a transition to the Suburban Residential densities in the Francisville area ("Area C-2: Hebron Area," pg. 218).

The Land Use Element provides the following general comments that relate to the proposal.

- A. Developments in Boone County should begin with an assessment of the existing site features to determine positive and useful attributes, as well as features which should or can be preserved. Development design should incorporate the use of these attributes for the benefit of the development and the County as a whole, rather than leveling an entire site to meet a pre-conceived project design.

Development plans should identify such areas, and delineate disturb limits to protect those areas that have been defined ("Utilization of Existing Vegetation and Topography," pg. 210).

- B. 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. Developments proposed adjacent to planned or established greenbelts should provide pedestrian access where appropriate ("Buffering," pg. 210).
- C. Developments 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 ("Landscaping," pp. 210 and 211).

- D. Developments in Boone County must recognize the potential impacts of stormwater run off. Developments must design and incorporate adequate provisions for the channelization and control of the rate of stormwater flow on and from the site ("Stormwater Management and Erosion Control," pg. 211).
- E. Development along existing arterials and collector roadways should not have direct driveway access, but be served by a local street ("Transportation and Pedestrian Network," pg. 211).
- F. 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. The minimal use of signs is encouraged; signage should be adequate to identify a specific development, but should not be used as a means to compete for motorist attention ("Design, Signs, and Historic Preservation," pg. 211).

The Business Activity Element provides the following comments that relate to the general area in question.

- A. The Hebron area will experience additional commercial development along KY 20 as the northern area increases in population. The existing commercial center along KY 20, just east of KY 237, will probably not expand significantly because the new highways, I-275 and KY 237, have bypassed it. Commercial development in Hebron will center around the intersection of new KY 237 and KY 20 with a limited amount of convenience and neighborhood commercial uses north of the I-275 interchange to serve the Southpark Industrial Park, the Heimann Property (Park West), and the growing number of residential subdivisions along North Bend Road. With the amount of residential construction expected in the North River area, larger scale commercial developments, such as drug stores and grocery stores will be needed. This commercial growth should coordinate with the existing and proposed industrial and residential developments, especially in terms of access ("Areas of Future Commercial Activity," pp. 82 and 83).
- B. The I-275 and KY 237 and Mineola interchanges will experience continued industrial development in addition to the previously outlined 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 ("Areas of Future Industrial and Office Activity," pg. 84).

The site in question is not indicated for either future industrial or commercial development on the Future Industrial and Commercial map (Figure 5.3) on page 87 of the Business Activity Element.

The Housing Element provides the following comments that relate to the area in question:

- A. This area will experience a great expansion in residential development in the near future. Two approved developments, Thornwilde and Tree Tops, will add a total of 950 housing units within the next ten years. Factors that will probably fuel even more growth include the recent extension of sanitary sewer lines and pumps to the area, minimal impact from airport noise, and good regional accessibility with nearby I-275. Barriers to further growth would include inadequate roadways, including North Bend Road, and inadequate school facilities. This is presently a very rural area of rough topography

Developable areas such as the many level ridge tops in the North River area need to have proper access to the major roads, such as KY 237 and KY 20 ("North River Area," pg. 106).

The Goals and Objectives provide 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. Future growth shall be accompanied by adequate infrastructure and services. Existing infrastructure and services shall be maintained or improved as needed ("Overall," Objective 4).
- D. Boone County shall strive to achieve a diversity and balance in competing land uses ("Overall," Objective 6).
- E. The needs of Boone County's population base are accommodated through the provision of orderly growth ("Population," Goal).
- F. 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).
- G. 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).
- H. Existing vegetation shall be considered as both an important site characteristic and a community resource ("Environment," Social Objective 4).
- I. Appropriate locations for businesses compatible with the surrounding area are provided in Boone County ("Business Activity," Goal).

- J. Compact, efficient development patterns shall be encouraged for business districts (e.g. industrial, commercial and office) with appropriately sized and well maintained buffer spaces between the business use and other land usage ("Business Activity," Objective).
- K. 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).
- L. 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 scaled 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).

#### STAFF COMMENTS

- 1. Overall, the Planning Commission will need to consider whether the proposal is in agreement with the Comprehensive Plan. Key points to consider regarding this issue include:
  - A. The site is designated for Suburban Residential uses on the Future Land Use Map, and this designation is discussed in the text of the Land Use Element. The Land Use Element specifically mentions the "existing residential character" of this vicinity in the "Area C-1" text.
  - B. The Business Activity Element states "commercial development in Hebron will center around the intersection of new KY 237 and KY 20 with a limited amount of convenience and neighborhood commercial uses north of the I-275 interchange to serve the Southpark Industrial Park, the Heimann Property (Park West), and the growing number of residential subdivisions along North Bend Road."
  - C. The Housing Element characterizes the North River Area as one that will experience a great expansion in residential development.

- D. A small area to the north of the area in question, located at the intersection of Thornwilde and North Bend Road, is designated for Commercial uses by the Future Land Use Map. This area is substantially comprised of an approximate four acre area that was approved as part of the Thornwilde development (RPD zone) where C-1 zone uses are permitted.
  - E. The Business Activity Goals and Objectives (listed as "I" through "L" above) provide general guidance regarding the proper placement of commercial uses.
2. Although Staff finds that the proposed building design provides an appropriate architectural response to the residential character of the immediate area, Staff is otherwise concerned about the relationship of the proposed use to the adjoining residential area and offers the following comments.
- A. When considering that the requested O-1 zone allows a fairly wide range of permitted uses, Staff suggests that the facility (if approved) should be limited to professional office uses only.
  - B. The area is still somewhat rural in character and is not currently subject to any tangible amount of ambient light that is found in urban environments. In order to avoid light pollution onto adjoining properties, Staff suggests that any exterior lighting be limited to building mounted wall packs or bollard style freestanding fixtures.
  - C. One plan sheet shows that a 10 foot buffer yard is proposed along the rear (east) property line (another plan sheet doesn't label the dimension, but the buffer yard is comparable in width). The Zoning Regulations require that "Buffer Yard C" (25 foot minimum width buffer with specified evergreen and deciduous trees) be provided where the proposed O-1 zone adjoins residential zones (along the north and east perimeters of the development area in this instance). Thus, a modification will need to be made to the plan to minimally provide Buffer Yard C, if not more extensive buffering as deemed appropriate by the Planning Commission and Fiscal Court. The buffer yard requirements will necessitate some rearranging of the parking area(s).

On a related note, Staff is also concerned with the "commercial" elements of the project that would be visible from both street frontages. Substantial landscaping (beyond the normal minimum requirements) and berming should be provided to reduce the visual impacts of the parking areas and driveways ("Buffer Yard A" is the minimum requirement for street frontage landscaping - this is a 10 foot wide landscape area with specified plantings); "sinking" the

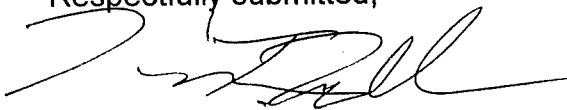
parking areas below the average finished grades of the site's perimeter would help in this regard. Landscaping around such areas could include clusters of hardwood and evergreen trees which are tied together with hedge material. Also to help minimize the "commercial" appearance of the project, Staff recommends that all on-site signage be limited to a single monument style sign (no building mounted signage) which has very minimal proportions (such as 5' maximum height and 28 square foot maximum size - a 10' high, 150 square foot monument style sign is normally permitted in the O-1 zone).

3. Based on the fact that improvements to North Bend Road are contemplated, but the nature of such improvements and specific alignment changes are not known at this time, Staff recommends that every precaution that can be taken to make sure that the proposed development would have the best "fit" possible with the future improvements needs to be undertaken. Specifically, an express written condition should be considered which limits the owner to one curb cut on Stahl Road only (is shown as such on the Concept Development Plan). The Concept Development Plan does illustrate an expansive setback along North Bend Road that would allow for some level of road widening - some rearrangement of the front parking area would allow for more area for road improvements as well as help to better conceal the parking area from North Bend Road.
4. The overall traffic generation is fairly minimal for the type of development proposed. The building (according to the ITE Trip Generation Manual, 6<sup>th</sup> Edition) would generate approximately 39.6 ADT, and approximately 5.6 trips in the AM peak hour and approximately 5.4 trips in the PM peak hour. The 39.6 ADT is roughly equivalent to the average daily traffic that would be generated by four detached single family residences.
5. Gravity sewer is not available in the immediate vicinity, although a force main does run across a portion of the site. Staff has been informed by Sanitation District #1 that in order to tie this site into the public system, the line from this site will need to be pumped to a gravity sewer (available in Tree Tops, Parlor Grove, and at the end of Stahl Road).
6. One of the Concept Development Plan sheets shows a two way driveway that is proposed to be 18 feet wide (20' minimum required). Staff highly recommends that a redrawn plan that corrects the "mechanical" issues noted herein (buffer and driveway widths, and some rearrangement of the parking areas) be provided for the Zone Change Committee meeting on this issue. Due to scale and dimension problems inherent in the Concept Development Plan, it needs to be redrawn to scale with dimensions noted.

CONCLUSION

This request needs to be evaluated by the Boone County Planning Commission and the Fiscal Court in terms of the three criteria necessary for approving a Zoning Map Amendment as stated in Article 3, "Amendment" of the Boone County Zoning Regulations and the potential impacts on the existing and planned uses in the area. The Future Land Use Map will need to be amended if the Planning Commission and Fiscal Court approve this request.

Respectfully submitted,

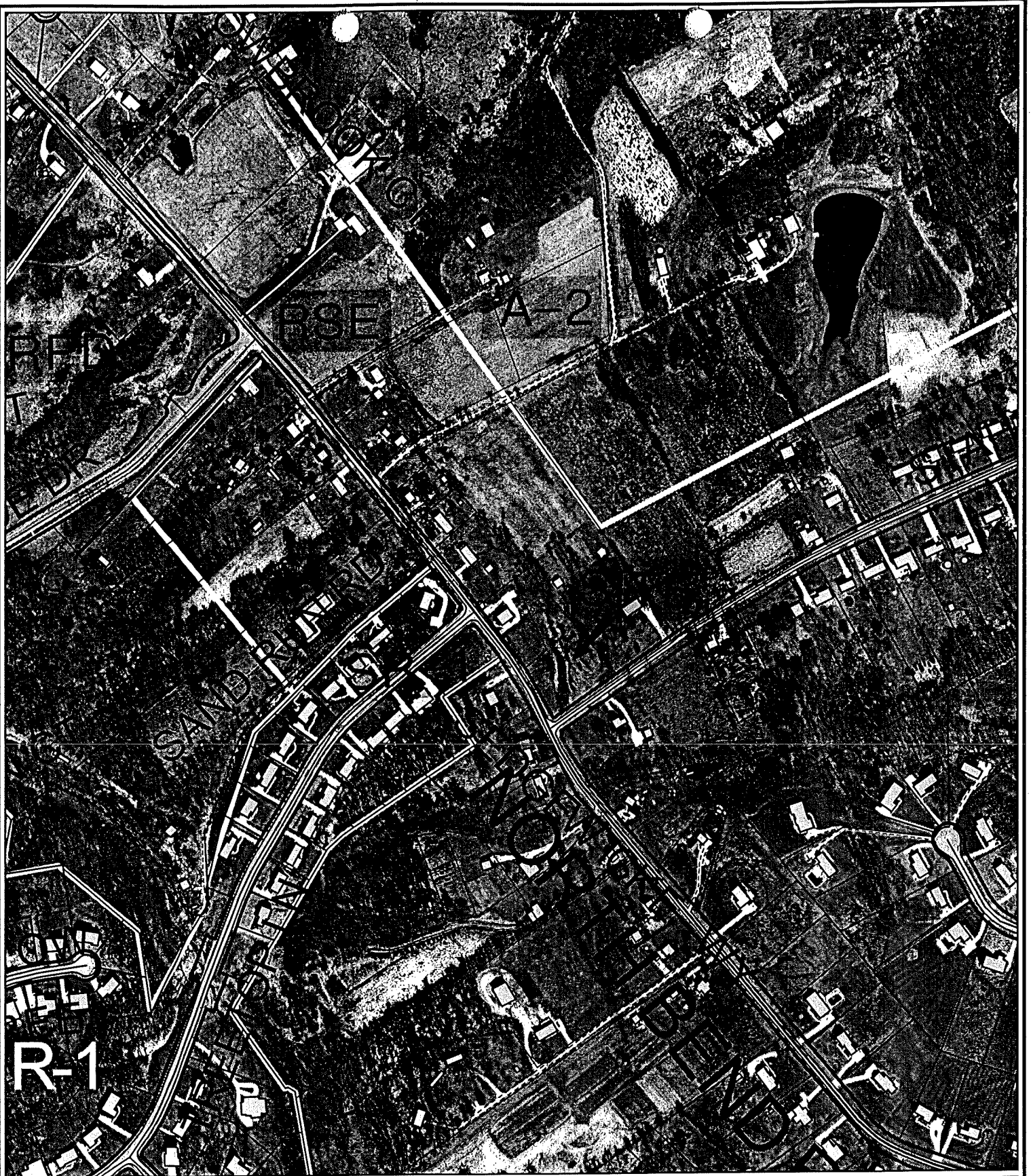


Kevin T. Wall, AICP CDT  
Director, Zoning Services

KTWpr

attachments:

- air photo w/ zoning information
- future land use map
- application and Concept Development Plan materials

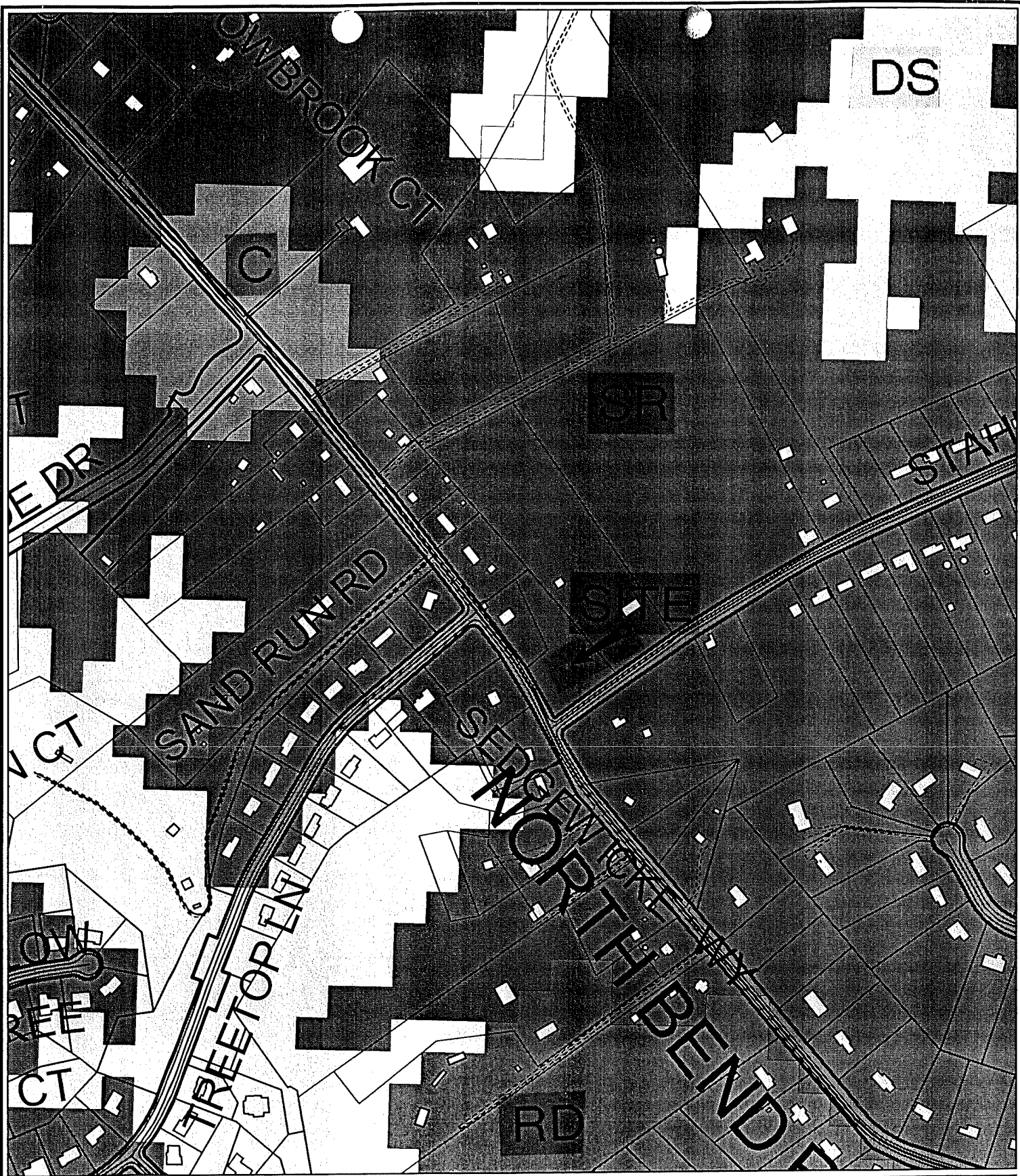


400 0 400 Feet

# Massey Zoning

1 inch equals 400 feet  
Produced by the  
Boone County Planning Commission  
GIS Services Division  
September 9, 1999





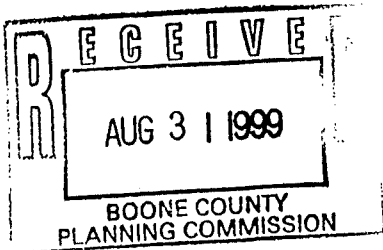
# Future Land Use

400 0 400 Feet



1 inch equals 400 feet  
 Produced by the  
 Boone County Planning Commission  
 GIS Services Division  
 September 9, 1999





APPLICATION FORM

ZONING MAP AMENDMENT
BOONE COUNTY PLANNING COMMISSION

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

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5. Proposed Zoning (Classification being requested) 0-1
6. Proposed Uses (please specify each use)

7. Names of Applicant(s) Charles E. Massey & Charles Edward Massey
Phone Number (606) 586-8388 Fax No. (606) 426-9001

8. Address of Applicant(s) 1789 Stahl Road
Hebron Kentucky 41048
City State Zip

9. Name of Property Owner(s) Charles Edward Massey
Phone Number (606) 727-3211 Fax No.

10. Address of Property Owner(s) 503 Edgar Ct.
Erlanger Kentucky 41018
City State Zip

11. Proposed Building Intensities (please specify) 1 36x50 0-1 building

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

13. Deed Book 198 Page No. 620 Group No. 2002

14. Are you also applying for:
Conditional Use Permit
Dimensional Variance

15. Have you submitted a Concept Development Plan? Yes

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

17. Please check the following organizations/agencies which you have discussed the proposed development within the last several months:

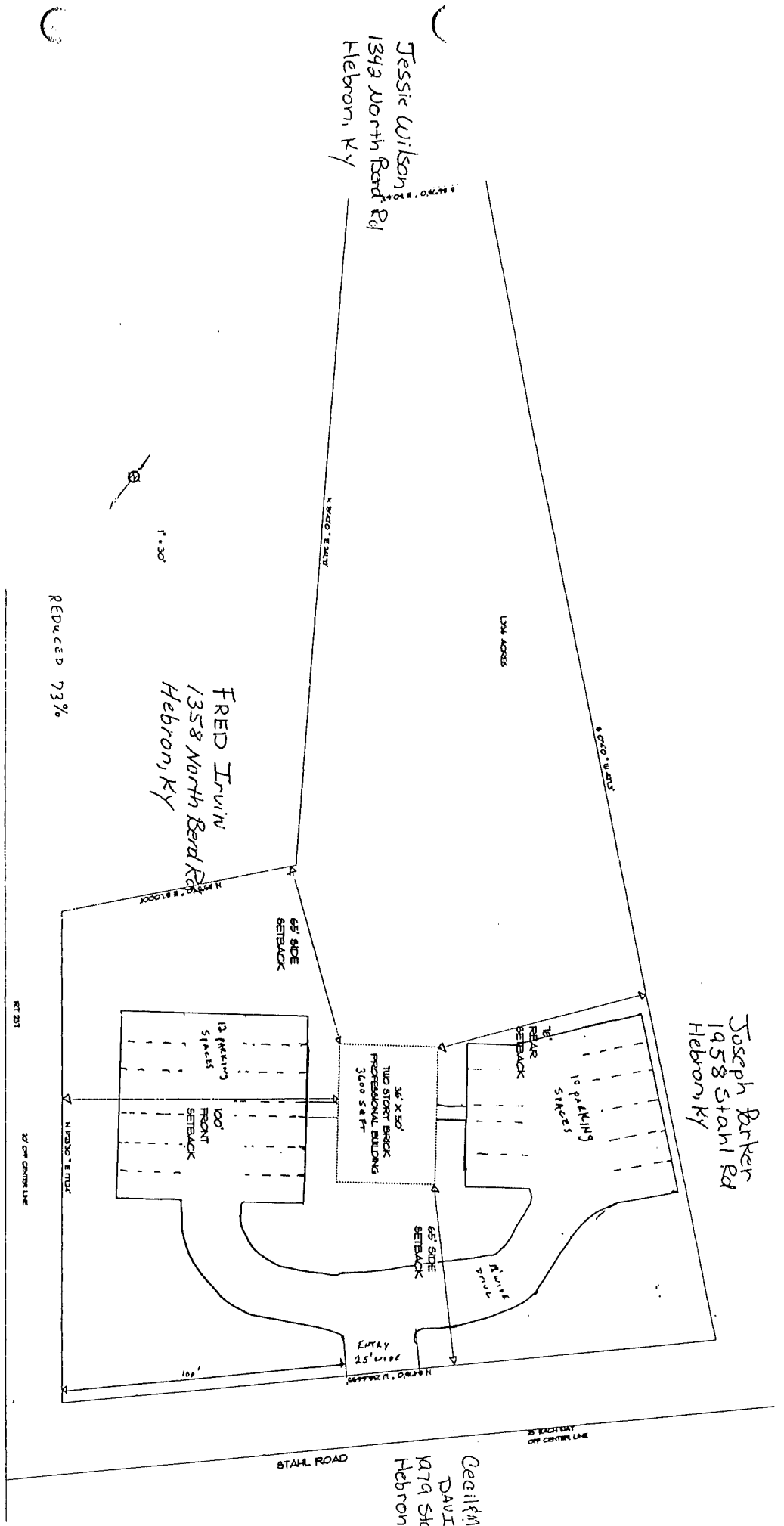
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Owen County Rural Electric
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City of Florence Public Services Department
X Boone County Building Department

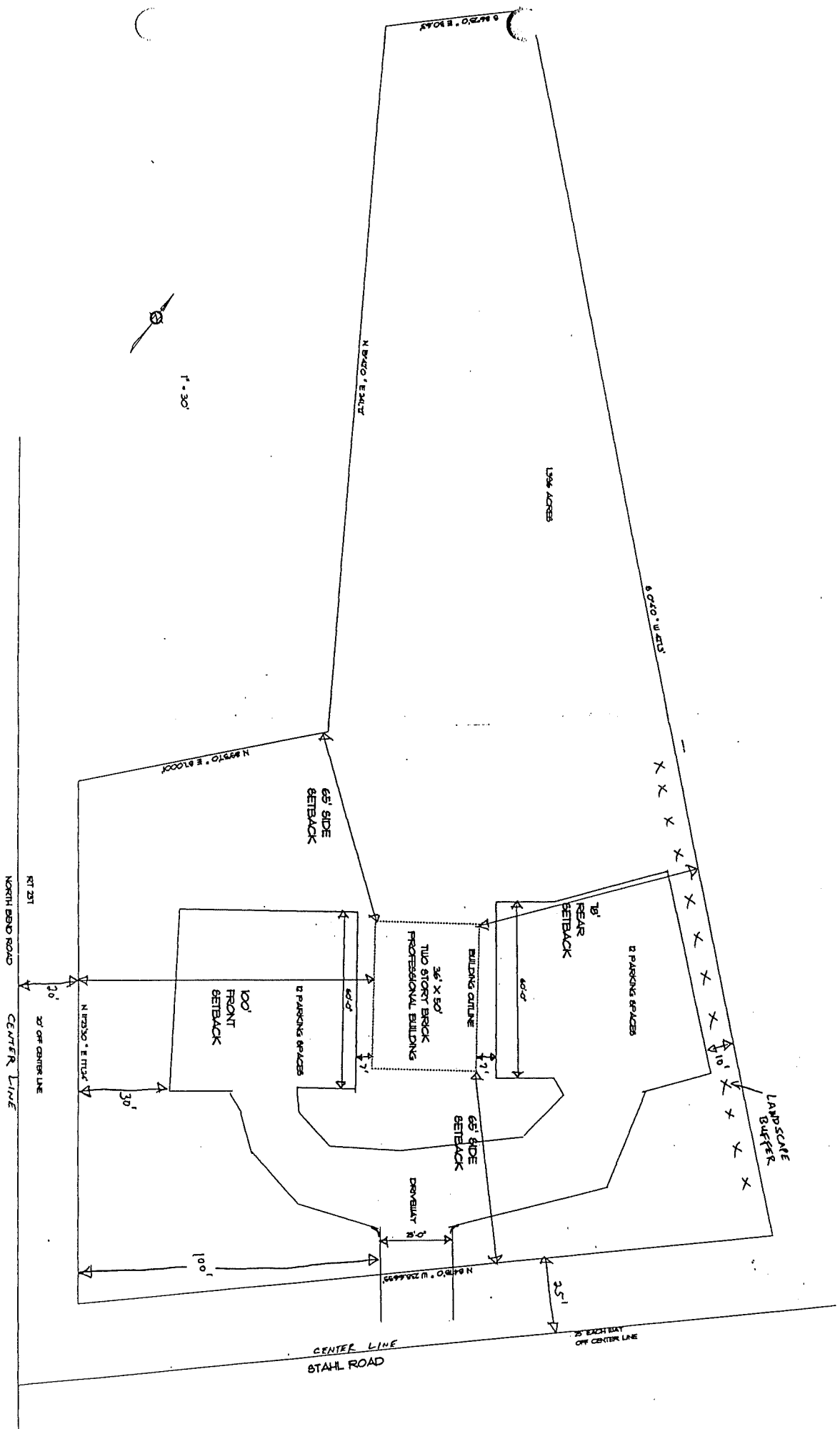
Jessie Wilson  
1392 North Bend Rd  
Hebron, Ky

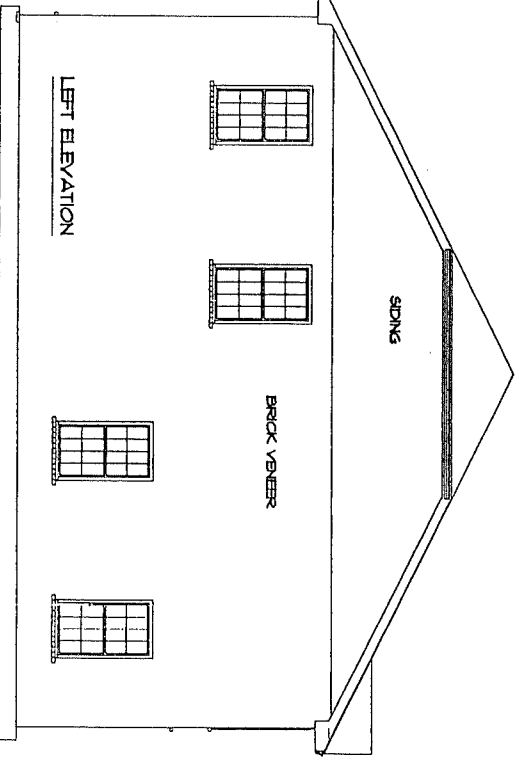
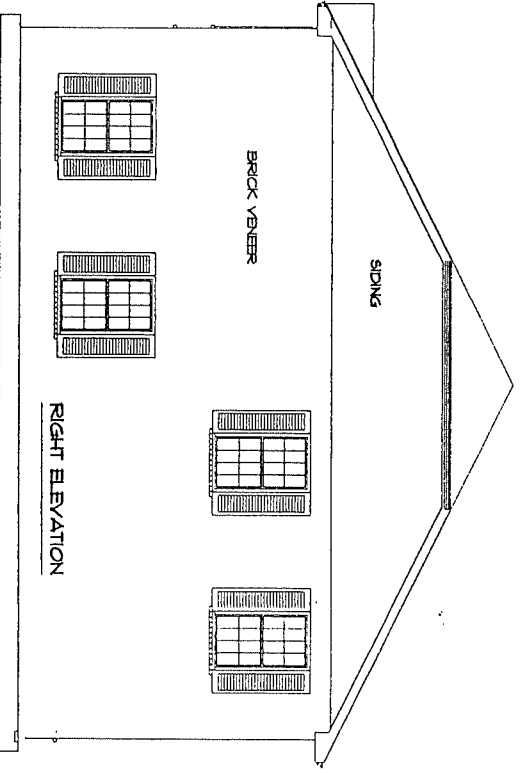
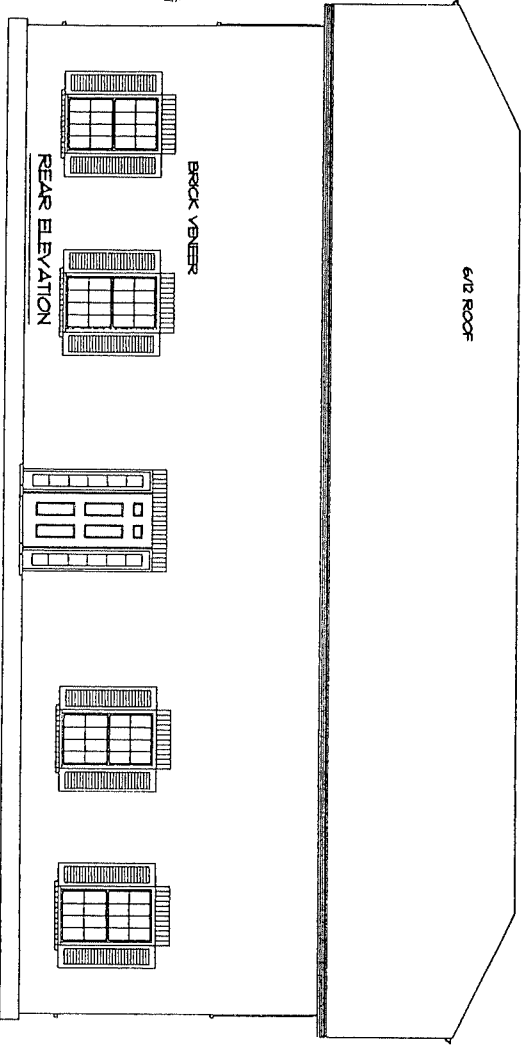
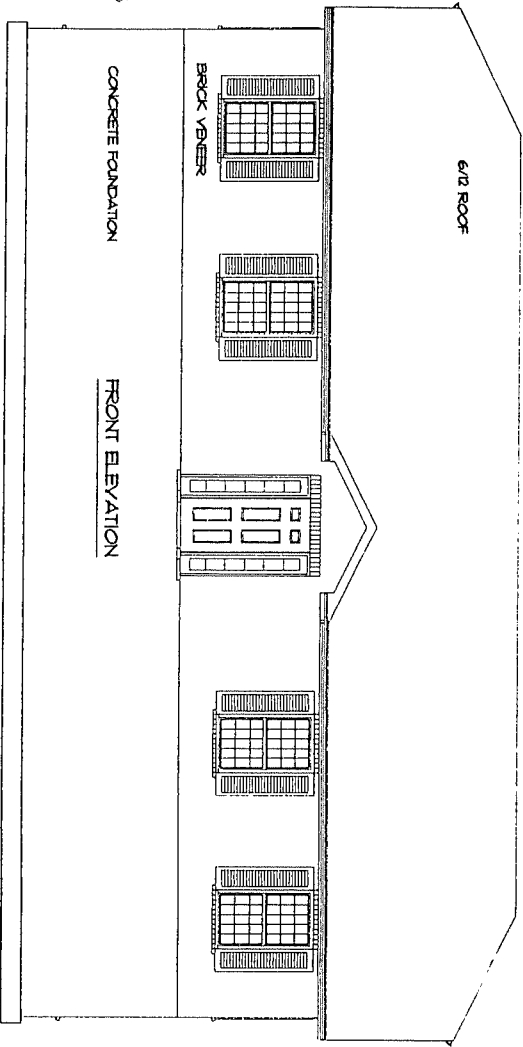
FRED Irwin  
1358 North Bend Rd  
Hebron, KY

Joseph Barker  
1958 Stahl Rd  
Hebron, Ky

HARVEY Pelly  
2519 North Bend Rd  
Hebron, Ky







BOONE COUNTY PLANNING COMMISSION  
BOONE COUNTY ADMINISTRATION BUILDING  
COURTROOM 3A  
September 29, 1999  
7:00 P.M.

PUBLIC HEARINGS

Commission Members Present: Mrs. Arnett - Secretary/Treasurer, Mr. Caddell - Chairman, Mr. Chaney, Mr. Damstrom - Vice Chairman, Mr. Hicks - Temporary Presiding Officer, Mr. McMillian, Mr. Newman, Mr. Ries, Mr. Schwenke, Mrs. Smith, Mr. White, and Mrs. Wilson.

Staff Members Present: Mr. Kevin Costello, AICP, Executive Director; Ms. Jan Hancock, Secretary; Mr. Todd Morgan, Planner; Mr. Kevin Wall, AICP, CDT - Director, Zoning Services.

Legal Counsel Present: Mr. Larry Dillon

Mr. Arnold Caddell, Chairman, called the meeting to order at 7 P.M. and introduced the first item on the Agenda:

1. Applicant: Charles E. Massey and Charles Edward Massey for Charles Edward Massey (owner)

Request: Zoning Map Amendment

The request of Charles E. Massey and Charles Edward Massey (applicants) for Charles Edward Massey (owner) to consider a Zoning Map Amendment from Rural Suburban Estates (RSE) to Office One (O-1) for a 1.39 acre tract on the northeast corner of the North Bend Road/Stahl Road intersection, Boone County, Kentucky. The request is for a zone change to allow an office building.

Staff Member Kevin Wall presented the Staff Report which included a slide presentation (see Staff Report).

Following an explanation of the Public Hearing process, the Chairman asked for the applicant's presentation.

Attorney Gerald Dusing, with offices in Florence and Covington, stated that he was representing the applicants, Charles and Edward Massey. He introduced Mr. Charles Massey, who was for many years the principal of Goodrich Elementary and a property owner in the area. His son, Edward Massey, is an attorney and a resident of Stahl Road

and would have his professional law office at the site with some complimentary professional uses in the building, such as an insurance agency.

Mr. Charles Massey, 503 Edgar Court, Erlanger, stated that he purchased this land from a good friend who is deceased. He wants to do something special with the property and wants his son to have his law office close to home. He requested approval of the application.

Mr. Edward Massey, 1789 Stahl Road, Hebron, stated that he has been here before as a member of the Boone County School Board. He and his father are very close and want to do this together. He has been practicing law since 1993 in Boone County and wants to live and work in the community. He presented an exhibit showing the outline of the property with the parking areas shown in gray and the proposed building shown in brown. The light green represents the green space and the dark green area represents the buffer to the adjacent Parker property. It will be a small office environment of his professional practice and probably a real estate office or insurance agency. He presented an exhibit of the proposed building elevations. The building is of a residential appearance and the builder is Tom Spille, who also built Mr. Massey's home on Stahl Road.

Mr. Edward Massey stated that he has spoken individually with the adjacent property owners, and some of their concerns were the same concerns as those in the Staff Report. He submitted a handout (see Exhibit 1) containing signed statements from three of the five adjacent property owners who do not object to the proposal. The other two property owners did not have the opportunity to sign the statements. Mr. and Mrs. Parker, who are immediately adjacent to the buffer area, are present; and Mary and Sandy Davis, who have property in the area across from Stahl Road, and are not present due to illness. Mr. Fred Hoffman has signed the statement. Next to Mr. Hoffman are two parcels owned by Harvey Pelley who was present. He stated that Mr. Pelley raised concerns regarding the lighting and he does not want the dumpsters removed at 3 A.M.. The owner of the property below the panhandle of the lot is Mr. Fred Irvine. Edward Massey stated that he grew up in this neighborhood and knows the neighbors. One of the concerns was the development of KY 237. He knows from his involvement with the School Board that ground breaking for the north point school is set for October 14 and he has seen a lot of communications regarding KY 237. He was told by the Department of Transportation yesterday that the report is not yet assembled but, based on the approval of the north point site and the development of the north point school, it will be moved up to the Six Year Plan and will become a matter of priority. He stated that he allowed significant space between the parking area and North Bend Road for the expansion of the road should it occur.

Mr. Dusing stated that when Edward Massey came to him over a year ago in regard to this project, he told him that the Comprehensive Plan

does not anticipate this -- the text and map are for residential from the Industrial Park to the Ohio River, except for the Thornwilde convenience/commercial uses of a Neighborhood Commercial nature. He told Edward Massey that the Planning Commission will be concerned about a proliferation of uses on KY 237 that are not single-family residential and will need assurance that because Mr. Massey gets this use someone would not be entitled to a gas station next door.

Mr. Dusing addressed the Staff Comments:

Staff Comment 1.A. - The property is designated for Suburban Residential use on the Future Land Use Map and he has just commented in that regard. He presented the exhibit of the elevations of the proposed office building and stated that there has been a special effort in design, at greater expense, to have the building look like a residence. It is a two-story building 36' x 50' with brick and shutters in a Federal style.

Staff Comment 1.B. - It is the applicant's intention to serve the growing number of residential subdivisions along North Bend Road.

Staff Comment 1.C. - "The Housing Element characterizes the North River Area as one that will experience a great expansion in residential development." - and that it is more reason why this use is appropriate there.

Staff Comment 1.D. - There is a designation for commercial use down the street and Sand Run Church is on the other side of the street.

Staff Comment 2. A. - They will agree as a condition to limit the site to professional use only. If the site would expand in the future with a separate use in the back, that would require another Public Hearing.

Staff Comment 2.B. - They agree to the building-mounted wall packs and bollard style freestanding fixtures. Mr. Wall explained that "bollard style" refers to approximate waist high lighting. Mr. Dusing stated that there is no intended overhead lighting. The lighting would be for security reasons after hours.

Staff Comment 2.C. - The ten-foot buffer is their mistake and will be corrected to twenty-five feet. He noted that the darker green on the Site Plan represents a stand of mature hardwood trees that is a good screen. They would need all 25 feet not to disturb them. They do not intend to disturb the stand of trees on the northeast side of the property when they do the parking lot or the building to assure a buffer to the Stahl Road residents. They do not have a problem with substantial landscaping and Buffer Yard A per the requirements. They do not have an exact drawing they would prove justification of the idea of sinking the parking areas below the average finished grades. Mr. Dusing showed on the exhibit how the land slopes from the

panhandle diagonally toward Stahl Road. The corner of Stahl Road and KY 237 is the low spot. There will be some elevation modification to fill in the gully and pipe through there. The parking lots are on both sides of the building and tucked up to the building to allow substantial green space on the perimeter. If the Planning Commission wants more green space on KY 237, they can push the parking lots back. He stated that they need to be ADA compliant and need handicapped access on grade from the parking lot.

Staff Comment 3 - Their best information is that KY 237 will happen sooner or later, but they do not know when.

Staff Comment 4 - Overall traffic generation is minimal. Edward Massey added that he normally has one or two appointments a day, and some days he has none. There may be an exceptional day when he has four or five appointments.

Staff Comment 5 - Mr. Dusing offered to submit a document dated June 8, 1992 from Sanitation District #1 stating that Mr. Massey was asked to grant a sewer trunk line across the corner of his property and could have a free tap in to develop his property. Sanitary sewer is available to the site. Mr. Wall stated that Staff has this document on file.

Staff Comment 6 - It is not a problem to correct the width of the driveway. The access to the site is a cub cut on Stahl Road and not on KY 237.

Mr. Dusing stated, in regard to compatibility with the Comprehensive Plan and the surrounding residential neighborhood, that they have done everything they can to cause the building to look like a residence and it will not generate more traffic than a residence. He stated that the present zoning can be found to be inappropriate and the requested zoning to be appropriate. KY 237 is not a country lane any more and is a major arterial highway. It is not realistic to expect single-family development to infill on a three- to five-lane arterial highway. He stated that if they were a subdivision requesting neighborhood commercial uses in front, the Planning Commission would be in agreement -- but they have an infill lot surrounded by residences that they need to be compatible with and to which they have services to offer so that the residents do not have to go to Burlington or Florence. Pre-paid legal services is in downtown Hebron but only has part-time hours. There is a significant demand for legal services in the area. The present zoning is inappropriate and the proposed zoning is more appropriate because, even though this site is not specifically referenced in the Comprehensive Plan, the text talks about the need for small scale businesses for the rapidly growing residential area. Mr. Dusing submitted copies of Page 11-1 of the Boone County Zoning Ordinance (see Exhibit 2). He read the paragraph from Article 11, Employment Districts, Section 1110, Office One (O-1) and stated "this is what we

are" -- low scale professional services which do not need or desire to be located in a commercial district. He stated that the proposed use is called for verbatim as the purpose of the O-1 Zone. He stated that the Zoning Ordinance anticipates this kind of infill development because the minimum size for an O-1 Zone is one acre, and they meet that criteria.

This completed the applicant's presentation. Mr. Dusing offered to answer any questions.

The Chairman asked if there was anyone else present who wished to speak in favor of the proposal.

Mr. Fred Irvine, 1358 North Bend Road, stated that he has no objection to the proposal and asked that it be approved.

There being no one else present in favor of the request, the Chairman asked if there was anyone present in opposition to the request or having questions.

Mr. Jack Gartner, 1302 North Bend Road, Francisville, stated that the Planning Commission spent many hours creating the Comprehensive Plan to establish land uses so that people know what is going to happen in the community. The proposal is a classic example of spot zoning, which is a real danger to society. He does not believe that this is an appropriate site for office use. The applicant has suggested that he has a limited law practice with one or two appointments a day, but a real estate office and an insurance office are beehives of activity. Mr. Gartner stated that he owns property up the street -- so why doesn't he ask for spot zoning for a gas station on the corner? Mr. Gartner stated that the parking is unfortunately located on the site and does not enhance the quality of the building. The front elevation of the building seems to be out of the ground by eight feet, which is the height of the foundation, and the back seems to be in the ground. He noted the topography of the site and stated that the building seems to be backwards. He questioned why this building would not be located in an office area? It is because the Masseys do not own property in an office area -- but they should buy property there. This is a classic example of spot zoning and if it is allowed here, then every piece of property of 1 or 1.5 acres is subject to the same kind of appeal all over the county.

Mrs. Shirley Millar, 669 North Bend Road, speaking personally and for her father of 1303 North Bend Road, and her sister of Stahl Road whose property is at a fifteen degree angle from the subject property, stated that she is friends with the Masseys and has known them for many years. Everything she has looked at -- whether it is the Housing Element or the Land Use Plan -- calls for residential. There is some commercial zoning with Thornwilde, but that was done for an extremely large development. She is not sure why the applicant is saying residential zoning is not appropriate other than

major changes to the community -- but the only major changes are because of residential developments approved by the Planning Commission. The Planning Commission has not approved an office zone. If this request is approved, then the Future Land Use Map will have to be changed, which will allow more office and spot zoning to be approved. People are not supposed to be able to say "you approved this for O-1 so I should be able to have it too" -- but it happens. She urged the Planning Commission to follow the Comprehensive Plan and not spot zone this property.

Mr. Dallas Robertson, 1298 North Bend Road, stated that he owns property on Stahl Road and on North Bend Road. He agreed that spot zoning is a problem. He stated that the area is very residential and he wants it to stay that way.

The Chairman asked if there was anyone else present who wished to speak in opposition. There being no response, he asked Mr. Dusing if he had any closing remarks.

Mr. Dusing stated that this is not spot zoning. Section 1115 says that the minimum size or extension required for O-1 is one acre and that does not mean it has to be attached to any other commercial or office area. It is public policy that a freestanding office zone of one acre or more is appropriate.

The Chairman asked if there were any comments or questions from the Commissioners.

Mrs. Smith asked if the front of the building will face Stahl Road or North Bend Road.

Mr. Dusing responded that Mr. Gartner was correct and that the footprint of the building is backwards. Edward Massey stated that the front of the building faces North Bend Road and it will have a two-story look. The rear of the building faces the Parker property and has a one-story look. Mrs. Smith asked "If you turn off Stahl Road into the property, would you be facing the front of the building?". Edward Massey responded that if you drive into the curb cut, you would be facing the side of the building. If you walked from North Bend Road, you would be at the front door.

Mr. Ries stated that the parking appears to be out of proportion with the building. There are about twenty four spaces and the parking area seems to be about twice the size of the building.

Edward Massey stated that the drawing is out of scale. Mr. Spille only builds 35 or 40 homes a year and hand draws. He stated that he will follow Staff's recommendation and submit a to-scale copy.

Mr. Ries stated that it looks like spot zoning to him and he believes this use should be in an O-1 area. He stated that he is concerned

about setting a precedent. He questioned what would prevent someone else from coming in and asking for the same thing. He is not convinced that the criteria for a zone change has been addressed. He asked the applicant to specifically state at the Committee meeting how the request meets the criteria for a zone change.

Mr. Wall explained that "spot zoning" is a legal concept used by the courts and is outside of the Zoning Code. He stated that Counselor Wilson or Counselor Dillon could be asked to provide definitions of what the courts use for "spot zoning" if it would be beneficial to the Committee. Mr. Ries responded that there are certain zones for certain businesses and if you take one office and put it in the middle of the residential zone, that is spot zoning. Mr. Wall asked that Counselor Wilson or Counselor Dillon provide definitions and examples to the Committee.

Mr. Damstrom asked how many office spaces will be available in the building and questioned what size they would be. He commented that often the use that goes in a building is based on the size office available.

Edward Massey responded that his office will be one half of one of the floors. If someone wants the entire upper or lower level, they will try to accommodate that. They anticipate there being a common hallway on each floor and two large office sections, or four sections on each level, or any combination thereof. They have not decided this yet.

Mr. Damstrom questioned the maximum number of other uses. Would six be the maximum? Mr. Edward Massey responded that six is foreseeable, but he envisions four uses.

Mr. Damstrom stated that he has listened to the applicants presentation and the reasons for the appropriateness of this particular request, but he is having a difficult time understanding why this zoning is more appropriate. He is more comfortable with the residential zoning and it has not been proven to him why it should be changed.

Mrs. Wilson asked for clarification of the layout of the land. Edward Massey responded by indicating the high elevation and the lower elevation and how the property slopes down. He explained that if the building faces North Bend Road, you would be able to access the lower level from a parking area and access the upper level from the other parking area so that someone in a wheelchair could access anywhere in the building. They do not anticipate having an elevator in the building.

Mrs. Wilson asked if there would still be enough area for the detention pond if KY 237 were to expand and the state wanted more of this property. Edward Massey responded that there is already a

culvert under North Bend Road for the natural drainage of the land. They do not anticipate any taking of their property to interfere with the retention system.

Mr. McMillian commented that the applicant said it was a residential type setting, but there is a big parking lot in the front.

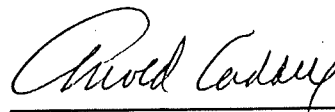
Mr. Dusing responded that the drawing is not to scale and the parking lot is not that big. They do not want to build any more parking spaces than the code requires. They have to have some parking on that side of the building for handicapped access at grade level. They have to have a couple of handicapped spots up against the building. They will be happy to talk with the Committee about reducing the parking.

Mr. Damstrom asked if there is room for another office building towards the back of the site. Mr. Wall responded that he does not think they would be able to meet the setbacks and there is a drainage swale through there that collects water from other sites. They would need Buffer Yard C, which would be 25 feet on each side for an active use. He does not think another use would fit on the site. Mr. Damstrom asked if the applicant will agree to that area being permanent green space. Mr. Dusing responded that they do not want a restrictive covenant because no one knows what will happen fifty years from now, but they would agree that they would not be able to build another building on the site as a matter of right and could not do anything without another Public Hearing.

There being no further comments, Chairman Caddell stated that the Committee Meeting for this item will be on October 7, 1999 at 5 P.M. in Courtroom 3A. This item will be on the Agenda for the Business Meeting on October 20, 1999 at 7:30 P.M..

The Chairman closed this Public Hearing and called for a short recess.

APPROVED:



Arnold Caddell, Chairman

Attest:

  
Jan Hancock, Recording Secretary

PUBLIC HEARING ITEM NO. 2:

Commission Members Present: Mrs. Arnett - Secretary/Treasurer, Mr. Caddell - Chairman, Mr. Chaney, Mr. Damstrom - Vice Chairman, Mr. Hicks - Temporary Presiding Officer, Mr. McMillian, Mr. Newman, Mr. Ries, Mr. Schwenke, Mrs. Smith, Mr. White, and Mrs. Wilson.

Staff Members Present: Mr. Kevin Costello, AICP, Executive Director; Ms. Jan Hancock, Secretary; and Mr. Todd Morgan, Planner.

Legal Counsel Present: Mr. Larry Dillon.

Following a five-minute recess, the Chairman introduced the last item on the Agenda:

2. Applicant: Charles Sallee and Linda Sallee (owners)

Request: Zoning Map Amendment

The request of Charles Sallee and Linda Sallee (owners) to consider a Zoning Map Amendment from Residential One Family (R1F) to Professional Office One (O-1A) for a 0.61 acre tract at 7368 Burlington Pike, Florence, Kentucky. The request is for a zone change to allow an office building.

Staff Member Todd Morgan presented the Staff Report which included a slide presentation (see Staff Report).

The Chairman asked for the applicant's presentation.

Mr. Charles Sallee, 221 Buckingham Drive, Florence, presented a model of the site and indicated the water drainage pattern. They have the number of required parking spaces. He stated that the building is shown in relation to Mrs. Turner's house, which is the house on which this development would have the greatest impact. He took the model to Mrs. Turner and her son-in-law has addressed some concerns in his letter which is attached to the Staff Report. Mr. Sallee believes that they have addressed those issues. He believes that the zone change would be consistent with the surrounding property and would not affect the Turner property. He met with some of the other residents at a City Council meeting and there was no opposition to his plans. He believes those residents would be present if they were opposed. The building and lot are of residential design to fit within the architectural design of the Clutterbuck subdivision. The thirty-foot berms are for water retention and safety from cars going over them, and to protect the Turner residence from headlights. He stated that a Baptist Church has just acquired property behind this site and received approval to proceed with their plans.

Mr. Costello stated that the Victory Baptist Church received a Conditional Use Permit from the Florence Board of Adjustment. They have an option on the property but may not have closed yet as the sale is contingent on the sale of their current property.

There being no one else present in favor of the request, the Chairman asked if there was anyone present in opposition to the request. There being no response, he asked if there were any comments or questions from the Commissioners.

Mr. Damstrom stated that the project has a lot of merit. He questioned the height of the berm where it fronts on KY 18. Mr. Sallee responded that it is 4.5 feet high. Mr. Damstrom asked if it will shield headlights from the cars facing onto Burlington Pike. Mr. Sallee responded "no - they would shine above it".

Mr. Damstrom questioned the proposed construction material. Mr. Sallee responded that it would be masonry.


Mr. Damstrom commented that the Subdivision Regulations say that water will be retained on site and they will have to manage the water on site.

Mr. Ries questioned the lighting. Mr. Sallee responded that they have not addressed that issue. They will probably have lighting off the building shining away from the Turners. They do not expect a lot of lighting. Mr. Ries asked that they consider the residents and have the lighting shine down. He asked that the lights not stay on all night and turn off at the appropriate time. Mr. Sallee responded "certainly".

Mr. Damstrom stated that he is concerned about the parking spaces and believes there needs to be some type of bushes to protect the headlights from shining on KY 18 and distracting those motorists. He asked that the Committee address this issue.

There being no further comments, Chairman Caddell stated that the Committee Meeting for this item will be on October 7, 1999 in Courtroom 3A. This item will be on the Agenda for the Business Meeting on October 20, 1999 at 7:30 P.M.. The Chairman closed this Public Hearing at 8:35 P.M..

APPROVED:

  
\_\_\_\_\_  
Arnold Caddell, Chairman

Attest:

  
\_\_\_\_\_  
Jan Hancock, Recording Secretary

BOONE COUNTY PLANNING COMMISSION  
BOONE COUNTY ADMINISTRATION BUILDING  
COURTROOM 3A  
BUSINESS MEETING  
November 17, 1999  
7:30 P.M.

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Mr. Phil Damstrom, Vice Chairman, called the meeting to order at 7:33 P.M..

COMMISSION MEMBERS PRESENT:

Mrs. Judy Arnett, Secretary/Treasurer  
Mr. W. Thomas Chaney  
Mr. Phil Damstrom, Vice Chairman  
Mr. Mark Hicks, Temporary Presiding Officer  
Mr. Richard Knock  
Mr. Don McMillian  
Mr. Robert Newman  
Mr. Charlie Reynolds  
Mr. Robert Ries  
Mr. Bob Schwenke  
Mrs. Carol Smith  
Mr. Earl White  
Mrs. Lisa Wilson  
Mr. David Zimmer

COMMISSION MEMBER NOT PRESENT:

Mr. Arnold Caddell, Chairman

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin Costello, AICP, Executive Director  
Ms. Jan Hancock, Secretary  
Mr. Mitch Light, Assistant Zoning Administrator/ZEO  
Mr. Todd Morgan, Planner  
Mrs. Pat Russ, Administrative Assistant  
Mr. Kevin Wall, AICP, CDT - Director, Zoning Services

Approval of the Minutes:

Mr. Damstrom stated that the Commissioners received a copy of the Minutes of the November 3, 1999 Business Meeting. He asked if there were any comments or corrections.

There being no changes to the Minutes, Mr. White moved that they be approved as mailed. Mr. McMillian seconded the motion and it carried unanimously.

ACTION ON PLAN REVIEWS:

1. Zoning Map Amendment

The request of Charles E. Massey and Charles Edward Massey (applicants) for Charles Edward Massey (owner) to consider a Zoning Map amendment from Rural Suburban Estates (RSE) to Office One (O-1) for a 1.39 acre tract on the northeast corner of the North Bend Road/Stahl Road intersection, Boone County, Kentucky. The request is for a zone change to allow an office building.

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

There being no discussion, Mr. White moved by resolution to Boone County Fiscal Court to deny the request based on the Committee Report. Mr. Knock seconded the motion and it carried unanimously.

Counselor Wilson advised that the Planning Commission's action is a recommendation only. The request will go to Fiscal Court for their final action.

2. Zoning Map Amendment

The request of William M. Code (applicant) for Tobacco Country, Inc. (owner) to consider a Zoning Map Amendment from Office One (O-1) to Suburban Residential One (SR-1) for a 0.75 acre tract at 18 Needmore Street, Walton, Kentucky. The request is for a zone change to allow a detached single-family residence.

Mr. Damstrom stated that this item has been withdrawn by the applicant.

Mr. Ries asked for clarification regarding the letter from the applicant. Mr. Costello explained that the applicant wishes to receive a refund, which is against our policy. The Fee Schedule clearly states that if a request is withdrawn, but it has been

**EXHIBIT**  
**“B”**

## COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Phil Damstrom, Chairman  
Zone Change Committee

DATE: November 17, 1999

RE: Request of **Charles E. Massey and Charles Edward Massey (applicants)** for **Charles Edward Massey (owner)** to consider a Zoning Map Amendment from Rural Suburban Estates (RSE) to Office One (O-1) for a 1.39 acre tract located on the northeast corner of the North Bend Road/Stahl Road intersection, Boone County, Kentucky. The request is for a zone change to allow an office building.

### REMARKS:

We, the Committee, recommend denial of the above referenced Zoning Map Amendment based on the following findings of fact.

1. The Committee has concluded that the Zoning Map Amendment and Concept Development Plan are not in agreement with the 1995 Boone County Comprehensive Plan due to the following reasons:
  - A. The 1995 Boone County Comprehensive Plan's 2020 Land Use Plan (the "Future Land Use Map") designates the site and immediate vicinity for "Suburban Residential" (SR) uses. This designation is described as "single family housing of up to four units per acre. This classification also includes any low density or estate residential developed as a formal subdivision." This classification does not include any form of non-residential uses, such as the proposed office building.
  - B. The text of the Comprehensive Plan's Land Use Element discusses the area in question in two different sections and both of these sections state that the area in question should develop as Suburban Residential uses as defined above. First, section "Area C-1: Francisville Area" (pp. 217 and 218) states "in general, Suburban Residential development should be concentrated on land nearest to KY 237, as indicated on the Future Land Use Map." The "Area C-1" text also specifically mentions the "existing residential character" of this vicinity. The text of the "Area C-1" section does not give any support to the provision of office or commercial uses for the site in question.

Second, section "Area C-2: Hebron Area" (pg. 218) discusses how the northwest quadrant of the I-275 and KY 237 interchange, which has since developed as Park West industrial park, is an ideal location for Business Park uses. This section also states that supporting commercial and office uses could provide a suitable entrance to this development and that the adjoining area is suitable for High Suburban Density Residential development, which will provide a transition to the Suburban Residential densities in the Francisville area. The site in question is within the Francisville area and within the area planned for Suburban Residential uses. Again, the text of the "Area C-2" section does not give any support to the provision of office or commercial uses for the site in question.

- C. Neither the "Areas of Future Commercial Activity" section (pp. 82 and 83) or the "Areas of Future Industrial and Office Activity" (pg. 84), both in the Business Activity Element, make any reference to the provision of office, commercial, or any other non-residential uses for the site or immediate area in question. In addition, the site in question is not indicated for either future industrial or commercial development on the Future Industrial and Commercial map (Figure 5.3) on page 87 of the Business Activity Element.
- D. In the "North River Area" section (pg. 106), the Housing Element characterizes the North River Area as one that will experience a great expansion in residential development. The text of the "North River Area" section does not give any support to the provision of office or commercial uses for the site in question.
- E. The Committee recognizes that there is an approximate four (4) acre site that is located approximately one quarter mile to the north of the site in question along North Bend Road that is designated for Commercial uses by the Comprehensive Plan's Future Land Use Map. This site was approved for small-scaled neighborhood oriented uses as part of the Concept Development Plan for the Thornwilde development, a large scale, residential development. This future commercial area is different from the proposed Zoning Map Amendment in the respect that it is an integral part of a larger development that follows the "Planned Development" approach and will also provide a variety of neighborhood goods and services in an integrated and orderly manner. The proposed office use is not an integral part of a larger Planned Development and is not integrated with the surrounding area as it is merely a "stand alone" office use; the Committee considers the requested Zoning Map Amendment, if it were to be granted, to be an unacceptable "spot zone" because the requested zoning is not in agreement with the Comprehensive Plan and because it is not justified based on the other statutory criteria for the granting of zone changes or other reasonable land use factors.

- F. The applicant has contended that the proposed Zoning Map Amendment and Concept Development Plan are in agreement with the stated purposes of the Office One (O-1) zone as expressed in Section 1110 of the Boone County Zoning Regulations. The Committee recognizes that agreement, or lack thereof, with such purposes stated in Zoning Regulations may provide guidance when evaluating zone change applications, however, the statutory criteria for the granting of Zoning Map Amendments deals with agreement with the Comprehensive Plan itself, and not certain "intent" sections of the Zoning Regulations.
2. The Committee has not found that the existing zoning classification is inappropriate and that the proposed zoning classification is appropriate, or that there have been major changes of an economic, physical, or social nature not anticipated in the 1995 Boone County Comprehensive Plan that substantially alter the area's character. Although there was discussion in the Public Hearing for this request regarding a reconstruction and upgrade of North Bend Road and substantial residential development that has occurred and will continue to occur in the North Bend Road/Francisville area, both of these issues are recognized in the 1995 Boone County Comprehensive Plan, whereas the proposed office use is not.

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

*Phil Damstrom*  
\_\_\_\_\_  
**Phil Damstrom, Chairman**

For       Against   
Abstain       Absent

*W. Thomas Chaney*  
\_\_\_\_\_  
**W. Thomas Chaney**

For       Against   
Abstain       Absent

*Mark Hicks*  
\_\_\_\_\_  
**Mark Hicks**

For       Against   
Abstain       Absent

*Bob Newman*  
\_\_\_\_\_  
**Bob Newman**

For       Against   
Abstain       Absent

*Earl White*  
\_\_\_\_\_  
**Earl White**

For       Against   
Abstain       Absent

**TOTAL: 5 FOR    2 AGAINST    1 ABSTAIN    1 ABSENT**

BOONE COUNTY PLANNING COMMISSION  
BOONE COUNTY ADMINISTRATION BUILDING  
COURTROOM 3A  
September 29, 1999  
7:00 P.M.

PUBLIC HEARINGS

Commission Members Present: Mrs. Arnett - Secretary/Treasurer, Mr. Caddell - Chairman, Mr. Chaney, Mr. Damstrom - Vice Chairman, Mr. Hicks - Temporary Presiding Officer, Mr. McMillian, Mr. Newman, Mr. Ries, Mr. Schwenke, Mrs. Smith, Mr. White, and Mrs. Wilson.

Staff Members Present: Mr. Kevin Costello, AICP, Executive Director; Ms. Jan Hancock, Secretary; Mr. Todd Morgan, Planner; Mr. Kevin Wall, AICP, CDT - Director, Zoning Services.

Legal Counsel Present: Mr. Larry Dillon

Mr. Arnold Caddell, Chairman, called the meeting to order at 7 P.M. and introduced the first item on the Agenda:

1. Applicant: Charles E. Massey and Charles Edward Massey for Charles Edward Massey (owner)

Request: Zoning Map Amendment

The request of Charles E. Massey and Charles Edward Massey (applicants) for Charles Edward Massey (owner) to consider a Zoning Map Amendment from Rural Suburban Estates (RSE) to Office One (O-1) for a 1.39 acre tract on the northeast corner of the North Bend Road/Stahl Road intersection, Boone County, Kentucky. The request is for a zone change to allow an office building.

Staff Member Kevin Wall presented the Staff Report which included a slide presentation (see Staff Report).

Following an explanation of the Public Hearing process, the Chairman asked for the applicant's presentation.

Attorney Gerald Dusing, with offices in Florence and Covington, stated that he was representing the applicants, Charles and Edward Massey. He introduced Mr. Charles Massey, who was for many years the principal of Goodrich Elementary and a property owner in the area. His son, Edward Massey, is an attorney and a resident of Stahl Road

and would have his professional law office at the site with some complimentary professional uses in the building, such as an insurance agency.

Mr. Charles Massey, 503 Edgar Court, Erlanger, stated that he purchased this land from a good friend who is deceased. He wants to do something special with the property and wants his son to have his law office close to home. He requested approval of the application.

Mr. Edward Massey, 1789 Stahl Road, Hebron, stated that he has been here before as a member of the Boone County School Board. He and his father are very close and want to do this together. He has been practicing law since 1993 in Boone County and wants to live and work in the community. He presented an exhibit showing the outline of the property with the parking areas shown in gray and the proposed building shown in brown. The light green represents the green space and the dark green area represents the buffer to the adjacent Parker property. It will be a small office environment of his professional practice and probably a real estate office or insurance agency. He presented an exhibit of the proposed building elevations. The building is of a residential appearance and the builder is Tom Spille, who also built Mr. Massey's home on Stahl Road.

Mr. Edward Massey stated that he has spoken individually with the adjacent property owners, and some of their concerns were the same concerns as those in the Staff Report. He submitted a handout (see Exhibit 1) containing signed statements from three of the five adjacent property owners who do not object to the proposal. The other two property owners did not have the opportunity to sign the statements. Mr. and Mrs. Parker, who are immediately adjacent to the buffer area, are present; and Mary and Sandy Davis, who have property in the area across from Stahl Road, and are not present due to illness. Mr. Fred Hoffman has signed the statement. Next to Mr. Hoffman are two parcels owned by Harvey Pelley who was present. He stated that Mr. Pelley raised concerns regarding the lighting and he does not want the dumpsters removed at 3 A.M.. The owner of the property below the panhandle of the lot is Mr. Fred Irvine. Edward Massey stated that he grew up in this neighborhood and knows the neighbors. One of the concerns was the development of KY 237. He knows from his involvement with the School Board that ground breaking for the north point school is set for October 14 and he has seen a lot of communications regarding KY 237. He was told by the Department of Transportation yesterday that the report is not yet assembled but, based on the approval of the north point site and the development of the north point school, it will be moved up to the Six Year Plan and will become a matter of priority. He stated that he allowed significant space between the parking area and North Bend Road for the expansion of the road should it occur.

Mr. Dusing stated that when Edward Massey came to him over a year ago in regard to this project, he told him that the Comprehensive Plan

does not anticipate this -- the text and map are for residential from the Industrial Park to the Ohio River, except for the Thornwilde convenience/commercial uses of a Neighborhood Commercial nature. He told Edward Massey that the Planning Commission will be concerned about a proliferation of uses on KY 237 that are not single-family residential and will need assurance that because Mr. Massey gets this use someone would not be entitled to a gas station next door.

Mr. Dusing addressed the Staff Comments:

Staff Comment 1.A. - The property is designated for Suburban Residential use on the Future Land Use Map and he has just commented in that regard. He presented the exhibit of the elevations of the proposed office building and stated that there has been a special effort in design, at greater expense, to have the building look like a residence. It is a two-story building 36' x 50' with brick and shutters in a Federal style.

Staff Comment 1.B. - It is the applicant's intention to serve the growing number of residential subdivisions along North Bend Road.

Staff Comment 1.C. - "The Housing Element characterizes the North River Area as one that will experience a great expansion in residential development." - and that it is more reason why this use is appropriate there.

Staff Comment 1.D. - There is a designation for commercial use down the street and Sand Run Church is on the other side of the street.

Staff Comment 2. A. - They will agree as a condition to limit the site to professional use only. If the site would expand in the future with a separate use in the back, that would require another Public Hearing.

Staff Comment 2.B. - They agree to the building-mounted wall packs and bollard style freestanding fixtures. Mr. Wall explained that "bollard style" refers to approximate waist high lighting. Mr. Dusing stated that there is no intended overhead lighting. The lighting would be for security reasons after hours.

Staff Comment 2.C. - The ten-foot buffer is their mistake and will be corrected to twenty-five feet. He noted that the darker green on the Site Plan represents a stand of mature hardwood trees that is a good screen. They would need all 25 feet not to disturb them. They do not intend to disturb the stand of trees on the northeast side of the property when they do the parking lot or the building to assure a buffer to the Stahl Road residents. They do not have a problem with substantial landscaping and Buffer Yard A per the requirements. They do not have an exact drawing the would prove justification of the idea of sinking the parking areas below the average finished grades. Mr. Dusing showed on the exhibit how the land slopes from the

panhandle diagonally toward Stahl Road. The corner of Stahl Road and KY 237 is the low spot. There will be some elevation modification to fill in the gully and pipe through there. The parking lots are on both sides of the building and tucked up to the building to allow substantial green space on the perimeter. If the Planning Commission wants more green space on KY 237, they can push the parking lots back. He stated that they need to be ADA compliant and need handicapped access on grade from the parking lot.

Staff Comment 3 - Their best information is that KY 237 will happen sooner or later, but they do not know when.

Staff Comment 4 - Overall traffic generation is minimal. Edward Massey added that he normally has one or two appointments a day, and some days he has none. There may be an exceptional day when he has four or five appointments.

Staff Comment 5 - Mr. Dusing offered to submit a document dated June 8, 1992 from Sanitation District #1 stating that Mr. Massey was asked to grant a sewer trunk line across the corner of his property and could have a free tap in to develop his property. Sanitary sewer is available to the site. Mr. Wall stated that Staff has this document on file.

Staff Comment 6 - It is not a problem to correct the width of the driveway. The access to the site is a cut on Stahl Road and not on KY 237.

Mr. Dusing stated, in regard to compatibility with the Comprehensive Plan and the surrounding residential neighborhood, that they have done everything they can to cause the building to look like a residence and it will not generate more traffic than a residence. He stated that the present zoning can be found to be inappropriate and the requested zoning to be appropriate. KY 237 is not a country lane any more and is a major arterial highway. It is not realistic to expect single-family development to infill on a three- to five-lane arterial highway. He stated that if they were a subdivision requesting neighborhood commercial uses in front, the Planning Commission would be in agreement -- but they have an infill lot surrounded by residences that they need to be compatible with and to which they have services to offer so that the residents do not have to go to Burlington or Florence. Pre-paid legal services is in downtown Hebron but only has part-time hours. There is a significant demand for legal services in the area. The present zoning is inappropriate and the proposed zoning is more appropriate because, even though this site is not specifically referenced in the Comprehensive Plan, the text talks about the need for small scale businesses for the rapidly growing residential area. Mr. Dusing submitted copies of Page 11-1 of the Boone County Zoning Ordinance (see Exhibit 2). He read the paragraph from Article 11, Employment Districts, Section 1110, Office One (O-1) and stated "this is what we

are" -- low scale professional services which do not need or desire to be located in a commercial district. He stated that the proposed use is called for verbatim as the purpose of the O-1 Zone. He stated that the Zoning Ordinance anticipates this kind of infill development because the minimum size for an O-1 Zone is one acre, and they meet that criteria.

This completed the applicant's presentation. Mr. Dusing offered to answer any questions.

The Chairman asked if there was anyone else present who wished to speak in favor of the proposal.

Mr. Fred Irvine, 1358 North Bend Road, stated that he has no objection to the proposal and asked that it be approved.

There being no one else present in favor of the request, the Chairman asked if there was anyone present in opposition to the request or having questions.

Mr. Jack Gartner, 1302 North Bend Road, Francisville, stated that the Planning Commission spent many hours creating the Comprehensive Plan to establish land uses so that people know what is going to happen in the community. The proposal is a classic example of spot zoning, which is a real danger to society. He does not believe that this is an appropriate site for office use. The applicant has suggested that he has a limited law practice with one or two appointments a day, but a real estate office and an insurance office are beehives of activity. Mr. Gartner stated that he owns property up the street -- so why doesn't he ask for spot zoning for a gas station on the corner? Mr. Gartner stated that the parking is unfortunately located on the site and does not enhance the quality of the building. The front elevation of the building seems to be out of the ground by eight feet, which is the height of the foundation, and the back seems to be in the ground. He noted the topography of the site and stated that the building seems to be backwards. He questioned why this building would not be located in an office area? It is because the Masseys do not own property in an office area -- but they should buy property there. This is a classic example of spot zoning and if it is allowed here, then every piece of property of 1 or 1.5 acres is subject to the same kind of appeal all over the county.

Mrs. Shirley Millar, 669 North Bend Road, speaking personally and for her father of 1303 North Bend Road, and her sister of Stahl Road whose property is at a fifteen degree angle from the subject property, stated that she is friends with the Masseys and has known them for many years. Everything she has looked at -- whether it is the Housing Element or the Land Use Plan -- calls for residential. There is some commercial zoning with Thornwilde, but that was done for an extremely large development. She is not sure why the applicant is saying residential zoning is not appropriate other than

major changes to the community -- but the only major changes are because of residential developments approved by the Planning Commission. The Planning Commission has not approved an office zone. If this request is approved, then the Future Land Use Map will have to be changed, which will allow more office and spot zoning to be approved. People are not supposed to be able to say "you approved this for O-1 so I should be able to have it too" -- but it happens. She urged the Planning Commission to follow the Comprehensive Plan and not spot zone this property.

Mr. Dallas Robertson, 1298 North Bend Road, stated that he owns property on Stahl Road and on North Bend Road. He agreed that spot zoning is a problem. He stated that the area is very residential and he wants it to stay that way.

The Chairman asked if there was anyone else present who wished to speak in opposition. There being no response, he asked Mr. Dusing if he had any closing remarks.

Mr. Dusing stated that this is not spot zoning. Section 1115 says that the minimum size or extension required for O-1 is one acre and that does not mean it has to be attached to any other commercial or office area. It is public policy that a freestanding office zone of one acre or more is appropriate.

The Chairman asked if there were any comments or questions from the Commissioners.

Mrs. Smith asked if the front of the building will face Stahl Road or North Bend Road.

Mr. Dusing responded that Mr. Gartner was correct and that the footprint of the building is backwards. Edward Massey stated that the front of the building faces North Bend Road and it will have a two-story look. The rear of the building faces the Parker property and has a one-story look. Mrs. Smith asked "If you turn off Stahl Road into the property, would you be facing the front of the building?". Edward Massey responded that if you drive into the curb cut, you would be facing the side of the building. If you walked from North Bend Road, you would be at the front door.

Mr. Ries stated that the parking appears to be out of proportion with the building. There are about twenty four spaces and the parking area seems to be about twice the size of the building.

Edward Massey stated that the drawing is out of scale. Mr. Spille only builds 35 or 40 homes a year and hand draws. He stated that he will follow Staff's recommendation and submit a to-scale copy.

Mr. Ries stated that it looks like spot zoning to him and he believes this use should be in an O-1 area. He stated that he is concerned

about setting a precedent. He questioned what would prevent someone else from coming in and asking for the same thing. He is not convinced that the criteria for a zone change has been addressed. He asked the applicant to specifically state at the Committee meeting how the request meets the criteria for a zone change.

Mr. Wall explained that "spot zoning" is a legal concept used by the courts and is outside of the Zoning Code. He stated that Counselor Wilson or Counselor Dillon could be asked to provide definitions of what the courts use for "spot zoning" if it would be beneficial to the Committee. Mr. Ries responded that there are certain zones for certain businesses and if you take one office and put it in the middle of the residential zone, that is spot zoning. Mr. Wall asked that Counselor Wilson or Counselor Dillon provide definitions and examples to the Committee.

Mr. Damstrom asked how many office spaces will be available in the building and questioned what size they would be. He commented that often the use that goes in a building is based on the size office available.

Edward Massey responded that his office will be one half of one of the floors. If someone wants the entire upper or lower level, they will try to accommodate that. They anticipate there being a common hallway on each floor and two large office sections, or four sections on each level, or any combination thereof. They have not decided this yet.

Mr. Damstrom questioned the maximum number of other uses. Would six be the maximum? Mr. Edward Massey responded that six is foreseeable, but he envisions four uses.

Mr. Damstrom stated that he has listened to the applicants presentation and the reasons for the appropriateness of this particular request, but he is having a difficult time understanding why this zoning is more appropriate. He is more comfortable with the residential zoning and it has not been proven to him why it should be changed.

Mrs. Wilson asked for clarification of the layout of the land. Edward Massey responded by indicating the high elevation and the lower elevation and how the property slopes down. He explained that if the building faces North Bend Road, you would be able to access the lower level from a parking area and access the upper level from the other parking area so that someone in a wheelchair could access anywhere in the building. They do not anticipate having an elevator in the building.

Mrs. Wilson asked if there would still be enough area for the detention pond if KY 237 were to expand and the state wanted more of this property. Edward Massey responded that there is already a

culvert under North Bend Road for the natural drainage of the land. They do not anticipate any taking of their property to interfere with the retention system.

Mr. McMillian commented that the applicant said it was a residential type setting, but there is a big parking lot in the front.

Mr. Dusing responded that the drawing is not to scale and the parking lot is not that big. They do not want to build any more parking spaces than the code requires. They have to have some parking on that side of the building for handicapped access at grade level. They have to have a couple of handicapped spots up against the building. They will be happy to talk with the Committee about reducing the parking.

Mr. Damstrom asked if there is room for another office building towards the back of the site. Mr. Wall responded that he does not think they would be able to meet the setbacks and there is a drainage swale through there that collects water from other sites. They would need Buffer Yard C, which would be 25 feet on each side for an active use. He does not think another use would fit on the site. Mr. Damstrom asked if the applicant will agree to that area being permanent green space. Mr. Dusing responded that they do not want a restrictive covenant because no one knows what will happen fifty years from now, but they would agree that they would not be able to build another building on the site as a matter of right and could not do anything without another Public Hearing.

There being no further comments, Chairman Caddell stated that the Committee Meeting for this item will be on October 7, 1999 at 5 P.M. in Courtroom 3A. This item will be on the Agenda for the Business Meeting on October 20, 1999 at 7:30 P.M..

The Chairman closed this Public Hearing and called for a short recess.

APPROVED:



Arnold Caddell, Chairman

Attest:

  
Jan Hancock, Recording Secretary

# SUPPORTING INFORMATION

BOOK 198 Vol. 810  
DEED

Property Transfer Tax Paid \$3.00  
Vernon W. ROUSE, Clerk *guk*  
That

KNOW ALL MEN BY THESE PRESENTS:

Arthur L. Wilson, single and Jessie L. Wilson, single

for and in consideration of THREE THOUSAND THREE HUNDRED 00/100 (\$3,300.00) to them paid by Charles F. Massey and Shirley A. Massey, his wife

the receipt whereof is hereby acknowledged, do hereby bargain, sell and convey to the said Charles F. Massey and Shirley A. Massey, his wife, jointly with remainder in fee simple to the survivor of them, his or her

heirs and assigns forever, the following described real estate, lying and being in Boone County, Kentucky to-wit:

Grantee Mailing Address 3126 Dixie Highway, Erlanger, Ky. Group No. 2002

Present Street Address North Bend Rd. at Stahl Rd. Hebron, Ky. Plat No. \_\_\_\_\_

Located generally on the Northeast side of Ky. Et. 237 (North Bend Rd) at its intersection with Stahl road and described thus: BEGINNING at the Southwest corner of the parcel of 1.517 acre conveyed to Middleton, said corner being common with the remainder of the 1.517 acre Wilson tract of 1.5 acres less an exception, in the East right of way line 20 feet (10' centerline) of Ky. Et. 237; thence with a tangent of a curve therein S 33-3/4-30 E 171.21 feet to the North line of Stahl road; thence therewith N 80-45 E 230.17 feet to the North line of said 1.5 acres tract; thence with said line W 44-56 W 427.3 feet to a stake a corner of the remainder of said 1.5 acres tract; thence S 11-35 W 30.63 feet to a corner with a line owned by Middleton; thence with lines of said parcel S 29-15 E 241.72 feet, S 44-57 W 170 feet to the place of beginning CONTAINING 1.26 acres and subject to legal easements of record and in existence.

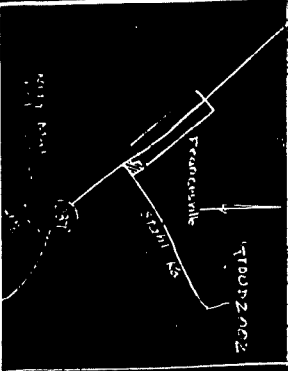
Being a part of the same property conveyed to the Grantors by R. S. Wilson, widower by deed dated 1<sup>th</sup> day of July 19 53 and recorded in deed book 106 page 330, in the office of the Clerk of the Boone County Court, Burlington, Kentucky.

Together with all the privileges and appurtenances to the same belonging. To have and to hold the same to the said

Charles F. Massey and Shirley A. Massey, his wife, jointly with remainder in fee simple to the survivor of them, his or her

This the 1st parcel partitioned off the parent tract does not appear to violate applicable zoning regulations.

S/ Wesley D. Kelly L.S.



Approved for recording purposes  
 The Board of Commissioners  
 Chairman

SCALE:		APPROVED BY:	
DATE:	197	DATE:	
DRAWN BY:		REVISIONS:	
DRAWING NUMBER:			

198 6

heirs and assigns forever, with covenants of general warranty.

In witness whereof the said Alfred L. Wilson, single and Jessie L. Wilson, single

hereunto set their hands this 23rd day of June, 1972

I hereby certify that this instrument has been drafted by:

Larry J. Critler, Attorney  
February 20, 1972

Alfred L. Wilson  
Jessie L. Wilson  
\_\_\_\_\_

Larry J. Critler  
STATE OF KENTUCKY,  
SCT.

County of Boone.

I, Larry J. Critler, a Notary Public in and for the county and state aforesaid, do certify that the foregoing instrument of writing from Alfred L. Wilson, single and Jessie L. Wilson, single to Charles E. Massey and Shirley A. Massey, his wife was this day presented to me in my county by the parties and then and there acknowledged by the said Alfred L. Wilson and Jessie L. Wilson, his wife to be their act and deed. Whereupon the same and this certificate are certified to the proper office for record.

Given under my hand and seal of office this 23rd day of June, 1972

My commission expires 4/1/73

Larry J. Critler  
Notary Public.

**WARRANTY DEED**

TO: Charles E. Massey and Shirley A. Massey, his wife

ACKNOWLEDGED BY: Alfred L. Wilson and Jessie L. Wilson

RECORDED IN DEED BOOK: 198 Page 620

RECORDING STAMPS \$ 3.50

FILED: JUN 27 1972

BY: [Signature] D.C.

STATE OF KENTUCKY, SCT.

County of BOONE

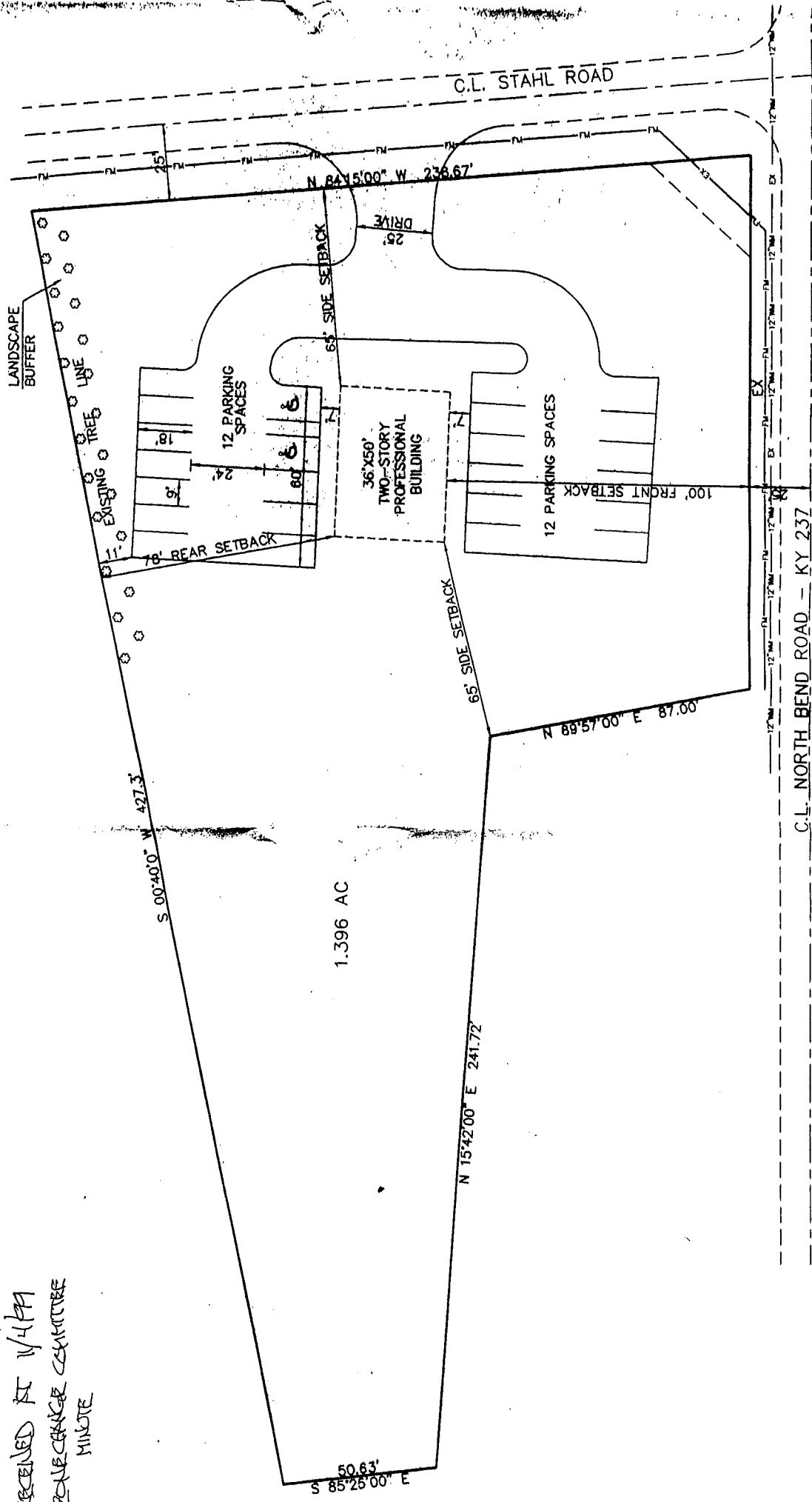
I, JERRY W. ROUSE, Clerk of the County Court in and for the County and State aforesaid, do certify that the foregoing instrument of writing from ALFRED L. WILSON and JESSIE L. WILSON to CHARLES E. MASSEY and SHIRLEY A. MASSEY was this 27th day of JUNE, 1972 produced to me, certified as above and lodged for record at 2:48 o'clock P.M.

Whereupon, the same with foregoing and this certificate have been duly recorded in my office.

Given under my hand, this 27th day of June 1972.

JERRY W. ROUSE Clerk  
By: [Signature] D.C.

RECEIVED AT 11/4/19  
ZONING CHANGE COMMITTEE  
MINUTE



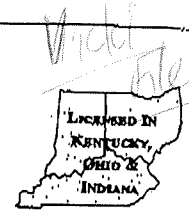
C.L. NORTH BEND ROAD - KY 237



# C. Ed Massey

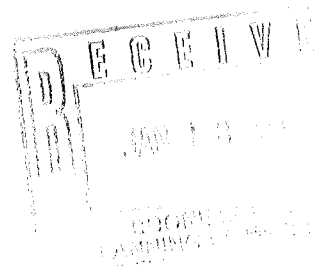
ATTORNEY AT LAW

2643 ERLANGER CRESCENT SPRINGS RD.  
ERLANGER, KY. 41017



January 17, 2000

BOONE COUNTY FISCAL COURT  
ATTN: JIM PARSONS  
2950 Washington Street  
Burlington, KY 41005



VIA FACSIMILE: 334-3105

IN RE: STAHL ROAD OFFICE PROJECT

Dear Jim:

Please remove my request for a zone change from the docket of the Boone County Fiscal Court. Based on the vote of the Planning Commission, my father and I have decided to re-evaluate our plans and proposals.

Sincerely,

*C. Ed Massey*  
C. Ed Massey

*Kevin Costello*  
*FYI*  
*Jim Parsons*