

**WALTON BOARD OF ADJUSTMENT
WALTON SENIOR CENTER
BUSINESS MEETING
March 16, 2015
6:30 P.M.**

Mr. Turner, Chairman, called the meeting to order at 6:30 P.M.

BOARD MEMBERS PRESENT:

Mr. Steve Turner, Chairman
Mr. Jim Bridges
Mr. Thomas Luebbe

BOARD MEMBERS NOT PRESENT

Mr. Robin Baker
Mr. Edward Sedor

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

APPROVAL OF MINUTES:

Mr. Turner stated that the Board members received copies of the minutes of the Walton Board of Adjustment meeting of December 4, 2014. Mr. Luebbe moved that they be approved and Mr. Bridges seconded the motion. Mr. Turner asked for a vote and it carried unanimously.

AGENDA ITEMS:

- 1. Request of John and Susan Pittman for a Change in Non-Conforming Use to allow an excavating business to occupy the former Brinkman Oil properties. The approximate 4.27 acre site is located at 257, 260, and 270 Old Nicholson Road, Walton, Kentucky and is currently zoned Commercial Two (C-2).**

Staff Member, Todd Morgan, AICP, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Luebbe asked if Tuemler Gas was also zoned Commercial Two (C-2)? Mr. Morgan replied that Tuemler Gas was zoned C-2 and was also a non-conforming use.

Mr. Turner asked if the applicant would like to make a presentation?

Mr. John Pittman asked about the last Staff recommendation regarding no heavy equipment, semi-trucks, or trailers being parked outside. Mr. Morgan said that was his recommendation for the properties at 260 and 270 Old Nicholson Road only.

Mr. Pittman said he wanted to address one of his emails, which is included in the Staff Report. His proposal is to demolish the two buildings, change the grade, and pour concrete for employee or visitor parking. He added that the building slabs would be removed. Mr. Luebbe asked for confirmation that the two buildings would be demolished, the slabs would be removed, the associated parking lots would be removed, and new concrete would be poured to create new parking lots. Mr. Pittman agreed. Mr. Luebbe asked what types of vehicles would be parked on that side of the road? Mr. Pittman responded pickup trucks and cars (nothing over 8' in length). Mr. Morgan asked if the parking lots at 260 Old Nicholson and 270 Old Nicholson would be repoured? Mr. Pittman said he wasn't sure because it would depend on the grades. He said he would probably use 270 Old Nicholson for parking unless there was a lot of cutting or utility work that needed to be done. If, so he would move the parking down to 260 Old Nicholson Road.

Mr. Pittman addressed the Staff questions found in the Staff Report.

- A. Explain how both of the remaining buildings would be used?

Mr. Pittman said the two remaining buildings would be used for storage and maintenance. He said they do their own maintenance on the equipment if it's light duty maintenance. They send out heavy duty maintenance jobs.

- B. The submitted plan shows that two existing office buildings and the filling area containment wall will be demolished. Will the associated parking lots be removed or will they remain?

He said he just answered that question.

- C. Approximately how many company vehicles (cars, trucks, tractor trailers) or trailers would be kept on site? Where would these vehicles be parked?

Mr. Pittman said he would like the option to have between 1 and 20 on site at any time. They normally only have 2 to 3 trucks outside and maybe 1 or 2 machines. Their equipment is usually on job sites or at the shop for maintenance. The trucks that are out there are dump trucks and drags, which are used to move equipment. They also have a couple service trucks but they stay inside the shop at night because they are loaded with tools.

- E. Other than heavy equipment, vehicles, or trailers, will anything be stored outside (scrap material, lumber, fill dirt, stone, etc.)?

He said he would like to keep some material outside temporarily until it goes to a job site. This occurs maybe two or three times a year. It would be less than a semi load of pipe. This doesn't have to occur but he would like to have it as an option. Mr. Bridges asked where this would occur? Mr. Pittman responded that it could take place in the heavy equipment compound or behind the warehouse/wash building.

Mr. Luebbe asked for clarification that his proposal wasn't to fence the heavy equipment gravel storage lot initially? Mr. Pittman said he doesn't want to fence the area unless he has vandalism or theft problems. Mr. Luebbe asked if the heavy equipment that was kept at the back of the site between jobs would be visible from the road? Mr. Pittman replied that it would be visible. Mr. Morgan asked for clarification that his light trucks would not be kept in the back of the site. Mr. Pittman responded that the big trucks and heavy equipment would be kept in the back of the site (red rectangle area).

F. How many people could work from this facility?

Mr. Pittman said most days only one person would be on site. This person would get his truck ready and leave. There are other times when they receive materials and supplies and perform equipment maintenance. There are also times when they could have an employee meeting and have 10 people on site. Mr. Luebbe asked if this would be his main business headquarters? Mr. Pittman said it would.

G. What are the proposed hours of business operation?

Mr. Pittman said it depends on several things. They may not open at all if it's a rainy day. On a typical day one or two guys will get there from 6:00 to 8:00 AM and arrive back on site sometime between 2:00 and 7:00 PM. 7:00 PM would be an really late day for them. Mr. Luebbe asked what time would heavy equipment leave or arrive back at the site? Mr. Pittman said it could be anytime throughout the day (6:00 AM - 7:00 PM). Mr. Morgan asked if they work on Sundays? Mr. Pittman said they did not. Mr. Luebbe asked if they work on Saturdays? Mr. Pittman replied not if they could help it.

H. Is any additional security lighting being proposed?

Mr. Pittman said he plans on installing more security lighting. Mr. Morgan said he wanted Mr. Pittman to address lighting because it could have an impact on the neighbors. Mr. Pittman said he does not know if the shop has adequate lighting or not. He would put up new steel pole lighting with concrete piers to deter theft and vandalism on the heavy equipment storage lot.

I. Will the fuel pumps be restored?

Mr. Pittman said he doesn't know much about the fuel pumps. He knows the underground storage tanks are still there but doesn't know what condition they are in. His plan is to remove the tanks and replace them with two small above ground tanks. They would be certified and contained storage tanks. Mr. Morgan asked if they would be gasoline or diesel tanks? Mr Pittman responded they would both store diesel fuel. Mr. Bridges asked if he could clarify what he meant by small tanks? Mr. Pittman responded the new tanks would be 1,000 to 2,000 gallon tanks. The existing underground tanks could be 5,000 gallons and could be leaking into the ground.

Mr. Bridges asked Mr. Pittman if he had purchased the subject properties? Mr. Pittman said he had not because he was awaiting the outcome of this meeting and a report concerning the condition of the tanks.

Mr. Morgan asked where the new above ground tanks would be kept? Mr. Pittman said they would probably be located next to the old warehouse and wash building. Mr. Morgan asked if they would be located to the side or rear of the building? Mr. Pittman said he thinks he would locate them to the side of the building but really doesn't know for sure. He said the tanks are really not that big. They are approximately the size of a small car. He said he really wouldn't want them reconstructed where they are now because they are located in the front parking lot. He would like to locate them close to a structure. Mr. Luebbe asked if two 1,500 gallon tanks are proposed? Mr. Pittman said there would probably be a 2,000 gallon tank and a 1,000 gallon tank. Mr. Pittman said a 2,000 gallon tank is approximately 10' long, 6' wide, and 6' tall.

Mr. Turner stated that major heavy equipment maintenance usually takes place wherever the piece of equipment is and does not get taken to a shop. He asked if someone would be coming to tear machines down and repair them on the subject site? Mr. Pittman responded no and indicated that the equipment would be fixed where it breaks down. It would not be brought back to the subject site.

Mr. Bridges asked how the oil, hydraulic fluid, antifreeze would be handled? Mr. Pittman responded that they have disposal tanks and someone would come and pump them out as needed. The tanks would be kept inside and have dikes associated with them to contain leaks for the full capacity of the tanks.

Mr. Turner asked if the maintenance of equipment is a permitted use? Mr. Morgan said the application is for a Change in Non-Conforming Use. Mr. Pittman's proposal needs to be on the record and the Board needs to act on it and determine if it's appropriate. Mr. Turner said the existing non-conforming use was basically the storage of and distribution of petroleum products (Principally Permitted Use #16 in the I-2 zone) and the proposal is to go to the heavy machinery, transportation vehicles and heavy equipment use (Principally Permitted Use #13 in the I-2 zone). The heading for these two uses does not say anything about the maintenance of vehicles. Mr. Morgan said he believes Staff would treat the maintenance of vehicles as an accessory use if a heavy equipment operator was permitted and was simply maintaining their own fleet. It would be an accessory use to the overall business. However, the maintenance of equipment is part of Mr. Pittman's Change in Non-Conforming Use application and needs to be evaluated by the Board.

Mr. Wilson said even if the Board views the maintenance as an accessory use to the overall business operation, they still need to analyze if the proposed business operation goes beyond the nature and scope of the previous business and if it's more objectionable. The Board can impose conditions on an approval. So even if equipment maintenance is an accessory use, the Board does not have to approve it unless they determine it does not go beyond what was there before. Mr. Tuner said they way he reads it is if the scope goes beyond what previously existed then they should not approve it by statute. He asked if that was correct? Mr. Wilson said what the Board has to remember is that Brinkman Oil's operation was allowed because it was preexisting non-conforming. Under

Kentucky law if something is preexisting non-conforming it is protected and can continue on forever. When someone comes in that owns that land and says that they want to have a new non-conforming use then they have to convince the Board that it is no more objectionable than what was there and protected before.

Ms. Judy Moses said she lives at 244 Old Nicholson Road, Walton, KY and her property is right next door. She wants to know why Mr. Pittman is coming to a residential street and is proposing to put all this heavy equipment on the lot? She asked what was wrong with his current location? Mr. Pittman responded that the property is for sale and they are seeking the change. Ms. Moses asked who is going to want to come to the Gaines House with all this stuff sitting around? She indicated that the roads and railroad crossing would be torn up by his vehicles. She asked if the City of Walton was giving him a tax break? Mr. Pittman said he would not be receiving a tax break. She said the big problem is that he would be destroying everybody's property value on the street. Mr. Pittman asked what would be any different than what is there now? Ms. Moses said the property is fine the way it is now. She has lived there 58 years and has seen everything. The property went from one or two gas tanks and a truck to a big company. The property is now vacant and it is quiet. Mr. Pittman asked if her property value went up after Brinkman Oil moved out of the facility? Ms. Moses said her property value has not changed. Mr. Pittman said his operation would look nicer and have less traffic and noise than Brinkman Oil's operation. Ms. Moses questioned how there could be less noise? Mr. Pittman said he believes Brinkman Oil had 15 to 20 trucks coming in and out of there each day and they will have 1 or 2. Ms. Moses said there are already trains in the area and noise isn't a real big deal. Mr. Pittman said he is sure they will not be as loud as the trains. He said if property values didn't go up when Brinkman Oil moved out then how could they decrease when his business moves in and they are less obtrusive? Ms. Moses said because they are bringing in bigger equipment. Mr. Pittman said that is only periodically. Ms. Moses said she understands the people that work there will park their vehicles. She asked if the big trailers that haul the equipment will be parked there. Mr. Pittman said he has trucks and drag equipment.

Mr. Dan Simpson said he lives at 236 Old Nicholson Road. His property is kind of caddy corner with the subject property. He built his house about 15 years ago. He is familiar with the subject property. His grandfather built one of the first houses on that part of the road over 50 years ago when it was a main thoroughfare. At that time, some businesses made sense because there was a constant traffic flow. It hasn't been that way for approximately 50 years. Slowly but surely, the businesses are moving out and the residents are making an effort to reclaim the road. It is a residential dead end street now. He understands that Mr. Pittman is a businessman and is looking for a place to store his equipment. It has been kind of refreshing since Brinkman Oil moved out. He believes the value of his property has unquestionably went up. In addition to Brinkman Oil leaving, a couple of old houses have been torn down and others have been upgraded. It is nice to see people from other cities driving down the street to see the Old Gaines House. Putting heavy equipment on this site will certainly lower his property values. He believes he has a nice house and he will be able to look out his living room windows at the site. He believes the new use will be a hell of a lot worse than it was before. In addition, anybody that goes to buy his house in the future will see the business as well. The business will also give the City of Walton a black eye. Many people will drive past the site as events are held at the Gaines House. He stated that

they did not like the Brinkman Oil operation and were glad when it moved out. They moved out because the site is not a good place for a business. It is a dead end residential street and it has changed significantly over the last 50 to 60 years. He said the only thing that could be put on the site to make it look nicer than it is now is a park. He asked Mr. Pittman if he would be willing to buy the property and donate it as a park to the City of Walton? Mr. Pittman responded that he couldn't do that. Mr. Simpson asked Mr. Pittman if he thought locating a park there would be nicer than a business? Mr. Pittman responded that parks are great but he wouldn't put one between two railroad tracks. Mr. Simpson said the conditions have changed and a business like Mr. Pittman's, with all the heavy equipment and noise pollution, would cause impacts. He said he has been around this type of equipment for years and he understands that it has to be started up from time to time. It is noisy. He said the proposed business is just not a fit. Mr. Pittman said he doesn't see it that way. He sees the area as being blighted when he drives past it. He said all of their equipment is late model and is nice looking stuff. He doesn't have old, junky, broken down equipment. Mr. Simpson said he is a General Contractor and is around the stuff all the time. He said Mr. Pittman is a businessman and eventually he will want to expand. He sees scenarios where Mr. Pittman will need more room and will park something where it doesn't belong. The neighbors will have to complain and it could take weeks or legal matters for issues to be resolved. Mr. Pittman said one of the reasons they are interested in the property is that it is bigger than what they will ever need. There will be no future expansion. They are looking to move because they have outgrown their current facility. Mr. Simpson said he is trying to protect the property values of his home and all the people that live on the street. Mr. Pittman said he doesn't mean any disrespect to anyone but it is just a business decision on their part. Mr. Simpson said it is a dead end residential street that they are trying to reclaim. He doesn't believe it should be a place where heavy equipment is stored.

Ms. Vonda Simpson said she lives at 236 Old Nicholson Road. She has lived in the area all her life and has put up with a lot of stuff. Her main concern is that Mr. Pittman has heavy equipment and trucks coming in and out and there are people in the neighborhood with small children. Some of these children play on the road. Her second concern is with fires because they are a dead end road and have one way in and one way out. They have propane tanks on end of the road and are now looking at heaving diesel fuel at this site. Another concern is property values. She asked how they will be able to sell their homes? These homes may not be worth much but they have worked for them all of their lives. Someday they or their children will want to sell out. She questioned how tall the equipment and machines will be? Mr. Pittman said he doesn't have anything that is over 11' tall. She asked if he was considering a 6' or 8' tall fence? Mr. Pittman responded that he was hoping not to construct a fence. Mr. Morgan responded that Mr. Pittman's proposal doesn't include a fence unless he deems it's necessary. He drafted a potential condition which would require a wood fence and landscaping if the Board approves the request and imposes the condition. Mrs. Simpson asked Mr. Pittman where his business was located now? Mr. Pittman responded on Production Drive in Florence. She asked if that area was all commercial? Mr. Pittman responded that it was. Although the subject property is zoned commercial, she doesn't understand why he would want to bring his business there. She asked Mr. Pittman if he would want such a business located across the street from his house? Mr. Pittman said he lives in the country and has farms so it doesn't matter what people park across from him. Mrs. Simpson asked if he would be concerned if a scrap yard

went in across from his home and the only thing that screened it was a fence? Mr. Pittman said he would not be concerned because of where he lives. He said he wasn't sure if he would be concerned if he lived in one of the houses on Old Nicholson Road. He said he couldn't speak to that. Mrs. Simpson said she does not see the proposed business as being equal or more compatible with what was there before. Mr. Pittman said he sees it being very compatible because it is smaller in scale than what was there before. He added that Brinkman Oil sold thousands of gallons of gasoline and diesel fuel and grease and was a fire hazard. Mrs. Simpson said she understood that and indicated that they are not there any longer. She understands from other people that when heavy equipment is worked on and is started that it's very noisy. His proposal is to come in at 6:00 AM and leave at 7:00 PM. Mr. Pittman responded the noise from the equipment is comparable to a diesel pickup truck. Mrs. Simpson said one of her neighbor works on this type of equipment and he indicated that it's as noisy at the trains when it is first started. Mr. Pittman said they only bring the machines there for maintenance. A machine may be there once every 2 or 3 weeks. There may be a circumstance where 2 or 3 machines are there. When Brinkman Oil was there they had 15 or 20 trucks they left there every day and they would come back to get more fuel and go back out again. His business will not be even remotely close to Brinkman Oil in this regard. Mrs. Simpson asked if he brought any pictures of his current business establishment? Mr. Pittman responded that he had not. Mrs. Simpson said she believes their street already has enough issues with it being a dead end and the propane company.

Ms. Donna Rosenstiel said she lived at 200 Old Nicholson Road. She said she wanted to ask a couple of questions for clarification. First, how many pieces of equipment were going to be kept there? Mr. Pittman said there will usually be 2 trucks with drag trailers on site every day, there will also be a couple of service trucks but those will be kept inside at night. Ms. Rosenstiel asked if only a couple of people would be working there? Mr. Pittman responded that on a given day there will be 1 to 3 people show up at the shop and they will get in their trucks and leave. They will be gone all day long and will come back to park and leave. That is a typical day. Ms. Rosenstiel said if it's only a couple of pieces of equipment and a couple of employees then why does he want to buy the property, tear down 2 buildings and a retaining wall, and put in tanks in a residential area. She asked why the location he was at now wouldn't contain two pieces of equipment? Mr. Pittman said both buildings fit their needs very well and they like the parking area. The parking area to pull in an out is larger than they have now. As far as the two buildings, they do not have to tear them down. There is sufficient room to park on the other side of the street. He believes the structures that would be torn down are blighted and are of no use to him. The old tanks piers are just an eye sore and he would like to turn the area into a green space. She said it still seems like a lot of work to her for him to keep a few pieces of heavy equipment. A couple pieces of equipment does not sound all that terribly bad but she doesn't understand why he would want that property. If two trucks with trailers and a couple of service trucks are the only things that will be kept on site than it sounds like his this could be accommodated where he is now. Mr. Pittman said they just want more room. It is hard to find property in Boone County that meets their needs. It is more than they need but it fits their needs. Ms. Rosenstiel asked if they have any other property in Boone County. Mr. Pittman said they do and it is a vacant lot. They also have a commercial building in Boone County but it is a rental warehouse. Ms. Rosenstiel asked if he could use the vacant lot for his business purposes? Mr. Pittman responded he could if he went through planning and zoning and constructed a building. However, these buildings already exist and they fit their needs. Ms. Rosenstiel said this area contains their homes and they are getting selective about who they want coming in. With the process they have a voice and they can speak out against what they do not want on their street. It is nothing against him personally.

Mr. Morgan asked Mr. Pittman to clarify something. Earlier he said there could be a couple pieces of heavy equipment on site quite frequently. However, on rare occasions there could be up to 20 pieces of heavy equipment on site. He asked if he heard that correctly? Mr. Pittman said he would like to have that option but he does not see it happening.

Mr. Turner asked what happens during the winter when they are not doing construction? He asked if all of his equipment would be stored on the lot? Mr. Pittman said it would not because they work year round. The equipment would be sitting out on job sites in the snow if they are not working. His trucks would come back to the shop.

Mr. Luebbe said his question is regarding the fuel tanks that he wants to have. If the equipment is not routinely coming in and out then why are the fuel tanks needed? Mr. Pittman said they transfer fuel to the job sites. One of the guys that comes in fills up a tanker truck and leaves to fill up the equipment. This employee also greases the equipment and takes care of other light duty maintenance. His truck will come back to the shop and be parked inside.

Mr. Bridges asked if a drag trailer is the same thing as a lowboy trailer? Mr. Pittman said there are different definitions of lowboy trailers. Drag trailers are typically pulled behind pickup trucks or dump trucks. Mr. Bridges asked what was the largest dozer or piece of equipment he has and would it be hauled on a lowboy? His concern is those trailers sit very low to the ground. He asked Mr. Pittman if he has taken any of his equipment over the railroad tracks. His concern is that a lowboy trailer could dig right into the tracks. Mr. Pittman said his trailers do not sit low to the ground like that so they do not have that problem. Mr. Morgan asked how long his trailers are? Mr. Pittman said the trailers are 34' long. Mr. Morgan asked how many trailers he had? Mr. Pittman responded 2.

Mr. Jerry Treadway asked Mr. Pittman if his trailers would clear the tracks? Mr. Pittman responded that his equipment sits above the trailer tires so it is not an issue.

Mr. Bridges asked if someone from Walton Fire Department could address the fuel tanks and their comfort level with them? Chief Tom Ollier said the proposed tanks would be above ground and would have to be permitted through the Fire Marshal's office. They will have be double walled tanks with emergency shut offs. This is the same thing the fuel stations have to have. The proposed fuel tanks would not be that bad. Brinkman Oil used to have old metal tanks in the ground that tended to leak. Today's tanks are doubled walled and have indicators if there is a leak. There biggest concern was lowboy trailers and the possibility of them getting stuck on the tracks. He said he hopes it never happens but they have a preplanned emergency evacuation area in the event that a propane or other fuel truck gets hit at the tracks. At the end of the road, near the Gaines House, there is a emergency gate and the Fire Department has a key for it. This would allow them to get the residents out. He said this crossing at Dixie Highway and Old Nicholson is an unguarded crossing. He has seen trucks hit at the Mt. Zion Road guarded crossing. He said in the next 2 or 3 weeks they are going to have a national railroad company come in and give them a class so they can stay up on these kind of issues.

Mr. Turner asked if Walton Fire had any comment regarding the short distance between the railroad tracks and the stop sign on Dixie Highway. He said he has measured the distance and there is 66' between the stop sign and the tracks. Chief Ollier said that is where they have run into problems in Richwood. If a truck is sitting behind a car at the traffic light then the tail end of the tractor trailer will cross the tracks. Mr. Turner said a large tractor trailer is more than 66' long and would cross the tracks on Old Nicholson Road.

Ms. Margie Stewart said she lives on Edwards Avenue. She said Mr. Pittman's proposal does not include fencing and the equipment would draw the interest of children. The kids will look at it, get closer to it, and eventually get on it. She has seen machinery left at Cauthen Run and the kids were all over it. Mr. Pittman said he would rather not do the fencing because of the cost. However, he is willing to put a fence up if there is a problem. Ms. Stewart said the facility will also attract kids on skateboards if he paves the lots. She said he may want to consider putting the lights on the buildings to keep it lower off the ground if the request is approved. This would have less impacts than light poles on the residential neighbors. She also has concerns about him stating that he wouldn't expand and the railroad track. She has noticed over the years that they have been raising the railroad tracks with blacktop. She asked what will happen to his trailers when the blacktop got too high. Mr. Pittman said they do not have lowboy trailers. Ms. Stewart said she is familiar with dump trucks trailers because of her brother. She said that there can be problems with these trailers going up and over tracks. Mr. Pittman said his trailers will clear the railroad crossing.

Mr. Jim Moses asked if the business was definitely going in. Mr. Turner said it depends on the outcome of this meeting and Mr. Pittman. Mr. Pittman will need to purchase the property if the Board approves the request.

Mrs. Simpson said a lot of Mr. Pittman's answers to the questions are kind of iffy. For example, how many pieces of equipment will be there, how many employees will there be, will there be 2 pieces of equipment or 20. It just makes sense that the business will continue to grow. Mr. Pittman said the nature of his business is that if a machine isn't on a job site it's not making money. There is no benefit if a machine is sitting in their yard. Ms. Simpson said they will be working on the machines and be turning them off and on. She said this will create a lot of noise. Mr. Pittman said it will create a lot less than the trains that go by. Mrs. Simpson said they do have train noise but this will add another thing. She said Mr. Treadway will be greatly impacted because he lives across the street.

Mr. Bridges asked Mr. Morgan to show the PowerPoint slide of the eastern side of the property. Mr. Pittman indicated earlier that his tallest piece of equipment was 11' tall and the highest you can go on the highway is 13'-6". If the request is approved, he recommends that Staff should contact the proper utility companies to make sure that there is proper safety clearance.

Mr. Luebbe said his concern is that the cat is kind of out of the bag if they approve the application. Mr. Pittman has intentions of what he would like to do with his company and he fully believes that his intentions are genuine. He will have a couple of pieces of equipment and trailers in the back of the lot and the business will be run out of the shop. That proposal has a certain degree of impact on the people that live on the street or travel to the Gaines House. This is a concern to him because as a City they are trying to draw people in and make the Gaines House a tourist attraction. This impact would be minimal the way he is describing his plan. However, once the Board allows the use and he has this big area to work with, he sees a scenario where additional pieces of equipment or decommissioned equipment will go there. Over time, he believes the use will build up. He feels that his job is not only to look at what Mr. Pittman says the plan will be but also what potential impacts could be placed on the community. It is very difficult for the Board to reel something back in if it is not being used exactly as presented. He knows that Brinkman Oil was there before and it is a good thing that they gone now. His business may not have a big impact the way he is describing it but things change. Over the last couple of years a property was permitted to store heavy equipment and it now looks like a junk yard. It is a

rusting pile of heavy equipment that hasn't been used for years and it continues to deteriorate. He would hate to see the subject property turn into something like that because it is located in a residential community and is on the way to the Gaines House. The other property he is talking about is more of an agricultural area and not a residential area. It is across from a farm on the way to his house. He said he does not know Mr. Pittman personally and does not believe he has the intentions of doing that. However, the Board would have a hard time controlling what went on if they grant application. The impacts could be detrimental to a lot of members of their community and to the Gaines House. Mr. Luebbe said he would need to have these concerns alleviated. He is not sure if they can be alleviated because they concern what can happen down the road. Mr. Pittman said the Board could impose conditions like there couldn't be broken down machines sitting on site for more than 2 weeks or 2 months. Mr. Luebbe asked what would the happen if the condition wasn't followed? It would become a legal nightmare to get those machines removed. He added that he liked some of the recommendations regarding large privacy fencing and evergreen landscaping in front of the fence so even if more equipment was added it wouldn't be seen by anyone. He asked Mr. Pittman if he would be willing to incur the expense to put up a 12' tall high privacy fence and 200 fir trees in front of the fence? Mr. Pittman said he wouldn't want to do a 12' tall fence because of the wind load. Mr. Luebbe indicated that Mr. Pittman didn't want to put up a 6' tall chainlink fence to keep people away from the equipment because of the cost and he understands that. He asked if he would be willing to incur the cost of doing the privacy fence and landscaping to screen the equipment from public view. Mr. Pittman said he didn't want to construct and pay for the fence because he doesn't plan on keeping equipment there. Mr. Luebbe said he cannot look into the future and know for sure that he will not keep equipment there. The Board needs to make plans based on what he could potentially do. If the fence and trees are installed they will screen any equipment that is kept there. Mr. Pittman said the Staff recommendation was for an 8' tall privacy fence to be constructed with 6' tall evergreen every 20' feet on center. Mr. Pittman asked if there could be a stipulation that they just have to do a certain area of that. Mr. Wilson stated that Mr. Pittman is the applicant and he needs to come in with an application and say what he is willing to do. He shouldn't be looking at the Board to come up with conditions so he can do what he wants to do. It is Mr. Pittman's burden to come in with an application and say what he is willing to do. Mr. Luebbe said with what Mr. Pittman is proposing today he doesn't know if he can support the application because he believes it will have too big of an impact on the community.

Mr. Turner said the problem he has is Section 273 of the Boone County Zoning Regulations. This sections reads that the Board shall not permit such a change unless the new nonconforming use is as equally or more compatible. He said he doesn't know if the proposal is less, more, or equally compatible. However, the second part of this section states that the Board shall not allow a changed nonconforming use to be increased or enlarged. He sees this proposal as in increase in usage. Brinkman Oil stored and distributed fuel and Mr. Pittman would be storing and repairing equipment and storing fuel. As a result, it more of a non-conforming use. Regardless of how he feels about the area around the site, that is part he is having trouble getting beyond. It does not fall in the category of being less of a non-conforming use and that it what the Board is bound by to uphold. Mr. Pittman replied that Brinkman Oil clearly occupied all the buildings and he is proposing to do away with 2 of them. As a result, he will be occupying less space. Brinkman Oil had 15 to 20 trucks and they have 2. Brinkman Oil had the whole garage full of cases of grease and oil and they will have none of that. He believes his use would be a lesser use.

Someone from the audience said Brinkman Oil did not perform their own maintenance on their trucks. Mr. Pittman said they did and that is why they constructed the new garage.

Mr. Simpson said his experience with Brinkman Oil was there was never more than 6 trucks on site at a time. The pictures in the PowerPoint show that. Mr. Pittman said he was guessing at the number. He said they would still have less trucks than Brinkman if they had 6 because they have 2.

Mr. Bridges said he concurs with Mr. Turner's appraisal of Section 273 and if due process has been given he would like to make a motion.

Mr. Turner asked if anybody else wanted to speak? There was no response.

Mr. Bridges made a motion to deny the request based on Section 273 of the Boone County Zoning Regulations. Mr. Turner seconded the motion. Mr. Turner called for the vote and it carried unanimously.

ADJOURNMENT

Mr. Turner asked for a motion to adjourn. Mr. Luebbe so moved and Mr. Bridges seconded the motion. The motion carried by unanimous consent and the meeting adjourned at 7:49 P.M.

APPROVED

**Steve Turner
Chairman**

Attest:

**Todd K. Morgan, AICP
Senior Planner, Zoning Services**