

CITY OF BRANSON PLANNING & ZONING COMMISSION  
REGULAR MEETING – MINUTES  
June 3, 2008

SPECIAL ANNOUNCEMENTS

PUBLIC COMMENTS

CONSENT

1. Roll Call.

Commissioners Present: Boyce, Butler, Hartley, Jordan, Loyd, McDowell, Weisz, Westcott, Vice-Chairperson Romine and Chairperson Harris.

Commissioners Absent: None.

Staff Present: Don Stephens Director of Planning and Development  
Ruth Denham Asst. Director of Planning and Development  
William Duston Asst. City Attorney  
Sonja Paden Office Assistant II

2. Approve Agenda.

Recommended Action: Approval of the agenda for the June 3, 2008 Planning and Zoning meeting.

Vice-Chairperson Romine said staff requested they postpone a vote on item number 5 and item number 7. Chairperson Harris said they will be postponed to a later date and that the agenda items would be renumbered accordingly.

**MOTION:**

Motion by Vice-Chairperson Romine and seconded by Commissioner Wescott to amend the agenda.

Chairperson Harris asked if there was any further discussion on this amendment; there was no response.

AYES: Commissioners Boyce, Butler, Hartley, Jordan, Loyd, McDowell, Wescott, Weisz, Vice-Chairperson Romine, and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: None.

Chairperson Harris asked if there was any further discussion on this amendment to the agenda; there was no response.

**MOTION:**

Motion by Vice-Chairperson Romine and seconded by Commissioner Wescott, and unanimously carried to approve the format of the June 3, 2008 agenda as amended.

3. Approve Minutes.

A. January 15, 2008.

Recommended Action: Approve the minutes of the January 15, 2008 Planning and Zoning Commission Work Study Session meeting.

MOTION:

Motion by Vice-Chairperson Romine and seconded by Commissioner Weisz, and unanimously carried to approve the minutes of the January 15, 2008 meeting.

B. February 5, 2008.

Recommended Action: Approve the minutes of the February 5, 2008 Planning and Zoning Commission Work Study Session meeting.

MOTION:

Motion by Vice-Chairperson Romine and seconded by Commissioner Weisz, and unanimously carried to approve the minutes of the February 5, 2008 meeting.

C. May 6, 2008.

Recommended Action: Approve the minutes of the May 6, 2008 Planning and Zoning Commission meeting.

Commissioner Boyce had the following amendment:

1. **Correct the election results of the votes for the Vice-Chairperson on the bottom of page 2 and at the top of page 3 to reflect Commissioner Boyce voted in favor of Chris Jordan and not in favor of Brenda Romine.**

MOTION:

Motion by Vice-Chairperson Romine and seconded by Commissioner Weisz, and unanimously carried to approve the minutes of the May 6, 2008 meeting as amended.

OLD BUSINESS
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None.

PUBLIC HEARINGS
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4. Request For Recommendation Of Approval Of A Special Use Permit For A Dinner Theater For Properties Located At 118 N. Commercial St. Branson, Missouri. Project No. 08-1.4 (08-00100004).  
Applicant: Keith Campbell

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division. Mr. Stephens used the aid of a PowerPoint presentation displayed on the overhead screen to augment his delivery of the staff report. He showed a short video of the location and the area around it. The applicant had handed Commissioner Weisz a DVD to play at tonight's meeting, and Mr. Stephens showed it at this time. Commissioner Weisz complimented staff on their presentations, saying they have improved greatly; the board has been given more information and so has the public. Chairperson Harris echoed those sentiments then invited the applicant to come up and speak with them.

Keith Campbell stepped to the podium and introduced himself. He said he had been in Branson for about 13 years and had always thought one thing missing from the city was a very intimate dinner theater that not only the tourists could enjoy, but the locals could enjoy in the off-season as well. Mr. Campbell said they will perform off-Broadway plays. He said it was important that it be located in the downtown area. If it is going to be anywhere, it should be downtown because it will add a lot to the area.

Chairperson Harris asked if anyone from the commission had any questions for Mr. Campbell and recognized Commissioner Butler.

Commissioner Butler stated the commission has approved special use permits in the past that may or may not have started operating, but they remain attached to the property unless the property owners relinquish them. He thought the dinner theater was a good idea, but said he would make a motion to the effect that, if the dinner theater ceases to operate for six consecutive months, the special use permit would be voided. Mr. Campbell said he does not plan on that being the case, but he would go along with whatever the commission decides is appropriate. He said they did not plan on being closed at all because they needed to have local entertainment during the off-season. Commissioner Butler asked if the six-month timeframe would pose a hardship on him; Mr. Campbell said no.

Chairperson Harris asked if anyone else there would like to speak in regards to this particular item.

Mike Radford came to the podium and introduced himself then thanked the commission for this opportunity. He said no one in the entertainment business ever expects to not be there six months from now. He had a show there for 10 years, and they did very well nine of those years. The tenth year in 2003, as Commissioner Jordan is aware, was a tough situation because Branson changed from having a limited number of theater events to having well over one hundred. The tourist comes to town and has an enormous selection of shows from which to choose, and Mr. Campbell had asked Mr. Radford what his thoughts were on this particular project as a theater. Mr. Radford stated he built the "Remember When" theater inside the IMAX complex back in 1998. It originally had 300 seats in it, but he had it cut it down to 220 seats. They specifically designed it so the guests could be comfortable with enough leg room. He downplayed the economic focus and focused instead on the comfort of the customers and on its uniqueness. He sees what Mr. Campbell has envisioned with this particular venue. Not only does it encompass the intimacy factor, but, because it is not the prettiest block in Americana, Mr. Campbell intends to beautify the exterior of the theater and make it very appealing to the motor coaches when they pull up to it, as well as to everybody who disembarks those coaches. The intimacy of this theater and the professionalism of the productions that are going to be put on there are things Mr. Radford believes downtown Branson desperately needs. Even though he is not a principal player in this and is only helping Mr. Campbell get his project off the ground,

people still come up to Mr. Radford and tell him this is a godsend for the downtown. They met with one major entertainment publicist manager in this city and, when they talked about putting another show in town, she rolled her eyes and asked if they were then going to have 150 of them from which to choose. When they replied no, it would be downtown in an intimate, beautiful, first-class dinner theater, her eyes lit up and she said yes, that would work. Mr. Radford said he thought that was part of the magic that the downtown needed and he respectfully hoped that the commission felt the same way.

Dmitri Tsahiridas came to the podium and introduced himself. He said he was very excited when Mr. Campbell told him he was going to put a dinner theater next to his business. Mr. Tsahiridas said every morning he has walked through there and seen that building, he has wished he had the money to buy it and tear it down or fix it. He was very excited and very happy about this and hoped the commission would help Mr. Campbell. Mr. Tsahiridas just finished his building over there and the restaurant will be open soon. The only problem is they have a lot of empty parking spaces. He thought the dinner theater shows would be mostly in the evening and they need to have those parking spaces filled. Mr. Tsahiridas said he stays open until 9 o'clock and some of the other stores are open until 10 o'clock. They need to have the theater over there, and he hoped the board would help Mr. Campbell get it quickly, so he can get it finished as soon as possible.

Chairperson Harris asked if anyone else there wished to speak in regards to this particular item; there was no response. He asked if the commissioners had any questions and recognized Commissioner Butler.

Commissioner Butler asked staff to back on the overhead screen to the property line map. He said where it is hatched on that map, it showed it going back to Atlantic Street, but asked if it really is the southern half of that hatched-in rectangle. Mr. Stephens said it is all under the one ownership. The property is the middle one. Commissioner Butler said the south one is the old newspaper building; Mr. Stephens said that is correct, it would be the one on the south side. Commissioner Butler said it would be north of the alley, but they are actually permitting one street address. Mr. Stephens said that is correct.

Chairperson Harris recognized Commissioner Weisz.

Commissioner Weisz commented that it seemed to him that it was a totally appropriate use of the downtown. Seeing live theater in a downtown setting is something he enjoys when he visits other cities and he wished them well, should the commission decide to approve it. Chairperson Harris concurred with this. He said it looked like something that would really be great and needed. The architectural changes and the aesthetics will look really great, and their hope for Mr. Campbell is much success.

Chairperson Harris recognized Commissioner Hartley.

Commissioner Hartley asked what their hours of operation would be. Mr. Campbell responded they would be open probably five to six nights a week from 5:00 p.m. to 10:00 p.m. Commissioner Jordan asked if it would be a one-seating show; Mr. Campbell said yes.

Chairperson Harris recognized Commissioner McDowell.

Commissioner McDowell asked Mr. Campbell if he had met with the health department to make sure he understands the constraints. It was his understanding they would not be preparing the food on site, but they would need to meet with the health department in terms of the pre-qualifying criteria to provide that service at that location. Mr. Campbell replied they had not yet done this, but it would be the first thing they did after they got approval. Commissioner McDowell encouraged him to do that sooner than later in case there are some additional requirements for the prep area, and wished Mr. Campbell good luck with his project.

Mr. Tsahiridas stepped to the podium and stated they would be catering the food for the dinner theater. They would be next door, maybe a hundred feet away from the theater. It is a commercial restaurant that has already been qualified. They will have refrigeration, if they need to move it.

Teresa Brewer came forward and introduced herself as being with the Ozark Mountain News, which is the Taney County Times and the Branson Daily Independent. She asked, if this is approved, how long it would take for this project to be completed. Mr. Campbell stated it would depend on some variables, but, as far as they are concerned, there is not much to really build inside the building, so they would probably be ready within a 60-day period. It would be a pretty simple construction build-out.

Chairperson Harris asked if there were any other questions or comments; there was no response. He entertained a motion.

**MOTION:**

Motion by Commissioner Boyce and seconded by Commissioner Weisz to approve Resolution 08-00100004 (Project No. 08-1.4).

Chairperson Harris recognized Commissioner Butler.

Commissioner Butler stated he had the following amendment:

1. Strike the last period of item number 5 and insert “; and,” then add item number 6 that states “This resolution shall become void at any such time as this dinner theater ceases to operate for six consecutive months.”

**MOTION:**

Motion by Commissioner Butler and seconded by Commissioner Wescott to amend Resolution 08-00100004 (Project No. 08-1.4).

Chairperson Harris asked for a vote on this amendment.

AYES: Commissioners Boyce, Butler, Hartley, Jordan, Loyd, McDowell, Weisz, Wescott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: None.

Motion to amend Resolution 08-00100004 (Project No. 08-1.4) carried with a 10-0 vote.

AYES: Commissioners Boyce, Butler, Hartley, Jordan, Loyd, McDowell, Weisz, Wescott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: None.

Motion to approve Resolution 08-00100004 (Project No. 08-1.4) as amended carried with a 10-0 vote.

Mr. Stephens said he wanted to mention that the special use permit for the classic car sales was postponed to the July meeting due to an incorrect legal description provided to them for the advertising.

5. Request For Recommendation Of Approval Of A Special Use Permit For An Amusement Ride To Be Known As The Branson Ball Kicker For Properties Located At 3330 W. Harvey Ln. Branson, Missouri. Project No. 08-1.6 (08-00100006).

Applicant: Rob & Cindy Barker

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division. Mr. Stephens displayed the vicinity map on the overhead screen. He then showed a short video of the location and the surrounding area and pointed out the "Z" sign that had been placed on the property. Chairperson Harris thanked Mr. Stephens and asked if there were any questions for him from the commission before they heard from the applicant; there was no response.

Rob Barker stepped to the podium and introduced himself. He stated he was there to answer any questions they may have pertaining to this project.

Chairperson Harris recognized Commissioner Weisz.

Commissioner Weisz asked if the ball would be operating on a grass runway rather than an asphalt runway. Mr. Barker said most of the surface is actually rock, so they will bring in two to three inches (2-3") of top soil and then sod it, so it will be grass.

Chairperson Harris recognized Commissioner Boyce.

Commissioner Boyce said he is not familiar with this attraction, but asked how steep the runway is or what percentage of grade it is. He asked, when the ball rolls down that hill, if there is something there to stop it at the end, such as a fence or a barricade. Mr. Barker said they would have two nets. The first net will stop the ball while the second net is a safety back-up. Behind that he will erect something similar to a billboard with four (4) four by eight (4' x 8') sheets with framing on the back and held up by four (4) 8-inch PVC poles filled with cement. This will act as an additional measure of safety. Commissioner Boyce asked if it would be a fairly steep grade and if they could get going as fast as ten or twenty miles an hour (10-20 mph). Mr. Barker guessed they could get up to eight to ten miles an hour (8-10 mph). Commissioner Boyce asked if a lot of people got sick on this attraction. Mr. Barker said to their knowledge and what they have read about it, there are two of them in the

United States right now, and they would be the third one to open up. Mr. Barker said he had been told no one has been sick in it yet.

Chairperson Harris recognized Commissioner Hartley.

Commissioner Hartley asked how long the runway would be. Mr. Barker said the run would be approximately 470-490 feet.

Chairperson Harris asked if Mr. Barker had been to any of the other sites where these are currently being used; Mr. Barker said no. He said they were in Michigan last week, but they did not make it over to where it was. Chairperson Harris asked what the approximate diameter of the ball is. Mr. Barker said the outside of the ball is approximately eleven feet (11') while the inside ball is approximately eight feet (8'). There is a 3-foot air chamber in between the two balls. Chairperson Harris asked if it could hold up to two people. Mr. Barker said it could hold up to two people and he believed the weight limit was 500 pounds. He said the ball itself weighs about 350 pounds.

Chairperson Harris recognized Commissioner Weisz.

Commissioner Weisz asked what precautions they had taken for gusts of wind that come from the side. He asked if there were side rails or something else appropriate to keep the ball on the track of the runway. Mr. Barker said they would straight-line the track down from the top to the bottom. He had been told there were boulders put in there for fill from the highway when the park was built, but he will try to run a valley down through there before he puts the top soil with sod on it to try and bring up the humps. Whether he can do this or not, there would be side rails that are approximately seven feet (7') tall going down for protection.

Chairperson Harris asked Mr. Stephens if the city had inspectors go out to inspect these types of entertainment devices for safety requirements after they are designed and put in place. Mr. Stephens said there would not be any inspections on the balls. If it was an amusement ride such as a rollercoaster, there are specialty inspectors that go out and check them, but not for this particular ride. They would inspect the ground, the fill and anything that was put up structurally, but, when it came to inspecting the balls to see if they met safety standards, they did not have any experts in that area. Chairperson Harris said they do not have anyone then who would observe someone going on a trial run to check for any difficulties; Mr. Stephens said no.

Chairperson Harris recognized Commissioner Jordan.

Commissioner Jordan asked how they would get the ball back up to the top of the runway. Mr. Barker said he would load two balls at a time onto a trailer and have a 4-wheel UTV (Utility Terrain Vehicle) bring them back to the top. Commissioner Jordan asked what they would charge to ride in the ball. Mr. Barker said it would probably be thirty dollars (\$30). He said they checked on the cost of the "slingshot" and the "rip cord" rides and this is below their prices.

Chairperson Harris recognized Commissioner Wescott.

Commissioner Wescott asked what the hours of operation would be. Mr. Barker said they would probably be 12:00 p.m. to 8:00 p.m. Commissioner Wescott asked if the RV park was currently in

operation. Mr. Barker said it had been shut down for about four years. He said they would like to get it back in operation for the rest of this year during the winter months as an RV park then start getting it ready for the ride. Commissioner Wescott said, since it is the same property, he is sure there are no ordinances, but it would be an RV park next to an attraction with screaming people going down a hill in a ball and he is familiar with loud attractions next to hotels because they get a few calls on occasion, so he wanted to make sure Mr. Barker had taken that into consideration. Mr. Barker said that is why they are keeping their hours before the quiet times and earlier in the evening.

Chairperson Harris recognized Commissioner Butler.

Commissioner Butler told Mr. Barker this resolution becomes void on June 3, 2009 if a Certificate of Occupancy has not been issued from the city by that time. He said at this point that June 3<sup>rd</sup> date is negotiable, but after tonight, it would no longer be negotiable. Commissioner Butler told Mr. Barker if he was not finished by June 3, 2009, he would have to go through the process again, which included paying the fees again. Mr. Barker said he had no problem with the June 3, 2009 date.

Chairperson Harris asked if there were any other questions for Mr. Barker; there was no response. He asked if anyone else there wished to comment in regard to this item; there was no response.

Chairperson Harris entertained a motion regarding this request for a special use permit.

**MOTION:**

Motion by Commissioner Jordan and seconded by Commissioner Butler to approve Resolution 08-00100006 (Project No. 08-1.6).

Chairperson Harris asked if there any other comments or questions; there was no response.

AYES: Commissioners Boyce, Butler, Hartley, Jordan, Loyd, McDowell, Weisz, Wescott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: None.

Motion to approve Resolution 08-00100006 (Project No. 08-1.6) carried with a 10-0 vote.

Mr. Stephens briefly commented on the item concerning proposed changes to landscaping, buffering and clearing that was postponed during the agenda approval at the beginning of this meeting. He said he requested the postponement to allow staff further time to review those proposed changes. They will be adding land disturbance permit requirements to the existing landscaping code so they can separate that from the other parts of it. The reason for it is because they want to correctly monitor the water flow from the grading, better monitor the land cover removal, and require installation of vegetation on sloped areas. They will be recommending an increase to the non-single-family district tree removal fees from fifty dollars (\$50) to two hundred fifty dollars (\$250). The reason for this is because they have found the planting of a typical tree of the size they require is running between two hundred dollars to two hundred seventy-five dollars (\$200-\$275), so the fifty dollars (\$50) does not cover the cost of replanting. The concept is to discourage unnecessary removal of trees. They will be

recommending an increase to the tree buy-out fee from two thousand dollars (\$2,000) to five thousand dollars (\$5,000), again to discourage the unnecessary removal of trees. As the commission may recall, there is a buy-out option that states, if developers are going to clear an area, they can clear up to forty (40) trees per acre. Based on the new proposed fee of two hundred fifty dollars (\$250) per tree, the fee would amount to ten thousand dollars (\$10,000); as it is right now, it amounts to only two thousand dollars (\$2,000). Mr. Stephens said they would be clarifying the section on land clearing. He said the department has been approached on several occasions with requests to clear land without submitting a permit. The language in there is relatively confusing and in many cases the applicants want to start the site work while the building plans are being completed or about to be submitted. It will further clarify the existing ordinances related to replanting that area after three months, if they do not continue with the building. They are considering adding a 'no topping' ordinance. They are finding more and more that topping trees is bad for them, if it is not done very well, and it can be very unsightly. Mr. Stephens said those are the things they are looking at changing. It is in only one particular section of the ordinance, but he was not comfortable with the way it is right now because it is not clear enough at this point. Both his department and the engineering department will be working on it over the next month or so.

Chairperson Harris recognized Commissioner Butler.

Commissioner Butler said the sentence right after the sentence that has 'six inches (6") in diameter' in it is unfinished. Mr. Stephens said there were several sentences in there like that and there were others that referenced areas with which he did not feel comfortable either. There were also other areas of the code that were affected by some of them and that was the main reason he pulled it from the agenda.

Chairperson Harris recognized Commissioner Jordan.

Commissioner Jordan asked Mr. Stephens to clarify what 'topping a tree' means. Mr. Stephens said a definition would be included in it, but basically many individuals will cut off the entire top of a tree to lower it without any consideration to whether the branches were being cut correctly or the trimming was being done properly. They just cut the tree at a certain point so they can have a better view of what is beyond it. Commissioner Jordan asked if that applied to trimming trees for power lines. He said a contractor with Empire [District Electric] came through his house from downtown Branson and destroyed his landscaping. Mr. Stephens said the electric companies basically have control to do as they will on any of those easements. The city has no control over them.

Chairperson Harris recognized Commissioner Weisz.

Commissioner Weisz commented on other times when they worked on an issue that really affected development. He said a committee was formed to look at the retaining wall issue, and developers and contractors were also a part of the process. He said he hoped Mr. Stephens would make it a point to invite area contractors and developers to be a part of this discussion before it came before the board for a vote. Mr. Stephens said they already do some of that. When the issue is brought back to the board, what normally happens is staff recommends that the commission tell them what group of individuals it wants staff to sit down with to discuss the matter. Staff can do that on its own, but they may contact the wrong individuals. Commissioner Weisz said this may be a better question for the media, but he thought it was important that developers, contractors and affected landowners be part

of the conversation. As Mr. Stephens was aware, the landscaping requirements, including paying so much per tree, are somewhat controversial and a reason some say they would rather build in the county than in the city. Commissioner Weisz said he did not think that was something they were trying to promote, but they want good developments to have enough trees and green space, which is why he suggested the developers, contractors and affected landowners get involved with the discussion. Mr. Stephens said one of the main reasons he wanted to go through those particular things with the board tonight was so it would be in a public forum and people would be aware of what they are looking at. He said staff is open to any kind of communication or input from any group. Commissioner Weisz said they are not here tonight, but thanked Mr. Stephens for postponing it because Commissioner Weisz thinks it should be at this point. Chairperson Harris thanked both Mr. Stephens and Commissioner Weisz for the discussion.

**6. Request For Recommendation Of Approval Of A Municipal Code Amendment To Section 70-10 Of The Branson Municipal Code Pertaining To Church Signs. Project No. 08-12.3 (08-01200003).**

**Applicant:** Planning & Development Dept.

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division. Mr. Stephens read portions of Section 70-10 Commercial Districts, including Section 70-18, in the current code to the commission. Anything from a sandwich board to a sign stuck in the ground is considered a portable sign and is prohibited, which includes existing signs used for the advertisement of Sunday church services at local theaters. Mr. Stephens showed photos with examples of this type of signage on the overhead screen and added that many times these signs are sitting on public right-of-way, not on private property. The need to inform tourists where these services will be held, though, has been identified. Mr. Stephens stated the city had some definite concepts it would like to see, but the language used in the amendment was left a little bit vague there because they wanted to be able to work with any concepts the theater owners may have for this signage, as long as it is safe. He said the proposal they have right now could be amended, postponed or looked at again, but he is relatively comfortable with the way it is written. Mr. Stephens said they are proposing an exception be added to the current code as it relates to church signs, and he read this exception verbatim to the board. He emphasized that it applies to live theater locations in the Sign Overlay Zone areas only. No off-premise signage for these church services would be allowed. Mr. Stephens reiterated that a normal church would still not be allowed to put a temporary sign out on its property. Because these are special services the theaters hold for the tourists, people are not aware they are being offered there. If you drive by a church, you know it is a church and services will be held there. Mr. Stephens said they decided there was enough of a difference between the two to warrant this amendment. If someone decided they wanted to have a church service in their restaurant and asked us if they could do that, according to this ordinance, the answer would be no unless they also have a live theater in their restaurant. The Golden Corral is an example of this type of venue, and one of the sign examples he showed earlier was at this restaurant. Commissioner Butler clarified that they would not be prohibited from doing that, they just would not be able to put the signs out; Mr. Stephens said that is correct. Chairperson Harris asked Mr. Stephens to go back to the sign examples on the overhead and asked about what size one of the signs is. Mr. Stephens said that particular sign was about eighteen inches by eighteen inches (18" x 18") or around three square feet. Chairperson Harris said they would actually be gaining area by being allowed to have two (2) signs out on their property. Mr. Stephens said twelve square feet is about three feet by four feet (3' x 4'), which is a pretty good size for a sign.

Chairperson Harris recognized Commissioner Jordan.

Commissioner Jordan asked why they would not let just any church do this, if the point is to let everybody know where praise and worship services are being held. Commissioner Butler said churches have permanent signs. Chairperson Harris said they already have their signage, but there is no signage for the type of service they are talking about now.

Chairperson Harris recognized Commissioner Weisz.

Commissioner Weisz said this is a good example of something that had come before them in the past and there was a little conversation about it, and they postponed it. He said it has come back in a way he is totally fine with and commended staff for taking the time to talk with the theater association and get them involved in this process. Mr. Stephens stated Mayor Presley had done that, not staff, and he thanked her for it. Commissioner Weisz also thanked the Mayor. Chairperson Harris said it is a good process and they should continue it with other items.

Chairperson Harris recognized Commissioner Jordan.

Commissioner Jordan asked if the sign displayed on the overhead screen was technically on public right-of-way. Mr. Stephens said that particular sign was on public property. Commissioner Jordan said, if they were to enforce this, that sign would have to be moved back. Mr. Stephens said yes. Commissioner Jordan asked who would enforce compliance with this ordinance. Mr. Stephens said his office did this now. Commissioner Jordan asked if they do it on weekends. Mr. Stephens said he had his code enforcement officer come in at least one Saturday per month.

Commissioner Hartley asked Mr. Stephens to show her a picture of a sign that is currently placed illegally, but where it might be moved to become compliant. Mr. Stephens said in the particular case being shown on the overhead screen, the sign is on Shepherd of the Hills Expressway and it could be moved back up a ways on the grass. Where it was located now, it was on a public sidewalk and was a safety hazard. Mr. Stephens apologized for not having the street overlays available to show them those locations, but said he could have that ready before this goes to city council. He drew their attention to another example of illegal signage that is near a curb, which is on a sidewalk and on public property.

Chairperson Harris recognized Commissioner Wescott.

Commissioner Wescott asked if the Friday-to-Monday timeframe should be more defined. Someone could put a sign up first thing Friday morning and not take it down until almost midnight on Monday. Mr. Stephens said they had discussed this topic and sent it over to legal. The biggest concern was, if they got into specifying too much detail on it, they would then have to prove what time it was taken down. The way it is written now, if they went out on Tuesday morning and saw one of those signs still out, there would be no doubt it was in violation. Commissioner Loyd stated Sunday night would be the time to take the signs down. Chairperson Harris suggested they be brought down by midnight on Sunday. Commissioner Loyd said the way it is written now, the signs can be up four days a week. Mr. Stephens said that is right. Commissioner Jordan said, when the services are over, they should take the signs down. Chairperson Harris agreed that it seemed like it would be easy to take the signs down after the services are over.

Chairperson Harris recognized Commissioner Jordan.

Commissioner Jordan asked if it would be inappropriate to put in language that stated a pre-requisite for code enforcement to continue to check that these are free services. He said if they are charging at the door and calling it worship, it is a show. Just because the content happens to be religious does not mean it should not fall under the commercial heading. Passing the hat is one thing, but selling tickets to a Sunday service makes it a show. Mr. Stephens said he would refer that question to legal. Chairperson Harris asked if Commissioner Jordan knew type of thing this to occur. Commissioner Jordan said no. He thought most of them right now were probably free services. Down the road, though, if someone wanted to put on a Sunday show at a theater and said it would have a religious tone and charged twenty-nine dollars (\$29), they could then put out a sandwich board advertising it. If another theater is putting on regular shows, but they sing one gospel song during their Sunday show, could they then put out a sandwich board, too. Knowing how the restaurant industry tries to get around our sign ordinances, he is trying to have some forward thinking here. Commissioner Butler stated they are trying to give theater owners a break to let the tourists know where they are, but if they are charging for these particular services, they should not get this break. Commissioner Jordan said that is what he thought, but the theater district might have a different viewpoint on it. Mr. Stephens said, in order to accomplish that, they could put wording in to state these services are free of charge.

William Duston, Assistant City Attorney, came to the podium and introduced himself. He said they had had a discussion about what a worship service is and what a worship service is not. If a theater started charging people to get in, it would have a lot more problems with the I.R.S. than it would have with the city. He understood what the commission was saying, but if they started selling tickets, he was not sure anyone would want to hear their worship services. This was Commissioner Butler's concern as well and he said he thought it was a recipe for failure, but it did not mean some theater owners would not try and, if they did, he did not think they should have the benefit of that extra signage. Chairperson Harris said changing the language to be more specific might cover their bases more. Mr. Duston said, in all of their conversations about this type of signage, they never discussed a theater charging for worship services because it would then be considered a show, and he would have to present this to a judge, if he was enforcing a citation. Commissioner Jordan said he was not trying to create a problem. Mr. Duston said it was a good question. If someone is charging for this type of worship service, he does not think it would fall under what the definition is of a religious service. This is something he would have to prove in court when he enforced those tickets. Mr. Stephens said, if it did not have the language in there and someone was charging, they would issue a citation based on the way it is written there because it does become a show and is no longer a religious praise and worship service. They would issue a ticket and it would be up to Mr. Duston to take it to the court and prove it. If they found out that did not work, they would have to come back and change it. Mr. Duston said that made sense; that is how he would approach it. Commissioner Jordan said he hoped code enforcement was aware of that. Commissioner Butler asked that they insert the word "free" into the language now and, if it is a problem, they do not have to come back through the planning and zoning board because it would have been the commission's fault. They should go directly to the Board of Aldermen and ask them to take the word "free" out because Mr. Duston should not have to continue going through this in court. Mr. Duston said he saw no problem with that. Putting it in there was a harmless way to take care of a problem before it happens.

Chairperson Harris recognized Commissioner McDowell.

Commissioner McDowell asked Mr. Stephens why this was directed to live theaters only. He knew some churches had started in a movie theater and other buildings. He asked if there was a reason why they were using only live theater designation. Mr. Stephens asked if he meant as opposed to where some of the theaters have converted to churches. Commissioner McDowell said no that he meant where a church would set up in a regular movie theater only on a Sunday, but it would be a movie theater the rest of the time, or any other building that the primary use was not as a church, but that would be utilized as such on a Sunday. He did not mean to complicate it, but they have had that situation and it seemed to disfavor some of those people who do not have the opportunity to get started in a live theater. Mr. Stephens said they could remove the word "live" and state it as simply theater locations. This would allow a ticketed movie theater to do the same thing. Commissioner Butler asked if all movie theaters were in sign overlay zones, adding he thought they were. The only one Mr. Stephens said he did not believe was in this zone was the one in Branson Meadows. Commissioner Butler said they may need to do more than just remove the word "live." Commissioner McDowell said basically what they are saying is any building that does not conduct worship services as its primary business use would have this as a way to have some signage and get some exposure. He is not sure what the right language is for that, but he knew there were some churches that have started this way and he would hate to see them not follow the ordinance just because the language "live theater" was used in it. Mr. Stephens asked if the preference would be to include both live theater locations and regular theater locations, no matter where they are located, or were they talking about maybe allowing restaurants and other businesses that want to do the same thing. He said they could change the language to state "held at live theater locations approved as "Special Uses" within one of the Sign Overlay Zone areas or on any movie theater location located anywhere." Commissioner McDowell said he did not mean to complicate it and he was fine with it the way it was, but he wanted to be cognizant of the fact that people may come to them with that issue. Mr. Stephens said, if they took it through this way and then those concerns came up, they could go back and amend it. It is a little complicated to do it that way, but it seems like there is always something that has been missed.

Chairperson Harris recognized Commissioner Loyd.

Commissioner Loyd asked about the example of a retail store front that a church will temporarily occupy. Mr. Stephens said, if a church were to temporarily occupy that kind of space, it would have to have some type of signage at that point and it would be 'on premise' signage. The church would be allowed to put up banners for that kind of operation. The difference would be that they would want this signage all the time, not just on the weekends.

Chairperson Harris said this was a good discussion and asked if the commissioners were comfortable with passing this request on with some amendments or do they want to postpone it and let planning and zoning rework it. Commissioner Butler said he would make a motion to recommend this to the Board of Aldermen with the comments from their minutes attached, but no amendments.

**MOTION:**

Motion by Commissioner Butler and seconded by Commissioner Weisz to approve Resolution 08-01200003 (Project No. 08-12.3).

Chairperson Harris asked if anyone from the audience wished to speak to this item before they vote.

Mayor Presley stepped to the podium and introduced herself. She attended the League of Theaters meeting and presented this item to that group, as well. One of the concerns was that there was a bulk of these signs going out there. They were also being set up on corners and not even close to where the church service was located, and they were up there all week. Folks who were running just a regular business wanted to know why they could not advertise their restaurant, for instance. The League was very receptive to this idea. They all had a chance to weigh in on it, and she did not believe they would have a problem with taking the signs down on Sunday night because four days is a long time. Mayor Presley said it was really intended for services aimed primarily at the tourist population. Overwhelmingly, the League members thought they could live with something similar to this.

Chairperson Harris asked if anyone else would like to speak; there was no response.

AYES: Commissioners Boyce, Butler, Hartley, Jordan, Loyd, McDowell, Weisz, Wescott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: None.

Motion to approve Resolution 08-01200003 (Project No. 08-12.3) carried with a 10-0 vote.

**7. Request For Recommendation Of Approval Of A Municipal Code Amendment To Section 415.010 Of The Branson Municipal Code Pertaining To Gravel Parking Surfaces. Project No. 08-12.4 (08-01200004).**

**Applicant:** Planning & Development Dept.

At 8:32 p.m., Commissioner Boyce abstained from this item due to his direct involvement in the request.

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division. Mr. Stephens went through the proposed amendment with the aid of a slide presentation displayed on the overhead screen.

Chairperson Harris asked if there were any questions for Mr. Stephens about this from the commission and recognized Commissioner Butler.

Commissioner Butler said he would make a recommendation for an amendment that stated after the six feet in parentheses [(6')] they strike "no more than eight feet (8)" so it reads "no less than six feet (6') in height."

Chairperson Harris asked if there was anyone in the audience who wished to speak in regard to this item; there was no response. He said to Mr. Stephens that the history on this is basically there are items that are tearing the base material up and it is expensive for everyone. In fact, there could be increased runoff because of the change in slope from material falling apart and breaking up. This would allow developers to park their heavy material there until their project is finished. He asked Mr. Stephens if this could be permanent. Mr. Stephens said it could be permanent in cases where

there is an actual equipment owner or heavy equipment operator or it is a business that does that type of work and would have this kind of equipment parked out there all the time. They would take them from there, haul them off somewhere and utilize them then bring them back. Commissioner Butler said that is what this request is for; it is not for construction sites because construction sites have this in the midst of getting to asphalt or concrete. This is for their place of business for equipment storage and maintenance. Chairperson Harris said it is for parking their heavy equipment at their place of business.

Commissioner Hartley asked Mr. Stephens what prompted this request. Mr. Stephens said the City Engineer came up with it, but he thought there was an issue on one of Tom Boyce's projects out in the county where they were getting ready to annex into the city and had to tie into the city sewer. When the city makes those agreements with these projects, they have to meet all city codes in order to do that and that is how this came up. There are not a lot of heavy equipment businesses around town, but there are a few.

Tom Boyce stepped to the podium and introduced himself. He said they bought a piece of property in the city limits and they have submitted their plans through city engineering. It will be a new maintenance facility that will store their equipment and will be a place where they will work on their equipment. In order for them to do this, they will have to pave and curb the parking lot. Even though the property is in the county, they will fall under city jurisdiction for building requirements because they will be hooking into city sewer. Mr. Boyce said he talked with David Miller, City Engineer, as did his employee, Todd Robertson, and together they thought it made sense to change this because the first time Mr. Boyce paves it and takes his dozer across it, it will bust to pieces. It made no sense to pave it and then tear it up. There are other issues like this. Robert Youngblood's parking lot was grandfathered in and has been on the strip inside the city for many years and is gravel for that same reason. Mr. Boyce said this would not be his main office, but would be his maintenance facility. He was one of the ones who suggested it to Mr. Miller to keep up with city code.

Chairperson Harris asked if there were any other questions from the commission for staff or for Mr. Boyce and recognized Commissioner Weisz.

Commissioner Weisz said, when things come up like this that cannot be foreseen, he is thankful that staff takes the time to write something that is appropriate for the problem, and he thought they had done that in this case with the amendment that had been discussed.

Chairperson Harris asked if there were any other questions or comments; there was no response.

Chairperson Harris entertained a motion regarding this request for a municipal code amendment.

**MOTION:**

Motion by Commissioner Weisz and seconded by Commissioner Wescott to approve Resolution 08-01200004 (Project No. 08-12.4).

Commissioner Butler offered the following amendment:

1. **Strike the words “nor more than eight feet (8’)” at the end of the last sentence of the language that was added under ‘Section 415.010. Parking spaces’ so the end of the sentence reads “no less than six feet (6’) in height.”**

**MOTION:**

Motion by Commissioner Butler and seconded by Commissioner Jordan to amend Resolution 08-01200004 (Project No. 08-12.4).

Chairperson Harris asked if there was any other discussion on this amendment and recognized Commissioner Loyd.

Commissioner Loyd asked the commissioners if they thought eight feet (8’) might not be high enough. He asked if the fence was higher than eight feet (8’), though, would the applicant then have to get a permit. Mr. Stephens said he believed the reason that was put in was because, during discussions with the building department, a comment was made that anything over eight feet (8’) would require a building permit, which is no big deal because they would have to get a building permit anyway. Mr. Stephens said he agreed with the amendment and thought it was a good one. He said this would allow them to build it twelve feet (12’) high or whatever distance they need it to be in order to keep the equipment enclosed. It would really become important on entry to the city if this kind of thing were to happen at one of its main entrances, Highway 65, to make sure they kept that buffered off and closed up so it did not become an eyesore on the way into the city. He said limiting the fence height to eight feet (8’) would probably be a mistake.

Chairperson Harris asked if there were any other questions or comments; there was no response. He had a question in reference to the size of the fences. If someone parked something else that would be considered objectionable on a long-term basis, such as would be the case with a junkyard, would that type of business require a special use permit to be allowed to be in the city. Mr. Stephens said yes, but there are a few things that are not allowed in Branson. The city has a manufactured zoning district in its code, but there is not any land in the city that is zoned manufactured. If someone found some land they wanted to work that way, they could come in and apply to rezone it to manufactured, which would allow certain businesses; however, some businesses that are prohibited inside the city are auto wrecking yards and businesses of that nature. If someone ever wanted to bring those types of businesses into the city, they would have to request a complete ordinance change to allow those as a use at all because they are not even listed as a special use. At such time, staff would be rather adamant about ensuring we got not only fencing, but greenery, shrubbery and trees around it, as well. Mr. Stephens said he had seen too many communities have those kinds of things happen on the entry into the city. People look at junk cars and other eyesores before they ever get into the city, and it just does not make sense. Chairperson Harris asked if a permit was required to build the fence. Mr. Stephens said he believed anything over eight feet (8’) required a building permit, but again, with this particular project they are talking about here, he would have to get a building permit anyway because he would have to meet all the city codes, so they would just include the fence on that permit.

Chairperson Harris asked if there were any other questions; there was no response.

- AYES: Commissioners Butler, Hartley, Jordan, Loyd, McDowell, Weisz, Wescott, Vice-Chairperson Romine and Chairperson Harris.
- NOES: None.

ABSTAIN: Commissioner Boyce.

ABSENT: None.

Chairperson Harris asked if there was any other discussion on the entire item; there was no response. Motion to amend Resolution 08-01200004 (Project No. 08-12.4) carried with a 9-0 vote.

AYES: Commissioners Butler, Hartley, Jordan, Loyd, McDowell, Weisz, Wescott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: Commissioner Boyce.

ABSENT: None.

Motion to approve Resolution 08-01200004 (Project No. 08-12.4) as amended carried with a 9-0 vote.

Commissioner Boyce returned to the panel table at 8:42 p.m.

#### OTHER BUSINESS

Mr. Stephens turned this part of the meeting over to Matt Filice, Assistant City Engineer, to give the commission an update on the city's trail systems.

Mr. Filice began by presenting a PowerPoint slide show for the commission. He said they have two segments currently under design. The Cahill Drive segment is their big priority. They completed it and sent it off to MoDOT because they are crossing the state right-of-way. They also sent it to the Corps of Engineers because they are within a 100-year water surface out there with the creek. They hope to have it out to bid in about two weeks. There will then be a connection between the roundabout up to the trail system at Skaggs Hospital. Chairperson Harris asked if that was at the new ortho-neuro center. Mr. Filice said that was correct. He said the hospital put in a new trail system, which in turn meets up with the city's Stockstill trail system, so there is actually a link all the way up to Stockstill Park. The other trail they are working on is the facilities maintenance trail that runs through facilities maintenance. It would run from the existing foot bridge at Stockstill Park up to James F. Epps Road. He pointed to the Cahill Trail shown on an aerial photograph and described how the trail would connect back up with the hospital trail system. Mr. Filice showed on the map where the trail would run from the foot bridge through the parking lot and along the creek up to James F. Epps Road. There would also be a park out there with trees and park benches. They are currently designing that right now and will be getting some matching state funds to help construct it. It will be an asphalt trail similar to the others and will be ADA accessible. It will be for walkers and bicyclists.

Mr. Filice said they just received a 25-foot long easement from the Johnson's for a piece of trail along Roark Creek. It will be between the railroad and Roark Creek. He pointed out the area on the overhead screen. He said the easement has been granted to the city, so they do have full rights to build the trail there. On the right hand side is property owned by the Ledbetter's with whom they have been talking. On the left side is another property owner with whom they have been also talking to try and come to an agreement about acquiring more easement through the properties.

Mr. Filice said they are also working on the trail through Branson Woods that runs up to an existing waterfall. An easement there has also been dedicated to the city and the city is going to construct a

footpath up through there. The Ozark Mountain High Road trail, which runs through the state right-of-way along where the future High Road will go, will extend from Highway 76 down to Schaefer Drive. He showed a drawing of the trail that runs through the Branson Woods development with the spot marked where the waterfall is located. The waterfall will be the major point of interest on that trail. He said they hoped to put in some picnic benches up there. Chairperson Harris asked Mr. Filice how close they were to putting the Branson Woods waterfall trail out to bid. Mr. Filice said they talked to the developer and the developer agreed to build a footbridge across the creek for the city. He said the actual footpath part will be built by volunteers. Mr. Filice said he and Curtis Copeland, G.I.S. Mapping Technician, will go up there with a GPS and mark a trail up through the area with trail markers. He said they will probably have that trail established in two to four months. Commissioner Butler asked Mr. Filice if he was referring to Community Caring Day when he talked about volunteers building the footpath. Mr. Filice said he meant Boy Scouts and those types of organizations. Chairperson Harris said he thought that was fine and that he had been involved with that through the years, but he also knew there were funds that have been dedicated for trails for the past few years, and there may be funds available from other areas, too. He saw nothing wrong with the expenditure of those funds to get some professional help or paying some public works department employees to help get through the initial material. He suggested renting construction equipment to help the volunteers because that is exceptionally difficult work to do when you are building a trail. To do it all by hand with axes and a few chainsaws and hope the volunteers show up would slow the process. Chairperson Harris said, if the money is there and the will is there, that would be the time to use it and do it. Mr. Filice said that was a good point. They have been focusing their efforts on the footpaths being built by volunteers and the paved paths to be built by a contractor, since that cannot be done too easily by volunteers. Commissioner McDowell asked Mr. Filice if the trail would be built between the two roadways of the High Road; Mr. Filice indicated it would. Commissioner McDowell asked if they were working on any public parking areas where people can park and get on their bikes and access the trails. Mr. Filice said they would have public parking on the extension on Schaefer Drive that will run down to the right-of-way. Commissioner McDowell said when they are working with the highway department they might ask them about commuter parking to make sure they do not miss an opportunity where those interchanges are. Mr. Filice said they are working pretty close with MoDOT on this and they have been very cooperative.

Chairperson Harris recognized Commissioner Butler.

Commissioner Butler asked if the interchange at the top of the map displayed on the overhead screen was Highway 76; Mr. Filice said yes. Commissioner Butler confirmed that the red area labeled Ozark Mountain High Road was an extension of the current Ozark Mountain High Road and was the next phase. Mr. Filice said that was correct. Commissioner Butler said the Fall Creek mountain trail will be located in the median. Mr. Filice said that was correct. He said the road will actually be separated and will be between the two directions of lanes. Realistically, the road is probably years away from being built, if it is ever built, but they will at least utilize the right-of-way there for recreational use. Chairperson Harris said the priority in his opinion ought to be the one going right down Roark Creek. He knew engineering was working diligently with the owners to obtain those rights and he appreciated that because people could use it as an alternative means of transportation. Chairperson Harris gave an example of someone who planned on biking to work on Shepherd of the Hills Expressway. He said that would be a dangerous route to take and it would be a lot safer for that person to be able to hop on the trail and ride down the middle of Roark Creek instead. He said, if the commissioners are familiar with the Greenways trail system in Springfield in Green County, many

people use that as their means of transportation to work. With gasoline prices going up, this will be something many people will be looking at seriously and for us to pursue this is something we really need to do.

Chairperson Harris asked Ms. Denham if she had something to present to the commission.

Ms. Denham began by providing a hand-out to all of the commissioners. She said there are some locations on the American Planning Association (APA) website ([www.planning.org](http://www.planning.org)) that may be of interest for the commission to access. She said the planning commission is now receiving *The Commissioner* publication; however, it goes back into the late 1990s and they have access to some of the articles that are in there. If they go to the home page to 'Publications' and click on 'The Commissioner,' there is a list of links on the left side of the page that shows 'Issues 1995-2003' and 'Issues 2004 to Present'; the "present" is 2007. If they want to go back farther to access an older article, anything in blue is available for viewing or printing. Chairperson Harris asked if he saw a search engine on the left side of the screen in which to enter key phrases. Ms. Denham said yes. She said, if it is in *The Commissioner*, the best place to go is on their home page. Commissioner Butler confirmed with Ms. Denham that all the areas to which she is directing them are accessible to the public, so they can go in without having to be a member. Ms. Denham said yes. She said the area on the home page called 'Read June *Planning* Online' is updated each month for that month. They can read each month's featured article through that link; the article for June was titled *Let the Sun Shine In* and dealt with residential solar programs. On the right side is *Daily Planning News* which contains interesting items at the national level and clicking on '[Click here for more news...](#)' allows them access to a larger selection of articles. Ms. Denham stated the commissioners can go to a variety of sites that have non-membership access. They are labeled "Making A Difference," "Ask the Author," "Hot Topic," "Outstanding Articles" and "View Article." For the first one, she entered 'trails.' If they want to search for something specific, they can go to the 'Edit' option in the toolbar at the top of the page to 'Find on this Page...' Ms. Denham said she was able to get information on sidewalks this way. Chairperson Harris asked, if they saw something that they were interested in, but could not get as much information about it as they wanted via the public access, could she get more information for them since she is a member. Ms. Denham replied yes. She said they could give her a call and she would do some more research. Commissioner McDowell asked if there was a reduced membership fee for commissioners. She said she would have to find that information for him. Commissioner Boyce asked what a membership costs. Commissioner McDowell asked if there was a membership for the City of Branson. Mr. Stephens stated they each have their own. The City of Branson has an APA membership, but it allows them to only buy books and that type of thing. He reiterated if the commissioners see something they would like to have, staff would get it for them. Chairperson Harris said, as Commissioner Weisz has mentioned, they are oftentimes looking for other opinions and information, and it has served their purpose well in the past. He said there is no reason to reinvent the wheel if there is already a solution out there. He thanked Ms. Denham and stated it is a great website, and he has visited it a couple of times.

Chairperson Harris said they are planning on changing the meeting times for the Planning and Zoning Commission meetings as of this August. The pre-meeting, which is an open meeting, will begin at 6:30 p.m. and the regular meeting time will be at 7:00 p.m. The July meeting will still be on the current schedule, which has the pre-meeting at 7:00 p.m. and the regular meeting at 7:30 p.m.

Chairperson Harris recognized Commissioner Jordan.


Commissioner Jordan said about four or five months ago, he had asked Ms. Denham to look into the original presentation by the developers of the Wal-Mart Supercenter regarding the number of stoplights they were going to install. The original plan showed a total of five (5) stoplights. He has noticed business has started to pick up on Branson Hills Parkway and Bee Creek Road. He remembered specifically in their plans that they had stated they would be putting stoplights in at both on/off ramps at Highway 65 and Bee Creek Road. He remembered Vice-Chairperson Romine had some comments about school buses. Vice-Chairperson Romine said the issue had already been addressed in an email. Commissioner Jordan said his point was that those were things that were brought up and he knew he had sat there many times waiting to get on or off, and traffic had definitely increased. He hoped it would not be one of those things where they have to wait for "x" number of accidents to happen before somebody looks into putting some type of traffic controls in there. Ms. Denham said she looked back and had sent out an email to the planning commissioners. David Miller, City Engineer, had provided an update on it. Commissioner Jordan said he missed the communication on that and Ms. Denham said they would get it to him then.

**ADVISORY RECOMMENDATIONS**

None.

**ADJOURNMENT**

Motion by Chairperson Harris and unanimously carried to adjourn the meeting at 9:02 p.m.

  
\_\_\_\_\_  
Clark Harris, Chairperson

7-1-08  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Sonja Paden, Office Assistant II

7-01-08  
\_\_\_\_\_  
Date