

CITY OF BRANSON PLANNING & ZONING COMMISSION
REGULAR MEETING – MINUTES
October 7, 2008

SPECIAL ANNOUNCEMENTS

PUBLIC COMMENTS

CONSENT

1. Roll Call.

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

Commissioners Absent: Loyd.

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 October 7, 2008 Planning and
Zoning Commission meeting.

Chairperson Harris recognized Commissioner Butler.

Commissioner Butler had the following amendment:

1. Postpone item number 4 to a future date with the proper notice and remove item number 5 from the agenda.

The remaining agenda items would be renumbered accordingly.

Chairperson Harris asked if there was any other discussion on changes that dealt with the agenda; there was no response.

MOTION:

Motion by Commissioner Butler and seconded by Commissioner Weisz 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, McDowell, Westcott, Weisz, Vice-Chairperson Romine, and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Loyd.

Motion by Commissioner Butler and seconded by Commissioner Weisz, and unanimously carried to approve the format of the October 7, 2008 agenda as amended.

3. Approve Minutes.

A. September 2, 2008.

Recommended Action: Approve the minutes of the September 2, 2008 Planning and Zoning Commission meeting.

Chairperson Harris recognized Commissioner Butler.

Commissioner Butler had the following amendment:

1. In the middle of page 18 at a break in the paragraphs, strike all the text up to the point where Chairperson Harris addresses Ruth Denham, Asst. Director of Planning and Development, on page 24 and insert “William Duston rose and spoke to the commission about his execution of his duties.”

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

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Loyd.

MOTION:

Motion by Commissioner Butler and seconded by Vice-Chairperson Romine, and unanimously carried to approve the minutes of the September 2, 2008 meeting as amended.

OLD BUSINESS

None.

PUBLIC HEARINGS

4. Request For Approval Of A Zoning Change For Properties Currently Zoned R-1 One-family Dwelling District To Be Rezoned R-3 Multiple-family Dwelling District Located At 1299, 1311, 1321, 1327, 1337, 1347, 1353, 1359 And 1377 Berry Dr. Branson, Missouri. Project No. 08-3.3 (08-00300003).

Applicant: RHW Development, LLC

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division and showed the zoning vicinity map on the overhead screen. An aerial map displayed on the overhead screen indicated where the proposed location is. Mr. Stephens showed a short video of the area, pointing out the location of the “Z” sign. He used the aid of a PowerPoint presentation to help with the description of this item. Mr. Stephens said in this particular case, the planning department had requested authorization from the individual owners of the properties out there to ensure everyone was involved in it because, if they were to rezone certain portions of it

without rezoning the entire section, it would become a “spot zoning” situation, which they wanted to avoid. Authorization in support of the change had been received from Ms. Karen Lacy (owner of lots 3-5), Mr. Werner Palm (owner of lots 7-12), and Mr. Joe Roberts (owner of the west 40 feet of lot 9). Ms. Denham said Ms. Marlene Hokanson (owner of lot 6) contacted her today to say she was in agreement with rezoning her property. This information had not been received by the planning department until after the agenda had been put together. Mr. Stephens said no authorization had been received yet from Wilco Investments, LLC (owner of lots 1-2), Mr. and Mrs. Thomas Sarandos (owners of lot 10), or Mr. J.C. Brown (owner of lot 11). He said it would be difficult if they did not get authorization in support of this rezoning request to R-3 from all of the owners in that particular area. They would not want to rezone only some of the lots. They would need to rezone the whole section so it would blend within it. Staff would recommend postponement until the next planning and zoning meeting to allow time to get the approvals from the remaining property owners. He understood one of the owners had passed away, so they needed to find out who has the ownership of it now. They had been working with the applicant to try and get these items put together.

Chairperson Harris asked if there were any questions by the commission; there was no response. He invited the applicant to come forward.

Ross Williams stepped to the podium and introduced himself. He stated first that Wilco Investments, LLC was also part of the applicants. He said they had tried a number of ways to reach the owners of the properties around them. Apparently, Thomas and Phyllis Sarandos were both deceased, but have a son by the name of Louis. They had conducted numerous searches to try to locate him, including utilizing the internet and sending certified mail to the various addresses that Louis Sarandos has had, but have had no response. The county offices still have the address listed as Thomas Sarandos, care of Louis Sarandos. The taxes are paid on the property, but no one can find Louis Sarandos. They have encountered a similar situation with Mr. J. C. Brown. They have an address listed in Galena for him, but they have not been able to trace him down either.

Chairperson Harris asked if there were any questions by the commission and recognized Commissioner Boyce.

Commissioner Boyce asked staff if they would keep postponing this item until all the property owners could be located and their approvals received by the city. Mr. Stephens said the city itself had the authority to zone. Nowhere did it state that signatures were required, but the biggest concern from a staff perspective was that they ensured they had done their due diligence. If the city felt the best use of property would be to rezone it from R-1 to R-3, the commissioners had the authority to recommend that and the council had the authority to make it happen. In his opinion, Mr. Stephens said they should do a little more due diligence to try to ensure they have made every effort to contact those individuals, including getting his staff involved somewhat. Mr. Williams said they had been working on this for about a total of six months, so another month would not matter to them.

Chairperson Harris recognized Commissioner Weisz.

Commissioner Weisz said he thought thirty (30) days would be a reasonable postponement to give them one final effort to contact the property owners. If they were unsuccessful, though, and the city felt the zoning would be appropriate, he would be ready to vote on the issue in a month.

MOTION:

Motion by Commissioner Weisz and seconded by Commissioner Jordan to postpone Resolution 08-00300003 (Project No. 08-3.3).

Chairperson Harris asked if there was any further discussion and recognized Commissioner Butler.

Commissioner Butler asked Mr. Duston what would constitute “due diligence.” Because the codebook stated they would contact the people who live in a certain area, Mr. Duston said he thought there was a degree of onus on the part of the city to do that. If the city had not, it would be hard for him to get up in front of a judge and say they had done their due diligence by letting the applicant do all the footwork. Chairperson Harris said it sounded like they needed to take some responsibility and take a look at it.

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

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

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Loyd.

Motion to postpone Resolution 08-00300003 (Project No. 08-3.3) carried with a 9-0 vote.

Chairperson Harris invited Bill Skains to come forward and speak.

Bill Skains stepped to the podium and introduced himself as an owner of Engler Block, which is to the north of the project location. He said this was a drainage ditch. He had been down there before and had called the Branson police after he had seen cars slip off the road and fall into it. With all due respect to the applicant, he asked how they were going to build something in a drainage ditch. He said there was a road going in from one side. Another issue concerned the Roark cave. He had come to a meeting and discussed the issue of the road going through and said they were told Roark cave did not exist, but fourteen (14) entrances to this cave were found, so it does exist. Mr. Skains said there were certain things you could just not build on. He said there was a huge issue of runoff into Roark. He said all the water would come off of West Highway 76 and that he had actually watched it go into the ground because he knew the cave existed there. He knew this because he was a local. He asked how the applicant would avoid Roark cave. He said Chris Lucchi discovered the cave when he dropped his elevator into it. He described an area on the west side of Engler Block where the top of the cave was located two hundred feet (200') below the surface. When his father-in-law built that for Lou Schaeffer years ago, he said they dropped the bid in at a hundred eighty-three feet (183') and at over three hundred feet (300'), they could not find it. The cave is there. It runs back behind Dixie Stampede and spreads out. He said he would like to see a plan on how they would build something in a drainage ditch.

Commissioner Weisz asked if there were any maps available that showed the caves in the area. He said he knew that Mr. Skains was correct; there was a Roark cave. He had gone in one entrance that was on Paul Nelson's property fifteen (15) years ago, although he did not know where it went because he had not gone into it more than three hundred (300) yards. He asked if any of this was

mapped for the benefit of our public works department and for the developers when they are working with these properties.

Mr. Stephens said he would pass the question on to public works and engineering, but he was not aware of any maps of caves. Chairperson Harris said it might be a good thing to look into because, as the prime areas are taken, people may look at areas that are drainage ditches with disappearing streams, and it would be nice to know what is underneath some of those areas. Commissioner Weisz said any good developer would do some engineering, but it gets expensive when they are dealing with a sloping drainage area. Mr. Stephens said the road would be going through there, so he knew engineering would have some information on it.

5. Request For Approval Of A Planned Development Amendment To The Butcher Hollow Land Use Regulations PD-96-004 Pertaining To The Effective Date Of The Regulations For Properties Located At 949 S. Highway 165 Branson, Missouri. Project No. 08-5.3 (08-00500003).

Applicant: Law Offices of Gannaway & Cummings

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division and showed the zoning vicinity map on the overhead screen. An aerial map displayed on the overhead screen indicated where the proposed location is. Mr. Stephens said adjacent properties were zoned R-3 multi-family, "C" commercial, "A" agricultural or they were unzoned. He used the aid of a PowerPoint presentation to help with the description of this request. The reason for the request was for the release of a performance bond for infrastructure construction that was part of the original planned development. He pointed out what used to be the Yellow Ribbon Theater, showed where Skyline Baptist Church was located, and indicated where the Wilderness Safari subdivision was on the overhead map. He showed a short video of the area, pointing out the location of the "Z" sign. With a site map displayed overhead, he paraphrased section 302 of the land use regulations on this particular property that referred to a development. There had been discussion about changing the route of Fall Creek Road because of the dangerous intersection on it. The alternate route would ultimately have the road connect to Safari Road. He briefly stated what the requirements were for Fall Creek Road that were cited in section 302. It was laid out so the construction would be in conformance with city ordinances and it would be completed in phases as the project developed out. He described what the different phases would entail. In November 1992, Butcher Hollow, Inc. obtained title to the real estate on Highway 165 that consisted of tracts 1, 2 and 3. The original ordinance 98-105 stated they were supposed to do the construction as part of it prior to any certificates of occupancy being issued. An amendment to the ordinance for the planned development added language that allowed them to provide a bond/letter of credit/cash to guarantee that, and Butcher Hollow, Inc. provided a one hundred fifty thousand dollar (\$150,000) surety bond to ensure that would happen. The development was supposed to be constructed within two (2) years of the effective date of the ordinance or it would become null and void. In November 1999, Butcher Hollow, Inc. had a default on the notes. In December 1999, there was a foreclosure sale on tracts 1 and 2, and Missouri Mountain Properties pledged a certificate of deposit to secure the outstanding letter of credit on behalf of Butcher Hollow, Inc. This has remained in place as of June 27, 2006 and has secured the position of Butcher Hollow and the Lowe's, relieving them of the obligation to actually pay for it. In December 2002, Missouri Mountain Properties, Inc. deeded tracts 1 and 2 to GDT CG1, LLC. In December 2003, GDT CG1, LLC, quit claimed tracts 1 and 2 to Skyline Southern Baptist Church. In January 2006, Skyline Southern Baptist Church deeded a part of tracts 1 and 2 to

Missouri Partners, Inc. (MPI). Referring to a particular area on the overhead screen, Mr. Stephens said, when this was done, there was a change to this part that actually put it down there. He said there was an easement, but he had not seen the details yet on what it was, but basically they transferred it back. He said inside a municipality in the state of Missouri, in order to transfer title to land inside the city, it had to be platted; this was not, so the transfers were done without going through the city of Branson platting process.

Mr. Stephens said he had talked with the city engineer who indicated he did not believe a road would ever be built there. Originally, there were eleven (11) tracts of different type uses within this planned development. The problem he had with the way the property was broken out right now was that the lines themselves actually divided several of the tracts to where the original uses and densities were no longer feasible. Based on the fact that the city engineer had indicated this road did not need to be there and he did not have a problem with the release of the bond for that, the issue would be to get an actual amended plat put together and provided to them that would legally transfer title. They could then break the one big plot into two smaller plots. Mr. Stephens said they could do this as an in-house amended plat, which was commonly known as a 'lot split.' Once that is in place and signed and ready to go, the church itself and the other property owners would have clear, legal title to both of the properties. In doing that, because of the zoning issue, everything on the property right now fit fine in the "C" commercial zoning. He said staff would recommend postponing this item until a legal plat could be put together with them. After that, an application for a rezone from planned development to "C" commercial for the entire area would need to be submitted. If the owners of the northern portion want to go back and do a planned development at a later date, they could do so. The only other unanswered issue concerned what the access easements were. There was about six hundred sixty feet (660') along the highway, but access to the state highway is only allowed every four hundred (400') and there had been some concern about whether or not these people would actually be able to get an additional access on to the highway. Mr. Stephens deferred to Ms. Denham, who had more current information about this.

Ms. Denham said MPI had sent them the information on their transfer of the property just today. Pointing to an area on the overhead screen, she showed the location of the easement that the church deeded to the property on the north. Mr. Stephens confirmed the location of that transferred easement and stated the map they had was still not correct, which further supported the need to have a map that laid it all out completely. He said they wanted to make sure all properties had access throughout the process and that no one got landlocked. He stated again that staff recommended postponement to the next meeting to allow time for the applicant and staff to get the property rezoned and platted, so they could bring that forward at the same time.

Chairperson Harris recognized Commissioner Butler.

Commissioner Butler asked staff, when they talked about subdivision, was what was commonly known as a minor subdivision or an administrative subdivision; Mr. Stephens said that was correct. Commissioner Butler said they would not have to go through the public hearing then, since it would be very difficult to accomplish within thirty (30) days. Mr. Stephens said they would need the applicant to bring it in to them. It was laid out just like a final plat. The only difference was that staff did the approval and it would be signed by staff. He said they could do it in-house with this, as long as there were no questions about access or public infrastructure or things of that nature. He said they

would not sign it until it came back through for the rezoning application because he did not want to sign something that would do a split in the middle of the zone. Commissioner Butler asked Mr. Stephens if he anticipated they could be ready to rezone by the next meeting. Mr. Stephens said he did not see any problem getting that done provided the applicant could get it together. He said staff would make those contacts and recommend to them they do that and they would put together an application for rezoning and get it advertized for the next meeting, provided the applicant got this done for them.

Chairperson Harris invited the applicant to come forward.

Lee Gannaway walked to the podium and introduced himself, stating he was not sure he could help them out too much. Commissioner Butler asked Mr. Gannaway whether or not he understood what they had just asked and if he was in agreement with it. Mr. Gannaway said he understood and he was in agreement. He said one of his clients had been paying for a letter of credit and another client had been paying a bond premium on it since it had been purchased at a foreclosure sale in 1999. He said a premium and a letter of credit on a bond of a hundred fifty thousand dollars (\$150,000) was not particularly inexpensive, and the next renewal was coming up this month in October, which was why they had started this process in August because they thought that would be a sufficient amount of time to get it completed before the renewal date. He said it would be nice to have some assurance that this matter could be taken care of by the next meeting so they could hopefully apply for it and get some refund of the premium and the cost of the letter of credit after it had been paid later this month. Chairperson Harris said Mr. Stephens had already indicated, if everyone got organized and communicated effectively, it could be done. Mr. Gannaway said he would be glad to do anything he could to facilitate matters. Mr. Stephens said the biggest help would be to make sure an engineer put that plat together for them.

Chairperson Harris recognized Commissioner Boyce.

Commissioner Boyce asked staff whether it was Mr. Gannaway or the new owner who was supposed to put the plat together. He said he knew who the new owner was and asked if anyone had talked to the new owner about putting the plat together on it. Ms. Denham said they were made of the new owner just today and that Taney County still had MPI listed as the owner of that property on its website. She said MPI sent over the deeds, so they have all the information. Commissioner Boyce said Bill Yung was familiar with the new owner and had done land plans, so he may be able to help them out with getting a plat. Mr. Stephens asked if he was working on the new one now; Commissioner Boyce said yes. Mr. Stephens said they would contact Mr. Yung.

Commissioner Boyce asked why the bond could not be released for a hundred and fifty thousand (\$150,000). Mr. Gannaway said it was a 2-year bond and it was specific to the purchaser of the bond, which was either a corporate entity or the Lowe family at that time. He said he thought the bond was totally worthless at this point. Mr. Stephens said it was a matter of interpretation the way it was laid out. He said the original intent of the bond was to make sure whenever development happened out there that it would be in place to ensure it would get built. It had not been constructed yet, so the bond was still there. Chairperson Harris said it was another loose end that needed to be handled. Mr. Stephens said to Commissioner Boyce that the biggest reason it was still in place was because the planned development required it and the requirements have not been met until something happens with it. Mr. Stephens said this was a way to fix it.

Commissioner Weisz said he was trying to learn something there, too, because this was a unique situation. Since Mr. Gannaway did not represent the church or the new owner, he asked, when there was a bond required in a planned development and one developer was selling a piece of the property, was there a way to transfer the rights and obligations to that bond to the new purchaser. He said it surprised him this had not happened years ago. Mr. Gannaway said there was an amendment to the original planned development ordinance which stated it would not be unique to the present owner, but it would apply to all future owners ad infinitum. There was no attempt by council or planning and zoning at that time to notify the present owner that his land was being subjected to this particular requirement.

Chairperson Harris asked if there was anyone else there who wished to speak to this particular item; there was no response.

MOTION:

Motion by Commissioner Butler and seconded by Vice-Chairperson Romine to postpone Resolution 08-00500003 (Project No. 08-5.3).

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

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

NOES: None.

ABSTAIN: None.

ABSENT: Commissioner Loyd.

Motion to postpone Resolution 08-00500003 (Project No. 08-5.3) carried with a 9-0 vote.

6. Request For Approval Of A Preliminary Subdivision Plat For The Siena Subdivision For Properties Located At 531 Prairie Dunes Dr. Branson, Missouri. Project No. 08-6.2 (08-00600002).

Applicant: Branson Hills Development, LLC

Don Stephens, Director of Planning and Development, presented the staff report as filed with the Planning Division and showed the zoning vicinity map on the overhead screen. An aerial map displayed on the overhead screen indicated where the proposed location is. He said it was currently vacant and undeveloped. The proposed use of the property is a mixed of single-family and multi-family residential with amenities. Mr. Stephens showed a short video of the area, pointing out the location of the “Z” sign. He used the aid of a PowerPoint presentation to help with the description of this request.

Chairperson Harris recognized Commissioner Boyce.

At 7:39 p.m., Commissioner Boyce abstained from this item due to his direct involvement in it and removed himself from the panel table.

Chairperson Harris invited the applicant or representative to come forward.

Rick Huffman stepped up to the podium and introduced himself. He stated he would be happy to answer any questions of the commissioners. Chairperson Harris said they were looking at primarily single-family lots. Mr. Huffman said yes. He said to the north was hole number one of the Payne Stewart Golf Course and the owners of the property were wanting to develop it possibly into condominiums. He showed where Eagle Bunker Drive was and where a clubhouse and swimming pool were located. He pointed out an area that would be gated with all private roads in there. He said they were zero-lot-line lots. It would be an age-restricted development for people fifty-five (55) years of age and over. The homes would be Tuscan-style, seventeen hundred to twenty-four hundred (1,700-2,400) square feet. All the land would be graded at a two to a maximum of a four percent (2-4%) grade so all the streets could be walkable without going up and down hills. Chairperson Harris asked if there were sidewalks in there. Mr. Huffman said the roads were narrow and there were very few sidewalks on them. It was designed where most of the walking would be done on trail systems that were around the perimeters. He said they did not know yet how the sidewalk would be designed. The planned development stated there may or may not be sidewalks in the area. This would be decided by the time they submitted their final plat. Chairperson Harris said it appeared they were trying to make it very pedestrian friendly and that it would be safe and walkable. Mr. Huffman said it would be very walkable.

Chairperson Harris asked if there were any other questions or comments for Mr. Huffman by the commissioners; there was no response. He asked if there was anyone else there who wished to speak in regard to this particular item; there was no response.

MOTION:

Motion by Commissioner Weisz and seconded by Commissioner Jordan to approve Resolution 08-00600002 (Project No. 08-6.2).

Chairperson Harris asked if there was any further discussion on this item by the commissioners; there was no response.

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

NOES: None.

ABSTAIN: Commissioner Boyce.

ABSENT: Commissioner Loyd.

Motion to approve Resolution 08-00600002 (Project No. 08-6.2) carried with an 8-0 vote.

At 7:42 p.m., Commissioner Boyce returned to the panel table.

OTHER BUSINESS

Mr. Stephens stated he had no 'other business' to discuss at this meeting.

Chairperson Harris invited Rick Huffman to come forward again to speak.

Mr. Huffman stepped back to the podium. He asked Mr. Stephens if there had been any changes that had happened lately on zoning or special use permits concerning construction trailers. He asked if they were limited to six months or one year (6 mos. or 1 yr.). Mr. Stephens said staff still had the ability by ordinance to approve a 6-month construction trailer with one 6-month extension, so it would be for one (1) year at the staff level. If the end of that one (1) year came, the trailer would have to move to a new address for a new development because staff was able to approve it for only one (1) year. Mr. Huffman said there were a lot of construction projects that took two (2) years. He said it was mentioned to them that they may have to move their trailer to another site and reapply. He said the Siena project they just discussed was a very long-term project. He said they were getting ready to move the construction trailer and put in an application, but he would hate to have to move it in a year and have to re-hook up the water and sewer. He asked if there were exceptions that could allow them to bring it back and get it renewed. Mr. Stephens said currently the way the code was written right now without any amendment to it, after they had finished the one (1) year through the staff, they could go to the Board of Aldermen and recommend an extension for that construction trailer. He said they were in the process of looking at a review of that right now. Commissioner McDowell asked if that was up to a year; Mr. Stephens said yes. Mr. Huffman said Branson Landing took over two (2) years and that a lot of projects go over a year on construction. Commissioner McDowell said the point was that the public did not want trailers to be set up there for long periods of time. There was a provision by which they could go through the Board of Aldermen and get it renewed for another year as long as they made a case and justified the request. Mr. Huffman said maybe there could be some provisions for construction sites that would take two (2) years, such as a hotel or a hi-rise. Commissioner McDowell said they needed to have some criteria that helped them understand the need for the extension versus somebody dragging out a project with the construction trailer sitting there and the city being told the project was not finished yet. Mr. Huffman said maybe they could look at what Springfield does.

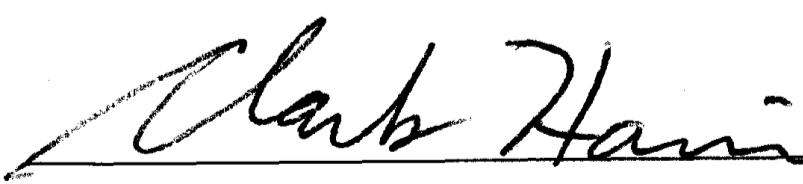
Commissioner Butler said the current ordinance came about as a result of the abuse of construction trailers located very close to city hall becoming permanent offices. He said they legislate to those who are responsible and everybody suffers.

ADVISORY RECOMMENDATIONS

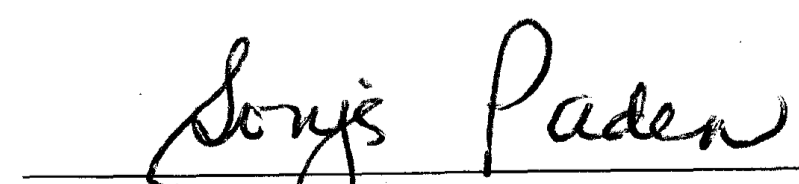
None.

ADJOURNMENT

Motion by Chairperson Harris and unanimously carried to adjourn the meeting at 7:47 p.m.


Clark Harris, Chairperson

11-4-08
Date


Sonja Paden, Office Assistant II

11-04-08
Date