

**PLANNING AND ZONING COMMISSION**

October 6, 2009

7:30 p.m.

Council Chambers

**STUDY SESSION**

7:00 p.m.

Planning and Development Conference Room

For its agenda, the Study Session will provide an overview of all matters to be taken up in today's 7:30 p.m. meeting of the Planning and Zoning Commission.

**SPECIAL ANNOUNCEMENTS**

**PUBLIC COMMENTS**

**CONSENT**

1. **Roll Call.**

Commissioners Present: Best, Hartley, Loyd, Wescott, Vice-Chairperson Romine and Chairperson Harris.

Commissioners Absent: Boyce, Butler, Davis and Woolery.

Staff Present:

Jim Lawson	Director of Planning and Development
Joel Hornickel	Senior Planner
Tara Norback	City Forester
William Duston	Assistant City Attorney
David Miller	City Engineer
Kendall Powell	Public Works Plans Reviewer
Sonja Paden	Office Assistant II

2. **Approve Agenda.**

Recommended Action: Approval of the agenda for the October 6, 2009 Planning and Zoning Commission meeting.

**MOTION:**

Motion by Vice-Chairperson Romine and seconded by Commissioner Hartley, and unanimously carried to approve the format of the October 6, 2009 agenda as amended with the wording changed in item no. 6, Project No. 09-1.14, from "In-Home Daycare" to "Family Day Care Home" per city guidelines; item no. 10, Project No. 09-1.18, withdrawn per written request of the applicant; and item no. 11, Project No. 09-12.6, moved from Public Hearing to Other Business for discussion.

3. Approve Minutes.

A. September 1, 2009.

Recommended Action: Approve the minutes of the September 1, 2009 Planning and Zoning Commission meeting.

MOTION:

Motion by Vice-Chairperson Romine and seconded by Commissioner Wescott, and unanimously carried to approve the minutes of the September 1, 2009 meeting.

OLD BUSINESS
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4. Request For Recommendation Of Approval Of A Preliminary Subdivision Plat For Buck Run At Roark For Properties Located At 2900 Gretna Rd. Branson, Missouri. Project No. 09-6.2 (09-00600002).

Applicant: HHLR, LLC.

Tara Norback, City Forester, presented the staff report as filed with the Planning Division and showed an aerial map on the overhead screen. She displayed the plat map of the subject property on the overhead screen and stated this request was only for Phase One. She used a PowerPoint presentation to aid in the description of this item.

Jim Lawson, Director of Planning and Development, said they had discussed this once before and they had the PD (planned development) on this agenda. He said they had talked about grading of the site and he asked the city engineer to talk about this issue.

David Miller, City Engineer, stepped over to the podium and introduced himself. Referring to the contour map on the PD, he said it was a very steep site. He did not know how they would be able to build a road, have a curve and then come back with that steep a grade and make it buildable. His concern was that the plat would be approved then down the road everyone would discover it could not be built. Chairperson Harris said it looked like it would be quite a challenge.

Ross Williams stepped down to the podium and introduced himself as the representative of the owner. He said they recognized there was steepness to this particular curve and that they would have to construct retaining walls to be able to make the curve and meet the required gradient. He said they were trying to make use of the utility easement that went up through there because they could not build on it, but they run a road around it. He pointed out that the Gretna Road access had originally been down in another area and said it would prevent any left turn out from it. They still might not be able to do that once they go through their traffic study to determine site distances, but their intent now was to move the Gretna Road access to come out between the two (2) islands and hopefully create a wide enough opening that way.

Chairperson Harris recognized Commissioner Best.

Commissioner Best thanked Mr. Williams for address the entrance and exit to the property because that was one of her concerns last time it was brought before the commission. She was glad they would be conducting a traffic study as to a left turn on to Gretna Road. Mr. Williams said again they did not know if it could be done until they do the traffic study and said they had experienced this same problem in the past. Chairperson Harris said the speed limit in that area was forty-five (45 mph). As construction increased, he said Mr. Miller may look into changing the speed limits along that road.

Chairperson Harris said oftentimes there can be quite a change between preliminary plats and final plats. It was not unusual for a preliminary plat to have a lot of concerns and that the commission will be reviewing something quite different submitted as the final plat. He asked Mr. Lawson if staff still recommended approval of this preliminary plat, even though there were some concerns with it. Mr. Lawson said yes. He had asked Mr. Miller to speak because he wanted to make sure it got put on the record that there were some major design concerns; if it worked, it worked, but it might not work. He said it would not be fair at this time with a preliminary plat to make the applicant pay to get it to the last stage then not allow them the opportunity to do that. The main point Mr. Miller made and that Mr. Lawson wanted to emphasize was that, even though they might approve this preliminary plat, they still had some concerns with it.

Chairperson Harris asked if there were any other comments or questions by the commissioners; there was no response. He said he would entertain a motion.

**MOTION:**

Motion by Commissioner Wescott and seconded by Vice-Chairperson Romine, and unanimously carried to approve Resolution 09-6.2.

Chairperson Harris asked if there was any other discussion among the commissioners before he called for a vote; there was no response.

AYES: Commissioners Best, Hartley, Loyd, Westcott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioners Boyce, Butler, Davis and Woolery.

Motion to approve Resolution 09-6.2 carried with a 6-0 vote.

<b>PUBLIC HEARINGS</b>
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5. Request For Recommendation Of Approval Of A Planned Development For Buck Run At Roark For Properties Located At 2900 Gretna Rd. Branson, Missouri. Project No. 09-4.2 (09-00400002).  
Applicant: HHLR, LLC.

Tara Norback, City Forester, presented the staff report as filed with the Planning Division and briefly showed the zoning vicinity map on the overhead screen. She stated she would go through the request page by page to make sure everyone understood all the parts of the proposed planned development. She utilized a PowerPoint presentation to aid in this process.

Ms. Norback said page 5 discussed the three (3) different kinds of parcels: residential, independent living and commercial. They also included open space areas. All streets would be private. The front yard setbacks for one- and two-family homes and townhomes would be twenty-five feet (25').

Page 6 of the proposal continued with other setback information and requested lot sizes. The applicant had requested single family homes to be on a seven thousand square foot (7,000 sf) lot while the current city ordinance requires those lots to be a minimum of seventy-five hundred square feet (7,500 sf).

Page 7 dealt with the heights of the buildings and buffers and screening. They had requested thirty-five feet (35') for single family homes, duplexes, patio homes, zero lot line homes, the club house, and commercial or office uses. For buildings used for independent and congregate living, they had requested one hundred feet (100'). If a tree was damaged due to machinery or as a result of development, one (1) tree would be planted to help counteract that loss. A landscape buffer along all exterior property lines, except for commercial or office uses, would be five feet (5').

Page 8 addressed sidewalks and landscaping. There would be 4-foot sidewalks. They would save a minimum of twenty percent (20%) of green space that would not be disturbed. Street trees would be provided.

Page 9 outlined their proposed parking:

- Independent/Assisted Living: 1 space per bed plus employee;
- Townhomes and one- and two-family: 2 spaces per dwelling unit (this request matches the current adopted code);
- Commercial uses: 5 spaces per 1,000 square feet of gross floor area;
- Office uses: 4 spaces per 1,000 square feet of gross floor area.

Page 10 listed the uses they proposed for the three (3) different parcels:

Parcel 1 = Commercial and Office Uses

- All uses permitted in the C Commercial except the following:
  - ✓ Amusement parlors, amusement parks or theme parks
  - ✓ Feed stores
  - ✓ Lumberyards

- ✓ Timeshare units
- ✓ Residential or outpatient facilities for the treatment of drug or alcohol abuse
- ✓ Wholesale, house, sales offices and storage operations
- ✓ Telecommunication towers

The applicant wanted to exclude the uses listed above, so they would not be allowed in Parcel 1.

- Residential uses allowed in Commercial district. Density varies with the use.
  - ✓ Single Family – 4 units per acre
  - ✓ Patio homes, cabins, zero lot line homes – 6 units per acre
  - ✓ Duplexes – 8 units per acre
  - ✓ Townhomes – 12 units per acre
  - ✓ Apartments/Condos – 25 units per acre
- Accessory structures to serve the project
- Clubhouse and related recreational facilities, food preparation facilities for residents only and meeting rooms
- Commercial Recreational facilities
- Maintenance facility

Parcels 2 and 3 = Residential Uses

- Allow any use currently permitted in R-3 zoning
- Density varies upon use:
  - ✓ Patio homes, cabins, zero lot line homes – 6 units per acre
  - ✓ Duplexes – 8 units per acre
  - ✓ Townhomes – 12 units per acre
- Accessory structures to serve the project
- Clubhouse and related recreational facilities; food preparation for residents only and meeting rooms
- Maintenance facilities
- Project offices, including rental and sales office

Page 11 talked about open space. She stated the applicant had granted the city a 25-foot easement that was approximately twenty-five hundred feet (2,500') long for a foot trail. It would basically follow along Roark Creek.

Ms. Norback displayed an overall vicinity map on the overhead screen. She pointed out the commercial property shown at the top of the map. The light green represented residential lots; the red areas were private streets; the trail was the orange line, which partially followed along

the railroad track; the light blue represented independent living; and, the dark blue area was the clubhouse and amenities that were for the residents of the subdivision. The remaining areas were green space. She next displayed three (3) photographs that had been taken of the property.

Mr. Lawson said, as in the previous item, staff would recommend approval if it could be done. He said he did not feel comfortable with the 100-foot height. They normally had not gone above fifty feet (50') and said perhaps the applicant could address why a hundred feet (100') would be necessary. Chairperson Harris asked Mr. Lawson to state the advantages of a PD to the citizens, as well as the applicant, as opposed to just platting the property. Mr. Lawson said this was a beautiful piece of property albeit a difficult site to navigate. If the city ordinance requirements were to be strictly adhered to in terms of setbacks and lot sizes, it would be very difficult to develop this property. By going through the PD ordinance, it would allow the applicant the flexibility to be able to work with the steep slopes and creek that were there. The point of this PD was to be able to come up with a design that would complement the environment better than what the typical zoning would allow. Chairperson Harris said, if this should be passed by the commission, it would be forwarded to city council for approval. Commissioner Wescott asked if the decision was made that the PD could not be accomplished, would that be in effect for a certain number of years or would be become null and void at that point. Mr. Lawson said the applicant had a period of time in which to work on it from an engineering standpoint. If the city engineering department deemed it could not be done, though, the application would become null and void, and the applicant would have to start over with a different type of development.

Chairperson Harris recognized Commissioner Loyd.

Commissioner Loyd confirmed with Ms. Norback that the 7,000-square-foot minimum lot size mentioned on page 6 was an exception to the current code, as we normally require it to be no less than seventy-five hundred square feet (7,500 sf). He asked her to go over all the exceptions from the current city ordinances that the applicant had requested in his proposal except for the height issue, as they had already talked about it.

Ms. Norback said they would restrict some uses within the C Commercial area, or within Phase One. They would go beyond the minimum twenty percent (20%) green space. The patio homes and zero lot line homes would be six thousand square feet (6,000 sf). A two-family duplex would normally be eight thousand square feet (8,000 sf), which they currently had listed. The buffers were different. Typically there was a hundred foot (100') buffer required between commercial and residential. Here they had requested thirty-five feet (35') at most. On the rear of the property next to the railroad track, they had proposed a 5-foot buffer and to the north of the single-family lots, a 10-foot buffer. She pointed these two areas out on the overhead map. The 25-foot buffer would be between the residential and commercial properties. Chairperson Harris asked what the property due north of the housing section was zoned. Ms. Norback said that was Deer Valley and it was zoned R-1. Chairperson Harris asked what the normal buffer was between two R-1 properties; Ms. Norback said no buffer was required.

Chairperson Harris recognized Commissioner Best.

Commissioner Best asked if Roark Hills connected to this project at all. Ms. Norback said no. Referring to the overhead map, she pointed to a piece of property that connected to Stockstill, and said there was quite a bit of space in between. She said she did not believe the Roark subdivision connected to it. Commissioner Loyd said he had noticed there was traffic that backed up at that the new roundabout on Forsythe Boulevard and the stoplight on Roark Valley Road. He said they would be accessing Roark Valley Road in the middle of that area. Ms. Norback said the applicant had been talking with engineering and with the railroad about the feasibility of doing this.

Chairperson Harris said Mr. Miller had listed five (5) main concerns with this and the previous item. He asked Mr. Miller to review those concerns so everyone could understand what the main engineering hurdles were, as Mr. Miller saw them.

Mr. Miller said the first one was storm water detention. He said the low spot was where the 100-year flood plain was located, so it would not work to have the storm water detention there, too. The concern was the need for storm water detention to be out of the flood plain so it would function properly. It also needed to be in place prior to any improvements being done, so they could avoid any flooding downstream during construction. The second concern was to ensure they did not create a hydraulic condition that would cause more flooding downstream. Trees should slow down the flow of water, but if this area was graded and straightened out, it would send more water down faster toward Stockstill Park, which has already encountered a lot of flooding in the past. He said they needed to make sure they did not create any conditions that would cause flooding downstream. The third concern was the traffic intersection up at Gretna Road. He said they had briefly talked about making sure the entrance was safe and whether or not they needed right turn lanes or left turn lanes, even if the site distances were adequate. Not only would they need to deal with the railroad about that, but there were some grade issues with Roark Valley Road, the creek and the train track that had to do with whether or not they could actually cross the track, go over it or go under it. If the applicant figured out a way to do it, the concern was, if a train was crossing and someone wanted to make a right turn going westbound, it appeared they would stop on Roark Valley Road, which would then cause a back-up of traffic. He said they may need Roark Valley Road improved to prevent this from happening. Lastly, he discussed the private streets. He said it was in the city code that they could be narrower than city streets, but they had to have the same thickness of asphalt so that if the developers or property owners wanted the city to take them over, the city would know it had a good quality street. Chairperson Harris said the streets would still have to be wide enough to allow emergency vehicles access to the area. Mr. Miller said yes.

Ross Williams stepped back to the podium and introduced himself. He addressed the height restriction first. He said they had made this per the code, which allowed it up to a hundred feet (100'). In reality, he said it would be unlikely that they would build five (5) assisted living buildings at that height. He said they wanted to service them with two (2) elevators, though. Three (3) of the five (5) buildings would have parking garages on the lower level, which would

help the flow-through of flood plain issues. As far as the building height is concerned, he said the first floor would be fourteen feet (14') with subsequent floors at twelve feet (12'). He said he could not see them wanting to go to a hundred feet (100'), but they wanted that flexibility to do that much, if they could. Chairperson Harris said it was a major concern of the commission, so Mr. Williams might work with staff on it. Mr. Williams said anything over fifty-five feet (55') in the building code went into high-rise construction. From notes he had taken when they were there before, he said the storm water detention could not be in the flood way, not necessarily the flood plain, so that was why they had moved it up and out to where it was located now. He said they should be able to make it so the dam that surrounded it would be above the flood plain itself and it would retain the water in that fashion. He said they would try to make use of as much of the natural features for waterfalls to be able to pump water back up to keep some kind of a water feature going on with it. They might end up with another storm water detention area down at a second location once they got to the final platting of it. He showed them on the overhead screen where a power line easement was located that was over a hundred feet (100') wide. In relation to the railroad crossing, he had talked with Assistant City Engineer Matt Filice today. Union Pacific Railroad had control over it now and Mr. Williams said he was surprised to find out they still allowed grade crossings. There was an application process to go through, and they would have to pay for the flashing lights and gates that would be needed. There was also the possibility of building an overpass instead, which was their preference. He said this would be a restricted access and it would be gated. The intent was it would provide an access only for the use of this and to provide double roads in and out of the area. He wanted to prevent it being used as a shortcut. With the change in footprint, it would also allow them to add curvature to the road, which would help keep the speed down going through it.

Chairperson Harris recognized Commissioner Loyd.

Commissioner Loyd asked about the white section of property on the map. Mr. Williams said the original owners of it were Roger and Judy Johnson. It was the original Johnson homestead and, when the group bought the property, the Johnson's wanted to keep that one (1) acre of ground. This was why there was a future road going in there to give them access, in case the Johnson's ever wanted to do something with it. Mr. Williams said he thought the Johnson's were also instrumental in setting up the trail at the time. Chairperson Harris said they had made some progress in obtaining easements down Roark Valley Road.

Chairperson Harris recognized Mr. Lawson.

Mr. Lawson said addressed the issue of height. He read part of the city ordinance dealing with R-3 zoning, which was the multi-family district. He said every building in excess of fifty feet (50') in height shall provide one (1) additional foot of side, rear and front setback for each additional two feet (2') in height above fifty feet (50'), which meant an additional twenty-five feet (25') of front yard and side yard setback would be needed to meet this R-3 zoning ordinance, and that would not work. Chairperson Harris said the purpose of a planned development was not to circumvent any of the code requirements. Mr. Williams said because

of the footprint buildings there was quite a bit of space between them, so setback would not be a problem. He said there were about fifty feet (50') between buildings.

Chairperson Harris recognized Kendall Powell.

Kendall Powell, Public Works Plans Reviewer, stepped to the podium and said he wanted to express some utility concerns. He said the developer would be responsible for designing, financing and constructing sewer extensions and water extensions to serve this property, and they have to be maintainable as well, so that was a big concern there. Right now there was a main trunk line that followed down Roark Creek area that would serve this property. As of right now, there was capacity to handle it, but the capacity could not be guaranteed in the future because it was reviewed on a permit by permit basis, so it was first come, first served. In figuring the actual flows for this development and the assisted living, it was a considerable amount of flow. He said the water company that would serve this property was Taney County Public Water District No. 3. The applicant would have to meet the water company's needs when it came to construction, as well as meet the city's requirements for fire protection and flow requirements, especially for buildings of this height.

Chairperson Harris asked Ms. Norback to illuminate them on what it meant to set aside twenty percent (20%) of the project for undisturbed areas. Mr. Norback said the landscaping code currently allowed larger projects to save twenty percent (20%) and remove whatever else they needed to remove. In this project, they were saving significantly more than twenty percent (20%) anyway because of the site itself; they could not build just everywhere. The landscaping code basically allowed a little more wiggle room for the developer for large projects. Chairperson Harris asked if they still worked with her on landscaping on the areas that were disturbed. Ms. Norback said yes. She said they had to put their limit of disturbance in the plans, how far they would go to disturb the property, and would also be required to replant per the city's standards.

Chairperson Harris readdressed the issue of runoff. He asked Mr. Miller whether or not pervious materials could be used in a project like this with such steep areas to help reduce the amount of runoff into the retention ponds to perhaps save the developer money and time for smaller detention. Mr. Miller said yes. He said if something could be done with porous or pervious pavements to reduce the amount of runoff, it could reduce the size of the detention basin. They would have to compare the cost between the two (2) options to see which would be more economical for them. There were three (3) ways to do it. There was porous or pervious concrete or asphalt, which basically had more voids in it so water would soak down through it. One of the long-term concerns with it, though, was that eventually little pieces of dirt and sediment could seep in and then they would not have the detention going through it and they would not have the detention basin size for it. They would have to keep it swept or even vacuumed to keep the silt out of the pores so it stayed functioning properly. Another way to do it would be to have concrete blocks with a gap between the blocks, so it would be a paved block surface. The water would go through those cracks and it seemed to have a better long-term life because it would not fill up as much since the cracks were wider; however, it was

expensive. Mr. Miller said this was an option the city would both allow and encourage. Chairperson Harris said it was a new technology that helped everybody all the way around.

Chairperson Harris recognized Commissioner Hartley.

Commissioner Hartley asked Mr. Miller if it should be required to have that type of concrete. Mr. Miller said he would hate to go that far, but he said they would recommend it and thought it was a great idea. It was more expensive, though, so he did not know that they would want to require it yet. Some day in the future when it had been proven there was a way to make sure it worked long-term they might want to look at that, but right now he would not recommend they require it. Commissioner Hartley said she had been thinking about the steepness and the water flow. Mr. Miller said the applicant had mentioned waterfalls, so there might be a way to do something aesthetic using water features that would make it look nice while functioning effectively.

Chairperson Harris recognized Mr. Williams.

Mr. Williams said they would like to use the pervious material, but said they were in a transition zone and climate here and the freeze/thaw cycle concerned them as much as the siltation. He said they had used the blocks before and they would be good to use for the driveways because they were usually filled with soil and grass grew in them. He said there was about a fifty percent (50%) void in those blocks and it was somewhat difficult to put painted stripes on them. He was not convinced yet that it was the right material to use in this climate. Chairperson Harris said he hoped follow-up studies would be done on this pervious material. He said he had conducted his own experiment on it in Springfield by pouring a couple of buckets of water on it as fast as he could, and the water went right down through it. Mr. Williams agreed that the results were impressive.

Chairperson Harris recognized Commissioner Wescott.

Commissioner Wescott asked who ultimately decided what type of crossing would be implemented at the entrance to the property. Mr. Miller said it would depend on the exact number of units that were built. They could calculate the number of cars per hour then look at how many would be making the turn. It would be part of a traffic study and would determine how long the turn lanes needed to be or if any were needed. They would have to carry out a traffic analysis as part of the railroad crossing. Mr. Miller said the engineering department would review the traffic analysis then get together with the applicant to decide what would need to be done.

Chairperson Harris recognized Commissioner Loyd.

Commissioner Loyd asked when they should address the issue of the hundred foot (100') height and if they should recommend a different height of fifty or fifty-five feet (50' or 55'). Chairperson Harris said they had been very specific on planned developments in the past. A motion could be made to alter the height and choose a certain number of feet or state it would

be to follow the recommendation of staff and the current ordinances. Commissioner Loyd said right now the ordinance stated fifty feet (50'). Mr. Lawson said that was correct. He said the ordinance stated they could not exceed one hundred feet (100') and from fifty feet (50') on they had to have the additional setbacks that he was not sure could be done. He recommended they stay with fifty feet (50') now. Once development had started, they could always come back and amend it to show why a hundred feet (100') made sense at that time. He said they were dealing with quite a few unknown factors right now. Commissioner Wescott said that was fifty feet (50') to the top of the structure; Mr. Lawson said right. Commissioner Wescott asked how many floors they could have with a 50-foot building. Mr. Lawson said floors were normally twelve feet (12'), but it depended on whether or not there was parking underneath. Mr. Williams said there was also the issue of roof access for stairways and elevators because they would be up another twelve feet (12'), so if they limited them to fifty feet (50'), it would limit them to three or four (3 or 4) floors. He said they wanted the residents to be able to have rooftop gardens or planters and make the roofs more green friendly. He said they also wanted to provide better roof access, other than the stairways, for any equipment that might be stored up there. He said in reality the setback requirements would dictate the height of the buildings. Mr. Lawson said under the ordinance, if the commission approved a hundred foot (100') building, there was no required setback. He clarified that they had discussed the normal requirements for setbacks for 100-foot buildings as stated in code staff would like to use that as a guide, but that based on a 100-foot building inside the proposed PD meant that the applicant would be asking for something like a 20-foot setback. Mr. Lawson said he would like to stick with the fifty feet (50') now then, when they came back after the development was completed and the floodplain issues were resolved and they had appropriate setbacks, he did not think there would be a problem. He said he felt uncomfortable because there were so many unknowns here and they did not know if the site could even be graded and made to work. Commissioner Wescott asked Mr. Williams if he would be comfortable with seventy-five feet (75'). Mr. Williams said the reason they were trying to get the height was because the first building would have amenities in it, such as cafeteria space, dining room space, kitchens and offices, which was why they were pushing for a 14-foot first floor there. He said they also needed the height for the stairways to go to the roof and for the elevator shaft. An elevator over three (3) stories had to have twelve to sixteen feet (12'-16') above the last stop line, so that was their problem because it would eliminate a floor if they did not have that height.

Chairperson Harris asked if there were any other questions or comments; there was no response. He said he would entertain a motion.

**MOTION:**

Motion by Commissioner Loyd and seconded by Commissioner Best, and unanimously carried to approve and pass Resolution 09-4.2 as amended.

Commissioner Loyd offered approval with the exception of the height stated on page 7. He said they ought to accept the current city ordinance requirement.

Chairperson Harris recognized Commissioner Wescott.

Commissioner Wescott said, to clarify, it would be to use the current commercial code. The building could be a hundred feet (100'), but it would have to comply with the required setbacks. This was per Mr. Lawson's recommendation.

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

AYES: Commissioners Best, Hartley, Loyd, Westcott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioners Boyce, Butler, Davis and Woolery.

Motion to approve Resolution 09-4.2 as amended carried with a 6-0 vote.

6. Request For Recommendation Of Approval Of A Special Use Permit For Family Day Care Home For Properties Located At 1013 Shawnee Ave., Branson, Missouri. Project No. 09-1.14 (09-00100014).

Applicant: Megan Schaffner.

Tara Norback, City Forester, presented the staff report as filed with the Planning Division. She used the aid of a PowerPoint presentation to help with the description of this item. An aerial map was displayed on the overhead screen first then a vicinity. She played a video showing the surrounding area. Staff met with the applicant and the following items were discussed:

- Drop-off time 7:30 a.m.; pick-up time 5:30 p.m.;
- Applicant will be the only employee, as the State does not allow additional employees unless it is a commercial daycare;
- Applicant has met with staff and has agreed to care for no more than six (6) children;
- No more than two (2) of the six (6) children would be under two (2) years of age.

Mr. Lawson said, as staff had not dealt much with child care, he read from the child care part of the ordinance under the zoning code, Section 410.080, entitled 'Child care.' It went through several different kinds of child care, but the type that pertained to the request tonight was titled 'Family day care home' and stated that a licensed family abode of a person or persons who regularly provide direct care during part of the 24-hour day to four (4) or fewer children under 12 years of age. He said to have no more than four (4) children was the first criteria. He said it excluded the licensee's own children. It went on to state a family day care home may provide care for up to ten (10) children, if it met the requirements found in subsection (C). The intent of subsection (C) was as follows:

B. *Intent.* The board of aldermen finds that affordable, good-quality, and licensed child day care within the City of Branson is critical to the well-being of parents and children in the community.

The section went on to state what the city code would like to see in terms of daycare that could provide for up to ten (10) children. These items included state licensing; lot size, building size and setback that were large enough; off-street parking; and, a drop-off/pick-up point needed to be provided. The code went on to state a family day care home may provide care for more than five (5) children provided that none of the additional children are in care for more than three hours. He said so there could be four (4) children for a daycare for a family home and then up to ten (10) if they were located on an arterial and had a drop-off/pick-up point then there could be five (5), if they were there part-time, for only three (3) hours. He said these were the kind of stair steps they had with daycare. A special use permit was set up for the planning commission to look at and determine whether or not what the applicant had presented to them fit under these criteria. If the ordinance stated anyone could have four (4) kids and charge for four (4) kids then it would be a use by right instead of a special use.

Chairperson Harris said he had researched the ordinances online and a lot of changes had been made to them over the years, so it could get a little confusing. He invited the applicant to come forward to talk about this request.

Megan Schaffner stepped to the podium and introduced herself. Chairperson Harris asked her if she had gotten a copy of the ordinance and if she agreed that the phrase “family day care home” was what she was looking for; Ms. Schaffner said yes. Chairperson Harris said his understanding was that Ms. Schaffner had had prior meetings with staff and that the number of children had started out at ten (10), but had been reduced to four (4) or five (5). Ms. Schaffner clarified that she had never agree to watch ten (10), but State requirements would not allow her to go over ten (10). She said she wanted to put that number out there as a starting point. Chairperson Harris said staff was looking at four (4) in order to meet the criteria unless she had a fifth child part-time. He asked her if she was agreeable to this; Ms. Schaffner said yes. When she had originally met with the three (3) people who had come to her home from the City, it was understood that she could watch six (6), but she would agree to whatever the commission approved. Chairperson Harris said they had not reviewed a daycare within the city limits for quite some time. He said it was a need, but they wanted to make sure it fit the integrity of the neighborhood. He said there were six (6) different guidelines the commission had to follow when deliberating a special use request.

Chairperson Harris asked Ms. Schaffner to tell them about her particular training or education related to childcare. She said she had never officially gone to school for childcare. She had grown up in church nurseries and worked with vacation Bible schools. One of her goals with having an in-home family childcare was that she and her husband would like to have their own family and she would like to be able to contribute to the finances, as well as stay at home with her own children. The State would instruct her to attend monthly classes as mandated and she would take any other classes, such as CPR, that were required by Taney County. Chairperson Harris confirmed that with her that she was familiar with the licensing requirements of the State and that she was okay with going through all the training.

Chairperson Harris recognized Commissioner Hartley.

Commissioner Hartley asked where the approved drop-off place was located. Ms. Schaffner said in her driveway and her front door. She said they would have to pull into her driveway. The parents would physically have to bring their child into her home and would physically have to go into her home and pick up their child. Commissioner Hartley asked what would happen if they had to back up and there were six (6) children that were needing to be picked up and six (6) cars were trying to get into the driveway at the same time. Ms. Schaffner said she had six (6) spaces in her driveway where people could park. Commissioner Hartley said she had recently attended three (3) neighborhood meetings that were sponsored by the City where they discussed concerns about the Hiawatha Heights area. She asked Ms. Schaffner if she had been to any of the meetings. Ms. Schaffner said no, but she had talked with Mayor Presley about one of them. Commissioner Hartley said everyone conceded that traffic was the number one problem. She said this street was a side street that got a lot of traffic and this was a concern to her. If someone saw cars in Ms. Schaffner's driveway and did not want to get blocked in, they might park in front or across the street and then only one (1) car would be able to go down the street at a time. Commissioner Hartley said she saw this as a problem for both the morning and the evening, and this was also when the traffic times were the busiest. Commissioner Hartley asked if she had a fenced-in yard. Ms. Schaffner said she had a fenced-in backyard and that was the State approved area for the children. Per State requirements, the children could not be in a front yard unless it was fenced.

Chairperson Harris recognized Vice-Chairperson Romine.

Vice-Chairperson Romine verified with Ms. Schaffner that the hours of operation would be Monday through Friday from 7:30 a.m. to 5:30 p.m. and that there would be no nighttime or weekend hours. She asked Ms. Schaffner if she would be open year round, and not take the summers off; Ms. Schaffner said yes.

Chairperson Harris recognized Commissioner Wescott.

Commissioner Wescott asked Ms. Schaffner if she was comfortable with the default deadline of six (6) months for her to get her business in operation because, if her licensing did not go through or something else prevented her from opening within that timeframe, she would have to come back through this process again. He said they could extend the date to a year, if she thought six (6) months was not long enough. Ms. Schaffner said she had no concerns with the 6-month period.

Chairperson Harris recognized Commissioner Hartley.

Commissioner Hartley said Ms. Schaffner's home was located in an R-1 residential zone. She said intruding a business into the neighborhood would have an effect on the properties that adjoin it. She said she had a concern about putting a business within an R-1 area and wanted to see those neighborhoods protected. She said would violate the current R-1 ordinance. She asked Mr. Lawson how many children had to be there for it to be considered a business. Mr. Lawson said the way the ordinance was set up, Ms. Schaffner could have her own kids and would allow her to babysit four (4) children in the neighborhood. The ordinance did refer to

having a license, which meant she would get paid beginning at four (4) or fewer children. He said there was another option. The commission could approve it for a year with a limit of four (4) children then after the year was over, it could review it again at that time. The special use permit did not have to have an indefinite time period attached to it. It was a new use, so they could see how four (4) worked on a trial basis for a year or six (6) months. Staff could then interview the people in the neighborhood and come back to the commission with a report on the results.

Commissioner Wescott asked Mr. Lawson, based on what the applicant desired and what Mr. Lawson had read from the code, if the maximum number of children would be six (6) or four (4). Mr. Lawson said he felt more comfortable with four (4), since Ms. Schaffner was new to the area and this daycare would be new to the area as well, and the daycare could not have an impact on the neighborhood. He said she had a double driveway, so it was wide, but the day he was there, two (2) vehicles were already parked there. If she was allowed to have four (4), a parent could bring in two (2) children. At the end of the year, Ms. Schaffner might come back to say five (5) would work better for her from a moneymaking standpoint.

Commissioner Hartley asked Ms. Schaffner if she planned to advertise her business with a sign in the yard. Ms. Schaffner said no. She said being State licensed she could be part of a resource and referral company that was organized by a church. Apparently by using this company, all of her openings would stay full. She had advertised on Craig's List, but it was mainly word of mouth advertising. She did not plan to have a sign in her yard. Commissioner Hartley asked if she would have a window sign. Ms. Schaffner said because sales people had come to her door and knocked repeatedly, she had a sign taped to her door that asked people not to knock on it. If this was an issue, she would take it off the door.

Commissioner Loyd asked Ms. Schaffner if four (4) children were okay with her. Ms. Schaffner said it would be challenging from a money standpoint. She asked if it could be reevaluated to see what impact it had on the neighborhood in six (6) months rather than a year.

Chairperson Harris recognized Commissioner Best.

Commissioner Best asked Mr. Lawson if he was comfortable with revisiting this in six (6) months instead of a year. Mr. Lawson said yes, but as of the date Ms. Schaffner had the four (4) children enrolled in her daycare. Commissioner Best asked if Ms. Schaffner should notify Mr. Lawson's office when that date occurred; Mr. Lawson said yes. She asked Ms. Schaffner if this was acceptable; Ms. Schaffner said yes. Commissioner Best asked Mr. Lawson at that 6-month time if Ms. Schaffner would meet with the commission again or if she would visit with Mr. Lawson then he would report back to the commission. Mr. Lawson said what the commission would be doing was granting her a special use permit for six (6) months only. He said Ms. Schaffner would come back before the commission and another staff report would be generated after staff got as much information as possible. If the daycare had had a negative impact on the neighborhood after six (6) months, Ms. Schaffner would not be guaranteed she could operate her business out of her home at all. Chairperson Harris asked if there would be any fee involved when Ms. Schaffner came back through the second time; Mr. Lawson said no.

Chairperson Harris asked if there was anyone else there who wished to speak.

Alderwoman Cris Bohinc came to the podium and introduced herself. She asked if the commission knew of any special use permits for daycares that were already in existence within the city limits. She asked how many people simply ran their daycares without actually going through this process because she knew there were a lot of daycares in town. Mr. Lawson said the majority of the daycares in town were business daycares as defined in the ordinance. He was not aware of any home daycares where the family lived there, too. If there were any, the city would have an issue with it because it was a zoning violation. He said Chairperson Harris had said there had been only one (1) that had come through in the past several years.

Chairperson Harris said if there were others, they would obviously require a special use permit. Mr. Lawson said they would also require a State license and a City of Branson business license. Chairperson Harris said it would be a violation to operate one without a special use permit and the city would want to know about it. Alderwoman Bohinc said her guess was there probably were daycares operating without a special use permit. She commended Ms. Schaffner for taking the time to do this the right way. She said it sounded like a nice thing for them to do prior to having a family. She had not met Ms. Schaffner, but she had met a lot of her family and she came from a very nice family. She thought it was a nice neighborhood in which to have a daycare and it would be good to see how it went and for it to be reevaluated.

Chairperson Harris asked if there was anyone else there who wished to speak in regard to this particular item.

Theresa Harry stepped down to the podium and introduced herself as a resident in the Hiawatha Heights area. She said there were a few of the residents there tonight and they were against this daycare. She said it was a residential retirement area and it was a very nice area. She asked that the video be played again. She apologized and said she was not a spokesman. Chairperson Harris reassured her that she was doing fine. With the video playing, Ms. Harry pointed out how narrow the streets were and she said that there were cars parked on the street all the time. She showed the direction where the school bus went down the street going from the west side to the east at about 6:40 in the morning. It picked up a child on the corner shortly before 7:00 a.m. She said Ms. Schaffner might have a double driveway, but if someone dropped off their child then realized they had forgotten to leave some necessary item, such as diapers or a hamper, they would have to go back through again, which would compound the driving and parking issues at that time. She said it was a clean neighborhood because they picked up any litter around the area. She said there was no parking available and they were concerned about the traffic and the noise. She apologized again because she was shaking. Chairperson Harris said she was doing fine. He said the concerns she stated she had were parking and trash potentially coming from the clients' cars being opened and closed. He said they had discussed the hours of operation being 7:30 a.m. to 5:30 p.m. He said special use permits were decided upon and issued by the Planning and Zoning Commission at these meetings; they did not go on to city council. Most of them had extra conditions added on to them by the commissioners, so when it got to the point where they were ready to vote on this, there would be stipulations placed in there. He said the commissioners would address any concerns she had as best they could. He asked if there were any other particular items she

wanted to express. Ms. Harry asked if this approved, what would prevent someone else from putting in a massage parlor or a beauty shop. Chairperson Harris asked Mr. Lawson to respond. Mr. Lawson said those types of businesses would not be allowed. He said this request would not set any sort of precedent, as far as staff was concerned, which was why it was a special use permit for Ms. Schaffner only. If she was to sell the house, the special use for a daycare would not go with the house. From that standpoint, it would not change the land use; it would still be zoned R-1 residential. Ms. Harry asked what if there was a disturbance. She asked what if there was a dispute among family members that could result in the police coming to the house. She said they did not want any uproar in the Hiawatha Heights estate area. It was a quiet area and everyone was nice and pretty much knew everyone else, and they did not want a family care business there.

Chairperson Harris asked if there was anyone else there who wished to speak in regard to this particular item.

Jim Kelly came down to the podium and introduced himself. He said he lived two (2) houses down from this property. He and his wife had lived there for forty-seven (47) years. At one time, he had served on the Planning and Zoning Commission of this city. To his knowledge, it was a residential area and he thought it was entirely wrong to put a business there. He asked the commission if any of them would agree to this in their neighborhood. He said he would not elaborate any further because that was enough.

Chairperson Harris asked if anyone else there wished to speak.

Rita Hinson stepped to the podium and introduced herself. She said the corner of her property touched the corner of the applicant's property. She had a privacy fence, but she also had a big dog that would bark when kids were out in the back, and he would have been there a lot longer than those kids. She said down at the very end of her street was a halfway house and she did not think that was safe for any children.

Chairperson Harris recognized Commissioner Loyd.

Commissioner Loyd said they had talked about that halfway house in the pre-meeting and asked to be shown on the overhead screen where it was located. Ms. Hinson said as far as she knew they had not been a problem. A family with children had moved into the area, but they were so quiet and did not bother anybody; however, the halfway house still concerned her. Commissioner Best asked where the halfway house was situated. Ms. Hinson said it was on the corner of Chippewa Avenue and Vaughn Road. Chairperson Harris asked her if she knew there were two (2) houses that were considered halfway houses, but that that was no longer the case; Ms. Hinson said yes. He said the only one she knew of was at the intersection of Chippewa Avenue and Vaughn Road; Ms. Hinson said right. He said again it was a halfway house and asked her to describe it further, if there were any alcohol issues. Ms. Hinson said she did not know about that because they did not associate with them. She did know they had converted their garage into a television room with a sofa and they kept the garage door open. She said again they had not been a problem for them, but she did not know how it would be

with children. She said that was her concern along with the fact that she did not want her neighbors to complain because her dog was barking because of the children

Chairperson Harris asked if there was anyone else there who wished to speak in regard to this particular item.

Ms. Hinson returned to the podium and said it was a very busy street between the Catholic church and the Baptist church and the old folk's apartment. She said these streets were busy for a residential area. She said it needed to be kept as a residential area, not a business area, especially for children. She personally did not feel it was a good idea to have children there.

Chairperson Harris asked if anyone else wished to make a comment.

Ms. Schaffner returned to the podium. She said she wanted her neighbors and Commissioner Hartley to know that she valued their neighborhood. She loved it and they did not want to go anywhere. They wanted to raise their family there because it was such a great neighborhood. She wanted to do everything in her power to keep it that way and in no way wanted this to negatively impact their neighborhood. She wanted to put all her neighbors' hearts at rest. She knew there was frustration and concern, and hoped, if she did get approved for six (6) months, that she would be able to prove herself that her intention was to keep their neighborhood a neighborhood and not a business district.

Chairperson Harris recognized Commissioner Best.

Commissioner Best asked Ms. Schaffner if she already had children selected to start her daycare, if she was approved. Ms. Schaffner said yes. Commissioner Best how many families that would include. Ms. Schaffner said she had two (2) families with three (3) children total.

Chairperson Harris recognized Commissioner Loyd.

Commissioner Loyd asked Mr. Lawson if Ms. Schaffner was to do this with four (4) or fewer children, did she even need to be here. Mr. Lawson said yes because the ordinance stated a license was needed, which would be the key item.

Chairperson Harris recognized Commissioner Best.

Commissioner Best asked Mr. Lawson to clarify the difference between a licensed daycare and a babysitter babysitting four (4) children from 7:30 a.m. to 5:30 p.m. every day in their home. Mr. Lawson said the way the ordinance was set up there was not a limit on the number of children someone could keep, as long as they were not doing it for money for a business. Commissioner Best said she was trying to figure out when the need to acquire a license for this came into play. Mr. Lawson said if they were getting paid, it needed to be a licensed daycare. He asked William Duston, Assistant City Attorney, if he could help him with this question. Chairperson Harris asked if this was Section 410.080. Mr. Lawson said that was where he had been looking, but it must have been in a definition he was reading earlier today that stated this

did not cover that. Joel Hornickel, Senior Planner, stepped to the podium. He said under the section with definitions, there were four (4) parts listed, the second of which stated “on a regular basis,” so that would be the difference between babysitting and child care.

Chairperson Harris recognized Commissioner Best.

Commissioner Best applauded Ms. Schaffner for coming to the commission because she knew it was a tough thing to do. She said she had mixed feelings on the subject, though. She knew one of the issues in our community was inadequate child care; however, she understood the community and the issues that went with it. She was very much on the fence with how to proceed with this request. She wanted to give Ms. Schaffner the opportunity to have her daycare, but with a safety net that if it was not working out, it would not be able to continue.

Chairperson Harris said he would agree. These were always difficult decisions, but they had the ability to reduce the number of children significantly from what was first discussed and to have Ms. Schaffner come back in six (6) months and to have staff visit the site. He said the neighbors should feel open to calling Ms. Schaffner with their concerns, as well. He said oftentimes the city did not have to be involved in these types of things. If someone did not know their neighbor, they needed to meet them and learn about them to know them. If the daycare was not working, the city and commissioners would find out about it and it could be changed, if the commission approved it tonight.

Commissioner Hartley asked if she heard correctly that they would be limiting the number of children to four (4). Chairperson Harris said that was his understanding. When they were ready to vote on the special use permit, there would be some limitations placed on it.

Chairperson Harris recognized Commissioner Loyd.

Commissioner Loyd said he was torn on this one also and he was glad they were down to four (4) children. He said that neighborhood was a very busy neighborhood. It had churches and the retirement home and there was a lot of through traffic. The caveat he was concerned about was the halfway house. They had talked about it in the pre-meeting, but he did not know what the ramifications would be with it. He knew there were some legal issues and maybe child care was not allowed within a certain distance of it. Mr. Lawson said this might not be a true halfway house. It could be a meeting house because they do meet there, but he was not sure. It had been there for a long time before there were any regulations. Commissioner Hartley said it had been there ten (10) years. Mr. Lawson thought it was owned by the Catholic church, but he did not know whether people lived there or just visited there or both. Commissioner Best asked if any of the neighbors knew what it was or how it was being used.

Ms. Harry stepped back to the podium and said people lived there who would walk the streets with brown bags. She said they carried a six-pack bag and would just walk around. She indicated on the overhead screen where she lived on the corner by the three-way stop, so she saw what came through that residential area. Commissioner Best asked if there were eight (8) who lived there. Ms. Harry said she did not know, but there were quite a few because a lot of

the parked over and across the street and in the street. She said she was not worried about them because she had a dog.

Chairperson Harris asked Mr. Duston if it was correct that if they were to find out there were State statutes that limited this then any action the commission took to approve this would be null and void because it could not supersede a State statute. Mr. Duston said they could not violate any State statutes. Chairperson Harris confirmed with Mr. Duston that if the commission approved this special use permit and subsequently discovered there had to be two thousand feet (2,000') between them then the commission would have been wrong and the special use permit would become null and void. Chairperson Harris said they should probably research that a little bit. Mr. Lawson said another option would be to defer the request for a month to let staff do some research and contact the Catholic church to find out exactly what that house was.

Ms. Hinson returned to the podium and said they had a big dog, a Weimaraner. In the last four or five (4 or 5) months, they had had somebody ring the doorbell and rung. They did not know who it was, but she and her husband installed an alarm system for their safety. She said they did not know that many people in town. Someone had told them that a neighbor down from the Hinson's home had a theft from their house with stereo and computer items being stolen. She said this was a house that had not been disturbed in years then all the sudden this happened. People were always coming and going at the halfway house, which was why they ended up putting in an alarm system.

Chairperson Harris asked if there were any other questions of staff by the commission; there was no response. He said he would entertain a motion.

**MOTION:**

Motion by Commissioner Best and seconded by Commissioner Wescott, and unanimously carried to postpone Resolution 09-1.14.

Commissioner Best said the motion to postpone this item for one (1) month was to allow staff time to obtain additional fact-finding information that would address the issues brought forth at tonight's meeting. Chairperson Harris said it would be to evaluate the area and do some research.

AYES: Commissioners Best, Hartley, Loyd, Westcott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioners Boyce, Butler, Davis and Woolery.

Motion to postpone Resolution 09-1.14 carried with a 6-0 vote.

Chairperson Harris said to Mr. Lawson that the halfway house ought to be checked out.

Mr. Lawson agreed. Commissioner Loyd asked Mr. Kelly if the house next to him was still in that mode or if it was a single-family residence. Mr. Kelly responded from the audience; his response was inaudible. Commissioner Loyd said it was a halfway house at one time. Because Mr. Kelly responded again from the audience, Chairperson Harris asked Mr. Kelly to come back to the podium so his response could be recorded for the minutes.

Mr. Kelly came back down to the podium. He said the organization was the Church Army; the Catholic church had nothing to do with it. He said Church Army had gone in there to acquire the property adjacent to him. They bought the property and moved in there then they bought this other property. The city had an ordinance that stated they could not have two (2) properties within thirteen hundred feet (1,300') of each other, so they sold the one just below him and kept the other one. He said that house should never have been put in there, if it had been handled correctly. Mr. Lawson said they were starting to get off the topic and they needed to move on to the next item. Chairperson Harris told Mark Weisz, who had come forward to speak, that staff had informed the commission they were through discussing this item.

7. **Request For Recommendation Of Approval Of A Special Use Permit For ATV/Moped Rental And Mechanic Repair For Properties Located At 1175 W. Highway 76, Branson, Missouri. Project No. 09-1.15 (09-00100015).**

Applicant: Eric Joseph.

Tara Norback, City Forester, presented the staff report as filed with the Planning Division. She said a gas station had been there previously and it was located behind Mazzio's pizza. With an aerial map displayed on the overhead screen followed by a vicinity map, she pointed out the subject property. A video of the property and the surrounding area was shown. Mr. Lawson commented that this was a busy street. Ms. Norback used a PowerPoint presentation to aid in the description of this item. This would be the new main location for LJ Rentals and would be the only one to provide maintenance for the mopeds. She said the applicant had received a special use permit in August 2008 for ATV and Moped rental at 3705 W. Highway 76. Training would be provided to all renters using videos and practice rides in the parking lot and helmets would be required. The applicant was considering increasing the variety of rentals to include other motorized equipment. Examples of two (2) regular 10-speed bikes that had been motorized were displayed on the overhead screen. These could go up to thirty miles an hour (30 mph). The applicant was interested in both renting and selling his equipment.

Chairperson Harris invited the applicant to come forward.

Eric Joseph stepped up to the podium and introduced himself. Chairperson Harris said he understood that Mr. Joseph already had this business located further out west. Ms. Joseph said yes. He said it was next to Cracker Barrel, but he was going to close this one and move to the new one because it provided a better area for him to work on his bikes. He could not work on his rental equipment on his showroom floor there and the new location would provide garage bays where he would be able to do this. With it being a high-traffic area, he would use the entrance that was in front of the Chinese restaurant for his mopeds to enter and exit the street,

since it was further away from the entrance with the curbed area that had bushes. Chairperson Harris said that was a very tough area to get in and out of safely, particularly if the applicant had just rented to someone who may be an amateur at riding this type of equipment. He asked Mr. Joseph to tell them how he trained his customers and how it had worked out for him this last year. Mr. Joseph said it had worked pretty well. He said they still had a lot of interaction with them after showing them the video. They stood with them and showed them all the procedures and also put out cones for them to use for practice. He said there was an area at the back of this location where they could ride around the cones to get familiar with the machine. If they did not feel comfortable with the customer riding the equipment, they would not send them out on it. Chairperson Harris asked if they were required to wear a helmet. Mr. Joseph said yes. It was a city ordinance and it was a good safety measure, plus they required it for their insurance. They would require helmets be worn on the bicycles as well. The bicycles were pedal-assist, but would go mainly thirty miles per hour (30 mph), so you would not have to pedal much.

Mr. Lawson said because this was a special use permit, staff would need to the hours of operation, the number of display units and where the units would be located. Mr. Joseph said the units would be displayed under the covered area, so the rain would stay off of them. Chairperson Harris asked how many units would be on display. Mr. Joseph said he would have ten to fifteen (10-15) mopeds and a couple of the coupes, which are two-seater mopeds. He could keep some in the garage also, if needed. Mr. Lawson asked if there would be twenty (20) in total. Mr. Joseph said yes, at the most. Commissioner Best asked if they would be brought in at night. Mr. Joseph said yes. They would go in the garage at night. His prior shop did not have an alarm yet and it had been robbed back in December, even though he had everything locked up at night. Vice-Chairperson Romine asked what his hours of operation would be. Mr. Joseph said from nine in the morning, Monday through Friday, until nine in the evening (M-F/9:00 a.m. - 9:00 p.m.). On the weekends they would open at eight in the morning and, depending on business, they would close at either ten or midnight (Sa-Su/8:00 a.m. - 10:00 p.m. or midnight). A lot of people wanted to rent in the evening and wanted to ride go-carts and that type of thing. Commissioner Best asked if he thought he would go until ten or midnight. Mr. Joseph said midnight, Friday through Saturday. Chairperson Harris asked if that meant the customer had to have the unit back by that time. Mr. Joseph said no. He said they offered a 24-hour rental option. The customer could keep it out all night, if they wanted to, but most people did not want to do that because a couple of hours on a moped was enough for them. Commissioner Wescott asked if it was only Friday and Saturday that would be eight to midnight (8:00 a.m. - Midnight). Mr. Joseph said yes. Commissioner Best asked if he would be closed on Sunday. Mr. Joseph said no. They would be open on Sunday also, so it would be included in the weekday hours. He apologized for misspeaking earlier.

Commissioner Wescott asked what the maximum number of units was that were permitted in front of his current location. Mr. Joseph said he was not given a maximum number. He was given a certain number parking spots in which he could put his units. He usually lined up four (4) mopeds per spot. This way it did not take away too many spots for cars coming into the lot. The good thing about this location was he would not be sharing it with any other stores. Chairperson Harris asked if a maximum of twelve (12) units outside be sufficient for him.

Mr. Joseph said yes. Commissioner Best asked what the parking requirements were when it came to customers parking their cars to rent or to drop off someone. Mr. Lawson said he thought there was plenty of space at this particular site, even with twelve (12) mopeds on display. He had some concern about being open until midnight, though. He said mopeds were not as loud as Harley's, but midnight was pretty late to be buzzing around one them. Commissioner Wescott said because it was a 24-hour rental, no matter when someone rented one nothing would stop them from riding them at any time. Mr. Lawson said that was right. Commissioner Wescott said the last time to rent a unit on Friday or Saturday would be at midnight. Mr. Joseph said on any day they had a two-hour minimum, so the last time someone could rent would be at ten o'clock; however, most people did not rent at ten o'clock. They came in earlier in the evening and he was usually closed up by ten or eleven. He said they did get really busy on holiday weekends, though, and had a lot of rentals for over the holidays. Chairperson Harris asked what percentage of his customers returned their bikes the same day they rented them. Mr. Joseph said ninety-five percent (95%). Very few people kept them out all night.

Mr. Duston asked Mr. Joseph if he was aware that inside the City of Branson the operators of a moped had to have a valid state driver's license; Mr. Joseph said yes. Mr. Duston asked him if he informed his renters of this fact. Mr. Joseph said yes. He said he did not let anybody drive without a driver's license.

Chairperson Harris recognized Commissioner Hartley.

Commissioner Hartley asked if there were any environmental issues they should know about associated with the mechanical repairs. Mr. Joseph said the only thing would be oil. He said they had a company that took it from them or they could use oil-burning furnaces during wintertime that dispersed the oil, which was better because it was energy efficient and would not run his heating bill up in the winter. Gasoline had been an issue before, but now he had a large storage tank that he kept in the bed of his truck with which to fuel his bikes instead of having to drive them to the gas station or store gas at the building.

Chairperson Harris recognized Commissioner Loyd.

Commissioner Loyd asked Mr. Joseph how long he had been doing this. Mr. Joseph said since August of 2008.

Chairperson Harris asked if there was anyone there who wished to comment in regard to this special use permit or had a question; there was no response. He asked if there were any other questions by the commission of staff before they acted on this particular item; there was no response. He said he would entertain a motion.

**MOTION:**

Motion by Commissioner Loyd and seconded by Commissioner Best, and unanimously carried to approve and pass Resolution 09-1.15 as amended.

Commissioner Loyd said he had an amendment to item no. 6 to limit the number of rental units to twenty (20). He did not see any reason to limit the applicant to twelve (12). Both Chairperson Harris and Commissioner Wescott responded that that number twelve (12) applied to the units being displayed outdoors.

Mr. Lawson said he would like the display area for the vehicles to be under the covered area. Chairperson Harris asked Commissioner Loyd if this would work for him. Commissioner Loyd said correct. He said that was the applicant's intent to have the display area under the covered area. He said he still wanted to keep it at twenty (20) units because they were small items. Chairperson Harris confirmed with Commissioner Loyd that he was making this motion with amendments then asked if he had any other amendments; Commissioner Loyd said yes.

Commissioner Loyd said item no. 7, hours of operation, were Sunday through Thursday, 9:00 a.m. to 9:00 p.m. He suggested Friday and Saturday hours be 8:00 a.m. to 10:00 p.m. Mr. Joseph said that would be fine, whatever the commission thought was safe. It would not limit him that much because he could run his last rental from eight o'clock to ten o'clock. Chairperson Harris said Mr. Joseph had previously stated the vast majority of people turned them in earlier than that time; Mr. Joseph said yes.

Chairperson Harris asked Commissioner Loyd if he had any other amendments to make. Commissioner Loyd said no; those were his two (2) recommendations.

Chairperson Harris recognized Commissioner Best.

Commissioner Best asked Commissioner Loyd if he would consider extending the hours of operation to midnight during federal holidays. Chairperson Harris asked Mr. Joseph if that would be of benefit to him. Mr. Joseph said yes. Commissioner Loyd changed his amendment to allow the hours of operation to be extended until midnight on federal holidays.

Commissioner Wescott asked Mr. Joseph if he was comfortable with being able to have his business in operation within the 6-month timeframe allowed. Mr. Joseph said that would be fine. He said this location would be open as soon as possible.

Chairperson Harris asked if there was a second to the motion with Commissioner Loyd's amendments; Commissioner Best said second. Chairperson Harris asked if there was any other discussion; there was no response.

AYES: Commissioners Best, Hartley, Loyd, Westcott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioners Boyce, Butler, Davis and Woolery.

Motion to approve Resolution 09-1.15 as amended carried with a 6-0 vote.

Mr. Lawson asked Chairperson Harris if the hours of operation could be restated to ensure they were accurately transcribed. At Mr. Lawson's request, Chairperson Harris asked Sonja Paden, Office Assistant II, to read the hours of operation back to the commission and staff; Ms. Paden complied.

8. Request For Recommendation Of Approval Of A Special Use Permit For Scooter/ATV Rental And An Accessory Structure For Properties Located At 907 W. Main St., Branson, Missouri. Project No. 09-1.16 (09-00100016).

Applicant: Eric Joseph.

Tara Norback, City Forester, presented the staff report as filed with the Planning Division. The request was for a ten by ten (10' x 10') accessory structure for storage. The current use was for retail and ticket sales. With a vicinity map up on the overhead screen, she showed where the on ramp and off ramp to Highway 65 was. She said it backed up to residential property, but it was adjacent to commercial property. She used a PowerPoint presentation to help describe this item. She played a video of the subject property and its surrounding area. She said this would be a second location for ATV and moped rentals. The storage shed would be a standard pre-manufactured unit and would be placed out of direct view of the public at the rear of the property. The applicant indicated the shed would be used to store tools and some oil, but no gasoline. With an aerial view displayed on the overhead screen, she said this would be the approximate location of the storage shed. Per the map the applicant had provided, she showed the location from where the units would be rented.

Chairperson Harris recognized Commissioner Best.

Commissioner Best asked if there was a fence between the residential area and where the storage shed would be placed. Mr. Joseph said yes. He said there was a concrete wall with the fence on top of it. Commissioner Best asked what his hours of operation would be. Mr. Joseph said they would be the same as his other stores. He said there would be fewer bikes at this location because his main location would have the bulk of them. He said he would have a maximum of ten (10) out there at this location. Commissioner Best asked where they would be situated. Mr. Joseph pointed to the area on the overhead screen and said they would be in the lower corner right there where everybody coming off the highway could see them.

Chairperson Harris recognized Vice-Chairperson Romine.

Vice-Chairperson Romine asked if the storage unit was already there. Mr. Joseph said no. Vice-Chairperson Romine asked if he would be taking up parking spaces for it and, if so, how many. Mr. Joseph said the shed would take up two (2) parking spots. Vice-Chairperson Romine asked how many parking spaces he would be taking up in the front. Mr. Joseph said two (2). He would be taking up four (4) parking spaces altogether. Chairperson Harris asked staff if taking up four (4) spots at that location would pose a problem. Ms. Norback said she was not sure what the square footage was, but for retail, only one (1) space per three (3) occupants was required and this building was primarily retail. Based on those parking spaces, it should be adequate. Chairperson Harris said it should be okay then.

Chairperson Harris said the only other concern he had about this particular location was the flashing red sign. He asked Ms. Norback if they had dealt with that in the past about some code issues. Ms. Norback said she was not positive on the signage. Chairperson Harris asked if there were codes that dealt with the amount of illumines given off by a sign. Mr. Lawson said yes. Vice-Chairperson Romine asked who was responsible for that sign. Mr. Lawson said he did not know. Vice-Chairperson Romine said it had been off at night, but it did run during the day.

Referring to a location on the overhead screen, Mr. Lawson asked Mr. Joseph if this was the unit he would be using. Mr. Joseph said yes. He said it was a ticket outlet now that Mr. Kilroy ran. Mr. Lawson asked if that sign would be removed. Mr. Joseph said the ticket outlet would still be operated out of there; he would just be running his moped business out of there, as well. He said that was Mr. Kilroy's sign. He would not have any advertisement on the sign because his advertisement would be his bikes sitting out front. Chairperson Harris commented again on the difficulties they had had in the past with the flashing red sign. He knew it was out of Mr. Joseph's control, but added that it was a point of contention. Commissioner Wescott asked Mr. Joseph if he would have any signage. Mr. Joseph said he would not have any signage at that location.

Vice-Chairperson Romine clarified that two (2) businesses would be operated out of the one unit, the applicant's business and a ticket outlet. Mr. Joseph said yes; the name of the ticket outlet was Market Source. Chairperson Harris asked Mr. Joseph if he was okay with the same hours that were approved on the previous item. Mr. Joseph said yes. He said his partner had just brought up a suggestion to him. Since many of the shows did not let out until eight or nine (8:00 p.m. or 9:00 p.m.) on Friday and Saturday, they could get a lot of the younger crowd would want to rent at nine or ten (9:00 p.m. or 10:00 p.m.) on those days. He wanted to know if they could stay open later on Fridays and Saturdays because of this situation. Mr. Lawson said with the two (2) businesses operating simultaneously, he was not sure about the parking. He said they would need to limit the mopeds to one (1) parking space, but he had not counted those parking spaces, so he was not sure. He said it was a very busy location there and it was hard to get in and out of it. He said he thought Mr. Joseph was going to take over that particular site and there would not be that double usage. Chairperson Harris said the difficulty would be two (2) sets of customers trying to access the same parking spots. Mr. Lawson said right. He said typically if someone wanted to purchase tickets, they would be park there for a few minutes and then leave, but someone who wanted to rent a moped would have to park their car and leave it there for a certain number of hours. Mr. Joseph said he would restrict parking his renters to the back of the building and leave the front parking available for the customers going to the other businesses. Commissioner Wescott returned to the issue of the hours of operation. Mr. Joseph asked if they could stay open until midnight on Fridays and Saturdays to take advantage of the younger crowd. Commissioner Wescott asked if any repairs would be done at this location. Mr. Joseph said no. All repairs would be done only at the main location. He added that no oil would be stored in this shed either, only bikes would be in it, and oil would be stored only at the main location. Chairperson Harris said all the bikes and mopeds would be locked up and stored in the shed. Mr. Joseph said yes. Commissioner

Wescott confirmed with Mr. Joseph that he would be gassing these units the same way as at the main location, which would be out of his truck.

Chairperson Harris recognized Vice-Chairperson Romine.

Vice-Chairperson Romine said she was still unclear about the hours of operation. She asked Mr. Joseph if he was asking if he could change the hours on the previous item after they had already approved it until ten (10:00 p.m.). Mr. Joseph said yes. He said his partner had come down and asked him about it when he brought up the hours shows let out. Vice-Chairperson Romine asked if he wanted the hours to be until midnight at all three (3) locations, since they would be discussing a third location after this item. Mr. Joseph said yes. He said the next location was a key location, since Dick Clark's was near it. Mr. Lawson said the commission would have to expunge their previous vote then go back and vote again. Chairperson Harris said he would not allow them to go back to the other one, but it did not mean they could not change this one. Commissioner Best asked Mr. Joseph if they approved this one and the one by Dick Clark's for midnight on Friday and Saturday, would that accommodate him, even though the first one would not have that timeframe. Mr. Joseph said yes. Commissioner Best said because this was such a difficult location, if it was not approved to be open until midnight, but the Dick Clark location was, would he be comfortable with that. Mr. Joseph said yes, but he would like this one open a little later because of all the traffic going to and from Branson Landing. Plus it was a key location since it was by the highway.

Chairperson Harris recognized Commissioner Hartley.

Commissioner Hartley asked Mr. Lawson if staff had heard from any of the neighbors. Chairperson Harris asked if staff had received any letters or phone calls about this item. Both Mr. Lawson and Ms. Norback said no. Commissioner Hartley said the customers would be starting and stopping the bikes there. Vice-Chairperson Romine said this location butted up against a house. The parking area and the bikes would be right next to the house directly behind it. Mr. Joseph said there were parking spots close to the back of the building. There were some back by the houses and up close to the building also on the back side. Vice-Chairperson Romine said there was no fence or barrier between that yard and that parking lot. Mr. Joseph said a big concrete wall and a fence were back there. Vice-Chairperson Romine asked if it went all the way across from Michel Lane all the way back. Mr. Joseph said yes.

Chairperson Harris recognized Commissioner Best.

Commissioner Best asked Mr. Joseph if he knew what the hours were of the other businesses in that facility. Mr. Joseph said he was not sure. He believed Market Source closed around eight or nine at night (8:00 p.m. or 9:00 p.m.), maybe a little earlier.

Chairperson Harris asked if there were any other questions of Mr. Joseph; there was no response. Hearing no other comments from anyone else, he said he would entertain a motion.

**MOTION:**

Motion by Commissioner Wescott and seconded by Vice-Chairperson Romine, and unanimously carried to approve and pass Resolution 09-1.16 as amended.

Commissioner Wescott said he had an amendment to item no. 6 with the hours of operation to be Sunday through Thursday, 9:00 a.m. to 9:00 p.m., Friday and Saturday, 8:00 a.m. to midnight, with the hours extended until midnight on federal holidays, as well. His amendment to item no. 7 would be to allow a maximum number of ten (10) display vehicles in the designated parking spots. Chairperson Harris asked if they were limiting the number of parking spots available to one (1). He asked Mr. Joseph if he would be able to fit all ten (10) vehicles in one parking spot. Mr. Joseph said he could not get all ten (10) in one spot; he would have to leave some in the shed that way. Chairperson Harris said it might be a little tricky to take up two (2) spots because it was a busy corner. Mr. Joseph said he could use one (1) and leave some in the shed. As people rented them, he would bring more out to put on display. Commissioner Wescott revised the amendment to state there would be a maximum of one (1) parking spot designated for the display vehicles.

Commissioner Loyd asked, if they condensed the applicant to one (1) spot and other people had their own bikes and parked them in a spot, how he would get any advertisement out of that type of situation. He said he thought the applicant would want to show them off a little bit. Vice-Chairperson Romine asked about the parking spots for the other businesses there. She did not know what their traffic was like, but the applicant would have one (1) corner and there were so many square feet on the other end of the parking lot. Mr. Joseph said there were a lot of spots there. Commissioner Loyd asked Mr. Joseph if that was his landlord. Mr. Joseph said no. He said Mr. Kilroy was a renter of that store. He said the Blair family was the landlord of it; they owned it. He said they were out of state and Mr. Kilroy was their agent for it.

Mr. Lawson said a parking space was nine feet by nineteen feet (9' x 19'). He said the applicant could get three (3) or four (4) rows of mopeds in one (1) spot. In other words, it would look like a display and not like somebody just parking their bike there. Mr. Joseph said yes. He said he could probably stagger them and put five (5) side by side in there.

Chairperson Harris asked Commissioner Wescott if he was going to address having the rental customers parking in the rear of the building instead of the front. Commissioner Wescott said yes. Item no. 8 would be the rental customers would park on the north side behind the building to allow customers for the other businesses to park in the front.

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

AYES: Commissioners Best, Hartley, Loyd, Westcott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioners Boyce, Butler, Davis and Woolery.

Motion to approve Resolution 09-1.16 as amended carried with a 6-0 vote.

Chairperson Harris recognized Mark Weisz.

Mr. Weisz said he was there for discussion, but it may be too late now. He said he wanted to know from Mr. Joseph if the Blair's had approved this request. Mr. Weisz said his company represented this property and he wanted to make sure it was okay with them. Mr. Joseph said yes, that Mr. Kilroy had contacted them for him and they had said it was fine. Mr. Weisz said he saw his signature as the owner and James Kilroy was not the owner. Mr. Joseph said he should have signed the agent section.

Mr. Lawson asked Mr. Weisz if the owner was comfortable with it because this was an issue. Chairperson Harris asked if he meant if the form was filled out incorrectly. Mr. Lawson said yes. Chairperson Harris asked if the form was filled out incorrectly then the application would not be valid. Mr. Weisz began to speak from the podium. Mr. Duston said there had been a motion and a vote, so discussion was over. Chairperson Harris said to Mr. Lawson if there were ramifications about a form that was improperly filled out then someone would have to pursue it. Mr. Lawson said yes. He said he could be contacted if there was a problem then he could get with their attorney, and the application and special use permit might have to be voided.

9. **Request For Recommendation Of Approval Of A Special Use Permit For ATV/Scooter Rental And An Accessory Structure For Properties Located At 1805 W. Highway 76, Branson, Missouri. Project No. 09-1.17 (09-00100017).**  
**Applicant:** Eric Joseph.

Tara Norback, City Forester, presented the staff report as filed with the Planning Division. She said at least part of the current use was for ticket sales and tourism. She displayed an aerial view on the overhead screen and pointed out Truman Street then showed the vicinity map. She played a video of the subject property and the surrounding area. She used a PowerPoint presentation to aid in the description of this item. She said this was the third location requested by the applicant. The applicant had requested a ten by ten (10' x 10') pre-manufactured storage shed be placed out of direct view and no gasoline would be stored in this shed. She indicated where the approximate location of the storage shed would be.

Chairperson Harris asked Mr. Joseph if he would store bikes in this shed, too. Mr. Joseph said yes. There would be only bikes in this one also, that way he would not have to trailer them in or out. Commissioner Loyd asked if he was renting the whole building. Mr. Joseph said no, just half of it. He said Mr. Kilroy owned this building and they would be working with a percentage off of it instead of actually paying rent. Commissioner Loyd said that the owner of the building was the one who signed the application in this case; Mr. Joseph said yes.

Chairperson Harris recognized Vice-Chairperson Romine.

Vice-Chairperson Romine asked if there was no fence to prevent the storage shed from being a focal point for the people who lived across the street from it. Mr. Joseph said there was no

fence at this location. She asked if there was no requirement for a fence to surround the shed. Chairperson Harris said it was R-1 zoning to the north of the location and asked Ms. Norback how this would work. Ms. Norback said, since it was pre-existing commercial against residential, the street counted as a buffer as well. If it was a dumpster, fencing would be required. Chairperson Harris said just a storage shed would not, though; Ms. Norback said right. Vice-Chairperson Romine said it looked like Mr. Joseph could use three (3) sides for his entrance and exit and asked him if he would use them all. Mr. Joseph said he would probably use Truman Drive. He would try to keep people from going right out onto the strip and have them go out that way because it would be a little safer. Vice-Chairperson Romine asked about the back entrance. Mr. Joseph said the back entrance could also be utilized, depending on where the customer wanted to go out and how busy the traffic was. Vice-Chairperson Romine asked how Mr. Joseph thought he thought people in the neighborhood would feel with his customers driving across there. Mr. Joseph said, on the residential side, he was not sure how people would feel coming out on that street. Vice-Chairperson Romine said the back street might be an issue. Mr. Joseph said they might not like it, so if the commission preferred he not use it, he would not. Vice-Chairperson Romine said she bet the residents would prefer it he not use it. Mr. Joseph said they would probably not like it.

Chairperson Harris recognized Commissioner Best.

Commissioner Best said she had an issue with parking at this location because this was a very busy venue. She said many times driving by it, the front part was really busy and all the spots were taken up. She asked how Mr. Kilroy was with Mr. Joseph taking some of the parking in the front. She asked if Mr. Joseph would require his customers to park in the back as he did at the other location; Mr. Joseph said yes. He said Mr. Kilroy was fine with him using one or two (1 or 2) spots up front to put his bikes out for display.

Commissioner Hartley said she discussion about his customers leaving their cars parked in the back of the building. She asked how many would generally be there. Mr. Joseph said during the week through the daytime, he might have ten (10) customers. They got a little busier at night. He could limit the number of bikes he put out, so he could limit the number of people that came through there. If all his bikes were already rented out there, he could send them down to the other location. Chairperson Harris asked him if there would be ten (10) bikes out in one (1) parking spot. Mr. Joseph said no. He would put ten (10) out in two (2) spots, which would be five (5) bikes per spot. If this was not acceptable, he could limit it to one (1) spot again as they did at the other location. Commissioner Best asked if there could be five (5) in the front and five (5) on the side. Mr. Joseph said he would leave five (5) in the shed and put five (5) out in the front spot. Once those five (5) got rented, he would bring more out. Commissioner Best said he would not put any on the side; Mr. Joseph said no. Commissioner Loyd asked if the spot they were talking about was right in front of the building. Mr. Joseph said the spot from where they would leave would come out on the side street. Commissioner Loyd asked where he would display his bikes. Mr. Joseph said right here on the corner and pointed to the area on the overhead screen. He said that way they would be visible to the people from down at Dick Clark's. Commissioner Loyd asked if it was a designated parking spot there; Mr. Joseph said yes. Chairperson Harris asked if Mr. Joseph was thinking about

having five (5) bikes in one spot then; Mr. Joseph said yes. Chairperson Harris asked him if he intended to keep a total of only ten (10) bikes at this property; Mr. Joseph said yes. Chairperson Harris said the bikes would be stored in the shed overnight; Mr. Joseph said yes. Chairperson Harris confirmed with Mr. Joseph that he would be fueling the bikes from the back of his truck.

Commissioner Hartley said public works had suggested that the structure could not be located within seven-and-a-half feet (7½') of a public water or sewer main. Mr. Joseph said okay.

Mr. Lawson said he was not as comfortable with this site as he was with the other sites because of the neighborhoods. He said there was residential across the street and they were jumping through a lot of hoops when it came to entering and exiting the property. He said there was the issue of the storage building being located across the street from residential, too. He said they were really having to work hard to make this work, and he was not sure this was a good site. It was a very intense location and it would be difficult to limit the bikes going in and out. The bikes would go wherever they wanted to go. If the commission wanted to defer it a month, he would be glad to do that and it would give him a chance to look at it again and visit with Mr. Joseph. At this point, it was pretty involved. Chairperson Harris asked him if he considered the biggest negative to be the storage shed in the back accompanied by the movement of bikes in and out of the storage shed. Mr. Lawson said yes along with the fact that there were curb cuts there. He said it was a commercial area, but there was residential property across the street from it. He said it was their job to protect what few residential areas there were as best they could, so he was concerned they might be getting a little intense here. Chairperson Harris asked if he would recommend postponing for a month then. Mr. Lawson said yes.

Chairperson Harris asked if there was anyone else there who wished to speak in regard to this item; there was no response. He said he would entertain a motion.

**MOTION:**

Motion by Vice-Chairperson Romine and seconded by Commissioner Hartley, and unanimously carried to postpone Resolution 09-1.17.

Vice-Chairperson Romine offered postponement until additional information could be gathered as to the impact of this proposal on the neighborhood. Chairperson Harris asked if the postponement would be until November; Vice-Chairperson Romine said yes.

Chairperson Harris asked if there were any comments.

Mr. Joseph said this would be one of his key locations because of Area '57. He would work with whatever adjustments he needed to make because he would like to be there. Chairperson Harris said sometimes they just needed to go out there and look it over because it was a special use permit. Commissioner Loyd said here was part of that survey. He said those renters would have access to Truman Drive as a cut-through street and to go through that neighborhood to get onto Roark Valley Road. He said they would want to restrict that activity. The city would

not want those renting the bikes to head north through the neighborhood. Mr. Joseph said he would tell them not to go through the neighborhood when they signed their waivers and to enter onto the street. Commissioner Best said when she rented golf carts on Catalina Island they provided a map designating the areas they were allowed to go with the carts, so they had dealt with that adequately. Commissioner Loyd said if Mr. Joseph did not show his customers how to go through there, they would not. Mr. Joseph said they would not know any better than to go back there. Commissioner Hartley said he would discourage it. Mr. Joseph said yes. He said he would discourage them and tell them not to go through the residential neighborhoods and to stay out on the strip. He would make it very clear to them.

AYES: Commissioners Best, Hartley, Loyd, Westcott, Vice-Chairperson Romine and Chairperson Harris.

NOES: None.

ABSTAIN: None.

ABSENT: Commissioners Boyce, Butler, Davis and Woolery.

Motion to postpone Resolution 09-1.17 carried with a 6-0 vote.

#### OTHER BUSINESS

Chairperson Harris said they were now ready for some staff work.

Ms. Norback said the next section about topping of trees would be to discuss modifying and making an amendment to the landscaping code to include a topping ordinance. This presentation was to inform the commission of exactly what the ordinance would be. She said it came from the Missouri Community Forestry Council, which had an anti-topping campaign, and there were also brochures and posters available.

Basically, topping was the cutting back of tree branches to stubs or secondary branches that were not large enough to assume a dominant role. Other names for topping include "heading," "tipping," "hat-racking," and "rounding over." An example of topping was displayed on the overhead screen. The drastic removal of large branches left large, open wounds subject to decay and disease. Topping removed the main leader of the stems and the cuts are usually made between nodes, where the leaves or buds came up, or in between two (2) nodes. An example of this was shown on the overhead screen.

Ms. Norback said there were ten (10) myths about topping. In reverse order, they were as follows:

10. Topping rejuvenates the trees energy.

Ms. Norback said it actually removed the tree's energy. It removed all the foliage, so the trees would not have a way to create their own energy to continue growing; it forced trees to tap energy reserves to replace the lost energy; and, it weakened trees and made them more susceptible to attack by pests.

9. Topping is inexpensive.

Ms. Norback said the actual cost of topping was not the initial bill. It was more expensive because someone would have to go back year after year to keep topping it. It created poorly attached branches, which could possibly damage something else if they broke off the tree. Trees could die prematurely and would then need to be removed and replaced. Property values would be reduced and liability would be increased.

8. A topped tree is more attractive.

Ms. Norback said a tree's natural form is usually prized. They have multiple crown shapes and someone could select a tree that had the shape they desired.

7. Trees can handle topping.

Ms. Norback said some trees could withstand topping a little bit better than other, but all of them were still damaged. The life of a topped tree was shortened by increased susceptibility to pests and decay. The re-growth, called sprouts, were poorly attached and could break off easily, as in ice storms that all of us had witnessed in the last couple of years.

6. Topping makes the tree fuller.

Ms. Norback said the tree would sent out a "flush" of these sprouts because it was trying to recreate its energy. It may appear to be fuller, but again unfortunately the branches would be poorly attached, they would easily break and they would be open to decay.

5. I see topping done all the time.

Ms. Norback said just because something was done by others did not make it correct. Fortunately, Branson did not have a lot of topping done. She had seen other towns that had quite a bit of it. Research had shown pruning techniques that worked with the trees biology, not against it.

4. New growth is stronger.

Ms. Norback said new growth usually grew faster, but not stronger. She showed an example on the overhead screen of a tree sprout with all the decay inside, yet the sprout still came off of it.

3. Topping will help the tree's health.

Ms. Norback said a declining tree would not be helped by removing its ability to feed itself. Topping forced it to use energy reserves it could have used elsewhere. Proper diagnosis of the problem could help address the tree's issues before it died.

2. The tree casts too much shade.

Ms. Norback said some trees did have dense shade and some things could grow under them. Tree canopies could be thinned. With the proper pruning, it would let some of the sunlight through, so grass would still grow. All the dead wood could be removed, so there would be less damage also.

1. The tree got "too big."

Ms. Norback said trees never get too big. Trees have a genetic disposition to be a certain size. Environmental factors affect the potential size, as well. Selecting smaller trees was usually a better choice, especially for locations with utility lines. She said she knew the city had an issue with utility pruning; unfortunately, it was approved as a utility pruning practice to cut around power lines.

Commissioner Hartley asked what prompted this presentation on tree topping. Ms. Norback said it was to continue Tree City. She said certain things needed to be done for Tree City, as well as the Growth Award that the city had received. She said Tree City had been fourteen (14) years; Growth Award had been ten (10) years. She said they needed to update their ordinance or tree board, something that would keep our growth going. This anti-topping ordinance would help us achieve our Tree City/Growth Award goals along with preserving as many trees as we could. Commissioner Hartley said this was almost the opposite view they had had about trees being trimmed in the past. She said the utility company had trimmed trees on Cliff Drive to a great extent. When she objected, she was told the city had a contract with them to be able to cut and trim the trees for utility reasons. She said some of the trees were totally ruined. She could still show you the trees today that were still damaged after ten (10) years. She was pleased to see Ms. Norback make this positive statement. Chairperson Harris said Empire District Electric Company had a different regional forester now who had changed some of its practices because of that. Ms. Norback said they had their own standards for tree trimming that had to get approved. As of late, they had tried to have a more positive image. She had talked to their forester for this region and he was willing to work with the city and to try to have a good working relationship with us. Chairperson Harris agreed that it was pretty drastic that one time that Commissioner Hartley had referred to.

Chairperson Harris asked Ms. Norback about the loss of the tree on Highway 248. He asked Ms. Norback to tell them what transpired during that project and how the city was dealing with it. Ms. Norback said the owner of the property did not live here, but she (the owner) wanted to remove some dead trees. There were still quite a few trees on the property that were dying and in need of some assistance. The owner's ultimate goal was to cut them down and replant them with something else. She was not aware of our ordinance, so our code enforcement officer went out to talk with her and she (the owner) was very apologetic to the code enforcement officer. She would be planting some new trees, possibly red buds, to replace the ones that had been removed. Chairperson Harris asked if she would be doing that this fall and if Ms. Norback would be following up with her. Ms. Norback said yes.

Chairperson Harris recognized Commissioner Hartley.

Commissioner Hartley said there were signs on West Highway 76, or Main Street, and Business Highway 65 that advertised businesses that had not been there for years. Chairperson Harris said the signs related to businesses that no longer existed. He said part of the sign ordinance dealt with that type of situation. Mr. Lawson said they would be abandoned signs and he would look into it. Commissioner Loyd said there was a rental building there that had not been rented for a long time. Commissioner Hartley said it advertised what was once in there.

Chairperson Harris recognized Mr. Lawson.

Mr. Lawson said he had one other item for discussion. He pointed out the signs that were leaning against the far wall of council chambers. He said right now the only sign staff used for notification was the "Zorro" or "Z" sign and the only calls the department had received from them were from people wanting to know how much we wanted for the property because they

thought it was a real estate sign. Referring to the signs against the wall, he said the first sign with the blue background was for planned development. It listed who to call for more information and indicated it was a certain type of PD and had the planning commission meeting date. The next sign had a white background and was for zoning requests. On that sign, they would put a notice that stated what the proposed change would be. The last sign, which had not yet been created, would have a red background and would be for special use permits. These would state what type of special use was being requested, such as a Family Home Day Care. People in the neighborhood could actually see what was going on at that location. He said the “Zorro” sign was not very effective and would be retired.

Chairperson Harris said anything that allowed the community to be more informed was certainly beneficial. He said the agenda was also posted on the website. Ms. Norback said we sent out the neighbor notices, too, which was usually from where all the phone calls came.

Chairperson Harris asked Joel Hornickel to forward and introduce himself.

Joel Hornickel, Senior Planner, stepped to the podium and introduced himself. He said he had been here for about a month now. This was his first planning and zoning meeting and he was glad to be finally be here and get an idea of what these meetings were all about. He said he came to Branson from Toledo, Ohio, where he worked doing design for the past five (5) years, so that was more of his background. He was helping Mr. Lawson and the rest of the department out with those efforts, as well as getting into the planning aspect and helping out with these meetings. He said he was glad to be here.

Chairperson Harris said Mr. Hornickel had worked on the drawings for the Hiawatha Heights neighborhood. Mr. Lawson apologized and said he thought the commission had already met Mr. Hornickel because it seemed like he had been here a lot longer than a month. Mr. Lawson said the next display of Mr. Hornickel’s work would be this Thursday, October 8<sup>th</sup>, at the open house at the First Baptist Church from 4:00 p.m. to 6:00 p.m. He said notices would be sent out about this event. He said this would be for traffic calming, which staff had worked on some more. The neighbors could go by and comment on whether or not this was what they had in mind. Commissioner Hartley asked if that was this Thursday. Chairperson Harris said yes; it was in two (2) days.

ADVISORY RECOMMENDATIONS
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None.

ADJOURNMENT

Motion by Chairperson Harris and unanimously carried to adjourn the meeting at 10:12 p.m.

Clark Harris  
Clark Harris, Chairperson

11-3-09  
Date

Sonja Paden  
Sonja Paden, Office Assistant II

11.03.09  
Date