

PLANNING AND ZONING COMMISSION

September 6, 2011  
7:30 pm  
Council Chambers

ROLL CALL

Commissioners Present: Best, Burney, Davis, Huddleston, Loyd, Wescott, Woolery,  
Vice-Chairperson Romine and Chairperson Harris  
Commissioners Absent: McDowell  
Staff Present: Jim Lawson Director of Planning and Development  
Joel Hornickel Senior Planner  
William Duston City Attorney  
Mike Ray Utilities Director  
Kendall Powell Utilities Plans Reviewer  
Sonja Paden Office Assistant II

1. **Approve Agenda.**  
Recommended Action: Approve the format of the September 6, 2011 agenda.

**MOTION:**  
Motion by Commissioner Best and seconded by Commissioner Woolery, and unanimously carried to approve the format of the September 6, 2011 agenda.

PUBLIC COMMENTS

None.

REGULAR AGENDA ITEMS

2. **Approve Minutes.**  
Recommended Action: A) Approve the minutes of the August 2, 2011 study session;  
B) Approve the minutes of the August 2, 2011 regular meeting.

**MOTION:**  
Motion by Commissioner Davis and seconded by Vice-Chairperson Romine and unanimously carried to approve the minutes of the August 2, 2011 Planning and Zoning Commission study session and the August 2, 2011 Planning and Zoning Commission regular meeting as presented.

OLD BUSINESS

3. Request for a Municipal Code Amendment to Appendix A, Sections 400.040, 405.030, 405.040 and 410.040 Pertaining to Uses Permitted and Special Uses.  
Project No. 11-12.1 (11-01200001)  
Applicant: City of Branson

Mr. Hornickel presented the staff report as filed with the Planning Department.

Chairperson Harris asked if future applicants for a Special Use Permit to display their wares would provide their parking numbers and be allowed to utilize only the spaces they have in excess of their required amount.

Mr. Hornickel stated a parking review would be part of the staff's review process and report.

Chairperson Harris asked if the larger businesses typically have more parking than what is required.

Mr. Hornickel stated they typically did because they based their parking off of their ten busiest days of the year, thus leading to an excess amount.

Mr. Lawson added there were not many developments similar to the older Wal-Marts, as many were now within Planned Developments. He stated only a handful of businesses would meet the requirements necessary to pursue a Special Use Permit.

Chairperson Harris asked if the Planned Developments would be covered by this change, as they were not C commercial districts.

Mr. Hornickel stated they would not.

Chairperson Harris asked if any of the Commissioners had any comments or questions for staff.

Commissioner Loyd asked how the proposed code changes would affect the business with manikins out front.

Mr. Hornickel stated that particular business would be able to display their wares only within ten feet of their building frontage, as they did not have fifty feet available to them within their parking area. He added they could display their wares near their building only if that much space was actually available.

Mr. Lawson stated the business also had the same manikins in their windows; therefore, this ordinance would remove the ones along the road.

Commissioner Wescott asked if the property line and the right-of-way referred to the same thing.

Mr. Hornickel stated they did.

Commissioner Davis asked how the three-foot minimum had been determined and whether or not it would be wide enough for wheelchair-bound folks.

Mr. Hornickel stated the distance had been derived from ADA requirements.

Commissioner Best asked how the proposed change would pertain to sidewalk sales.

Mr. Lawson stated they would still be able to occur, as they were typically Special Events or occurred downtown.

Chairperson Harris asked if the downtown would be affected by this ordinance change.

Mr. Hornickel stated it would not as they were their own zoning district, D downtown.

Chairperson Harris asked if there was anyone present who wished to speak in regards to the item.

Mr. Bob Huels approached and stated he had missed the previous meeting when the newest changes were added. He stated everything had been great and he would have not come had he not accidentally seen the addition. He asked how anyone could consider the display of wares as a planning and zoning use. He stated he was not against the rules being created, but he was against putting them in planning and zoning uses. He stated they partially belonged in the sign ordinance and also in the nuisance ordinance. He added many terms were being added that did not include definitions. He stated the intent for the changes was correct. He stated the grandfather clause may also cause issues with existing businesses and their displays.

Mr. Lawson stated staff had been trying to deal with whirligigs in the sign code and it did not make any sense. He stated there would not be a grandfather clause with this particular ordinance because the items were temporary uses, as they go up and come down several times a year.

Commissioner Best asked what the process had been from when there had been agreement to not having agreement. She added she had missed a meeting during that time also.

Mr. Hornickel stated the first time the item was presented, it was for discussion and the display of wares had not been included. He stated due to delays for both ordinance changes, staff felt it would be less confusing and more efficient to bring both items forward together, since they were within the same section.

Mr. Lawson stated the Board had reviewed the intent of the wares ordinance and had recommended for it to then go before the Planning and Zoning Commission. He added the timing was such that it came at the same time as the Special Use changes.

Chairperson Harris asked if there was anyone else present who wished to speak in regards to the item.

Mr. Mark Weisz approached and stated he recalled during the previous meeting discussions to shorten the distance to something less than fifty feet for the display of wares under a Special Use Permit. He stated several businesses could be negatively affected by this change. He stated he was specifically worried about P. Graham Dunn's and Dickens Gift Shoppe.

Mr. Hornickel stated the distance had been proposed as one hundred fifty feet and had now been shortened to fifty feet based on the discussion at the previous meeting. He added it had also been discussed to base the distance on a minimum from the right-of-way or as a percentage of someone's overall property. He stated staff could not make either work without being confusing. He added P. Graham Dunn was located within a PD so it would not be affected by this ordinance change. He also stated staff had been working with Dickens to keep their wares closer to their building and they had been complying, as seen in a photograph within the presentation.

Mr. Weisz thanked Mr. Hornickel for his response. He added Mr. Dickens' sales had been greatly affected by the Code Enforcement Officers.

Commissioner Davis stated he believed the intent and spirit of the ordinance change met the visitors' and citizens' sense of place they wanted created. He stated it was also consistent with the long-range goals of the Board of Aldermen and they needed to move it along.

Commissioner Best asked how it would affect an open-air, farmers' market.

Mr. Hornickel stated there had been extensive discussion regarding farmers' markets at the previous meeting, as well as the nursery across from the Auto Museum. He stated the nursery should have applied for a Special Use Permit prior to operating since it was not a listed use in our codes. He added farmers' markets were allowed as long as they had permission from that property's owner.

Mr. Duston stated any farmer was allowed to sell their own produce as long as it was from their own farm.

Mr. Lawson stated if someone wanted to have a farmers' market, they could do a Planned Development which would allow mixed uses and special uses. They would then additionally be able to lock it down to a specific area within their development forever.

Commissioner Davis stated Aldermen Bohinc had extensive study of farmers' markets and her definition allowed farmers to bring their own produce in for only a couple hours as a nonbusiness activity. He added one would be welcome and a location needed to be found. He stated one used to be held at the campground shelter and another by the Christian Church. He encouraged Commissioner Best to meet with Aldermen Bohinc, if she had any thoughts to share.

Chairperson Harris asked if there was anyone else present who wished to speak in regards to the item; there was no response. He then asked again if there were any further comments or questions by the Commissioners.

Commissioner Westcott stated he still had some concern with passing the ordinance because Mr. Huels brought up some good points. He agreed in just looking at the ordinance, it did not appear to fit within the list of other uses.

Mr. Hornickel stated a telecommunication tower was also listed as a Special Use and had similar guidelines for its location as what was being proposed for the display of wares. He added the similarities made staff more comfortable with the decision.

Commissioner Westcott stated he was still concerned because he agreed someone would need to review the proposed locations, but did not know whether it needed to be the Planning and Zoning Commission or someone else.

Mr. Lawson stated businesses would automatically be allowed to display their wares only within ten feet of their building. He added if someone wanted to display anything within a parking area, they would have to be given permission by the Planning Commission to do it at all. He stated it would not be a use by right.

Commissioner Davis stated they would be managing the parking lot and not the manikins with a Special Use. He added he felt it did not belong anywhere else in the codebook, and staff placed it correctly.

Commissioner Huddleston stated he tended to agree with some of the comments shared by Mr. Huels and Mr. Weisz. He stated during the Study Session there had been discussion about the arbitrary easement lines for electric service allowing those companies to remove anything within their easements and how that upset a few people. He stated they were now doing the same with another arbitrary distance and it may be examined more moving forward to make sure it was the right distance. He added the change was still a step in the right direction in order to change the appearance of the streetscape. He stated he was comfortable with it, but did not feel it should be the end of its discussion prior to complete adoption.

Chairperson Harris asked again if there were any further comments or questions by the Commissioners; there was no response. He entertained a motion.

**MOTION:**

Motion by Commissioner Huddleston and seconded by Commissioner Woolery to approve Resolution 11-12.1.

AYES: Best, Burney, Davis, Huddleston, Loyd, Wescott, Woolery, Vice-Chairperson Romine and Chairperson Harris.  
NOES: None.  
ABSTAIN: None.  
ABSENT: McDowell.

Motion to approve Resolution 11-12.1 carried with a 9-0 vote.

<b>PUBLIC HEARING AGENDA ITEMS</b>
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4. Request for a Planned Development Amendment to the Branson Hills Land Use Regulations, PD 2005-007, to allow Additional Irrigation Wells.  
Project No. 11-5.2 (11-00500002)  
Applicant: Rick Huffman

Mr. Hornickel presented the staff report as filed with the Planning Department.

Mr. Lawson added at least one of the proposed wells had already been dug.

Chairperson Harris asked if any of the Commissioners had any comments or questions for staff; there was no response. He then asked Mr. Duston if, because the Annexation Agreement had occurred prior to the Planned Development in which the wells then appeared, they would be making a determination affecting only the Planned Development.

Mr. Duston stated the Annexation Agreement had been done in 2003 and allowed for two wells. He stated the Planned Development was then drafted later and, from his point of view, it then enshrined the Annexation Agreement.

Chairperson Harris asked if there was anyone present who wished to speak in regards to the item.

Mr. Rick Huffman approached and stated the two existing wells were deep wells approximately fourteen hundred feet. He stated they were drilled to be commercial wells with twelve inch casings and a couple hundred horse power pumps with the ability to produce enough water for their own water district. He added they were within a formation of rock that was very, very deep and had a lot of water. He stated the two proposed wells would be smaller with six inch casings and ten horsepower pumps. He stated the main reason for their request was because it would be more cost-efficient from an electrical standpoint, as opposed to running pipe under or along the road from their existing pumps. He passed out previous electric bills from the Greens Development that were five thousand dollars each. He stated he had been lobbying the City of Branson for three years to buy Water District Number Three so they could take control of it to provide better rates and service. He added there were already about twenty irrigation wells within the City that were approved in the past.

Mr. Huffman stated was correct.

Chairperson Harris asked what the depths would be for the two new wells.

Mr. Huffman stated they would be about seven hundred feet.

Chairperson Harris asked if those who depend upon private wells outside of the city would be affected by their draw on the same aquifer.

Mr. Huffman stated he did not believe so, as most of them lived at least a mile away. He added they have had their wells running since 2005 and there had been only one year where the water level had gone down. He stated they then worked with the city to cut back their irrigation on the golf course until the aquifer replenished. He added during the same year the city lowered its pump in its well near the RecPlex to limit further issues.

Chairperson Harris asked what the depth of the city's well was at the RecPlex.

Mr. Powell approached and stated it was sixteen hundred feet.

Commissioner Davis asked Mr. Huffman if he knew they needed to amend the Planned Development before drilling the wells. He also asked how long they had been using the new wells.

Mr. Huffman stated one of the wells had been drilled, but never used. He stated the other one had been pumped on during the summer. He added they were made aware they needed to make a Planned Development Amendment in order to have additional wells by the city.

Chairperson Harris asked whose responsibility it was to maintain the trees and irrigation along Branson Hills Parkway.

Mr. Huffman stated the trees belonged to the city because, when they built Branson Hills Parkway, they had donated them to the city along with the lighting, irrigation, utilities and land for the RecPlex. He added they also mowed the right-of-way areas free for the city. He stated seventy-five percent of the irrigation water was the city's as it comes out of its well. He added the city has control of the time clock for the system at the RecPlex.

Chairperson Harris asked if any of the other Commissioners had any other questions for the applicant.

Commissioner Loyd asked who owned the two existing, deep wells.

Mr. Huffman stated they were owned by the golf course.

Commissioner Loyd asked if their drinking water came from Water District Number Three.

Mr. Huffman stated it did.

Mr. Hornickel added staff had been contacted by Mr. Gus Kontoleon of Lot Sixty-Two and was solely interested in who would be responsible for paying for the new wells.

Mr. Huffman stated the electric for the well located at the Greens would be paid for by the Greens and the other would be paid for by the Master Association.

Chairperson Harris asked if any of the other Commissioners had any other questions for the applicant.

Commissioner Davis asked who was running the irrigation system at the RecPlex for the land along Branson Hills Parkway.

Mr. Powell stated they were not sure who was running the system.

Mr. Huffman stated it was someone under Cindy Shook in the Parks Department.

Chairperson Harris asked if there was anyone else present who wished to speak in regards to the item; there was no response. He then asked if there were any further comments or questions by the Commissioners.

Mr. Duston stated the Commission had the authority on zoning issues to make recommendations to the Board of Aldermen. He stated they could recommend four wells be allowed instead of two within the Planned Development. He added the Commission does not have the authority to make any decisions in regards to Chapter 90 of the Branson Municipal Code for utilities which states no wells shall be allowed within the city limits. He stated their recommendation would be for staff to review their decision to ensure no conflicts with Chapter 90.

Commissioner Davis asked if they had any commitment within their organization to encourage ground water recharge from storm water to help offset their impact on the aquifer.

Mr. Huffman stated they did through the design of the entire development by taking advantage of the storm water runoff. He stated sixty-five percent of the runoff was directed toward detention areas that had pumps in them to send the water back as irrigation.

Commissioner Huddleston thanked Mr. Huffman for his numbers right off the bat. He stated he had concerns the sizing they mentioned would not be what was actually needed and thus used. He added he was concerned there were no comments provided from the Engineering Department.

Mr. Huffman stated DNR has many regulations and a rigorous process that must be gone through in order to be given approval for any well providing over seventy-five gallons per minute. He stated any wells providing less than seventy-five gallons per minute still required a permit, but did not require as much of the process.

Mr. Powell stated the small wells would be considered domestic wells with DNR, meaning they would be seventy gallons per minute or less. He added the two larger wells for the golf course were considered bedrock irrigation wells which were seventy gallons per minute or larger and could be used for human consumption. He stated the well at the Greens had been rated for fifty-six gallons per minute. He confirmed it was an issue addressed by DNR and outside of the city's control for sizing.

Chairperson Harris asked again if there were any further comments or questions by the Commissioners; there was no response. He entertained a motion.

**MOTION:**

Motion by Commissioner Davis and seconded by Vice-Chairperson Romine to approve Resolution 11-5.2.

AYES: Best, Burney, Davis, Huddleston, Loyd, Wescott, Woolery, Vice-Chairperson Romine and Chairperson Harris.  
NOES: None.  
ABSTAIN: None.  
ABSENT: McDowell.

Motion to approve Resolution 11-5.2 passed with a 9-0 vote.

**COMMISSIONER & STAFF REPORTS**

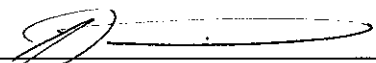
Mr. Hornickel stated on Thursday, September 8<sup>th</sup> at 7:00 pm there would be a second tour at the old school property at the intersection of College and Sixth Streets for those who were unable to join the first tour. He added on Thursday, September 29<sup>th</sup> at 6:00 pm the Cantwell Hills Neighborhood Organization would be having the Kick-Off Picnic at Cantwell Park.

**ADJOURNMENT**

Motion by Commissioner Best and seconded by Commissioner Wescott, and unanimously carried to adjourn the meeting at 8:47 pm.

  
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Clark Harris, Chairperson

11-1-11  
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Date

  
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Joel Hornickel, Senior Planner

11/2/11  
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Date