



TANEY COUNTY PLANNING COMMISSION

P. O. Box 383 • Forsyth, Missouri 65653

Phone: 417 546-7225 / 7226 • Fax: 417 546-6861

website: www.taneycounty.org

AGENDA TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, SEPTEMBER 15, 2010, 7:00 P.M. COUNTY COMMISSION HEARING ROOM TANEY COUNTY COURTHOUSE

Call to Order:

Establishment of Quorum

Explanation of Public Hearing Procedures

Presentation of Exhibits

Governing Statutes

Public Hearing:

Larry and Heather McKaig

Review and Action:

Minutes, August 2010

Old and New Business:

Adjournment.



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TANEY COUNTY BOARD OF ADJUSTMENT

STAFF REPORT

LARRY AND HEATHER MCKAIG

SEPTEMBER 15, 2010

#10-3

Public Hearing appeal request by Larry and Heather McKaig, in the Swan Township, Sec. 17 Twp. 24 Rng. 20.

The applicants request an appeal of the Taney County Planning Commission approval May 17, 2010, for Major's Commercial Development/Auto Shop.

History: A permit was issued by the planning staff to Bill and Kelly Majors for a commercial development to include a used car facility with shop, tire store with light repair facility, a motorcycle sales with repair facility with a fourth building yet to be determined.

General Description: The subject property is located at 13159 St. Hwy. 160. The adjoining properties to the request consist of commercial, residential, and agriculture.

Review: The applicants maintain that the Division II Permit was issued before the Division III Permit, that the property owner did not provide proof of ownership, the legal description was not accurate, the applicant started construction before permit issuance, the emergency waiver is not legal, the Division III permit is unlawful under state statute, and the applicants feel their rights were violated because the proper procedures were not followed.

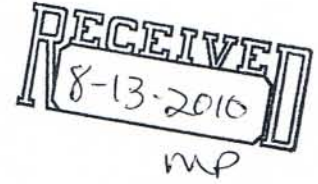
Summary: If the Taney County Board of Adjustment approves this appeal, the following requirements shall apply, unless revised by the Board:

1. Permit #10-3 is revoked and the property restored to its original state.
2. All other provisions of the Taney County Development Guidance Code met.
3. The Decision of Record shall be filed with the Taney County Recorder's Office within 120 days or the approval shall expire (Appendix D Step 6).

**TANEY COUNTY BOARD OF ADJUSTMENT
APPLICATION and AFFIDAVIT
FOR VARIANCE OR APPEAL**

(Circle one)

Variance (\$125.00) Appeal (\$125.00)



PLEASE PRINT

DATE 8/13/2010

Applicant/Appellants: Larry McKaig and Heather McKaig

Phone 417-546-5075

Address, City, State, Zip 13114 US Hwy 160, Forsyth, MO 65653

Representative John E. Price, Esq.

Phone 417-447-4400

Owner of Record Bill Majors and Kelly Majors

Signatures of Appellants: Larry McKaig

Heather McKaig

Name of Project: Majors' Commercial Development/Auto Shop

Section of Code Protected: See attached "Grounds for the Appeal"

Address and Location of site: 13159 US Hwy 160, Forsyth, Missouri 65653

Subdivision (if applicable) N/A

Section 17 Township 24 Range 20 Number of Acres or Sq. Ft. 41.8

Parcel Number 04-4.0-17-000-000-029.000

Correct #
04-4.0-17-000-000-029.004
mp.

Does the property lie in the 100-year floodplain? (Circle one) Yes X No.

Required Submittals:

☒ Typewritten legal description of property involved in the request. See attached Notice of Appeal

☐ Postage for notifying Property owners within 600 feet of the project – N/A

☐ Proof of public notification in a newspaper of county-wide circulation-N/A

☐ Proof of ownership or approval to proceed with request by the owner-N/A

☐ Sketch plan/survey of the project which completely demonstrates request-N/A

Please give a complete description of your request on page two.

II. **NOTICE** is hereby given that Larry McKaig and Heather McKaig, the owners of property at 13114 US Highway 160, Forsyth, Missouri, 65653, appearing by and through their counsel of record, Carnahan, Evans, Cantwell & Brown, P.C. hereby appeal the granting of a Division III Permit on May 17, 2010 by the Taney County Planning Commission for the "Bill Majors Commercial Development" authorizing a change in land use to the applicants listed above, and the granting of a Division II Permit, No. 09-006 and 007 on March 23, 2010 authorizing construction of a tire shop on the above referenced property, for the reasons specified hereafter.

GROUND FOR THE APPEAL

1. The Division II Permit is void, in that:

a. It was granted in violation of § 4.1.2(a) and Appendix C, of the Taney County Development Guidance Code because the Division II permit was issued before any Division III Permit was issued to the applicants authorizing a new commercial use of the property. The Division II Permit was issued March 23, 2010; a Division III Permit for the property was not issued until March 17, 2010.

b. The applicants failed to file proof of property ownership for the subject property with their Division II Permit Application as required by Taney County Development Guidance Code, Appendix C, Step 2 (a), page 42, in that they failed to file a Warranty Deed or other legally established document that includes both the property owner's name and a legal description of the property, and the property tax statement filed with the Division II permit application does not describe the same property by acreage that is referenced in applicant's permit application, nor is the property tax statement in the name of the applicants, but rather shows the property owned by a different owner.

c. The Division II Permit was improperly issued upon an unlawful procedure in that the permit application describes property in Section 17, Township 24, Range 20, in Taney County, Missouri, but the Notice of Public Hearing for the Division II Permit described property in Section 20, Township 24, Range 20, in Taney County, Missouri.

d. The applicants started construction on the project prior to applying for or receiving a Division II Permit and before seeking the "emergency waiver" of the Division II Permit. The Division II Staff Report states that the Division II application was filed March 5, 2010. Section 64.865 RSMo specifically provides that after the appointment of a zoning official by the County Commission, no building or other structure shall be erected or constructed, nor shall the use of any land be changed without a permit issued by the zoning officer. The actions of the Taney County Planning Commission in allowing the applicant to commence construction of its project without the appropriate permits, and in granting the Division II Permit to an applicant who was already in violation of state law is a violation of the Commission's duties under §64.865 RSMo and § 3.10 of the Taney County Development Guidance Code.

e. The Division II Permit was granted based upon an unlawful procedure, where the Commission granted the applicants an “emergency waiver” allowing the Division II Permit to be issued later, after construction had already begun. There is no provision in Missouri state law for the granting of a “emergency waiver,” and the Commission’s action in granting the applicant’s an emergency waiver on March 5, 2010, violates § 64.870 RSMo, which grants specific authority only to the county Board of Zoning Adjustment to authorize a variance from the strict application of zoning regulations. Section 64.870.1(3) RSMo. The granting of the emergency waiver also violates the Taney County Development Guidance Code in that there is no provision for a “emergency waiver” from any requirements of the Taney County Development Guidance Code, and § 7.1 of the Code provides, in compliance with § 64.870.1(3) RSMo, that only the Board of Adjustment can issue a variance from the requirements of the Code. Therefore, the use of this “emergency waiver” to excuse the issuance of a Division II Permit, after proper public hearings, before issuance of a Division II Construction Permit, was an unlawful procedure in violation of Missouri State Statutes and the County Development Guidance Code and the Division II Permit must therefore be rescinded because they were unlawfully issued.

2. The Division III Permit is void, and was issued in violation of Missouri state statutes and the Taney County Development Guidance Code in that:

a. The applicants started construction on the project prior to applying for a Division III Permit, and before seeking the “emergency waiver” of the Division III Permit. The application for concept, Division III was filed February 25, 2010, and “the emergency waiver form” for the Division III Permit is dated March 3, 2010. Construction at the property started before either of these dates, and involved substantial excavation, dirt work and concrete work, prior to issuance of any permit or waiver for the property. Section 64.865 RSMo specifically provides that after the appointment of a zoning official by the County Commission, no building or other structure shall be erected or constructed, nor shall the use of any land be changed without a permit issued by the zoning officer. The actions of the Taney County Planning Commission in allowing the applicant to commence construction of its project without the appropriate permits, and in granting the Division III Permit to an applicant who was already in violation of state law is a violation of the Commission’s duties under §64.865 RSMo and § 3.10 of the Taney County Development Guidance Code.

b. The Division III Permit was granted based upon an unlawful procedure, where the Commission granted the applicants an “emergency waiver” allowing the Division III Permit to be issued later, after construction had already begun. There is no provision in Missouri state law for the granting of a “emergency waiver,” and the Commission’s action in granting the applicant’s an emergency waiver on March 5, 2010, violates § 64.870 RSMo, which grants specific authority only to the county Board of Zoning Adjustment to authorize a variance from the strict application of zoning regulations. Section 64.870.1(3) RSMo. The granting of the emergency waiver also violates the Taney County Development Guidance Code in that there is no provision for a

“emergency waiver” from any requirements of the Taney County Development Guidance Code, and § 7.1 of the Code provides, in compliance with § 64.870.1(3) RSMo, that only the Board of Adjustment can issue a variance from the requirements of the Code. Therefore, the use of this “emergency waiver” to excuse the issuance of a Division III Permit, after proper public hearings, before issuance of a Division II Construction Permit, was an unlawful procedure in violation of Missouri State Statutes and the County Development Guidance Code and the Division III Permit must therefore be rescinded because they were unlawfully issued.

3. The issuance of the Division II and III Permits has violated the Appellants’ rights to procedural due process under the United States Constitution, Amendment 14 and Article I, Section 10 of the Missouri Constitution, and the Permits must be rescinded for the reason that under the lawful and proper procedure for issuance of these permits, the following procedures should have been followed:

a. Application for a Division III Permit, and a Public Hearing upon that Permit to authorize the change in land use of the subject property (Taney County Development Guidance Code § 4.1.3 (c); Appendix D, Steps 4-6, (Code pages 44-45).

b. Issuance of the Record of Decision and the Division III Permit (Taney County Development Guidance Code Appendix D, Step 7, page 45).

c. The Appellants’ right to appeal the issuance of the Division III Permit, granted by § 64.870 RSMo and § 7.2 of the Taney County Development Guidance Code.

d. If appeal of the Division III Permit was unsuccessful, the Applicants could then apply for a Division II Permit to construct the project (Taney County Development Guidance Code § 4.1.2(a); Appendix D, Step 7, page 45).

e. An Administrative Hearing regarding the Division II Permit by the Planning and Zoning staff (Taney County Development Guidance Code, Appendix C, Step 4, page 42).

f. Issuance of the record of decision and the Division II Permit by the Planning and Zoning staff (Taney County Development Guidance Code, Appendix C, Step 4, page 42).

g. Appellants’ Right to Appeal the Issuance of the Division II Permit to the Board of Adjustment (Taney County Development Guidance Code, § 7.2).

The unlawful procedure followed by the Commission here has deprived Appellants’ above their rights to procedural due process because construction was allowed to proceed and a Division II Construction Permit was issued to the applicants prior to any public notice or public hearing on the proposed land use change, and prior to the issuance of any Division III Permit, so that Appellants’ were denied their rights to a public hearing and to an appeal of the issuance of the Division III Permit approving the land use change before any construction commenced on the

subject property. Appellants have been damaged because they are now faced with appealing the issuance of the Division II and III Permits after construction is essentially complete and the land use change is a fate accompli. Appellants have therefore been denied their right to review of the Commission's actions at a meaningful time in the re-zoning process.

III. RELIEF REQUESTED

Because the Division II and Division III Permits were issued based upon an unlawful procedure in violation of Missouri State Statutes and the Taney County Development Guidance Code, Appellants respectfully request the Board of Adjustment for its Order rescinding the Division II and Division III Permits issued to the Applicants in this case, and an Order directing the Applicants to restore the subject property to its original condition prior to the commencement of unlawful construction on the property.

8/13/2010
Date: _____



John E. Price, Esq.

Majors 160		Permit#:		10-07	
Division III Relative Policy Scoring Sheet: Eastern Taney County		Performance Value	Importance Factor	Score	Section Score
Water Quality					
SEWAGE DISPOSAL		n/a=			
centralized system		2	5	0	0
on-site treatment system(s) with adequate safeguards to mitigate pollution		1			
septic system of adequate design and capacity		0			
proposed system may not provide adequate capacity		-1			
proposed solution may cause surface and/or ground water pollution		-2			
Environmental Policies					
STORM DRAINAGE		n/a=			
on-site stormwater retention and absorption with engineered plans		2	4	0	0
on-site stormwater retention and absorption without engineered plans		1			
stormwater retention with managed and acceptable run-off		0			
no stormwater retention, but adverse impacts from run-off have been mitigated		-1			
no acceptable management and control of stormwater run-off		-2			
AIR QUALITY		n/a=			
cannot cause impact		0	4	0	0
could impact but appropriate abatement installed		-1			
could impact, no abatement or unknown impact		-2			
Critical Areas					
PRESERVATION OF CRITICAL AREAS		n/a=			
no adverse impact to any designated critical area		2	3	2	6
one of the designated critical areas impacted but can be fully mitigated		1			
more than one of the designated critical areas impacted but can be fully mitigated		0			
one or more of the designated critical areas impacted and mitigation not fully effective		-1			
one or more of the designated critical areas impacted with no ability to mitigate problem		-2			
Land Use Compatibility					
OFF-SITE NUISANCES		n/a=			
no issues		2	4	1	4
minimal issues, but can be fully mitigated		1			
issues that can be buffered and mitigated to a reasonable level		0			
buffered and minimally mitigated		-1			
cannot be mitigated		-2			
USE COMPATIBILITY		n/a=			
no conflicts / isolated property		0	4	0	0
transparent change / change not readily noticeable		-1			
impact readily apparent / out of place		-2			

Majors 160		Permit#:	10-07		
Division III Relative Policy Scoring Sheet: Eastern Taney County		Performance Value	Importance Factor	Score	Section Score
STRUCTURAL SCREENING OF ROOFTOP EQUIPMENT & VENTS		n/a=			
no rooftop equipment / vents or blocked from view by structure design or screening		0	3	0	0
partially blocked from view		-1			
exposed / not blocked from view		-2			
STRUCTURAL SCREENING OF SOLID WASTE CONTAINERS		n/a=			
no on-site waste containers or blocked from view by structure design or screening		0	3	-1	-3
partially blocked from view		-1			
exposed / not blocked from view		-2			
STRUCTURAL SCREENING OF OUTDOOR EQUIP, STORAGE, ETC.		n/a=			
no outdoor storage of equipment, materials, etc., or outdoor work areas		2	3	2	6
blocked from view by structure design		1			
blocked from view using screening		0			
partially blocked from view		-1			
exposed / not blocked from view		-2			
LANDSCAPED BUFFERS -- RESIDENTIAL		n/a=			
approved landscaped buffer between homes and all streets / roads / highways		2	2	0	0
approved landscaped buffer from major roads / highways only		1			
minimal landscaped buffer, but compensates with expanse of land		0			
no landscaped buffer between residences and local streets		-1			
no landscaped buffer from any road		-2			
LANDSCAPED BUFFERS - INDUSTRIAL		n/a=	x		
approved landscaped buffer from public roads		0	3		
minimal landscaped buffer, but compensates with expanse of land		-1			
no landscaped buffer from public roads		-2			
Local Economic Development					
AGRICULTURAL LANDS		n/a=			
no conversion of Class I-IV agricultural land to other use(s)		0	1	0	0
development requires reclassification of Class I-IV agricultural land to other use(s)		-2			
RIGHT TO FARM		n/a=			
does not limit existing agricultural uses / does not cause nuisance, predation		0	3	0	0
does not limit existing agricultural uses, but may result in minor nuisance		-1			
potential impact(s) on existing agricultural land		-2			
RIGHT TO OPERATE		n/a=			
no viable impact on existing industrial uses by residential development		0	2	0	0
potential impact but can be mitigated		-1			
potential impact on existing industrial uses with no mitigation		-2			

Majors 160		Permit#:		10-07	
Division III Relative Policy Scoring Sheet: Eastern Taney County		Performance Value	Importance Factor	Score	Section Score
DIVERSIFICATION n/a=					
creates >=5 full-time, year-round jobs outside of recreation / resort sector		2	4	2	8
creates full-time, year-round and seasonal jobs		1			
creates seasonal jobs only		0			
Site Planning, Design, Occupancy					
RESIDENTIAL PRIVACY n/a=					
privacy provided by structural design, or not applicable		2	2	1	2
privacy provided by structural screening		1			
privacy provided by landscaped buffers		0			
privacy provided by open space		-1			
no acceptable or effective privacy buffering		-2			
MIXED-USE DEVELOPMENTS n/a=		x			
uses / functions are compatible or not applicable		2	3		
uses / functions are integrated and separated based on compatibility		1			
uses / functions differ minimally and are not readily apparent		0			
uses / functions poorly integrated or separated		-1			
uses / functions mixed without regard to compatibility factors		-2			
Commercial Development					
DEVELOPMENT PATTERN / BUFFERING n/a=					
approved and effectively designed landscaped buffers between structures and all roads		2	4	0	0
minimal landscaped buffering, but compensates with expanse of land		1			
minimal landscaped buffering		0			
no landscaped buffering, but utilizes expanse of land		-1			
no or inadequate buffering or separation by land		-2			
Services - Capacity and Access					
UTILITIES n/a=					
adequate utilities capacity as evidenced by letter from each utility		0	4	-1	-4
adequate utilities capacity without formal letter from each utility or not from all utilities		-1			
inadequate information to determine adequacy of utilities		-2			
TRAFFIC n/a=					
no impact or insignificant impact on current traffic flows		0	2	-1	-2
traffic flow increases expected but manageable using existing roads and road accesses		-1			
traffic flow increases exceed current road capacities		-2			
EMERGENCY SERVICES n/a=					
structure size and/or access can be serviced by emergency equipment		0	3	0	0
structure size and/or access may impede but not hinder serviceability		-1			
structure size and/or access could be problematic or non-serviceable		-2			

Majors 160		Permit#:	10-07		
Division III Relative Policy Scoring Sheet: Eastern Taney County		Performance Value	Importance Factor	Score	Section Score
RIGHT-OF-WAY OF EXISTING ROADS		n/a=			
greater than 50 ft. right-of-way		1	5	1	5
50 ft. right-of-way		0			
40 ft. right-of-way		-1			
less than 40 ft. right-of-way		-2			
Internal Improvements					
WATER SYSTEMS		n/a=			
central water system meeting DNR requirements for capacity, storage, design, etc.		2	3	1	3
community well / water system meeting DNR requirements		1			
private wells meeting DNR requirements		0			
private wells not meeting any established standards		-1			
individual / private wells		-2			
EMERGENCY WATER SUPPLY		n/a=	x		
fire hydrant system throughout development with adequate pressure and flow		0	5		
fire hydrant system with limited coverage		-1			
no fire hydrant system		-2			
PEDESTRIAN CIRCULATION		n/a=	x		
paved and dedicated walkways (no bicycles) provided throughout development		2	4		
paved walkways provided throughout development / maybe shared with bicycles		1			
designated walkways provided but unpaved		0			
no pedestrian walkways, but green space provided for pedestrian use		-1			
no designated pedestrian walkway areas		-2			
PEDESTRIAN SAFETY		n/a=	x		
separation of pedestrian walkways from roadways by landscape or structural buffer		2	2		
separation of pedestrian walkways from roadways by open land buffer		1			
pedestrian walkways abut roadways with no buffering / protection		0			
BICYCLE CIRCULATION		n/a=	x		
dedicated / separate bike-ways with signage, bike racks, trails		2	1		
bicycle lanes shared with pedestrian walkways but separated by markings / signs		1			
no designated bike-ways		0			
UNDERGROUND UTILITIES		n/a=			
all utilities are provided underground up to each building / structure		2	4	0	0
all utilities traverse development underground but may be above ground from easement		1			
utilities above ground but / over designated easements		0			
utilities above ground and not within specific easements		-1			
no specific management of utilities		-2			

Majors 160		Permit#:		10-07	
Division III Relative Policy Scoring Sheet: Eastern Taney County		Performance Value	Importance Factor	Score	Section Score
Open-Space Density					
USABLE OPEN SPACE		n/a=	x		
residential developments (>25 units) include more than 25% open recreational space		2	2		
residential developments (>25 units) offer >10% but <25% open recreational space		1			
recreational area provided, but highly limited and not provided as open space		0			
no designated recreational space provided, but open space available		-1			
no open recreational space provided		-2			
Solid Waste Disposal					
SOLID WASTE DISPOSAL SERVICE AVAILABILITY		n/a=			
weekly service is available and documentation of availability provided		0	5	-1	-5
weekly service reportedly available but not documented		-1			
centralized, on-site trash collection receptacles available		-2			
SOLID WASTE DISPOSAL SERVICE COMMITMENT		n/a=	x		
restrictive covenants provide for weekly disposal for each occupied structure		0	5		
services available but not a requirement documented in covenants		-1			
not applicable / no pick-up service provided		-2			

Total Weighted Score= 20

Maximum Possible Score= 81

Actual Score as Percent of Maximum= 24.7%

Number of Negative Scores= 4

Negative Scores as % of Total Score= 11.4%

Scoring Performed by:

Date:

Eastern District Relative Policies: Division III Permit

Project: Majors 160

Permit: 10-07

	Max. Possible	As Scored	%	Total Negative Scores	
Scoring	81	20	24.7%	4	18.2%

	Max. Possible	As Scored	Negative Scores	
			Number of	Percent
Importance Factor 5			1	50.0%
sewage disposal				
right-of-way / roads	5	5		
emergency water supply				
waste disposal service	0	-5		
waste disposal commitment				
Importance Factor 4	40	8	1	12.5%
stormwater drainage	8	0		
air quality	0	0		
off-site nuisances	8	4		
use compatibility	0	0		
diversification	8	8		
development buffering	8	0		
utilities	0	-4		
pedestrian circulation				
underground utilities	8	0		
Importance Factor 3	18	12	1	14.3%
preservation of critical areas	6	6		
screening of rooftop equip	0	0		
screening / waste containers	0	-3		
screening of outdoor equip	6	6		
industrial landscape buffers				
right to farm	0	0		
mixed-use developments				
emergency services	0	0		
water systems	6	3		
Importance Factor 2			1	25.0%
residential landscape buffers	4	0		
right to operate	0	0		
residential privacy	4	2		
traffic	0	-2		
pedestrian safety				
usable open space				
Importance Factor 1				
agricultural lands	0	0		
bicycle circulation				

Scoring by:

Date:





TANEY COUNTY PLANNING COMMISSION

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website: www.taneycounty.org

MINUTES TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, AUGUST 18, 2010, 7:00 P.M. COUNTY COMMISSION HEARING ROOM TANEY COUNTY COURTHOUSE

Call to Order:

Chairman Dave Clemenson called the meeting to order at 7:00 p.m. A quorum was established with five members present. They were: Dave Clemenson, Bob Hanzelon, Jack Johnston, Tom Gideon, and Dave Nelson. Staff present: Eddie Coxie, Bonita Kisse, Dan Nosalek.

Mr. Coxie read a statement explaining the meeting procedures and placed the Taney County Development Guidance Code as Exhibit A, the staff report as Exhibit B, and the staff files including all pertinent information as Exhibit C, and the Taney County Board of Adjustment bylaws as Exhibit D. The state statutes that empower and govern the Board of Adjustment were read. Mr. Clemenson swore in the speakers before the hearing.

Public Hearing:

Spring Creek Park Homeowner's Association: a request for an appeal of the Taney County Planning Commission decision to approve a lot split for Bradford JoAnn Properties. Mr. Coxie read the staff report and presented pictures and a video of the site. Mr. Clemenson addressed the email from Mr. Rod Phillips, of the property owners association, which asking the Board to respond. Mr. Clemenson stated the Board cannot respond to anything that isn't in an open meeting. He also stated that in his opinion the Planning Commission had not made a hasty decision as the homeowners felt they had. Mr. Cousland who lives on Spring Creek Road stated in his opinion Mr. Gillum should be allowed to divide his property. Nicki Richard who lives across the street stated that the property drains to a creek behind her house, and during the last storm the water raised to a foot above her ground floor. She spoke to DNR about the availability of the water and stated that it was a possibility the community well could go dry if it was in the same aquifer. The well is 460' deep. She also addressed the road situation and felt any additional traffic would cause more potholes. With no discussion a motion was made by Dave Nelson to allow the Planning Commission decision to stand and deny the appeal based on all items being addressed at the Planning Commission meeting. Tom Gideon seconded. The vote to deny was unanimous.

Old and New Business:

Mr. Coxie reported that zoning districts were approved by the County Commission this day.

Mr. Coxie also reported on the request for next month.

Review and Action:

With no changes or additions a motion was made by Jack Johnston to approve the minutes as written. Seconded by Bob Hanzelon. The vote to approve was unanimous, with the chairman not voting.

Adjournment:

With no other business on the agenda for August 18, 2010 the meeting adjourned at 7:45 p.m.