



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, DECEMBER 21, 2011, 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 Hearings:

*Branson Development, LLC
Milton Lianne
Branson Sports Entertainment Complex Request for Reconsideration*

Review and Action:

Minutes, November 2011

Old and New Business:

Adjournment.

11-7

TANEY COUNTY BOARD OF ADJUSTMENT
APPLICATION and AFFIDAVIT
FOR VARIANCE OR APPEAL
(Circle one)

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

PLEASE PRINT

DATE

Applicant Branson Development LLC Phone 417-527-5946

Address, City, State, Zip 2750 Womble RD STE 200 San Diego, CA 92106

Representative Eddie Wolfe Phone 417-334-8820

Owner of Record Branson Development LLC Signature: [Signature]

Name of Project: Pinnacle

Section of Code Protested: (office entry) Right of Way Provisions of Section 5

Address and Location of site: Legends Cir Branson Creek

Subdivision (if applicable) Legends At Branson Creek Condo's

Section 27 Township 22 Range 21 Number of Acres or Sq. Ft. 14.70

Parcel Number 17-8,0-27-000-000-011,000

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

Required Submittals:

- ☐ Typewritten legal description of property involved in the request
- ☐ Postage for notifying property owners within 600 feet of the project
- ☐ Proof of public notification in a newspaper of county-wide circulation
- ☐ Proof of ownership or approval to proceed with request by the owner
- ☐ Sketch plan/survey of the project which completely demonstrates request

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

Describe in detail the reason for your request:

Asking For Variance of Road Right-of-way thru
platted condos to plat 4 residential lots.



**TANEY COUNTY BOARD OF ADJUSTMENT
VARIANCE STAFF REPORT
P.O. Box 383, Forsyth, MO 65653 (417) 546-7226**

HEARING DATE: December 21, 2011

CASE NUMBER: 2011-0007V

APPLICANT: Branson Development, LLC

LOCATION: The subject property is located on Legends Lane and Legends Circle off of Branson Creek Boulevard; Scott Township; Section 27, Township 22, Range 21.

REQUEST: The applicant, Branson Development, LLC is requesting a variance from Section 5, Section 11.1.7, Section 11.2.8 and Appendix L of the Taney County Development Guidance Code regarding the 50 foot road right-of-way and the 100 foot cul-de-sac right-of-way requirements.

BACKGROUND and SITE HISTORY:

The subject property consists of a portion of the Legends at Branson Creek Development. The Legends at Branson Creek Development (Permit # 2004-0020) was approved by the Taney County Planning Commission on May 17, 2004, authorizing the development of 59 dwelling units for medium density residential use, to be held in condominium style ownership.

In September 2011 Branson Development, LLC sought to replat the Legends at Branson Creek as a 43 lot residential subdivision to be held in individual lot ownership, with the submission of a Replat of the Legends at Branson Creek, renamed The Pinnacle at Branson Creek. On September 20, 2011 the Planning Administrator sent a Letter to the applicant indicating that upon review of the Final Plat of The Pinnacle at Branson Creek (a Replat of the Legends at Branson Creek) that it was found that the plat did **not** comply with the provisions of the Taney County Development Guidance Code because the required road right-of-way width for residential subdivision roads shall be 50 feet and the required cul-de-sac width shall be 100 feet. The Final Plat was amended including only those areas of the subdivision that had not already been plated as a part of the condominium style development, as indicated on the attached copy of the Final Plat of The Pinnacle at Branson Creek. The Pinnacle at Branson Creek (39 Residential Lots) has been approved by the Planning Department and filed with the Taney County Recorder of Deeds office.

GENERAL DESCRIPTION:

The applicant, Branson Development, LLC is requesting a variance from Section 5 Section 11.1.7, Section 11.2.8 and Appendix L of the Taney County Development Guidance Code regarding the 50 foot road right-of-way and the 100 foot cul-de-sac right-of-way requirements.

REVIEW:

In Taney County it has been generally accepted practice to allow for the plating of a condominium style ownership development with a minimum of a 20 foot wide ingress and egress easement. Therefore, as the condominium units were completed within the Legends at Branson Creek, upon the issuance of Certificates of Compliance, each of the condominium units and the common areas maintained by the Condominium Owners Association were platted with access being provided by 20 foot wide ingress and egress easements. The applicant is requesting a variance in order to allow the remaining portion of the Legends at Branson Creek to be replatted with access being provided by the existing, platted 20 foot wide easement and substandard cul-de-sac easement.

STATUTORY REQUIREMENTS OF APPROVAL:

Per the requirements of Missouri Revised Statutes the Board of Adjustment shall have the have the following powers and it shall be its duty:

"Where, by reason of exceptional narrowness, shallowness, shape or topography or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under sections 64.845 to 64.880 would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as distinguished from the mere grant of a privilege, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the demonstrable difficulties or hardships, provided the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map."

SUMMARY:

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

1. Approval of a variance from Section 5, Section 11.1.7, Section 11.2.8 and Appendix L (concerning the requirement for a 50 foot minimum right-of-way width and 100 foot cul-de-sac right-of-way width) of the Taney County Development Guidance Code in order to allow for the remaining portion of the Legends at Branson Creek to be replatted with access being provided by the existing 20 foot wide right-of-way and/or substandard cul-de-sac right-of-way width.
2. Compliance with all of the other provisions of the Taney County Development Guidance Code.
3. The Decision of Record shall be filed with the Taney County Recorder's Office within 120 days or the approval shall expire (Chapter 7.3.4 of the Taney County Development Guidance Code).



TANEY COUNTY PLANNING COMMISSION

P. O. Box 383 • Forsyth, Missouri 65653
Phone: 417 546-7225 / 7226 • Fax: 417 546-6861
website: www.taneycounty.org

September 20, 2011

Mr. Scott Bailey
The Communities at Branson Creek
100 Branson Creek Blvd.
Hollister, MO 65672

Re: Review of the Final Plat of The Pinnacle at Branson Creek

Dear Mr. Bailey:

Upon review of the Final Plat of The Pinnacle at Branson Creek, a Replat of the Legends at Branson Creek it has been determined that the following items will be required in order to ensure compliance with the provisions of the Taney County Development Guidance Code, allowing the Planning staff to sign the Planning Commission signature block:

1. The required road right-of-way width for the residential subdivision roads shall be 50 feet per the provisions of both the Taney County Development Guidance Code and the Taney County Road Standards. Residential Lots 1, 2, 3 & 4 are not being served by a required 50 foot road right-of-way. It has been generally accepted practice to allow for the plating of a condominium style ownership development with a minimum of a 20 foot wide ingress and egress easement. However, upon the amendment of the plat of the Legends at Branson Creek, the final plat of The Pinnacle at Branson Creek shall conform to the residential subdivision right-of-way requirements of the Development Guidance Code.
2. The cul-de-sac right-of-way width shall be a minimum of 100 feet per both the provisions of both the Taney County Development Guidance Code and the Taney County Road Standards.
3. A notation of any adjoining plats or certificates of survey and ties thereto. (*Per the provisions of Appendix H of the Taney County Development Guidance Code.*)

Thank you for your time and assistance. Please feel free to contact me with questions or concerns.

Sincerely,

Bob Atchley
Taney County Planning Administrator

THE PINNACLE AT BRANSON CREEK
A REPLAY OF PART OF THE LEGENDS AT BRANSON CREEK
LOCATED IN THE 1/2 OF THE NE 1/4 AND

LOCATED IN THE S1/2 OF THE NE1/4
OF THE INNACLE AT BRANSON CREEK
OF PART OF THE LEGENDS AT BRANSON
TOWNSHIP 22 NORTH, RANGE 27,
N 27, TOWNSHIP 22 NORTH, RANGE 27,
OF THE 6th PRINCIPAL MERIDIAN
TANNEY COUNTY, MISSOURI
OWNED AND DEVELOPED BY
BRANSON CREEK DEVELOPMENT, LLC

TANDARD CURVE TABLE			
CODE	100000	50000	20000
C7	20.17	20.05	60.00000
C8	26.46	26.05	61.2017
C9	42.87	38.00	67.2416
C11	165.00	626.00	126710
C12	11.48	278.00	111307
C13	26.97	278.00	91788
C14	26.97	111.68	41719.00
C15	21.03	26.00	48117.27
C16	26.03	26.00	48117.27
C17	17.82	26.00	48232.08
C18	21.37	26.00	48232.08
C19	29.27	26.00	48232.08
C20	18.37	26.00	48232.08
C21	42.86	68.20	48232.08
C22	10.00	120.00	48232.08

LINE TABLE	
LINE #	DESCRIPTION
L1	N 18°04'41" E
L2	N 60°26'56" W
L3	N 60°29'26" W
L4	S 60°26'56" E
L5	N 74°22' E
L6	N 28°17'01" E
L7	S 60°03'11" W
L8	N 64°01'56" W
L9	N 20°00' E
L10	N 63°41'36" W
L11	N 17°08'26" W
L12	S 21°17'04" E



GOOD INVESTMENT.
THE PROPERTY SHOWN ON THIS PLAT IS LOCATED WITHIN AN AREA HAVING A ZONE DESIGNATION "R" (RESIDENTS) DESIGNED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN. AT THE SOUTHWEST CORNER OF HOUSING AND URBAN DEVELOPMENT, ON FLOOD RESISTANT PILING. VIEW NEARBY 7215502700, PAVES 279 OF 600 AND WAS MAINTAIN 2521502000. PAVES 263 OF 600 IN THE COUNTRY. SUCCESS

[illegible]

ALL LOTS ARE SUBJECT TO A 10' UTILITY EASEMENT ALONG ALL FRONT AND BACK LOT LINES AND 7' ALONG ALL SIDE LOT LINES EXCEPT SHOWN OTHERWISE.

1. SETBACKS

25 FEET OFF OF ALL BUILDING FRONTS, 1/2' REARWARD FRONT SETBACK OFF OF ALL SIDE CORNER LOT LINES, 5 FEET OFF ALL SIDE LOT LINES AND 10 FEET OFF ALL BACK LOT LINES.

4. ALL LOTS CORNERS WERE STAKED WITH 1/2" REBARS WITH P.L. CAP PLACED ON TOP OF EACH CORNER SETBACK 7' ON P.A. CAP PLACED ON TOP OF EACH CORNER SETBACK 7' ON P.A.

CHRYSLER FZE
SHAWSON CORP., LLC
1000 SHAWSON COURT, SUITE 300
PHILADELPHIA, PA 19102

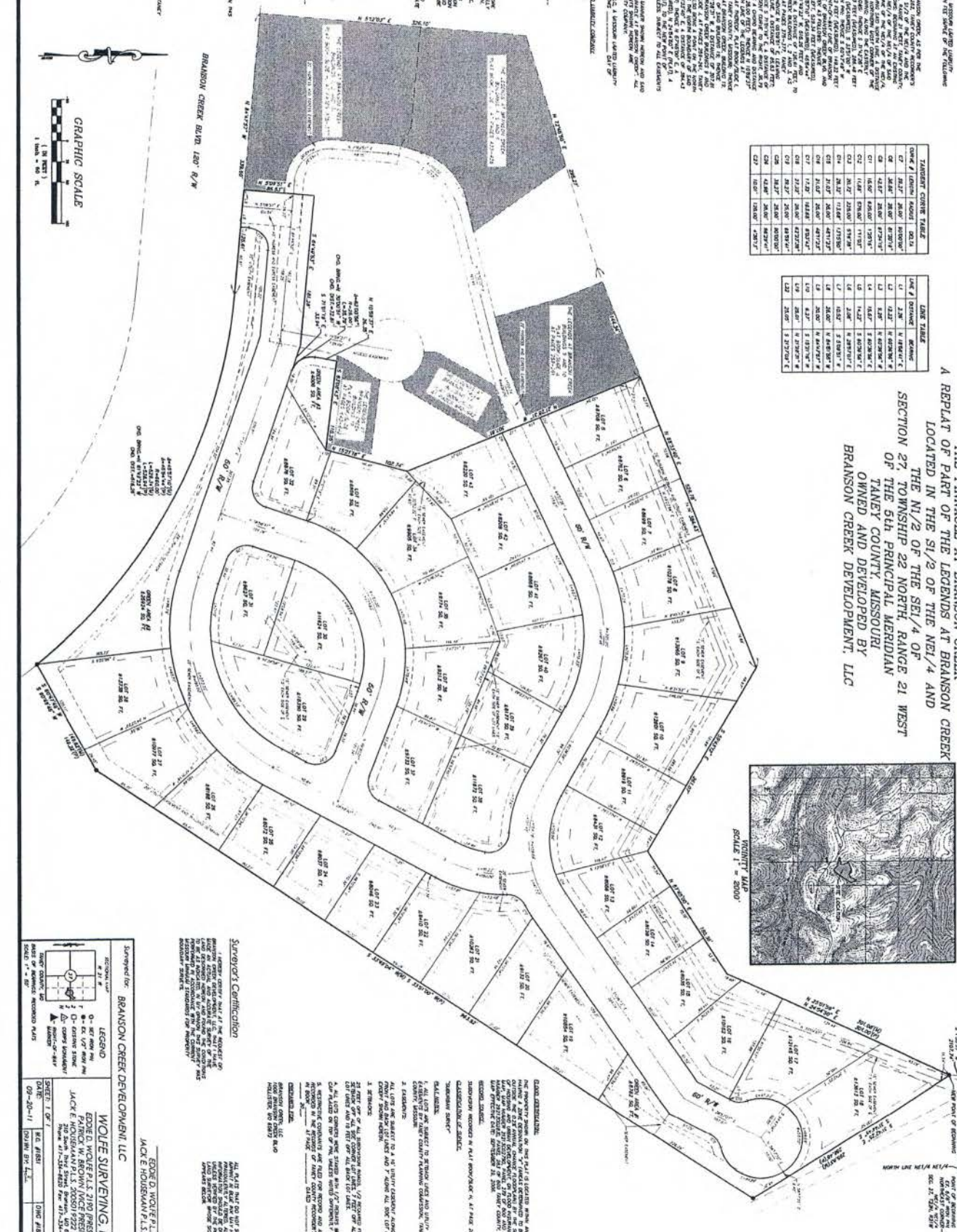
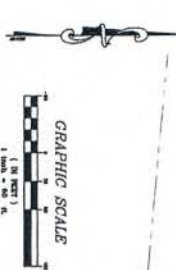
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EDDIE D. WOLFE P.L.S. 2191
JACK E. HOUSEMAN P.L.S. 2005

JACK E. HOUSEMAN P.L.S. 2005019222 (SHEET 1 OF 1)

210 South Third Street, Suite 200, MD 66616
Phone 410-334-8820 Fax 410-334-8161

SHEET: 1 OF 1	DATE: 09-20-11	MC #1881	DMC #1881-PN
		COAST BY: L.S.	



Surveyor's Certification

1. DIRECTLY CERTIFY THAT AT THE REQUEST OF GRASSMAN ENTER DEVELOPMENT, LLC, THAT IT WAS AN ACTUAL AND ACCURATE STATEMENT OF LAND DESCRIBED HEREON AND FURTHER THAT THE COPIES OF THE RECORDS OF THE COUNTY OF LOS ANGELES TO BE AS ACCURATE, IN GRASSMAN DOES NOT REPRESENT ANY ACCORDANCE WITH THE CLIENT'S ASSURANCE THAT THE RECORDS ARE ACCURATE AND CORRECTLY STATE THE PROPERTY.

1000 BRAYTON DRIVE
MILLISTER, MD 20687

ALL PLATS MUST DO NOT SHOW A
GROWING OR BURNING AREA HAVE
PROVIDED BY ALL TYPES ALL
MATERIALS NOT SHOULD BE DISPERSED
UNLESS COVERED BY THE PROTECTED
LAND SURVEYOR WHOSE SIGNATURE
APPEARS BELOW

EDDIE D. WOLFE P.L.S. 2190
JACK E. HOUSEMAN P.L.S. 2005019222
M. LLC

MIL. LLC

WOLFE SURVEYING, INC.

PATRICK W. BROWN / VICE PRESIDENT
JACK E. HOUSEMAN P.L.S. 2005019222 / SEC

SHEET 1 OF 1

09-20-11		
DRAIN BY <i>[Signature]</i>		

11-8
12-21-11

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

(Circle one)

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

PLEASE PRINT

DATE 10-18-11

Applicant Milton Lianne Trustee Phone 417-294-2200

Address, City, State, Zip 8 Willow Ct Branson, Mo. 65614

Representative Eddie Wolfe Phone 417-334-8820

Owner of Record Lianne Milton

Signature: Lianne Milton
Lianne Milton for
the Trust dated
July 7, 2006

Name of Project: Country Park

Section of Code Protested: (office entry) _____

Address and Location of site: 121 Yale St

Subdivision (if applicable) Country Park

Section 17 Township 23 Range 21 Number of Acres or Sq. Ft. 0.38 acres

Parcel Number 08-4.0-17-000-000-013.000

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

Required Submittals:

- ☐ Typewritten legal description of property involved in the request
- ☐ Postage for notifying property owners within 600 feet of the project
- ☐ Proof of public notification in a newspaper of county-wide circulation
- ☐ Proof of ownership or approval to proceed with request by the owner
- ☐ Sketch plan/survey of the project which completely demonstrates request

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

Describe in detail the reason for your request:

Asking on Lot 8 for a variance to place a
6 foot fence along the existing homes instead of
a vegetative buffer as required by code.



**TANEY COUNTY BOARD OF ADJUSTMENT
VARIANCE STAFF REPORT
P.O. Box 383, Forsyth, MO 65653 (417) 546-7226**

HEARING DATE: December 21, 2011

CASE NUMBER: 2011-0008V

APPLICANT: Lianne Milton

LOCATION: The subject property is located at 121 Yale Street; Branson Township; Section 17, Township 23, Range 21.

REQUEST: The applicant, Lianne Milton is requesting a variance from Section 6.1.3 and Table J-2 of the Taney County Development Guidance Code.

BACKGROUND and SITE HISTORY:

The subject property consists of Lot 8 of the Country Park Subdivision. The approximately .38 acre site (per the Assessor's information) contains an existing residence and an existing off-premise (billboard) sign.

GENERAL DESCRIPTION:

The applicant is seeking a Division III Permit requesting to utilize the existing residence as a commercial use. Per the provisions of Section 6.1.1 of the Taney County Development Guidance Code, "A landscape buffer is required between any residential land use whether those uses are single or two-family... or any other residential land use, and any non-residential land use such as commercial or industrial (but not agricultural)." Per the provisions of Section 6.1.3 of the Development Guidance Code, "The required buffer shall be a minimum of twenty-five (25) feet in width and may consist of existing indigenous plant material left in the undisturbed state. The use of a wall or fence as part of the buffer is an option, but will not reduce the required minimum width. The Planning Commission will establish any required buffers that are wider than the minimum 25 feet during the Division III process."

However, per the provisions of Table J-2 of the Development Guidance Code 40 feet of natural vegetative buffer is required between a commercial use and adjoining residences / public open space.

REVIEW:

Due to the limitations of the site size, and the location of the Country Park Subdivision Community Well lot immediately to the north of the lot in question sufficient space to provide for either a 25 foot wide or 40 foot wide natural vegetative buffer between the proposed commercial use and the adjoining residences would not be available. The applicant is requesting a variance from the natural vegetative buffer requirements of the Development Guidance Code in order to allow for the provision of a 6 foot tall opaque (privacy) fence in lieu of the natural vegetative buffer between the property in question and the adjoining residence to the north.

On November 21, 2011 the Planning Commission approved amendments to Section 6.1.3 and Table J-2 of the Taney County Development Guidance Code which would allow the Planning Commission to approve the use of a privacy fence, wall, landscaped earthen berm or other screening device in lieu of the required twenty-five (25) wide landscaped buffer. These recommended amendments have been provided to the Taney County Commission. However, the County Commission will be required to hold an advertised, public hearing prior to adoption of these amendments to the Taney County Development Guidance Code.

STATUTORY REQUIREMENTS OF APPROVAL:

Per the requirements of Missouri Revised Statutes the Board of Adjustment shall have the have the following powers and it shall be its duty:

"Where, by reason of exceptional narrowness, shallowness, shape or topography or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under sections 64.845 to 64.880 would result in peculiar and exceptional difficulties to or exceptional and demonstrable undue hardship upon the owner of the property as an unreasonable deprivation of use as distinguished from the mere grant of a privilege, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the demonstrable difficulties or hardships, provided the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map."

SUMMARY:

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

1. Approval of a variance from Section 6.1.3 and Table J-2 (Natural Vegetative Buffer Requirements) of the Taney County Development Guidance Code in order to allow for the provision of a 6 foot tall opaque (privacy) fence in lieu of the natural vegetative buffer between the proposed commercial use and the existing adjacent residences.
2. Compliance with all of the other provisions of the Taney County Development Guidance Code.
3. The Decision of Record shall be filed with the Taney County Recorder's Office within 120 days or the approval shall expire (Chapter 7.3.4 of the Taney County Development Guidance Code).

11/29/2011 4:38 PM
Scott L.



TANEY COUNTY PLANNING COMMISSION

P. O. Box 383 • Forsyth, Missouri 65653
Phone: 417 546-7225 / 7226 • Fax: 417 546-6861
website: www.taneycounty.org

Reconsideration of
Condition Number 4
Amended Decision of
Record for Division III
Permit # 11-16

TANEY COUNTY BOARD OF ADJUSTMENT

APPLICATION and AFFIDAVIT

FOR VARIANCE OR APPEAL

(Circle one)

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

PLEASE PRINT

DATE 11-29-11

- Russell Cook

Applicant Branson Sports and Entertainment Complex Phone 417-334-3535

Address, City, State, Zip 689 High Mtn. Dr., Ridgedale, MO 65739

Representative Tom Gammon Phone 417-334-3535

Owner of Record Russell Cook Signature: Russell L. Cook

Name of Project: Branson Sports and Entertainment Complex

Section of Code Protested: (office entry)

Address and Location of site: 689 High Mtn. Dr.

Ridgedale, MO 65739

Subdivision (if applicable) N/A

Section 8, 9, 17 Township 21N Range 21W Number of Acres or Sq. Ft. Approx. 809.19

Parcel Number 20-2.0-09-000-000-012.001; 20-3.0-08-000-000-001.012

20-3.0-08-000-000-002.000; 20-4.0-17-000-000-005.000

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

Required Submittals:

- ☒ Typewritten legal description of property involved in the request
- ☒ Postage for notifying property owners within 600 feet of the project
- ☐ Proof of public notification in a newspaper of county-wide circulation
- ☐ Proof of ownership or approval to proceed with request by the owner
- ☐ Sketch plan/survey of the project which completely demonstrates request

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

**Reconsideration of Condition Number Four Amended Decision of Record for Division III
Permit # 11-16**

Russell Cook requests Reconsideration of the Appeal filed October 17, 2011 and considered on November 16, 2011 of Condition No. 4

The Taney County Board of Adjustment is hereby requested to reconsider the failed appeal of Condition Number 4

Condition Number 4 currently reads as follows:

4. Prior to the issuance of Certificates of Conformance (C of C's) the developer shall install **all** of the required infrastructure improvements.

Under this condition it is inferred that entire development must be completed in a single phase and ALL infrastructure must be completed prior to any receipt of a Certificate of Conformance thereby limiting the developer's right to beneficial occupancy of offices, sales offices, public safety buildings, warehouses and other permanent structures. This is a large phased development and each phase will require a Division II Permit. We simply request that each Division II Permit be supported by the appropriate level of infrastructure required to support that phase.

New evidence a Preliminarily Conceptual Phasing Plan Exhibit A. will be provided to the Planning and Zoning Administrator's Office on Friday, December 2, 2011.

We further request that the language of Condition Number 4 Division of Record #11-16 be revised to the following proposed Condition Number 4 Language:

4. Prior to the issuance of Certificates of Conformance (C of C's) the developer shall install **all** of the required infrastructure improvements specifically related to the issued Division II permit the developer is requesting a Certificate of Conformance.



TANEY COUNTY PLANNING COMMISSION

P. O. Box 383 • Forsyth, Missouri 65653
Phone: 417 546-7225 / 7226 • Fax: 417 546-6861
website: www.taneycounty.org

Reconsideration of
Condition Number 9
Amended Decision of
Record for Division III
Permit # 11-16

TANEY COUNTY BOARD OF ADJUSTMENT

APPLICATION and AFFIDAVIT

FOR VARIANCE OR APPEAL

(Circle one)

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

PLEASE PRINT

DATE 11-29-11

- Russell Cook

Applicant Branson Sports and Entertainment Complex Phone 417-334-3535

Address, City, State, Zip 689 High Mtn. Dr., Ridgedale, MO 65739

Representative Tom Gammon Phone 417-334-3535

Owner of Record Russell Cook Signature: Russell L Cook

Name of Project: Branson Sports and Entertainment Complex

Section of Code Protested: (office entry)

Address and Location of site: 689 High Mtn. Dr.

Ridgedale, MO 65739

Subdivision (if applicable) N/A

Section 8, 9, 17 Township 21N Range 21W Number of Acres or Sq. Ft. Approx. 809.19

Parcel Number 20-2.0-09-000-000-012.001; 20-3.0-08-000-000-001.012

20-3.0-08-000-000-002.000; 20-4.0-17-000-000-005.000
Does the property lie in the 100-year floodplain? (Circle one) Yes No.

Required Submittals:

- ☒ Typewritten legal description of property involved in the request
- ☐ Postage for notifying property owners within 600 feet of the project
- ☐ Proof of public notification in a newspaper of county-wide circulation
- ☐ Proof of ownership or approval to proceed with request by the owner
- ☐ Sketch plan/survey of the project which completely demonstrates request

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

**Reconsideration of Condition Number Nine Amended Decision of Record for Division III
Permit # 11-16**

Russell Cook requests Reconsideration of the Appeal filed October 17, 2011 and considered on November 16, 2011 of Condition No. 9.

The Taney County Board of Adjustment is hereby requested to reconsider the failed appeal of Condition Number 9

Reconsideration is justified based upon the following facts and new evidence

- 1. The hearing was over 4 hours long, did not begin until 7:00 PM and the most technical portion of the hearing was heard last. The Board was not fresh and could not give adequate consideration of the issue.**
- 2. B O A members admitted on the record that the sound testimony was confusing; they were tired and confused on the issue. One board member suggested that they adjourn to study the issue further.**
- 3. County Officials admit that the current language is unenforceable and unclear.**
- 4. A "decibel" is not a measurable unit but a general term.**
- 5. New evidence will be presented showing that sound mitigation has been accomplished by the developer in selecting the location and elevation of the $\frac{3}{4}$ mile track.**
- 6. Projected Sound Pressure Maps will be presented showing the sound pressure levels at the sounding properties.**
 - a. The sound pressure levels at the current location and elevation of the $\frac{3}{4}$ mile track**
 - b. The sound pressure levels at the other considered location and elevation of the $\frac{3}{4}$ mile track.**
 - c. A written explanation, in engineering and layman terms, explaining and sound monitoring terms, and the meaning of data collected.**
 - d. The exhibits will be submitted to the Planning and Zoning Administrator by Monday, December 7, 2011**
- 7. The current language compared to the proposed language**
 - a. Condition No. 9 currently reads as follows:**

Decibel reading at any of the four (4) measuring stations shall not exceed a sound pressure level of 68 decibels. The Certificate of Compliance shall be suspended for any readings exceeding 68 decibels. A written notice of suspension shall be served upon the owner or operator of the development, requiring that the development return to compliance within to calendar days or be revoked. The Certificate of Compliance shall be revoked for any readings exceeding 68 decibels within the 60 day non-compliance period. A fine of \$5,000.00 shall be levied per each offence over 68 decibels.

b. Proposed Condition Number 9 Language:

Noise levels will be monitored as follows:

- Leq (15 minute increments) noise level shall not exceed 77 dBa
- Lmax noise level shall not exceed 83 dBa

If three of the four monitoring stations exceed the monitored levels, a written notice of violation will be sent to the owner/operator for the first offense during a 12 month period. Taney County and the Developer and Opeator will both receive Written Reports of monitored noise after each monitored event. If a subsequent violation occurs during the same 12 month period a voluntary fine of \$5,000.00 shall be levied, per racing event or concert event that exceeds the monitored maximum levels.

In the event maximum levels are exceeded the developer or operator shall at the developer or operator's expense hire a sound engineering professional to investigate the cause of the excessive levels and issue a report to Taney County within 60 days of the notice of violation stating the cause and available measures to avoid the reoccurrence of the maximum levels being exceeded.

Justification for Request for Reconsideration of Condition No. 4 of the Decision of Record for the Branson Sports Entertainment Complex (BSEC)

1. BSEC is requesting reconsideration for clarification to identify that Certificates of Conformance can be obtained by the developer for each Division II permit (phase) of the construction. Each Division II permit will require approval from the applicable regulatory body (i.e. Taney County Planning and Zoning, MoDOT, MoDNR, Taney County Regional Sewer District, Taney County Health Department,...) to ensure that the required infrastructure is in place prior to receiving a Certificate of Conformance for that Division II permit.
2. As has been discussed, the development is expected to be prepared for its first event in the late Spring of 2014, but some of the buildings will need to be occupied prior to that opening. A Division II permit will be applied for each of these buildings separately to allow them to be occupied and used prior to the first major event. These are as follows:

a. Maintenance Building	March 2013
b. Public First Aid and Triage Building	March 2013
c. Central Office and Store	June 2013
d. Infield Central Building	September 2013
e. Infield First Aid and Triage Building	September 2013
f. Ticket Booths	February 2014
3. The attached project schedule outlines the conceptual development plan for these Division II permits and request for Certificates of Conformance.

Justification for Request for Reconsideration of Condition No. 9 of the Decision of Record for the Branson Sports Entertainment Complex (BSEC)

1. Condition No. 9 of the Decision of Record references 68 decibels. The Type I integrating sound level meters require that the scale be identified as either dBA or dBC. Therefore, in order for Condition No. 9 to be evaluated for compliance/enforcement this parameter needs to be defined.
2. In determining the parameters for monitoring, the following shall be considered:
 - a. Must define what scale that sound will be measured.
 - b. Sound is measured as a peak or an average over time.
 - i. Lmax
 - ii. Leq (over some time period)

Condition No. 9 does not identify either of these parameters.

3. Condition No. 9 is based upon the Noise Analysis for the Emory Creek Ranch "Racetrack" Development. The calculated data from that analysis was used to determine the amount of noise expected. This report references sound levels generated by modified cars at the Route 66 Speedway. The readings taken from this event were 68 dBA at 0.5 miles from the track. The following is the reasons that these results of this study do not have any direct correlation to the BSEC proposed facility.
 - a. The source for the study was 6 cars, BSEC could have as many as 43 cars.
 - b. The horsepower from the modified cars is typically 500 horsepower; BSEC cars could have as much as 800 horsepower.

It should also be noted that the Decision of Record for the Emory Creek Ranch "Racetrack" received approval of an 83 decibels and it had residents closer that this proposed development. It therefore does not seem logical that the Emory Creek Ranch "Racetrack" development would receive a higher acceptable level compared to the BSEC development. There appears to be a great disparity between these two developments.

Additional information has been developed to evaluate the noise impacts the proposed facility would have on adjoining property. Since the Board of Adjustment meeting on November 16, 2011, a study has been conducted to prepare a Noise Contour Map. This map has been included with this as supporting documentation for the Request for Reconsideration. The study also included evaluating impacts of building the track on the top of the hill verse building the track in a "bowl" configuration lower on the hill.

We therefore request reconsideration of Condition No. 9. It would be the goal of this reconsideration to clearly define the criteria for the testing and the monitoring of sound pressure levels to be used. We also do not believe that it is within the Taney County Planning and Zoning's authority to leverage fines, therefore we request that this item be removed from Condition No. 9. The remaining issues included as a part of Condition No. 9 (notice of violation procedure, time period for corrective action, retraction of Certificate of Compliance and fine) would be expected to remain the same.



TANEY COUNTY PLANNING COMMISSION

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MINUTES TANEY COUNTY BOARD OF ADJUSTMENT WEDNESDAY, NOVEMBER 16, 2011, 7:00 P.M. FORSYTH HIGH SCHOOL, MULTI-PURPOSE ROOM

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, Dave Nelson, Tom Gideon, and new member Mark Weisz. Staff present: Bob Atchley and Bonita Kisse.

Mr. Atchley 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 Board of Adjustment Bylaws as Exhibit D. The state statutes that empower and govern the Board of Adjustment were read.

Public Hearings:

Appeals of the Branson Sports Entertainment Complex; The Branson Sports Entertainment Complex (BSEC) is located east of the intersection of Thunderbird Road and US Hwy. 65. The subject property contains approximately 809 acres currently containing a single family residence and has served as a deer and elk hunting facility. The property owner received approval July 18, 2011 by the Taney County Planning Commission to operate a motorsports facility for automobile, motorcycle and BMX bike racing, concerts, car or other trade shows, food, retail, commercial, public events and faith based and community gatherings. The following five applicants are appealing that approval.

Mr. Weisz at this time stated that since he represents clients in the vicinity of this project he will be abstaining from all votes at this meeting.

Paul Vozar; this appeal states the project does not meet all requirements of the Development Code citing eight items. #1. Sec. 1, "to conserve and protect property and building values", #2 Sec. 11.1.3, Land Use Compatibility, #3 Sec. 11.1.3, relative policies, #4. Sec. 11.1.3, mitigation of off site nuisances, #5. Land clearing without a permit, #6. Requested documents not provided, #7, stating the Planning Commission violated their own policies, #8. Items pointed out by a Planning Commission member were not addressed at the final vote. Mr. Atchley read the staff

report. Grant Johnson, representing Mr. Vozar, stated that he will be filing a lawsuit in circuit court regarding various breach of contracts.

Mr. Brian Wade discussed the fact that a Board member, who was a member of the Board at the time of the approval, had been removed and a new member inserted. The new member cannot vote so, Mr. Wade asked that the Board adjourn until the new member could be appointed who could vote. Mr. Clemenson addressed this question and conferred with the Board and legal counsel. Legal counsel did not have an opinion. Mr. Atchley stated that a quorum has been established and per the Board of Adjustment Bylaws a decision of the Board will be reached with three members. Mr. Atchley further stated it is at the discretion of the Board how to move forward. After conferring with the Board it was decided to proceed with the meeting.

Anthony Gosserand representing BSEC asked that the Board not consider the pending lawsuit during the proceedings of this meeting. He proceeded to address the landgrading issue. Spencer Jones addressed questions from the Board regarding landgrading. There were no questions from the Board. Mr. Jones stated that an extensive compatibility study had been done proving the location is ideal for the project, as well as for sewer, he also discussed the percentages of residential and non-residential proving compatibility. Mr. Hanzelon discussed compatibility with Mr. Jones and Mr. Gideon asked how many residences within 1000' there were. LoAnn Barter who is a real estate agent spoke in favor of the project because of creation of jobs, and more tourism to the area. She also presented a letter from an individual who lives in an area with a race track also from a local lawyer discussing certain issues regarding a race track. Mr. Hanzelon discussed property values and traffic. Tom Gammon reported on growth, traffic, and property values at the Kansas Speedway in Wyandott County. Mr. Gosserand respectfully asked the Board to deny the BSEC appeal.

After discussion, Mr. Nelson stated that he did not see any reason to approve the appeal therefore making a motion to deny. Tom Gideon seconded. The vote to deny the appeal was unanimous.

Anthony & Nyla Espey: this appeal states incompatibility with the surrounding area and proof of economic growth, and that the Planning Commission did not adhere to certain areas of the Development Guidance Code. Mr. Atchley read the staff report. Mr. Espey read a prepared report pointing out noise and light pollution. In Mr. Espey's opinion a traffic study should be prepared by BSEC and presented to the county road and bridge department. Also a development plan showing the amount of economic growth and jobs should also be presented for the file in Mr. Espey's opinion. Mr. Espey reported on the number of residences that would be affected by this project, finishing his statement by saying that racetracks and neighborhoods are not compatible. Mr. Clemenson explained that all studies are to be in place before a project proceeds and not all phases of the project are planned to be done right away. Brian Wade stated in rebuttal, that the whole population of Taney County does not live around the racetrack.

He then presented a power point presentation discussing certain points of the Development Code, and studies presented to MoDot. Mr. Hanzelon asked Mr. Wade what studies in his opinion should be addressed. Mr. Wade stated that the sound mitigations, and traffic, and compatibility issues. Mr. Clemenson asked what total population for Taney County he came up with and how that 50% lived within this area of the track. Mr. Gosserand in rebuttal, asked Elizabeth Link, who is a real estate developer consulting on the project, to address the economic benefit to the community. She read the study, and reported that there will not only be jobs on the site, but there would be jobs within the County, 3086 jobs in her opinion would be created by this project. She broke the figure down into direct and indirect jobs connected with this project. She gave figures of the amount of taxes that would be created for the schools, sales taxes, state taxes, and federal government, ambulance districts, and personal property taxes. Mr. Clemenson asked for a time frame of build out of the first phase. Ms. Link stated that the first phase would be industrial not the race track, with the track being constructed in the spring of 2014, and the industrial portion in 2013. Mr. Hanzelon asked about the phasing and how close the industrial would be to the residential. Ms. Link stated that the developers would be bringing other phases not included in this request before them in the future, and that the industrial is not close to the residences. She discussed related commercial uses planned. The economic study would be ready by 2012. John Jaeckel addressed Mr. Espey's discussion of noise. Mr. Clemenson asked what the elevation of the lowest vs. the highest point on the property was. Mr. Jaeckel broke the numbers down into four different elevations. Mr. Gosserand stated that as far as this appeal is concerned in his opinion it should be denied. Mr. Wade asked if the information Ms. Link presented this evening was presented to the Planning Commission at their meeting. She stated that the information was not available at that time and elaborated on this. Mr. Wade asked if the sales tax figures were based on 2012. Mrs. Link stated that she based it on 2013. Mr. Wade presented Exhibit 12. Mr. Nelson clarified that two industries presented letters of intent. Mr. Atchley reported that MoDot called the office this day and a final cost report would be turned in at the end of this year. The public hearing was closed at this time for this request. Mr. Hanzelon clarified that there are reports that have not been turned in yet and asked who would be interpreting the reports and applying them to the project. Mr. Atchley stated that this would be done in phases. The first phase has been turned into the office including the paperwork and the second phase paperwork (studies) have not been turned in. The Planning Commission wants to see infrastructure done before approval of each phase. Mr. Hanzelon wants to see more structure within the permitting process. Mr. Gideon stated that it is a part of the approval process that all the conformance letters and studies have to be done before Certificates of Conformance can be issued. Mr. Clemenson asked Mr. Atchley to identify the 809 acres on the map. He pointed out the section presently considered and the other portion not being considered. Mr. Clemenson asked for a motion. Mr. Nelson made a motion to deny the appeal based upon there being no errors in the Planning Commission's decision, Mr. Hanzelon seconded. The vote to deny the appeal was unanimous.

Stacy Whitfield; this appeal states seven violations as follows: #1. Purpose/page 5. #2. 4.2 Representations/pg.15, #3. 4.2 Conditions of Permit approval and issuance/pg. 16, #4. 11.1.1 Water Quality/pg. 16, #5. 11.1.3, land use compatibility/pg. 27, #6. Appendix O/commercial zoning compatibility list/pg 94, #7. Appendix Q, rural residential compatibility uses/pg. 102. Mr. Atchley read the staff report. Ms. Whitfield representing Hidden Oaks Subdivision, stated that her request is about what the Planning Commission did not follow in the Code. She proceeded to address these sections, and read Appendix O and Appendix Q. She pointed out that there are no commercial uses within 1000 ft. of this property, and that the applicant began landgrading before obtaining a permit. She addressed the request to strike the lawsuit, and asked the Board to also strike the requests for phases II and III. Mr. Wade clarified the usage of the 809 acres, and addressed the build out schedule stating that it was not brought to the Planning Commission's attention during the hearings, and pointed out that if all plans were presented a fair decision could be made in his opinion. Mr. Wade suggested revoking the permit, having the applicant start over and "do it right", and that it should be up to the Planning Commission's staff to watch the BSEC. Mr. Gosserand, asked Mr. Wade if Big Cedar had ever presented other phases after the fact. Mr. Wade stated that not to his knowledge. Mr. Gosserand asked the Board to take into consideration the testimony of the previous speakers on behalf of the BSEC. He stated that in his opinion the Planning Commission had not made any errors in regard to the landgrading permitting process, sound studies, and traffic studies. Mr. Gosserand addressed all the points Ms. Whitfield brought forward. He responded to Mr. Wade's statement regarding "doing it right", by stating that they have done it right, and asked that the appeal be denied. Mr. Hanzelon asked Mr. Gosserand if they had all the necessary permits beforehand. Mr. Gosserand agreed with the staffs report regarding the permitting process. Mr. Clemenson closed the public portion of the meeting. The Board deliberated. Mr. Clemenson stated that the report by Ms. Whitfield was not all inclusive because it did not include a rock quarry, and airport. Mr. Hanzelon asked staff if there were reports from the other entities. Mr. Atchley reported on the DNR, EPA, and Corps of Engineers correspondence. Mr. Jones commented on the status of the DNR, and Corps of Engineers with the BSEC, and that all information is documented and logged. Mr. Clemenson asked for a motion. Stating that no new information had been presented Mr. Gideon made a motion to deny the appeal. Dave Nelson seconded. The vote to deny the appeal was unanimous.

Country Farm Estates Home Owners Assoc.; this appeal states that the development does not meet all of the requirements of the Taney County Development Guidance Code. Mr. Atchley read the staff report. Todd Aeschliman President of the Association read a prepared statement and pointed out the number of people in the subdivision and that their covenants support the development code. He pointed out that at the Planning Commission meeting Mrs. Martin asked for a comprehensive plan to be turned into the office before the final vote, and that this was not done before the vote was taken. Gary Gillum a property owner in the subdivision, discussed noise pollution. He constructed sound systems as a career in his life, and explained the type of sound

pollution the track would create. Mr. Gillum stated that the races would be heard in the homes in the subdivision. Mr. Nelson stated that a tornado siren is made to be heard long distances, and asked Mr. Gillum if it could be heard from down in a valley. Mr. Gillum stated that it would. Mr. Gosserand cross examined Mr. Aeschliman and asked how many houses were within 1000 feet of the race track property. Mr. Aeschliman stated that none of them were. Mr. Gossard asked Mr. Gillum if his study included atmospheric conditions, ground absorption, trees or any other influences. Mr. Gillum stated that it didn't. Mr. Gosserand then referred the Board to the previous testimonies, and stated that this appeal did not bring forward any inconsistencies in the Planning Commission decision. Mr. Clemenson closed the public hearing portion of the meeting. There was no discussion. Bob Hanzelson made a motion to deny the appeal. Tom Gideon seconded. The vote to deny was unanimous.

Big Cedar Lodge: this appeal states the project fails to satisfy multiple absolute and relative policies of the development code including sections 4.12.2, 4.12.3, 11.1.1, 11.1.2, 11.1.3, 11.1.7, 11.1.8, Section 12.4, Appendix F and Appendix I. Mr. Atchley read the staff report. Mr. Wade asked that the Board take into consideration points he has already made, and explained the reason for the appeal. He stated that the request is in direct contrast to his clients business across the highway. Mr. Wade pointed out the various items that would impact the environment by this project. In his opinion the Planning Commission, staff, Board of Adjustment and property owners do not have a clear picture of the request. Mr. Wade discussed the height restriction portion of the development code and stated that information has not been provided to the Planning Commission of the proposed structures of the development. He again asked that the permit be revoked and the developer reapply with the necessary requirements provided. If assurances were in place maybe the project would be ok, in Mr. Wade's opinion. Mr. Nelson discussed the fact that projects do change during the process. Mr. Wade stated that if you make a commitment you should stand behind it. Mr. Hanzelson discussed the concept portion of the process. Mr. Nelson asked if Top of the Rock had ever changed their plans after approval had been granted. Mr. Wade stated that plans do change and that Top of the Rock had changed its plans during construction. He stated that until a racetrack is built, you can't know what the sound levels will be. Mr. Clemenson asked if BSEC was in compliance with DNR, and Corps of Engineers. Mr. Atchley stated that they are not in compliance with them, but they are with the County. Mr. Nelson clarified that in most instances they are in compliance with DNR requirements. Mr. Jones reported that BSEC conducted a sound test a couple of weeks before this meeting, and explained how this was done, and the findings. With two stock cars the test showed a 64 decibel level. Mr. Jaeckel stated that with a full race the decibel level would measure 73. Mr. Nelson asked if the barriers would significantly stop the noise. Mr. Jaeckel stated that the levels would measure different depending on atmospheric conditions, and location of the measurements. The sound will be heard, but will be below the criteria requested. Mr. Gosserand stated that in his opinion no evidence has been presented in this appeal that would warrant revoking the permit. He proceeded to address the various points Mr. Wade presented. Mr.

Clemenson closed the public hearing after public discussion. No discussion from the Board. Mr. Nelson made a motion to deny the appeal. Tom Gideon seconded. The vote to deny was unanimous.

Branson Sports Entertainment Complex: appeal of the July 18, 2011 Decision of Record: items; #4, #7, #8, #9#10. Mr. Atchley read the staff report. Tom Gammon the applicant, presented the case by following the outline of the staff report. The first item #4, regarding installation of infrastructure, the applicant would like to build the infrastructure in phases. Items #7, 8, 9, concerning sound, the applicant does not believe the Planning Commission has the authority to impose fines or enforce sound measurements. Mr. Gammon elaborated on these points. Item #10 concerning time of events. BSEC wants to change the time because of traffic getting in and out of the site, and that entertainment can be provided before the events. Mr. Jaeckel explained noise levels of training, racing, and decibels. Mr. Gosserand discussed the fine and asked the fine be imposed on the change. Mr. Wade pointed out that if the Board recognizes error of law they can impose certain conditions. In his opinion error of law was not proven by the applicant. Todd Aeschliman asked the Board not to change the decision of record. He pointed out that the BSEC turned in the sound study the night of the meeting, and that the Planning Commission did what they could to protect the property owners at the neighboring properties. He also pointed out that the sound system must be louder than the race cars in order to be heard. Mr. Hanzelon discussed the sound study and stated that he would like to see it recorded definitively before the project would proceed. He asked that the process be stopped until the County can determine the sound levels. Tammy Pasco didn't understand why the BSEC wanted the sound levels changed, and why any of the items of the Decision of Record should be changed. Tom Gammon addressed the questions and statements. He stated that the PA system is not louder than the cars. Mr. Nelson asked if the other race tracks have fines and restrictions on sound. Mr. Jaeckel answered that some states have noise restrictions and work with the various tracks on the sound and curfew. Mr. Gosserand addressed the reason for the appeal regarding noise and that there is no noise ordinance in Taney County, and that the Planning Commission did not have sufficient evidence to reach a decision. In his opinion the Planning Commission made a special ordinance for the BSEC, and that the BSEC is trying to work within the rules. Mr. Wade pointed out relative policies applying to the request. Mr. Jaeckel stated that the track was designed to mitigate the sound and explained how. Mr. Hanzelon asked if any other experts could provide a different perspective. Mr. Jaeckel stated that there is only one kind of mitigation operating within the same parameters. Mr. Hanzelon asked what the time table of the first race was and how long it would take to build up to the top series. Mr. Gammon stated that it would take several years. Mr. Hanzelon pointed out that after three years he would not be able to maintain the maximum sound levels. Public input was concluded. Mr. Nelson pointed out that if the Planning Commission did not have the authority to enforce or impose fines on sound levels all the other items would become moot. The sound parts would have to come out until someone gets the authority to do that, in his opinion. Mr.

Hanzelon asked if the Board could hold the permit until a decision was made regarding enforcement. Mr. Atchley reported on a discussion with legal counsel if the Planning Commission had the authority to mitigate off site nuisance and enforce restrictions. After discussion Mr. Nelson made a motion to approve #10, making the opening time 9:00 a.m., Mr. Hanzelon seconded. The vote to approve was unanimous. #1, granted as requested. #4, approved infrastructure is done in phases as needed. No second. Motion failed. The motion restated as: Mr. Clemenson made a motion to deny #4, Bob Hanzelon seconded. Vote to approve denial was tied, there for the appeal of #4 failed. #7 granted. Tom Gideon made a motion to approve the change, as presented striking the three year time frame. Mr. Nelson seconded, the vote to approve was unanimous. Mr. Nelson made a motion to deny the three year portion of the item and change to 10 years. No second. Motion failed. Mr. Hanzelon made a motion to continue monitoring without relationship to time but every 5 years is reviewed by the County allowing for modification of the original requirement. Seconded by Tom Gideon. The vote to approve the motion was unanimous. #8, granted. Mr. Nelson made a motion to be taken by independent contractor by BSEC, Mr. Hanzelon seconded. The vote to approve the motion was unanimous. #9, changed from three to two measures, Mr. Nelson made a motion that two out of three of the sound stations not exceed 83 decibels. No second the motion failed. Mr. Hanzelon made a motion to deny #9. Tom Gideon seconded to deny #9. The vote to deny was three to one. This concluded the appeal for BSEC.

Old and New Business:

There was none.

Adjournment:

With no other business on the Agenda for November 16, 2011 the meeting adjourned at 11:40 p.m.