

Minutes

DVD No. 188

The City Council of the City of Leawood, Kansas, met in regular session in the Council Chambers, 4800 Town Center Drive, at 7:00 P.M., on Monday, May 12, 2008. Mayor Peggy Dunn presided.

**Councilmembers present:** Gregory Peppes, Gary Bussing, Jim Rawlings, Lou Rasmussen Debra Filla, Julie Cain, James Azeltine, and Mike Gill

**Mayor/Councilmembers absent:** None.

**Staff present:**

Scott Lambers, City Administrator  
Patty Bennett, City Attorney  
Joe Johnson, Public Works Director  
David Ley, City Engineer  
Mark Klein, Asst. to the Planning Director

Jeff Joseph, Senior Planner  
Jack Reece, Info. Systems Specialist  
Deb Harper, City Clerk  
Pam Gregory, Deputy City Clerk

**1. PLEDGE OF ALLEGIANCE**

**2. APPROVAL OF AGENDA**

A motion to approve the agenda was made by Councilmember Peppes; seconded by Councilmember Rawlings. The motion carried with a unanimous vote of 8-0.

**3. CITIZEN COMMENTS**

Members of the public are welcome to use this time to make comments about City matters that do not appear on the agenda, or about items that will be considered as part of the consent agenda. It is not appropriate to comment on pending litigation, municipal court matters or personnel issues. Comments about items that appear on the action agenda will be taken as each item is considered. **CITIZENS ARE REQUESTED TO KEEP THEIR COMMENTS UNDER 5 MINUTES.**

Judy Brewster, 11615 Tomahawk Creek Parkway Apt. H, stated the residents of the condominiums were concerned regarding the application filed to rezone the five acres, located on the northeast corner of 117<sup>th</sup> and Roe. The rezoning would change it from neighborhood retail, to general retail for a business park. The construction at this location would allow mud and debris to flow into their retention pond and would cause expensive dredging for clean-up. They felt the cost should be included in the price of the construction company's project. She noted another concern would be the view of residents who face west toward the facility, and wanted assurance the landscaping would be appropriate. The condo residents want the City Council to be aware of the rezoning consideration, and did not want it to be at their expense.

**4. PROCLAMATIONS – None.**

**5. PRESENTATIONS/RECOGNITIONS – None.**

**6. SPECIAL BUSINESS**

- A. Resolution approving Final Site Plan located approximately at the southeast corner of 137<sup>th</sup> Street and Mission Road for multi-family housing [Applicant: Oddo Development] – ***CONTINUED TO THE MAY 19, 2008 GOVERNING BODY MEETING TO A DATE CERTAIN.***

City Attorney Patty Bennett requested to recess into Executive Session, concerning the matter in litigation regarding the attorney/client privilege. A motion to recess into Executive Session for a time period of 15 minutes was made by Councilmember Azeltine; seconded by Councilmember Peppes. The motion carried following a unanimous vote of 8-0.

The Governing Body recessed into Executive Session at 7:05 P.M.

The Mayor and Council reconvened into regular session at 7:25 P.M.

Doug Patterson, 4630 W. 137<sup>th</sup>, attorney for the applicant, made a presentation. He stated the master plan was amended in 1988, regarding the rezoning of 29 acres, located on the southeast corner of 137<sup>th</sup> Street and Mission Road. It was approved by City Council to change the zoning from agricultural to high density residential 20 years ago. He recalled the “*2000 and Beyond Plan*” and noted the area was planned medium density residential. Thereafter, the comprehensive master plan was approved and updated to designate it as high density residential multi-family. He noted Council approved the preliminary plan in 2000 with the 29 acres to include 272 apartments, and 20 twin villas.

When they submitted a final development plan in 2005, consistent with the preliminary approved in 2000, he noted the project was delayed while Council considered Mission Corners. Mission Corners contained significant MXD zoning: 87,000 ft. of retail, 85,000 ft. of office, and 107 multi-family residential units. He stated when Council considered Leawood Corners; the “*Olsson Traffic Study*” was included to look at all traffic in the vicinity from that date through 2002. The traffic study looked at it in 2005 as part of Mission Corners, and it included the 292 units for the Oddo Development.

He noted the final site development plan was approved by the Planning Commission in February, 2007, and considered by Council in April, 2007. It was identical to the preliminary plan approved in 2000, with exception to the modifications that were a result of changes in the Leawood Development Ordinance [LDO] they had complied with. Mr. Patterson stated when Council denied their final plan; they filed a petition and met with mediating Judge Kevin Moriarty. He noted Judge Moriarty suggested they have a settlement plan before the City that would be superior to the final site development plan Council considered last year. Mr. Patterson urged Council to consider the improved plan, or to remand it to the Planning Commission; however, if settlement could not be obtained, they would return to the judge to suggest affirming the original, inferior, final site development plan Council rejected a year ago.

He noted some of the stipulations staff had submitted to them are inconsistent with the settlement plan filed and; therefore, must be rejected.

Councilmember Bussing noted Mr. Patterson had not included approval of the 135<sup>th</sup> Street Corridor Guidelines, which this particular tract was included, on December 20, 1996. Mr. Patterson stated he understood the results of the market area study were to be the subject matter of the next comprehensive plan. Since that time, the plan had been affirmed as high density residential.

Mayor Dunn noted Mr. Patterson kept referring to the comprehensive plan as high density residential and noted her plan stated medium density. Senior Planner Jeff Joseph stated the Mayor's plan was from 1988. He noted the 2004/2005 comprehensive plan designated the area to be high density residential.

Councilmember Bussing stated the 135<sup>th</sup> Street Corridor Guidelines defined the area as "*bonus density attached.*" City Attorney Patty Bennett stated that at some point it had a deviation, allowing its density to be greater than what was allowed.

Bill Prelogger, Nearing, Staats, Prelogger & Jones Architects, stated he had been involved with this since 1988 and prepared the original plan submitted for rezoning. When the plan was updated to RP-3 and RP-4, the City asked them to bring in a plan of how Oddo Development intended to develop the remaining ground. They submitted the plan for the Siena Development on the south side of the tract, and noted there were 42 single family homes. The lots were substantially larger than the City's requirements. He noted the lots in the center of the development were reserved for future *very large lot* single family homes. The City's intent was to create a comprehensive plan for the entire 80 acres. This would inform anyone who owned vacant land around this, or that may wish to buy or develop there, what the approved uses were for this tract. The Tuscany Reserve developers were informed of the development intended for the Oddo tract. The same was true for the Mission Corners and Villaggio developers, as well.

Mr. Prelogger stated he wanted to review some specific aspects of the plan for the Tuscany Reserve Development; compare those approved plans with the modified final development plan, currently being presented. He noted the proposed condominiums at the northeast corner of Tuscany were as tall as, or taller than, the proposed Siena buildings. He noted the Tuscany condominiums have significantly less stone veneer than what they had agreed to place on the Siena buildings. He noted similarities between the garages, construction, and the interior and exterior features of the Tuscany and Siena buildings. He stated the only material and significant deviation was the approval of a mixed use development on the tract of land north of Siena. The approved plan would include 89 ft. tall buildings that were not foreseeable in the Leawood comprehensive plan. These buildings negatively impact the Siena tract.

Mr. Prelogger noted the Siena plan currently before Council demonstrated improvements made. He stated the greatest concern of the residents in Tuscany Reserve and Siena, was how close the buildings were going to be to the homes built along the south portion of the east property line. Mr. Prelogger spoke of some improvements; they moved some buildings to the opposite side of the road to provide set backs that range from 125 ft. to 140 ft. from the east property line to their closest buildings.

By doing that, they were able to enlarge the overall open space in the entire development. He noted the open space of the approved preliminary development plan included 67% of the RP-3 area be left green, and the RP-4 area 57.3%, for a total of 59% of the site in green space. He stated this was nearly twice the City's ordinance requirement of 30%. The compromised plan RP-3 area now has 68.3%, and the RP-4 has 61.7%, for a total of 62.9%. This resulted in a net increase in green space of 47,487 square ft., or approximately 1.1 acres of land. He stated this would be an increase of 6.5% compared to the plan denied a year ago. Additional berms and landscaping had also been included. He noted the clubhouse had been relocated to the northwest corner of the site and they had added an additional water feature, for a total of three. Mr. Prelogger stated the current plan meets or exceeds the LDO requirements. The exterior stone on the apartments were increased to 15%; the twin villas 44%, and the clubhouse 36.3%. The total number of buildings were reduced from 40 to 35, plus the clubhouse. He noted they added two enclosed garages to the twelve-unit apartment buildings, so each apartment unit would have one attached garage. They removed the same number of surface parking spaces, leaving the landscape open space. They slightly adjusted the locations of some of the apartment buildings to conform to the minimum building clearance requirements of the new LDO.

Mr. Prelogger addressed the concern regarding the traffic study. He stated staff had determined a traffic study was not needed, due to one being completed and reviewed as part of the rezoning process that resulted in the approval of the Mission Corners Development. That traffic study included the 292 units proposed. The traffic generated by developing single family patio homes would be nearly the same as the proposed multi-family development. The apartments, per that study, would generate 149 A.M. peak hour trips, and 181 in the peak hour of the afternoon. The single family development would generate approximately 128 A.M. and 172 P.M. trips. He noted this would be only a minor change in traffic.

Councilmember Filla noted the Planning Commission's request for a building to be removed, and asked if this had been done. Mr. Prelogger stated the building in the northeast corner was rearranged to a more interior position. Ms. Filla confirmed with Mr. Prelogger that the Planning Commission's concern was the close proximity to the lots, versus the density.

Councilmember Rasmussen asked if the "optional gate" noted on his plan had been eliminated. Mr. Prelogger stated all gates had been removed. Mr. Rasmussen asked if the lot owners would be responsible for maintaining the amenities, including the trails. Mr. Prelogger stated everything within the property lines would be their responsibility.

Mr. Rasmussen asked Mr. Prelogger to compare his statement that the traffic signal study had been included, to the staff comment from City Engineer David Ley, that the proposed apartment development was 7.5% more dense. Mr. Prelogger stated the traffic study they were aware of included 292 units.

Mr. Rasmussen stated the Planning Commission minutes reflected Mr. Oddo's promise of two-story buildings. Mr. Prelogger stated the buildings were two-story in the front, with some three-stories in the back with walkout lower levels; this was consistent with their promise.

Mr. Rasmussen asked where the overflow of the lake in the southeast corner would drain when completely developed. Mr. Prelogger stated the overflow would drain into the open channel, which is part of the Tuscany Reserve developed plan.

Mr. Rasmussen noted many of the trails dead-end on the street and crossover onto short sidewalks, and asked if they intended to align the streets with pavers. Mr. Prelogger stated they intend to differentiate the paving; however, not align with pavers.

Paul Myer, 11641 Connell Apt. 3, Jefferson Point Apartment Complex, located in Overland Park, stated he has lived in the Oddo development apartments for three years and noted they are kept clean and very well maintained.

Eldon Conyne, 11630 Connell Street Apt. 9, Jefferson Point, stated he thoroughly enjoys living there and noted the beauty and park-like area. He noted the many diverse backgrounds of the residents, ranging from owning their own companies, the medical field, and attorneys. The apartments are very well maintained and it is an excellent development.

Rick Oddo, President of Oddo Development, stated the plan before Council was an improved plan, compared to the one from a year ago. He noted the setbacks, green space, and finishes all exceed City standards. He stated the City reviewed the final plan, incorrectly, as a rezoning last year. They had challenged the City's decision by filing suit and noted Judge Moriarty gave them the opportunity to develop a compromised plan to meet the goals of the City, neighbors, developer, and the objectives of the judge. He stated the following:

1. They have designed an apartment community that is in compliance with the approved preliminary plan.
2. They have designed a plan that maintains the 292 units.
3. They have increased the buffer on the east side to match the buffer of Tuscany on the northeast side of their villas.

Mr. Oddo stated they were willing to accept any reasonable stipulations. In 2001 they presented a three phase plan to the City. Phase I has very large single family lots. Phase II is the condo/apartments in the twin villa community, currently under consideration. Phase III has several extra-large estate lots in the center of the property with home values ranging from \$3 - \$5 Million. Mr. Oddo stated phase II had not begun construction earlier, due to sewers not being in the area until 2003. He also noted they did not want to begin phase II until phase I was financially stabilized. He stated it was not fair or legal to deny the second phase, after they did what was promised in the first one, Siena of Leawood.

Mr. Oddo stated they had designed the apartment condos to be of the highest quality in the Kansas City metro area. They will have granite counter tops and stainless steel appliances; the same finishes compared to all new homes in Leawood. If they were sold as condos, they would sell on the current market from \$200,000 - \$250,000. The villas would market from \$300,000 - \$350,000. He noted they would lease them for a few years, and then possibly sell them. All successful communities have a wide-range of income groups. The people in this community have an average income of over \$85,000 per year, with an average age over 45 years old.

He stated they screen every resident by running background police reports. He noted a huge demand for reasonably priced apartments/condos in the 135<sup>th</sup> Street Corridor area.

Mr. Oddo noted staff had suggested two alternatives for the site; the first would be to surround the site with twin villas and build mid-rise condos in the center to keep the unit count. He stated the residents in the communities to the east, west, or south did not want more high rises closer to their homes. They promised the residents they would not build anything taller than their homes, which were two-stories. Mr. Oddo stated they made it very clear that the two-stories would be from the front with walkouts in the back. There is little to no market for high-rise condos in this area, and this would be a change from the approved preliminary plan. The other suggestion from staff was to develop this as a single family subdivision. This would not be feasible in the shadow of the three high-rises to the north, one of which is equal to a seven-story building. He noted they would not be able to sell a single lot to any buyer; therefore, would suffer huge financial loss.

Mr. Oddo stated when City staff recommended approval of Mission Corners, it added 107 additional units. The traffic study was clear that this included their density and unit count. This also included the proposed development of the apartments and other two phases, in addition to everything south for several miles. He noted staff stated they did not need to have a new traffic study done, as one had been done the month prior. The study proved that density and the number of units was not a concern for traffic. The intersection of 137<sup>th</sup> Street, Mission Road, and Pawnee, was evaluated for signalization up to the year 2020. Based on the existing, plus approved added development, conditions that warrant for signalization were not met for the 137<sup>th</sup> Street and Mission Road A.M. peak hours, nor for the 137<sup>th</sup> Street and Pawnee for either peak hour. The intersection of 137<sup>th</sup> Street and Mission Road did meet the requirement in the P.M. peak hours; however, the recommendation was made that the signal not be installed until the area was further developed and traffic warranted it. If the additional traffic would require a signal, he noted they would be happy to have one installed.

After several meetings with the neighbors, they noted some concerns; the storm drainage in phase II, which was previously discussed. He noted staff could be assured they would follow the law, by not releasing more water when the development is complete, than what was currently being discharged. The development would not have any adverse affect on the water shed downstream. The second concern was if the existing street system could handle the increase in traffic. He noted they previously answered that; yes, it could. He understood the City believed in traffic studies; otherwise, they would not have them conduct them.

Councilmember Gill asked if they had their own traffic study done. Mr. Oddo stated the traffic study was done for a different project; however, the study was for the exact same intersections.

Mr. Oddo expressed the third concern of the neighbors; the pressure put on the schools. He noted the Blue Valley Schools knew the property had been zoned for apartments for over 20 years. The development would create very little impact on the schools. He noted at their other apartment communities, they average 2-3 children per 100 units. Based on these projections, this would add approximately eight children to the local schools. The neighbors expressed concern if these children would attend the same schools.

Most of these children live in the area while their house is being built. Their parents don't want to move them during the middle of the school year.

Another concern was the type of roof and buffer on the east side of the property. He stated all of the green space to the edge of the property for the Tuscany Reserve residents had a 135 ft. buffer, which exceeded the LDO requirement of 25 ft. Some have asked if they could put landscaping on their side of the property line. He stated they were willing to do that, if the City would allow it to count as part of the required landscaping; however, they would not be responsible for the maintenance.

Mr. Oddo stated residents were concerned with the transition on the east side of the property. The task of transition lies with the second developer, not the first, and noted their apartment community was already zoned, platted, and had an approved plan in place.

Another question was if they could move one of the entrances from 137<sup>th</sup> Street to Mission Road. Mr. Oddo noted the City wanted all of their access to be on 137<sup>th</sup> Street. The two entrances on 137<sup>th</sup> would make it much safer. Codes require two entrance/exits, both left and right turn. Mission Road is planned for four lanes, and does not allow for any additional four lane turns.

Councilmember Gill asked if the traffic study showed whether there should be access onto Mission Road from their property. Mr. Oddo stated it only spoke in terms of the total traffic.

Mr. Oddo clarified some misconceptions in the sale of phase I; single family subdivision. He stated they acted as reasonable, responsible brokers and had disclosed all intentions of phase II; the apartments/condos, to perspective buyers who were considering buying in phase I. None of the buyers thought it would affect the value of their homes. He stated they applied for their final plan within the required five-year time limit. Staff suggested they withdraw the submittal and help Mission Corners move through the process, so they could set the street entrances, due to their buildings being larger and harder to move about. He noted they did this, and time extensions were granted at staff's request, not theirs. Traffic studies were done by area, not by project. Since both flow to 137<sup>th</sup> Street, he stated the traffic study would be the exact same area with the exact same traffic count. Staff made the conclusion a second traffic study would not be necessary.

Mr. Oddo stated Siena was not the most dense community in Leawood. The entire 29 acre community will have 10.3 units per acre. The LDO allows for 10.9 units, or below. Nothing in the area has changed, except the area has been developed exactly as shown by the master plan. The development to the north, Mission Corners, has increased in density along 135<sup>th</sup> Street, and has quadrupled in size. If there was an issue with traffic, 107 additional units would not have been added at that time. With the size of the buildings to the north, the apartments/condos would be the perfect buffer and transition to single family.

Mr. Oddo stated everything has and is being developed per the City's master plan. He noted they have agreed to many suggestions of the Tuscany residents; however, they could not move the entrances to Mission Road.

With one other exception, the roofing materials, they were in agreement with the Tuscany neighbors. He stated that Barry Hopkins, Tuscany Homes Association President drove through the communities and stated how well they were maintained.

Also, as a home realtor, he knew the apartments would not reduce the value of the homes in Tuscany. He also stated he knew the law was clearly on their side. As an agent, he could not sell single family homes valued at \$700,000 next to high-rises. With that realization, Mr. Hopkins felt the Tuscany homeowners would not protest the project.

Mr. Oddo stated he felt there was a personal prejudice of not wanting them in the City of Leawood, and hoped that the prejudice of a few would not trample his rights as a landowner and developer. The new plan before Council is a great compromise for all parties, and is a perfect transition to the entire neighborhood. The Planning Commission agreed they would rather have the improved plan before Council, rather than the judge impose the old plan with the 25 ft. setbacks.

Mr. Oddo addressed the most frequently asked question as to the rezoning and the apparent reason for so much prejudice; how it would affect their homes. This question should have been asked at the time they bought their villa lots between two apartment/condo communities. The burden of the responsibility lies on the buyer to verify any surrounding zonings or concerns, and the realtors and developers to divulge relevant information prior to the sale. Mr. Oddo stated that as an ethical developer, he notified all potential homebuyers in Siena of their intention of building the apartments in phase II; however, knew it would not have any effect on the home values. They felt it necessary to notify them, to allow them to make that determination. He stated according to Paul Welcome, Johnson County Appraiser's Office: If a community is well maintained, has proper traffic flow, curb appeal, proper setbacks, exterior materials consistent with the neighborhood, and buildings that are in proportion to the neighborhood, it would not affect the value of the neighborhoods. Mr. Oddo stated he compared the values of nine adjacent homes to their community to nine homes in close comparison. In 1997, the average value of the homes adjacent to Jefferson Point was \$171,877. The other nine homes average was \$168,978. In 2001, the value of the properties adjacent to their property increased in value by 27%, and only 23% in the other properties. Within 10 years, the value of the properties adjacent to their property increased a total of 43.28%, and 43.24% in the other properties; no change. He stated a study performed by Integra Realty Resources demonstrated that of the only three homes sold since the construction of Jefferson Point, they sold for almost the exact same price per square foot as the ones that sold adjacent to their property. He stated they were certain that the apartments would have no effect on the value of the surrounding properties, and intend to build homes in value of \$3 - \$5 Million adjacent to the apartments in phase III.

Councilmember Azeltine asked why the building on the northeast corner was moved, and not removed, as requested by the Planning Commission. Mr. Prelogger stated he removed it from that particular location, and relocated it to another. Mr. Oddo stated the Planning Commission did not say to move that unit and lose eight units, and noted if they would have wanted the density lowered, they would have stated so. Mr. Azeltine noted a lot of discussion regarding density and stated the number of units had been 292 throughout the entire process. Mr. Oddo stated the next time this goes before the judge, it would be during a trial, and they wouldn't be looking at the current plan, they would look at the one Council had rejected.

Mr. Prelogger stated it was clear in the minutes; the intention of the Planning Commission was to increase the green space along the east property line, and not a request to reduce the number of units. Mr. Azeltine stated the word "removed" was used.

Steve Johns, 12949 Granada Lane, spoke on behalf of the Woodlands Homes Association in opposition of the project. He stated their main concern was density; however, did appreciate the developer willing to make changes to the project. He noted the number of units still remain at 292, and was concerned to the traffic volume in the future. He was also concerned about the level of input homeowners have had, and noted the Tuscany Homeowners Association was new; therefore, all voices may not have been represented. The Siena residents may not have been heard, due to restrictions of the lawsuit. Mr. Johns stated with the many new homeowners in the area, if the Master Plan were to be updated, it would change the dynamics. It was his understanding that the Planning Commission, under the lawsuit, was not able to speak openly. Mr. Johns stated if this were a good development, it wouldn't be in litigation and have deed restrictions to gain approval.

Mayor Dunn asked staff if the Planning Commission was allowed to speak. City Attorney Patty Bennett stated they did not have stipulations and were able to debate.

Jim Orr, 4800 Rainbow, spoke on behalf of the Tuscany Reserves Homes Association. He wanted to clarify they were not speaking about condos; however, apartments. Condos are individually owned units, and this was not the proposal before Council. He also stated he was at the meeting with Oddo Development and stated Mr. Hopkins was not a broker and noted he did not hear Mr. Hopkins say the things Mr. Oddo had stated. Mr. Orr stated in summary from the meeting, they did not speak of other plans, or whether this should be a gated community. They spoke of the settlement proposal and issues to that. The first issue was whether there should be access to Mission Road, and noted Oddo Development opposed it. He stated the City would require a new traffic study and a new plan. Regardless of what a traffic study showed several years prior, the residents are currently experiencing traffic congestion and the area is not yet fully developed. This development has access to only one street, and in many circumstances that would be considered unsafe. Secondly, they stated they would make plans available for independent review of the drainage issue. Third, roofing material was discussed and he noted they did not reach agreement in that regard. Mr. Orr stated they requested slate or tile, as did staff. Oddo Development stated they had another material in mind, and noted he had e-mailed Mr. Oddo requesting he contact Mr. Hopkins with examples of the material to bring before the board for approval. Mr. Orr stated to his knowledge that had not been done. He noted they did reach agreement on buffering, with the addition of trees for Tuscany Reserve property owners. The fencing was acceptable and is aluminum; however, the fence would only be constructed if it were a gated community. Mr. Orr noted he wasn't clear if they intended on *an additional* 15% of stone, or increasing it *to a total* of 15%. The Staff Report stated to increase it *by* 15%, and noted their discussions were to increase it *to* 15%. Mr. Orr noted the comparisons that had been made to the Tuscany Villas project. These are condominiums, not apartments and they have tile roofs. The traffic study in reference, was based upon predictions and hypothetical estimates of the future. They need to be updated frequently as a development grows. In response to Councilmember Rasmussen's question on who would maintain common areas, he understood it to be that the condo owners would.

Mr. Orr asked for clarification on this, since it is not a condominium with a homeowners association, and was to be owned by the Oddo Development interest or related entity for the foreseeable future; therefore, the landlord would be responsible for maintenance.

Mr. Oddo confirmed with Mayor Dunn that they had met with the Siena residents.

Barry Hopkins, 13801 Canterbury, stated this was not the first time he had been misrepresented and not stated correctly. He stated he was not currently a real estate broker; he sold real estate 25 years prior. Mr. Hopkins was concerned with the comparison of pricing of the two developments. The homes in Tuscany are in approximate value of \$750,000 and up, versus the \$200,000 real estate projected in Mr. Oddo's.

Councilmember Filla wanted clarification as to the cause and effect of the 292 apartments and villas concerning traffic, and if the seven-story buildings were included in the traffic study. She also questioned if it was staff, or Oddo Development that did not want another entrance off of Mission Road. Mr. Lambers stated the applicant requested the only access point be off of 137<sup>th</sup> Street, at two separate points. Staff's position was that the current access points work to serve the project. Staff was not requested to evaluate an access onto Mission Road; however, a third access would help divert traffic from 137<sup>th</sup> Street directly to Mission. Councilmember Filla asked the best way to approach alternatives for the site. Mr. Lambers stated generally, additional access points would help the project to flow; however, it could be possible additional access points could cause problems. A traffic engineer could make that determination. The majority of the traffic leaving the site would pursue north. Mr. Lambers stated that the high-rise buildings were included in the traffic study.

Councilmember Rasmussen noted the zoning lines on the illustration were drawn through a building. Mr. Lambers stated it was staff recommendation to adjust the zoning lines; however, Mr. Oddo was not in agreement. Mr. Rasmussen stated if every building on the plan under No. III were three-story buildings, there would be 16 units, and if reduced to two-stories, it would reduce the density by 68. Mr. Prelogger stated the buildings are two-stories high on the street side, and three-stories in the back, due to the sloping of the land. The total number of units under III are 12, and under No. II are 8.

Councilmember Rawlings noted Mr. Patterson's comment to submit the original and inferior plan before the judge if the current plan before Council is denied. Mr. Rawlings asked that he keep an open mind; there may be suggestions to improve the plan. He asked if Stipulation No. 1, under staff recommendation, had been deleted by staff. Mr. Lambers stated the applicant had always proposed that the twin villas on the west side act as a transitional land use buffer. Staff believed that by extending this concept to the south and east it would be more beneficial. Mr. Rawlings asked the size and height of the twin villas. Mr. Prelogger stated they would be two-stories; with exception to some being three-stories with walkout lower levels, depending on the slope of the lots.

Mr. Prelogger confirmed with Mr. Lambers that the two-story twin villas would not have basements.

Mayor Dunn asked if they would have safe rooms. Mr. Prelogger stated they have provided a safe room in the clubhouse to accommodate all of the residents of the proposed Siena apartments. Mayor Dunn stated they had not objected to the stipulation that required them to consider safe places for the development. Mr. Prelogger noted they were designing safe rooms in other developments also in the clubhouses; that way residents would know where they were, and could be provided with life support items, as needed. It was a very large clubhouse and the safe room was designed to hold approximately 450 people; they provided 7.5 sq. ft. per person, per the building code.

Councilmember Rawlings asked if the condominiums/towers would be visible by the residents in phase I of the Siena single family homes. Mr. Prelogger stated in his opinion, it would be difficult, due to the high ridge of the south and north sector. Mr. Rawlings stated he wanted clarity due to the comment made that the lots could decrease in value, due to the condominiums.

Councilmember Gill noted everyone was there to compromise, and asked if they would consider a development that was aligned in principal with Stipulation No. 1. Mr. Patterson stated they would be open to that; however, instead of the twin villas within 30% – 35% to the backyards of Tuscany Reserve, they had established a 130 ft. setback. Mr. Oddo stated they had presented both staff and the neighbors a plan that had twin villas on the east and west side. This put the villas at the minimum 25 ft. setback and they did not want this. He also noted the building in the far northeast corner and stated the residents would rather have the green space than nothing. Mr. Gill asked if they would be willing to start over with a new plan, to reconsider the project along the lines of Stipulation No. 1, and return to Council at a later date. Mr. Oddo stated they had a plan and tried to present it; however, it did not pass the test of the neighbors. He stated his main concerns were keeping the unit count at 292, and the feasibility and marketability of the number of twin villas. He noted they felt there was a limited need for \$2,000 - \$2,500 per month homes in the area. Mr. Oddo noted Mr. Lambers had seen the plan; although, he could neither recommend nor deny it, he felt they would rather see the larger setback.

Councilmember Gill noted in 1988 they had 220 units. Mr. Oddo stated an additional six acres of land was given to him by Council, and in return, he would build the lots double in size in phase I. Mr. Gill noted Siena was beautiful and has been a very successful project.

Mr. Oddo stated the traffic study had proposed there would be 50,000 people in the area per day by 2030; therefore, removing eight units from 292 would not make any difference in the traffic.

Councilmember Gill asked if they would consider an alternative plan similar to Tuscany Reserve. Mr. Prelogger stated they had presented something that was virtually identical. Mr. Gill noted the comparison was only with similar density and the green space area. Mr. Prelogger wanted clarification of what the significant differences were, and noted the only predominant differences from the outside were; Tuscany had less stone, and what looked like a tile roof, in comparison to the 50-year composition roof planned for the Oddo Development.

Councilmember Gill referred to the previous comment made of the inferior plan that was rejected last year. Mr. Oddo stated he felt it wasn't an inferior plan; however, the current plan is improved for the people in Tuscany because it gives them a larger buffer. He stated he would be okay with either plan, with exception of wanting the clubhouse moved to the front entrance for greater visibility. Mr. Oddo stated the compromise did not concern unit count; however, it was to design an improved plan the neighbors would like.

Councilmember Gill stated the changes made on the 2001 plan were only done because they were required by the LDO. Mr. Gill stated he had made the motion at that time to approve the plan, provided they agreed to do three things; comply with zoning laws as they revise, bring the "best of breed" plan, and bring a traffic study. He noted they may have complied with the first one; however, the other two never took place. Mr. Prelogger stated the only resolution stipulation that was not complied with was the request for a traffic study, and it did not make sense to duplicate a one month old traffic study. Mr. Gill felt the compromised plan should include a current traffic study, since it has been a big issue. Mr. Oddo noted it was stated by staff that a traffic study was not necessary, due to the recent one performed. Mr. Gill stated if he were a developer, he would not have disregarded the stipulations in the motion, and would have addressed them prior to the current meeting.

Councilmember Gill took offense and resented the comment made by Mr. Oddo; that he did not want the prejudice of a few to stand in the way of this good project. Mr. Gill noted that his statement of the apartment complex likely only bringing eight children was not a good thing, and that he wanted children moving into Ward 3 to help support the schools. Mr. Gill stated he has been the proud representative of a low-income housing apartment complex for 11 years located in Ward 3. He noted there were 250 family constituents currently living there, and was pleased to say he had not experienced any problems. Mr. Gill stated he has solicited and received great input over the years from these families, and noted for Mr. Oddo to imply anything otherwise, was wrong. Mr. Gill stated Leawood was a great community and felt the City had led the metropolitan area in developing intelligent housing. He stated the area that Oddo Development was proposing to bring the apartments already had 250 families that have the background, interests, and diversity they insinuated was not there. Mr. Oddo stated they were told by multiple people this was an issue, and apologized if he, in any way, offended Mr. Gill or anyone else.

Councilmember Cain stated the Tuscany Villas had eight buildings with four condos in each one; therefore, noted the many household items that go with each family would make a dramatic difference. She expressed hope of reaching a compromise. Ms. Cain stated, to her knowledge, Mission Road was not planned to be widened between 133<sup>rd</sup> north to 119<sup>th</sup> Street, and if it was to happen, it wouldn't for many years.

Councilmember Rasmussen asked if they would consider reducing the height of the buildings to two-stories. Mr. Prelogger stated the height would remain the same. With a nine foot foundation wall in the back, the ridge would be the exact same height. Mr. Oddo noted they had always stated the buildings would be two-stories in the front and three-stories in the back. The commitment was that they would be no taller than their own homes.

Councilmember Azeltine noted the previous discussion on the removal of the building. At paragraph 5, page 24, of the Staff Report; Commissioner Jackson, who supports the apartments, stated she was a little concerned about the building in the northeast corner, and she could go either way on a stipulation within this, that the building be removed from the plan. He also noted page 29; stipulation No. 5, it stated in her motion to remove the building.

Jim Bauers, co-counsel with Doug Patterson, stated if Council would recommend approval, subject to the Planning Commission working through the stipulations, they could determine what Commissioner Jackson meant. Mr. Azeltine noted a letter to the City Attorney from Mr. Patterson referencing all of the stipulations, and again, used the words “remove the building.”

Councilmember Filla asked to compare the prior and current plan, and wanted to further discuss the comparison of the Tuscany Condominiums versus theirs. Ms. Filla asked if there were to be another traffic study performed, and if it concluded there was a 10% increase in traffic, what would be expected to change. Ms. Filla confirmed to Mr. Rasmussen that as a Council, they had always stated they would measure the stories of a house from the front. Ms Filla confirmed with Mr. Prelogger that if they were constructed as two-stories, it would not change the height of the roof line.

Councilmember Filla confirmed with Mr. Oddo that the only change in the layout was that the street alignment was moved; thus allowed them to move the building in the corner to create a consistent buffer.

Councilmember Filla asked if there was an apartment complex in Leawood to compare the Oddo apartments to when speaking in terms of the “*best of breed.*” Mr. Prelogger stated neither Mr. Oddo, nor himself, had ever represented that this was an inferior plan. There have been many improvements in the revised plan; however, that did not mean the first plan was inferior in any way.

Councilmember Bussing asked if a building had been removed from the plan. Mr. Prelogger stated he had never represented that it had been removed, only moved from that location. Mr. Bussing asked what a condo unit at Tuscany Reserve would sell for. Mr. Prelogger stated they were 2,700 – 3,100 sq. ft. units on one level with optional lower level expansion of up to 1,400 additional sq. ft.; prices range from mid \$700,000 to upper \$800,000. Mr. Bussing asked how those prices compared to the units in the Oddo Development. Mr. Prelogger stated that Tuscany would sell for approximately \$230.00 per sq. ft., and if they were to sell the units in the Oddo Development, they would sell in the same price range; the only difference was the size of the homes, not the quality.

Mr. Bussing stated he was in complete agreement with Councilmember Gill on the issues he had raised and was equally offended by their comments. He noted concern with the current maintenance arrangement, and was extremely concerned with not having basements in the villas. Mr. Bussing stated he was intrigued by Mr. Orr’s presentation of the difference between condominiums and apartments. He demonstrated progress that can be made, and noted they were able to reach agreement on all but two of the issues addressed.

Councilmember Rasmussen confirmed with Mr. Prelogger that the buildings in No. III are occupied walkout units. Mr. Rasmussen stated the units were similar to a slab home. Mr. Prelogger stated they would be similar to two-story homes with walkout basements; however, different occupants on each level.

Mayor Dunn noted Mr. Oddo's reference to the apartments as condos and/or apartments. She asked Mr. Oddo if his intention would be to sell them as condos, and at what point in the future this could take place. Mr. Oddo stated they were designing them so if they would decide to sell them in the future, they could do so. Mayor Dunn asked if he would agree to have the apartments and twin villas individually platted. Mr. Oddo stated he wasn't clear of the process involved in order to do that, and noted he didn't think it would be beneficial or a necessity to do it up front; however, would be willing to look into it. Mayor Dunn noted one of the key issues from the Tuscany Reserve residents was the traffic, and asked if Mr. Oddo was willing to have an additional access point off of Mission Road. Mr. Oddo stated concern if they were to have an additional access point, they would no longer be in compliance with the current plan, and it could cause more legal issues. He noted as an engineer, cities typically won't allow two four-way entrance/exit sites within 200 to 300 ft. in proximity of each other. Mr. Oddo stated he would consider anything; however, would like staff clarification up front.

Mayor Dunn noted Planning Commission stipulation No. 2; the roof material shall be 50-year quality and shall meet the requirements of the City's approved list of roof materials. She noted an e-mail from Mr. Oddo concerning the expense of slate and tile, and it stated they would install a 50-year laminate roof that is a slate roof look-a-like; this would give Tuscany residents the look they want, at a price he could afford. Mayor Dunn noted she was not familiar with a slate roof look-a-like and asked Mr. Oddo to present it to staff for evaluation. Mr. Oddo stated they agreed to the stipulation of a 50-year roof; however, the cost of the tile roof would be approximately an additional \$1,628,000. Mr. Oddo stated it was a laminate roof made to look like slate and it was on the City's approved list of 50-year laminates.

Mayor Dunn noted Planning Commission stipulation No. 8; the applicant shall consider safe places within the development, and noted an article from The Kansas City Star; "No Safety from Storm," regarding the recent tornados. Mayor Dunn felt a safe room in the clubhouse would not be sufficient for 292 units, and asked them to take that stipulation seriously when, or if, it is remanded to the Planning Commission and consider other possible ideas.

Mayor Dunn asked if they were planning to use the aluminum wrought iron "look-a-like" fencing. Mr. Oddo stated they had intended on using the fencing; however, they weren't allowed to gate the community; therefore, they would remove it from the plan. Mayor Dunn stated he should let the residents know of his plan. Mr. Oddo stated he had informed them; however, would be glad to inform them again.

Mayor Dunn noted staff stipulation No. 36; the construction traffic shall be limited between the hours of 7:00 A.M. to 10:00 P.M. She requested to insert 7:00 A.M. to 7:00 P.M., Monday through Saturday, with no Sunday work hours, due to another construction project in Leawood currently causing stress to area residents surrounding the project.

Mayor Dunn asked if they would be willing to work within those hours. Mr. Oddo stated sometimes roofers and framers prefer to work in the evening or early morning hours during the summer, due to the heat; however, they do not allow machinery or grading, and should it become a noise issue, they would suspend the work.

Mayor Dunn noted Doug Peterson had deleted some of the recommendations out of the LDO that are requirements. Mr. Oddo stated they did not intend to go below any of the current LDO requirements; however, asked that the City not increase them over the current standards. Mayor Dunn stated most of the stipulations are directly out of the LDO, so when they have been deleted, it gives preferential treatment. Mr. Oddo stated that was not their intention, and only deleted three stipulations they could not adhere to.

Mr. Prelogger noted they were unsure of the requirement for the utilities; however, they would not have any overhead utility lines. Mayor Dunn stated if there were any power lines on part of 137<sup>th</sup> Street, they would be required to bury them. Mr. Prelogger stated any new utilities that are brought to the site to serve the development, would be buried underground. Mr. Lambers stated there were power lines on the east side of Mission Road they would be required to underground.

Mr. Oddo noted the previous discussion on the 15% increase of the stone. He stated this was meant to increase the stone *to* 15%, not increase it *an additional* 15%. Mayor Dunn noted stipulation No. 3; the quantity of stone proposed on the buildings shall be increased *by* a minimum of 15%. She stated there was previously 4%, this would increase it to 19%. Mr. Oddo stated they had agreed to 15% *total* stone on the exterior. Mayor Dunn noted staff would like to see 40% stone, and they weren't in agreement of this.

Councilmember Rawlings asked if the tile roof would enhance the value and marketability of the properties if they were to convert the apartments into condominiums, and sell them in the future. Mr. Oddo stated they were trying to establish reasonable housing in the neighborhood and felt they could not increase the amenities to that magnitude, and still be affordable. He noted it may increase the value slightly for the larger condos; however, not the smaller ones. Mr. Rawlings asked the total construction cost comparison on the roofs. Mr. Oddo stated total cost percentage would be around 35% and the difference would increase it by 5%. Mr. Rawlings asked them to consider the tile roofing. Mr. Oddo stated they could not consider it, that it was cost prohibited. Mr. Prelogger stated the roof proposed was on the City's approved roofing list.

Councilmember Azeltine stated he installed the composition tile look-a-like roof on his own home and it was more expensive than a regular composition; however, not nearly as expensive as a tile roof.

Mr. Oddo noted a statement from Commissioner Jackson on page 29, stipulation No. 3 of the Staff Report. She stated that the stone on the apartments/condos would be increased *to* 15%. Mayor Dunn noted the stipulation stated to increase it *by* 15%. Mr. Prelogger stated that was not the way it was read in the minutes. Mayor Dunn noted the minutes may not be verbatim and the City looks at the stipulations. She also noted staff recommended more of the natural stone. Mr. Oddo stated it would be cultured stone similar to most of the homes in construction, with exception to homes over \$1 Million.

Mayor Dunn stated the problem could be with the application of the cultured stone, and hopefully their application would adhere better. Mr. Oddo stated he knew the importance of building a top quality community.

Councilmember Filla made a motion to remand this to the Planning Commission, with the following issues addressed: Traffic, increase the stone, clarify the Planning Commission's comments on removal of the building, maintenance of public areas, and individual platting. Mr. Gill noted Stipulation No. 1. Mayor Dunn asked if Ms. Filla was incorporating all staff stipulations. Ms. Filla noted she would like Stipulation No. 1 be discussed by the Planning Commission to allow the Tuscany owners to participate in the discussion whether they would like to see more green space and less buffer.

Councilmember Gill stated he would not support a remand that would not include these specific points: 220 units, versus 292, incorporate Stipulation No.1, and to re-align the plan to better incorporate with Tuscany Reserve. Ms. Filla asked what Mr. Gill meant by "more aligned with Tuscany Reserve." Mr. Gill stated he wanted to see a "commercial type" of quality associated with it. Ms. Filla noted the discussion of the square footage cost being equivalent to Tuscany. Mr. Gill stated it was based on the square footage basis, and the cost per unit was different.

Mayor Dunn asked if the remand would send this to Planning Commission with further debate on Stipulation No. 1, as well as the others. City Attorney Patty Bennett stated it would be important to know if there was a point of no negotiation between the City and the developer. If Council would require both green space and the villa buffer; this would result in fewer units, and the developer stated he could not do this. If Council would be willing to take what the Planning Commission returns as recommendation, then it could be worth doing.

Councilmember Filla recommended leaving the density at 292, and letting the Planning Commission debate the other issues previously discussed.

Mayor Dunn confirmed that Ms. Filla's motion was to move forward with all staff, Council member, and Planning Commission comments be remanded to the Planning Commission for further debate and review, with a recommendation back to Council. Mayor Dunn noted that the Planning Commission had no information to any of staff stipulations when they reviewed this.

Councilmember Filla's motion to remand to the Planning Commission died for lack of a second.

Councilmember Gill asked what their options were if the developer would not consider some of the recommendations.

Stuart Stein, Attorney for the City, recommended the City do nothing more, and allow the developer an opportunity to absorb the discussion. If it should lead to further discussion, and they want to come forward with new information, then the City should welcome it. If Council felt there was no room for further compromise, then the litigation would continue.

Mayor Dunn noted the previous discussion stated by Mr. Patterson; if Council didn't approve or remand this, they would take their inferior plan back to court. She asked if they refuse to give any meaningful compromise, if this was where the City would stand. Mr. Stein noted they filed their lawsuit based upon the Council's refusal to grant the original plan; therefore, this would be the plan before the court.

Jim Bauers stated on behalf of Oddo Development, if Council decided to take no action and ask them to respond to the comments made, they would do so; however, they would prefer Council recommend this to the Planning Commission, subject to resolving the stipulations. The approved preliminary plan allows them to develop 292 units, and intended on doing so; however, they would design them to accommodate the neighbors, staff, and City Council to the best of their capabilities. He stated the only other issue was the roofing materials. Mr. Bauer stated other than these two issues; they have demonstrated flexibility and felt they had negotiated in good faith.

Mayor Dunn confirmed with Mr. Bauer that if another motion was presented to remand this to the Planning Commission, they would agree to allow the super majority requirement to remain in place; therefore, when it returns before Council, the super majority would not be lost, should they override the Planning Commission.

Councilmember Bussing made a motion to continue the discussion to the May 19, 2008 Council meeting to a date certain; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 8-0.

### **ADJOURN**

Mayor Dunn adjourned the meeting at 10:50 P.M.

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Debra Harper, CMC, City Clerk

Pam Gregory  
Recording Deputy City Clerk