

Minutes

DVD No. 191

The City Council of the City of Leawood, Kansas, met in special session in the Council Chambers, 4800 Town Center Drive, at 7:00 P.M., on Monday, June 9, 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
Mark Klein, Assistant to the Planning Director
Karl Weinfurter, Info. Systems Specialist
Pam Gregory, Deputy City Clerk

Patty Bennett, City Attorney
Jeff Joseph, Senior Planner
Joe Johnson, Public Works Director

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

A motion to approve the agenda was made by Councilmember Rawlings; seconded by Councilmember Azeltine. The motion carried following 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.**

4. PROCLAMATIONS – None.

5. PRESENTATIONS/RECOGNITIONS – None.

6. SPECIAL BUSINESS

A. Resolution approving Final Site Plan located approximately at the southeast corner of 137th Street and Mission Road for multi-family housing [Applicant: Oddo Development] [Siena Apartments]

Mayor Dunn noted the document placed upon the dais was submitted at 5:20 p.m. this evening and stated neither she nor Council had time to review it.

Jim Bowers, behalf of Oddo Development, gave a presentation outline of Oddo's "best compromise plan" of the Siena Phase II Final Site Plan.

Mr. Bowers stated this plan would be in lieu of the original plan denied in April, 2007, which they filed suit challenging that denial. In lieu of going forward with the litigation they were there to discuss settlement. He noted there were 15 main points to address, realizing the letter did not get out until late this evening. Mr. Bowers noted the following people accompanying him tonight: Rick and Frank Oddo, Oddo Development, Bill Prelogger, Nearing, Staats, Prelogger & Jones Architects, Doug Patterson, Co-Counsel, and Tom Fulton, Traffic Engineer, Olsson & Associates.

Mr. Bowers distributed the following letters to Council they had received from abutting property owners in support of their application:

Vice President of Legal Affairs Scott Welman, Associated Wholesale Grocers, Inc.
A Resolution adopted by the Heartland Apartment Association
Christine Lee, Apartment Association of Kansas City
Manager Stephen Seat, Terra Bentley II, LLC

Mr. Bowers stated the main points of discussion were:

1. Traffic Impact Study [TIS]

April 2, 2007, Council denied approval of the Sienna final plan, because there was no TIS submitted in conjunction with it. The reasons were two fold: First, the staff waived the TIS requirement. Second, the Mission Corner Development TIS dated May, 2005 revised by Bucher Willis & Ratliff Corporation August, 2006, included the existing proposed traffic from the Siena Apartment project. *See* the Memorandum from City Engineer David Ley to City Administrator Scott Lambers, dated May 8, 2008.

However, in spite of this, Oddo Development hired Olsson & Associates, author of the 2005 study, to update the TIS and evaluate what an access onto Mission Road to the west for Siena would do. The study concluded it would neither be appropriate, or warranted. It also confirmed that the impact of the additional traffic from Siena would not pose any problems, with respect to the usage of 137th Street and surrounding streets.

2. Construction of 137th Street from Mission Road to Pawnee

The staff report requires Oddo to pay 100% of the cost of the improvement. The City is also requiring Mission Corner to pay for 100% of the improvement. *See* the Memorandum from David Ley to Scott Lambers, dated January 19, 2006, Item 2(d). Mr. Bowers noted they had met with the owner of Mission Corner, Terra Bentley II, LLC.

They were willing to join with them to form a Special Benefit District [SBD] to fund the project construction on a 50/50% basis, and were proposing this be the method of financing that improvement.

3. Roofing Material

Leawood requires that all development within the City use roof material that is on the City's approved list. This approved list includes 40 and 50 year composition shingles, as well as tile and slate materials. The Tuscany Reserve neighborhood to the east had suggested Siena's apartment buildings have slate or tile roofs. Mr. Bowers stated they had met with Tuscany on several occasions and have proposed to use Capstone, a "slate like" composition 50-year shingle, which exceeds the requirements of the City's approved list of roofing materials. He noted it has an appearance of slate and believed it to be an excellent material.

4. Building on Building Lines

One of Oddo's twin villa buildings is located on the RP-3/RP-4 "zoning" line. They did not understand why this would be an issue, since both zoning classifications allow a twin villa. There are no required setbacks of zoning lines.

5. Safe Places

They had previously stated they would supply safe places in the clubhouse; however, Council suggested safe places to be scattered throughout the project. He noted they were willing to do that, for a total of three safe places. One would remain in the clubhouse and the other two would be located in apartment buildings throughout. In addition to these three safe houses, they would have safe houses in each of the twin villa buildings. The May 27, 2008 Staff Report requires safe rooms within each apartment building; however Mr. Bowers stated they didn't understand the need for this, and noted Oddo was not willing to do that.

6. Density

They were willing to discuss density; however, they wanted to understand the problem with the approved density of 292 residential dwelling units. The preliminary plan approved 292 units. Density has an impact on traffic, open space, building "footprint," height and adjacency. The TIS demonstrates that the street network has more than adequate capacity to handle the traffic generated by 292 units. Oddo has, with the proposed settlement plan, increased open space. The approved plan shows 59% of the land as open space. The settlement plan shows 62.9% open space. This is a net green space increase of 6.5%. The number of buildings has been reduced from 40 to 35, plus the clubhouse. The heights of the buildings within the project remain the same. The approved plan has setbacks adjacent to Tuscany Reserve of 25' – 30'. The proposed plan has setbacks of 125' – 142'. Mr. Bowers stated they did not understand the basis of asking them to reduce the number of dwelling units.

7. Open Space Buffer Adjacent to Tuscany Reserve

The approved preliminary plan provided a 25' setback on the east side of Siena, adjacent to Tuscany Reserve.

The approved preliminary plan provided a 25' setback on the east side of Siena, adjacent to Tuscany Reserve. Initially, Oddo increased the setback to 60' – 70', and have now increased it to 125' – 142'. In order to accomplish this; they had to eliminate the villas on the east side. Currently, the closest buildings are apartment buildings. Mr. Bowers understood the City Attorney and City Council wanted both the increase setback and the villas, and noted they were unable to do that.

8. Basements in All Villas

At the May 12, 2008 meeting, comments from Council suggested basements in all villas. The May 27, 2008 Staff Report required a minimum of 50% of the total area of the first floor to be basement. Oddo plans to build four buildings with full basements on the west side and four with walkout basements on the east side.

9. Underground Utility Lines

Mr. Bowers stated Oddo was willing to comply with the Leawood Development Ordinance [LDO] requirements concerning under grounding utility lines on Oddo property.

10. Stone Façade of Buildings

The approved plan provided the building exterior to have, at a minimum, 4% stone and 96% stucco. The Planning Commission suggested the quantity of stone be increased to 15%. Staff is suggesting 20%. Mr. Bowers stated Oddo was willing to provide 20% stone on all buildings. There has also been discussion of natural versus cultured stone. The suggestion was that manufactured stone is inferior to natural stone. He noted it was impossible to visibly tell the two apart. From an installation view point, both products are applied veneer finishes. The primary difference is that natural stone is heavier; therefore, more likely to delaminate than the lighter manufactured stone product. Their preference was to use the cultured stone.

11. Exterior Lighting

Concern has been expressed about the perimeter exterior lighting and its effect on Siena's neighbors. The May 27, 2008 Staff Report prohibits the use of wall pak lighting. Oddo intends to use shielded wall pak lighting mounted on the interior of the development for security and safety reasons, and will adhere to the no wall pak lighting mandate on the perimeter of the project. Mr. Bowers also noted they would meet the minimum foot candle requirements on the perimeter, and would use decorative carriage lamps.

12. Length of the Cul-De-Sac Town-Villa Area

They met with the City's emergency personnel, and because the cul-de-sac is less than 600 feet, it doesn't present a problem.

13. Fence and Gates

There has been considerable discussion about fencing and gating. Mr. Bowers stated City Council had expressed opposition to gating; however, noted they don't understand the issue. The internal road network would be private. Leawood's Fire Marshall did not oppose the gating of Siena, as long as the following conditions were met:

- a. A Knox box with a button is installed on the inside to open the gates.
- b. Installation of a yelp siren sensor; sirens on all emergency vehicles would then automatically open the gates.
- c. A manual override is installed to open the gates if there is a power failure.
- d. Gate codes of key cards are provided to open gates in non-emergency matters.

Oddo was willing to meet all of these conditions. The Tuscan Reserve neighbors support a fence and Oddo was willing to install one, as long as it could be gated. The Staff Report also requires the fence material to be wrought iron, with masonry columns in between. Oddo was proposing an aluminum fence that *looks like* wrought iron with masonry columns at the "public corners."

14. Street Trees

The number of trees has been increased from 1 per 40' to 1 per 35' of frontage and they have added shrubs as required by the LDO.

15. Pedestrian Crosswalks

All areas where pedestrian routes intersect streets and driveways shall be enhanced and differentiated from the vehicular paving areas with colored, stamped concrete to look like pavers, in accordance with the LDO.

Tom Fulton, Senior Project Manager Traffic Engineering, Olsson & Associates, 7301 W. 133rd Street, Overland Park, Kansas stated they had revised the previous traffic study done in 2005. The study accommodated the development to the north, east, and all of the other approved undeveloped projects in the area. One of the goals from the study was to look at a third access onto Mission Road to see if any benefits could be gained from it. The study showed approximately 150 trips in the A.M. peak hour. He noted this was no more than a convenience store or other small development. The P.M. peak hour was approximately 180 trips. In looking at the capacity and how 137th Street was operating, if it wasn't for safety restraints for the fire trucks in needing two accesses, one would accommodate the development. When they considered a third access, they discovered that anyone wanting to go to or from the east would migrate to Pawnee via 137th Street. There was no reason, based on how the site plan was laid out; they would want to go to Mission Road.

Mayor Dunn asked where they had projected an access onto Mission Road. Mr. Fulton stated south of the clubhouse. The proposed access is to relieve traffic on 135th Street.

If Council considers another access along Mission, it would only add an un-needed potential conflict. There was no need to have another access onto a secondary arterial, since there was not a capacity problem. Mr. Fulton stated this was why they were not recommending a third access.

Councilmember Bussing asked what the expected traffic count was along 137th and Mission Road once all development was completed. Mr. Fulton stated you could expect approximately 10,000 vehicles per day. Mr. Bussing noted that seemed considerably low, and thought he remembered the numbers to be around 30,000 – 35,000 on 133rd Street, which is the twin of this street on the north side. Mr. Fulton stated 137th Street was geared for a 3-lane roadway and could not accommodate 35,000 vehicles per day.

Councilmember Rasmussen recalled a comment made that some of the turns off of 137th Street onto Mission Road of this development would delay the timing by at least 7.5%. Mr. Fulton stated with their analysis, all of the intersections operate acceptable with the improvements that have been set forth. Mr. Rasmussen confirmed with Mr. Fulton that a level service “D” or better would be considered acceptable in the peak hour. Mr. Fulton confirmed that the intersection at 137th Street and Mission Road would be considered a level service “A” with improvements overall in 2020.

Councilmember Gill asked what the rationale would be for a private versus a public street. Mr. Bowers noted he wasn’t involved when this discussion took place; however, it’s not unusual in a development of this type to have private streets if they own 100% of the land and are proposing to lease apartment units. Mr. Gill noted the City has private streets and there have been problems.

Mr. Lambers noted there were two reasons for a developer to want private streets; they don’t have to build them to City standards, and they don’t have to adhere to the City’s front yard setback requirements. As noted in previous times, the streets tend to fall apart if not constructed properly and the homeowners have to rebuild them. At this point, the homeowners will ask the City to take them over. Mr. Gill asked what the City’s point of view would be on private versus public streets. Mr. Lambers stated the City’s position would be that private streets need to be constructed to City standards, and other matters, such as sidewalks, street lighting, and setbacks would be subject to Council consideration. The proposed project before Council did not have any of these things.

Mayor Dunn stated Stipulation No. 17, “All streets shall be constructed per Public Works standards,” and noted Stipulation Nos. 14, 15, 16, 17, 18, and 40 were new. The Mayor asked if Parkway Plaza had private drives. Mr. Lambers stated the internal streets were private; the bisecting streets were public, which is fairly typical. Mayor Dunn noted the snow removal vehicles would have difficulty maneuvering through this development. She felt the streets should be maintained by the developer; however, built to City standards. If not, the project would need to totally be re-designed.

Mr. Prelogger agreed with Mr. Lambers that the reasons developers like to use private streets is that it relieves them of the need to provide that the right-of-way be dedicated to the City, and relieves the need of the City’s setback requirements on public streets.

Beyond that, Mr. Prelogger stated that Oddo was willing to build the private streets to exactly the same standards of construction as public streets. They felt it would be more attractive to provide sidewalks circulating through and behind the buildings, rather than having sidewalks along a street. Street lighting was another issue and Mr. Prelogger noted they preferred to have the lighting mounted on the buildings to shine out for added security. He addressed Mayor Dunn's concern of the snow removal vehicles and noted they would privately contract for this to include driveways and sidewalks simultaneously. By controlling this internally, they could provide better service for the residents.

Mr. Lambers referred to the building on building lines, and noted staff felt this shouldn't be an issue. Mr. Bowers stated the reason they were in this position was due to attempts to provide additional open space to Tuscan Reserve to the east and move buildings further to the west. This presented a situation where the twin villa on the northeast corner fell on the break of the zoning. The twin villa is permitted in both zoning classifications and doesn't create any setback problems. They were willing to discuss this; however they were at a loss understanding why it was an issue. Mr. Lambers stated there was a line going through a building and the City doesn't allow it. This would require it be re-platted to show the different zoning category.

Councilmember Filla clarified with Mr. Lambers that the plat line would need to be straightened when re-zoning the property. Mr. Bowers noted their concern was that they were not, currently, in a re-zoning process and were trying to reach an accommodation with the City regarding these important issues, without creating procedural problems for themselves. Mr. Lambers noted staff would support the re-zoning, the cost would be nominal, and it would take approximately 90 – 120 days to process. Mr. Bowers stated if they could reach an agreement on everything else, and if that was the only thing holding up the project, then they would be willing to do that under the circumstances Mr. Lambers had outlined.

Mayor Dunn addressed Mr. Bowers regarding the safe places. Mr. Bowers stated following the May 12, 2008 meeting, Stuart Stein, Attorney for the City, told him during a phone conversation that Council wanted them to scatter safe houses throughout the project. They changed the plan to locate three safe houses, in addition to safe houses in each of the villas. The Staff Report on June 4, 2008, suggested they have safe houses in each of the apartment buildings. Mayor Dunn noted Stipulation No. 18 was how she recalled the conversation the night of the Council meeting on May 12. Mr. Stein noted it was his impression from Council, to have the safe places relocated throughout the complex away from the clubhouse. He didn't take the position of how many safe houses should be provided, and noted Council should decide if it was possible for them to have multiple locations; however, not a location in every building. Mayor Dunn was delighted to see there was going to be a basement in every villa; however, noted she would like to have a safe room within every apartment. Public safety is the City's utmost concern.

Councilmember Filla asked how many people could get in the basement areas of the safe houses. Mr. Prelogger noted approximately 600. She asked if each individual apartment had a safe room, such as the bathroom. Mr. Prelogger stated each apartment has its own entrance. Some of the buildings are two-story with slab on grade. They have living units on the main level, second level, and walkout lower level.

He noted each apartment has a walk-in closet they could make as a safe room; however, if a tornado hit one of the buildings, it would be gone. The only safe place for people during a tornado is in a basement. Mr. Prelogger noted they have done safe rooms in two other apartment developments, one of which was located in the clubhouse; the other was located in 3 out of 17 apartment buildings. With adequate tornado warning they would be within a few minutes walk of everyone's home and could descend to the basement of the safe house.

Mayor Dunn asked how many people each apartment building would hold, excluding the clubhouse. Mr. Prelogger stated they allocated 7 square feet per person with 4,200 square feet required. They provided 4,500 square feet of total area and scattered these safe houses conveniently located for everyone in the development. The twin villas all have either a full underground basement or a walkout where they could create a safe room against the garage wall and the living unit.

Councilmember Bussing asked why they wouldn't consider a basement in every apartment unit. It's inconceivable to ask people to seek shelter down the street during a rain storm with sirens going off. Mr. Prelogger noted they could provide a safer place with aggregated community safe rooms, rather than providing a safe room in each individual apartment. Mr. Bussing noted he was referring to a basement in each apartment unit, and not safe rooms in each actual apartment.

Mayor Dunn noted after hearing the description of what could happen to the buildings if they were struck by a tornado, she agreed the safe rooms all needed to be located in a basement area. She asked if they could provide a safe room in the basement of every apartment unit small enough for just the people in that unit, rather than the three proposed that would hold 200 people each. She felt this would be more economical. Mr. Prelogger noted he hadn't studied the cost implications of this; however, knowing the building plan, they could possibly create a partial basement space in the stairwell area. There was not, currently, stairwell access on the second level and they would have to create one. Mayor Dunn asked how the residents would get down from the second level in case of a fire. Mr. Prelogger noted they would use their front door with their own private entrance. Each apartment has its own direct independent access.

Councilmember Bussing confirmed with Mr. Prelogger that the buildings had ADA compliance. The first floor units are all ADA accessible; however, no wheelchair access to the upper or lower levels.

Councilmember Peppes asked if they had a number of safe houses they could agree upon, whether it was 27 or 3. Mr. Prelogger noted it may be somewhere between the two numbers. They chose the locations of the two safe houses due to the units being on a sloped area, which could allow them access for a stairwell. There are other buildings that share this characteristic. If they did this, they could construct more safe rooms; however, smaller and distribute them diversely throughout the site.

Councilmember Rasmussen recalled the Leabrook Development, located east of State Line Road on 151st Street. He noted the initial plan of the developer was to construct them as slabs; however, City Council was concerned for public safety and decided they should have tornado relief in each building.

The developer eventually agreed to construct the basements. Mr. Lambers noted he was correct; however, the location was at The Cottages of Lake Shire, west of the Villages of Seville on 133rd Street, not the Leabrook Development.

Mayor Dunn referred to the stone on the buildings and asked staff to discuss the difference between the cultured and natural stone. Mr. Lambers stated the City has had numerous occasions where the cultured stone had fallen off and are discouraging the use of it, or at least limiting its application. Mr. Prelogger stated their experience had been that cultured stone, when properly applied, would not delaminate as quickly as natural stone, due to the difference in weight.

Mayor Dunn noted Stipulation No. 3, and asked if the Planning Commission differentiated between the two types of stone. Mr. Lambers noted it was staff and that the Planning Commission's focus was on the percentage of stone. The City had not encountered natural stone falling off; however, the cultured stone has. Mr. Bowers noted it could be the time differential of when the stone was applied, and that the product had improved over the last 10 years. Mayor Dunn noted this had occurred just over the last few years.

Councilmember Rasmussen recalled a previous meeting where private streets were prohibited; however, staff considered the possibility of an unusual circumstance where private streets might be applicable. He asked if this development would qualify as unusual. Mr. Lambers stated it would usually be a dead end street that has limited service to the general public, or a service drive that provided parking for employees. It is not uncommon; however, for apartments to have private drives. The setback requirements would preclude the construction of many of these buildings and the developer doesn't want to have sidewalks or streetlights.

Councilmember Azeltine confirmed with Mr. Lambers the difference in the setback requirements from public to private streets would be 30 feet.

Councilmember Filla confirmed with Mr. Lambers that a sidewalk in the back would not be equivalent to one in the front, due to people needing to access the streets to get to it.

Councilmember Azeltine asked how much additional density does the difference of the setback requirements allow in this development. Mr. Lambers noted it would be a considerable amount. Mr. Azeltine confirmed with Mr. Lambers that one of the reasons a developer would want to use private streets would be to increase the density.

Councilmember Azeltine asked when the last time the City allowed private streets in a development. Mr. Lambers stated a couple of years ago in the Villas of the Tuscany Reserve Development for a shared common driveway.

Mr. Bowers noted when City Council approved Resolution No. 1603 in 2001, Stipulation No. 25 stated: "All roadways in the duplex and multi-family project will be private drives and maintained by the owner of the property." Mayor Dunn confirmed with Mr. Bowers the date of the resolution was April 2, 2001. He noted the Tuscany Reserve project was approved in 2003, after the approval of Oddo.

Councilmember Peppes asked where guests of the apartment homes will park. Mr. Prelogger noted they had provided additional parking in front of each of the garages, as well as surface spaces throughout the development; this exceeds the City's parking requirements. Dr. Peppes confirmed with Mr. Lambers the City does not require a certain number of parking spaces per building for guests. Dr. Peppes was concerned with using the streets as parking, since people would be walking on them because there are no sidewalks. Mr. Lambers noted concern of the street parking and recommended they be permitted to park only on one side. Mayor Dunn noted Stipulation No. 49, "No parking signs shall be installed on one side of the interior drive system for the apartment and duplex portions. These no parking limitations shall be enforced by the management of this complex. This shall provide a minimum of 20 feet unobstructed drive." Mr. Prelogger stated they had no objection to parking being limited to one side of the street; however, there should be more than adequate parking available.

Mayor Dunn noted one of the requirements from the City for private drives had always been "no gates." Oddo was proposing aluminum for fencing; however, they stated without a gate they would not install a fence. Mayor Dunn noted the fence was a requirement in the stipulations. Mr. Prelogger noted there were a number of developments in Leawood that have private streets and gates, such as Chartwell West, located at 102nd and Leawood Boulevard, and the Edgewood Development, located on Town Center Drive. Mayor Dunn noted Edgewood was one of the last developments that was gated and approved. This was when the ordinance went into effect for no more private streets. Residents of several private streets came into City Hall with their attorneys and demanded the City take back the streets.

Mayor Dunn noted staff had recommended wrought iron fencing, and Oddo had proposed the aluminum fencing that *looks like* wrought iron, due to the cost. Mr. Lambers stated wrought iron was less susceptible to damage. Staff felt a perimeter wrought iron fence with masonry columns would be appropriate for the project. Mayor Dunn confirmed with Mr. Lambers the fencing material being used at the Ironhorse Golf Course was wrought iron with aluminum finials. Councilmember Rasmussen noted they sometimes have trouble with the finials; therefore, aluminum was used.

Councilmember Cain referred to the masonry columns proposed to be placed at the "public corners" and asked where those corners were located. Mr. Prelogger stated they would be placed at the south, northwest, and northeast corners of the property.

Councilmember Cain asked how disabled people would get to the basement if they constructed the safe houses in each unit. Mr. Prelogger noted FEMA, the Department of Homeland Security, and HUD had not proposed an answer to that. He didn't understand why people who were mobility impaired were ever allowed above the ground floor.

Mayor Dunn noted Stipulation No. 18, "All apartments shall provide a safe room within the individual building, based on the criteria and specifications outlined in FEMA 453 / May, 2006 publication (Risk Management Series – Safe Rooms and Shelters). She asked if this stipulation addressed the issue of the disabled. Mr. Lambers stated it establishes a standard for safe rooms to be constructed on first, second, or third level buildings to provide some protection during certain levels of harsh weather.

Staff felt by adding this stipulation, people would have at least minimal protection, rather than going outside. Mr. Prelogger stated the FEMA Code, in regard to the construction of safe rooms, was designed to primarily keep people from getting hurt from flying debris. A safe room is not designed to withstand a tornado. Mayor Dunn confirmed with Mr. Prelogger the reason they were constructing the safe rooms underground was to give everyone a safe place.

Councilmember Rasmussen noted an *optional entry gate* located on the northwest corner of the development and asked what it was for. Mr. Prelogger stated it was a computer error and should not be on the plan.

Councilmember Gill noted some of the biggest concerns were the density and the moving/removal of the building; however nothing had changed in that respect. In terms of density, he wanted to see less than 292 units. Mr. Bowers stated they were willing to consider this; however, wanted to understand the reasoning behind it. Mr. Gill expressed that it comes down to the number of units, and felt they were trying maximize as much *stuff* and as many units as possible into the development. This is located among some of the finest residential and mix-used developments in the metro-area, and noted he was concerned with the quality and "*fit*" of their plan. Mr. Bowers noted the decision was made in 2001 when the preliminary plan was approved; Council approved 272 apartment units and 20 twin villas. When they were ready to proceed with the project and submitted the final plan, they did so in compliance with the approved preliminary plan. Mr. Bowers stated this issue shouldn't be decided in the settlement process, it had already been decided in 2001. Mr. Prelogger addressed the density issue and noted Council didn't mind having the same size of buildings, as long as they had fewer units in them; however, density is a way of describing the intensity in the use of the land. The only part of density that would be relieved by having fewer units would be the issue of the traffic impact. The LDO requires that 30% of the land be left as green space, and noted they had 62%. Mr. Prelogger noted part of what allowed them to build a high quality property, was to have the density to be able to build a nice clubhouse, amenities, and the quality of materials on the buildings. The City had asked them to do many things to enhance the quality of the development and he noted they had agreed to do so.

Mr. Gill asked them for a number of units they would be willing to comply with. Mr. Bowers stated if Council could come to an agreement and settle the matter, they would remove one of the buildings; this would make the new unit count 284. Mayor Dunn noted this was the number the Planning Commission had required be removed from the plan.

Councilmember Filla asked if they had considered motion sensitive lighting. Mr. Prelogger stated that motion lighting would not allow the residents to view the outside of their home at all times.

Mayor Dunn confirmed with Mr. Lambers that the City did not allow wall pak lighting. Mr. Rawlings questioned what wall pak lighting was. Mr. Lambers noted it was usually not good quality lighting and generally located behind buildings for added security.

Councilmember Filla noted the letter from the Apartment Association of Kansas City, and asked how long those apartments had been established. Mr. Prelogger stated his firm designed them in 1983.

Councilmember Filla asked how far the amenities were, (such as grocery stores) in terms of walking distance. Mr. Prelogger noted people could use their pathways through the green space and there would be sidewalks along the public streets that bound the project.

Ms. Filla was supportive of their agreement to use the natural stone, the wrought iron fencing with aluminum tops, and the additional safe houses, as referred to by Councilmember Bussing.

Councilmember Rasmussen asked what was meant, in regard to the number of units, by comments made of the utilization of the twin villas for transitional land use purposes to be expanded to the east and south perimeter of the project. Mr. Lambers stated staff had prepared a concept plan that would incorporate the utilization of the twin villas for that purpose; however, they hadn't presented it to Council because it hadn't been requested. Mr. Rasmussen confirmed with Mr. Lambers the number of units would be 216.

Councilmember Rawlings referred to the applicant's reference to the 2001 LDO and noted it was difficult to visualize what would be approved five or six years into the future when the plan was extended. Mr. Rawlings asked if there had been discussion of three-story buildings with a tiered look. Mr. Prelogger noted they had designed three-story apartment buildings in the past that typically have a breeze-way with a common stair for access to the third floor. He stated they had been trying to make this development similar to a single family home development. Part of this concept was to allow residents to have access to their entry, rather than a common stair. Many of the residents in Oddo Developments are elderly, and to have too many stories, up or down, could be an imposition. This was not consistent with what they wanted to accomplish.

Councilmember Cain referred to the density and was hoping to see additional twin villas on the south side of the development as well as the east side, to better coincide with the \$2 Million upscale housing that Siena was proposing, as well as Tuscany. She noted people are looking for quality villas in the City of Leawood.

Mr. Lambers noted after the previous meeting, Council had provided input to the applicant and staff and he felt that the Mission Road connection, which currently was not included, was a priority and needed to be added. The applicant was proposing this as a buffer on the west side and constructing the apartments to the east of that. Mr. Lambers noted the extensive landscaping on the east property line and proposed this be reduced to have the street constructed through this area.

Councilmember Gill noted Mr. Rick Oddo had left the meeting and thought this was pertinent information he would want to hear. Mayor Dunn noted Frank Oddo, Oddo Development, was still in the Council Chambers.

Mr. Lambers wanted to have the theory of the west side of the project brought to the east side.

This would create a nice vista view for the subdivision to the east. The area to the south would be a very nice enclave of twin villas around that amenity. The Council had expressed an interest in these being available for condominium purchases. The southern area around the water feature would help to make them desirable. He noted, again, the project generated 216 units. Mayor Dunn confirmed this had a Mission Road ingress/egress road that would run through the development, and noted this was in direct reference to Staff Stipulation No. 1, "The utilization of the twin villas for transitional land use purposes shall be expanded to the east and south perimeters of the project and that the open space shall be increased."

Councilmember Bussing made a motion to deny the Final Site Plan application for the Siena Apartments, due to public safety reasons; seconded by Councilmember Gill.

Councilmember Bussing stated the following reasons:

- A. The City could not ensure public safety.
- B. Although, the additional access point onto Mission Road was not essential from a traffic viewpoint, he felt it would provide better access for emergency personnel.
- C. Lack of sidewalks would pose safety hazards to residents on the streets.

Councilmember Rasmussen agreed to the motion; however, thought the reason for the meeting was to discuss a settlement. City Attorney Patty Bennett stated they were all there to discuss settlement possibilities, and noted the developer may want to hear individual thoughts of the Councilmembers in hopes of reaching that settlement.

Councilmember Gill asked if the applicant would consider some of the comments made by Councilmember Cain and Mr. Lambers, thus be willing to allow some movement in this. Mr. Bowers stated Mr. Lambers described a "for sale" project and theirs was a "for rent" project. He noted Mr. Lambers described 30 twin villas, as opposed to 8. The marketability of twin villas in that density, in their opinion, would not be feasible. He reduced 35 apartment buildings, to 14. The mix, purpose, and the layout of the plan would be different; this was not acceptable.

Councilmember Peppes expressed hope of reaching a compromise between Mr. Lambers plan and The Oddo Development plan, and felt; otherwise, he would have no option except to also deny the plan.

Councilmember Filla stated her comments and suggestions if she were to support the plan:

- a. She appreciated the efforts of Oddo to increase the green space.
- b. Supported the traffic study they had performed, and felt the Mission Road access was not necessary.
- c. Agreed to the comments made regarding additional twin villas to the east and south of the property, and felt the location would allow better marketability.
- d. No objection to not having sidewalks.
- e. Increasing safe spaces for the apartments and they would need to be located no more than one unit away.
- f. Use of natural stone and wrought iron.

Councilmember Rasmussen referred to the staff recommendations and noted they were very comprehensive in terms of good planning and developing in the City of Leawood.

Councilmember Azeltine noted although this property had been zoned for apartments for 20 years, high-end communities had developed in the area during this time frame. Council had encouraged the developer to bring forth a plan that would meet the standards of this surrounding area. Mr. Azeltine stated the plan had expired on April 2, 2006 and Council had granted two 6-month extensions in good faith. There have been no substantial changes made on the part of the applicant. He resented having last minute items placed upon the dais for review, and noted it looked like a “negotiating tactic,” rather than someone wanting to progress forward for settlement. Mr. Azeltine stated the biggest reason he would vote to deny the application was due to public safety.

Mayor Dunn offered Mr. Bowers the opportunity to respond to Council comments. The offer was declined. The motion to deny the application carried following a unanimous vote of 8-0.

Councilmember Bussing made a motion to direct staff to move forward with an alternative plan for this particular tract of land; seconded by Councilmember Rasmussen, adding to incorporate staff recommendations, where applicable, as delineated on a report written on May 27, 2008, Siena Phase II, request for approval of a final site plan.

Councilmember Peppes confirmed with Mayor Dunn that the plan before Council was denied, and that staff would come up with an alternate plan with all stipulations included, where applicable.

Councilmember Azeltine asked how this would affect the dynamics of the now-ended negotiations. Ms. Bennett noted her understanding was, since this didn't get settled, it would go back to court. The City would ask the court if they would stay the underlined litigation, pending consideration of the new plan from staff.

Mayor Dunn confirmed with Mr. Lambers this should take approximately 120 – 180 days to complete.

The motion to move forward with an alternate plan from staff carried following a unanimous vote of 8-0.

ADJOURN

Mayor Dunn adjourned the meeting at 9:05 P.M.

Debra Harper, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk