

Minutes

DVD No. 201

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, October 27, 2008. Mayor Peggy Dunn presided.

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

Mayor/Councilmembers absent: None.

Staff present:

Scott Lambers, City Administrator
Richard Coleman, Comm. Dev. Director
Jeff Joseph, Senior Planner
Mark Klein, Assistant to the Director
David Ley, City Engineer

Patty Bennett, City Attorney
Mark Andrasik, Info. Systems Director
Deb Mansfield, City Clerk
Pam Gregory, Deputy City Clerk

1. PLEDGE OF ALLEGIANCE

2. APPROVAL OF AGENDA

Mayor Dunn referred to the Amended Agenda and noted the following modification:

- * Under Special Business - corrected to read “Ordinance approving a rezoning” vs. “Resolution approving a Final Site Plan.”

A motion to approve the Amended Agenda was made by Councilmember Rasmussen; seconded by Councilmember Rawlings. The motion carried following a unanimous vote of 7-0. (Councilmember Azeltine absent).

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.**

Mayor Dunn stated many citizens had signed in to speak and noted they would hear from them after the presentation.

4. PROCLAMATIONS – None.

5. PRESENTATIONS/RECOGNITIONS – None.

6. SPECIAL BUSINESS

- A. **Ordinance No. 2362** approving a rezoning from RP-3 (Planned Cluster Attached Residential Sistrict) and RP-4 (Planned Apartment Residential District) to RP-3 and RP-4 (Reconfiguration of Zoning Lines) and a Preliminary Site Plan for Siena II – City Project, located approximately at the southeast corner of 137th Street & Mission Road [Applicant: City of Leawood] [Oddo Development; Siena Subdivision]

City Attorney Patty Bennett stated the Kansas statute allows cities to rezone property and do planned zoning. The City of Leawood has traditionally required a plan along with the rezoning request. This case has been filed and subject to a protest petition by Oddo Development Company. This is a valid protest and requires 7 out of 8 votes for Council to approve the rezoning.

Diane Binckley, Ochsner Hare & Hare, stated she was representing the City of Leawood on a rezoning application. The proposed rezoning was from RP-3 and RP-4 to RP-3 and RP-4, which was an adjustment to the zoning line. This is the same type of zoning that is currently on the property. This property is located at 137th and Mission Road. The current proposal before Council is for a total of 240 units. She noted 192 of these would be for apartment units, with the remaining 48 units for duplexes or town villas. Ms. Binckley stated the recommendation from the Planning Commission was for denial. Ms. Binckley identified the amendments to the plan since that time and clarified that the plan she was presenting this evening was the one that the staff report reflected.

Mayor Dunn confirmed with Ms. Binckley that the staff report was reflecting the modified plan since the Planning Commissions review.

Ms. Binckley stated this property was located at what would be the future 137th Street and Mission Road. She noted the north side was mixed-use zoning and extends to 135th Street. The east side is Tuscan Reserve and is zoned RP-2 and RP-1. The south side is the Oddo homestead property, zoned agriculture. To the west is Leawood Meadows, zoned R-1 and the Villaggio property, zoned SD-NCR and RP-4.

The plan shows two entries off of 137th Street with the clubhouse located in the corner. Twin Villas are located on the west, south, and east sides of the property. Apartments are located in the middle section around three ponds. There is a proposed “emergency access only” point located off of Mission Road. Upon future widening of Mission Road, there will be a median constructed and open for general access in a right-in/right-out manner only.

The previous plan showed 50 twin villas; the current plan has 48. The reason this was done was due to the request for deviations regarding setbacks between buildings. The ordinance requires 30 feet between buildings. There were a number of deviations requested on the original plan; the idea was to have more green space and common locations.

They were able to meet the 30 foot separation requirement on all buildings within the development, with the exception of one location; between two apartment buildings there is a request for a deviation of a little more than three feet.

Ms. Binckley indicated another concern was having enough parking spaces and noted the new plan meets all parking space requirements. The grading has been more refined since the previous plan. The decreased number of units slightly increased the open space.

Councilmember Rasmussen asked for clarification of the storm drainage facilities.

Brett Carlgren, Engineer for BHC Rhodes, stated the plan before Council had two planned storm water systems between the northern and center pond. The purpose of this is so a primary would be located on one side of the apartment buildings. A redundant system or emergency overflow will be provided on the other side. This redundant pipe system was chosen because of the placement of the buildings.

Councilmember Gill asked where people could take shelter from bad weather. Ms. Binckley stated this requirement had been met with a common storm shelter located in each of the buildings.

Councilmember Gill referred to an interact meeting where a different set of plans were presented. He received a form letter with comments objecting to the various specifics of the plan and as a result, changes were made. He later received a large number of follow up e-mails from residents stating their objections were withdrawn as a result of the changes. Mr. Gill asked if those changes could be addressed.

Planning Director Richard Coleman stated there was a misconception regarding the plan from the homeowners who sent those letters, which in turn, resulted in new letters from them. They had changed their opinion about the plan. Mr. Coleman stated they had a meeting with homeowners who were under the opinion that the south boundary of the development was going to include part of Oddo's property and the zoning boundaries had changed. They were concerned of those developments and it was explained that there were no changes in the zoning boundaries. He indicated they were satisfied with the development and many of them rescinded the letters they had originally sent.

Mayor Dunn referred to Stipulation No. 17 – "All apartment buildings shall provide a safe room within the individual building itself, based on the criteria and specifications outlined in FEMA 453 / May, 2006 publication." She noted in previous discussion, the developers architect mentioned it would need to be underground to be of any value. The Mayor asked if this stipulation indicated a basement for all apartments to share.

Mr. Coleman stated FEMA recommends a safe room for multi-family projects. The safe rooms would be located on the lowest level. They don't technically have to be underground and they can be constructed to protect the occupants from flying debris and high winds.

Mayor Dunn confirmed with Mr. Coleman that each apartment building would have its own safe room that would be shared by multiple families. Mr. Coleman stated FEMA requires a minimum square footage for each occupant.

Mayor Dunn confirmed with Mr. Coleman that this stipulation could be further reviewed upon the final application.

Councilmember Rasmussen confirmed with Ms. Binckley that every paved street would be considered a private street. Mr. Rasmussen referred to Stipulation No. 37 and asked what it meant by private drives. Ms. Binckley indicated it reinforces Stipulation No. 35, that all roadways are private drives.

Mayor Dunn confirmed with Ms. Binckley that they were to be built to public standards.

Councilmember Filla asked for clarification that all of the water features indicated were for purposes of stormwater or retention, versus aesthetics.

Mr. Carlgren stated the intent was to serve both functions; wet or amenity type ponds, which would also serve as a stormwater detention facility. The water is slowed down as it leaves the site, so there would be a stormwater detention capacity designed above the normal water surface elevation of each of those three basins. Councilmember Filla confirmed with Mr. Carlgren the intent was for these to never be dry.

Councilmember Filla confirmed with Ms. Binckley that the Tuscany Reserve condominiums would be located in the upper northeast area. Councilmember Filla confirmed that this area would be planned mixed-use with residential or town homes along 137th Street. The area to the west was zoned RP-4 and SD-CR.

Councilmember Filla asked if it was necessary to have villas on the Mission Road side, versus apartments. Ms. Binckley noted there was interest in maintaining villas in that area, so the City made that request.

Councilmember Filla referred to the Oddo property zoned agricultural and asked if it was necessary to create a buffer for what was now an open green area. Ms. Binckley indicated some day there could be large lot single family residences at that location.

Councilmember Filla indicated her impression was that the buffering and berms had been reduced as they had moved toward the villas on the Tuscany Reserve property.

Councilmember Azeltine joined the meeting at 7:25 P.M.

Councilmember Rasmussen asked when 135th Street would be expanded to six lanes.

City Engineer David Ley stated this would take place when the developments abutting 135th Street are developed.

Mr. Rasmussen confirmed with Mr. Ley that 137th Street to the east would be completed when a developer builds east of Chadwick. Mr. Ley stated there is currently no plan to extend 137th Street to Kenneth by the City.

Mr. Rasmussen was concerned with the limited access to Mission Road and asked when it would become four lanes. Mr. Ley indicated it was not within the 5-year Capital Improvement Program [CIP].

Ms. Binckley stated the limited access was more in regard to safety rather than traffic flow.

Councilmember Rawlings referred to Stipulation No. 35 and asked if the developer didn't maintain the streets to City standards, if they would have the right to fix them and assess the property owner. Ms. Bennett stated the City does very few private streets and indicated this had been the standard when done previously.

Mayor Dunn noted this was a standard funding mechanism for common areas and was not the responsibility of the City.

James Bowers, 4510 Belleview, Kansas City, Missouri, stated he was there on behalf of Oddo Development Company. Mr. Bowers stated there had been a lot of discussion regarding the number of units involved and the various generations of plans before Council. The approved preliminary plan of record was approved by the City in 2001 for 292 units. This was for 272 apartment units and 20 duplex units, for a total of 292. The plan presented at the interact meeting had a total of 250 units; 208 apartment units, and 42 duplex units. The plan presented at the Planning Commission had 242 units; 192 apartment units, and 50 duplex units. The plan presented this evening has a total of 240 units; 192 apartment units, and 48 duplex units.

The ordinance pending will down zone the Oddo's property and approve a preliminary development plan that the Oddo's will not build. Mr. Bowers stated Council should vote against the pending ordinance.

There is currently a lawsuit pending that challenges the City's action in refusing to approve the final plan submitted by Oddo Development that was consistent with the approved preliminary plan. That litigation should be given an opportunity to proceed without the City Council proceeding in adopting an ordinance down zoning the property in an attempt to moot that litigation. The Planning Commission has recommended 5 to 1 not to approve this plan and had evaluated the plan very carefully. There have been changes made since then in an attempt to correct the deficiencies. Their concern was the reduction in density of the zoning of this property.

Mr. Bowers stated Council should also vote against the plan this evening because it sets bad public policy, as outlined in Mr. Kerr's letter previously distributed. This letter will be the point of discussion by Kevin Nunnick, who will testify in person. Mr. Bowers indicated Mr. Kerr could not be present this evening due to a previous engagement out of town.

In addition, this plan violates the Leawood Development Ordinance [LDO] requirement with respect to the owners consent to the rezoning. Ms. Bennett mentioned in her opening remarks that state law allows the City to rezone property without the owners consent. Mr. Bowers stated that was correct; however, when she went on to mention that the state law also allows planned zoning; state law is silent on whether this City Council can approve a preliminary development plan for the Oddo's property without their consent. That is an open question, which has not been decided. In addition to violating the LDO, Council would also be violating state law by adopting a preliminary development plan without state regulatory authority.

Finally, Council's actions will constitute a taking of the Oddo's property in violation of both state and federal law, which will inevitably lead to more litigation. Neither the Oddo's nor the City should want this to occur. Oddo Development Company has invested Millions of dollars in this property to date; that investment was made in reliance upon the existing zoning. There was a moral, as well as a legal, compact between the City and the developer. Both the agreement and compact are being violated if Council approves this ordinance. This could have an impact on others who are similarly situated, that Leawood may, based upon their belief that the existing plan is not adequate or appropriate, change the plan in mid-stream. This would send a signal to investors and potential developers that they may not be able to rely on the zoning decisions that have been made by the City.

The decision is much larger than whether the Oddo's property will have 292 or 240 units, it will decide the future of real estate in Leawood. There is an immutable law in real estate development and investment and that is: "Capital goes where it is welcome, and stays where it is appreciated." Mr. Bowers asked Council to support the recommendation of the Planning Commission and deny this ordinance.

Barbara Pickert, 3313 West 138th Street, stated they were disappointed by the Planning Commission's decision to reject the rezoning proposal. They seemed to look at this as a final plan, rather than a concept plan. The twin villas around the perimeter of the property provide a much better transition with the surrounding area and the neighbors, than the previous plan.

The Planning Commission also did away with the entrance/exit onto Mission Road. It's important that this densely populated area be serviced by more than just 137th Street. The 137th Street Corridor has been planned to carry much of the area traffic; however at the present time, 137th does not go east bound and ends at Chadwick. Because of this, Tuscany Reserve currently experiences a lot of heavy cut-through traffic and they only see this increasing with the additional traffic from Siena II.

With the approved plan for Mission Corners, all of the underground parking traffic would enter/exit immediately across from Siena II, putting an extreme amount of traffic on 137th Street between Mission and Pawnee and could involve some safety issues. Since the plan for Mission Road is for four lanes and 137th Street to have only two lanes, it would make good sense that Mission Road share in disbursing the traffic in this area. It is apparent that the developer has silenced Leawood Meadows by making promises regarding placement of twin villas and locating entrance/exits onto 137th Street.

Ms. Pickert felt the City should be responsible for determining appropriate locations of entrance/exit sites and proper traffic flow. She asked Council to approve the rezoning of this property and to also consider the traffic concerns.

Jane Ross, 4004 West 137th Terrace, stated she represented the Leawood Meadows Homes Association Board. The homes association was very active during the preliminary planning phase of Villaggio. This is a different plan; however, during final approval of the plan, one of the City Council members stated "I'm proud of the developers and proud of the neighbors because we had to reach a compromise during the planning phase and had come to an agreement." Obviously, the City encourages that by the required interact meetings. She noted they were encouraged to get along with the developers and discuss the plans with them.

Ms. Ross stated before moving to Leawood, she had neighbors who had a similar compromise with Oddo Development regarding these apartments. They had indicated there would not be traffic on Mission Road entering or exiting the apartments and also the duplexes would act somewhat as a buffer between Leawood Meadows, Mission Road, and their development. This was agreed upon and approved at the preliminary plan. The right-in/right-out seems better than traffic going continually and trying to turn left on Mission Road; however, once a median is constructed, it will force traffic to go that way and she was concerned people would begin making a lot of u-turns at Leawood Meadows. It was part of the agreement they had with the Oddo's, as was encouraged by the City, to work in a spirit of compromise.

Ms. Ross noted she had witnessed two instances where the City Council had decided to take what the Planning Commission declined and hear it anyway. She stated it was a little disconcerting, since it was clear that the Planning Commission was not certain of what they were voting on because they knew this was not going to get built. The confusion this raises was also something she wanted to state her objection to.

Tony Ross, 4004 West 137th Terrace, stated there was agreement in 2001 regarding not having an entrance to Mission Road. He was concerned if the City had the right to do this rezoning, and wondered about the prudence when the City hired a development team to design a plan for privately owned property. Mr. Ross wanted to know how much taxpayer money was being spent on this lawsuit.

Mayor Dunn stated the request for the cost of legal fees and Ochsner Hare & Hare cost was noted in the record and the City Clerk could get that information available to Mr. Ross.

Harley Tennison, 3240 West 138th Terrace, Tuscan Reserve, stated he and his wife had been residents of Leawood for 33 years. Twenty years ago, the zoning was for multi-family, which was very appropriate for the area at that time. However, in the interim time, Leawood has seen a tremendous change and a change in the character of the neighborhood. This development would be the highest density multi-family development in Leawood; however, surrounding it are very beautiful single-family homes. Traffic along Mission from 142nd Street to 119th Street has gotten heavy and there are schools located on 143rd Street with many children moving south along that road in the morning. There is another school located at 133rd Street, plus all of the vehicles.

Mr. Tennison concurred that they needed another access to Mission. The single access two lane road mentioned by Councilmember Rasmussen was going to be nearly impossible with this.

Mr. Tennison appreciated the opportunity to voice his concerns and noted if there must be multi-family; he wished there had been a mechanism where once the zoning was set, as the character of the area changed, the zoning could be reviewed then instead of 20 plus years later.

Mayor Dunn recognized Patrick Bates, who declined to speak.

Steve Dicus, 14011 Pawnee, Mission Prairie, stated their subdivision was immediately south of Siena. Mr. Dicus was speaking on behalf of the Board of Mission Prairie Homes Association. He stated they were opposed to the Oddo proposal for the apartment complex. They favored the proposal made several weeks ago by the City's Planning Department, which showed less density, a berm, and a road surrounding the apartment complex. That proposal also had an emergency exit onto Mission Road.

Mr. Dicus stated they felt the City's proposal was better than the developer's high density proposal and was better in keeping with the current circumstance and quality of the neighborhood. They understood the judge asked the City and the developer to compromise and come up with a solution. The City's most recent proposal was a good compromise and it was their understanding that the Planning Commission had rejected the City's proposal. They felt the City acted in good faith. If the developer's original plan is accepted by Council, this would only be a "win" for the developer and a "loss" for the neighborhood. This would have the potential adverse effect on the quality of their neighborhood and property values. The Planning Commission's proposal has had no compromise.

Kevin Nunnick, 1901 West 47th Place, stated he had been in the real estate business for over 30 years, primarily in Johnson County. He stated it was not unusual for them to appear before Planning Commissions and City's and noted most state laws were very similar in the process. In Johnson County, preliminary plan approval has been treated as hallowed ground. Developers, appraisers, bankers and a number of stake holders in the development process rely upon preliminary plan approval before they spend their money. He noted the process was simple; appear before the Planning Commission after working with the City reviewing subdivision regulations and zoning ordinances.

Mr. Nunnick noted he met the Oddo family in 1976 and was the Director of Community Development for the City of Olathe at that time. He noted Mr. Oddo never wanted to do anything to hurt a community and wanted to develop and make money. He has always been insightful and looked at the community as though they were partnering with him and wanted to make a good return for his investment; this required good planning.

Mr. Nunnick stated in his 32 years experience, he had never seen a City take it upon themselves to take a land plan and re-design it. There is no finer company than Oschner Hare & Hare and noted there was a reason they don't design plans and move forward. To make a successful development, everything has to line up. This requires a contractor, appraiser, banker, engineer, architect, and the land planner.

He was concerned if Council approved this down zoning, it would establish bad public policy. He respectfully suggested that Council re-think what they were about to do and noted it was unfair to the Oddo's. Mr. Nunnick stated he would respect any decision Council made; however, felt it would have some dire repercussions to the City and county.

Jim Pateidl, 13925 Canterbury Circle, Tuscan Reserve, stated he appreciated comments by the residents of Leawood Meadows and thought they needed to recognize that a politically expedient promise was made by a developer when there were no other constituents in the area to whom he had to satisfy.

The ordinance before Council addresses a number of concerns, one being the density and access for emergency vehicles. Mr. Pateidl thought if anyone objected to that and felt they should walk away from this development plan, then he questioned their validity as a community participant, recognizing the health and welfare of the future residents.

Marge Pateidl, 13925 Canterbury Circle, Tuscan Reserve, stated they have lived in Leawood for over 35 years and the reason they chose to invest in Leawood was because of the quality of living. They knew it was going to be multi-family on the Oddo property and they trusted the City to do the right thing. The Oddo's attorney made reference to the precedent. There is no more land in Leawood, as it is almost completely developed. His argument doesn't hold value.

Ms. Bennett noted in addition to what had been discussed, cities are allowed to zone per the statutes and planned zoning is also allowed per the statutes. From the City standpoint, it meets those procedural elements.

Mayor Dunn clarified that the role of the Planning Commission is a recommending body to the City Council and their actions are recommendations for Councils further review and final action. It is the Council's responsibility to hear cases the Planning Commission takes action upon.

Councilmember Bussing confirmed with Mr. Ley that 137th Street currently extended to Chadwick. Pawnee and Chadwick both extend to 135th Street. Mr. Bussing confirmed with Mr. Ley that when this property is developed, 137th Street would have access to Chadwick going east.

Councilmember Filla asked what the density was of the condominiums that were going in at Tuscan Reserve and asked for clarification on the development north of the lake area.

Mayor Dunn confirmed there were row houses abutting 137th Street with three taller condominiums located behind. One of those buildings is five stories tall with the two on either end shorter.

Councilmember Filla asked Ms. Binckley to compare the number of people/cars they would estimate in the original plan of 292 units versus this proposal.

Mr. Coleman noted in regards to the density of the condominiums to the east, there are 30 units on 7.5 acres with a density of 4 units per acre.

Mayor Dunn confirmed with Mr. Coleman that the overall density when considering apartments and twin villas was 8.58 units per acre. The Mayor confirmed that in 1988, 222 units was the original plan for this tract of land.

Councilmember Filla confirmed with Mr. Coleman that from 2000 - 2007, it was planned for 292 units.

Mr. Lambers noted in regards to mixed-use developments, the City does not identify units per acre, they identify F.A.R. There are bonuses where residential square footage is discounted up to 50% and developers also get bonus F.A.R. for stacked structured parking.

Councilmember Rawlings asked for clarification regarding Mr. Bowers comments that if this ordinance passed, the City would be violating state law. Ms. Bennett thought Mr. Bowers was referencing his belief that Council doesn't have the authority to approve a plan and stated the statute does allow planned zoning and allows Council to approve zoning.

Mr. Bowers stated that state law is explicit in allowing the City Council to rezone property without the owner's permission; however, state law is silent as to whether Council could also adopt a plan. Mr. Bowers stated they believed there is no authority under the statute to allow Council to adopt a plan without the owners consent. This violates the LDO, which requires owner consent.

Mayor Dunn confirmed with Ms. Bennett they were rezoning approximately 1/3 of this tract of land. The rezone by this Governing Body is allowed under state law and by their own standards, they do not rezone without a plan. Ms. Bennett stated the end impact, in regard to the land owner, is identical either way. The land owner could choose to build this plan; however their attorney's have made it clear they won't.

Councilmember Cain asked how the plans compared at the interact meeting to the ones they were deciding upon this evening. Ms. Bennett noted they did see a different plan. Ms. Binckley and staff took the comments at that meeting and made changes.

Ms. Binckley stated the plan that was before the residents at the interact meeting was for 250 units; however, there has been no increased density on the property.

Councilmember Azeltine asked what Mr. Bowers meant by down zoning. Mr. Bowers clarified that this term was used in connection with this case and meant to reduce the number of dwelling units that were permitted to be constructed on the site.

Mr. Bowers stated the approved plan allows his client a higher density than the plan Council was proposing. He indicated Council was also changing the zoning boundary lines, which will change the unit mix. The change effectively makes the project unbuildable from a financial standpoint, not only because of the number of units, but also because of the unit mix and the amenities that are mandated under the stipulations. Mr. Bowers felt Council was taking his client's property rights from him making it appear as a reasonable number of units; however, the impact was to totally deny them the right to build this project.

Mr. Bowers stated the end result would be a taking of his client's property and stated they would file suit if the ordinance was approved.

Councilmember Azeltine stated "taking" implied eminent domain or condemnation and noted it would still be Mr. Oddo's land.

Councilmember Azeltine asked Mr. Ley to clarify what was indicated from the traffic study regarding the possible u-turns Ms. Ross was referring to. Mr. Ley stated if someone was coming from the north and heading south on Mission Road, the quickest way to any of these units would be to go east on 137th Street. The only time someone would need to go down to 138th and make a u-turn would be if they drive by and forget to make the left on 137th Street. For the most part, everyone will be accessing the condos from 137th Street.

Councilmember Filla asked what the total number of parking spaces would be. Ms. Binckley stated the ordinance required two enclosed parking stalls per unit for the twin villas. The apartments are required to have one enclosed parking space and one is not required to be enclosed. There are 192 apartments with 193 enclosed and 192 not enclosed spaces. There are 96 enclosed for the villas.

Councilmember Filla confirmed with Ms. Binckley there were approximately 20 additional visitor parking spaces available around the clubhouse and other locations. Mayor Dunn confirmed there were approximately 600 total resident parking spaces.

Councilmember Filla asked how many residential units were located to the north. Mr. Joseph stated just to the north was the Mission Corner property. Along 137th Street were four row houses that were two stories with four and five story buildings toward the center. Just to the east are the Tuscany Reserve single family homes. The west side is Villaggio, zoned RP-4 and then SD-NCR just to the north.

Councilmember Filla confirmed with Mr. Joseph they were requesting to have RP-3 zoning next to RP-4. Ms. Filla confirmed with Mr. Joseph there will be 96 units in the four and five story buildings.

A motion was made by Councilmember Gill to pass the ordinance rezoning; seconded by Councilmember Rasmussen.

Councilmember Gill referred to the letter received from Mr. Kerr and stated it concluded the right sentiment and point. He noted the last paragraph: "Today quality development and successful outcomes depend on the developer doing what he commits to do, as well as the City honoring its legislative and entitlement commitments."

Councilmember Gill went on to further note that twenty years ago, zoning was put on this property before there was any development there and before anyone on this Council was involved. It proposed 222 units, which presumably was a developable plan. Currently, it is proposed for 292 units. The 20 year old plan was subject to sunset and would have gone away if it had not been for the developer requesting to extend it.

There was a commitment made by the City and the developer in technical parlance; it's called stipulations. There were stipulations made that were conditions of an approval. One of these stipulations was a traffic study, which was not done; however, subsequently got done. Another stipulation expressly made was there would be a top plan brought to Council. The original plan was brought back and was subsequently referred to as an inferior plan by representatives of the developer. No one seriously challenged the inferiority of the plan. One of the top real estate attorneys in the City on behalf of the developer told the City if they didn't like the plan, they could rezone it. The advice given to Council has been faced with deadlock and failure to honor commitments. Density has always been the big issue and there has been no movement from 292 units, although at one point 222 units was a developable plan. Public safety is also important and this newer plan doesn't accommodate for that.

Councilmember Gill stated he was in favor of this proposal and in terms of commitment, felt an obligation to do what was in the best interest of the City.

The motion to pass the ordinance carried following a roll call vote of 7-1. Yea: Councilmembers Gill, Rasmussen, Peppes, Rawlings, Bussing, Azeltine, and Cain. Nay: Councilmember Filla.

ADJOURN

There being no further business, Mayor Dunn adjourned the meeting at 8:30 P.M.

Debra Mansfield, CMC, City Clerk

Pam Gregory
Recording Deputy City Clerk