

# City of Leawood Planning Commission Minutes

February 20, 2007  
Meeting - 6:00 p.m.  
Leawood City Hall Council Chambers  
4800 Town Center Drive

CALL TO ORDER/ROLL CALL: Henderson, Roberson, Jackson, Conrad, Rohlf, Munson (absent), Williams, Elkins (tardy), Reynolds (absent)

APPROVAL OF THE AGENDA: A motion to approve the agenda was made by Roberson and seconded by Williams. Motion approved unanimously.

CONTINUED TO THE FEBRUARY 27, 2007 MEETING:

**CASE 01-07 CAPITAL IMPROVEMENTS PROGRAM** Request for approval of the Capital Improvements Program for 2008-2012. Public hearing

**CASE 11-07 VILLAS OF HIGHLANDS RANCH** Request for approval of a revised preliminary plan and final site plan. Located north of 138th Street and east of Chadwick. Public hearing

CONTINUED TO THE MARCH 13, 2007 MEETING:

**CASE 08-06 LDO AMENDMENT - SECTION 16-2-9.2 NON-RESIDENTIAL USES** Request for approval of an amendment to the Leawood Development Ordinance. Public hearing

**CASE 09-06 LDO AMENDMENT - SECTION 16-3-9 DEVIATIONS** Request for approval of an amendment to the Leawood Development Ordinance. Public hearing

**CASE 04-07 ST. MICHAEL THE ARCHANGEL** Request for approval of a final site plan. Located north of 143rd Street and east of Nall Avenue.

NEW BUSINESS:

**CASE 03-07 SIENA** Request for approval of a final plan and final plat. Located south of 137th Street and east of Mission Road.

Rohlf stated staff will not be making a presentation tonight in regard to this case.

**Applicant presentation:** Presentation by Larry Winn. There is something here outside your normal deliberations concerning final development plans. Staff has decided that the existing zoning, which is consistent with the existing master plan, does not meet their favor. Their main contention is that the area in and around this currently zoned project has somehow changed. He would agree, if the definition of change is that we have gone from soy bean fields to some kind of development. He has looked at the projects that have been approved and those being developed in the area and there has been no change between the projects either approved or now constructed as visualized in the master plan. There have been no attempts by the City to change the master plan, with respect to this property, or to change the zoning. The property in question has been zoned for more than 20 years for apartment homes. The current zoning and the preliminary plan for which the zoning is based is valid and remains in place tonight. The only issue that is before the Commission tonight and should be discussed tonight is the compliance of the final plan with the previously approved preliminary plan. The Commission should not get caught up with staff's preference because it is not relevant as to why the Commission is here tonight. The LDO states a final development plan that contains minor changes or no changes to the plan may be approved by the Planning Commission and the Governing Body without notice or hearing. A final development plan that contains substantial changes may only be approved upon submission of a preliminary plan. That is not the case tonight. The ordinance then goes on to define the changes as to use, density, FAR, structure size, traffic or other change that is not identified as a minor stage and any changes that are materially contrary to the intent of the approved preliminary development plan. It is at the preliminary plan stage that the Commission is directed to consider the following: whether the development is designed, located, and proposed to be operated so that the public, safety, health and

welfare are protected, whether an identified community need exists for the proposed use, whether the development will impair the use, enjoyment and value of the neighboring properties, and the degree of harmony between the proposed development and the surrounding neighborhood. The fact that these criteria are listed in the preliminary development plan consideration section, but not the final development plan consideration section, shows the intent in the code is to make these determinations during preliminary plan approval. Further, the LDO states the approval of a preliminary plan shall be an act of rezoning. A final development plan is intended only to provide additional final details or minor changes, but otherwise shall comply with the approved preliminary plan. The plan before the Commission tonight is not just substantially compliant, but is exactly the same. The only change made is that during the five years of the rezoning being approved, the ordinance changed. They do have to comply with items that have changed since the rezoning and they have done that tonight. Rathkopf Law of zoning and planning states, "where there is approval of a preliminary plan a final plan conforming thereto and setting forth all of the information required endorsements of approval by other departments required by the planning act and other local rules and regulations, the final plan must necessarily be approved." The plan before the Commission tonight incorporates all of the rules of the current ordinance. At some point there was a focus group put together and someone in the focus group suggested they did not like apartments. Due to that, staff believes that Council does not like apartments. He does not believe anyone on the Commission was part of that focus group.

Rohlf stated she was part of the group. Winn's recollection of it is not accurate. It was a more formal group. Winn stated if a policy decision was made in a focus group that the City does not like multi-family for some reason, then that should have been promulgated by this Planning Commission. This Planning Commission is designated by state statute as the primary moving force in land use considerations. If that has become the policy of the City then the Planning Commission should have been involved in it.

Winn stated anyone in this area seeking to buy a home, construct a condominium, or anything done at 135<sup>th</sup> and Mission over the last 20 years, took notice of this zoning. There was no surprise. If someone were to call the City and ask for the zoning of 137<sup>th</sup> and Mission they would find out it is zoned for multi-family. Another question is how the City can strip away someone's zoning. There has not been any decrease in density. There has been a substantial increase in density. If there is something that has materially changed and whatever the focus group found, there are two ways to remedy it. This City can initiate a rezoning on its own. It has that right. If there was a huge change in the area and a certain type of project is deemed to be not appropriate then the City can file an application and change the zoning. The second thing to do is if the master plan is no longer appropriate, then have public hearings and change the master plan. The City has not done that and he feels it is because there is no need to do it. Multi-family in this area is a classic land-planning transitional use from everything that is occurring along 135<sup>th</sup> Street and to the south. Mr. Oddo owns all of the land from 137<sup>th</sup>, along Mission Road all the way south to the homes in Siena. When Oddo came in for the Siena project, he showed a site plan that had this as a multi-phased project. He can assure the Commission that if the Oddos believed that the City planned on stripping away the zoning for their multi-family that has been in place for 20 years, they would not have submitted a plan to show those large lot single-family homes to the north. They could have had the same infrastructure cost as the large homes that are down there. They did that because they had the increased density to the north. There is some real financial damage there because the Oddos believed they could construct condominiums. The Commission needs to look at this plan's compliance with the preliminary development plan. The ordinance has changed in some instances. There is some discussion about roofing and exterior materials and wall packs. Those are open for discussion. It is extremely important that the Commission does not get caught up in this and change a process that is well established. Land use is not a science, it is an art and it is sometimes not very pretty. If we all stick with the process, the process works.

Presentation by Bill Preloger, architect with Nearing Staats Preloger and Jones. The plan before you is essentially in conformance with the preliminary plan that was approved by the Governing Body in April of 2001. There are some minor changes incorporated in that plan with the intention of bringing the plan into compliance with the current RP-4 zoning ordinance. Attached parking garages have been added. They removed some surface spaces from the adjoining drives. The second change is that the trash enclosure is now attached. They are using a single trash enclosure with a trash compactor. It is attached to the club house in a way that the applicant believes is in full compliance with the requirements of the ordinance. It would be the one trash receptacle for the entire site. It is attached with a covered portico. The walls will be concrete block veneered with stone. The walls are high enough to fully-enclose the trash compactor.

Conrad asked if the club house was part of the originally approved preliminary. Preloger stated it was part of the approved plan and was in the same location. The only change is the addition of the trash compactor.

Preloger stated the third change was a slight adjustment of two to three feet in the location of a few of the buildings. This was done to bring the distance between the buildings into compliance with current requirements. The landscape plan has been prepared and is in conformance with current requirements. In regard to staff comments on page four, titled "performance standards", staff seems to be dwelling on the density of this project and their belief that it may not be in conformance with the ordinance requirements. It states, "A deviation was granted at the time of the preliminary plan application process." That was actually codified in the 34 stipulations that were attached to the preliminary plan approval. The density is exactly the same. The land area dedicated to RP-3 and RP-4 uses is exactly the same. The number of units in those two categories is exactly the same as the preliminary plan. There is no deviation in this plan

from the approved plan, nor from the stipulations given by the Governing Body as it relates to density. There are some comments regarding the elevations. "The clubhouse is shown as constructed primarily of stone and in discussion of the apartment buildings and the club house there is reference to stone veneer as part of the plan." Further, staff draws attention to this issue again and states it would be their preference to have 40% stone and 60% stucco on these buildings. Stipulation 31 of the approved preliminary plan states, "Buildings will have at a minimum the following ratios of use of exterior materials. As a whole, the project will have exteriors of a minimum of 4% stone and 96% stucco." The apartment buildings have 11.5% stone as depicted and the majority of that is on the front elevations, where it has the most impact for people driving around the project. The duplexes have 40% stone, taking the entire exterior elevation into consideration. The clubhouse has 40% stone. The ratio has dramatically increased as compared to what was required at time of preliminary.

Jackson asked if the ordinance has changed since the preliminary plan was approved. Preloger stated there is no ordinance that regulates the percentage of stone to stucco.

Preloger stated staff made a comment that the roofs are proposed to be constructed of composition shingles and they make reference to Tamko Heritage II. This roof is a class A roof. It is an architectural laminated shingle roof. As such, it fully complies with the City's ordinance requirements for roofing materials on multi-family developments. On page 5 of the staff report, there is a section that covers lighting. Staff has made mention that wall pack light fixtures are prohibited by the LDO. The applicant agrees to use the fixture shown on the front of the apartment buildings, in lieu of the wall pack lighting shown affixed to the duplex garages. He believes making that change would eliminate the concern of staff in regard to wall packs. On page 6, in regard to density, since the preliminary plan was approved in 2001 they have not made a change in density on this project. Everything is exactly as approved by the Planning Commission and the Governing Body in 2001. Staff is not supportive of this plan. They state, "The character of this neighborhood has developed in such a way that it no longer appears to justify this use and staff would recommend a different mixture of housing units within the development." They strongly believe in the concept of transitional units. Higher density should transition to medium-density and then to lower-density developments. The Leawood Commons development is substantially more dense. That development created a change to the ordinance to allow for substantially more density, had that been developed as previously zoned. Staff has commented that there are gates. That is correct. This is a gated community and the streets are private. The type of tenant that they anticipate attracting is the type of tenant that requires this additional security in their community. Their anticipated tenant mix is of semi-retired or retired persons who own properties in other parts of the country. They prefer to live in a place where they can leave their units for a significant length of time and know that their property is more secure by the installation of the gates. The applicant understands there is a public safety concern. These developments have been done in many other communities and there are a number of methodologies so that emergency vehicles have ready access into the development. They are employed in many different developments throughout the country with no impedance of life-safety vehicles.

*Elkins arrived.*

Conrad asked if the preliminary plan had a gate and fence. Preloger stated, yes.

Roberson asked why this community should be an exception, given that this City has repeatedly discouraged gated communities. Preloger stated he does not believe it is an exception. He believes it is consistent with what the City has done in similar circumstances. Roberson asked for an example of another gated community in Leawood. Preloger stated Edgewood. Roberson asked when it was built. Preloger stated about 10 years ago. There are other gated communities in the City.

Preloger stated on page 6 of the staff report, staff refers to several other details that are not appropriate. Staff mentions the composition shingles. They say the material is recommended for single-family dwellings and not commercial, multi-tenant apartment buildings. Article 2, page 51, of the ordinance has considerable discussion for all buildings except single-family residential. Page 52 has a listing at the bottom of the page of roofing safety and performance standards and lists recommended materials. Page 53 makes reference to synthetic shingles and page 54 lists the laminated composite shingles meeting the following standards and there is a list of twelve standards. The last of which states that it needs to be class A fire-rated material. The roof they are proposing meets the criteria set forth in the ordinance for laminated shingle roofing product. He believes it is an erroneous statement that the roofing materials proposed are not in compliance with the ordinance. Staff is not supportive of the amount of stucco proposed on the buildings. Staff has a recommendation of 40% of natural material be used. It may be a recommendation, but it is not part of the ordinance. They have increased the amount of stone from what was required in the stipulations when this preliminary plan was approved in 2001. Staff comments state that generally all trash enclosures are required to be screened from public view with a 6-ft. solid masonry structure with materials to match the buildings and shall be architecturally attached directly to the individual buildings and accented with appropriate buildings. "Directly attached" shall mean that the interior wall of the trash enclosure shall be a shared wall with the main building. The gates shall be a sight-obscuring painted decorative steel. Ordinance 16-4-1.4 states, "Architecturally attached structures shall be allowed only when the accessory structure is connected to the primary structure with a minimum 10-ft. wide structure, such as a

breezeway, pergola or other similar shade-type structures constructed of similar materials to which it will be attached. The accessory structure and the primary structure shall not be more than 15 ft. apart measured from the exterior wall of the accessory structure to the exterior wall of the primary structure. Fences, decks, awnings or other types of non-compatible or non-shade type structures shall not be used to provide the necessary connection referenced above." The trash enclosure has been connected with a breezeway roof made of the same materials used on the clubhouse. It is less than 15 ft. to the primary structure and is in full compliance with the ordinance requirements. The next bullet point is regarding the wallpack lighting. Those will be replaced with the type A lighting fixture that seem to be approved by staff. In regard to staff's comment that there is not enough detail on all community amenities. They have not submitted a picture of the benches that they plan on installing in some of the amenity areas. They would be happy to submit a picture of the benches that they plan to install prior to installation. There is a comment regarding the lighting fixtures. They submitted a catalogue cut sheet showing all lighting fixtures they plan to use. In regard to staff's comment about a tree inventory not being submitted, the site of this proposed development was a Christmas tree farm and there are a number of Scotch pine trees. Many of them have been used to help landscape Oddo's developments and will continue to do so here. If the tree has any value as a landscape item, it will be transplanted and used. This is exactly what was done with phase one for Siena. They carefully removed the existing trees and transplanted them for street trees and back yard areas of the homes sites. That development now has many trees that are 25 and 30 ft. tall. They took a number of those trees to construct and landscape the berm along Mission Road extending from 137<sup>th</sup> Street south to the fence that encloses Oddo's current family homes. Stipulation 18 states, "A minimum 3-ft. tall berm shall be constructed along Mission Road and future 137<sup>th</sup> Street for the duplex and multi-family. This has not been done." That berm has been constructed and has been in place for about three years for the entire length of Mission Road for this property. That berm and landscaping also extends along the south property line and is in place. They will also be berming the area along 137<sup>th</sup> Street with landscaping just as they have done along Mission Road and the south property line. It does not seem appropriate to do it along 137<sup>th</sup> Street until they know what is going to be done there. The berm that has been built is substantially higher than the 3-ft. required.

Presentation by Rick Oddo, president of Oddo Development. He is very surprised to be standing here tonight. He would have expected this to be on the consent agenda because it is the exact plan that was approved by the City in 2000. He is here because staff is recommending denial of this project, alleging that changes in the neighborhood have occurred and they no longer meet the Golden Criteria. The master plan has not changed. This would be required for them to not have met the Golden rules. The developments to the south, east and west have not changed. The only development that has changed is to the north. It has quadrupled in size and gone from 5 stories to 7 stories. The plan before the Commission tonight is the exact plan that was before you in 2000 with no deviations except to meet the revised building codes. There is no legal precedence to deny a current plan within its sunset period. There are two reasons for a sunset clause; first, the developer knows his plan is good for that time frame and can spend money and resources towards that project, second, after the sunset is expired, the City can reexamine the plan to see if it still fits the community. The City cannot change its mind in such a short time frame. What type of City makes commitments to its residents, developers and land owners and does not keep its commitments? In 1988, his father, Frank Oddo, had the north third of his property zoned for apartments. Staff has stated that nothing has happened since that time and that this is reason for denial. The proper order of things should be as follows: (a) create a master plan, (b) design an infrastructure around the master plan, (c) build the infrastructure to meet the master plan, and (d) the developer will then build the vision of the master plan. The infrastructure for the storm and sanitary sewers has not been installed or was not installed until 5 years ago when Tuscany was built to the east. Mission Road, between 135<sup>th</sup> and 137<sup>th</sup> Street has still not been improved. In any other City they would not be allowed to begin any type of construction until the streets are built or the storm and sanitary sewers are installed. To say that they have done nothing since 1988 is an inaccurate statement when the infrastructure is not in place. Plus, it has been a working farm the entire time. Kansas does not penalize land owners for maintaining working farms. In 2000, he gave a three-phase plan to the City that had very large single-family lots on the south end. Those lots are double the City's requirements. The second phase is the condo/apartment and twin villa community on the north side of the property – the one we are discussing tonight. The third phase is to have several extra large estate homes in the middle. Staff says that this development has consistently increased its density with each application. That is a stretch of the facts. In 2000, they went from 220 units to 292 units, but that was in exchange for building very large lot homes in phase one and three. Now that phase one is complete, the City cannot take the density or zoning away. That is how planned communities work. There is lower density on one end and you give it on another. They are not asking for more density this time. They have not changed anything on the three-phase plan given to the Commission in 2000. They said they would get started on phase one upon approval, and they did. They are going to start the second phase, the apartment/condos, when the market is ready and it is now ready. He clearly stated, for the record, in 2000 that he needed 137<sup>th</sup> Street to be installed and Mission Road to be improved from 135<sup>th</sup> to 137<sup>th</sup> Street, by the City. At the time the City planned to improve Mission Road in 2008. That has now been revised to a later date. It is almost 2008 and the market is ready for this community and he is ready to build it. He made a promise not to have any condo buildings or apartment buildings taller than the neighboring homes and he plans to keep the promise. Another reason for staff's denial is that Scott Lambers has asked him to build four-story buildings in the center, increasing their density, and he told Lambers that he promised the neighbors in Leawood Meadows and the families that he sold lots to in Siena that he would not build anything taller than two-story in the front and three-story in the back. He was told by Lambers to tell the residents that Lambers is making him build taller buildings. He does not believe in breaking his promise even if the City says it is okay. In 2000 the City of Leawood made a commitment that said his preliminary plans would be good until 2006 and extended one year to

March 31<sup>st</sup>, 2007. That promise was broken when staff had a leadership change. You cannot break promises every time there is a staff change. Approximately one year ago he submitted a revised plan that was very similar, but with a few improvements over the one seen tonight. Staff asked him to rescind the plan to see what would happen with Mission Corner. In exchange, he would receive a one-year extension from Mission Corner's approval. He was only given 6 months from their approval. He was led to believe that the City wanted to line up the entrances. He was told that it would be better for the City if he would let Mission Corner set the entrances and his development work around them. He was duped. Once Mission Corner was approved he was told that his current plans would not be approved by staff because the neighborhood had changed. As stated before, staff wants more high-rise, high-end condos in the middle of this site. Oddo does not want any more high-rises in the area due to the prior promises he made to people, also, there is no need for any more high-end condos. There are already 19 approved within Johnson County and many more on the drawing board. If this was going to be a high-rise it would be another 7 to 10 years before they could begin because there is no need for it. None of the neighbors to the north, east or south want more high-rises. This hearing is not open to public input, otherwise he would have filled this room with people saying that they do not want any more high-rises or density in the area than what is already there. He believes the owners of Mission Corner do not want any competition to jeopardize their success. This is an over prescribed product and is nearly impossible to get financing anymore. In the staff comments they say that this has the highest density in the City. Other apartment communities have 11.45 units to the acre. This development is 11.72 units to the acre. That equates to six additional units over the 23 acres. The same staff recommended approval of Mission Corner, which has 40 units to the acre on its 5 acres of residential. Plus, if you look at the site as one 28-acre lot with 292 units, combining the villas and the apartment/condo buildings, they have the lowest density of any apartment community in Leawood, at 10.9 units to the acre. They have designed these apartment/condos to be marketed toward the high-end apartment user at \$200,000 to \$250,000. The twin villas will be marketed at around \$300,000, or they will also be rented. If he sells them, he will probably do as Tomahawk Creek did, which was to lease the units and then sell in a few years. This will reduce the cost and time of construction because he can build them all at once. Nobody wants this to be a 7 year project. If he builds them as a condo project it would take 7 to 10 years to complete. That is not what the community wants. He has been told by City officials that they do not want that type of people in the City. He believes that statement violates a few fair housing laws.

He believes that every great community has all types of people and housing for all types of people. The people in his communities have an average household income of \$85,000. per year and are over 45 years old. It is not a college annex. The City needs to have affordable housing, by Leawood's standards, in the area for its workers to live in. They have a high percentage of residents that are divorcees and want to live within 2 miles of their children. He estimates that this population will be 25 to 40% of their community. Seniors typically represent 25% of their communities. As he understands, the Golden Criteria are only applied to rezoning. This is a final plan. Staff's first comment regarding the Golden Criteria is that the character of the neighborhood has changed since this plan was first contemplated and continues to change. Staff says the character of this neighborhood is mixed, including retail, office and high-end residential and that high density apartments no longer meet the character of the corridor. This is what was master planned in 2000. Development to the east and south is being built to the master plan. Nothing has changed. If everything is being built to the master plan, how can staff state that this no longer meets the character of the corridor? The second Golden criterion is the suitability of the subject property for use to which it has been restricted. Staff's response is that the current plan for this property is similar to the preliminary plan.

However, over the last 5 to 6 years the area has changed and the surrounding development has focused on high-end residential use and office and retail. Oddo believes nothing has changed in the community or the master plan, except that the development along 135<sup>th</sup> Street has increased in density and the area has always been high-end. Nothing has changed. The final Golden criterion is the time the property has been vacant. Staff's response is that the property was rezoned in 1988 and again five years ago and there has been no building on the land, further; the owner has not come forward with a final plan until now. Oddo stated the facts are that in 1988 they wanted to get it rezoned. The sanitary sewers and storms did not get completed until the last five years and the streets have still not been approved. This is a Christmas tree farm and they have been harvesting trees for over 20 years. It takes 10 years to harvest a tree and they are on the last cycle. Once those crops are pulled out of the ground, they will be ready to begin construction. They are still waiting for improvements on Mission and 137<sup>th</sup> Street that need to be installed by the City. Staff goes on to say that the character of the neighborhood has changed drastically, which affects the use that might now be appropriate for this property. Oddo stated nothing has changed except for the development to the north that is denser.

The fourth Golden criterion is the extent to which the removal of the restrictions will detrimentally affect nearby property. Staff's response is that it is not so much a question of restriction removal, as it is about allowing high-density apartments to occur in this location in light of the high-end residential property surrounding the area. Oddo stated there are 7-story buildings, 89 ft. tall, just a few hundred feet from this. To say that these are not the right density is a real stretch. He was asked by staff to increase density in the center of this property. The fifth criterion is the gain to the public health and safety due to the denial of the application as compared to the hardship imposed, if any, as a result of the denial. Staff has responded that the hardship imposed as a result of denial of the application is minimal. Oddo disagrees. If this does not go ahead now he will be impacted by over a million dollars a year in income. Staff further states the applicant has indicated that they do not intend to build on the property until the persons currently residing on the Oddo tract vacate the tract. This

is because the current Oddo owners do not wish to look up the apartment complex. He does not know where staff received that information. This is blatantly untrue. And even if it were true, it would have no legal bearing on the case. He is submitting for final approval now and he intends on starting construction when Mission Road is widened and 137<sup>th</sup> Street is installed. He has a hard time constructing his entrance on 137<sup>th</sup> Street when the entrance has not been installed yet. Staff also states the gain to public welfare is higher in requiring a plan to come forward that will better match this area in character and density. Oddo finds it ironic that staff does not feel the density is right when he has been asked to build four-story buildings over garages and given the density to the north. Staff wants to increase it and not lower it. This City needs to be a City that stands by a commitment. Developers need to know that when they have a preliminary plan and they submit a final plan within its sunset period, it is going to be accepted. He hopes City Council approves this plan so that he can keep his commitments as promised.

Rohlf stated she feels it is most important to start with questions to the architect. Even without the history presented tonight, she is concerned about the number of comments staff has about this plan from a final perspective. There are some specific recommendations that the applicant has chosen not to accept. She would expect a lot of this to be worked out. She asked the Commission to start with specifics relating to stucco and lighting, and final plan issues.

Henderson stated, in respect to Oddo's anticipated clientele, there are other communities in Leawood that have a high percentage of single owners and none of them, to his knowledge, have asked for a gated community. He thinks that Oddo's comments about this community needing to be gated are more imaginative than factual. He thinks that sort of appeal is not the Commission's concern. The Commission is not the economic engine for the applicant. The project went from 220 to 292 units. That is a change. Winn stated this project was approved with 292 units and it has 292 units. There were historical changes, but there has been no change since 2001. In regard to the gated community, if the Commission does not want it to be gated, they could do what they did in Leawood Forest and put a checkpoint type of area so that if someone could physically be there or not be there, it gives the impression of a secure community. They would offer that as an alternative. Preloger stated when the zoning changed from 1988 to 2001, the land area changed as well. The density did not change appreciatively. The number of units went up but so did the land. In regard to demographics, one of the things he has noticed is that the development and architectural community has responded to the marketplace as they perceive it and as it is validated by the people who buy the products they are offering. One of the things that has happened in the development community is that we have moved away from "one size fits all" because we now have ways to measure demand for certain products. He would not contend that every divorced person wants to live in a gated community. It has been his observation that those communities targeted towards the 55-plus age group gravitate towards a more secure environment. One reason is because they don't feel as physically capable of defending themselves. They are also more mobile and do not own just one home anymore. The tendency is to be gone longer. There is a huge desire on a significant part of the population to maintain a home in the Kansas City metro near their family, but have it in a secure environment where they feel comfortable to spend time away from their homes. He would never contend that it is universal.

Roberson asked if this is to be a purchased or rented product. Preloger stated they are developed to start as rental and then purchased. This is a very successful methodology to get it all done at one time. Winn stated they will be platted as for-sale condominiums. Preloger stated this is not a new concept. It is not unique to Johnson County. Henderson asked if they are differentiating between townhomes and condominiums. Preloger stated, generally speaking, in a condominium the buyer purchases the air space within the living unit. The building structure is owned in common by the condominium association. Townhomes are generally regarded as a fee simple sale from the ground to the sky.

Conrad asked if Tomahawk Creek condos are gated. Preloger stated, no. Conrad asked if the City ever pursued the construction of safe storm areas in its ordinances. Lambers stated Cottages of Lakeshyre proposed slab on-grade and he objected to allowing that. Council required that some sort of basement needed to be provided. Winn stated they came in with a concept that would have met the safe-room standards, but he does not believe the project has been developed. Lambers stated, typically, there is a common shelter. Conrad asked if there were any ordinance requirements for a safe place for the residents. Lambers stated, no.

Jackson asked the applicant to describe the material board. *Preloger described the materials board.* On the apartment buildings they are about 11.3% stone on one type and 11.7% on another type. 40% of the surface area viewed from the street is covered with the stone veneer. The duplexes back up to Mission Road. They placed stone along the back, sides and fronts of those buildings. The club house has stone on all four elevations at various locations. They have shown three different stucco samples and will mix and match these throughout the development so that they are not all one color. Winn stated Tomahawk Creek has a substantial amount of wood siding. Everything with this development is stucco or stone. Jackson stated the Tomahawk Creek condos are about 50% brick. Oddo stated unlike most developers, they use 8 or 9 different combinations of paint colors so that the buildings do not all look the same.

Henderson asked if all of the roofs would be the same color. Preloger stated, yes. The shingles are made up of different colors. Henderson asked the name of the color. Preloger stated it is called weathered wood. Oddo stated a 30-year roof is typically the

standard. They are proposing a 40 or 50-year so it will be a better quality of roof. Henderson stated there are many places where 40-year roofs are being replaced within 20 years. Roberson stated according to staff composition shingles are not allowed, yet the applicant says that it is. Bennett stated there is a list of actual manufacturers and names of roofing materials that are approved by the City. Those have to meet the requirements of the ordinance. Staff's concern was looking at some other projects in the City. Roberson asked why the architect would recommend it if it is not approved. Preloger stated he did not know that it was not approved in Leawood. His company deals with national standards. It meets all of the criteria listed in the City's ordinance for laminated composition shingles. Roberson stated if it is not on the approved list for Leawood then he is surprised that the applicant is requesting it. Preloger stated he would be willing to use another approved material with the same color and specifications. Williams asked if another issue is the use of a residential product on a multi-family or commercial project. He is supportive of the applicant's comments about the roofing, but it is an issue as to whether or not it is a material that should be allowed for this type of project.

Williams stated, in looking at their elevations, he does not have a problem with the ratios they have presented for exterior materials.

Preloger stated they have carefully considered every recommendation that staff has made. Some of them do not fit with how they envision developing a community. In every instance, they have attempted to fully comply with the City's ordinances. They have made every effort to comply with the unique requirements established in the 37 stipulations of the preliminary plan. In many instances they have improved upon the requirements called out in the stipulations. Though the staff is making recommendations, those recommendations are not defined anywhere in the zoning ordinances. The fact that they may not have fully complied with staff's subjective views on what they would like to see in this project does not mean it is not approvable, it just means that we have a disagreement with differing points of view.

Henderson asked if the streets in the southern part of Siena are private or public streets. Joseph stated they are public. Henderson asked why they are using private streets in this northern portion. Winn stated they will be constructed to public street standards. Henderson asked if the Oddo development has done private streets in the past and how they are maintained. Oddo stated all of his commercial properties have common drives and he has done residential private drives since 1983. They always maintain their properties. Henderson asked if they plow their private streets. Oddo stated, yes. They also resurface the streets as needed. Henderson asked how the funding is done. Oddo stated the customer pays with their homes association dues. Winn stated he has been involved in a dozen of the private street developments and most of them never collect a reserve for the overlay of the road. In Oddo's case, they collect money for a capital reserve fund. Henderson asked who monitors the homes associations to make sure they are saving money for such projects. Oddo stated the mortgage company and the customers will make sure that the funds are kept up. If and when he turns it into condos he will make sure that a fund is set up to do the necessary maintenance. Henderson stated he is still not sure why they went from public to private streets. Preloger stated the grade distinction has to do with the marketplace. Those with public streets are not gated communities. Phase 2 of this development is targeted to a different market. The City of Leawood will not allow a gated community to have public streets. If the public cannot drive on them, then they are private. Those tenants are willing to pay a certain amount of money per month for that service. This demographic is looking for this service to be provided for them and they are willing to pay the price to have that accomplished. They are generally professionally managed and establish the budget each year. Henderson stated he cannot put professional management into private to public streets and Preloger should not use that as a marketing device.

Conrad asked if these were shown as private during preliminary. Preloger stated they were shown as private.

Rohlf asked if the applicant is aware that the developer is responsible for the public improvements such as widening of roads and signalization. Winn stated all of the private owners are responsible for the street adjacent to their project. Oddo was not suggesting they were waiting for the City to build 137<sup>th</sup> Street. That will need to be built in combination with the people of Mission Corner and Mr. Oddo. That is a funding issue, but the responsibility belongs to the private sector owners on each side of a street. 137<sup>th</sup> Street is a collector street and the ordinance holds those developers responsible. Preloger stated the stipulations are clear on who has the responsibility of getting those roads done. Rohlf stated she understood Oddo's comments earlier as stating that he was waiting for the City to finish Mission Road. Oddo stated Mission Road is an arterial street. Rohlf stated she believes that is not to be widened until 2011.

Rohlf stated the City's position has changed over the years in regard to gated communities. She then asked the applicant if they would still build this if the gates were not approved. Winn stated they would prefer to have it gated. The City's preference is to not have a gated community. If that is an issue to the Commission and your preference is not to have a gated street, the applicant will agree to not gate the street. They will probably construct a device that would give the appearance that there is some form of security. They would deal with it in an alternative manner if that is the Commission's consensus.

Elkins asked for more detail on the situation of the roads being developed. Winn stated the center line of 137<sup>th</sup> Street is between the Oddo property and the Terra Venture property. Some cities would make Oddo responsible for the south half and Terra Venture for the

north half. Leawood makes both parties responsible for both halves. They sit there conflicted about who is going to start. If Terra Venture wants to start, it would need to build both sides of 137<sup>th</sup> Street and Oddo would save half of the cost. As a practical matter, those adjacent property owners need to get together and agree how they are going to divide up the cost of the street. That has not changed in this City within the last five years. Elkins asked if Oddo is waiting on anything from the City in order to get construction started. Winn stated he would need to coordinate the building of the street with Terra Venture. Oddo stated Mission Road is the responsibility of the City. Winn stated he is not as worried about Mission Road. He would assume that Mission Road would get moved up in the CIP once the projects are developed around that area. Elkins asked if this plan complies, in all substantive respects, with the preliminary plan that was approved in 2001. Winn stated, yes. It is at least in substantial compliance, if not exact compliance. Elkins asked if the preliminary plan stipulations are being upheld with this plan. Winn stated staff pointed out two stipulations that staff believes may not be in compliance. The berm on 137<sup>th</sup> Street will be completed once 137<sup>th</sup> Street is installed. He will stipulate that on the record. In regard to the tree study, the only trees that are out there are the Christmas trees and those will be transplanted.

Roberson asked when the applicant plans to begin construction and when construction would end. Oddo stated he plans on starting when 137<sup>th</sup> Street gets improved. He would like to have had Mission Road improved to 137<sup>th</sup> Street. Roberson asked if they are waiting for the road construction before they begin. Oddo stated they were waiting for the streets to be constructed originally because it was allowed within the sunset clause. Now that this is an issue, he will begin construction if that is the wish of the City. He is ready to get started. Winn stated Mission Corner could begin construction without 137<sup>th</sup> Street being built and still carry traffic from 135<sup>th</sup> Street. There is no way that Terra Venture or Oddo can begin construction until 137<sup>th</sup> Street gets built. Roberson asked the process of how 137<sup>th</sup> Street will get built. Preloger stated the private developers would come to an agreement and those plans have to be submitted to and approved by the City's public works department. Roberson asked if Terra Venture has agreed to pay for half of the street. Winn stated they have to. They are already out doing site grading. Roberson asked for the timing of 137<sup>th</sup> Street. Winn stated he would expect the construction will happen in 2008. Roberson asked if that is consistent with what the City is expecting. Winn stated 137<sup>th</sup> Street was created to be a reverse frontage road. It does not do any good to have one segment done and not the other. It needs to go from State Line to Nall. Lambers stated the private developers would determine the time frame for the construction of the street. Mr. Oddo's project cannot be completed until 137<sup>th</sup> Street is built whereas Mission Corner has access off of 135<sup>th</sup> Street. Terra Venture is obligated to pay for their portion of the road. It is in their stipulations of approval. The City does not put a time table on that unless traffic was to begin to be a problem. Roberson asked how long this final approval would last. Lambers stated five years.

Henderson asked how this entry would compare to Siena to the south. Preloger stated his firm designed the entry and fencing for Siena and it fully complies with the City's sight triangles. They do not have any entry off of Mission Road. They would emulate the style as used on the Siena single-family. The entire development will have consistency. Henderson stated the entry looks like stones from Scotland more than Italy. He is concerned the entries at 137<sup>th</sup> Street will be large massive structures. Preloger stated the designs have been submitted. They are using similar kinds of materials as used for the Siena single-family. The signage is similar. Henderson stated they look very heavy and high and there is none other like that on 137<sup>th</sup> Street. Preloger stated he believes there is a pretty substantial wall for Tuscany Reserve, on the south side of 137<sup>th</sup> Street.

Winn asked if Rohlf's questions have been answered. Rohlf stated she is still concerned with the gating issue and the product for the roof. She believes the other items could be cleaned up. The applicant has responded that they are willing to back away from the gated community. Winn stated he agrees with Williams on his explanation of the roofing materials. There are only four multi-family Class A projects in Johnson County. Two of them belong to Oddo and two belong to Amli. They all have roofing materials similar to that proposed tonight. There are a couple of apartment complexes by Spanos that have tile roofs and neither one of them is classified as Class A in Johnson County. There is more to classifying a development as Class A than just the roofing material. He is concerned about the idea that a developer is going to take 9 months to go through the system and hundreds of thousands of dollars to go through the zoning process, they come back a couple of years later and the City staff has changed their mind and said the land use is not permitted. The Commission should stick with the process that works. If there is some issue of change on 135<sup>th</sup> Street then they should change the master plan. You cannot take someone through the process and then change your mind. It would send a horrible message to the development community.

Henderson stated the Commission saw this preliminary plan six years ago and the applicant has received two extensions. That went beyond the process twice. We granted five years and nothing happened but a request to continue it. Winn asked what changes have occurred to make this type of land use no longer appropriate at this location. Henderson stated the City's opinion on gated communities is just.

Williams stated he does not see a change in the final plan from the preliminary that was approved, other than the changes to bring it into compliance with today's ordinance. Probably the biggest change might be how they are handling the trash compactor, but he does not see that as an issue. Regarding the gates, it has been the position of the City and this Body to not allow gated communities. In regard to the stucco and stone, in his review of the elevations, he believes they are fine and consistent with what has been done on other

projects. In regarding to roofing, it has been the City's interpretation of the ordinance that multi-family and commercial buildings do not use composition shingles. Concrete tiles or slate would be appropriate. The applicant has stated they will remove the wall packs with an approved replacement fixture, so that is not an issue. In terms of the tree survey, he appreciates the comments on the treatment of trees and would look forward to seeing more detail on how they incorporate them into the final plan. He believes they are in compliance with a final plan, short of a few details.

Jackson stated she is troubled by some of the comments made at this meeting. She would hope that a statement was never said that we do not want apartment dwellers in Leawood. Every community needs a great deal of diversity. The 135<sup>th</sup> Streets Corridor is laid out to entice pedestrian use. You need high density for that. An apartment complex adds that density and adds to the viability of that corridor. She thinks it is very appropriate for this area. It is very appropriate for Leawood to add more affordable housing. She hopes the City strives towards that end.

Roberson stated he is puzzled as to why there is so much adversity with respect to this project. This project started 20 years ago and is potentially coming into fruition. He is not convinced that this will be built any time soon based on the comments he has heard.

Elkins stated he practices in a profession where a great deal of the process is adversarial. He finds himself in the unusual situation that in this evening's presentation the Commission only had one side of the story presented. He has great respect for Mr. Lambers and Ms. Bennett. He is sure there are strong reasons staff chose to go down this path. He is troubled because he finds Winn's comments persuasive. When an applicant appears to be in compliance with the preliminary plan it is very difficult to see how we justify a change of heart. It seems to be within the process. On the other hand, he is troubled with the applicant's response as to when we can expect this project to start construction. A final plan is before us that complies with the preliminary plan that was approved. He wishes he had more in front of him to explain the change of heart.

Conrad stated he is not sure how to attach final stipulations to this plan if we are to vote for approval. Rohlf stated the Commission could suggest stipulations to the Council based on the conversations tonight. Conrad stated he would definitely stipulate that it not be a gated community.

**A motion to approve was made by Conrad to include the concerns mentioned tonight in addition to the development not being a gated community. Motion seconded by Williams.** Henderson stated he would be voting against it.

**Motion approved 5-1.** Williams, Conrad, Elkins, Jackson and Roberson for. Henderson against.

**OLD BUSINESS - REMAND FROM COUNCIL:**

**CASE 53-06 LDO AMENDMENT – SECTION 16-2-5.7 (RP-4 DISTRICT)** Request for approval of an amendment to the Leawood Development Ordinance.

**CASE 55-06 LDO AMENDMENT – SECTION 16-2-5.2 (RP-A5 DISTRICT)** Request for approval of an amendment to the Leawood Development Ordinance.

**CASE 56-06 LDO AMENDMENT – SECTION 16-2-5.3 (R-1 DISTRICT)** Request for approval of an amendment to the Leawood Development Ordinance.

**CASE 57-06 LDO AMENDMENT – SECTION 16-2-5.4 (RP-1 DISTRICT)** Request for approval of an amendment to the Leawood Development Ordinance.

**CASE 58-06 LDO AMENDMENT – SECTION 16-2-5.5 (RP-2 DISTRICT)** Request for approval of an amendment to the Leawood Development Ordinance.

Lambers suggested opening the public hearing since this was noticed to the public and then continue these cases until Council has had the opportunity to discuss the issues of height and massing.

**Staff presentation:** Presentation by Scott Lambers. City Council felt the provision that was in place created a series of problems and felt that perhaps a different position of measurement would be in order. Council directed Lambers to take the measurement from the highest point in front of a house and go up 35 ft. That is not a recommendation to the Commission, but it gives the Commission a starting point to think about how this is to be done. At the City Council level there were serious concerns that the back could be 70-ft. tall. At least for now the City has agreed that the front measurement is what should be taken into account, and not the back. They did not

want to constrain the Commission from looking at all aspects of this issue. This meeting will give the public room to comment and then the Commission could discuss this at a work session. He believes the calculations he has been authorized to approve are sufficient to handle the requests coming forward right now.

**Public hearing:** Phil Perry, representing the Home Builders Association of Greater Kansas City. In discussions with builders in this area, he would request to raise the height to 40 ft. and measure from the top of the foundation. In today's market, first floors are typically 10-ft. ceilings and the second floors are 9 ft. You end up with a minimum of 36 ft. high from the top of the foundation wall. The reason they are suggesting the top of the foundation wall is because when the plans are brought into the City that is all that the plans examiners have to look at. There are no elevation details whatsoever. The top of the foundation wall is the one consistent thing.

Kirk Cornelieus, 11021 Glenview Lane. He is a custom home builder in Leawood. Most of his homes tend to be larger homes. He does home design as well and would like the Commission to take into account the different architectural styles. He thinks the size of some of these homes is driven by the consumer. In designing homes, proportion is everything. If you have a tall house, the roof needs to be even taller in order to get the proportion. He agrees with Mr. Perry. The only consistent measurement you could have is from top of foundation or top of first floor. That is the most consistent measurement. When the home plans are brought in for the City to review there is no accurate way to determine what the grade would be. 37 or 38 ft. is not uncommon. He has seen homes that have exceeded 40 ft. The homes in Mission Hills all have steep pitched roofs and proportion in common.

Lambers asked if the builders would be okay if the City were to put a maximum of 2 ft. for the foundation. Perry stated there has to be a minimum of 18 inches exposed by code. Lambers stated it cannot be more than 2 ft. His concern is that someone would put in extra foundation to get more height.

**A motion to close the public hearing was made by Henderson and seconded by Jackson. Motion to close the public hearing approved unanimously.**

**Henderson made a motion to continue these cases to May 22, 2007. Motion seconded by Elkins. Motion to continue approved unanimously.**

Meeting adjourned.

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Lisa K. Rohlif, Chair