

City of Leawood
Planning Commission Minutes

February 19, 2008
Meeting – 6:00 p.m.
Leawood City Hall Council Chambers
4800 Town Center Drive

CALL TO ORDER/ROLL CALL: Present: Shaw, Roberson, Jackson, Conrad, Rohlf, Williams, Elkins, Heiman.
Absent: Munson.

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

CONTINUED TO THE FEBRUARY 26, 2008 MEETING:

CASE 123-07 – AT&T SAI CABINET – Request for approval of a special use permit for an AT& T SAI cabinet, located south of 117th Street and east of Nall Avenue. **PUBLIC HEARING**

CASE 05-08 – ONE NINETEEN- GREEN EARTH CLEANING BUILDING A – Request for approval of a preliminary plan, final plan and special use permit, located on the southeast corner of 119th Street and Roe Avenue. **PUBLIC HEARING**

CONTINUED TO THE MARCH 11, 2008 MEETING:

CASE 09-08 - BI-STATE CENTENNIAL PARK DESIGN GUIDELINES – Request for approval of a final plan, located at 143rd Street and Kenneth Road.

CASE 81-07 - BI-STATE CENTENNIAL PARK – KIDDIE ACADEMY – Request for approval of a special use permit and a preliminary plan, located south of 141st Terrace and east of Overbrook, within the Bi-State Business Park Lot 20. **PUBLIC HEARING**

CASE 128-07 – BI STATE BUSINESS PARK LOT 17- PARS ENGINEERING BUILDING – Request for approval of preliminary plat and preliminary plan, located north of 143rd Street and east of Kenneth Road. **PUBLIC HEARING**

CONTINUED TO THE MAY 13, 2008 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 LEAWOOD DEVELOPMENT ORDINANCE AMENDMENT – SECTION 16-3-9 DEVIATIONS Request for approval of an amendment to the Leawood Development Ordinance. **Public Hearing**

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

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

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

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

CASE 73-06 LDO AMENDMENT – SECTION 16-4-5.10.1 (RP-2 DISTRICT) Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 58-06 LDO AMENDMENT – SECTION 16-2-5.5 HOME OCC. Request for approval of an amendment to the Leawood Development Ordinance. **PUBLIC HEARING**

CASE 66-07 LDO AMENDMENT – SECTION 16-4-5.7 PARKING LOT CONST. STANDARD. Request for approval of an ordinance to the Leawood Development Ordinance. **PUBLIC HEARING**

NEW BUSINESS:

CASE 19-08 SIENA – PHASE TWO Request for approval of a final site plan, located approximately at the southeast corner of 137th Street and Mission Road.

Chairman Rohlf: I ask that we can have some latitude both ways, if some of the commissioners might have what appears to be questions along the preliminary plan line. We will hopefully get through this without too many problems. Let's get started, and we will hear from the applicant, first.

Comm. Elkins: Pardon me, Madam Chairman. I think Mr. Patterson – who is counsel for the applicant – is aware of this, but just as a matter of the record, I wanted to note that I have been a partner of the law firm that represents the City in this matter, although my partnership terminated in February of 2003. I wanted to disclose to the applicant that prior relationship with Stinson, Morrison, Hecker exists, and after conferring with City's counsel, I concluded that it is not a matter that requires my recusal.

Mr. Patterson: And we would agree with that.

Comm. Elkins: Thank you.

Doug Patterson, 12712 El Monte, Leawood, soon to be 4630 West 137th, appeared before the Planning Commission and made the following comments:

Mr. Patterson: We are here tonight to give you a glimpse and summary of a project, why we're here, and an outline of the type of project we have and the residence. We're going to try to make it succinct, the package, and really not repeat some of the things you heard a year ago. First of all, I'd like to call upon Rick Oddo, President of Oddo Development

Rick Oddo, Oddo Development, 8460 Nieman Road, appeared before the Planning Commission and made the following comments:

Mr. Oddo: My address in Leawood is 2801 West 112th Street. We believe the plan before you is a much better plan than what was presented before. The neighbors should enjoy it, should prefer this plan, due to the fact that we have increased our setbacks on the east side of the property to 138 feet. We increased green space by seven percent. We still have the same number of units at 292 twin villa and apartments. Our finishes exceed all of the city standards, and as I will discuss, this community is still the best product for the area.

As you can see on the board over there, this was a three-phase community. We started off with Phase I, Siena of Leawood. Very large-lot homes, single-family lots, on the south side. The lots were double the minimum requirements of the city. We have since sold about 75 percent of those homes. The second phase is the condo apartment and Twin Villa Community on the north end of the property, the one that we're discussing tonight. And contrary to other statements, we have not increased our density. The City approved the plan in consideration of the single-family community to the south side of the property. The third phase will have extra-large-lot homes in the middle of the property. Those homes will sell between \$3 million and \$5 million. The project that is before you has got to be so nice that I will be able to sell \$3-5 million homes right next to it.

We have designed these apartment condos to be marketed as the highest-end apartments in all of Kansas City – a lot of granite countertops, and the highest of finishes. If and when we sell the condos, they will sell for between \$200-\$250,000; the twin villas will be marketed around \$300,000. If I sell them, I'll probably do it like Tomahawk Creek did; fill up [*inaudible*] in the beginning, and a few years later, we would sell off the units, if we were to condo it.

I think all of the great communities have all types of people, and housing for all of them. Not everyone can afford a half million to a million dollar home. This city needs to have affordable housing in the area for its workers to live. And it's affordable by Leawood standards; we're not talking about Section 8 housing.

We're going to talk about who these people would be. These are the same people who moved into Tomahawk Creek and bought their condos, people that currently live in Leawood. People in other communities, Bradford Point and Jefferson Point, the demographics there I think are very similar to here. Actually, I think the demographics would be even higher at this community. At the other communities, they average \$85,000 per year, and the average age is 45 years or older. The average income is \$85,000, but you only need \$45,000 to qualify for a one bedroom, so it is going to be housing for people who work in the community, as well as those who already live here.

So, who are these people? They are policeman, fireman, teachers, nurses of Leawood. Also city staff, executives, retirees who lived in the area. We have a very large demographic of seniors. Twenty to 25 percent of our communities are seniors over 60 years old. Approximately 40 percent of our residents are divorcees that want to live in a nice, affordable place within two miles of their children, hoping someday they will buy a home. The remainder are professional who want to live in a nice community within five miles of where they work, or where they plan a home. They typically buy their home within five years. We have very few families, so it's hardly any impact on the schools. Once again, I can tell you in the other communities, we only have five or six families that have children. That's why I believe we have very little to no impact on your schools. They also only live in our three-bedrooms; we have very few three-bedrooms in this community. In other words, these are the people who rent by choice, not by necessity. They are the parents of the people who live in Leawood, the divorced people who currently live in Leawood and want to stay in Leawood, and people who plan on living in Leawood someday. So I ask you, who wouldn't want these residents in their community?

Staff has suggested two other alternatives for this site. The first one is to have more high-rise buildings, high-end condos, in the middle of this site. I told them I didn't think this was a very good idea, for the following reasons. First, none of the residential communities to the east, west or south want more high rises. Second, I don't want any more high-rises in the area due to the promise I made to the people in the neighborhoods when I got the original zoning here, and with the people who I sold homes to in Siena; I promised them I would not have anything taller than their own homes, which is a two-story or two-story with a walkout. And I plan on keeping my promise.

Third, there's not a need for any more high-rise condos. There's currently 19 approved in Johnson County and none of them are doing well. Mission Corners don't want any more competition to jeopardize their success. And lastly, this is an over-subscribed product, next to impossible to get financing.

The staff's other recommendation is for this site to be single-family. If this would occur, I would take a huge financial loss. With the density of Mission Corners and three planned high-rises, one of which is 89 feet tall, it would be next to impossible to sell single lots to an original buyer. Would you buy a home overshadowed by an 89-foot-tall building? Therefore, I believe that the low-density residential is not viable.

I do want to make one very important point about the density. When city staff recommend the approval of Mission Corners, it added 107 units to the property to our north, Mission Corners. A traffic study was done. That is why staff said we do not have to do a second one because it would be a complete copy, and it had just been done for the area. When we did the traffic study, it had to take into account our currently-approved 292 units. Staff stated that the traffic study proved that density, traffic, and the number of units is not a concern, and nothing has changed.

The density and the use has been approved. The use has been in compliance with the master plan for the past 20 years. This site is listed as RP-4 on the current master plan. The plan is in compliance and really shouldn't even be relevant to the discussion tonight. I say that there is not a need for any more high-rise condos, and a single-family subdivision would not be viable with an 80-foot-tall building to the north. This is a perfect transition for the entire neighborhood, and therefore the best use for this site is still apartments. Since Siena of Leawood Phase I has been a beautiful asset to the city of Leawood, the next two phases will continue the vision and [inaudible] me in the implementation of my original plan. They, too, will be an asset to your community, and mine. It will be so nice that I will be able to complete Phase III and sell \$3-\$5 million homes. I've got the most at risk if I don't pull this off and give you the most beautiful community that the city has seen.

As I stated before, we [inaudible] all the criteria from the approved zoning, and this plan is much better than the plan we presented to you before. Therefore, I urge you to approve this revised settlement plan before you. Thank you.

Mr. Patterson: I thought maybe by way of some background, we would explain and understand why we're here and the entirety of this Siena project. Siena consists of an ownership of 80 acres, the first portion of which the single-family has been developed. This is the second part, the apartments and twin villas. As you know in 1988, the property was zoned from agricultural to the uses that are anticipated in this project. It was that 1988 zoning that sets the stage for the preliminary plan, which you approved and the city council approved in 2001. The Leawood master plan has been amended numerous times since 1988. All of the master plan changes and upgrades established and one by you all, as well as city council, have been consistent with that original 1988 zoning of this tract for multi-family.

In 2001, the applicant filed an application for preliminary approval, which really sets the stage for the final tweaking and final approval. In 2001, you and city council approved the preliminary plan, which contained 292 units, which were 272 apartments and 20 duplex units. Our final plan which, as you recall, was in all aspects identical to the 2001 preliminary plan, was considered by you all last year. The submission was delayed when Oddo submitted the final plan for this project. Staff requested that that application be delayed as a result of the finding of Mission Corners. Mission Corners, as you know, you all approved it approximately a year ago, consisted of 334,000 square feet of retail and office and multifamily. And as Rick said, the traffic study, which was suggested and presented to the City and approved as part of the Mission Corners development, included the 292 units of Siena that you have before you, later that year in the final plan, and that you have before you tonight. So, the traffic study of Mission Corners included our 292 units.

Commencing 2006, we submitted a final plan that was in all aspects identical to the 2001 preliminary plan, save six modifications. The six modifications, you might recall that you all looked at them last year, that the final plan made to the preliminary plan were staff-requested and LDO driven. There were things like, some of the buildings had to be shifted two feet to make way for some setback requirements. You recall back in 2001, you could have free-standing trash containers. Can't do that anymore, so we adjusted the plan to do that. We made certain changes on the enclosed parking as a result of the changes in the LDO from 2001 to 2005. Therefore, you all received, after Mission Corners was approved, you all received the final plan and considered the final plan for Siena on February 21st, and you approved it 5-1. Thereafter, it went to the city council, and on April 20th of last year, the city council denied it. They didn't remand it, and they didn't continue it for reconsideration, and they didn't send it back to you all on that remand; they denied it.

Therefore, I think the paper made us look like bad guys, but all we can do, the only tool we have to do upon the denial of city council, if we don't think that was the thing to do, is to go to Olathe within 30 days of that denial and ask a judge what he thinks of this. So, we did challenge and contest the denial in Johnson County District Court.

As you all know, there are some instances where final plan is the consent agenda item before the Planning Commission and the City Council. The final plan must be, in all aspects, in conformance with the preliminary plan, save staff adjustments, certain details, landscaping – those type of details that you only see on the final plan, but it can have no material or substantial deviation from the preliminary plan. And our final plan that you approved a year ago was compliant with that requirement. Therefore, we went to Olathe to ask a judge if he felt as if we had met the criteria in the LDO, which would have meant that the city council maybe could have said, well, you need to tweak it a little bit because, you know what they do; they say, well, the trees aren't that way, and we don't exactly like the landscape plan, we have some tweaks on it. But they shouldn't have denied it, and they did, and therefore, we did what we had to do.

Our judge, a very smart judge, I think all the lawyers involved in the case will agree to that, has done certain things. He scheduled certain procedures involving the case, and as a result of the consensus of all parties, my clients as well as the City's, we suggested and the judge totally agreed to mediation. Therefore, we were fortunate to find another judge in Johnson County District Court, Judge Kevin Moriarty, to mediate the case, and on December 7th, we met in his chambers, in his courtroom, to try and see if we couldn't mediate. That's a legal word for settle the case. We talked with Judge Moriarty for half a day. Various options were discussed, but at the end of that session, a settlement was not reached. Judge Moriarty called us into his courtroom and said, "You all should be so close. Here's what I want you to do." We had broken out into separate caucuses and he had heard what the City's concern was and he had certainly heard our side of the story. He said, "Mr. Oddo, I've heard you make some improvements to the final plan that's in court today, so put a settlement plan together that you would propose as settlement, that involves some concessions on your part, some changes. You've been in court; you've heard what the City is concerned about. File a settlement plan and go through the same procedures that you have to do under the LDO." The only thing he said was that, "City, I don't really want you to make a detailed staff report." I guess I'm kind of making the staff report for tonight on where we come from. Therefore, he said, "Go back and see what the City says on the settlement plan." So, we've kind of referred to this plan that you're going to see tonight as the settlement plan.

We were definitely very disappointed to understand that the staff recommendation was denial of the settlement plan, but that's what it was a year ago, and you voted in favor of the final plan 5-1. Let me kind of review what I see as the tools that you all have to consider tonight in deciding whether or not to recommend this settlement plan to the city council favorable.

First would be the master plan, the comprehensive plan. That's a tool. That's the platform that lays the way for your foundation of consideration of this settlement plan. And as I've said, the comprehensive master plan, which originated I think around 1988 when our zoning occurred, since that time has always had and designated this property as a use consistent with the density and the type of project you see in the settlement plan and that you considered last year in the final plan. One, the master plan; the comprehensive plan is a tool you have. That's the platform. The next tool you have is the zoning. The zoning on this property, established in 1988, is consistent with the final plan, it's certainly consistent with the preliminary plan of 2001, and is consistent with the final plan in the settlement plan. The third tool you have is the preliminary plan. It's kind of the rule of the road. If we deviate from that preliminary plan that was approved in 2001, you need to send us back for denial. But it is not inconsistent with that preliminary plan. It's identical to it, with the exception – as far as the final plan is concerned – of six LDO staff-driven changes, which we made gladly.

Those are the rules of the road that you have. Those are the three tools you have. That's the platform for your consideration. Yet, staff recommended denial. They did a year ago. But I understand, and in discussing it, we've heard the concept that the project is still too dense. Well, dense for a developer and planners is kind of a four-letter word. It means nothing, but when you dissect it, it means everything. To say something is dense means, really, I haven't thought much about it. I don't know the impact this development would have. But when you take the elements of density and break it out into its component parts, you can analyze any type of project and determine whether or not those component parts result in a bottom line that a project is dense or not dense.

So, let's take Siena apartments and Twin Villas. Let's not call it too dense or not dense enough; let's just break that word down into what it means, what I think it means, and what I think you all wrestle with when you consider plans. Let's talk about the number of units. The number of units hasn't changed; the number of units was 292 in 2001, there were 292 units in 2007, and there are 292 units in the settlement plan. The same number as the plan you approved a year ago. Compatibility, I think density can mean compatibility with surrounding properties. We have Mission Corners to our north, 334,400 square feet of retail office and multifamily. I don't think anyone disagrees that we're compatible with that use because that's retail and office. To our west, we have Bellagio. Both parts of Bellagio are 80 acres of mixed-use development, minimal retail. It's probably the largest mixed-used development along 135th Street that Leawood will see. Certainly we're compatible with that, if anything were a buffer for our neighbors to the east. To the south there's Frank Oddo's land, and that's going to be the third part of Siena. It's his home right now. To our east, we have Tuscany Reserve.

It sounds tiresome to say we were here first, we had zoning in 1988, we had a preliminary plan in 2001. But we were here first, and I think everyone who buys property in undeveloped areas in any city like Leawood, the developer, the broker, they have an obligation to say, What's going to happen over there? And anyone in Tuscany Reserve who had questions about what happened to our west could have gone to the city and they would have seen a preliminary plan that had the project you see here tonight, and the project you approved a year ago. However, the settlement plan is different from the final plan that you considered and reviewed last night, because the settlement plan increases the setback in Tuscany Reserve from around 25 feet, which it was when you approved it a year ago, to an average of about 140 feet. So, if density means how close you are to your neighbor, are you intruding on their space, I think you'll hear tonight that not only have we increased the setback from the plan you approved a year ago from 25 feet to 140 feet, and I don't think anyone will question the lavish buffering and the landscaping that is established as our buffer between Tuscany Reserve and our property. The provisions of the settlement plan in connection with the setback and the interaction between Tuscany Reserve and Siena are far above the obligations as established in the LDO.

Another issue that we use in dissecting the term density is, I guess it's density. How many buildings do we have? From the plan that was approved by this Planning Commission and City Council in 2001, to the plan that you approved a year ago and that is now in court, and the settlement plan, we've reduced the number of buildings in the settlement plan. Setback buffering, kind of what can you see from the property; setback, berming. 2001 preliminary plan certainly anticipated the LDO requirements. I think you will recall a year ago in this settlement plan, it has lavish landscaping, significant berming, and now 140 feet distance from Tuscany Reserve rather than 25.

Another aspect of density is probably the impact the development will have traffic-wise on neighboring properties. As part of the submission of our final plan, you know the LDO usually requires a traffic study. Staff waived the traffic study last year because Mission Corners had submitted a traffic study that included our 292 units. Acceptable levels. Didn't even require it. In fact, if they had required a traffic study, we would have simply taken the Mission Corners traffic study, put a different cover on it, probably paid the \$5,000 for it, and submitted it to you. But you had it. You already had it.

Signage, kind of gets into the question of density. Is he going to be a bad neighbor? Not an issue. Never has been an issue on Siena. Photometrics. That kind of deals in density. Are you intruding upon your neighbor's property? There's going to be street lights and house lights. There's no issue in terms of what density means to photometrics on this Siena project. Parking. Some people say that parking deals with density. You're going to have a lot of cars. No issue here. We comply with the LDO, overly so, in terms of enclosed parking structures and one parking structure for multifamily. Never has been an issue, and it's not here tonight.

Additional improvements that go into this question of density – Are we dense, or are we compatible with our master plan, with the zoning, and the preliminary plan? Or the fact that we have six additional improvements from the preliminary plan to the final plan – And I think Mr. Prelogger is going to describe some details about the setback and the reduced number of buildings. With that, I'm going to call upon Bill to do just that.

Bill Prelogger, Nearing, Staats, Prelogger & Jones Architects, 3515 West 75th Street, Prairie Village, appeared before the Planning Commission and made the following comments:

Mr. Prelogger: I asked Rick to put up this first board, primarily just to kind of set the stage of what we're doing. The area immediately to the east of us is occupied by Tuscany's development. I would draw your attention to the fact that the setbacks are in the order of 30 feet, and a number of those homes were built that close to those setbacks. They seem to be satisfied with the 30 foot setback from the property line. One of the changes that we made to the plan – in fact, the driving force behind that change – had to do with objections we heard from the Tuscany people, a number of them as we went to a number of interact meetings with them, that we were respecting the City's development ordinance setback requirements with our preliminary plan and with our final plan, was that they wished that the buildings could be farther away. So, as we were thinking about the compromised plan that we have before you tonight, one of the things that we wanted to seriously consider was whether there was a way that we could effectively increase that setback. Rick, put up the original final development plan. As you can tell, this is the plan that you all reviewed and approved right at a year ago. We have respected the setbacks and provided a fairly substantial amount of landscaping along our east property line, Tuscany's west property line. However, the big thing that we want to draw your attention to on the compromised plan – if you would put that back up – is that we have provided a really substantial green belt. In fact, one of the comments that was made was that, if we've got a sizeable setback along the south boundary of our development separating the apartment homes that we were going to build there from the large lots that we were proposing to develop as a third phase of Siena, would it not be also appropriate to provide a comparable green belt buffer and setback from the Tuscany development. And we took that to heart and sought to figure out if there was a way that we could reconfigure the plan, such that we could leave the total number of units that are important to the financial and management success of the property and still provide that additional green space. It turned out that we were able to do so. We worked in concert with our engineers, Schlagel & Associates, to figure out ways that we could re-grade some portions of the plan that would let us put more 12-unit buildings in place of where we previously had eight-unit buildings. That meant that we would be building buildings that would fit the slope of the land, such that we would have four units on a lower, walk-out basement level and still maintain the two-story profile from the street. That helps us keep our buildings in scale with our neighbors to the east of us, as well as to the Siena homes that are already built south of us and that will be built in the third phase. That was important to us.

We were anxious to see if there was a way that we could increase some side amenities as well, and part of the regarding that we did made it possible for us to introduce a third water feature. Consequently, we've ended up with a fairly substantial number of apartment homes now overlooking these water features, and we've been able to extensively expand the trail system as well, so that we have pedestrian trails that will bring people to and around these green belt spaces.

But the thing I think I'm probably most pleased with is that we were able to increase the overall green space on the site, I think substantially. The final development plan that you approved a year ago had a grand total of right at 725,000 square feet of landscaped open space, approximately 59 percent of the total site area, by the way. The compromised plan that we bring before you tonight has increased that from that 725,000 square feet to roughly 772,500 square feet, or about a 47,500 square foot increase. This is an increase over the previous plan of 6 1/2 percent in green space. That green space represents almost 63 percent of the total site area. That is more than double the Leawood Development Ordinance requirements for green space. I'm proud to present this plan to you tonight with that kind of green space on it. I think it's going to be significant for the success of the development, and significant for maintaining the reputation that Leawood has as a very open and green and well-landscaped community.

This has resulted in a site redesign that has now provided setbacks where we are adjacent to existing homes that have been built in the Tuscany development, where the setbacks now range from 137 feet to 142 feet instead of the required 30 feet. That is exactly the same range of setbacks that occurred to the south, to our third phase as well. This has allowed us to develop a landscape berm along there that will expand out into this substantial green space and allow us to build berms that will vary in height, from three feet at the low point to six feet at the high point, and has given us a very broad area that we can now landscape with a variety of shade trees, evergreen trees, ornamental trees, and shrubs, so that there will be a continuous living screen of plant materials along there.

The predominant material that we're using is evergreen trees, so that they remain dense and leafed out 12 months out of the year, so there's not a matter of trees losing their leaves and we're going to be able to see through the project in the fall, winter and early spring.

The third change that we've made to the plan and that's helped us with the rearrangement of the plan was to move the clubhouse from its previous location to the northwest corner of the site. We think that is advantageous because in that location, we now have substantially more green space around the clubhouse than we did around the Twin Villas that were located there previously. We'll be able to put more landscaping in place. In fact, our final development plan calls for substantially more landscaping in that part of the site than in the final development plan that you all reviewed and approved a year ago.

I mentioned that we've added an additional water feature. To kind of summarize, the [inaudible] continue to meet or exceed the criteria in Leawood's development ordinance: The requirements for landscaping, for building setbacks, for building separation, for landscaped open space, for external building materials. I would like to mention that the resolution that granted our preliminary plan called for – Resolution 1603 – called for us to maintain at least four percent stone and 96 percent stucco for the exterior walls. The actual percentages on the buildings that we have both presented to you a year ago and that we're still presenting to you tonight – on the apartments, we have 11.1 percent to 11.4 percent stone, depending on the type of building, nearly three times as much as the ordinance that granted us our preliminary plan required. The Twin Villas exterior is 44 percent stone; the remainder is stucco. That's 11 times the ordinance requirement. And the clubhouse is 36.3 percent stone; the remainder is stucco, nearly nine times the ordinance requirement. In redoing the plan, we were able to reduce the total number of buildings on the site from 40 buildings of living units plus the clubhouse, to 35 buildings of living units plus the clubhouse. That's obviously one of the major contributing factors for being able to increase the green space.

As was alluded to by Doug Patterson, some minor changes in the final development plan that you all reviewed last year, that had to do with bringing that final development plan into conformance with changes that had occurred in the LDO from the time the preliminary plan was approved in 2001 to when we submitted again in 2007. [sic] Five of those deviations include the following: We added enclosed garages – 2 – to the 12-unit buildings, where before we had ten enclosed garages. We now have 12. That is one garage space for each dwelling unit, in conformance with the LDO. When we did that, we removed an equivalent number of surface spaces so that we were able to, as we increased the amount of ground covered by buildings, we reduced the amount of ground covered by paved open parking spaces. We slightly adjusted the locations of some of the apartment buildings from that preliminary plan to the final plan so that the dimensional requirements that were [inaudible] in the LDO were maintained, so that the building separations were brought into full compliance with the new LDO. We have maintained that same kind of required separation on this site, even though we've been able to move the buildings and adjust them such that we can greatly increase this green space. We relocated and attached the previously approved trash compactor and its enclosure to attach it to the clubhouse, so that it was no longer a freestanding accessory structure. This plan still has that feature intact. We increased the perimeter landscaping shown in the landscape plan to conform to the expanded landscape planting requirements in the newer LDO. That landscape requirement is still being met or exceeded in the plan that we have before you. Greatly exceeded along our eastern boundary. And as I mentioned before, we increased the amount of stone veneer on both the apartment homes, the twin villas, and the clubhouse, not because the LDO requirement, but simply to try to meet a request that had been made by staff from the time our preliminary plan had been approved, until we had submitted our final plan. We have not changed those building elevations. We still have considerably more stone than what was required, and I think considerably more stone veneer than you would find on most of the homes that have been built in Leawood. With that, I would offer ourselves, our team, for any questions you might have.

Mr. Patterson: In listening to Bill, I remembered Mike Gill, who sits kind of where Lynn is on Monday nights. He always justifies a vote by reciting portions of that book, where he says, "Good is the enemy of the best." I'm thinking about what Bill Prelogger was saying. I think the 2001 preliminary plan set the stage for a good development, and I think the final plan that you approved last year, which is now in court, set the stage for a good community. But I think

it took a wise mediation judge to say, "Go back and do better, and come out with your best plan." To double the open space, to reduce buildings, I believe is far better, if not the best plan available for this development.

In reading the minutes of last year's planning commission and city council, I know there was concern about timing. You've been zoned since 1988, you've been preliminarily approved since 2001, we had a little hiccup the last two years to make way for Mission Corners to happen, and then we were able to come in. I can tell you that with your favorable recommendation and the approval of city council, this plan will start a clock that will never be turned back. And that's a five-year clock to substantial construction. I assure you that will happen. This project will have to go in the ground. The construction drawings, the permitting, take a significant amount of time, so as you all know, a five-year period of time puts us under the gun, and we know it's going to happen because I don't think the City's going to extend it again. So, we would submit that this is not a good plan; it's the best plan possible. We'll stand for questions.

Chairman Rohlf: Just to start off, here are some of my observations. I think you know that we are operating at a disadvantage as planning commissioners because we have not been privy to the discussions that have been going on this last year. We have been given a plan that you call your settlement plan or your final/final, and just in looking at the plan, without the benefit of staff's comments, I have not been able to review these plans, but I see some changes. You've gone over some of them – moving the clubhouse, adding a new water feature, moving buildings around, changing the traffic layout within your development. You've got a cul-de-sac now on one end. It looks like the existing lake on the north side is larger. These are some things that if we were in the normal application process, this would probably be real close to some substantial changes, and we always get into this five percent between preliminary and final. We don't get the benefit of a water study on the new water feature, the existing lakes; we obviously don't have the benefit of a traffic study because you're indicating that it's come in through the Mission Corner development. I do see some changes to this plan since we saw it a year ago. It appears that some things have improved it. We've lost two twin villas? I mean, there have been some significant changes, and I really do think it's putting us at a disadvantage, and I'm not really sure why we're seeing this plan tonight.

The one thing that is at issue that you all haven't discussed is the reason why the council did not approve this plan a year ago, was that it doesn't fit into the neighborhood anymore. Because this plan has been around for 20 years in various forms, it has changed. The neighborhood has changed. I think we were in a different position when we looked at this plan a year ago than the council. They obviously have some powers that we don't have. We have to look at compliance to the plan, and at that time, it was in fairly significant compliance. You did make some cosmetic changes that improved it. But here, we now do have some, what I think are significant changes. I would like to be able to ask more questions about some of these things, and I'm not sure we have that purview as it's being presented as a final plan. Because this has been around for a long time, you've benefited from the notification process. You've taken care of that with your people who have bought the Siena homes. That's in their covenants, that they really can't bring up anything about this development. Unfortunately, the Tuscany Reserve people have not really been given an opportunity because of their distance from this development. Mission Corner has been through a lot of variations. Really, the only development around there happens to be Leawood Meadows, which is a subdivision that has been there as long as this plan, back in 1988. Obviously they don't have the benefit of coming back in to see this plan or have any public comment. I am going to allow the few people who are here tonight to speak to it. I'm not sure where they live, but I'm sure we'll find out.

Those are just some of my concerns. I don't see where we have addressed at all the council's concern and why it probably would have been remanded back to us, and I really feel like the burden is on you all to convince us why this is a harmonious development now with what's gone on around you. I do think you bear that burden, and so far, all I've seen is kind of a rehash of your plan and why it's much better. Yes, it gets better each time, but convince me that it fits in now, 20 years later. With that, I'll let my other commissioners ask questions, and perhaps you can be thinking about that. So, does anyone have questions for the members of the applicant's team?

Comm. Conrad: I had a question. When I was reviewing the information in the packet, when we approved this a year ago, is it true there were no stipulations to that approval?

Mr. Lambers: That is correct. The Planning Commission was advised that after you made recommendation, if the Council decision was for approval, it would be remanded back to the Planning Commission for staff to prepare stipulations for the Planning Commission to consider and review, and then it would be returned to the Council.

Comm. Conrad: Well, to follow up on the chairperson's comments, we rely on staff reports and recommendations, which we discuss and to some degree are negotiable. I would like to revisit some of those, I guess, if we proceed to approve this. But do I understand that we can have no stipulations if we approve this evening?

Mr. Lambers: That is correct. That is not to be part of the discussion tonight.

Comm. Conrad: Well, I think the last time I made the motion to approve this plan, I guess understanding that we had no stipulations. I guess I'll say right now, though I'm concerned that we didn't have stipulations, I think there are a lot of specifics that do need to be addressed. I don't remember if there was anything in there about the trash collection. I don't recall. Does all of the trash go to the clubhouse in this plan?

Mr. Oddo: Yes, there is a covered trash dumpster next to the clubhouse.

Comm. Conrad: So if I'm way in the southeast corner, I have to take my trash all the way to the clubhouse.

Mr. Oddo: Yes, in all of our communities, we now have one point of trash removal. We feel that it keeps the site cleaner, and per LDO, they have to be connected to a building.

Comm. Conrad: I think the last time we talked a lot about public roads versus private roads. I think we've made stipulations before, whether or not they should or should not be public or private roads. I think the parking of the extra garage and the 12 units certainly gives us the ability for every unit to have a covered garage, but it seems to me that most living units have two cars. That would be a lot of street parking unless people are going to park in the driveways, which is an element of our community of where we park our cars and how many cars there are. I'm getting off track a little bit. I guess I'm trying to think about where this whole process goes because the last time I made a motion to approve this, it was without stipulations. I don't know that I would want to go forward without stipulations again.

Mr. Patterson: I think really the judge said that the staff isn't to make recommendations and so forth. We are totally open in this proceeding with you all, for you all to say, I'm going to talk about central trash collection, let's talk about that, and let's tweak it, if you want to put a condition on approval. I mean, we're open to those. That's what we do. Every time we show up before a planning commission or city council, we hear your concerns and thoughts, and if you say I'm for this but I really want thus and so, we're open to that. So, I don't think anything keeps that from happening. We're open to it. To be honest, we just want to get in the ground with something that's good.

Patty Bennett, City Attorney, appeared before the Planning Commission and made the following comments:

Comm. Bennett: My suggestion would be, Commissioner, if you were going to make a recommendation for approval, that it would be recommended that City Council approve it and direct staff to come back with stipulations that it be remanded back to you. If there are specifics you want to address with them, such as trash, as Mr. Patterson said, this is the appropriate time.

Chairman Rohlf: I think there were a number of little items from the last go-around, such as the gates, the private streets, the stucco, the shingles – all of those things. And I'm sure that a lot of those things have been taken care of. I believe from my review of the plans, there are no longer gates. Right?

Mr. Patterson: There are no longer gates. In fact, these are private driveways from building to building.

Chairman Rohlf: So I really think a lot of the outstanding elevation issues and things like that probably have been taken care of. I guess I do have some follow-up questions about the timing of this. I think when we heard the plan a year ago, you all talked about the construction of the streets and that sort of thing. Now, with the Mission Corners plan being on file, what's the status of the actual, true construction? Let's take away the pending litigation and where we are tonight, but just if all things were equal.

Mr. Oddo: I'd like to get started within the next 12-18 months. That's my goal. I know we have to work out an agreement with Mission Corners, which Eric and I are in communications with to build 137th Street. We'd like to get that built and start immediately after that.

Chairman Rohlf: And is it my understanding that would be split between the two developers?

Mr. Oddo: Correct.

Comm. Jackson: Explain to me how you're adding up the units. I think we had some question as to whether they are the same actual number of units not that you've changed the buildings around.

Mr. Prelogger: Changing the buildings around reduced the number of twin villas by two. So, four units that were twin villas are now in the apartment component.

Comm. Jackson: So in the Twin Villas, there are 16 units total.

Mr. Prelogger: Probably 16 units, although one of the buildings actually straddles the zoning line between RP3 and RP4.

Comm. Jackson: How many units are in each of the other buildings?

Mr. Prelogger: The buildings have either eight units, if they are on the flat part of the site; ten units if they're on part of the site that slopes diagonally across the building, or 12 units if they're on a part of the site that slopes directly to the rear of the building.

Comm. Jackson: So they're not all the same. That's why I can't get them to add up right.

Mr. Prelogger: That's correct, yes, ma'am. Some are eight, some are 10, some are 12. Behind the blue, there is tabulation of the number of buildings that have eight units, the number that have 10, and the number that have 12.

Comm. Jackson: So the total now is still 292 units.

Mr. Prelogger: Yes, ma'am. I was going to offer to go back to one of the issues that was raised before, which is roofing. I think one of the stipulations we would certainly be prepared to accept, perhaps we'd even recommend to you, is that the roofing materials that are ultimately spec'd out to be used on the building would be materials that are selected off of the then-current Leawood list of approved materials. We could choose something from the list today, but a month from now, that list might change, and something we might choose today might disappear from the list.

Comm. Jackson: Going with that, there seemed to have been a dispute last time around whether you were looking at the residential use or the commercial list of roofing materials.

Mr. Prelogger: You can choose. The list is practically the same.

Comm. Jackson: Is that correct, that the lists are pretty much the same? My understanding was that they were very different.

Mr. Joseph: The residential is different than commercial. On commercial we have slate and tile and all that. Residential is just asphalt shingles.

Comm. Jackson: So if we put in a stipulation that you had to take something from the commercial list for the larger buildings?

Mr. Prelogger: I'd like to review that list again, but I believe the commercial list also includes architectural laminated shingles, which we would be perfectly happy to choose from. The project is a residential project. It's not a commercial project.

Comm. Jackson: Well, I think the concern was for the larger buildings. I don't know so much about the Twin Villas, but for the larger buildings, needing something more. A concern also is, if you turn these over into condos and you're no longer doing the upkeep and directly in charge of that, how long is it between repairs and maintenance once each individual has that responsibility themselves?

Mr. Prelogger: Most of the list in the residential sector of your ordinance calls for very heavy architectural laminated shingles, typically 40, 50-year life warranted shingles. The roofs would probably last the lifetime of anybody that buys in there.

Mr. Oddo: I am planning to put on a 40 or 50 year, if you want to stipulate that. I'm happy to do that. And you said something about if they're sold as condos, the individual takes care of it – Typically the roof is taken care of as a community so that no one individual is stuck with something, that he couldn't afford to fix the leak. There's always money set aside for that.

Comm. Jackson: So the condo would mainly just be the inside.

Mr. Oddo: Right. And that was one of the early agreements we had with staff, was we'll put extra stones on these buildings over going to something like concrete tiles, because this is something that people see, they appreciate more, and we can actually get something on the rents from it. And the people really do like the stone.

Mr. Prelogger: There's a great deal of common interest between an apartment developer who builds to own long term and a condominium owner. Both are very, very interested in having a predominance of very low maintenance, long-life materials on the walls, on the pavement, in the grass, the sprinklers, roofs. Apartment developers are no more interested in having to prematurely replace this stuff than condo owners are.

Comm. Jackson: My next concern would be, we have authority to look at this and approve it since there is some question as to whether now this is a new preliminary plan. I understand the judge told you to come forward with the best and brightest idea, but he also said you needed to follow the LDO. Well, the LDO says that there's significant changes, more than five percent, and some of those are structure, some of those are traffic patterns, which seem to apply here. Then we go back to the preliminary plan, and with the preliminary, a new public hearing and all of the other processes that we go through.

Mr. Patterson: I understand your concern because the quandary is, by improving the plan, are we starting all over again? And that shouldn't be if we're essentially the same. We sat down with staff before we submitted the plan you

have before you. We had some various options, and city staff looked at, I think we had three different options, and said, "This plan you cannot submit as a final. It's a substantial material change and therefore you'd have to start back at preliminary." Here's another one. "No, that's not a final. You're going to have to start back at preliminary." And the settlement plan you have before you, it was agreed that we could submit it as a final plan, as our settlement plan. I would like to think that, I guess if someone was looking for an excuse, you'd say, Well, it's a lot better, but you've changed. We're not wanting to do that. We could say, okay, [inaudible] on all the improvements we made and we'll go back to the final plan that we submitted a year ago and you approved a year ago. But I'd like to think that, given staff suggested and agreed that we could submit this as a final plan, and that I don't think anything we've changed or modified is anything but an improvement, I would submit that this is a final plan submission.

Comm. Jackson: Can we ask if staff is in agreement with that?

Mr. Lambers: Staff was under directive from the judge to expedite this process. It was my opinion that that meant being generous with regard to the interpretation as to whether a preliminary or final plan was necessitated by the proposed changes. As Doug indicated, the first two plans clearly did not meet that litmus test. This one, in my opinion, is in compliance with the judge's directive, and that is the reason for it.

Comm. Elkins: Mr. Patterson, in your presentation, you identified the tools that were available for our assessment in whether we should recommend to the governing body that this plan be approved. I'm curious as to your position on the Golden Criteria and whether those are rules, or are those criteria that are appropriate for us to evaluate? Or is it your position that because it's a final plan, those aren't any longer available to us?

Mr. Patterson: First, for me to say I agree that they are not available. I think a bit of some of the Golden Criteria are applicable to fine-tune a final plan to make sure it conforms with preliminary. You've had to do that, and I think we have that. But legally, that's true. The Golden Criteria relate to preliminary plan. The final plan is to add those certain details to the preliminary plan to tell the planning commission, city council and staff exactly what's going to be built there.

Comm. Elkins: Your presentation collectively took a little over an hour there and I took notes as quickly as I could, but Mr. Patterson, could you, in a fairly succinct manner, summarize for us the differences between the plan that we're looking at tonight and the plan that we looked at a year ago. I'll leave it to you to determine what's material or not. I don't want a list that's 20 pages long, but I'd like to get a summary from the applicant as to what the changes are.

Mr. Oddo: Do you mind if I take this one? First and foremost, we took the clubhouse and moved it to the commercial corner. We thought that was important. Mission and 137th should be a commercial use instead of homes there. Second is the buffer on the east side, increased from 25 to 137 to 142 feet. The third big difference, we put another water feature in. Fourth, we decreased five buildings, two of which were duplexes and three that were apartment buildings. We had a lot of eight-plexes, and because of the grades that we had, we were able to turn them and get walk-outs. One of the promises I made to everybody when I asked for this in 2000 is that I wouldn't have anything taller than a two-story with a walk-out, and I kept my promise on that. So, where the grade allowed us, we slid units underneath as a walk-out, two and four units. So, those are the differences. We did do a little bit on the pattern layout, thanks to Scott. He asked for a cul-de-sac, he thought that would be nice. We liked it. We didn't know if Fire would allow that, but that was fine. The traffic changes were all very much staff driven as suggestions. Is that succinct enough?

Comm. Elkins: That's excellent, Mr. Oddo. One other question I wanted to ask there, I want to make sure I have this clear, is that a year ago, I recall a fair amount of discussion about fencing or gating, and the gate is gone now, is that correct?

Mr. Oddo: We do have it fenced, but the gates are gone per your request last time. We tried to keep this plan as close to what you were asking for and meet all codes. We've met everything that's required in the LDO.

Comm. Elkins: Now, as I understand it, all the traffic exiting or entering from this development will exit onto 137th Street, correct? There are two egresses and they're both onto the same street?

Mr. Oddo: That is correct.

Comm. Elkins: And do you know, from Mission Corner, does all of Mission Corner also exit onto 137th Street?

Mr. Prelogger: Rick, if you'll pull up that other board that has the entirety of the Mission Corner plan, if the camera wants to zoom in on that a bit, you'll see they've got several entrances, two along 137th, I think one that opens out to I think Pawnee to the east, and two that open to 135th Street. Yeah, one central, one to 135th Street.

Comm. Elkins: Explain this business to me of the traffic study that was done for Mission Corners. It also included this Phase II of Siena?

Mr. Prelogger: Because our plan was the plan of record, when Mission Corners was asked to do a traffic study, they were compelled to take into account the traffic that would be generated by all of the existing or planned developments that surrounded their tract. Because of that, their traffic study included the projected traffic generation figures, and these are all standard figures that come out of traffic manuals, they were compelled to include our traffic as though the project were built into their overall traffic study. If we had been required to do a traffic study, we would have been required to do exactly the same thing. So, the truth of the matter is, all of the factors that were considered in developing the Mission Corners traffic study would have been exactly the same factors that we would have been asked to consider and develop. We would have ended up producing exactly the same traffic study.

Comm. Elkins: And what does the LDO tell us about, what is the metric or the standard that one looks to, to determine what is acceptable in terms of volumes of traffic? Let me back up – That's a two-lane street at 137th in the plan, correct?

Mr. Prelogger: I think it's actually designed as a collector. It's probably only 36 feet wide, which means that there would be painted turn lanes.

Comm. Elkins: One plus a turn lane?

Mr. Prelogger: One each way plus a turn lane.

Comm. Elkins: And what is the criteria that is established as to what's acceptable and what's not acceptable as far as volume through there?

Mr. Prelogger: I don't know. I'm not a traffic engineer. However, the traffic study was done and I believe that staff found that the levels of service at the various intersections were then an acceptable level of service.

Comm. Elkins: I understood it was acceptable. I'd just like to get an idea what kind of volume we're talking about here. How many parking spots do you have in the facility?

Mr. Prelogger: We have a little over two per dwelling unit, so 292 units, so probably 600-plus parking spaces.

Comm. Elkins: Six hundred parking spaces, so maximum what we're talking about is morning/afternoon, we could have 600 additional cars coming in and out of those two spots onto 137th Street.

Mr. Oddo: Yes. As a matter of fact, one of the things that Mission Corners did was ask for an additional 107 units, and they determined – and staff approved it – that not only was the traffic fine the way it is, that they could add an additional 107 units, so per your staff, they feel traffic is adequate. Now, I can tell you that apartments typically don't come like office buildings, all at eight o'clock and again at four-thirty. They do come and go very gradually, so the traffic count that we see in most of our communities is about, during the height of traffic patterns, less than one car per 30 seconds, in or out. Therefore, because of the trickle effect, it doesn't add a high impact.

Comm. Elkins: And 137th Street will go into Mission, is that right?

Mr. Prelogger: It intersects into Mission Road, that's correct. Also, it becomes an extension of the existing 137th Street that's in front of Tuscany.

Comm. Elkins: What's the distance from the exit out of your phase to Mission Road? A quarter mile?

Mr. Prelogger: Oh, no, it's maybe 350 feet, perhaps.

Comm. Elkins: And is there a plan for a traffic control device at that particular intersection?

Mr. Prelogger: On 137th Street? I seriously doubt that we'd ever reach a traffic level that would warrant a traffic signal there.

Comm. Elkins: But the answer is no, correct?

Mr. Prelogger: It's likely that it would be no. A warrant for a traffic light is normally determined by actual in-the-field traffic counts. The city measures the traffic, determines whether there's a need for a traffic light, and if there is, it gets put in, and if there isn't, it doesn't.

Comm. Elkins: You're telling me that in the ordinary course, the decisions about traffic lights going in are made after the development is in place rather than before.

Mr. Prelogger: Unless the traffic study indicates that there's going to be such a volume of traffic that a traffic light is needed at the inception of development.

Comm. Elkins: Tell me this. Conceptually, what is the difference between an apartment and a condominium. There seems to be a lot of discussion here and I'm curious as to what the difference is, besides the obvious ownership difference.

Mr. Oddo: Legally, it depends on what city you're in. An apartment in New York is different from an apartment in Kansas City.

Comm. Elkins: I'm talking about Leawood right now.

Mr. Oddo: In this community typically "condo" is when the person who lives there owns the unit, or it's individually owned instead of group ownership.

Comm. Elkins: Therefore, from our perspective as a planning commission, there's really no difference in substance in terms of the construction and what we're looking at between whether the ownership vehicle is by a landlord renting or by a condominium association and individual owners?

Mr. Oddo: Are you asking me per the LDO, per the building codes? Yes, there's no difference whatsoever.

Comm. Elkins: And on average, what is the size of the units that you are proposing here?

Mr. Oddo: One bedrooms will be between 800 and 1,000 feet; two bedrooms will be 1,250 up to 1,400 feet. A one bedroom would go for, at today's prices, over \$1,000 a unit. Two bedrooms would be closer to \$1,500, and three bedrooms would be around \$2,200 a month. Very high rent.

Comm. Elkins: There was some discussion from the architect about the volume of stone that we'll have here, and I recall from our last conversation that there was a lot of discussion about what is stone. Are we talking about stone veneer, or are we talking about true stone here? So, when you all are referring to the volume of stone that we're talking about, are we talking about real rocks, or are we talking about something other than real rocks?

Mr. Prelogger: The stone industry is changing quite a bit, and one of the interesting things that's now being offered is what I call a sheared stone, which is real stone that is now being cut in a thin dimension. The nice thing about it is you put it on the wall and it looks like what it is, which is real stone with no mortar. Interestingly enough, the manufactured stone is now so close to emulating that that I think the vast majority of people, as they approach a building that's got manufactured stone on it, probably can't tell the difference. In fact, I think you'd probably be amazed to realize how much commercial building has been done along 135th Street with manufactured stone on it, including in the city of Leawood.

Mr. Oddo: Actually, it used to be that at corners you could always tell because you always saw the break. Now they've got it so they have 90 degree turns. You cannot tell. As someone who is an expert in the field – and I think I qualify – I have to get up close to be able to tell if it's manufactured stone or real stone. The new ones that we're using are so good. Many of the homes in Leawood are going up with manufactured stone and you can't tell.

Comm. Elkins: Thank you. That's all the questions I have.

Comm. Roberson: Is there a material board or something that we could see that shows what you're suggesting?

Mr. Prelogger: It's around city hall here someplace.

Mr. Oddo: By the way, one of the things we do to help this out, and I think it's a very good point, asking about the stone, we do use a multi-colored stone, like eight or nine different colors ranging from grays, blacks, reds, rust. We use a lot of color variations in our stone. It's the most expensive stone you can buy for manufactured stone. The other thing we do, we use a minimum of three different color stucco veneers on these so that they're not the same over and over. We don't like that look. We also have – What did we have [*inaudible*]? Eight or nine different finishes on the trim paintings, on the accent doors. So, we end up with a multitude, so it's not the same every single house. I'll bet you that we'll have more differences in our colors than Tuscany to our east. They have fewer colors to pick from than we use. I think that gives it a more homey look. I have to build something that's so nice, that my mom's going to be happy living next door to it, so that's a pretty good standard.

Chairman Rohlf: Anything else? All right, I think I'll give members of the audience an opportunity to make their comments, and then you all will have an opportunity to respond to those. Also, think about some of the things that still may be outstanding, particularly some of the observations I had at the beginning.

Mr. Prelogger: Madam Chairman, one of the questions you raised earlier and one of your concerns that we did not address is the issue of compatibility. One of the things that I'm both reluctant to do, and anxious to do, is talk a bit about the planning and zoning process as it has evolved over the last 35 or 40 years of my practice. It used to be that you zoned a piece of property in the city in a vacuum. You went in and you said, "I want to build an office building," and you got O zoning. If you wanted to build a shopping center, you got C zoning. If you wanted to build a residential project, you got R-1, R-2, R-3, R-4 zoning. About 35 years ago, the planning community – that would be both private and public – determined that that didn't give the cities very much latitude, and it certainly didn't give them a look at what might be built. Therefore, the concept of planned zoning was introduced. Shortly after it was introduced, which was the idea that we would not just ask in a vacuum to build an office building, a shopping center, or an apartment development, we would be requested to submit a plan that showed how we were going to use the land, how we were going to arrange the buildings, what the buildings were going to look like, how the uses were going to be accommodated on the land, and how the land was going to be accommodated with what we built. Along with that, the concept of cities doing master planning came into vogue as well. This was sort of done in the realization, particularly in suburban areas, that the cities wanted to have a way to guide the process of the development of their cities. All of you know this; you're sitting on a planning commission.

The significance of this was that it gave vacant landowners an opportunity to see what the cities' vision was for the development of their land, at that time and in the future. And the master planning process is one where the cities go through a process of re-evaluating that master plan on some kind of regular basis; some cities once a year, some cities at longer intervals. The purpose of the master plan is to guide development and inform vacant landowners how their land is intended to be used, and how adjacent land is intended to be used. The City of Leawood has – I think very wisely – adopted master plans. The master plans in this particular case have been consistent since 1988 with the proposed uses on this land, at least since 1988.

I want to go back and talk a little bit about, why master planning? When somebody develops a piece of ground and it's surrounded by vacant land, the developer has an idea of how it's going to fit into the meaning of what the city's plan is for the surrounding ground. I think that's very, very important. It also informs the ultimate users of that developed site what they can likewise expect to happen in the immediate vicinity. Once development has commenced, it's normally extremely difficult, and only done with exceptionally good reason, why a vacant landowner would be granted a wish or a request that a master planned use for a piece of vacant ground would change when the ground around it had commenced the process for development, and people were in place, owners were in place who had developed their property or bought their property in anticipation of certain planned uses.

The master plan is colors on a map and shows what the intent is for the use of the land. The next step that one takes is to submit a preliminary plan to the city. You want to submit a preliminary plan that's compatible with and in concert with the city's zoning ordinances and its master plan. In this case, that was done. It was done in 1988, and it was done in conformance with zoning and the master plan that was in place at the city of Leawood, and it has been consistently in conformance with many, many updates of the city's master plan. Now, as property around the subject property has developed, it's not developed in a vacuum, it's not developed around a piece of ground that's been master planned as agricultural or zoned as agricultural. It has not been zoned as agricultural land since 1988 and, in fact, has been zoned for the uses that are shown on the ground pretty consistently since 1988, with updates that have occurred as the marketplace for multifamily development has changed. But the use of the land has been in place for 20 years.

Now, as development has proceeded and as developers have moved in, they have made their plans in concert with the city's master plan, and in full knowledge. They are compelled to have full knowledge because they have to show on their plans the planned and existing uses of the land around their sites. So, every parcel of ground that has, in fact, been developed or subsequently zoned since our plan was approved in 2001 has been done in the context of the planned uses and zoned uses on the older tract. I think that is a pure example of exactly how long-range planning is supposed to play out. You make a plan, developers conform what they're going to do to that plan; developers take into account what others planned to do with their ground as they plan uses for their own ground. This is a classic example of a peer application of this basic planning precept. I think we've somehow lost sight of that in

this discussion, because everyone who has had anything to do with the land around here has been well aware of what the intent is for the use of this land, since 1988. I'm here to answer questions about that process, if anyone is interested.

Comm. Conrad: What's the current master plan for Phase III? It's currently zoned agricultural – what's the master plan?

Mr. Prelogger: We actually submitted a three-phase plan to the city in 2001, showing what our intentions were for the entire 80 acres. And in fact, they were shown as, Phase I was the large-lot single-family on the south portion of the tract; larger-lot single-family in the central portion of the tract; and multifamily development in the second phase of that three-phase plan.

Comm. Conrad: What's the master plan identified as? Phase III?

Mr. Prelogger: I don't know. I presume Phase III is R-1. Low-density residential.

Comm. Conrad: I'm asking.

Chairman Rohlf: Master plan. Not your plan.

Chairman Rohlf: I'm not sure we're going to be able to know the answer to that, Mr. Conrad.

Mr. Lambers: Staff can answer that question. It's a factual question.

Mr. Joseph: That would be single-family.

Comm. Conrad: Multi single family.

Mr. Joseph: Just single family. Low density single family.

Mr. Prelogger: Low density. Light yellow probably on your map.

Comm. Conrad: Is that R-1?

Mr. Joseph: That would be R-1, yes.

Comm. Conrad: Thank you.

Chairman Rohlf: All right. I'm sure we'll have more questions after we've heard from some of the people who are here in the audience. Sir, please come forward.

Gregg Pickert, 3313 West 138th Street, Tuscany, appeared before the Planning Commission and made the following comments:

Mr. Pickert: I would like to start off by saying that in no way, shape or form do I support the idea of apartments on this particular tract of land. Having said that, I would recognize the fact that this has been zoned for this for quite some time, and I remember one of the attorneys representing the developer standing up here, saying that there have been no changes; everything is the same since we had it zoned that way. But you and I know that that's not true, because

there have been some changes out there. The major change is the Tuscany Reserve development, which is the entire border of the east side of this proposed development.

The thing that bothers me a little bit about this whole thing is we're here tonight to put a plan in place, a "revised" plan, and the people in Tuscany Reserve have had absolutely no input into that plan whatsoever. Now, we did do the interface meetings prior to the first plan that has resulted in coming back for the second plan, but at this point in history, the people who are probably most affected by this development have had absolutely no input. I feel at a real disadvantage tonight, seeing these changes for the first time, and I don't know that I can really intelligently make comments on these. I'm not sure we shouldn't go back to square one, so to speak – and I don't know from a legal standpoint the legal ramifications, under the circumstances, if we're allowed to do that, but that would be the ideal thing to do, to go back and let the people who are directly affected by this have some input into it.

There are a few the things that were presented today that I would like to comment on, and I will talk strictly from a Tuscany Reserve standpoint, the border along Tuscany Reserve. The first thing is, I believe there is a No. 2 type building in the extreme northeast corner of the project. Now, that building has a setback from the corner of 30 feet to both the Tuscany Reserve and to 137th Street. To me, that is completely inadequate. Completely inadequate. Another change that was made – a very positive change – was the setback, which was 25 to 30 feet before along almost the rest of that entire border; that has been increased to 138 feet. Well, that is very, very positive, but is the berming adequate? I don't know if the berming is adequate or not. Is a three-foot berm enough berm? It's a situation where, with that type of a setback, you could go – if my calculations are right, if the information I have is right – you could go to a 15-foot berm along there. Why not have a taller berm? Give Tuscany Reserve a little more privacy. To me, that makes some sense.

The other thing I would mention is, at one point in history, in doing those initial interface meetings we had with the developer, there was a plan on paper, it was put in front of us, that showed the Twin Villas not only on Mission Road, but also on the Tuscany border. And again, I don't know enough with this additional setback if it makes more sense to have the additional setback for the Twin Villas, but strictly from the standpoint of a transition, going from single-family homes into apartments, it certainly makes a lot of sense – to me anyway – to have the Twin Villas along that line as opposed to the apartment buildings. Now, I recognize that some of the other developments a long time ago had some pretty substantial input because the Twin Villas are scheduled to be along Mission Road. Well, Mission is going to be a four-lane road along there. What privacy? What are we transcending by having those units on that side of the development as opposed to the Tuscany Reserve side?

Again, those are just some of the brief comments that I could come up with on such short notice, seeing this for the first time. The one thing that kind of struck me is the fact that it was said that, you know, we were looking for some concession on the part of the developer. But to me, there really hasn't been a whole lot of concession. It's more a reconfiguration as opposed to concession. We have the same density problem from the standpoint of people living on the property. We have the same stormwater run-off that we had before. We have the same traffic. We have the same light and noise pollution that this is going to create. We have the same impact on our schools in the immediate area with the additional traffic. And probably, from a selfish standpoint, we have the same impact on the single-family property values in the area. Again, I think you so much for giving me the opportunity to say a few words. Thank you.

Chairman Rohlf: I'll now give the applicant an opportunity to respond to those comments, if they so wish.

Mr. Patterson: Thank you. I want to make sure that we focus and clarify the issue of phasing of Siena and the way it's master planned, as Commissioner Conrad was asking. Do you want to describe that?

Mr. Oddo: Far south, you've got about 37 acres of Phase I. Phase II is 28 acres far north. In the middle will be Phase III.

Mr. Patterson: Now, the master plan as far as the 29 acres we're talking about tonight that was zoned in 1988, in 2004 and 2006 – and this kind of addresses what the chairman mentioned – the 2004 master plan, and they

upgraded that in 2006, designated this area – the 29 acres – as high-density residential. That's what it's master planned, consistent with the zoning.

Comm. Conrad: My question is, what is the plan for the third phase?

Mr. Joseph: It's low-density residential. It could be R-1 or RP-1.

Mr. Patterson: On the gentleman from Tuscany Reserve, I won't go through my we-were-here-first argument again. I don't think that's necessarily appropriate. The question is, is this the best plan. I can tell you that if you focus on that building type 2 that the gentleman mentioned on the northeast corner of Siena, you've met my partners in Gardens of Bellagio. The office building, the little two-acre, three-building project on 137th between Roe and Mission; his name is Merdad Colintary (sp?) He has bought the two remaining lots in Tuscany Reserve, in the northwest corner of Tuscany Reserve. He's bought those lots. I sat down with him and I said, Merdad, take a look at the plan, because I represented the Oddo's at the time. He said, "Who's doing it?" "Oddo Development." He knows the family. He said, "I'll be proud to buy those lots and build about a \$2.5 million house there." So, he's the closest to the remaining multifamily in Siena, eyes wide open, going to be a great neighbor. Those are the type of things that go on, and frankly, I know it was mentioned that people didn't have an opportunity to speak because of some contract or deed things. When I worked for Jason at his company, [inaudible] brothers, J.C. Nichols company made a habit of not telling people, you can't show up at a zoning hearing. The purpose of that was to tell people, here's what we're planning on doing, and here's what we're doing.

I guess we could talk about the comments, and I don't think it would be wise to mention that we did have four to five interacts meeting before the final was submitted to you last year and voted on. We've already talked about how I understand the gentleman is concerned about having multifamily instead of the Twin Villas. But the site line has not changed, the berming is more sufficient, the landscaping is significant, yet the closest building is 140 feet away instead of 25 feet away.

Here's what we're asking for. If the Commission feels as if – as Commissioner Conrad has said, and some of you – if you don't have the information, you need some interaction with us, maybe you would consider this without recommendation or without conditions, or you think you need to address certain things, even if it's something like centralized trash collection, we would encourage that type of dialog. I'll leave it to staff and the city attorney and the city administrator on how that goes, but if you wanted to sit down with us in a work session as part of this mediation settlement process, we would welcome that. If you want to talk about how this is a better plan than the final, but you don't have staff reports so you need to get the details of that, we're open to that. We don't want a denial tonight. That's what we don't want. Because here's what we face. What we're asking from you is the approval of a better plan than the final plan that you considered a year ago, the demographics of the area of which have not changed at all. We're asking you to approve a better plan. But if we can't get that, based upon the vesting we have under state law on 80 acres in this area, the only thing the judge can do is sustain the plan you all approved last year. It might be a little less expensive than this settlement plan, but that's what we have to ask a court to do. And frankly, we like this plan better. That's what we want. We don't want a denial or a recommendation that's negative. If you think you need more information, that we need to talk about stipulations, we want to do that. We do not want a denial, because we don't want to go back to court and ask the judge to sustain the good plan. And we, again, stand open for any questions that you have.

Chairman Rohlf: I guess before we move into a final discussion on this matter, in looking back over the times I've seen these plans, I had one question for you, Mr. Oddo. Why is it that back in 2001, when you were really close to having your final plan approved and ready to go, why did you not move forward seven years ago?

Mr. Oddo: I think that is a great question. We did. That night that I asked for my approval of that plan, the three phases, I started immediately on Siena Phase I, and I said at that time that upon me getting Siena Phase I completed and the market being ready, which included bringing sewers and storms to that site, which occurred in 2002 or 2003,

and the market being ready; the other stipulation I put in there was I would like to have Mission Road improved. Mission Road was supposed to be approved in 2008. It hasn't, but we're willing to go ahead because the traffic studies say that the street is adequate. So, I did what I promised this City, this Council, that I would do – Phase I. I'll be honest with you – Unfortunately, I'm not financially strong enough to do everything at one time. I presented this plan in phases and I'm following it in phases. I feel it is best for the city that I do it that way.

I would like to add one other thing. As far as things changing, if you look at the plan, if you go back from 2000 to even earlier, the master plan has not changed at all. The only thing that has changed is it has been built to the master plan. And I think it needs to continue to be built to the master plan. Thank you very much.

Chairman Rohlf: That brings us to the point where we can have further discussion and comments, leading to some type of motion. I will remind you we have three options here this evening – we can recommend approval; we can recommend denial; or we can go ahead and continue this again. The applicant has made it known that he wishes to receive approval of the plan. I guess I still am at a crossroads as to where we are this evening on this particular revised plan. I think there are some open-ended concerns I have about the plan, whether it really is a final or a preliminary. I think in the regular course of our business here, this would have come back in as a preliminary for further review. I have not been privy to the conversations that have gone on at the staff level or at the City Council level, and it seems we have a real difference of opinion here. You're presenting this plan tonight as if this is something that the City has represented as a "go." The only comment we have in our staff report this evening is that they are recommending denial. I can't help but think that takes us back to the original reason why Council did not approve this plan a year ago, which is that they believe that this plan no longer fits in to the surrounding community. And I've heard some pretty good comments made by the applicant's team tonight about master planning and that it is in compliance with the comprehensive plan. I can't help think if more people were given an opportunity to respond to this plan, you might hear some other comments about whether it really fits in or not. I have a hard time because the development along 135th has changed drastically over the last ten years, and this plan has come back and forth in between that time, several times. I'm really not sure at this point what I think we can do, because I'm not sure what we are exactly being asked to approve or deny. So, I hope some of you will have comments or points of discussion that may help us get to the conclusion of this matter this evening. Therefore, I will open it up for further discussion.

Ms. Bennett: Madam Chair, Mr. Patterson made some legal comments to you that made me a bit uncomfortable, and I think I'm going to ask Mr. Stein to respond on behalf of the city.

Stuart Stein, Attorney with Stinson, Morrison, Hecker, representing the City of Leawood, appeared before the Planning Commission and made the following comments:

Mr. Stein: I just want to expand a little bit on Mr. Patterson's comments to you, so hopefully it will help you understand better what your job is. As you all know, we are in the midst of litigation, and as part of that litigation process, we all willingly participated in a mediation session. The City has taken a position based upon what they legally feel is appropriate, based upon recommendations that Patty Bennett and I have made to the City, but additionally, they are trying to come up with a solution, a plan, a decision, based upon what they think the Planning Commission and the governing body together with the citizens of Leawood want.

When we were in a mediation session, the mediation judge explained to us that the trial judge has a choice. He can either accept the plan that was originally submitted to you and passed by you and denied by the City Council. He can say that they have the right to go ahead with that, or he could say that they don't have the right to do it. It could go either way. I feel as if he's going to say no. Obviously Mr. Patterson has expressed to you that he thinks they're going to say yes. None of really know, and given that fact, the mediation judge said that we would be much better off in trying to resolve it. Therefore, his suggestion was, let's go back through the process again. And as you were told, the mediation judge said, let's give it the best shot. And there is no question – and I'm expressing an opinion here – I think that this plan is a better plan than the one that you saw a year ago. But I think that it's incumbent upon all of you to do what you think is appropriate. If that means asking questions, ask questions. If you

think that elements of this or all of this is good, I think that you should say that. If there's something that you want changed, I think that they need to hear that. If you feel that additional consideration is needed, I think that that's fine. The reason I believe the judge said that he didn't want staff's opinion is because we're really looking for your opinion. I hope that's helpful to you.

Comm. Williams: I guess in that regards, it sort of clears it up for me a little bit, in the sense that we're trying to work with a plan that, what was described here by Mr. Patterson and Scott commented, does it really start the ball rolling all over again. And this is the closest thing they have to do that. That's why we're talking about a final plan instead of the preliminary plan, which may be appropriate.

In that regard, some of my biggest issues with the plan really do begin to look more to the preliminary plan stage, which I was not a member of this panel in 2001 to look at that and to address. Some of those issues the gentleman from Tuscan Reserve referred to, and that's the buffer along the east property line that may at one point have been the town homes, which I thought would have been a nice touch. But again, given that we're looking at something that's more final, that was approved by others besides us and brought forward, and one of the reasons that we passed this last year, that I recall, was, you know, not the plan that we're looking at this evening, the other approved plan, the final plan, was that it was in compliance with the LDO, in compliance with the preliminary plan, and there really wasn't anything we could do to say we can't approve that plan. I think the plan that is before us tonight is a much better plan than what we saw a year ago. I think the buffer down the east side, even though it might not be town homes, I think with the 140 feet that they're providing, plus you add another 30 feet for setbacks to the houses in Tuscan, and there's only a few that get that close feet to the property line, that's 170 feet or more. I don't think we have any developments that I'm seeing, as a member of this panel, that has that kind of a setback to a single-family residential neighborhood. If we were to have town homes, or single-family homes for that matter, we could be looking at drastically less setback, so you'd be seeing more of your neighbors' back yard.

In that same regards, a drive thru Tuscan Reserve would begin to show you that Tuscan Reserve is a fairly tight community. There's not 30, 40 foot setbacks or distances between homes. You start looking at some of the distances from back of houses to back of houses and they're not going to be 170 or 180 feet. And that appears to be fine with the residents that live in Tuscan Reserve. And it's a nice community. I liked it. There's a couple houses for sale, and I took down some phone numbers. But that's beside the point.

In this plan, I do like the traffic plans that they've developed versus what they had before. I think it's a little cleaner, a little smoother. I like the amenities, the green space. There is a substantial amount of green space in this plan, a lot of pedestrian trails. We're very big on pedestrian trails. They've added a number of pedestrian amenities, but I think we need some further definition. That's where some staff examination and stipulations may come into play. I do like the additional water features. I think that's a plus. I don't really have much exception with everything that they have changed in this, with the one possible exception, which would not cause me to deny this plan, and that's the placement of the clubhouse. It seems awkward to me to put the clubhouse over in that corner, but I heard the applicant's reasons for that, and they are acceptable. I would have liked to have seen it more central to begin with, but that wasn't going to be, and in my opinion, that's not a reason to deny the plan.

The argument about compatibility with the neighborhood. Planning practices do suggest transition from high-density development to low-density development, and when we have Mission Corners with the 80-foot-high buildings and the density we have there, this is a logical transition to single-family housing. Could it be a little less dense? Do you want to take out some units and open up more green space? Again, they have a fair amount of green space, they have good distance between units. I think the landscape they are proposing does make this an attractive place to be versus other apartment complexes that we have here in the city of Leawood. If I remember staff's comments earlier today, we only have two, and I drove through the two that they mentioned, and they are drastically different than what this is going to be. I think this is a better apartment complex than either one of those two.

I would be supportive of this plan, and certainly we need to have staff stipulations, but if you look at the list of typical staff stipulations, if we had 30, 20 of them are usually boilerplate, with the donations to this, that, and the other thing, etc. We do need to get into some of the nuts and bolts, but I don't know exactly what staff is going to find in this except to confirm berms and landscaping and a few other technical things. I think the elevations on the

buildings are as attractive as anything else we have in the city from a residential perspective. And especially for this price range. I'm supportive of the plan. I'd like to see it go forward.

Comm. Elkins: I guess I would start by expressing some frustration here. Again, I don't think it's directed at the applicant, I don't think it's directed at staff. If anything, it's directed at the settlement judge and the trial judge. He professed a desire for us to get back into the ordinary planning process, but he denied this body one of its major tools in doing that. I find that extremely frustrating. I sense some frustration by some of my colleagues with respect to some of my questions, but frankly, one of the questions I would have had for staff – had I been able to ask the question of staff – is exactly what can we do with this as a final plan? What latitude do we have? And I didn't have anybody that I could ask that question to tonight with any authority at all. I know from my own experience what I think we can do with the final plan and what I don't think we can do with a final plan, but I'm frustrated that that tool was denied. I'm also frustrated that I have a plan before me that the professional staff for the city of Leawood has recommended against approving, yet I have no idea what about the plan they are against. What is it about this plan that has led them to recommend against our recommending it for approval? I have a great deal of respect for the professional staff of this city. At times I disagree with them, and I'll vote that way when I do disagree with them, but I have respect for what they have to say. All I have here is a recommendation that says no, we're recommending against it, but it's not been explained to me why. And again, that's no criticism of staff. I understand those were the rules of the game that were dealt to staff, so I guess I'm frustrated with the way the court has set this up, to essentially cast commissioners adrift without the tools that it normally has available to it.

I think that this particular plan presents one of the most difficult issues that this Commission and the City has to deal with. The first time I visited this Commission as a citizen was at a time where the issue was essentially what it is today, and that is, How do you transition from the 135th Street corridor into what frankly are reasonably high-end residential neighborhoods that are set off as far as a quarter-mile away from 135th Street? It's been a difficult thing all along, and my guess is, it's part of the reason that 135th Street corridor has been – and certainly economics has been a part of it, but one of the reasons it has been difficult to develop the last little bit up to 135th Street is, what do you put between the half million and million dollar homes that are a quarter mile away and the commercial areas that are right on 135th Street? That's a hard problem. There's no question about it. This is certainly one solution, and that is to have this transition from the commercial at 135th Street through multi-family housing, finally transition into single-family residential. And my guess from the reading I've done, it's one of the traditional ways of doing that transition, of trying to find some sort of gradient that takes us from north of 135th Street, south. This isn't the last time we as a Commission will be faced with that difficulty because the little bit of empty ground that we have left to decide about as commissioners are generally those pieces along 135th Street. It will be an interesting opportunity for all of us, both the staff and the Commission alike, to figure out what to do with that.

Having said all those things, I align myself absolutely with Commissioner Williams. I think this is a better plan than the one we saw before. I am absolutely open if any of my colleagues can help me understand what choice we might have. I simply don't think we have a lot of choice here because this is presented to us as a final plan. This would appear to be consistent with the preliminary plan that was approved a long time ago. It seems to be generally consistent. I understand you could argue that it's so much different from the final plan that we approved last year that it*[break in recording for a few seconds....]*...that you could still have 292 units here and all of a sudden, 63 percent of this could become green space and not build it up. It's almost like this is a multi-dimensional universe that this thing is in. The professionals that spoke tonight, I'll defer to them, and understand that in some magical, mystical way, I do have 63 percent green space, which seems to be extraordinary. I don't have any buildings that are more than two stories tall. So, as these things go, this is a plan that I can completely support. Thank you.

Comm. Roberson: After listening to Commissioner Williams and Commissioner Elkins, I too believe that this is a good plan. I'm not totally opposed to it, but there is a "But." It's the discomfort and uncomfortable feeling I have with staff's denial of this project. Without further information, I find it hard to make an informed decision as to why we should approve this or why we should deny it. I mean, on the surface it looks good, but there are some underlying reasons why it has been denied by staff. Comm. Elkins suggested help, and my thought is, rather than approving a final plan,

we continue this as opposed to denying this, and hopefully we can get some better input as to what the issues are so that we can make an informed decision. My thought is, although I'm not opposed to the plan, if I was given the choice to either approve or deny, I would have to deny this plan based on the lack of information. So, I would much rather continue the process as opposed to deny it. I'm hoping that's an option we may have.

Mr. Lambers: Commissioner, it would be my recommendation to you that that is not an option that is available. For us to get together and go back to the judge and to change the order to allow that to happen, the time constraints just are not feasible, so that's not an option. I guess I should say that if this goes to City Council with whatever recommendation, and the City Council changes its position, I'm assuming that both sides would agree that staff then could proceed with the stipulations without having to go back to court and getting permission.

Mr. Oddo: We would be more than willing to work with staff in any way, shape or form, any stipulations. We're very easy to work with. We'd be happy to do that.

Comm. Jackson: I clearly thought apartments were a good idea here. This area at 135th and Mission is supposed to be retail, walking areas, biking areas, and it's supposed to be a vibrant pedestrian area. The only way you can do that is with a dense apartment complex. I am highly in favor of an apartment complex here. On the other hand, we are in settlement negotiations. If both attorneys don't deny, the judge either has to say yes or no. My hope is, as this is a better plan, that we can somehow get this moved forward to City Council and have a vote of yes or no on that.

However, it is settlement negotiations, and the key word there is "negotiations." I'd like to propose that we add a few stipulations. If we're making a motion for approval, I would add, number 1, if City Council does approve it, it has to come back for the more formal stipulations that are always added by staff. Many of those are boilerplate. I would also add that either we come up with a roofing requirement tonight, or put into the stipulation that the parties have to work together and come up with a roofing requirement. If I had to come up with a stipulation tonight, I'd say 50-year roofing material per city ordinance. That doesn't clear up the issue of whether it be residential or the commercial list, however.

I would also make a requirement, this is negotiation, the city of Leawood likes a little more stone, let's bump it up to 15 percent on the apartments. Also, I'm a little concerned about the building in the northeast corner. Unfortunately, because of the way the judge has put this to us, we have not been able to open up hearings publicly. We did have one person from Tuscany Reserve come in. Mr. Oddo, you have represented to us that the owner of the two lots directly behind that northeast building has seen this plan and approves it, but unfortunately, he's not here to speak to us tonight. I could go yes or no on a stipulation within this, that that building be removed from the plan.

Also, I would require a meeting with Tuscany in order to look at the buffer and the landscaping, with Tuscany and Oddo to come up with an agreeable plan on the size of the buffer and the landscaping. Right now, the landscaping looks good to me. I don't know too much about buffers, and I'm not quite sure what the buffer is. It's a little hard to read the site plans on that.

That would be my recommendation on how to deal with this. Like I said, I'm very much in favor of putting apartments in that area, and I would like to see this better plan go forward with those added stipulations.

Comm. Conrad: I guess what I've learned in the last year, if we put smart people and give them a little longer time, they can come up with a better solution. The plan is better. We went through a similar situation at the Saddle & Sirloin property, for those who have been around that long. If I remember right, it started out with very highly dense units with a nine-hole golf course in it, and you saw where it ended up. I feel like we're in the same place a year ago except that we put smart people with a little more time to come up with a better solution. If we approve it the last time, which we did, we look for stipulations and staff approval, and here we are. I don't know if it's appropriate. I would support a continuance with direction to the applicant to work with staff to come back with an approval of recommendation [sic]. I don't see what progress we've made.

Comm. Williams: Going back to a year ago, and it's hard to remember all the details, even going through the minutes of that meeting. Staff had recommended denial of the project at that point in time, but even then, they didn't provide us any information as to why they were denying it. At that time, we looked at what the preliminary plan was, looked at the issues related to the LDO, and didn't find any problem with that plan meeting the LDO. Likewise, this plan was in that same position. You're meeting the square footage requirements of the LDO, you're meeting the setback requirements of the LDO, and all the other provisions that are in there. Short of this being a toxic waste dump, where do you deny this? I'm agreeing with you, that having from staff the reasons for denial outlined would be extremely helpful to better understand where they're coming from. And we didn't get it then; we're not getting it now. There are no substantial reasons that I can see of actually denying this plan, except that we don't want an apartment complex here. And yes, that's what it is zoned for, that's what it has been approved for for the past several years, and we have a better plan today that we had a year ago. And I agree, we need more staff input, but at the same token, with the staff input, it's got to be detailed reasons as to what that is. And without having benefit of that, the only thing we can do is do like we did last time, and that's to look at what's presented before us, and unless we see something here, I'm not seeing it. If somebody else on this panel is seeing gross problems with this plan as it, again, meets the zoning and meets the LDO, I'd like to know what those are because I'm not seeing it. I think this is a better plan; it certainly has met all the criteria of the LDO that I can see. I would say we take it to that next step. And certainly I agree with Kelly, that adding some of the stipulations that she mentioned tonight so that we can move it forward to the City Council, get an approval or a denial, and with an approval, that it be remanded back to us with staff stipulations that we typically see, and move forward with the process.

Chairman Rohlf: I do have a couple procedural questions, and I'm not sure whether anyone will be able to answer them or not. Is this plan going to go before Council as part of the mediation process? Will the Council see this?

Mr. Lambers: Yes, we have time scheduled March 10th for them to hear it.

Chairman Rohlf: And they will have the same options that we do, to approve or deny.

Mr. Lambers: Yes.

Chairman Rohlf: All right. If they deny it, will it go back to the mediation judge? Or will it go back to the trial court?

Mr. Lambers: Trial court.

Chairman Rohlf: So then we have no idea how long it would be before the trial court would render a recommendation.

Mr. Lambers: No.

Comm. Bennett: This plan does not go back to the trial court. The underlying plan that you approved a year ago, that litigation is still pending, and we will continue in that.

Chairman Rohlf: So that would be the plan that he would make his decision on.

Comm. Bennett: That he would be expected to hear, yes.

Chairman Rohlf: All right. Mr. Shaw?

Mr. Shaw: I agree with Mark, that the judge did take away a lot of our professional advisement, and while I agree with you, I do not see anything wrong with the plan. But, a lot of the plans that we look at, and we consistently have 20 to

40 staff comments, we do need the staff input. There's no question, so it makes it very difficult for me to vote in favor it or to deny it at this point.

Comm. Williams: I think Kelly had the right approach to this, and one of her suggestions was that this goes to Council, but with the stipulation that we add to it, that they can either accept or deny. I would guess they would accept this. I don't know why they wouldn't. With their approval of the plan, then it comes back to us for one more final approval. At that, you ask for staff stipulations so that we can complete the circle of the process. I'm assuming that's what would happen, would it not, Scott?

Mr. Lambers: Correct. That's why I mentioned to the applicant; right now, because we're under the judge's order, the process would still remain in place, and rather than going back and getting permission, both parties have to agree that the judge's constraint on us would be removed for us to prepare stipulations. They indicate that they agree to that.

Comm. Williams: With that, we can get the I's dotted and the T's crossed and address concealed downspouts, trees, size, *etc.*, that we often see. At that point in time, maybe we can see from staff any glaring stipulations that they are not able to share with us tonight, and that the applicant can also begin to address an either correct or decide not to. I don't think not having the stipulations tonight, giving the framework we're being asked to work around or through, not having those stipulations shouldn't be an issue to deny the project.

Chairman Rohlf: And I think that's true, but I think the assumption you're making there is that perhaps Council will approve this plan, and I don't think we have any indication of that.

Comm. Williams: And I don't know either. I don't know either. I'm just saying that lack of stipulations, that in itself should not be the reason to deny this plan tonight, but move it forward so potentially we can get to that point.

Comm. Roberson: I don't really think it has as much to do with stipulations because many of them are boilerplate. We all know that. I think the underlying reason for the denial here by the staff and the underlying denial by City Council isn't more key to this. And quite frankly, if we submit this plan or any plan, are they going to deny it. My concern is we are abdicating our responsibility here a little by shoving up to the Council to make a decision for us, is what it amounts to. And again, I'm not so sure that that's appropriate.

Comm. Williams: I don't think we're abdicating our responsibility here. We're being asked to look at a final plan that's based on an approved preliminary, which is a normal process that we go through, and just as we did before, we look at the plan, no significant changes since last time, although there are changes now, but as has been discussed, there are some game rules that have been forced on us tonight. But, based on that, we make a recommendation for approval or denial based on the plan that we have and the information provided, and we move forward. We either say no, an apartment complex is appropriate here, or it's not. But we have a master plan that has this zoned for multi-family.

Comm. Roberson: That's not the issue. I don't disagree.

Comm. Williams: What's your issue?

Comm. Roberson: It's an apartment complex. I don't disagree. I actually think it's a good idea. I've said that multiple times. My concern is the lack of information that we have to make a decision. Plain and simple.

Comm. Jackson: Unfortunately, you're in the middle of a court case, and that's being held over City Council's head also on March 10th when they review it. I would like them to understand why we're in favor or not in favor of this

proposal, and they're getting that information when they see the minutes, they read the minutes, hopefully, and see why we are or are not in favor. They will understand the difficulties we have and understand why we want to add stipulations as to the roofing, the stone, and the stipulation that says it has to come back for more stipulations. It at least gives them a clearer understanding of where this body stands as far as the appropriateness of an apartment complex there, and finding a way to make it work, and being given an opportunity to make it work in a better fashion than if a judge just comes down and says you have to take that original one.

Mr. Stein: Madam Chair, potentially I can help a little bit here. Mediation, as you've indicated, is a negotiation. You could place stipulations on this, or the Council could, and you could pass it, and the Oddo's could say, "I don't want it." It's a two-way street. When you received the memo with your packet from Patty Bennett, she said after you review the plan and hear from the applicant, you have the following choices: (1) Recommend approval of the plan; (2) Recommend denial of the plan; or (3) Continue consideration of the plan pending more information from the applicant. And Mr. Patterson I think reiterated that. Although we're anxious to move forward with this, I guarantee that litigation will take a lot more time than mediation. What the judge is trying to say, I believe, is that he doesn't want to become the staff's plan. He doesn't want it to be a battle between the staff and the Oddo's. He wants your input into it. Therefore, to the extent that you have questions of the applicant or want additional information, whether it's tonight or at your next meeting, I think that that's contemplated here. I don't know if that's helpful to you, but I think everybody agrees that we would love to see a settlement of this, but there can only be a settlement if we come up with something that everybody ultimately agrees to.

Comm. Jackson: Madam Chair, to that point, would the Oddo's like to put their input on to the stipulations proposed?

Chairman Rohlf: I don't know, at this step in the process, perhaps Mr. Stein has given us an opportunity to continue this matter again, but I'm just not sure that's really in the benefit of this body. It appears we are close on agreement if we just look at the plan. Ms. Jackson, you've expressed approval; Mr. Williams, Mr. Elkins. I think Mr. Shaw and Mr. Roberson and Mr. Conrad are perhaps not leaning in favor of that because of the lack of the information, because of the process we're being asked to operate under. Is that correct? We will get denials from you?

Comm. Conrad: I made a motion to approve the plan a year ago, and I think it's gotten better. And as I said, I think if we go another year, it could get even better. I follow up with Mr. Elkins, that when he asked the questions about traffic and how you judge whether or not this traffic is right, that's where we rely on staff to tell us what level of service is. Help us make those decisions. We rely on staff with their experience on berm heights and distances.

Comm. Roberson: I'm confused, because I've gotten conflicting information at this point about the ability to continue as opposed to approve or deny. Maybe I misunderstood.

Ms. Bennett: You can approve, or deny, or continue. And I think it's important to clarify that if you do want to put stipulations on your motion, you can do that, too.

Chairman Rohlf: Yes, Mr. Conrad?

Comm. Conrad: Are we ready for a motion?

Chairman Rohlf: Well, if you want to give it a try.

Comm. Conrad: I'll give it a try. I would make a motion to continue Case 03-07 Siena, Request for Approval of Final Plan and Plat located south of 137th Street and east of Mission Road, with the very strong recommendation that the applicant and staff work together.

Mr. Lambers: Commissioner, we simply can't.

Chairman Rohlf: We can't do that.

Mr. Lambers: The judge made it clear that this had to get to the Planning Commission and City Council before the staff could participate.

Comm. Conrad: Well, if I recommend a continuance, what do I recommend they continue to do?

Mr. Lambers: That's what I'm saying. It would be information only from the applicant, and the staff would not have any participation or comment on it. My best recommendation tonight is to attempt a motion to approve, in fairness to the applicant, and get this to Council. That's what the judge wanted us to do.

Chairman Rohlf: I think it is clear that we cannot resolve this.

Comm. Williams: Going to Ken's motion for just a moment, I guess in that regard, Ken, since we can continue this to get more information from the applicant?

Comm. Elkins: From the applicant, we can.

Comm. Williams: Yes, from the applicant.

Comm. Elkins: But staff can't participate.

Comm. Williams: So in that regards, what kind of additional information might we want ?

Comm. Roberson: You're asking a layman. I can't answer that question. I'm not a builder, I'm not a developer.

Comm. Williams: I don't think you necessarily need to be. If there's information – again predicated on the applicant – what additional information might any of us need from the applicant to make a decision as to whether or not to move the plan forward for approval, or not?

Comm. Roberson: I'm not sure we're looking for information. At least I'm not.

Comm. Williams: Okay, that begins to answer the question. I'm not looking for any additional information myself.

Comm. Roberson: I'm looking for information from staff.

Comm. Williams: Okay. That's why I was asking the question, since we have the opportunity for continuance for more information from the applicant.

Comm. Roberson: I don't think that solves the issue. What I'd really like to see is a continuance so that they can mediate and solve the issue, and then come back to us with a final plan that they all agree on. That would be the nice thing.

Comm. Jackson: But that was what was supposed to happen here. We didn't get there.

Comm. Roberson: I understand that.

Comm. Williams: But that's not an option on the table.

Comm. Roberson: I know. I understand. That would have been the ideal situation.

Comm. Jackson: Madam Chair, I'll make a motion. I'll move for approval of 03-07 Siena, Request for Approval of Final Plan and Final Plat, located at south 137th Street and east of Mission Road, with the following stipulations.

Comm. Williams: Is that the right number?

Chairman Rohlf: Actually, 19-08.

Comm. Conrad: Oh, I read last year's.

Comm. Jackson: Okay, 19-08, excuse me. And I'll put in stipulations, and if anyone would like to make friendly amendments to help me with the language, you're more than welcome. The first stipulation being that if this plan is approved by the City Council, it would come back to the Planning Commission with further stipulations by staff; (2) that the roofing material would be a 50-year quality from the approved Leawood city list; (3) that the stone on the apartments/condos would be increased to 15 percent; (4) that the developer will meet with the abutting property owners and discuss the buffer zone and landscaping; and I think I'll throw in (5) remove the building in the northeast corner. We can talk about that if you like.

Chairman Rohlf: Is there a second?

Comm. Conrad: I want number 6.

Chairman Rohlf: Friendly amendment?

Comm. Conrad: I'd like to add a stipulation (6), that the applicant review and consider the length of the cul-de-sac past the clubhouse to the Villas. There's been much discussion over the years on safety and the length of cul-de-sacs and it should be reviewed by emergency personnel with the City. (7) I think we established before that it would not be gated, but that seems to come and go, so I'd like to make that as a definite stipulation, that it not be gated. We talked a year ago I think about developments like this and the consideration of safe places, this type of construction and facility. I'd like the applicant to review and consider safe places for this many people, given our geographic location. I might be able to come up with a few more, but I'd have to review minutes of the past. Those are my friendly amendments.

Comm. Williams: I will second the motion, providing Kelly is good with those.

Comm. Jackson: I accept those as friendly amendments.

Chairman Rohlf: I thought I would have her provide any further comment on the motion. If not, we're ready for a vote.

Motion passes 5-2, with Commissioners Conrad and Roberson voting in opposition to the motion to approve.

Meeting Adjourned