

# Mission Valley

# CITY COUNCIL COMMENTS

“I’ve been on the council for 16 years, I went through the Village Vision; and I don’t recall us ever discussing this as a transition property. We decided to keep this property residential because we felt it should be residential. So in the discussions of this being transition and what’s appropriate for transition, . . . in my mind, it’s . . . always been whatever fits residential. So . . . for me, for this project to work, it needs to feel residential. . . .

I vote no. I do not believe that the density and intensity of the us fits the character of the neighborhood.” **Council Member Laura Wassmer**, Transcript of September 3, 2013, City Council Proceedings, at 224:23–225:11; 237:15–18.

“My concern is when I look at R-1a, and the property was purchased as an R-1a property, the purpose and intent of the residential district is . . . to protect and sustain the property values, prevent the decline of physical conditions of private property, prevent conversions of noise and uses that are not in harmony with the neighborhood and . . . generally ensure the quality of life at the highest practicable order. So . . . I’m with Laura on that, on the R-1a. I think it’s got to fit into that property.” **Council Member Ted Odell**, Transcript of September 3, 2013, City Council Proceedings, at 227:13–25.

“I do have an issue with the scale and mass and size of what has been presented. And I really do believe it’s out of context with the neighborhood. . . .

No [on the motion to approve MVS’ special use permit application]. And it’s based on density, size and proposed materials selection for this project does not . . . match the existing neighborhood.” **Council Member Ted Odell**, Transcript of September 3, 2013, City Council Proceedings, at 228:24–229:1–2; 239:23–240:1.

“No [on the motion to approve MVS’ special use permit application]. And I’m going to go with Number 1, the character of the neighborhood. I feel like the project is too dense for that property, and I feel like it is not compatible with the neighborhood.”

**Council Member Ashley Weaver**, Transcript of September 3, 2013, City Council Proceedings, at 235:15–19.

“[I] vote no. . . . I believe the project is out of context with the surrounding neighborhood.”

**Council Member Michael Kelly**, Transcript of September 3, 2013, City Council Proceedings, at 236:25–237:3.

“I vote no. Density, the number of units, yes, but you’re accounting for a maximum of 412 people at one time with 80 employees. That takes it . . . almost up to 500 people there, so a lot of units, a lot of people and not enough space.” **Council Member Brooke Morehead**, Transcript of September 3, 2013, City Council Proceedings, at 238:2–7.

# **New Application Comparison** **Skilled Nursing/ Memory Care Building**

	Plans dated July 30, 2013	Plans dated October 4, 2013	Change
Gross Building Square Feet	91,200 sf	97,550 sf	+ 6,350 sf
Units	120 Units (136 Beds)	120 Units (136 Beds)	NO CHANGE
Building Height	One to Two Story Peak: 22'0" (One story peak); 29'6" (two story peak).	Three-Story Peak: 38'-0" to 40'-0"	+ one to two stories (+ 8'6" – 18')
Lot Coverage	7.3%	5.7%	-1.6%
Total Area	18.4 acres/801,504 sf	12.8 acres/557,632 sf	N/A



# Assisted Living/ Independent Living Building

	Plans dated July 30, 2013	Plans dated October 4, 2013	Change
Gross Building Square Feet	228,340 sf (+3,000 sf Storm Shelter (basement))	228,340 sf (+3,000 sf Storm Shelter (basement))	NO CHANGE
Units	190 Units	190 Units	NO CHANGE
Building Height	Two to Three Story Peak: 26'-0" (two story peak); 36'-0" (three story peak)	Two to Three Story Peak: 26'-0" (two story peak); 36'-0" – 40'0" (three story peak)	+ 4'0" ("at interior common area screen walls")
Lot Coverage	10.1%	14.6%	+4.5%
Total Area	18.4 acres/801,504 sf	12.8 acres/557,632sf	N/A

## Villas

	Plans dated July 30, 2013	Plans dated October 4, 2013	Change
Gross Building Square Feet	38,500 sf	Undisclosed by Applicant	Undisclosed by Applicant
Units	17 Units (2 Bedroom Units)	Undisclosed by Applicant	Undisclosed by Applicant
Building Height	21'4"	Undisclosed by Applicant	Undisclosed by Applicant

# **New MVS Application Fails to Comply with Kansas Law**

**Applicant has not complied with City's Zoning Ordinance with respect to notice, and therefore, approval of the Application will be invalid.**

- Under the City of Prairie Village Zoning Ordinance, twenty (20) days prior to the public hearing in front of the Planning Commission, an applicant for a special use permit must provide notice by mail to all “owners of lands located within two hundred feet, ***except public streets and ways.***” Zoning Ordinance 19.28.020 (emphasis added).
- Applicant did not exclude Mission Road when determining the property owners entitled to notice. Thus a number of property owners to the east of the subject property who are within 200 feet of the property once you exclude Mission Road from the calculation were not provided notice as required by the Prairie Village Zoning Ordinances.



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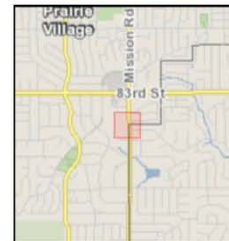
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**Johnson Co AIMS Map**

LEGEND

AIMS Imagery: Current Imagery (2012)

Property/Owner	Address
1 Diana K. Lebow	3801 W. 84th St., Prairie Village, KS 66206
2 Dale & Esther Foster	3800 W. 84th Terr., Prairie Village, KS 66206
3 Brandon R. & Amanda Cox Myers	3604 W. 85th St., Leawood, KS 66206
4 Cameron B. Jones & Debora L. Jones (Co-Trustees)	3605 W. 85th St., Leawood, KS 66206
[5] Thomas M. Johnston & Rhett Johnston	8412 Somerset, Prairie Village, KS 66207



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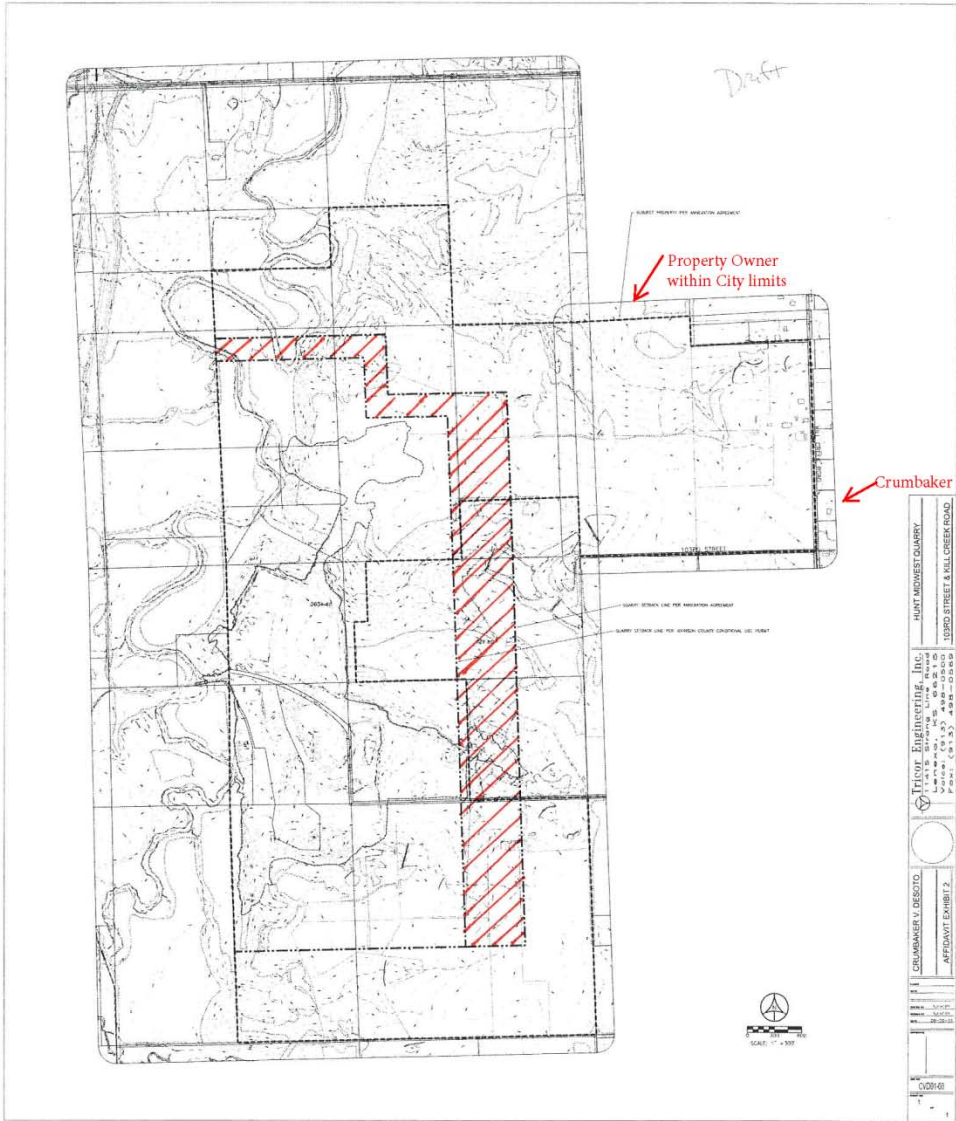
**Kansas Law and this City's planning regulations do not permit MVS to draw an artificial boundary solely for purposes of circumventing the adjoining landowners' property and due process right to file a Protest Petition.**

- The Applicant's refusal to recognize the south and southwest adjoining landowners' property right to receive notice and in turn file a protest petition is premised on the hope that this City will find that that “the area to be altered”, *i.e.* the area subject to a change in “land use,” should be measured from only the area containing its Assisted Living/Independent Living and SNF facilities and not the outer boundaries of the entire proposed Mission Chateau development.
- Under its previous 7/30/13 development proposal, the Applicant agreed that the “villa”-style residences to the south were within the “area proposed to be altered” and thus afforded the adjoining property owners their property right to file a protest petition.
- In the instant application, the Application takes the inconsistent and disingenuous position that only the Assisted Living/Independent Living and SNF facilities should be considered “the area proposed to be altered” under K.S.A. 12-757.

**The Kansas Supreme Court has specifically recognized the validity of a Protest Petition which measured the requisite distance requirement from the outer boundary of the lot, despite that only a limited portion of such lot was subject to a Special Use Permit.**



- In *Crumbaker v. Hunt Midwest Mining, Inc.*, the Kansas Supreme Court considered a landowner's efforts to avoid following the notice and protest petition procedures of K.S.A. 12-741, *et seq.* 275 Kan. 872, 877, 69 P.3d 601, 606 (2003).
- The Kansas Supreme Court found that the City's actions effectively changed the "land use" without properly observing the notice and protest petition procedures of K.S.A. 12-757. *Id.* at 886–87.
- The Kansas Supreme Court found the denial of the adjoining property owners' right to file a protest petition against Hunt Midwest's special use permit rendered the City's actions invalid.
- The "area proposed to be altered" by the special use permit application in *Crumbaker* was limited to an area "within 750 feet from the north property line, and . . . to within 3,390 feet from the quarry's east property line." *Id.* at 877. Nevertheless, the Court found that the failure to provide those property owners within 1,000 feet of the *outer boundaries* of the quarry land proper notice or the opportunity to file a protest petition as required by K.S.A. 12-757 rendered the City's actions invalid.



- The Kansas Supreme Court held that the “area proposed to be altered” by Hunt Midwest’s special use permit was the entire 770-acre property, despite that only a portion therein was actually subject to the special use permit.
- The Applicant's position that the neighbors on its south and southwest property lines need not be afforded notice and the right to file a protest petition is directly contrary to *Crumbaker’s* recognition of a protest petition filed by those owning property within 1,000 feet of the outer boundaries of the subject lot.
- The *Crumbaker* Court did not afford any credence to the position made by Applicant here that the distance requirement of K.S.A. 12-757 should somehow be measured from an arbitrary line surrounding the special use permit.

**The right to file a Protest Petition, which “Appear[s] to be applicable to virtually every situation” where a change in “Land Use” is sought, is broad enough to encompass an Application to change the use of the Mission Valley property from a School to a Multi-Building Senior Living “Campus.”**

- The power of a municipality to enact “planning and zoning” regulations is derived solely from the grant contained in K.S.A. 12-741. *et seq.* *Crumbaker v. Hunt Midwest Min., Inc.*, 275 Kan. 872, 884, 69 P.3d 601, 610 (2003).
- The Act acknowledges an emphasis on “land use” regulation since it defines zoning as “the regulation or restriction of the location and uses of buildings and uses of land.” K.S.A. 12-742(a)(10).
- As such, a city has no authority to change the zoning or “land use” of property—which includes issuing special use permits—without conforming to the statute which authorizes the zoning. *Crumbaker*, 275 Kan. at 886 (citing *Ford v. City of Hutchinson*, 140 Kan. 307, 311, 37 P.2d 39 (1934)).
- The *Crumbaker* court held that the procedures of K.S.A. 12-741. *et seq.* “appear to be applicable to virtually every situation” where a change in zoning or “land use” is sought. *Crumbaker*, 275 Kan. at 885.

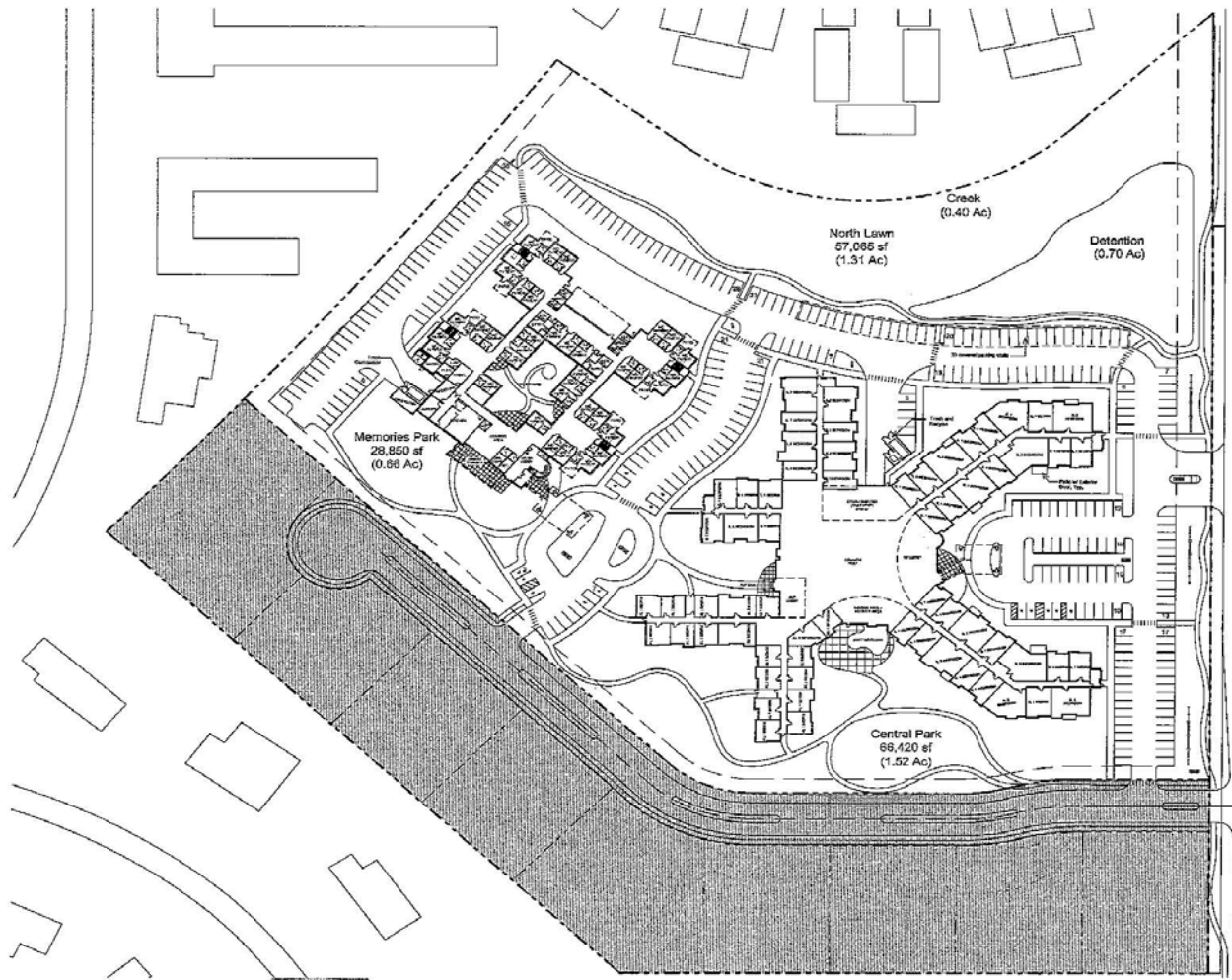
- The Applicant requests that this City elevate form over substance and find that only the land containing its Assisted Living/Independent Living and SNF facilities should constitute a change in “land use” for purposes of determining whether the adjoining landowners’ property right to file a protest petition applies.
- It is undeniable, however, that the area subject to the proposed single-family lots are necessarily a part of and related to its overall senior living “campus” development. It defies reason to suggest that an access road to a skilled nursing facility should somehow not be considered a part of that skilled nursing facility.
- Here, as in *Crumbaker*, this City should refuse to elevate artificial and arbitrary lines over the substance of the Application. To allow the Applicant to unilaterally decide that the area to the south and southwest should now be considered separate from its overall development proposal would frustrate the purpose of the Act, which is intended to apply in “virtually every situation” where a change in “land use” is sought. *Id.* at 885.
- If the Applicant attempted to construct a subdivision of “manufactured homes” or a fire station on its south property line, one would be hard pressed to argue that such construction would not constitute a change in “land use” under *Crumbaker*, despite that such uses are permitted in R-1A Districts as provided in Zoning Ordinance 19.06.010.

**The City's Subdivision Regulations do not  
contemplate the ability to subdivide Property  
for the purpose of defeating a special use  
permit.**

- Applicant's refusal to recognize the south and southwest adjoining landowners' property right to both the receipt of the statutorily-required notice and to file a protest petition must fail for the additional reason that the City's Subdivision Regulations make clear that purported lot lines not approved by the Planning Commission and City Council, or reflected in the public records, are legally invalid.
- The Prairie Village Subdivision Regulations were specifically enacted to ensure the "proper location and width of streets, building lines, open spaces, . . . ", among other aims. See Subdivision Regulation 18.01.050. The City, and not the developer, is vested with exclusive authority to approve a proposed lot subdivision and street system.
- Applicant invites the City to deny the adjoining landowners' right to file a protest petition based on street widths and building lines that have not been approved by the City Council or recorded with the Register of Deeds.



- The Application specifically includes a semi-divided road to be dedicated to the public upon completion. This road runs most of the length of the south and southwest borders and is a necessary component of the overall plan, as the tract described in the special use permit application has only one other access point.
- Applicant did not exclude the width of this road in determining the owners of land who were legally entitled notice of the public hearing.
- Applicant was required to provide notice to owners of land within 200 feet of the artificial boundary but excluding the width of the proposed road right-of-way. Applicant did not provide such notice, and therefore, even if the City were to grant the application, the application would be void for its failure to comply with the City's regulations



**SUMMARY OF SQUARE FOOTAGES**

Skilled Nursing/Memory Care	
One Story	21,000 sf
Two Story	23,500 sf
Three Story	32,250 sf
<b>Total Skilled</b>	<b>77,000 sf</b>

Independent Living/Assisted Living	
One Story	81,366 sf
Two Story	81,366 sf
Three Story	65,610 sf
<b>Total Skilled</b>	<b>228,342 sf</b>
Stem Shallow	+3,000 sf

<b>Total Building Square Footage</b>	<b>308,699 sf</b>
<b>Total Building Footprint</b>	<b>112,166 sf</b>

**SUMMARY OF UNITS**

Skilled Nursing	
One Bedroom Units	48
Two Bedroom Units	15
<b>Total Units</b>	<b>64</b>

Memory Care	
One Bedroom Units	36
Two Bedroom Units	0
<b>Total Units</b>	<b>36</b>

Independent Living	
One Bedroom Units	81
Two Bedroom Units	45
<b>Total Units</b>	<b>126</b>

Assisted Living	
One Bedroom Units	47
Two Bedroom Units	7
<b>Total Units</b>	<b>54</b>

TOTALS	
One Bedroom Units	242
Two Bedroom Units	67
<b>Total Units</b>	<b>310</b>

1 FIRST FLOOR PLAN  
1" = 40'-0"

*Legend*  
 IL - Independent Living  
 AL - Assisted Living  
 SN - Skilled Nursing  
 MC - Memory Care

**W** HOFER WYSOCKI Architects  
**THE TUTERA GROUP**

*Mission Chateau Senior Living Community*

**Applicants proposed development cannot be approved in piecemeal fashion; at base, the entire “Mission Chateau Senior Living Community” constitutes a Planned Mixed Use Development which must be considered as one application under Zoning Regulation 19.23, *et seq.***

- Applicant is seeking the City’s approval for an application to change the land use on the subject property from what was exclusively a public school to what would contain several uses: (1) single-family dwellings; and (2) a special use permit for senior adult dwellings; and (3) “[n]ursing care or continuous health care services . . . on the premises as a subordinate accessory use.”
- Despite assuring its potential residents a variety of uses in its senior living “campus,” Applicant is claiming—solely for purposes of avoiding the adjoining landowners’ right to file a protest petition—that the City must consider its special use permit application separate from its eventual plat approval for the single-family dwellings to the south and southwest.
- Applicant proposes a variety of uses on one common lot, the intent of the City’s Zoning Ordinance demands that it be reviewed as a single application for rezoning as a “MXD” Planned Mixed Use District.
- Unlike Applicant's piecemeal application proposal, the MXD procedures expressly provide the City with the ability to review the *entire* development plan in unison to ensure that it, as well as each of the proposed uses therein, complies with the City’s Zoning Regulations and those special considerations especially applicable to mixed use developments such as Applicant's proposed senior care “campus.”

- See Zoning Regulation 19.23.035 (requiring preliminary development plan to include, among other things, “proposed public and private ways, driveways, sidewalks,” etc., location of parking areas, outdoor lighting plan, landscape plan, detailed traffic impact study, list of uses proposed for MXD District, and a “phasing plan” if project not constructed at one time).
- For a striking demonstration of the absurdity of Applicant's piecemeal application proposal, one need look no further than the failure of Applicant's site plan/special use permit application to provide any access road to its SNF facility located in the rear of its campus.
- Applicant must make the tenuous argument that the proposed access road is not part of the “area to be altered” by the special use permit.
- Only the procedures applicable to MXD District are equipped to handle the Application.

**Any consideration by the City of Applicant's piecemeal Application scheme would constitute invalid haphazard zoning enacted without any reasonable basis but for the advancement of Applicant's private interest in evading the adjoining property owners' right to file a Protest Petition.**

- The City has no authority to enact arbitrary and unreasonable “spot zoning” that singles out of a small parcel of land for use classified differently from the surrounding area, “primarily for the benefit of the owner of the property so zoned and to the detriment of the area and other owners therein.” See *Coughlin v. City of Topeka*, 206 Kan. 552, 558, 480 P.2d 91, 96 (1971).
- A zoning ordinance or an amendment of a zoning ordinance to permit piecemeal or haphazard zoning is void, and so-called “spot zoning,” where it is without a reasonable basis, is invalid. *Id.* (quoting 18 McQuillin Mun. Cop. (3rd Ed.), Zoning, § 25.83). “Thus, singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or to his economic detriment, is invalid ‘spot zoning.’”
- Given the direct application of the MXD District Regulations and the undeniably singular nature of Applicant's “campus” or “community” mixed use development proposal, there exists no rational basis by which the City could consider this Application in piecemeal fashion.
- Applicant only now seeks to employ its artificial piecemeal application scheme in support of its efforts to invalidate the property owners’ right to file a protest petition.

This Application interferes with  
existing MVS, LLC lawsuit



**The City should abstain from acting on MVS' Renewed Application for a Special Use Permit because MVS has removed the case from the jurisdiction of the City to the jurisdiction of the District Court through its Appeal, and any action from the City on the matter would interfere with the District Court proceeding.**

**By appealing the City's decision, MVS  
has terminated the City's power to  
reconsider MVS' application for a Special  
Use Permit.**

- After a city governing body, acting in a quasi-judicial capacity, renders a final order, the body no longer has jurisdiction to reconsider or change such order once an appeal has been perfected. See *Petition of City of Shawnee*, 236 Kan. 1 (1984); see also *Scenic Riverway Community Ass'n v. City of Lawrence*, No. 105,096, 260 P.3d 1248 (Table) (Kan. App. Sept. 30, 2011).
- In *Scenic Riverway*, the court found that once a party has appealed a decision, the case moves vertically, and the appealing party has left the jurisdiction of the tribunal that rendered the aggrieved decision. *Shawnee*, 236 Kan. at 14–15. Thus, the appealing party cannot request, and the appealed-from tribunal cannot grant, reconsideration or amendment of the initial decision during the pendency of the appeal. *Id.*
- MVS filed an appeal of the City Council's decision to deny its April 2013 application for issuance of special use permit in the District Court of Johnson County, Kansas (Case No. 13CV06998). MVS left the jurisdiction of the City tribunal and seeks redress from a court with appellate jurisdiction. Thus, just as in *Shawnee*, the City Council's power and authority to consider MVS' special use permit application is terminated during the pendency of the appeal.
- PV should stay any action on MVS' attempt to re-examine its application until the conclusion of the appeal.

**Because the District Court now possesses jurisdiction over the matter, the City should avoid potentially-conflicting parallel litigation and abstain from acting on MVS' application for a Special Use Permit.**

- “It has long been the rule in this state, and is the general rule elsewhere, that the court of competent jurisdiction which first acquires jurisdiction retains it to the exclusion of any other court of concurrent jurisdiction.”  
*Nixon v. Nixon*, 226 Kan. 218, 221–22 (1979)
- By virtue of MVS’ appeal, the Johnson County District Court has jurisdiction over the matter of MVS’ application for a special use permit. This appeal was perfected prior to MVS’ filing of a second application for a special use permit. This new application covers the same property and reflects substantially the same plan. Resolution of the new application will necessarily interfere with the adjudication of the original application.
- The City Council and Planning Commission, acting as a quasi-judicial body, should respect the District Court’s jurisdiction over this matter and stay any consideration of MVS’ renewed application. To do otherwise would risk inconsistent judgments.
- If the City grants this new application, such a finding could be in direct conflict with an Order from the District Court on the prior application.

**Application Is Not New**

# DENSITY

The total square footage is now 325,890. (This does not include square footage on south portion of 18 acres)



## Size of the “New” Project:

- 325,890 sq. ft.- without including square footage of improvements on south border (bigger than SME on a tract that is 24 acres smaller)
- Now:
  - Compare to residential buildings- The Independent Living Facility is still 228,340 square feet- Essentially a tie for the third largest residential building in Jo.Co. behind Santa Marta and Claridge Court. (This does not include the nearly 100,000 square foot SNF)
  - PV would have two of the four largest residential buildings in Johnson County each serving seniors within one mile of each other.

TOP 10 LARGEST RESIDENTIAL BUILDINGS FOR 2013

Property Address	Building Name	Total Sq.Ft.
13800 W. 116 <sup>th</sup> St, Olathe, KS	Santa Marta	294,284
8101 Mission Rd., Prairie Village, KS	Claridge Court Retirement	241,073
6565 Foxridge Dr., Mission, KS	The Falls Apts	230,826
9100 Park St., Overland Park, KS	Lakeview Village (Southridge)	194,500
5901 W. 107 <sup>th</sup> St., Overland Park, KS	Park Meadows Senior Living	193,569
7300 W. 107 <sup>th</sup> St., Overland Park, KS	The Atriums	183,456
3501 W. 95 <sup>th</sup> St., Overland Park, KS	The Forum of OP	183,445
8101 Santa Fe Dr., Overland Park, KS	Santa Fe Towers	181,452
6555 W. 75 <sup>th</sup> St., Overland Park, KS	Overland Park Place	162,431
13750 Metcalf Ave., Overland Park, KS	Building 1.2 (Redtail View)	156,840

Mission Chateau- Independent Living Facility 228,340 sq. ft.

# Santa Marta





## Largest Senior Living in Johnson County

<u>Name</u>	<u>Zoned</u>	<u>Sq. Footage</u>	<u>Residents</u>	<u>Acreage</u>
Lakewood	RP-5	909,088	750	100
<b>Mission Chateau</b>	<b>R-1a</b>	<b>325,890</b>	<b>378</b>	<b>12.8</b>
Tallgrass	R-1	317,600	331	65
Brookdale	RP-3	312,418	355	19
Santa Marta	RP-4	294,284	242	46

MISSION CHATEAU (“NEW”) would be the second largest Senior Living Facility in Johnson County on the smallest tract.

○ Density Numbers- Compare to Corinth Square Density-

- Mission Chateau (“New”) 25,460 sq. ft. per acre to 11,902 sq. per acre at Corinth Square.

## CORINTH AREA OFFICE AND RETAIL

<u>Property</u>	<u>Acres</u>	<u>Square Footage</u>
1. Corinth South (Panera, First Watch, and Mission Antique Mall buildings)	6.92	89,076
2. Corinth Square (All buildings)	17.76	167,351
3. Corinth Office Building	2.01	51,818
4. Corinth Executive Building	<u>3.64</u>	<u>52,752</u>
<b>TOTAL</b>	30.33	360,997

Square footage/ acre of existing mixed use (properties 1-4 above) =  $360,997/30.33= 11,902$

	<u>Acres</u>	<u>Square Footage</u>
Development Proposal	12.8	325,890

Square footage/acre proposed= 25,460

The proposed development is over two times more intense a development than the mixed use development to its north.

Square footage/acre proposed	25,460
Square footage/acre existing mixed use	<u>11,902</u>

- Square feet per acre for other senior housing developments
  - Benton House- 5,816 sq. ft per acre
  - Average sq. ft. per acre for CCRCs in Johnson County – 8,196 sq. ft. per acre [see attached slide]

Mission Chateau (“New”)-25,460 sq. ft per acre

The square footage at Mission Chateau (“New”) is almost four and one-half times the density of Benton House on a square feet per acre basis.



SENIOR LIVING SAMPLE **ZONED R1**

Retirement Facility	Zoning	Indep. Living	ALF	SN	Memory Care	Total Res.	Bldg. Sq.Ft.	Acres	Res/Acre	Sq.Ft./Acre	BUS	Perimeter Type
Village Shalom	R-1	128	54	52	12	246	220012	25.5	96	8627.9	NF	TEMPLE,HO SPITAL,W-SF,E-MF
Forum	R-1	220	30	60	30	340	183445	7.5	45.2	24394.3	FP	2-R,2-B
Tall Grass	R-1	401	32	44	28	505	317600	65	7.8	4886.2	NF	2-MF,1-C,1-HWAY
Freedom Point	R-1		79		14	93	67443	4.6	20.4	14790.1		B, MF
Heritage of OP	R-1				48	48	30495	4.0	12.0	7604.7		CHURCH,3-R
Rose Estates	R-1		80			80	52195	5.9	13.5	8787.0		2-GREEN,1-R,1-2LANE MEDIAN
Brighton Gardens	R1B		106	45	25	176	80382	4.4	39.8	18186.0		MF-1,SINGLE-2
Benton House	R1A		47		13	60	39512	6.8	8.8	5819.1		RESI
<b>TOTAL</b>		749	428	201	170	1548	991084	123.7	12.5	8,009.4		
Mission Chateau	R-1A	242	72	100	36	412	325,890	18.4	22.4	25,460		

## JOHNSON COUNTY CCRC'S

Retirement Facility	Zoning	Independent Living Facility	Assisted Living	Skilled Nursing	Memory Care	Total Residents	Building Sq.Ft.	Acres	Residents Per Acre	Sq.Ft. Per Acre	BUS	Perimeter Type
Aberdeen Village	RP-3	153	56	60	16	285	164,722	35.5	8.0	464.1	NF	2-B,1-I,1-SF
Santa Marta	RP-4	231	32	32	16	311	294284	46	6.8	6394.5	NF	MF
Village Shalom	R-1	128	54	52	36	270	220012	25.5	10.6	8627.9	NF	TEMPLE,HOSPITAL,W-SF,E-MF
Claridge Court	CP-2	224		45		269	241073	4.8	56.3	50433.7	NF	2-MF,2-C
Forum	R-1	220	30	60	30	340	183445	7.5	45.2	24394.3	FP	2-R, 2-B
Tall Grass	R-1	401	32	44	28	505	317600	65	7.8	4886.2	NF	2-MF,1-C,1-HWAY
Lakewood	RP-5	300	26	172		498		100	5.0	9090.9	NF	MULTIFAM RES(BUILT AFTER LKVW)
Total		1657	230	465	126	2478	2330224	284.3	8.7	8,196.4		
Mission Chateau	R-1A	242	72	100	36	412	325,890	18.4	29.5	25,460		

## JOHNSON COUNTY CCRC'S

Retirement Facility	Zoning	Independent Living Facility	Assisted Living	Skilled Nursing	Memory Care	Total Residents	Building Sq.Ft.	Acres	Residents Per Acre	Sq.Ft. Per Acre	BUS	Perimeter Type
Aberdeen Village	RP-3	153	56	60	16	285	164,722	35.5	8.0	464.1	NF	2-B,1-I,1-SF
Santa Marta	RP-4	231	32	32	16	311	294284	46	6.8	6394.5	NF	MF
Village Shalom	R-1	128	54	52	36	270	220012	25.5	10.6	8627.9	NF	TEMPLE,HOSPITAL,W-SF,E-MF
Claridge Court	CP-2	224		45		269	241073	4.8	56.3	50433.7	NF	2-MF,2-C
Forum	R-1	220	30	60	30	340	183445	7.5	45.2	24394.3	FP	2-R, 2-B
Tall Grass	R-1	401	32	44	28	505	317600	65	7.8	4886.2	NF	2-MF,1-C,1-HWAY
Lakewood	RP-5	300	26	172		498		100	5.0	9090.9	NF	MULTIFAM RES(BUILT AFTER LKVW)
Total		1657	230	465	126	2478	2330224	284.3	8.7	8,196.4		
Mission Chateau	R-1A	242	72	100	36	412	325,890	18.4	29.5	25,460		

## Benton House comparison:

- Dictates 94,068 square feet

If you compare the size of the Benton House project (when fully completed as approved) against the Mission Chateau (“New”) project on a square footage basis then the size of Mission Chateau should be 94,068 square feet.

$$\begin{array}{l} \underline{49,800 \text{ sq. ft. at Benton House}} \\ 295,786.67 \text{ sq. ft of land} \end{array} = \begin{array}{l} \underline{\mathbf{94,068 \text{ sq. ft. at Mission Chateau}}} \\ 558.720 \text{ sq. ft of land} \end{array}$$

## Other CCRCs in Johnson County comparison:

- Dictates 104,908 square feet

The other CCRCs in Johnson County on average are 8,196 square feet per acre (including Claridge Court which is on property that is zoned C-2 and should probably be excluded).

8,196 sq. ft. x 12.8 acres at Mission Chateau = **104,908** square feet

MR. WOLF: I'm curious, does anybody else still think this project is still too big? I need some input here from what you all are thinking, because I still have some concerns based upon everything that the neighbors have said, what their counsel has presented.

Transcript of Proceedings 8/6/2013, Page 171

CHAIRMAN VAUGHN: Well, I'm concerned just because it does use up some more green space, yes, there's no doubt about it.

Transcript of Proceedings 8/6/2013, Page 171

## PC Comments (June 4, 2013)

Mr. Schafer: "But, I think the elephant in the room, maybe more so than property value, and maybe it's tied to property values, is the size of the project...**it just feels too big.**"

Mr. Kronbald: "But I was basically going to say, **why so big?**...it comes down to why so big?"



Mr. Schafer: [In comparison to Benton House]..."if they've got 50,000 feet on six acres and, you know, that scale seemed appropriate to the commission and to the neighbors and this is **150,000 feet on 18 acres makes sense.**"

Chairman Vaughn: "concern for the intensity of the use. And my question was going to be, can a project that's smaller be feasible? And I – suspect that it can...But the intensity of the development, the intensity of the structures, the narrow streets, those all concern me.

Ms. Wallerstein: [Regarding height] I think it is that – the look of Prairie Village is the – a lot of it is the low flat ranch type houses. And it – **the three stories just seems to be completely out of place** when you have all these low ranches around you."

Chairman Vaughn: "I would hope that you would be able to get a large number, not necessarily a majority, but a large number of the neighbors...in agreement with what you propose...we're really concerned about the neighborhood and they need to—**they need to be enthused about the project**, also"

MR. WILLIAMSON: It will be one of the largest buildings in the area, of course, so it will have that sort of impact.

Transcript of Proceedings 8/6/2013, Page 139

## Reminder of saturation:

- Within 5 mile radius-34 senior living facilities totaling 4,348 units (that may hold as many as 5,292 residents when double occupancy considered).

# **Planning Commission May Recommend Denial Based On Only Aesthetics**

**\*\*1275 \*509** The district court has cut to the essence of this case- City's determination was based solely upon the visual impact and aesthetics of the proposed stealth tower. The court found City was entitled under the law to make this determination and Gump had not proven the unreasonableness of the denial of the conditional use permit.

R. H. Gump Revocable Trust v. City of Wichita, 35 kan.app.2d 501 (2006)

As long ago as 1923 we recognized in a zoning case that '[t]here is an aesthetic and cultural side of municipal development....

R. H. Gump Revocable Trust v. City of Wichita, 35 Kan.app.2d 501 (2006)

The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as **\*510** carefully patrolled.

R. H. Gump Revocable Trust v. City of Wichita, 35 kan.app.2d 501 (2006)



The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area sanctuary for people.

R. H. Gump Revocable Trust v. City of Wichita, 35 Kan.app.2d 501 (2006)

“The proposed tower would have a definite negative aesthetic impact on the neighboring properties.” He noted that three homes would be, respectively, 550, 750, and 1,350 feet from the proposed water tower. The record indicates those residents opposed the permit.

Rural Water District #2, Miami County v. Miami County Board of County Commissioners  
268 P.3d. 12, 2012 WL 309165 (Kan.App.)

...The maintenance and operation of searchlights on a regular basis would have a measurable adverse impact on the valuation and marketability of nearby residential properties....the current trend of the decisions is to permit regulation for aesthetic reasons.

Robert L. Rieke Building Co., Inc. v. City of Overland Park, Kansas  
232 Kan. 634, 657 P.2d 1121

There was evidence that the maintenance and operation of plaintiff's searchlights would have an adverse impact on the marketability **\*\*1129** of nearby properties.

Robert L. Rieke Building Co., Inc. v. City of Overland Park, Kansas  
232 Kan. 634, 657 P.2d 1121

...Kansas appellate courts have long allowed aesthetics to be considered in zoning matters...[T]he current trend of the decisions is to permit regulation for aesthetic reasons.

Zimmerman v. Board of County Commissioners of Wabaunsee County  
289 Kan.926, 218 P.3d 400

...we further observe that K.S.A. 12-755(a) expressly provides that “[t]he governing body may adopt zoning regulations which may include, but not be limited to provisions which:... (4) control the aesthetics of redevelopment or new development.” As the Court of Appeals has observed when citing this statute, “regulation of redevelopment or new development is permitted for aesthetic reasons.

Zimmerman v. Board of County Commissioners of Wabaunsee County  
289 Kan.926, 218 P.3d 400

The facts presented at various meetings indicate that Wind Farms would likely consist of complexes of a dozen or more turbines, *located on ridge lines within the county.*

Zimmerman v. Board of County Commissioners of Wabaunsee County  
289 Kan.926, 218 P.3d 400

“The location of Wind Farms within Wabaunsee County would not be in the best interests of the general welfare of the County as a whole. In arriving at this **\*953** conclusion, the Board is mindful of the fact that ‘general welfare’ includes a broad spectrum of values, *including aesthetics...Placing complexes of Wind Farms, of the size and scope necessary to accomplish their intended purpose, upon the ridge lines of the County would have a dramatic, and adverse, [e]ffect upon all of those general welfare issues [e.g. aesthetics].*

Zimmerman v. Board of County Commissioners of Wabaunsee County  
289 Kan.926, 218 P.3d 400



*“... The size, and scope, of the proposed Wind Farms make them objectionable and unsightly, partly as evidenced by the overwhelming opposition by the public.*

Zimmerman v. Board of County Commissioners of Wabaunsee County  
289 Kan.926, 218 P.3d 400

Further, inherent in zoning and planning regulations is the concept that a city remain free to act in its perception of the best interests of the community at large.

Blockbuster Video, Inc. v. City of Overland Park, Kansas  
24 Kan.App.2d 358, 948 P.2d 179

Finally, in response to Blockbuster's argument that the City lacks power to enforce zoning regulations based on aesthetics...

Blockbuster Video, Inc. v. City of Overland Park, Kansas  
24 Kan.App.2d 358, 948 P.2d 179

...our Supreme Court observed that since 1923, Kansas has recognized there is an aesthetic and cultural side of municipal development which can be fostered within reasonable limits.

Blockbuster Video, Inc. v. City of Overland Park, Kansas  
24 Kan.App.2d 358, 948 P.2d 179

...the Kansas statutes provide that a city may adopt regulations which control the aesthetics of the development...the city may then choose to enforce them or not when a development plan is proposed.

Rodrock Enterprises, L.P. v. City of Olathe, Kansas  
28 Kan.App.2d 860 21 P.3d 598

The planning commission reasoned that the plat did not comply with the WRCP and design manual, and that the plat would result in a disappointing development of a promising parcel of land.

Rodrock Enterprises, L.P. v. City of Olathe, Kansas  
28 Kan.App.2d 860 21 P.3d 598

# SHIFT CHANGES AND NOISE

MR. WILLIAMSON: Item 8, then, adjoining properties and the general public will be adequately protected from...unnecessary intrusive noises....

Transcript of Proceedings 8/6/2013, Page 142



MR. WILLIAMSON: ...it's a 365 day a year operation rather than what it was as a school.

Transcript of Proceedings 8/6/2013, Page 136

MR. WILLIAMSON: So there will be -- there will be some adverse effects....

Transcript of Proceedings 8/6/2013, Page 137

**MR. WILLIAMSON:** The third -- third factor, the proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located. Well, we're looking at the density. And again, this is a transitional property that we have high-density residential that are to the north and the northwest, we have the low-density residential to the south.

Transcript of Proceedings 8/6/2013, Page 137

MR. WILLIAMSON: The fourth item is the location, size and the special use, the nature and intensity of the operation involved or conducted....

Transcript of Proceedings 8/6/2013, Page 138-139

MR. WILLIAMSON: There will be some additional noise from the vehicles as they arrive and depart at night, which is different.

Transcript of Proceedings 8/6/2013, Page 142-143

MR. WILLIAMSON: And there will be some emergency responses, of course, that -- that will -- that will happen, but some of these are on sirens and some are not, so there will be a variety of those.

Transcript of Proceedings 8/6/2013, Page 143

MS. WALLERSTEIN: Yeah. At one point, they talked about a total of 80 employees on site per day, is that correct?

Transcript of Proceedings 8/6/2013, page 143

MR. WILLIAMSON: 85, I think, is what their count is.

Transcript of Proceedings 8/6/2013, Page 144



MS. WALLERSTEIN: Yeah. But then you have a shift change at 11 o'clock at night then again?

MR. TUTERA: And that's a -- a reduction that's -- I think it's 20 employees, I'm thinking from the top of my head.

Transcript of Proceedings 8/6/2013, Page 144

**SNF**

## Skilled Nursing Facility Memory Care (SNF):

- Mission Chateau (“New”)-SNF is twice the size of the existing Benton House project in total.
- Mission Chateau (“New”)-SNF is 97% the size of the existing Mission Valley School
- SNF is not subordinate and accessory. Its services will not be limited to the residents of Mission Chateau.
- SNF has been increased in size compared to the prior plan.
- Staff Report reflects that the SNF has increased from one to two stories to three stories with the height as much as 40 feet.

We have reviewed the other Johnson County SNFs to determine usage by residents in the applicable CCRCs.

Our review reflects that on average only 10% of the SNF patients will come from the CCRC residents. In other words, almost 90% of the patients on average will come from somewhere else.

When preparing for the August hearing The Forum had only 3 out of 60 SNF patients that came from their facility.

If 10% of proposed Mission Chateau SNF patients come from the other facilities, then 90 patients served by the Mission Chateau ("New") SNF will come from somewhere other than Mission Chateau.

Clearly, the size of the SNF is not dictated by "lifestyle".

- Staff Report reflects that “the applicant needs to reanalyze the building to reduce square footage or provide justification for the increase in size.”

# Skilled Nursing Facility

Legal Issue: Subordinate accessory use

Prairie Village Zoning Ordinance Section 19.28.070 (I) Dwellings for senior adults...“Nursing care or continuous health care services may be provided on the premises as a subordinate accessory use.”

# TRANSITION

## **Transition:**

- 63% of the perimeter of the Mission Valley School is single family residential. This percentage is higher than every nearby senior housing development in Johnson County (except for Benton House)



MR. WILLIAMSON: So it's – it's a transition area, there's a lot of different things in the neighborhood.

Transcript of Proceedings 8/6/2013, Page 153

MR. WILLIAMSON: The proposed senior housing provides a good transition between the low-density and is a residential use.

Transcript of Proceedings 8/6/2013, Page 159

MR. WILLIAMSON: And this is an urban --  
really, an urban area.

Transcript of Proceedings 8/6/2013, Page 158

MR. WILLIAMSON: The hardship on the neighbors will be the loss of the open space and green space.

Transcript of Proceedings 8/6/2013, Page 153

MR. WILLIAMSON: ...there are going to be about 23 percent of building coverage there; but it's going to be, I don't know, I can't remember, 46 percent with like parking and impervious surface or something like that....

Transcript of Proceedings 8/6/2013, Page 145

- Surrounding single family homes have an average density of 5,559 square feet per acre based on county records of lot size and home size for 27 properties.
- The commercial areas to the north are 11,902 square feet per acre
- Mission Chateau (“New”) is 25,460 square feet per acre
- This is not a transition

## **Transition:**

- Still inadequate due to its size
- Three stories is out of place in these neighborhoods
- Uncertainty on 200 foot barrier



## Santa Marta

**Print Date:** 07/25/2013  
**Image Date:** 03/10/2012  
**Level:** Community

46 Acres







## Aberdeen Village

**Print Date:** 07/25/2013  
**Image Date:** 03/10/2012  
**Level:** Community

36 Acres





## Tallgrass

**Print Date:** 07/25/2013  
**Image Date:** 02/27/2012  
**Level:** Community

65 Acres

# PARKING

## **Parking is a significant problem:**

We have examined four other similar CCRCs in the area.

### Regular use:

In summary, if you apply the minimum requirements of Prairie Village (similar to what was done at Claridge Court) to Mission Chateau (“New”), you come up significantly short on every day parking.

On the conservative side, the proposed parking at Mission Chateau is short by as many as 89 parking spaces.

### Mission Chateau Parking

	# of Units	Prairie Village Special Use 19.28.070	Code Rqd Parking	Staffing Counts	Staff	Changeover Ratio	Staff Changeover	Total
ILF	136 Units	3 spaces/ 4 units	102	Re: SUP Narrative pg. 8-4-05-13 (approx. 17% staff per unit)	26	Re: SUP Narrative Pg. 8 4-05-13 (approx.55% staff change over ratio)	16	
ALF	54 units	3 spaces/ 4 units	41		10		6	
Memory Care	36 units (36 beds)	1 space per 5 beds	8		7		4	
SNF	84 units (100 beds)	1 space per 5 beds	20		42		24	
<b>TOTAL SURFACE PARKING</b>			<b>171</b>	<b>Plus</b>	<b>85</b>	<b>Plus</b>	<b>50</b>	

## Parking Shortage

	Lakeview	Santa Marta	Aberdeen	Tallgrass	Total
Actual Parking Spaces	875	274	262	491	1902
Est. using Mission Cht. Formula	751	217	189	328	1485
Excess parking over formula	124	57	73	165	417
Formula error % (excess/estimate)	17%	26%	39%	50%	28%

Mission Chateau estimated parking before villas is 316 spaces,  
 $316 \times 28\%$  error rate = 89 spaces short

## **Weekends/Holidays:**

To suggest that parking during weekends and holidays can be handled operationally (as indicated by the Applicant) when your every day parking analysis is so short is an inadequate explanation.

If the project is designed to a size comparable to Benton House you will have enough room for adequate parking.



# TRAFFIC

## Traffic:

You cannot only compare peak times of a school which has only two real traffic periods (on 190 days a year) with peak times of a facility that has varied peak times and which operates 24 hours per day 7 days a week.

# Traffic Estimates for Mission Chateau

# Using the Traffic Impact Study submitted by Tutera Group

## Mission Valley School (2010-2011)

## Mission Chateau Traffic Study

\*440 Students

\*49 Staff

\*8 School buses with average 38 students per bus

\*\*11% Students Walk to School = 48 students

\*\*\*67 Single Cars – single student=67 students

\*\*\*10 Carpool Cars = 25 students

Total trips: 220 x 2 times a day = 440 daily trips

440 x 5 days a week = 2,220 trips a week

2,220 x 36 weeks of school = **79,920 annually**

\*Shawnee Mission School District (July, 2013)

\*\*National Institute of Health (Oct. 2007)

\*\*\*Prairie Village Safe Routes to School (Dec. 2007)

The proposed site and Traffic Impact Study only encompassed two hours a day (am and pm). This site will be used 24 hours a day, 7 days a week.

According to Tutera: 1,078 daily trip

1,078 x 7 days a week = 7,546 trips week

1,078 x 365 days a year = 393,470 **annually**

\*Mission Chateau will **generate 5x traffic** on

Mission Road. Statement that is important!

# Factors For Consideration

Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent hazards and to minimize traffic congestion in public streets and alleys.

- **Staff Report reflects that the existing three access points to the site from Mission Road will be reduced to one access driveway point. This is the only access point to the project contained within the area subject to the Special Use Permit Application. This cannot be acceptable for safety and traffic circulation purposes.**
- **Staff Report reflects that a public street is proposed to be dedicated but the access point is not located within the area subject to the Special Use Permit Application. The proposed street is absolutely necessary but has not been made a condition to the issuance of the SUP.**
- **If the Applicant does not construct single family residences on the proposed 9 lots to the south, then a public road is all that divides the single family homes to the south and the massive project. There is no requirement that the Applicant facilitate the construction of single family homes on the proposed lots that are supposed to be a buffer between the south border properties and the massive project.**

# Golden Factors

**1. The character of the neighborhood;**

- **The SNF is essentially a 3- story, 100,000 square foot commercial operation and will be completely out of place with the neighborhood.**
- **The use of the facility is 24/7 with nighttime shift changes and traffic.**
- **Unlike the character of the neighborhood.**
- **Staff Report uses "units per acre" which is quite misleading. The Staff Report does not address "square feet per acre" or "residents per acre". Although the Staff Report mentions "floor area ratio" it fails to mention that according to Village Vision the average floor area ratio in the 5 commercial centers in PV is 25%.**
- **In essence, the floor area ratio in this project (22%) is basically the same as the 5 commercial centers in PV but it has three stories unlike the 5 commercial centers..**
- **When including buildings, sidewalks, streets and parking the area covered is 50% of the lot. If you subtract the 2.5 acres in the flood plain then the area covered percentage goes up to 61.5%. Coupled with primarily three story buildings this does not fit the character of the neighborhood.**

2. The zoning and uses of property nearby;
- **The primary zoning nearby (on the south, southwest and the east) is single family residential. It is unprecedented to have a project this size directly next to R-1 single family residences.**
  - **63% of the perimeter of this Project is single family residences. This percentage is the second highest of any senior dwelling facility in Johnson County.**



3. The suitability of the property for the uses to which it has been restricted under its existing zoning;
  - **Brighton Gardens is zoned R-1b and is located next to R-1b. A development with the density of Benton House would be embraced by the neighbors.**
  - **There is significant demand for other R-1a uses so a distinct and drastic change in use whether or not it is permitted in R-1a does not mean it fits in comparison to the property nearby.**

4. The extent that a change will detrimentally affect neighboring property;
- **We agree with the Staff Report that open green space enjoyed by the community will be lost. One of the primary goals of Village Vision is to maintain open green space (Village Vision includes schools as open space).**
  - **There is room for more density without compromising the open green space.**
  - **We disagree with Staff Report that the project will have little effect on the property values, including the residences across the street from Mission Road. The size of the proposed project will negatively impact the property values on the east side of Mission Road.**

- **The Proposed Project will have little if any useable open space.**
- **Note that the 2.5 acres to the north is in a flood plain and much of it sits in a creek bed or is otherwise covered with natural vegetation.**
- **The "green space" along Mission Road is right of way. This hardly constitutes green space when you compare it to athletic fields.**
- **Staff Report reflects that the height and mass of the buildings are concerns.**

- **The SNF is essentially a commercial enterprise that is not intended to merely serve the senior dwelling facility. The large size of the SNF is not necessary to maintain the “lifestyle” of the proposed Project.**
- **We agree with the original Staff Report that although the height of the proposed Independent/Assisted Living building is about the same as the school gymnasium but it is a much larger building and has a significantly greater impact because of its mass.**

5. The length of time of any vacancy of the property.
  - **The property is readily suitable for reasonable development so the length of any vacancy is irrelevant as a Golden Factor. The Applicant cannot take the position that the property should somehow receive favorable treatment from the City because it would not otherwise be developed. There are multiple parties that have expressed interest in this property.**
6. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual land owners;
  - **Staff suggests that by not allowing the property to be redeveloped the property will depreciate in value and the depreciation in value would have a depreciating effect on the surrounding property.**
  - **Suggesting that opposition to this particular project with its mass, lack of green space, minimal transition and other issues means that the property is not going to be developed is a straw man argument and disingenuous. Because this project is being opposed does not mean every project will be opposed.**

- **As Staff previously pointed out, in addition to the adjoining property owners, all PV residents will be negatively impacted because of the loss of the open space and use of the area for recreational purposes. Other uses or less dense uses may not have this same negative impact.**

7. City staff recommendations.

- a) **The Staff Report fails to consider the impact on traffic due to the continuous operation of this facility as compared to the School.**
- b) **The project only has one access point. MVNA has pointed out the health and safety issues related to the private drive.**
- c) **The detention basin should be enclosed as presented by MVNA. Regular monitoring should be required.**
- d) **For reasons stated above, the density issue is not acceptable.**
- e) **For reasons presented by MVNA, the density of the project provides no transition. It is out of character with the area.**
- f) **Despite the fact the major building setbacks may meet minimum standards; PV needs to impose higher standards in light of the size of the project.**

- g) Open space will be dramatically impacted. Very little useable green space**
- h) We concur with the Staff Report that the Skilled Nursing/Memory Care facility should be reanalyzed to reduce the square footage. We believe the size of the facility should be dramatically reduced. The SNF is a commercial operation with a small portion of the patients coming from the Mission Chateau IL/AL facility. The commercial operation will be surrounded by residents occupying either homes, condos, or apartments.**
- i) The SNF needs to be a subordinate accessory use. The SNF is essentially as big as the existing middle school. How can it be deemed to be a subordinate accessory use?**
- j) For reasons previously stated, the mass of the buildings should be reduced in height and no building should be taller than two stories so they are consistent with surrounding properties.**
- k) We disagree with the Staff that the "density of the project is reasonable for the size of the land area. 12.8 acres is one third the size of the SME tract but the SME school building is similar in size to the proposed project.**
- l) The mass of the buildings is inconsistent with any reasonable transition.**



## 8. Conformance with the Comprehensive Plan.

### 1. Encourage developers to obtain community input.

- **The Applicant has failed to incorporate any material input from the neighbors. The most recent two plans presented by the Applicant, even after receiving direction from the Planning Commission to get input from the neighbors, have been prepared and presented without any input from the neighbors. The neighborhood meetings were nothing more than a presentation by the Applicant with no changes having been made to the project except that in both instances the size of the project was increased.**
- **The recent Amendment to the Comprehensive Plan precipitated by the school closing clearly requires the participation of neighbors in any proposed development and required the input of the surrounding neighborhood. The developers are to make significant efforts to solicit community input in redevelopment planning. The site is to be designed in a manner that is compatible with the neighborhood. This has not occurred. The Applicant has not incorporated into this project any input from the neighbors in the surrounding neighborhoods.**

# Factors/Factors for consideration

The Planning Commission and Governing Body shall make findings of fact to support their decision to approve or disapprove a Special Use Permit. (Ord. 1973, Sec. I, 1999; Ord. 2199, Sec.V, 2009)

A. The proposed special use complies with all applicable provisions of these regulations, including intensity of these regulations, yard regulations and use limitations:

- **Staff Report fails to address the requirement that the SNF be a subordinate and accessory use.**
- **Platted as one lot so the Applicant has been able to avoid a number of requirements.**
- **The Staff Report addresses lot coverage to reflect that it falls within 30% lot coverage ratio (119,165 sq.ft. or 21.4%)(26.50% if you subtract 2.5 acres in flood plain). What it doesn't point out is that the average floor area ration in the 5 commercial centers in PV is 25%. The floor area ratio does not take into account height.**
- **Staff Report reflects the area covered by buildings, sidewalks, streets and parking is 276,475 or 49.6% of the lot. If you subtract the 2.5 acres in the flood plain then the percentage goes up to 61.5%.**

B. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public;

- **For the reasons stated (density, lack of real transition, etc...) we believe that the welfare or convenience of the public is adversely impacted and we have shown that the need for senior housing is already available for PV residents.**
- **As previously stated, the Traffic Impact Study fails to address a 24/7 use but rather only mentions two peak traffic periods.**
- **As previously stated, the parking provided by the Applicant will be insufficient for daily use as well as weekends and holidays.**

C. The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located;

- **Staff Report misleadingly uses "units per acre" to address the impact on the value of the other properties in the neighborhood. Other density calculations more accurately reflect the dominating impact of this proposed project.**
- **We disagree with the Staff Report that the project will have little effect on the property values of the residences across the street from Mission Road. We believe the size of the proposed project will negatively impact property values on the east side of Mission Road.**

D. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood consideration shall be given to:

1. The location, size, nature and height of buildings, structures, walls, and fences on the site; and
2. The nature and extent of landscaping and screening on the site.

- **Staff suggests that the traffic impact will be less for this project than it was for the school despite the fact that the school operated less than 190 days a year and generally during normal school hours while the proposed project will be open 365 days per year 24/7.**

- **Regarding the size of the Project, Claridge Court is not a fair comparison because it is located in C-2 zoning and there are no single-family residences abutting the property. SME high school property is 20 acres larger than Mission Valley although the buildings are similar sizes.**
- **The original Staff Report reflected that the height of the proposed Independent Living/Assisted Living building will be approximately the same height as the school gymnasium; however, the building is much larger and is closer to the residents on the south and southwest property lines.**
- **We agree with the Staff Report that the mass of this project will dominate the area.**

E. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations, and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.

- **Although the minimum parking requirements for this use may have been met, PV cannot afford to be wrong in its parking requirements (See Claridge Court). The parking requirements are inadequate when compared with other Senior dwelling facilities in Johnson County and the parking requirements do not address special events such as Mothers Day, Fathers Day, July 4, Memorial Day... We understand that there can be as many as 50-250 visitors on these days.**
- **Staff was previously concerned that parking may be a problem at the afternoon shift change. We have no idea what has changed this time. Parking is a problem**
- **Previously the Staff Report clearly reflected that parking during holidays could be a problem.**



F. Adequate utility, drainage, and other such necessary facilities have been or will be provided.

- **We believe the detention facility needs to be placed underground for safety reasons.**
- **We believe the underground detention basin should have regular monitoring and treatment as required by local, state, and federal law to protect both on site and down stream public health and environment.**

G. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.

- **No analysis has been undertaken by staff regarding shift changes in the nighttime hours.**

H. Architectural Style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed building is to be built or located.

- **City Council has stated that the proposed materials for this project do not match the existing neighborhood.**
- **Will the single family lots be restricted to single family homes that conform architecturally to neighboring properties.**

# Closing

1. Stay the Applications for a Special Use Permit and Site Plan until the conclusion or resolution of the MVS, LLC lawsuit against the City.
2. Require Applicant to re-submit the Special Use Permit Application having addressed the following:
  - a. Require Applicant to provide notice in compliance with the Zoning Ordinances, namely giving notice to all adjoining property owners within 200 feet of the boundary of the entire Mission Valley School tract and not an artificially determined portion of the tract as well as excluding streets from the 200 feet calculation;
  - b. Confirm that the applicable neighbors entitled to the receipt of the foregoing notice may avail themselves of the filing of a Protest Petition if the requirements of the Zoning Ordinances are satisfied;
  - c. If Applicant wants to plat the Mission Valley School tract then require compliance with the Zoning Ordinances applicable to mixed use development so the entire tract receives a uniform review thus avoiding piecemeal treatment;
  - d. Require in any event that the to-be-publically dedicated road is included in the portion of the Mission Valley School tract that may be subject to senior dwelling units so that the senior dwelling units have adequate and safe access;
  - e. Require the skilled nursing facility to be treated as a subordinate accessory use in size and location to the independent living housing