

**CITY COUNCIL  
CITY OF PRAIRIE VILLAGE  
August 17, 2015**

The City Council of Prairie Village, Kansas, met in regular session on Monday, August 17, 2015 at 7:30 p.m. in the Council Chambers at the Municipal Building, 7700 Mission Road, Prairie Village, Kansas.

**ROLL CALL**

Mayor Laura Wassmer called the meeting to order and roll call was taken with the following Council members present: Ashley Weaver, Jori Nelson, Ruth Hopkins, Steve Noll, Eric Mikkelson, Andrew Wang, Brooke Morehead, Sheila Myers, Dan Runion, David Morrison, Ted Odell and Terrence Gallagher.

Staff present was: Captain Byron Roberson and Sgt. James Carney; Keith Bredehoeft, Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Wes Jordan, Assistant City Administrator; Nolan Sunderman, Assistant to the City Administrator; Lisa Santa Maria, Finance Director and Joyce Hagen Mundy, City Clerk. Also present was Chris Brewster, City Planning Consultant and Ron Williamson, former City Planning Consultant.

Mayor Laura Wassmer led all present in the Pledge of Allegiance.

**PUBLIC PARTICIPATION**

With no one wishing to address the Council, public participation was closed at 7:35.

## **CONSENT AGENDA**

Terrence Gallagher noted a change to the first line on page 7 of the minutes changing the word “sound” to “odor” filters.

Council President Brooke Morehead moved for the approval of the Consent Agenda for August 17, 2015:

1. Approve regular City Council Minutes - August 3, 2015 as amended.
2. Adopt Ordinance 2335 approving the Prairie Village Jazz Festival as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded public area for the event.
3. Adopt Ordinance 2334 approving the KU Kickoff Event at Corinth Square Shopping Center as a special event and authorizing the sale, consumption and possession of alcoholic liquor and cereal malt beverages within the boundaries of barricaded public area for the event.
4. Approve production services agreement with S.E.C.T. Theatre Supplies, Inc. to provide, set-up and take down stage, sound, lighting and roof necessary for the Prairie Village Jazz Festival.

A roll call vote was taken with the following members voting “aye”: Weaver, Nelson, Hopkins, Noll, Mikkelson, Wang, Myers, Morehead, Runion, Morrison, Odell and Gallagher.

## **COMMITTEE REPORTS**

### **Planning Commission**

PC2015-08 Consider request for a Special Use Permit for the operation of an Adult Senior Dwelling Community including an Independent and Assisted Living Facility and Villas at 8500 Mission Road

Mayor Wassmer reminded the City Council that a previous Special Use Permit has been approved for this property by the Governing Body that includes a skilled nursing facility, single family homes, assisted and independent living units. The neighbors and the applicant have come together with the plan that is before you that the

neighbors feel is more suitable for the community that does not include skilled nursing. If this plan is not approved by the Governing Body, the applicant has permission to build the approved plan with construction beginning by October, 2016. If this plan is approved, the previously approved plan will be withdrawn and the lawsuits filed by the neighbors against the city will be dropped. A settlement agreement has been entered into by the neighborhood group and the applicant that would prevent a skilled nursing facility on this site.

### **City Legal Counsel Comments**

Katie Logan, City Attorney, noted the previous application was approved by the City, a lawsuit was filed by the neighbors against the City, a District Court Judge ruled that the approval by the City as appropriate and binding. The neighbors have appealed this decision to the Kansas Supreme Court where it is awaiting scheduling for oral arguments.

The Governing Body in its approval of special use permits is acting in a quasi-judicial manner; the application is to be considered on the official record of the Planning Commission and discussion at this meeting. If any Council member has prejudged or predetermined their position on this application, they were directed to recuse themselves.

Mrs. Logan asked each Governing Body member the following questions:

- “Have you accepted any communications oral or written, related to this application that was not known to the Planning Commission or posted on the city’s website information page on this project?”
- If yes, “Please share that information with the Governing Body at this time.”
- If you have had ex parte communications, have they affected your ability to fairly and impartially consider this matter?”

Council members Weaver, Hopkins, Noll, Wang, Morehead and Morrison replied “No” to the questions. Council members Nelson, Mikkelson, Myers, Runion, Odell, Gallagher and Mayor Wassmer stated they had received a copy of the settlement agreement between the applicant and the neighbors; however, this ex parte communication has not affected their ability to fairly and impartially consider this matter.

Katie Logan stated adoption of zoning ordinances require the approval of the Governing Body which includes the Mayor as a voting member, not only voting in the case of a tie vote.

### **Staff Presentation**

Ron Williamson, Former City Planning Consultant, stated the Planning Commission considered the findings of fact set out in the city’s code for approval of Special Use Permits and the “Golden Factors” and found favorably on the application before you subject to 15 conditions.

Staff contacted the applicant and representative of the neighborhood prior to the July 29<sup>th</sup> meeting regarding any concerns that they may have with the staff recommendation. Their concerns were related to conditions #2, #3 and #12 and were addressed in the staff report dated July 29, 2015. Since that time the neighborhood has stated that there were 7 conditions of the settlement agreement that should be included in the conditions of approval. Mr. Williamson noted the city had no part in the creation of the settlement agreement and staff felt they should not be included. He also noted that this application consists of three parts: the Special Use Permit now before the City Council, the site plan approved by the Planning Commission and the approval of the plat. Some of the issues being raised are addressed in conditions of approval for the site plan and the plat.

Mr. Williamson addressed the seven conditions requested to be added.

- No Skilled Nursing facility may be constructed on the MVS Property or may skilled nursing services be offered on the MVS Property. (The city has an established process for the approval of skilled nursing facilities through the special use process. No application was filed requesting a skilled nursing facility. Therefore the findings of the factors for this operation were not considered by the Planning Commission and cannot be considered. )
- The MVS Property will not be used for parking for any other purpose other than supporting the independent living facility, the assisted living facility and the villas depicted in the approved site plan dated June 5, 2015 and cross-parking with adjoining tracts shall not be allowed. (This was addressed in the site plan approval, but could also be added as a condition for the SUP.)
- The only two (2) vehicular access points to the MVS Property will be to and from Mission Road as depicted on the approved site plan dated June 5, 2015. (This was addressed in the site plan approval, but could also be added as a condition for the SUP.)
- Each of the twenty-two (22) units to be contained within the eleven (11) villas described on the approved site plan dated June 5, 2015 (two (2) units per villa) shall be constructed to meet or exceed the minimum unit footprint size, not exceed the maximum unit footprint size, and not exceed the height restriction set forth in the approved site plan dated June 5, 2015. As depicted on the approved site plan, none of the eleven (11) villas shall be located closer than fifty (50) feet from the boundary lines of the MVS Property and none of the six (6) villas located on the south and southwest boundary of the MVS Property may be closer than a minimum of fifty (50) feet to one another and shall have a minimum backyard setback of not less than fifty (50) feet. Furthermore, each unit in each of the eleven (11) villas may not contain more than a two (2) car garage. (This was addressed in the site plan approval, but could also be added as a condition for the SUP.)
- The carport structures within the Senior Living Building Area as depicted on the approved site plan dated June 5, 2015 shall contain walls opposite to the applicable parking space entrance to reduce automobile headlight exposure to adjacent property owners. (This was addressed in the site plan approval, but could also be added as a condition for the SUP.)
- Prior to the issuance of a building permit for the assisted living facility and independent living facility building MVS shall provide evidence of financing for the entire project. (This condition is not pertinent to City approval. Financial information has not been required of other developers.)
- Parking for the assisted living facility and the independent living facility building shall be contained within the Senior Living Building Area as depicted on the approved site plan dated June 5, 2015.

Mr. Williamson stated the five conditions could be added to the ordinance for the Special Use Permit by the Governing Body, but noted this would required a two-thirds vote for approval as it changes the recommendation of the Planning Commission.

Katie Logan stated that staff has discussed the addition of the five items with representatives of both parties and have their approval.

Ted Odell noted an incredible amount of time and effort has gone into this agreement and he feels the conditions in the agreement should be referenced in the ordinance. Ron Williamson replied relevant to the first item, the city has a due process it has established and which it would not be following as no consideration was given to a skilled nursing facility to deny or approve it as it was not included in the applicant's request for a Special Use Permit. He noted per the terms of the approval of the plat, the covenants and deed restrictions are required to be filed with the plat.

Mayor Wassmer stated the deed restrictions prohibit the building of any skilled nursing facility.

Katie Logan responded that she is not certain the city can legally restrict this property from ever having a skilled nursing facility nor does she feel it is necessary as this has been addressed elsewhere. Ted Odell stated that he just wanted to be sure everyone was on the same page and the mutually agreed upon project would follow all the conditions.

Ted Odell moved the Governing Body adopt by specific reference the findings as contained in the minutes of the Planning Commission meeting of July 29, 2015, and the recommendations of the Planning Commission and approve the Special Use Permit for 8500 Mission Road as docketed PC2015-08 with the five conditions stated above. The motion was seconded by Terrence Gallagher.

Mayor Wassmer opened the meeting for public comments.

Rick Jones, with NJSP Architects, confirmed that the motion for approval contains the recommendation of the Planning Commission with the additional five items added.

Dan Runion sought clarification that both parties agreed that the provision prohibiting a skilled nursing facility and requiring evidence of financing for the entire project not be referenced in the city's approval.

Mike Flanagan, attorney for MVS, responded that he had spoken with the city attorney prior to this meeting and that the applicant has no objection to the inclusion of the additional five conditions. Mayor Wassmer asked if they were ok with the omission of the two conditions. Sheila Myers asked what conditions were being omitted. Mayor Wassmer responded the reference to no skilled nursing facility built or services provided and the evidencing of financing for the entire project being provided. Mr. Flanagan replied that information will be provided and he is ok with it not being part of the city's approval.

Dan Runion asked if the city was capable of enforcing the settlement agreement and covenants and suggested that in addition to the five conditions added in the motion and specifically regarding the recording of the restrictive covenant.

Mike Flanagan explained that the restrictive covenant has been drafted, executed and escrowed with a title company and once the ordinance granting the special use permit becomes a final and non-appealable judgment, journal entry, order or memorandum decision under applicable Kansas law, which he believe is 35 days after publication of the ordinance, they have been instructed to record the covenant and deed restrictions on that date.

Andrew Spitsnogle, representing the neighbors stated they support the inclusion of the five conditions in the ordinance, but would prefer that all the conditions be included. Eric Mikkelson noted as the plaintiff has stated they would prefer all conditions included, he is struggling as to why they are not being included. He stated that it is not abundantly clear that Assisted Living does not include skilled nursing services. He suggested that language be added clearly identifying what is meant by “Independent Living Units” “Assisted Living Units” and “Skilled Nursing Unit”. Katie Logan responded that “Skilled Nursing Facility” is defined in the city’s zoning code as a separate allowable special use.

Mayor Wassmer asked if language stating “no skilled nursing services be provided” could be added to condition #1 of the ordinance. She felt this would address the concerns stated by Ms. Nelson and Mr. Mikkelson.

Katie Logan responded that stating “No skilled nursing facility shall be constructed on MVS property” is not necessary as it would be against city code since no special use permit has been issued for that use. To say that “No skilled nursing services shall be allowed” seems redundant as skilled nursing services can’t be provided without a skilled nursing facility.

Jori Nelson noted that beds in units are regularly changed from one level of care to another without the construction of a separate facility. Mayor Wassmer noted the room requirements for skilled nursing are larger than assisted living care.

Mike Flanagan responded that the State of Kansas issues providers licenses to provide specific levels of care. Assisted Living License is a specific care level. You are not allowed to provide skilled nursing care without a specific Skilled Nursing Care license. One of the conditions for a license is specific building requirements. They are

not going to construct a facility that meets those requirements. A skilled nursing care is a higher level of care license and cannot be provided under an assisted living care license. They would not provide a service for which they are not licensed. They will be securing an assisted living care license which covers clearly identified care components.

Mayor Wassmer asked how the Council would know whether or not the Tutera Group applied for a skilled nursing care license.

Randy Bloom, President of the Health Care Division, stated that skilled nursing facilities have to be constructed to meet specific criteria for skilled nursing and this building will not meet those criteria making it impossible for them to secure a “skilled nursing care” license.

Ted Odell moved to amend his motion to add condition #21 to read “No skilled nursing services will be offered on the Property.” Terrence Gallagher seconded the amendment.

Eric Mikkelson noted that condition #11 requires that sidewalks be open to the public, but the owner may establish reasonable rules for its use and hours of operation. A sidewalk will be constructed to the southwest corner of the site to eventually connect to the trail on Somerset Drive. He asked if there would be a gap in the proposed fence to allow for public access and what will the access to the sidewalk on Mission Road look like. He understands that the applicant intends to put a fence surrounding the property.

Rick Jones replied the existing fence around the property will be used with the new fence being constructed from wrought iron and there will be a gate allowing for access, probably with a code. He noted that while the sense of security is important to Mission Chateau residents, it is also important for them to feel like part of the community with access to public park. Mr. Jones noted this is a requirement of the city. Mr.

Mikkelson stated he was asking about public access for the public to get to the park through their property. Mr. Jones responded the gates will be open during the day.

Jori Nelson stated she does not like having a fence the entire length of Mission Road, but instead to have key codes on doors to provide security and not gates. She does not feel a gate will be the welcoming community that was portrayed with the initial presentation of this project. Mr. Jones repeated the gates will be open during the day and added the sidewalk is located a minimum of 16 feet back from Mission Road with it being 20 feet in most locations. The proposed fence is located behind the sidewalk constructed with the most transparent fence material available and there is significant landscaping along Mission Road. Ms. Nelson noted that none of the other senior living facilities in Prairie Village were gated.

Eric Mikkelson confirmed the applicant's commitment to keeping the gate on Mission Road open during the day as well as the gate on the back side.

Mayor Wassmer asked if there were any other items to be considered. City Attorney Katie Logan stated there were a couple small items in the proposed language to be addressed. Dan Runion noted the language regarding the termination date is not clear. Ms Logan noted language needed to be added to address the 30 day period as provided by Kansas Statute for appeal.

Ted Odell amended his motion to amend condition #3 (ii) to read as follows:

if a lawsuit is filed challenging the issuance or legality of the Special Use Permit **within the 30 day period as provided by Kansas statute**, the first business day after the date upon which any judgment, journal entry order or memorandum decision upholding the issuance and legality of **the ordinance becomes a final and non-appealable judgment, journal entry, order or memorandum decision** under applicable Kansas law,

The amended motion was seconded by Terrence Gallagher.

David Morrison stated there is another side to this issue that is not being addressed. He feels this is the better of two very bad alternatives for Prairie Village. The city does not need any more senior living facilities in Prairie Village. The overarching question has not been addressed. Mr. Morrison stated that the Shawnee Mission School District wants this property back and Mr. Tutera refuses to discuss this. This school will be needed. Current classes are too large, students have to be bused to school. This has been forced on the citizens of Prairie Village. If the other Special Use Permit had not been approved, this would never even be considered.

Mayor Wassmer noted that MVS is the owner of this property and has been approved for a special use permit for an adult senior facility. What is done is done and no longer relevant.

David Morrison stated the Council needs to talk about this property and the future of schools in Prairie Village. Mayor Wassmer stated that discussion is not relevant to the motion on the floor and ruled Mr. Morrison out of order.

The motion as amended was voted on with the following votes cast: "aye" Weaver, Nelson, Hopkins, Noll, Mikkelson, Wang, Wassmer, Myers, Morehead, Odell and Gallagher; voting: "nay" Runion and Morrison. The ordinance was declared adopted by a vote of 11 to 2.

Eric Mikkelson questioned Mayor Wassmer's ruling of Councilman Morrison out of order and the appropriate action to stop discussion would have been for the question to be called. David Morrison objected to the Mayor's ruling.

### **JazzFest Committee**

Brooke Morehead announced that the Prairie Village Jazz Fest is less than a month away. She encouraged Council members to attend the event on Saturday,

September 12<sup>th</sup>, to show their support with a yard sign and to consider volunteering at the event.

## **Mayor's Report**

Mayor Wassmer reported on her recent activities centered on discussion on the settlement agreement for the Mission Chateau project.

## **STAFF REPORTS**

### **Public Safety**

- Captain Byron Roberson reported that the start of school went well at SME with the assistance of the traffic unit.
- One officer will be graduating from the Johnson County Police Academy on Thursday, August 20, 2015.

### **Public Works**

- Keith Bredehoeft reminded council of the upcoming meeting on Mission Road
- The drain issue with the Franklin Park bathrooms has been resolved.
- The new Field Superintendent for Public Works will begin next Monday.
- The flashing lights have been installed at 83<sup>rd</sup> Street & Somerset

### **Administration**

- Nolan Sunderman announced the pool will host a dog swim on Tuesday, September 8 between 5 and 7 p.m. at the pool complex. Information is available on the city's website.
- Wes Jordan stated Deffenbaugh has emailed him potential dates for the council tour of their recycling operations. He will e-mail council the information. There is a weekday afternoon and evening option as well as a Saturday time. If there are open slots, members of the Environment/Recycle Committee will be invited to participate.
- John Blessing will be meeting with the Environment/Recycle Committee in September.
- Quinn Bennion announced that Johnson County Parks & Recreation District has narrowed their candidates for the position of consultant for the Meadowbrook Project.

## **OLD BUSINESS**

Terrence Gallagher asked if the city was staying in communication with First Washington regarding potential projects/improvements to the shopping centers. Quinn

Bennion replied he and the Mayor have had meetings with First Washington. Jori Nelson stated that she and Ashley Weaver would like to hold a Ward 1 meeting. Mayor Wassmer asked what funding was available and if other Wards were planning on having meetings. Quinn Bennion stated that about \$2000 was included in the 2015 budget for Ward meetings. Wards 4, 5 and 6 indicated that they wanted to have ward meetings. Mayor Wassmer stated that she and staff would look at available funding and get back to interested Council members.

**NEW BUSINESS**

There was no New Business to come before the City Council.

**Committee meetings scheduled for the next two weeks:**

JazzFest Committee	08/27/2015	5:30 p.m.
Planning Commission	09/01/2015	7:00 p.m.
Tree Board	09/02/2015	6:00 p.m.
Council Committee of the Whole	09/08//2015	6:00 p.m.
City Council	09/08/2015	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to present an exhibit by Wayne Wilkes in the R. G. Endres Gallery during the month of August.

Prairie Village Pool is on reduced weekday hours opening at 4:30 p.m. Weekend hours will remain as set. The pool will close at 6:00 p.m. on Monday, September 7<sup>th</sup>.

The NEJC Chamber Luncheon on Thursday, August 20<sup>th</sup> from 11:30 a.m. to 1:00 p.m. will feature Dr. Jim Hinson, SMSD Superintendent. The Lunch will be provided by the Broadmoor Bistro students at 6701 West 83<sup>rd</sup> Street.

City offices will be closed on Monday, September 7<sup>th</sup> in observance of the Labor Day holiday. Deffenbaugh also observes this holiday, so trash and recycling services will be delayed one day for the week.

The 6<sup>th</sup> Annual Prairie Village Jazz Festival will be held on Saturday, September 12<sup>th</sup> opening at 2:30 p.m. with the Shawnee Mission East Blue Knights and concluding at 10:30 p.m. with the McFadden Brothers with the Kansas City Jazz Orchestra.

The 2015 Citizens Police Academy will begin September 16th. Classes are held on Wednesday evenings from 6:30 to 9:30 p.m. for 11 weeks. Contact Chief Schwartzkopf or Captain Roberson if interested.

### **ADJOURNMENT**

With no further business to come before the City Council the meeting was adjourned at 8:55 p.m.

Joyce Hagen Mundy  
City Clerk