

TO: Prairie Village Planning Commission
cc: Catherine Logan, Esq.

FROM: John D. Petersen

SUBJECT: Application of MVS, LLC for Special Use Permit

DATE: August 2, 2013

As the Commission is aware, our office represents MVS, LLC ("MVS") in regard to its Applications for a Special Use Permit and Site Plan to construct the Mission Chateau Development. In that capacity, we provide the following comments to the Staff Reports dated August 6, 2013 that have been submitted to the Planning Commission for its consideration.

I. Project Overview - Background

We believe that the Mission Chateau will be a significant enhancement to the City of Prairie Village both in terms of services provided and the quality of the development. Plans for Mission Chateau have been continually modified to take into consideration comments from the public and from the City's Professional Planning Staff in an effort to strike a balance between the necessary Project components and the need for appropriate transitional design concepts. A particular focus has been to provide buffering to adjoining property owners, including the single family homes to the south and southwest of the development. The result is that Mission Chateau will be a \$50 million asset that adds value to the City and the neighborhood.

The Mission Chateau plans are the result of almost a year's work and numerous meetings with interested parties. The instructions of MVS to its architects and engineers were straight forward: Provide a plan that:

- A. provide a self-contained senior living community that sets the standard for senior lifestyle in the region—including independent villas, independent living apartments, assisted living with memory care facility and a skilled nursing care facility;
- B. create substantial open spaces so residents and visitors will enjoy a park-like atmosphere;
- C. comply with Village Vision and all its elements;
- D. comply with all R-1A zoning regulations;
- E. meet and/or exceed all Prairie Village development standards including height, setback, traffic, parking, stormwater and runoff so that no variances would be required;
- F. include substantial buffer of residential borders to the south and southwest;
- G. reduce the presence off of Mission Road through the use of berm and building elevations;
- H. provide access only off Mission Road and provide a service road to the north;

- I. conform to City traffic requirements; and
- J. match the building design, character and scale to complement surrounding neighborhood and highlight the unique character of the City.

It is our opinion that these goals have been accomplished and the resulting project components and transitional development concepts allow for a viable development that adheres to all design requirements of City and adequately protects the interests of surrounding property owners.

II. Public Input

We have been pleased with the significant public support that has been expressed for the Project. However, we acknowledge that some members of the Mission Valley Neighborhood Association ("MVNA") remain in opposition. Some members of MVNA live near or adjacent to the subject site, many do not. Although we have attempted to be responsive to all concerns raised as we have moved through the design process, we have paid particular attention to issues involving adjacent properties.

MVS is sensitive to the complaints of MVNA. MVS understands that the Mission Valley Junior High School was a long-standing fixture in this neighborhood. While the closing of the School by the School District was hotly debated--the School was closed. The reality of the situation is that a change in use of the former School property is inevitable.

III. Kansas Law

It is not unusual in land use matters for there to be neighborhood opposition. Many times this is caused by fear of the unknown and a resistance to change. However, Kansas law requires that land use decisions be considered within a broader context and be based upon the benefit or harm to the community at large. The Kansas Supreme Court has made this point very clearly stating that "Zoning is not to be based upon a plebiscite of the neighbors, and although their wishes are to be considered, the final ruling is to be governed by consideration of the benefit or harm involved to the community at large." Waterstradt v. Board of Commissioners, 203 Kan. 317, Syl. p. 3 (1969).

When the Planning Commission and, ultimately, the City Council acts on the Application, the City acts in a "quasi-judicial" capacity—the City hears evidence on the Application and will take action based upon certain criteria approved by the Kansas Supreme Court in Golden v. City of Overland Park, Kansas, 224 Kan. 591 (1978) ("Golden Factors"). In addition, the City of Prairie Village has followed the recommendation of the Court and promulgated its own set of factors to be utilized in determining the acceptability of Special Use Permit requests (Section 19.28.035) ("City Factors"). Both the Golden Factors and the City Factors serve as the basis of the Staff Report and their professional opinions expressed therein.

IV. Golden Factors

Generally stated, we concur with Staff's analysis of our Application within the context of the eight Factors advanced by the Kansas Supreme Court in the Golden case. There are two of the

eight, however, that are so foundational to any land use decision they are worthy of further comment:

1. The conformance of the requested change to the adopted or recognized master plan being utilized by the City.

The use provided by the Mission Chateau Application comports with the City's Comprehensive Plan. City Staff points out that Village Vision was amended in 2012—after an exhaustive process that included significant input from neighbors at public hearings—to specifically address this Property. The Plan Amendment—adopted by the Governing Body on May 21, 2012—specified that use of the Property be restricted to R-1A—which specifically allows senior living development with a Special Use Permit.

If the City intended not to allow redevelopment of the former School property with senior living—that would have been reflected in the 2012 amendment. Instead, all interested parties understood in May 2012 that a senior living development was a distinct possibility for this Property and the pending application came as no surprise. Further, the action to amend the Plan was premised on a market study that indicated such a senior living development would be of the size and scope being proposed by the Applicant.

In addition, the City Staff Report states, “Village Vision also has pointed out in several areas of the plan that more housing choices should be available to the residents, particularly in the area of senior living.” Attempting to limit redevelopment of the former School property to single-family development will be contrary to Village Vision and the Plan Amendment.

2. The recommendations of permanent or professional staff.

As the Kansas Supreme Court has stated, the recommendation of a professional City Staff is an important factor in the process for approval of a Special Use Permit.

In regard to the MVS Applications for the subject Special Use Permit and related Site Plan, the Prairie Village Professional Staff has concluded;

“The plan has evolved over several months that included community meetings, meetings with City Staff and many modifications to the original plan. The revised plan is consistent with Amended Village Vision and in the opinion of Staff it is a workable plan....”

(Page 6 of Staff Report)

MVS concurs with Staff’s Finding.

V. City Factors and City Site Plan Criteria

City Staff has reviewed the factual basis of both the Special Use Permit and Site Plan Applications and has, as part of its recommendation, evaluated the Applications compliance with both the City Factors and City Site Plan Criteria.

MVS concurs with the Staff's factual review and Findings as to compliance.

VI. Conditions of Approval

Staff has proposed Conditions 1-13 to the Approval of the Special Use Permit Application and Conditions 1-17 to the Approval of the proposed Site Plan.

MVS has reviewed these proposed Conditions and finds them acceptable.

In closing, we respectfully submit that MVS has more than carried the burden of proof in regard to the pending Applications and would ask for the Commission's Recommendation For Approval.