

# LATHROP & GAGE<sup>LLP</sup>

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January 2, 2014

## VIA EMAIL AND US MAIL

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Duggan Shadwick Doerr & Kurlbaum LLC  
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Overland Park, KS 66210

Timothy J. Sear  
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6201 College Boulevard  
Suite 500  
Overland Park, KS 66211

Re: Protest Petition  
Mission Valley Project  
Special Use Permit Application No. PC 2013-11

Gentlemen:

This is to advise that the City of Prairie Village has determined that the protest petition filed on December 17, 2013 does not contain valid signatures necessary to satisfy the 20% threshold required by KSA §12-757(f)(1) and 19.28.041 of the Prairie Village Code.

The spreadsheet used by the City in making this determination and a map of the 200 foot notice area provided by Johnson County AIMS are enclosed. As indicated, the City has determined that 18.31% of the 200 foot notice area is represented by valid signatures on the protest petition.

At my request I received correspondence from each of you, shared with each of you, relating to withdrawals of signatures from the protest petition and the treatment of the Mission Chateau Condominium property which is partly within the 200 foot notice area. Based upon careful consideration of your arguments and independent research, my conclusions on these issues are set forth below.

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### **Withdrawal of Signatures from Protest Petition:**

The deadline for filing the protest petition was 5:00 p.m. Tuesday, December 17, 2013. The protest petition was filed with the City Clerk at 1:25 p.m. on December 17.

I opine that KSA §25-3602(c), which provides signers of protest petitions a three day withdrawal period, applies to KSA §12-757 zoning protest petitions. See AG Opinion 2003-18 and *Deffenbaugh Disposal Services, Inc. v. City of Kansas City, Kansas*, unreported decision at 776 P.2d 835; 1989 Kan. App. LEXIS 447. The three day withdrawal period expired at 5:00 p.m. on Friday, December 20.

The following withdrawals, and one “withdrawal of a withdrawal”, were filed with the City Clerk prior to 5:00 p.m. on Friday, December 20:

3800 West 83rd Terrace. A notification of withdrawal for property at 3800 West 83rd Terrace executed by Edson Ludwig and Leonice Ludwig was filed with the City Clerk at 11:16 a.m. on December 16. The Ludwig property at 3800 West 83rd Terrace is not counted towards the 20% required for a valid protest petition.

8335 Mission Road. A notification of withdrawal for property at 8335 Mission Road executed by Marc L. Baratta was filed with the City Clerk at 4:34 p.m. on December 16. The Baratta property at 8335 Mission Road is not counted towards the 20% required for a valid protest petition.

8449 Somerset Drive and 8451 Somerset Drive. The protest petition includes property at 8449 Somerset Drive and 8451 Somerset Drive owned by William G. Wilt and Vicki L. Wilt Trust dated February 23, 2011 and executed by William G. Wilt and Vicki L. Wilt in their capacities as co-trustees. A notification of withdrawal executed by William Wilt, Trustee, was filed with the City Clerk at approximately 3:30 p.m. on December 17. I noted a defect in the notary block reference to being signed by Mr. and Mrs. Wilt, instead of Mr. Wilt and initially ruled that the withdrawal was invalid. The notary block for the withdrawal was cured within the 3 day withdrawal period. However, Mr. Wilt filed a withdrawal of his withdrawal at approximately 4:30 p.m. on December 20. I deem the withdrawal of the withdrawal valid because it occurred prior to the expiration of the 3 day withdrawal period. I believe that the purpose of the 3 day period is to allow signers to change their minds, and that this includes withdrawing a withdrawal. The Wilt Trust property at 8449 Somerset Drive and 8451 Somerset Drive is counted towards the 20% required for a valid protest petition.

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8415 Mission Road. A notification of withdrawal for property at 8415 Mission Road executed by Deogracias D. Diego and Cecilia Diego was filed with the City Clerk at 10:50 a.m. on December 20. The Diego property at 8415 Mission Road is not counted towards the 20% required for a valid protest petition.

**Mission Chateau Condominium property located within the 200 foot notice area:**

KSA §12-757(f)(1) requires that protest petitions be signed by “the owners of record of 20% or more of the total real property within the area required to be notified by this act of the proposed rezoning.”

Prairie Village Code Section 19.28.041 provides:

Valid Protest Petitions must be signed and acknowledged by each and every owner(s) of property protesting a given action. The work “owner(s)” for purposes of protest petitions shall include all those individuals that may have ownership in subject real property or property within the notification area. If the property is owned by joint tenancy, all such owners must sign the petition by their own hand to be valid, unless the petition itself clearly indicates that one tenant has the legal authority to sign for and on behalf of the other.

The Prairie Village Code is consistent with Kansas Attorney General Opinion No. 78-184:

[W]e concluded that the signature of one cotenant or joint owner is not sufficient to bring the property on the side of the protest unless the petition itself shows that the cotenant was authorized to sign for the other cotenants or joint owners. Thus, the signature of one joint tenant, standing along [sic], is insufficient to commit the property against the proposed rezoning.

The land comprising the platted Mission Chateau Condominium includes individual condominium units and common area which is jointly owned by the owners of all of the individual units, each unit being allocated a stated percentage of an interest in the common area, with such percentages totaling 100%.

A portion of the units and a portion of the common area are located within the 200 foot notice area.

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Treatment of Individual Units within the 200 foot notice area:

The owners of each individual condominium unit own the unit itself in fee simple absolute and an undivided interest in the fee simple estate of the common areas.

Based upon information received by the City from Johnson County AIMS, the individual condominium units located wholly or partially within the 200 foot notice area are: 8395, 8393, 8391, 8389, 8287, 8385, 8383, 8381, 8379, 8377, 8375, and parts of 8373, 8371, 8369, 8347 and 8345.

With the exception of units 8375, 8369 and 8347 the owners of each of the above units signed the protest petition.

Based upon information from Johnson County AIMS, the City has determined that AIMS allocates land area to each of the above individual condominium within the notification area.

Accordingly, the City has allocated the same land area within the 200 foot notification area to the above condominium units, and counted those units, except units 8375, 8369 and 8347, towards the 20% required for a valid protest petition.

Treatment of Jointly Owned Common Area within the 200 foot notice area:

Johnson County AIMS confirms that the land within the 200 foot notice area not allocated to individual condominium units is common area. As noted above, the common area within the 200 foot notice area is jointly owned by the owners of all of the individual units (both within and without the notice area), each unit being allocated a stated percentage of an interest in the common area, with such percentages totaling 100%.

In addition to the signatures of owners of individual units in the notice area noted above, the protest petition submitted to the City includes (a) signatures of some, but not all, of the owners of units located outside of the 200 foot notice area, and (b) signatures of the Chateau Home Owners Association.

Based upon Section 19.28.041 of the Prairie Village Code, which is consistent with 12-757(f)(1), I have concluded that the portion of the common area of the platted Mission Chateau Condominium located within the 200 foot notice area may only be included in the 20% area required for a valid protest petition if 100% of the owners of the common area (which is the owners of 100% of the units) sign the protest petition, unless

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the petition itself shows that one or more co-tenants who signed were authorized to sign for the co-tenants or joint owners who did not sign.


Less than 100% of the joint owners of the common area (unit owners) signed the protest petition.

I have concluded that the petition does not show that one or more co-tenants who signed were authorized to sign for the co-tenants who did not sign. The petition does not include any power of attorney or other delegation of authority by unit owners who did not sign. The signature by the Chateau Home Owners Association, itself the owner of a single unit, apparently purports to trigger inclusion of the common area within the 20% area required for a valid protest petition. However, there is nothing in the condominium declaration, or the Kansas apartment ownership act, which delegates to the Association, either by vote of a requisite majority of the unit owners, or otherwise, the right to sign a zoning protest petition on behalf of 100% of the unit owners in their capacities as co-tenants or joint owners of the common areas.

Accordingly, the City has not counted the common area located within the 200 foot notification area towards the 20% required for a valid protest petition.

In summary, based upon the above determinations and because the protest petition fails to satisfy the 20% threshold required under KSA §12-757(f)(1) and 19.28.041 of the Prairie Village Code, the requirement of 3/4 vote of the Governing Body for approval does not apply to Special Use Permit Application No. PC 2013-11.

Very truly yours,  
Lathrop & Gage LLP

  
Catherine P. Logan  
Prairie Village City Attorney

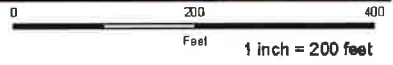
Enclosures

cc: Governing Body  
Joyce Hagen-Mundy  
Quinn Bennion  
Kate Gunja  
Danielle Dulin  
Ron Williamson  
David Waters  
Jennifer Hannah

Tract/Plat ID	Area (sqft)	Site Address	Owner1	Owner2	Area in Notice Area (sqft)	% of Parcel	% of Notice Area
HP04000000 0080	30299.87	3608 W 85TH ST	GRIMM, JAN T.		24354.60	80.38	3.80
HP04000000 0081	30001.23	3609 W 85TH ST	KERR, MATTHEW L.	KERR, CATHERINE C.	8408.12	28.03	1.31
OF251228-4007	2371.19	0 NS NT	CORINTH GARDENS ADJACENT, LLC		18816.27	79.36	2.94
OF251228-4009	56208.43	8401 SOMERSET DR	SOMERSET APARTMENTS, L.L.C.		50340.99	89.56	7.85
OF251228-4010	13545.1	8451 SOMERSET DR	WILT, WILLIAM AND	WILT, VICKI LYVING TRUST	13513.70	99.77	2.11
OF251228-4023	5933.42	0 NS NT	TOWER PROPERTIES COMPANY		3032.95	51.12	0.47
OF251228-4024	10597.51	8449 SOMERSET DR	WILT, WILLIAM AND	WILT, VICKI LYVING TRUST	10597.51	100.00	1.65
OF251228-4025	109445.17	8300 MISSION RD	CSS RETAIL PARTNERS, LLC		3987.27	3.64	0.62
OF251228-4026	142450.45	3917 W 84TH ST	PRAIRIE PROPERTY LL, LLC		127758.07	89.69	19.93
OF251228-4027	87508.28	8340 MISSION RD	TOWER PROPERTIES COMPANY		13863.34	15.83	2.16
OP06000001 0001	17522.43	8335 MISSION RD	BARATTA, MARC L.		17522.43	100.00	2.73
OP06000001 0002	15047.48	3908 W 83RD TER	PEATIE, LINDSAY	PEATIE, SETH	6159.13	40.93	0.96
OP06000001 0003	16787.29	3800 W 83RD TER	LUDWIG, EDSON	LUDWIG, LEONICE	192.23	1.15	0.03
OP06000001 0032	13034.62	3907 W 84TH TER	MICK, MARTHA		417.88	3.21	0.07
OP06000001 0033	15535.33	3815 W 84TH TER	HARRIS, R. LEE	HARRIS, BARBARA A.	15535.33	100.00	2.42
OP06000003 0001	12365.94	8401 MISSION RD	LAING, HELEN M. TRUSTEE	LAING-NESSLEN, SUSAN TRUSTEE	12365.94	100.00	1.93
OP06000003 0002	12373.68	3809 W 84TH ST	CAROLAN, WILLIAM		3647.74	29.48	0.57
OP06000003 0021	12871.5	3908 W 84TH TER	LIDDLE, CASEY	LIDDLE, MELISSA	3792.64	29.53	0.59
OP06000003 0022	13456.46	8415 MISSION RD	DIEGO, DEORACIAS D.	DIEGO, CECILIA	13456.46	100.00	2.10
OP06500001 0000D	30994.65	8301 MISSION RD	CORINTH SCHOOL 32	TRUSTEES	13492.75	4.35	2.11
OP24000001 0000	802747.3	8500 MISSION RD	M/S, LLC		240798.47	30.00	37.57
OP27000000 0013	10092.82	8428 SOMERSET DR	EGAN, ANN D.		192.22	1.90	0.03
OP27000000 0014	10038.93	8436 SOMERSET DR	ALEXANDER, BILL J.	ALEXANDER, VIRGINIA H.	2.13	0.02	0.00
OP27000000 0015	839.39	8345 SOMERSET DR	BARTON, CATHERINE K. TRUSTEE	BARTON, CATHERINE K. TRUST	428.00	50.75	0.07
OP27000000 0016	815.93	8347 SOMERSET DR	HUNT, JOAN S. TRUSTEE	HUNT, JOAN S. TRUST	38.39	4.70	0.01
OP27000000 0017	643.46	8389 SOMERSET DR	CLEMENTS, CHRISTOPHER E.		60.02	9.33	0.01
OP27000000 0018	643.39	8371 SOMERSET DR	DEXTER, GEORGE A.	DEXTER, BRUCE P. JR	348.93	54.23	0.05
OP27000000 0019	643.41	8373 SOMERSET DR	RAINEY, FRANCES L. TRUST		595.64	92.68	0.09
OP27000000 0020	643.42	8375 SOMERSET DR	VALENTINE, FRED J. TRUSTEE	VALENTINE, FRED J. TRUST	643.42	100.00	0.10
OP27000000 0021	643.41	8377 SOMERSET DR	ANDERSON, JACLYN		643.41	100.00	0.10
OP27000000 0022	643.41	8379 SOMERSET DR	WOHLGEMUTH, MATTHEW R.		643.41	100.00	0.10
OP27000000 0023	630.71	8381 SOMERSET DR	WOOSLEY, HOWARD R. TRUSTEE	WOOSLEY, MARY GAY TRUSTEE	630.71	100.00	0.10
OP27000000 0024	718.72	8383 SOMERSET DR	MOELLER, SUSAN B.		718.72	100.00	0.11
OP27000000 0025	718.73	8385 SOMERSET DR	PETROWSKI, JOHN D.	PETROWSKI, JANET L.	718.73	100.00	0.11
OP27000000 0026	630.83	8387 SOMERSET DR	SCHNIEDERS, JOHN H. AND	SCHNIEDERS, SHARON J. TRUST	630.83	100.00	0.10
OP27000000 0027	643.39	8389 SOMERSET DR	RHUDY, DIMITRA		643.39	100.00	0.10
OP27000000 0028	643.43	8391 SOMERSET DR	VANDERPOOL, CANDICE L.		643.43	100.00	0.10
OP27000000 0029	630.69	8393 SOMERSET DR	DALBERG, GUDRUN B.		630.69	100.00	0.10
OP27000000 0030	677.47	8395 SOMERSET DR	MARINE, HAROLD C. TRUSTEE	MARINE, THERESA TRUSTEE	677.47	100.00	0.11
OZ75000000 0000	75400.11	CONDO PROP LAND	VARIOUS		29907.10	39.66	4.67

Highlighted Green valid signatures

Total 200 foot notice area 640,958  
Percent of protest petitions in 200 foot notice area 18.31



- Lot Line
- Section Line
- Plat Penmeter
- Notice Area
- Proposed Subject Parcel
- Valid Protest Petition Signatures

200 ft Notice Area

