

City of Coral Gables City Commission Meeting
Agenda Item E-1, E-2 and E-3 are related
January 24, 2012
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Maria Anderson

Commissioner Rafael “Ralph” Cabrera, Jr.

Commissioner Frank Quesada

City Staff

City Manager, Patrick Salerno

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Planning Director, Eric Riel

Public Speaker(s)

Laura Russo, Attorney Representing Somerset Academy

Tucker Gibbs, Attorney Representing Somerset Biltmore Neighborhood Association (BNA)

Felix Pardo, Coral Gables Resident

Paul Zamek, Somerset Gables Parents Association

Suzette Ruiz, Principal of Somerset Grace Academy

Albert Sanchez, Coral Gables Resident

Sandra Murado, Coral Gables Resident

Agenda Items E-1, E-2 and E-3 are related [Start: 9:43:50 a.m.]

Mayor Cason: The next Item is E-1; Mr. City Attorney would you please read the titles of Agenda Items E-1 through E-3 into the public record.

City Attorney Leen: Yes Mr. Mayor. These are ordinances on Second Reading, change of land use, conditional use and site plan review. Item E-1 is an ordinance of the City Commission of Coral Gables, Florida, requesting an amendment to the Future Land Use of the City of Coral

Gables Comprehensive Plan pursuant to Small Scale amendment procedures (ss. 163.3187, Florida Statutes), from “Religious/Institutional” to “Community Services and Facilities” for a 2.6 acre parcel of land commonly known as the “University Baptist Church”, legally described as all of Block 116, Coral Gables Country Club Section Part 6 (624 Anastasia Avenue), Coral Gables, Florida; providing for severability, repealer, codification and an effective date. (Passed on First Reading December 13, 2011) (Deferred from the January 10, 2012 Meeting). Item E-2 is an Ordinance of the City Commission of Coral Gables, Florida, requesting conditional use review pursuant to Zoning Code Article 3, Development Review, Division 4, Conditional Uses, to permit the issuance of a City of Coral Gables Certificate of Use (hereinafter referenced as a “Certificate of Use”) for a student increase of the existing Somerset Grace Academy Charter School of Coral Gables from one hundred and ten (110) students up to a maximum of two hundred and sixty (260). The issuance of an annual Certificate of Use shall be subject to compliance with all of the conditions contained and referenced herein on property designated “Special Use (S)” Zoning District, legally described as all of Block 116, Coral Gables Country Club Section Part 6 (624 Anastasia Avenue), Coral Gables, Florida; providing for severability, repealer, codification, and an effective date. (Passed on First Reading December 13, 2011) (Deferred from the January 10, 2012 Meeting). Item E-3 is an ordinance of the City Commission of Coral Gables, Florida, requesting site plan review to permit miscellaneous site improvements and to permit the issuance of a City of Coral Gables Certificate of Use (hereinafter referenced as a “Certificate of Use”) for a student increase of the existing Somerset Grace Academy Charter School of Coral Gables from one hundred and ten (110) students up to a maximum of two hundred and sixty (260) students. The issuance of an annual Certificate of Use shall be subject to compliance with all of the conditions contained and referenced herein on property designated “Special Use (S)” Zoning District, legally described as all of Block 116, Coral Gables Country Club Section Part 6 (624 Anastasia Avenue), Coral Gables, Florida; providing for severability, repealer, codification, and an effective date. (Passed on First Reading December 13, 2011) (Deferred from the January 10, 2012 Meeting).

Mayor Cason: Thank you. These items on the Second Reading are considered public hearings and so we will be entertaining public input. I have five cards, for anyone else who plans to speak, please get your cards in now. For those who have given us their cards already would you – plan to address either items 1, 2, or 3, would you please rise up, raise your right hand and allow the City Clerk to swear you in at this time.

City Clerk Foeman: Would you raise your right hand please? Do you solemnly swear or affirm that statements you enter into the public record today would be the truth and nothing but the truth.

All: Yes we do.

Mayor Cason: Thank you. City Manager, do you have a staff person that will address the ordinance?

City Manager Salerno: Briefly Eric Riel will address it and then I think it may be appropriate for the counsel representing the parties to speak before public comment.

Mayor Cason: That's fine.

Mr. Riel: Good morning. As you indicated Mr. Mayor on December this was before the Commission on First Reading, all three ordinances were passed unanimously, 5-0. On January 10th a request was made to continue the application by both the applicant as well as the neighbors. The intent was to work out a private settlement agreement, they have done that, and they will present that – those findings to you as part of their presentation. As a part of that review, two changes were asked of staff; one of the issues that they were asked was to go from 3 to 2 dismissals on the property. If you remember there were 3 dismissals; they asked staff to basically provide a recommendation. Our response was obviously we didn't have the data and the analysis completed, because as part of the review process our traffic consultant looked at their data and analysis. And the other thing they suggested we look at trying to channel traffic into the side of Segovia. So those two things, what staff has done is provided an additional condition which is in your Commission memo, which basically allows for our traffic consultant, City traffic consultant, to go out and review at the beginning of the school year which is in 2012, August of 2012, look at these two issues and provide data and analysis regarding these specific two issues. This is hard-line data; it's not from a surrogate school, so it's actually on-site analysis. Analysis is detail in terms of the six items that they are going to look at. Typically, they will record, they will look at vehicles entering, exit, stacking and the sort; and then they will come up with a recommendation; and the way this is written is staff would administratively review that, make a determination whether they can go to the two dismissal or the channelization of the traffic. So that is what is suggested as an amendment to this ordinance. In addition, staff which is typical between First and Second Reading, we met with the applicant, we also met with the church because this is a unique application, there are changes that were made to clarify the conditions which were shown, underline and strikeout between First and Second Reading and that's on Exhibit C in your packet; and also as a result of the packet going out Friday, the church had some additional changes that they would like and that's what I'd like to enter into the record that you have before you. The City Attorney and I had met with the church yesterday, we agree with those changes and we recommend as a part of the recommendation for approval that you include those as well in the packet. Pretty much that's it. Staff continues to recommend approval of all three applications. I'll be happy to answer any questions you may have.

Mayor Cason: Alright. Why don't Ms. Russo and Mr. Gibbs – would you like to come forward and say what you'd like to say.

Ms. Russo: Good morning Mr. Mayor, Commissioners, for the record Laura Russo with offices at 2655 LeJeune Road. I'm here this morning representing Somerset, and I would like to say that Mr. Gibbs and I have been working tirelessly since the holidays, but in particular since the last meeting here, and I'm very happy to report that we have an agreement with the Neighborhood Association, and that the school and the neighbors have worked together to try to make sure that the impact of the school on the neighborhood will be minimal, and I can tell you, I think everybody is very happy with the outcome and the process and it's been a very positive experience. So we are looking forward for your approval of the items on the agenda, in particular the conditional use approval and the site plan approval with the conditions; and we've seen the conditions, some of them that have been modified at the churches request and we are completely in agreement with those conditions and we have no issues with them.

Commissioner Cabrera: The attorney's conditions...?

Ms. Russo: We have no issues with the changes that have been made.

Mayor Cason: Great. Thank you. Mr. Gibbs.

Mr. Gibbs: Good morning. My name is Tucker Gibbs and I represent the Biltmore Neighborhood Association and Carlos Carta who is a neighbor of this site, and my law office is at 3835 Utopia Court in Coconut Grove. Just to confirm, we have come to an agreement with the school. As we've discussed at your two previous hearings on the application, but one issue we would like you to consider today addresses traffic in the area, and Mr. Riel addressed it briefly when he made his presentation. My clients and Somerset have agreed to the following request as a solution to my client's concern regarding the school's traffic operations. As you know the City has recommended and the school has presented documents regarding a 3-shift morning drop-off and afternoon pick-up, and Mr. Riel has created this new condition, amended condition that talks about a staff review of those three shifts, drop-off and pick-up and maybe bring it down to two. My clients would prefer to do it in the opposite way, and what we would do is require two shifts of students instead of three for the morning drop-off and afternoon pick-up, and then if it is determined by the staff, the City's consultants pursuant to the analysis that Mr. Riel spoke about, that the 2-shift program does not work, what we mean by not work is creating stacking and spill over into the adjacent streets, then the school would at the beginning of the next school year, which would be this coming, not this coming, but the 2012-2013 school year, the school would go back to the 3-shift that they proposed initially. That would be what we would like. In addition, we would also require that all school related traffic during drop-off and pick-up must enter the

property by right turn from Cardena Street by Segovia Avenue, and a right turn onto Cardena, and then when they exit the property they would do a right turn only onto Cardena, and then a right turn onto Anastasia. What that would do is pull the traffic in from Segovia, bring it into the school and have it exit onto Segovia and out. There is a light on Anastasia and Segovia that will help do that; and then further that no school related traffic would turn left from Cardena into Anastasia and turn left from Anastasia to Cardena. That literally keeps the traffic away from the residential community, and what we would like to have these done is done first, and then the traffic study that Mr. Riel talked about would still happen, and it will happen I think by October, I think its October...

Ms. Russo: October 15th.

Mr. Gibbs: October 15th and if it's found that this does not work then we go to the three. This deals with the issues we talked about at the last major public hearing when my clients talked about the issue of the long shifts and how much time it takes. We'd like you all to adopt that and I also want to say some things on the record to state on the record that this settlement agreement is between the neighbors and Somerset. I want to confirm that there is an existing 1977 ordinance which you all heard plenty about, and we understand that the church is only interested in retaining their rights if Somerset leaves to do the things that they were allowed to do under that 1977 ordinance, and we have no objection to that, and I wanted to put that on the record; and I also want to place on the record that we'd like to ask this Commission to allow us to place into the public record our settlement agreement along with the exhibits, and ask the City Commission to direct the City Clerk to make that, keep that as a public record on file with the City of Coral Gables until such time that Somerset no longer exists or its successors no longer exist on that site.

Vice Mayor Kerdyk: So everything Mr. Gibbs said you are in agreement with, is that correct?

Ms. Russo: Yes, that is absolutely. Somerset is...

Commissioner Quesada: Including the traffic pattern.

Ms. Russo: Including the traffic pattern, we leave that up to you. We told them we know that 3 works, we are OK with doing 2, we believe it works, whatever option we are prepared to work with the neighbors.

Mr. Gibbs: And I'd like to conclude by saying that people may not realize it, but even over their holiday, these are people who work for a living, they took a lot of time out of their days and nights to meet with me and meet with Ms. Russo and representatives of the school, and our many

discussions were lively, but we are really pleased. I think this is a solution that not everybody is thrilled with or happy with, but that's the mark of a good compromise. Thank you all.

Commissioner Cabrera: Before they leave may I just ask a question?

Mayor Cason: Of course.

Commissioner Cabrera: You know I just want to clear the record for this one. Shortly after, actually the following day after the first hearing, it was Wednesday, December 14th, there was an article in the Miami Herald, and I kept the article and I want to read a quote in the article because I'd like to get some sort of closure on this issue, because I came away after reading the article somewhat uncomfortable, but at the same time I understood that on many instances reporters may misquote an individual or a group, but in this particular article the principal for Somerset Ms. Ruiz, and let me just read the article as it's paraphrased: *"The Principal for Somerset, Suzette Ruiz, said that 260 isn't an ideal number and that the school still plans to go forward with an eventual expansion."* This is an article in the paper; I'm not making this up.

Ms. Russo: I'm sure she was misquoted, but to make it perfectly clear, we have Ms. Suzette Ruiz here who is the principal, and I'll have her address that the school Somerset Grace Academy...state your name.

Ms. Ruiz: I'm Suzette Ruiz for the record, principal, Somerset Academy in the Gables. Can you repeat what was...

Commissioner Cabrera: I'm going to read it to you; I'm not going to take it to you. *"The principal for Somerset, Suzette Ruiz, said that 260 isn't an ideal number and that the school still plans to go forward with an eventual expansion."* Period.

Ms. Ruiz: And for the record, I had stated here that 260 was the number, that was the agreement that we had made with the neighbors, so that was obviously a misquote.

Commissioner Cabrera: And you said that later on. You went on to say that positively what you just confirmed you said later in the article, but I just wanted to get this out.

Ms. Ruiz: Absolutely and I'm glad you did.

Commissioner Cabrera: OK. Alright. Thank you.

Mr. Gibbs: And that...in our agreement, so everybody says it's in our agreement and we can enforce it.

Commissioner Cabrera: You know what? Mr. Gibbs it's just to set the record straight, it's not meant to throw a curve ball, it's to set the record straight.

Mayor Cason: Thank you both.

Mr. Gibbs: Thank you.

Mayor Cason: Now we'll open up the meeting for public testimony. I have 5 cards starting with Felix Pardo.

Mr. Pardo: Good morning Commissioners, Mayor.

Mayor Cason: Good morning.

Mr. Pardo: Well, I'm glad to see that Tucker has through his clients, his association have tried to provide as many controls and constructs on this application. The reverter clause, things like that are key. I wanted to see if I could just bring a couple of things up to this Commission's interest, and that is that I don't think that you have been informed properly of the issue of the master plan, in other words the Comprehensive Land Use. Much has been said about the restrictions and the safeguarding of the citizens, and this Commission I know has the intent to make sure that this is done. Problem is that in the application itself, as far as the land use is concerned you have to read that two pages where it says, in conjunction with the 44 percent reduction in students, Somerset is proffering a reverter clause in association with the requested change in land use from religious institution to community service and facilities. The agreement, the additional letter that was proffered today by the Planning Director has to do about preserving the religious component of it, in other words that they are able to do certain things such as expansion, etc., not for the school but for the church, in other words that there could be additional implementation of that. Why is this important?- but I wanted to make sure I didn't leave any details out. The first thing is that this reverter clause is being put in there because it says, and I quote: this reverter clause to be implemented with the restrictive covenant shall provide that when the school use ceases to exist or the school abandons the property the land use of the property shall revert to religious institution. Now the problem is, that's great from a zoning standpoint; you got zoning and you have the master plan. Now years ago there were no Master Plans in the State of Florida, it was a state legislature item. The Master Plan as you may or may not know is an overlay of the permissible uses if accepted by this Commission or any future Commission. Now why is that important?- because if you look at this they are going from religious institution in the Master

Plan, the land use to community services and facilities. Now what does that mean? Well it means a lot. When you look at their application, but even more disturbing your staff's recommendation, 2-page recommendation for the change of the Master Plan, the land use, it says number one, under the Comprehensive Plan Analysis Somerset Gables, 2 pages note– It says in here that as far as the policy is concerned and the policy that the Planning Director is quoting is actually from the School Board from the State of Florida. He quotes, “policies and objectives, not codes or requirements,” in other words it's a, “we'd love to have it” list. Keep this in mind, it says in there, it is consistent with the goals; the University Baptist Church property is consistent with the goals policies and objectives of the City of Coral Gables Comprehensive Plan. No it is not. The Comprehensive Plan right now that is a religious institution with auxiliary uses of education, not the other way around. That was adopted in 2009. You have a land use plan that clearly stated that when the land use was finally implemented and updated that was religious. Now you are on a slippery slope, let me tell you what it is. If you look at that land use plan, all of you together, look at that land use plan with your Planning Director and he can point out everything that's in purple in that plan, there are religious areas all over this City, in other words these areas that are religious, which are fine because they are community based, which is great their impact is very, very different than an impact of a school. Now keep in mind that these areas that are around there, traditionally before the Master Plan even came into effect. Remember, we were planned in the mid 20's, when all these areas around the City were put into effect. Please keep in mind that there was no land use ordinance or legislation in the State of Florida. Now keep in mind all these areas were always “S” uses, Special uses. Those Special uses were really working as zoning and land use at the same time. All those areas were put into areas that were specifically, specifically residential areas “R”. So you'll have an “S”-Special, “D”-Duplex; S-Special, “R”-Residential. The reason that you have this from a land use standpoint is very important. Keep in mind you change this land use in this one then all of a sudden you are going to be changing it in others. You don't have to change the religious overlay that you have now, you do not have to amend this Master Plan for you to be able to place these restrictions that have already been entered between Somerset and the homeowners association's attorney, so it doesn't hurt the application, but what it does, it provides a specific restriction. Now, I'd like you to understand also that in this recommendation from your staff it says, in its Comprehensive Plan the City has affirmatively committed itself to finding solutions to school overcrowding. It's not our place to do what the School Board has to do; the State of Florida School Board has to do. Now the objectives again that are quoted there are substantial. So, the City according to this is currently to our knowledge working, not working on any other solutions, but believe me when this is approved there are going to be applications for every single religious institution that is a Special Use anywhere in the City. So there will be more assault on single family residential communities, keep that in mind. Now if this Special use or this Master Plan would go into a commercial area you don't have to do anything at all, including the zoning changes. Now it is shown as a religious not an education, in the recommendation it says the City's Comprehensive Plan identifies University

Baptist Church location as a logical one for an educational facility. Keep in mind that at one point the Planning Director even said that the requested change in land use to community services and facilities is the perfect category not religious; we are talking about something that is so open that you have no clue. You could actually back out of the religious facility in the future once this is done, if you go from the religious to the recommended change of the Master Plan.

Commissioner Cabrera: Mr. Pardo?

Mr. Pardo: Yes.

Commissioner Cabrera: At the last Commission meeting when we deferred this item because both the neighbors and the Somerset folks were not able to come to a closure. We actually actively discussed the fact that – and if I’m speaking out of turn, we all agreed that approving the land use is inappropriate. So, I think your point that you are making this morning is like right on.

Mr. Pardo: And I’m sorry to be redundant. I just want to make sure that, and Mr. Mayor I really apologize I want to make sure no one has spent this amount of time on this specific issue and I think that this Commission has been short-changed as far as this explanation, and the reason that it’s important is not only this application, but when you look at the map you will see how scary it is as far as all the single family communities around this neighborhood with the exception of only two religious institutions that are in commercial or-slash/apartment high density areas.

Mayor Cason: Thank you very much we appreciate it.

Mr. Pardo: One more thing.

Mayor Cason: OK.

Mr. Pardo: Just keep in mind that these Special uses when you back track on the Master Plan you will see that they will pop out at you and the best interest of the surrounding neighborhoods is quoted right in your Code; and also please keep in mind that when you look at your zoning map, your original zoning map there are restrictions there under the plates, the old plates and it says specifically church purposes and child development center; and in closing when you look at the Master Plan you should definitely look at amending and taking out without a doubt one thing which is extremely, extremely dangerous and that is this specific land use category that does not exist, the one they want to change it to does not exist anywhere in the City of Coral Gables. It’s a dangerous precedent, it should be stricken as a category from the land use plan, and I think it would be a great, great service that this Commission could provide to the citizens of Coral Gables by simply striking out that use that has never been used in the City before. Thank you.

Mayor Cason: Thank you very much. Very good. Paul Zamek.

Mr. Zamek: Good morning everyone, Paul Zamek, 1505 Ferdinand Street, Coral Gables. I want to thank everybody for being here today, I want to thank first of all the City staff for working so closely with both parties on this. I can honestly tell you that when Laura and Tucker told you that they have been working tirelessly, it's an understatement. I want to thank Carlos Carta and Alex Mantecon specifically for representing the BNA (Biltmore Neighborhood Association) so well. We learned a lot about each other through this process. I think as also Tucker said that it's a sign of a good compromise is that everybody walks away wanting more, but I think what stands before you is the product of honestly two years of work, not just a month's worth of work. From the position of the Somerset Gables Parents Association, which I'm the president of, we are very pleased with the settlement agreement. We think that it accomplishes what we set out to do and that's providing another educational opportunity for the City, also at a reasonable size which protects the neighbors. I think we heard a lot of things that didn't occur to us during this process, so we are happy to include them, and we continue to be open to the needs and desires and concerns of the neighbors. I ask that you approve the application as it stands before you and know that we are committed to continuing to work with the neighbors, this doesn't go away after today. We are going to be there and we are going to be neighbors long after this leaves. So as the President of the Parents Association that's my commitment to you, commitment to the City of Coral Gables and also to the commitment to the neighbors and the parents as well. As long as I will be involved in the process you are going to have that level of commitment and I'll be accountable for our parents abiding by this settlement agreement. So once again, thank you all and strongly urge you to approve the application. Thank you.

Mayor Cason: Thank you very much.

Commissioner Anderson: Thank you very much.

Mayor Cason: Albert Sanchez.

Mr. Sanchez: Good morning. I'm Albert Sanchez; I live at 619 Camilo Avenue with my wife, 9 year son and 5 year old daughter. Over the last two years much dust has been thrown around on the charter school issue. As the dust begins to settle, I think it's important to review where we are netting out. A 34 year old restrictive covenant is being thwarted; permission for a school enrollment that defies anyone's reasonable definition for a neighborhood school is being established. During this debate I've often been asked what number I could live with?- my response has always been the same. Given that this is being touted as a neighborhood school one class per grade, K through 8 seem like a reasonable solution to me. If the model serves many

schools as well as including the school that my own children attend; however, I always found the numbers question fairly presumptive because it assumes there is a bona fide need for a school. A review of the facts very strongly questions that need. I think a School Board member Raquel Regalado does address this issue when she presented before this Commission last August. During her presentation Ms. Regalado praised the City for the fact that every school in Coral Gables, elementary, middle, and high school was “A” rated. So from a quality point of view there is no need. Addressing the capacity issue I’m sure you recall that Board member Regalado stated that numerous schools in Coral Gables and the surrounding areas were under enrolled, including Henry West Lab, Sunset Elementary, David Fairchild and Ponce Middle. Therefore, from a capacity standpoint there is no need for an additional school. Yet supposedly there are hundreds of students on the charter school’s waiting list. Over the course of many different meetings and hearings it became quite evident to me that this school was not appealing to children in our local public schools, but rather children in private schools. Parents whose children had attended or were attending schools like St. Phillips, Gulliver, and St. Teresa took this podium to argue about the need for an additional school option, and now we have that additional school option. One that caters to parents who would otherwise be sending their children to private school, hardly the type of school option that I think many envisioned. When I walk over to the Coral Gables Library and vote in City elections one of the underlying tenants for any candidate that desires to be a public official is leadership. I’ve been happy to see that this Commission either collectively or individually has provided leadership on a host of issues; unfortunately this has not been one of those times. With the exception of Commissioner Anderson, this Commission has demonstrated a conspicuous lack of leadership on this issue. Requesting that a neighborhood association a huge school conglomerate come to an agreement is not leadership. Rubber-stamping that agreement without much debate is not leadership. This is a major public policy issue not simply a neighborhood issue to be worked out behind doors. This is an issue that affects all of Coral Gables far into the future. I have yet to find a neighborhood association on a Coral Gables ballot, rather it is each of you whom I have seen, and it is for you for whom I have voted. I ask you to demonstrate the leadership commensurate with your position and debate this issue today and vote what you honestly believe is the right course for Coral Gables. Thank you.

Mayor Cason: Thank you. Sandra Murado.

Ms. Murado: Good morning Commission, City Attorney, City Clerk. My name is Sandra Murado; I am a resident and a business owner in Coral Gables. I’m just here to raise two points, one of them goes back to a discussion that was on the record during the March 23, 2010, Commission hearing, and I’d like to raise something that I thought was a valid point, and I have a question. So one’s a question and one’s a comment. Commissioner Kerdyk raised a very, very valid and vital point during the preliminary discussions before Somerset had made any sort of

application before the City and that was – what are the physical education requirements of a charter school? My daughter attends Coral Gables now known as Preparatory Academy. She is a third grade student, she has physical education every day. I asked myself what are the physical education requirements for a charter school?- I don't know what they are, but I know that I'm paying for it, I'm a taxpayer, I'm a voting taxpayer, so my question is Commissioner Kerdyk, did anyone answer that question?- did anyone look into this?- does anyone know the answer?- because frankly I don't know where they are going to do physical education, I hope it's not at the Youth Center because the Parks and Recreation Board as you all know unanimously passed in their minutes opposition to the school being there, the change in the land use and everything that had to do with this, but you all know that because you approved these minutes just a couple months ago. So if you could I'd like the answer if any of you have that, because I think it's a legitimate answer, and the second thing I'd like to raise, and I'd like it to be from somebody who has authority perhaps from the School Board, because I don't know what the answer is, and when I've asked I haven't been given an answer...and here's the second thing I'd like to raise before I sit down. In the capacity that all of you are sitting in now as a Commission with this issue before you, with this application before you, with now as a proposed agreement before you that you are about to vote for and pass or not pass, my question is this is a quasi-judicial proceeding which means that the public is limited to the conversations they may have with their elected officials, lobbyists who are "hired guns" in my eyes are the ones that are allowed to sit and discuss issues with you. In light of that I have been involved in this matter since it happened two years ago and I don't know why because I'm not an affected neighbor, but I do believe in integrity of the process and I do believe in transparency and if I didn't care I wouldn't be here. So my question is the City's position is very clear on the record especially during the lawsuit that was filed in June 2010 before Judge Jennifer Bailey. I cannot secure a copy of that because now I'm prohibited from getting copies of a pleading unless I'm a Judge or I'm an attorney of record, so I'd like to know or I'd like to raise and I'm not a landuse lawyer, but I'd like to raise a consistency challenge because it is my opinion that the prior former City Attorney who represented the views of this City and gave her recommendations and went to court before Judge Bailey who ultimately ruled that 110 was the number came back, and I'd like to know then what is your position Mr. Leen?- have you had an opportunity to review this agreement?- is it legal?- will we see it?- or is everybody going to rubberstamp it, and if there is an inconsistency, then what in fact is the position of this City on this very application? Thank you.

Mayor Cason: Mr. Gibbs you want to address the recreational issue?

Mr. Gibbs: I can address both of them; it's my agreement not the City's. The issue of the P.E. requirements – I don't know what the P.E. requirements are but the issue is the Youth Center. In our agreement as well as I believe in the conditions of the City it specifically says that the school and the school have agreed, the school will not use the Youth Center. So that can be enforced by

my clients and it also can be enforced by you all as a City. You all are not being asked to bless our agreement; our agreement as I said before is a private agreement between the neighbors and Somerset, and we had this discussion at the previous agreement. It has nothing to do with the City; in fact some of our requirements are more stringent than the requirements of the City's. So I just want to get that on the record.

Mayor Cason: Thank you.

Ms. Murado: I'm sorry for coming back, but my question wasn't answered. I'd like to know if anybody can give me an answer as to what the physical education requirements are for a charter school if you have an elementary school, and please don't mock me, I need to know because I'm paying for that school and I want to know if there is going to be compliance with the law, because when this has been rammed down my throat I want to know who is responsible to make sure that all the "T's" are crossed and all the "I's" are dotted. That is what this is about. I want to know if there is going to be compliance. Period.

Mayor Cason: Does the principal of the school have any views on any information in terms of the P.E.'s?- and then we'll move on to the last.

Ms. Ruiz: Good morning once again. The physical education requirements are the same compliance as any other traditional public school. We are bound by the same requirements, we have to be compliant in order for the school to operate, in order for the information to be given to the parent and there is a charter school officer that comes out to the schools that makes sure that we are in compliance with all those rules, and we will continue to do so. We have benchmarks that have to be followed, standards that have to be followed, and there is a space available at the school to conduct the physical education classes.

Mayor Cason: Thank you very much. Anna Louise Faulks.

Ms. Faulks: Good morning Commissioners, Mr. Mayor, Mr. Leen. I am looking at a covenant and a restrictive ordinance that was signed many years ago on February 29, 1968. This is directed basically to Mr. Leen, I would like you to go back to the very beginning to read what was signed and delivered by our City of Coral Gables and the University Baptist Church. This did not include any charter school or any other entity except a child development center at a religious institution. I think it states it very clearly, it's underscored on some parts of the paper that I have given you that it shall be binding upon the said trustees, which is University Baptist Church and their successors – successors. Anyway Mayor Dunn signed this and it was also signed by Virginia Paul who was the City Clerk at the time. I now jump to the ordinance which again goes directly to University Baptist Church; it does not go to Academica Somerset Gables

or BNA. It states very clearly that said property for the operation of a child development center shall be subject to the following conditions and restrictions. Do you want me to read them a, b, c, and d?

Mayor Cason: No, we have this.

Ms. Faulks: Alright. At any rate what I'm asking is that Mr. Leen go back to the beginning, look at what was said, written, contract, binding by our City of Coral Gables and by University Baptist Church. BNA, UBC, Academica does not represent me nor many of my neighbors, who does represent me are my elected officials who presently sit on this dais before me. Lastly, Maria Anderson, I wish you the most happiness in your future calling of the ministry, and I thank you for so many years that you have sat before us with your sensitivity and your kindness in the roles that you have done in the past. Good morning ladies and gentlemen.

Mayor Cason: Thank you for your testimony. That ends our public testimony part of this item. Mr. City Manager you have a couple of points you wanted to make.

City Manager Salerno: Yes. Eric would you just come forward. There was an issue raised and I think staff would just like to provide some additional information for the Commission's consideration when they – one of the suggestions made here this morning.

Mr. Riel: As I briefly outlined in my presentation. Just a little background on the traffic. The traffic – the applicant provided a traffic study to the City, an accumulation study. Our traffic consultant evaluated that data, that data was based upon a surrogate school; similar situation, similar location and what-not, and that's what we formulated our conclusion for and that's what they did the three dismissals on. The proposed language we are proposing is to allow actual data to be compiled on site, which is hard line data, traffic accumulation, traffic studies, level of service. For those reasons staff recommends that we start with the three dismissals and then depending on the data that's provided we can then go to the two and that would be enacted on January 2013. So basically when they start the school year for about 45 days our traffic consultant will look at the data; October 15th they will give the data to us, we'd make an administrative determination and then that will be issued or implemented depending on what those findings are in January. Staff recommends that we do that because that provides us with evidence, hard facts rather than just saying an assumption that we are going to two, which has not been the case throughout the entire application review. So staff recommends we start with the three and depending on the information go to the two.

Vice Mayor Kerdyk: But Eric once you study that two and then get that data, I mean I don't understand the...

Mr. Riel: But by doing the three you get a worst case scenario, you look at...

Vice Mayor Kerdyk: Yes, but if you get two and you say it's going to work, then why go to three?- and if it doesn't work then you go to three, there is no alternative you are not going to five, I mean, it's either two or three.

Mr. Riel: From staff's viewpoint we feel more comfortable having substantial competent evidence to support the three to two, and that's...

Vice Mayor Kerdyk: Listen, I like listening to staff, believe me, but the fact is I can't see the difference, and if the party agree upon two to three, I just can't see the substantial difference between it, and the neighborhoods want two as opposed to three, then let's stick with the agreement. That's my opinion. I don't see the rationale from going from three to two. Thank you though.

Mayor Cason: Thank you. Craig do you have anything you want to say before we begin our discussion?- anything?

City Attorney Leen: There have been a number of statements related to the City Attorney. I generally would answer them only – sorry. There have been some statements made regarding legal interpretations of the prior City Attorney and myself. Generally, I would just answer those questions from the Commission if you have them, if you want me to speak on those issues I will.

Commissioner Quesada: Please do.

Vice Mayor Kerdyk: Please.

City Attorney Leen: First, the lawsuit which one of the residents brought up. It should be recognized that, that lawsuit was over – the decision that the Judge made in that lawsuit was on a limited issue of whether an injunction, a preliminary injunction should be issued or not, and at least in my opinion I've looked at the order that was issued, there was no final decision in that case, and I do not see that decision as standing for the proposition that only 110 students can be at Somerset. I don't think it says that at all. So I don't think that binds you in any way. On the second issue, on the issue of a restrictive covenant – and I'd also say that in terms of being able to get pleadings or anything like that, if you make a request of the City Attorney's office, we can certainly give you pleadings in the future in any matter that we are involved with, if that's what you'd like. Now as to the matter of – and I don't have any control over the County Clerk's office, all I can do is control what's requested of the City Attorney's office. Now as to the

declaration of restrictive covenant, I gave the opinion previously that, I think it's important to recognize what this restrictive covenant was about. This restrictive covenant related to approval of a walkway, a covered walkway, and as part of that there were two provisions: one which said, that said property will not be leased or rented or used in violation of any of the ordinances of the City of Coral Gables now in effect or hereinafter enacted, and the key provision here is hereinafter enacted. This does not by its own terms was not intended to be the end of everything in 1977, pardon me, what year was this?- 1968, it specifically said hereinafter enacted. If you enact these ordinances, then it would be consistent with law and in my opinion you could do that. The second provision is standard language that relates to, whatever you make, and we have this in other types of restrictive covenants as well. This covered walkway basically is saying you can't split the property because there is now a covered walkway that's being approved. I don't think that this, particularly where this is, in my opinion, could be an accessory use to the church, I don't see how provision two prevents you from acting in any way. Also, provision one is the principal in my opinion, provision here, and if there is a future ordinance that permits this with a number of conditions, then that future ordinance would control. So, I do not see, although you can consider the restrictive covenant, I do not see this as binding you in any way in terms of your ability to act today. Now, I've also been asked in previous meetings related to the land use change. Would the Commission like me to talk about my legal opinion on that?

Vice Mayor Kerdyk: Yes please.

Mayor Cason: Yes – maybe the best way to do this is to take up Item E-1 and have your opinion and a discussion and a vote on that and move to 2 and 3 as a block or we'll vote on them separately, but discussion on 2 and 3. So why don't you give us your opinion on E-1 on the land use change.

City Attorney Leen: There are a couple portions to my opinion. First, did the current land use at the church is for religious institutional and there is presently a charter school there. So presently there is a charter school operating in a religious institutional land use category and that's at that church. I did at the last Commission meeting, I was requested to look into a little bit what our practice is in Coral Gables relating to religious institutional land use; and City staff provided me with 11 different churches or religious institutions that have schools or some sort of educational use attached to them, and 10 of those were in a religious institutional land use category. The one that wasn't which was brought up by Laura Russo last time was St. Teresa, but remember St. Teresa, first of all is a much larger school, it's about as I recall, close to 900 students, but it's much larger than what's being discussed here. In addition, it's a separate – the church part of St. Teresa is on a different block and that is a religious institutional land use, as I recall, and then the school which is on a separate block is educational. Now the closed comparator that I found was St. Thomas and St. Thomas is a religious institutional land use and it has been approved,

according to the information provided to me by our Zoning office, for school – pardon me – I’m going to read it directly from the document. It’s been approved in a certificate of use for three year olds through kindergarten for 129 students and for grades 1 through 6 for 196 students. So that’s a total of 325, which is larger than what you are being asked to consider here as an accessory use and that is a religious institutional land use. So certainly the practice of the City of Coral Gables in my opinion would permit you to follow precedent and continue to keep this a religious institutional land use. In addition, it’s my legal opinion that you do not have to – and I’ve stated before the rationale for it, but it’s my legal opinion that you do not have to make this land use change in order to approve the zoning ordinance and the site plan ordinance. I can go into that further if you like or answer any specific questions.

Vice Mayor Kerdyk: So what you are saying is we would deny this application if we didn’t want to approve the land use, we deny Item 1, E-1, is that correct?

City Attorney Leen: My opinion is that you can do – yes, my opinion more completely is that you can do either. This is a legislative item and it is within your discretion, you can do either, but if you deny the land use change you can still approve the other two ordinances before you.

Vice Mayor Kerdyk: That’s what I wanted to hear. Perfect – thank you.

Mayor Cason: OK. Let’s have a discussion on this, if not...

Commissioner Quesada: Just one quick point. I think Mr. Pardo’s testimony; I guess he left, Mr. Pardo’s testimony earlier today and he was a member of the Planning and Zoning Board for quite a long time. For me he was very convincing and I think Mr. Gibbs’ argument to the last hearing was very convincing as well. I just want to say on the record I will be voting against Item E-1.

Mayor Cason: Why don’t we entertain a motion then to deny rather than the other way around and do I have a motion on that?

Commissioner Cabrera: I’ll move it.

Vice Mayor Kerdyk: I’ll second it.

Mayor Cason: Motion made by Ralph Cabrera and seconded by the Vice Mayor. City Clerk.

Commissioner Anderson: Do we have an opportunity to – I’d like to make a couple of comments.

Mayor Cason: Go ahead.

Commissioner Anderson: If I could vote on my personal opinion there would be a lot of different votes, but I can't do that. In this arena I'm called to look at the facts and put my personal feelings aside. I try to abide by all the standards, ethical standards that I'm guided by, and I'm not a big fan of charter schools, not a particular reason, I don't care for them, but they are the law and they are allowed. I don't like the way this came about, but here we are. It still troubles me, but I think we've reached the best possible compromise, and Albert and Anna Louise, I'm sorry if I've let you down today. I'm going to be voting for that and its troubled me greatly, but I feel this is a compromise that I can live with and it's never easy up here and I appreciate your kind words and I hope that I can still count on your kindness and your friendship and that being said we'll move on.

Mayor Cason: OK. So Commissioner Cabrera has made the motion the Vice Mayor has seconded it.

City Clerk

Vice Mayor Kerdyk: Yes

Commissioner Quesada: Yes

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: OK. Discussion...?

Commissioner Cabrera: Mayor, that's a yes vote to deny?

Mayor Cason: To deny, to deny change of land use. Yes for no.

Commissioner Anderson: To deny.

Mayor Cason: Items E-2 and E-3, do you want to discuss these together?- I think these go together.

City Attorney Leen: Mr. Mayor we would ask that you – you can discuss them together certainly, except that you vote separately.

Mayor Cason: Right.

Vice Mayor Kerdyk: I'll go ahead and make the motion for E-2 and I'll just make a quick comment. My comment is very similar to Commissioner Anderson, the fact is that 260 children, I don't know if that was going to be the number up here, I know I have some anxied about it, but the fact is that there are a lot of other forces that weren't in play in 1977 in protection of the neighborhood making sure that's not 550 in two years is probably a big consideration of why this agreement is made. So at this point I am, as I mentioned I will make the motion to approve this to move it from 110 up to 260.

City Manager Salerno: Mayor?

Mayor Cason: Yes.

City Manager Salerno: Mr. Vice Mayor just a note, based on your comments earlier, do you want to amend the ordinance changing it from three to two?- because you need to make that amendment, E-2 and E-3.

Vice Mayor Kerdyk: Oh, E-2...

Commissioner Cabrera: Mr. Kerdyk, I'm prepared to second your motion, but I would like to entertain as an amendment to the motion to do what was required or requested which is to include the settlement agreement as part of public record, which is something that I wanted to add to it, as well as the letter from Berkcow Radell and Fernandez as part of the actual agreement. Are you comfortable with that?

Vice Mayor Kerdyk: I am.

Mayor Cason: I am too.

Mr. Gibbs: Mr. Mayor?

Mayor Cason: Yes.

Mr. Gibbs: Just to clarify. The conditions that we've asked for the traffic circulation which included the right turns...

Vice Mayor Kerdyk: Right, right.

Mr. Gibbs:...if that could be included, and the settlement agreement should be recorded as a public record, and what you wanted to say is that the Berkcow Radell would be recorded in the City's record, but not part of the settlement agreement.

Commissioner Cabrera: No, these are separate, these are separate items.

Ms. Russo: The settlement agreement would be part of the City's records.

Mr. Gibbs: The City's public record.

Vice Mayor Kerdyk: Mr. City Clerk, do you have all that?- that's good.

City Clerk Foeman: Yes, I do.

Mayor Cason: Two to three, right?

Vice Mayor Kerdyk: From three to two.

Mayor Cason: Three to two.

Vice Mayor Kerdyk: Right – three to two, we are going to test two out and the right turn. Is there any question for the City Clerk?

City Clerk Foeman: No.

Mayor Cason: Is everybody clear on this? OK. The Vice Mayor made a motion, Commissioner Cabrera has seconded it. City Clerk.

Commissioner Quesada: I would like some discussion prior to the vote. Mr. Sanchez brought up a point; it's something that's been in the back of my mind throughout this process. When the School Board member, Raquel Regalado, came before us, what was it?- May?- June?- was it August? At that August meeting she went through the different public schools in Coral Gables and she gave us an update and she let us know that they were all "A" schools and she talked about the enrollment numbers, and that's something that when this process began I went back to the minutes of that meeting and I scanned through it, and she talked about some under enrollment, some over enrollment at the different schools; and if this number was going to be closer to the 400 number or the 700 number that was definitely going to be the main reason I wasn't going to go that high, but because I think the number has come down a significant amount and I think it's 260, I'm OK with it at this point; but I just want to point out that it was a very

good observation by Mr. Sanchez and the School Board, it's something that was always in the back of my mind, I'm glad it was brought forward in the public record.

Mayor Cason: Any more discussion on Item E-2?- if not, City Clerk.

Commissioner Quesada: Yes

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: Item E-3, the site plan review. Any discussion? Can I have a motion?

City Attorney Leen: Pardon me; before the motion is made the two to three probably should be part of the site plan too.

Mayor Cason: Both.

Vice Mayor Kerdyk: I'll make the motion with the same changes that we made in the prior motion.

Commissioner Cabrera: I'll second.

Mayor Cason: OK. Motion is made by the Vice Mayor; Commissioner Cabrera has made the second. City Clerk.

Commissioner Anderson: Yes

Commissioner Cabrera: Yes

Vice Mayor Kerdyk: Yes

Commissioner Quesada: Yes

Mayor Cason: Yes

(Vote: 5-0)

Mayor Cason: If I could just commend both lawyers and both of the neighbors and the school for working out this agreement, I think it took a long time, but I think the extra 30 minutes was helpful in reaching the final conclusion and that's always great to have a "win-win" even though everybody is not totally satisfied, I think this is good for the City and I hope that you all would

continue to work together and make this a smooth process over the next couple of years. Thank you.

[End: 10:44:04 a.m.]