

**City of Coral Gables City Commission Meeting  
Agenda Item E-1  
November 18, 2014  
City Commission Chambers  
405 Biltmore Way, Coral Gables, FL**

**City Commission**

**Mayor Jim Cason**

**Vice Mayor William H. Kerdyk, Jr.**

**Commissioner Pat Keon**

**Commissioner Vince Lago**

**Commissioner Frank Quesada**

**City Staff**

**Interim City Manager, Carmen Olazabal**

**City Attorney, Craig E. Leen**

**City Clerk, Walter J. Foeman**

**Deputy City Clerk, Billy Urquia**

**Public Speaker(s)**

**John Freudenthal, Consultant, Quality Structures, Inc.**

**Louis La Fontisee, Original Pledge Class of 1950**

**Scott Mendelsberg, House Member in the 1980's**

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Agenda Item E-1 [Start: 10:01:18 a.m.]

Appeal by Quality Structures, Incorporated on behalf of West Range Coral Gables, LLC, for consideration of impact fees assessed on 5800 San Amaro Drive

Mayor Cason: Item E-1, this is an Appeal by Quality Structures, Incorporated on behalf of West Range Coral Gables, LLC, for consideration of impact fees assessed on 5800 San Amaro Drive. Interim City Manager, who will present this?

Interim City Manager Olazabal: Jane Tompkins will present the item.

Commissioner Lago: Mayor, Madam City Manager, I have to recuse myself in regards to E-1, the Appeal by Quality Structures due to the simple fact that I'm the contractor on the job. This is a private matter outside of University of Miami and I want to make sure that I put it on the record

that there is no conflict in regards to this issue. So I will not be voting or making a decision based on E-1.

Mayor Cason: OK.

Ms. Tompkins: Good morning, Jane Tompkins, Development Services Director. I'll try and keep my presentation brief. Last winter West Range applied for and received a building permit for the construction of a new fraternity house at the property at 5800 San Amaro Drive. As staff normally does in calculating the invoice for the permit, we included the typical impact fees that are charged to all projects in this City. In calculating those fees we looked at the ordinance and applied the rates that were charged to multi-family dwelling units. West Range did not believe we charged the correct multipliers and appealed after they received the permit. Provisions for appeal are provided in the impact fee ordinance. The staff then looked at the ordinance very carefully and the project and determined that we had made some errors in calculating the fees. First of all, the correct rates for the UM project, University of Miami projects are based on bed counts, not the number of apartments or condo units in the building. That led to a lower fee for the impact fees. We also determined that the art in public places fee should not be charged, the University projects are exempt from paying art in public places, as they have numerous art component projects on the campus already. So we refunded art in public places fee and we refunded the difference between the fee, impact fees that were initially charged and what we believed were the correct amounts. The appellate West Range has now appealed our calculation, they contend that the original structure had 37 beds and that the new project has 35, therefore they shouldn't be charged impact fees. You can see in the Commission packets, they included a number of documents to support their position and I believe Mr. John Freudenthal is here today to speak to you as well. In trying to research this property to come up with the correct fees, our staff went through numerous, various avenues, every source of information we could find on this property. We looked through our building permit records; we couldn't find any records that told us how many beds were in this building originally. In fact, we couldn't even find the original building plans for the project. We searched through our certificate of use records; certificate of use should have been issued each year for this property, but wasn't, so the only things we had to rely on were a document that we had from Miami-Dade County Water and Sewer Department that showed that the previous structure had 15 beds. We also talked to other staff, most particularly Chief Robert Lowman from the Fire Department who recalled that the earlier structure, the initial structure had more beds, but they weren't permitted, they weren't there legally. So staff concluded that the 15 bed count was the authorized number and that's what we based our calculation of impact fees on.

Mayor Cason: How would the Sewer and Water Department have concluded that there were 15?- were they told that?- were they asked?- do we have any idea how...I wouldn't think that the

water department would know how many beds would be inside of a building. You have any idea?

Ms. Tompkins: I don't have any idea how county tracks or maintains their records.

Mayor Cason: Since this is a public hearing, we have four cards. City Clerk do we have to swear them in?

City Clerk Foeman: Yes.

Mayor Cason: Those would be Dan Corah, Louise La Fontisee, John Freudenthal, excuse me if I didn't pronounce that, and Scott Mendelsberg. So if you all would stand and raise your hands.

City Clerk Foeman: Do you solemnly swear and affirm that the statements you are about to provide here today will be the truth and nothing but the truth?

All: Yes.

City Attorney Leen: Mr. Mayor, I just wanted to make a point. In considering the testimony and the discussion today, the test that you are applying is, and this is in 2-2106 of the City Code, is what is the net increase in the demand for public facilities; and obviously the point that's made here is that what happens in situations where maybe that amount of beds were not authorized, but in practice occurred, so you'll be applying that test. What is the net increase in the demand for public facilities?

Mayor Cason: OK. Dan Corah.

Mr. Freudenthal: Is there an order?

Mayor Cason: No. I just have them here.

Commissioner Quesada: Whatever order you guys want to speak

Mr. Freudenthal: Thank you very much. Good morning Mayor, City Manager, Commissioners, I appreciate the opportunity to come speak in front of you. Just to start off with, we've had several interactions with City staff and have been again, treated with the utmost consideration and professionalism. We are here as a matter of a calculation, not as necessarily a significant difference of opinion, but when this project started – my name is John Freudenthal, I live at 14109 Ballantine Country Club Drive, Charlotte, North Carolina. I'm a consultant, I view

development all across the country for a variety of different owners and represent West Range Coral Gables LLC, and I am the entity Quality Structures, Inc. that filed the appeal on behalf of West Range Coral Gables. They are the holding company for the house; they literally are the owner/developer and have been since the early 80's, but effectively since the house was built through another holding corporation and entity. When we did this originally, laid out the budget for this project, we did the research the same research that Ms. Tompkins was talking about and came to the determination that based upon the....that was published in the ordinance, that we set a budget, an original budget, and when we got the notice on the fees for the permits it exceeded our estimate or our interpretation of the ordinance by about \$113,000. We went ahead and applied back through Planning and Zoning and as Ms. Tompkins reiterated, we basically were given consideration for the multipliers and as Mr. Leen appropriately pointed out, we are here today because we have a difference of opinion relative to the original design load for the facility, which we contend is 42 plus a house manager, at that time, it was a house mother, of 42 occupants. We have several documents that we will present to you today. Effectively we are building a facility that has 17, two bedroom dormitories, and again a resident manager for a total occupancy of 35, so there actually is a net decrease from what was occupied in the past versus what we are proposing to occupy today. We are not seeking a refund by the way. I brought with me Mr. Lou La Fontisee, who we have the great pleasure, he actually was in the original pledge class of 1950, and he was initiated in 1951. Scott Mendelsberg, who is going to speak was also a member of the house in the 80's, and he will speak to us as well, and I'd like to kind of come back and summarize what our position is after Mr. La Fontisee speaks. I have a copy of his document if you'd like to see it.

Mayor Cason: Sure.

Mr. La Fontisee: Thank you very much. Good morning Mr. Mayor, Commissioner, City Manager. My name is Louie La Fontisee; I was privilege to be at Phi Kappa Alpha fraternity member in 1951. I entered the University of Miami in September 1950. There was housebreaking for the Phi Kappa Alpha fraternity house at 5800 San Amaro Drive in October of 1950, and occupancy was granted in the spring of 1952. The issue I'm here to speak on is the number of beds that were allowed in that fraternity house. There were 42 for the students, Phi Kappa Alpha brothers, and one for the house mother, who at that time was Mrs. Holland who I knew quite well. I actually resided in the house. One of the things that gives you that much occupancy is the fact that a part of the house on the north end was what was in a dormitory, which had six double-deck bunks. There were never anything added, by any changes that were made they did not add anything more than the 43 that were originally there. There were six double-deck bunks for 12. I think there were 13 two-man rooms on the second floor, and two more two-man rooms on the north wing of the ground floor. I have documentation of that a bulletin, an alumnae bulletin from the University of Miami of May 1952, that my sisters....she

sent to me some years ago. I'm proud to say my picture appears, that's me in the picture with my crew cut standing there beside the fireplace, that was part of the promotion for it, and I'd like to read a short section from this. I'll submit to you, we have copies for all of you. On the cover, the first fraternity house has just been completed and members of Phi Kappa Alpha Fraternity moved in last month that would have been April. On the cover is a picture of the fireplace in the living room. This modern structure cost over \$100,000, tuition was \$200 a semester and I had a scholarship, and will sleep 42 men. There is a private apartment for the house mother and more sleeping room can be added if necessary, that would have been in the open bay area on the north end of the building. In front is a raised terrace patio swimming pool, the house is on what would be forever known as "Fraternity Row". This is a picture of the house, we have other pictures and drawings over there that we were able to obtain from our archives, but I would like to submit this to you with the appropriate copies.

Commissioner Quesada: We all have copies.

Mr. La Fontisee: You all have copies? I'm here if you have any questions. I know the history of it. I was in the school for six years, graduated in June of 1956. I've resided at the house as the treasurer and I'm well qualified to speak from memory.

Mayor Cason: Thank you. John Freudenthal.

Mr. Scott Mendelsberg: Scott Mendelsberg, 10861 S.W. 120<sup>th</sup> Street, Miami, FL. I also attended the University of Miami from 1981 to 1987, undergrad, graduate school. I was a teacher there from 1989 through 2009, and from 1989 to about 2006, I was managing the local house corporation for the fraternity collecting rent from all the undergraduate brothers and paying all the bills. What I have here is some original photographs and an article from the newspaper, the Miami Herald talking about the architects and the original drawings and it says that it does sleep 42 people and that was the way it was designed. This was given to me by alum from 1947 a few years ago, and I've been keeping it in my closet ever since hoping to be able to show it at some point, if it ever meant anything or at least to local alumnae. So I can assure you that it had far more than the numbers calculated today at the Zoning Department.

Mayor Cason: Thank you.

Mr. Freudenthal: Mr. Corah is the Director of Real Estate for the corporation for Phi Kappa Alpha. He is here from Memphis, he came for this meeting, but he will speak if there is something relative to the entities how they are related. Bottom line to make it, to summarize, I think most importantly as Mr. Mendelsberg says, this article from the newspaper was an interview with the architects and engineers for the project and they state clearly in there that it's

designed for 42 plus 1. As Mr. La Fontisee also reiterated that's the way as he recalls was the way the certificate of occupancy was written. We have no information and no data as Ms. Tompkins reports, that occupancy was ever changed or the load was ever affected. We also have that we've submitted in your packet copies of internal documents from Phi Kappa Alpha that basically state the occupancy load of the house, there are internal documents from the 1980's, I left them sitting over there, 1980's, 1997 and 2007, all reflect more occupancy again than what is being allowed under the determination of Planning and Zoning; and the last thing that I would point to is, again, according to on page 12 of 2009-01 Ordinance, it does as Mr. La Fontisee refers, it does signify beds and so with that we would appreciate your reconsideration of our impact fee. At this time I'm open to questions.

Commissioner Quesada: So I'm looking at the affidavit of Scott Mendelsberg...

Mr. Freudenthal: Yes.

Commissioner Quesada:...that you just passed up to us, 2000 database, it says capacity 37.

Mr. Freudenthal: Yes that's it.

Commissioner Quesada: Yes, that's what I'm talking about. Where is this database from?- from your internal records?

Mr. Freudenthal: That's the internal, that's the log of all of their properties throughout the country or at least the applicable.

Commissioner Quesada: And then the 92 database states 18 number of sleeping rooms, 18, and I guess I've heard you testify that there were double beds, so those are sleeping rooms is 18.

Mr. Freudenthal: Correct.

Commissioner Quesada: And then the 1989 database states capacity occupancy of 36.

Mr. Freudenthal: Correct.

Commissioner Quesada: Jane can I ask you to come on up?- no, can I ask you to stay there? So their Exhibit A on the documents that we received that I'm looking at here – let me make sure I understand this correctly, and I apologize if I'm going through this again. So the fees were originally were \$78,000 and change, and then there was a \$20,000 art fee that they paid and that was given back, that was refunded, and then when you recalculated the number it came down to

\$41,300, after there was, I guess the recalculation based on the impact fees using the University of Miami multiplier, instead of multi-family residential multipliers, am I correct?- OK. What I did see in the cover memo was – they have a letter dated February 20, 2014, that we have as Exhibit A in our documentation that discusses two exemptions; and the first exemption is replacement of the demolished structure of similar use with equal or less capacity, which is I guess the crux of the argument today, which is Ordinance No. 2009-01, Section 2-2106 of Section A. So you are saying – I guess it's staff's position that there were only 15 beds formally recognized so therefore this ordinance isn't applicable?- that's staff's position?- am I wrong? Explain me what staff position is with regard to the exemption?

Ms. Tompkins: I don't have that 2000, I'm sorry, February letter in front of me. Staff's position is that the increase from 15 beds for the County records to the 37 beds.

Commissioner Quesada: So the County records say its 15 beds.

Ms. Tompkins: Right.

Commissioner Quesada: 15 beds or 15 units?- do you have that....?

Ms. Tompkins: 15 beds. It's Exhibit B in your packet.

Commissioner Quesada: Exhibit B – OK.

Mayor Cason: And we don't know how they reached that?

Ms. Tompkins: Chief Lowman informed me while I was sitting down that he believes that information comes from the applicant to the County.

Mayor Cason: Chief you want to come up and add anything you would like to before we continue on?

Chief Lowman: Good morning, Robert Lowman, Division Chief, Fire Marshall for the City of Coral Gables. I got involved with this building back in the early 2000's as a Lieutenant, Assistant Fire Marshall at the time. One of our inspectors went to the location found a significant number of critical life safety hazards, called me to come out and take a look at it. We met with the proprietors, representatives that were there at the time, and we started looking at it. Essentially what I got from them was originally there were areas of the building that was open that had transpired as far as what they used over history. Great rooms that were used for recreation, dormitory styles stuff, but there were no internal partitions and what had happened was

somebody had come in, apparently they believe post Hurricane Andrew when they had window replacements, but had built separate rooms, and there were about 18, as we have the correct number.

Commissioner Quesada: 18 rooms.

Chief Lowman: 18 rooms – and these rooms were constructed of 2 by 4 plywood construction. I was told by the proprietors at the time that most of the work was done by the brothers and they basically gave themselves privacy, is what they had done, and not unusual for...they are not unique in that, but there were about 18 rooms. Now buildings are designed to have capacity, not just on the square footage and the size of the building, going back several versions of the Code many years ago, but also what's the building design to operate at that much square footage – egress, escape windows, any fire sprinklers, and the number 15 is very important. If you go to the County and you apply, that how they get the number, how many beds is your hotel going to have or your rooming house is going to have?- for fire purposes it's a rooming house. When they apply they tell them the amount, that's what they are going to put down, and that has to do with charges. Under the Fire Code its 16 is a very important number; you go past 16 you are not a dormitory, you are no longer a rooming house, you are a dormitory hotel, requires fire sprinklers and whole slew of other things; more active fire alarm capability, etc. So if you are below that number and you are just a rooming house, whether you are 15 or you are down to 4.

Commissioner Quesada: So has this property been designated a rooming house?- or a dormitory?

Chief Lowman: We recognize – the facility that was there when we found it in the condition that it was, we issued violations and their resolve was they demolished the building.

Commissioner Quesada: OK.

Chief Lowman: So its record retention it's come and gone. I don't have the reports from it, but they came into compliance by demolishing the building.

Commissioner Quesada: You say this was around Hurricane Andrew time you said?

Chief Lowman: This was in early 2003-ish.

Commissioner Quesada: OK.

Chief Lowman: And the inspector has retired, she is no longer with us, in fact, I thought....was actually here at the time, but I actually walked the facility, met with them, and we looked at

options trying to salvage the building, make it functional for what they wanted to do, and there were about 30-plus people living there. Most of these rooms are individually set-up, they have TV's and a bed and so they were over that 16 number, and they wanted to try to figure out what they could do with it and their solution was too much money, let's knock it down and build a new one. So they came into compliance by knocking it down. It's been a number of years longer than I think they expected, but now we have reopened it and they've got a beautiful modern day facility, but as far as what were they allowed to have, yes its big enough, you can put a lot of people in this room if you have enough exits to get them all out, and that's really what it comes down to. I know how big it was, but it predates the state mandated Code which took effect in the early 90's, and it predates obviously my tenure with the 27 years with the City. But what we did find there was a non-compliant facility, it would have been a dormitory-hotel with that number of people, and the escape windows were blocked with the walls they put up and a number of things. So they were looking at a situation of vacating or coming to immediate compliance, which they couldn't do, and their resolve was we work with them like we were fire watch until...so that the tenants could move out.

Mayor Cason: You are saying there would have been an incentive back in the beginning to say 15 rather than 16?

Chief Lowman: If you go to the water department and they ask you how many beds you are going to have, there are two things. I tell you I have 16 or fewer, I'm only going to pay for 16.

Mayor Cason: So there could have been a financial incentive.

Chief Lowman: The fire...is much greater...

Mayor Cason: Craig, is that relevant to the discussion today, because whether or not they were snuckering the system or anything, let's put it that way. The point is this original document that you gave us said it was built for 42, is any of that relevant what they may or may not have advantage of by saying to the water department all we have in terms of our information.

Chief Lowman: We have some...documents on here and statements now, what we found here didn't match that.

City Attorney Leen: But this is a unique case. I haven't seen a case like this. We haven't had impact fee appeals before the Commission while I've been here, but in terms of appeals generally, I haven't had a situation where the standard is how many additional people will be there basically, but the building was in compliance with Code so they had more people. I do think you can consider in those circumstances. The other thing you can consider is, you do have

some discretion as well, because the City Commission 2-2104 can also waive or reduce impact fees as a discretionary matter if there is a public purpose. Considering that for example you definitely could consider that on whether you wanted to reduce or not. In terms of the strict appeal the standard is does it increase the impact for the City or are there additional people that are going to be using the City's resources, but if you want to give them, I mean ultimately the Code gives you a lot of discretion. You can either affirm, reverse or modify and it doesn't say – the standard is one sentence and it's what I told you.

Commissioner Quesada: Got it.

Mayor Cason: In 1952 were there at any point 42 kids?

Mr. Freudenthal: Absolutely.

Mayor Cason: So...

Commissioner Quesada: A question for you. Is there anywhere else in our Code other than the provision the Fire Code that says that they have to report to the City how many people are living in the structure or any other requirements of that nature, because the Exhibit B that you showed me is strictly with the County, so that's the first question and I have a follow-up question.

Ms. Tompkins: I believe that would have been identified in the certificate of use application, as I mentioned earlier we don't have those certificates.

Commissioner Quesada: Got it. You did mention that. And also the County, where does the County get that number when they report it?- do you have any idea?

Chief Lowman: The water department would get that from the applicant when they ask how big is your hotel?- how big is your business?- that information is presented to them by the proprietors or their representatives, which ones.

Commissioner Quesada: Is it possible there to shorten that number to save some money on the water fees? I have no idea. I'm speculating here.

Mayor Cason: But even if it had been 15, even if they had come and said to the water department, we have 15 students, or 15 rooms with two people in a room would have been 30.

Commissioner Quesada: Let me ask you a question. Were the rooms that you saw when you were there, were they similar to the rooms that you guys have when you are working in the Fire Station right now?- they are essentially cubby-holes?

Chief Lowman: Basically all they built was it had room for a bed, most of them had their own little refrigerator, their own TV and their own...

Commissioner Quesada: Similar to what you guys have currently when you are working overnight?

Chief Lowman: Similar – yes. A little different though.

Mr. La Fontisee: That's where they always were, there was no air conditioning back in 1950-51, and the partitions were like cubicles, you wouldn't call it cubicles today...there was ventilation, there was a separation between you and the guy next door....it was originally designed and built...

Vice Mayor Kerdyk: My feeling is the following. We don't have a certificate of use so we don't know for sure what they have in there. I had never stepped in that old pike house, never wanted to, but I can assure you (laughter), but I like the new one I will tell you that, but I can tell you there were more than 15 people living there, I can assure you of that, and I think the key is what the City Attorney said, the net increase in public service. I don't think there is net increase in public services because I think there had been over 30-some odd people living there for many, many years, and I actually came in here thinking I was not going to support this, but I'm going to support not charging the impact fees.

Mayor Cason: Any more discussion?

Commissioner Keon: Yes. I have a problem with supporting. They are not paying impact fees and I think what is most striking and maybe you can help me with this square footage. The building square footage in this Exhibit 2, the old square footage was 7,500 square feet, is that right?- that what seems to be on this Exhibit 2, it's on this Exhibit 3, where it says by the chapter, whatever, Gamma, Omega, Phi, Kappa, Alpha Holding Corporation, it list the total building area as 7,200 square feet, is that right?- and now help me with this. This is now a three-story frat house with 22,737.5 square feet?- so its three times as big.

Mr. Freudenthal: Great question – great question.

Commissioner Keon: Am I right?

Mr. Freudenthal: Correct. Correct. Correct.

Commissioner Keon: OK.

Mr. Freudenthal: Again, let's go back to 1952, Merrick style and all of the men slept together in an open barracks environment, OK. Again, the way the ordinance is written, it specifically refers to beds, not square footage or occupancy, and so fast-forward to today, when I went to school everybody ate together, everybody went to the same bathrooms together, they went to the same wash rooms together. The facility now is for lack of a better term more of an apartment complex. The rooms all have, each room has two bedrooms, two bathrooms, a kitchen, a full kitchen, a living room and an entry area. So the fact of the matter is that the building is bigger because we have to do that in order to attract students and to populate the building. Back to the comments. We were at a point where we needed to comply, we are all here under the same desire to comply, and we elected to tear the building down and build a modern facility which would attract residents again, but when you spoke about visiting the facility before, I can't speak to that, I can't speak to why there was one person per cubicle or per room, but it could have easily been that that's all that we would go there because everybody else was offering better amenities and better services. That's why we tore the building down.

Commissioner Keon: But you just said that you all slept barrack style.

Mr. Freudenthal: Correct.

Commissioner Keon: And they are saying, no, you didn't sleep barrack style, they were cubicles.

Speaker: [Inaudible...]...open barracks the others were cubicles with two people in each, a total of 42.

Commissioner Keon: How do you explain the 15 number that seems to be everything else?

Mr. Freudenthal: I am authorized by West Range Coral Gables to file paperwork, Mr. Corah is also authorized to do that, neither one of us submitted that to the City or to the County or whoever has this auto record, so that is outside of our approval and I quite frankly can't speak to it.

Commissioner Keon: OK. For whatever reason it seems that somebody may have given conflicting information to some other department for whatever reason.

Mr. Freudenthal: That could very well be, but it wasn't....

Commissioner Keon: When you were there and you were working with them prior to the time the facility was demolished, how many people were living there?

Chief Lowman: At the time there was probably, I'm guessing a little bit because it's been a while I was there, 18, about one per unit, including the RA or senior in charge. I will say their testimony does...what I was told on site by some of the people that historically this giant room on the second floor had transitioned from dormitory style, maybe they didn't have enough members so they needed a recreation room and then they decided to divvy it up into private cubicle-type of – they built rooms...

Commissioner Keon: It strikes me that it may have been at 7,500 square feet, it may have been built to, I don't know, accommodate whatever. This is obviously a much larger building with much resources and accommodations and whatever that brings it more into date with maybe what is desirable, which there are likely its being built for that appropriate number of people.

Commissioner Quesada: Commissioner Keon, if I can just jump in and I just asked Craig a question. Your argument that you are making makes sense under 2-2106(b), but the argument you are making doesn't makes sense under 2-2106(a), which is – I just asked the City Attorney if these provisions of the Code are to be read in the conjunctive so you have to meet both or the disjunctive if it's one or the other.

Commissioner Keon: Right – and?

Commissioner Quesada: And I don't know, he's still reading it. That's why I walked over and asked him to take a look at that.

Mayor Cason: And Craig in that same vain, if at any point do we have a long history, times change, you get air conditioning, rooms change and so on; they had 42 people, does that answer the question right there, that's it?– because you could have summer with fewer people in it, you could – the number is going to vary, but this shows it would have been no reason for them to say that they are building this building and it will sleep 42 men. It seems to me, why would they say that if there was no financial reason to do it or...?

Mr. Freudenthal: The other, I think, important point is if you look at the article that Mr. Mendelsberg brought, it is written after an interview from the design architect that designed the building. He included all of the sketches and they quote 42 men plus a house mother that is as close to all the data that we can gather that's what the original certificate of occupancy was

issued on and to our knowledge that number has never changed. So it could be just because of popularity, yes, it changed because maybe it was a bound year and nobody wanted to pledge...I don't know.

Mayor Cason: Well that's my point. If we can establish and I'm willing to accept this that there were 42 people and they are asking for less now, does that answer the question?- is that it are we finished?

City Attorney Leen: Let me answer the question and also state the more general legal – I think you have to read them both.

Commissioner Quesada: I believe it's disjunctive though.

City Attorney Leen: I don't think that they are disjunctive because they both apply. They may not be perfectly consistent with each other...

Commissioner Quesada: Yes, they are not. They are certainly not.

City Attorney Leen: That's the issue. The way it's written is they both apply because one says that it applies, it's basically a grandfathering provision (a), and (b) says, where this article become applicable due to, and then it list several things that apply in this particular case, so both apply. The general legal principal for an impact fee is, you look at two things, one, is there – this is just a general law in this area, you look at whether there is a nexus between the fee and the increased development, which there would be here if there was increased development, and two, you look at, it says roughly proportional to what the City has to bear as a cost. So if the City is going to have to bear additional burden and have an additional cost, you are allowed to charge the development for that as opposed to the general taxpayer base, that's the general test that you are supposed to provide by the U.S. Supreme Court, in two cases, Nolan and Dolan are the two cases.

Commissioner Keon: But with regard to that is the impact to the City services based on the number of people that are occupying the dwelling or it's not the number, it has nothing to do with the size of the structure.

City Attorney Leen: It's based on the number of people, but you are posed with a difficult proposition because if the people are there, and I'm not saying that this is true just hypothetically, if the people are there unlawfully then you could have a situation where someone is benefiting from their own misconduct and that is a principle at law. If you feel that there has been misconduct here, maybe you don't feel that way, maybe you feel that this is just more

administrative, but if you make that finding we don't have to grant them the benefit that's a basic legal principle, but if that situation was existing here and they were allowed to have 42 people, you would definitely not charge the impact fee.

Mr. Freudenthal: Again, just to follow up on that. I believe that we have demonstrated that all we want to do is comply. We knew that we couldn't comply cost effectively we tore the house down. Once the violation was brought to our awareness, we did everything we could to work with the City in order to provide safe housing for those students.

Commissioner Quesada: Who was the first violation; the violation you are referring to, what was that?

Mr. Freudenthal: When you said that he came in and they inspected and they determined that we needed to have fire sprinklers.

Commissioner Quesada: OK.

Mr. Freudenthal: We are here to comply folks. We have invested \$5.5 million in a great facility; all we are asking for is consideration an application of the ordinance in a fair and reasonable manner.

Commissioner Keon: How many bathrooms were in the previous house?

Unknown Speaker: We had open showers, and....toilets, stalls....

Commissioner Quesada: It's not a typical dress room like you would think.

Mayor Cason: No, no.

Unknown Speaker: There is a long....

Commissioner Keon: I didn't go there either.

[Laughter]

Commissioner Keon: Are there more?

Mr. Freudenthal: The old house had one upstairs and one downstairs for the men and one women's bathroom. The new house, each individual room has two bathrooms for the two occupants.

Commissioner Keon: So there are more showers, more toilets, more....

Commissioner Quesada: Because it's a different era.

Commissioner Keon: Pardon me?

Speaker: Fewer students, fewer beds.

Commissioner Keon: Right – but what I'm looking at is on the verification form from, this must be...from Dade County is that, the previous flow was 1500, the proposed flow is 2550, which is not – it's probably more related to the number of bathrooms and water use than it is actual to the number of people, do you think that's the case?- that's what I'm asking.

Mr. Freudenthal: I would take us back to what the ordinance says; the ordinance clearly says beds. It is a function of – it is impact, it's not only sewer....

Commissioner Keon: You know what, I know what you are saying, it clearly says beds, but you have documentation from the County that says 15 beds, so that's why – you have documentation in here that says 15 beds. I know that there are articles, I know there is what else, but we have documents that are used to build on and whatever that conflicts with what you are saying, so for whatever reason. I'm only trying to – I guess I'm looking at – although the document may have said 15, maybe it wasn't 15, maybe it was 30 or 36, or maybe it was whatever, and so what are the other things that could tell us that there actually were more people there than what was indicted on that particular document, because we know that every document we've ever received from any level of government or source of government isn't always sometimes it's not correct. But what other things are telling me that you had the number of people there that now you are saying are not 15, and I'm looking at water flow, the water flow over the years was 1500 gallons or whatever. I'm going to assume that this little increase in water flow is really related not to more people, but to probably more facility, that's all I'm asking.

Mr. La Fontisee: May I respond Commissioner Keon? There were 42 people plus a house mother. I saw that, I was there. That's what happened in 1952. I don't know what happened down the line, but that's what it was authorized for, that's what our certificate of use and occupancy was based on, and segway to the current time we are not increasing the per capita use of the property, which is what the ordinance says. Per bed we have fewer beds, more bathrooms

but beds. The ordinance doesn't say how many bathrooms you have, what the square footage is, the criteria...

Commissioner Keon: OK. Maybe you can help me.

Commissioner Quesada: I'm going to make a motion.

Mayor Cason: Commissioner Quesada, do you want to...

Commissioner Keon: [Inaudible – off mic]...and it asks how many...and it says 18, and you have the other document that says 15.

Mr. La Fontisee: I've dealt with County records for a long, long....

Commissioner Keon: That's what I'm asking you....

Mr. La Fontisee: Let's go back to 1952 – I don't know about 1992, and there has been no particular documentation of who put that together...

Commissioner Keon: [Inaudible]

Mr. La Fontisee: They didn't put that the County record together, they....

Commissioner Keon: They....all that information.

Mr. La Fontisee: I've dealt with Dade County records since I was in practice since 1956; there is a lot of stuff down there that's not right. You all read history about the City of Miami that's totally inaccurate; I mean things that come and go. To take something out of context in 1992, something from the water department...

Commissioner Keon: No, that's their declaration.

Commissioner Quesada: I'm going to make a motion.

Commissioner Keon: Are you comfortable that there were that many people there before?

Mayor Cason: I'm comfortable that there were 42 people living there in 1952.

Commissioner Keon: I have no idea.

Commissioner Quesada: Based on the testimony that was presented to us and the documents that have been given to us.

Vice Mayor Kerdyk: And the lack of documents – we didn't have anything other...

Mayor Cason: We don't have any of our own documents. So what's your motion?

Commissioner Quesada: I'm making a motion in favor of the applicant.

Vice Mayor Kerdyk: What?

Commissioner Quesada: In favor of the applicant.

Vice Mayor Kerdyk: To uphold the appeal?- uphold the appeal, right?

Commissioner Quesada: Overturn the lower level ruling, the decision.

Mayor Cason: You are granting their appeal of the....

Commissioner Quesada: Correct.

Mayor Cason: OK. So we have Commissioner Quesada makes the motion, the Vice Mayor seconds.

City Clerk

Commissioner Keon: Yes

Vice Mayor Kerdyk: Yes

Commissioner Lago: (Abstain – Conflict of Interest)

Commissioner Quesada: Yes

Mayor Cason: Yes

(Vote: 4-0)

Mayor Cason: Go forth and build.

Commissioner Keon: Go forth and live (laughter). Thank you.

[End: 10:43:26 a.m.]