



**MIAMI-DADE COUNTY
FINAL OFFICIAL MINUTES
Board of County Commissioners Zoning Board**

Board of County Commissioners

Stephen P. Clark Government Center
Commission Chambers
111 NW 1st Street
Miami, Florida 33128

Thursday, February 22, 2007
As Advertised

Harvey Ruvlin, Clerk
Board of County Commissioners

Kay Madry Sullivan, Director
Clerk of the Board Division

Scott Rappleye, Commission Reporter
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Clerk's Summary and Official Minutes
Board of County Commissioners Zoning Hearing
February 22, 2007

The Board of County Commissioners met in regular session in the County Commission Chambers on the Second Floor of the Stephen P. Clark Government Center, 111 N.W. First Street, Miami, Florida at 9:30 a.m., February 22, 2007, there being present upon roll call the Honorable Chairman Bruno A. Barreiro and Vice Chairwoman Barbara J. Jordan; Commissioners Audrey M. Edmonson, Carlos A. Gimenez, Sally A. Heyman, Joe A. Martinez, Dennis C. Moss, Dorrin D. Rolle, Katy Sorenson, and Javier D. Souto (Commissioners Jose "Pepe" Diaz, Natacha Seijas, and Rebeca Sosa were absent); Assistant County Attorneys Joni Armstrong-Coffey and Craig Collier; Assistant Director for Zoning Alberto Torres and Zoning Land Use Development Division Chief Maria Fojo; and Deputy Clerks Diane Collins and Scott Rappleye.

ALL WITNESSES AND INTERPRETERS WERE SWORN IN BY THE DEPUTY CLERK BEFORE MAKING THEIR TESTIMONY BEFORE THE BOARD.

Mr. Alberto Torres, Assistant Director, Planning and Zoning, announced that in accordance with the Code of Miami-Dade County, all items on today's agenda had been legally advertised in the newspaper, notices mailed, and the properties posted. He noted additional copies of today's (2/22) agenda and all applications were available. He also noted official translators were available for individuals requiring such assistance. He presented the rules of procedure to be followed during today's proceedings.

Mr. Torres presented the following application:

A. LEXUS OF KENDALL AUTO PARK (06-9-CC-2/06-285) 22-55-39 BCC/District 11

Mr. Miguel Diaz de la Portilla, 121 Iron Brook Plaza, Coral Gables, attorney representing the applicant, appeared before the Board in support the foregoing application. He made a presentation on the foregoing application. He noted the applicant was appealing an assessed impact fee of \$77,452.43 for that portion of the applicant's building that was classified as warehouse. Mr. Diaz de la Portilla stated that the Institute of Transportation Engineers (ITE) defined a warehouse as "a place to store materials" and pointed out that cars were not materials. He argued that the applicant's use of the area classified as warehouse was no different than a surface storage lot; that "surface storage lot" area was not assessed an impact fee; and that the existing Impact Fee Ordinance imposed fees for a car dealer's showroom and service space.

Mr. Diaz de la Portilla explained that the applicant's use of vertical storage was the same in form, function, and impact as surface storage lots at traditional car dealers. He referred to the February 17, 2006, memorandum from Ms. Ester Calas, Director, Public Works Department, in which she stated the portions of the applicant's building that were classified as warehouse should be considered as automobile storage areas. He requested that the County Commission reduce the assessed impact fee from \$305,028.04 to \$227,575.61.

Mr. Tim Plummer, 1750 Ponce De Leon, traffic engineer representing the applicant, appeared before the Board. He made a presentation on the ITE Trip Generation Report.

Commissioner Moss questioned how the Road Impact Fee was assessed for car dealerships with a separate sales center and parking garage, as opposed to the CarMax example used by Mr. Plummer that had a joined sales center and parking garage.

Mr. Plummer said the ITE Report would assess the fee based on the square footage of the sales center.

Commissioner Heyman expressed concern about Mr. Diaz de la Portilla's description of the cars being stored vertically. She asked that a representative from the Public Works Department come forth and qualify the definition of "warehouse" and "showroom."

Mrs. Lori Daws (phonetic), President County Walk Master Home Owners Association, 14601 County Walk Dr., West Kendall, appeared before the Board in opposition to the foregoing application.

Mr. Diaz de la Portilla cross-examined Mrs. Daws.

Mr. Diaz de la Portilla rebutted statements made by Mrs. Daws.

Mr. Plummer, responding to Commissioner Heyman, explained how cars stored vertically were similar to cars stored in a surface lot, and how vertical storage had no impact on traffic.

Mr. Michael Reese, Lexus of West Kendall, employee representing the applicant, appeared before the Board. He made a presentation on the foregoing application and rebutted statements made by Mrs. Daws.

Commissioner Martinez asked Ms. Calas what had changed since her February 17, 2006, memorandum to Ms. Nancy Rubin, Legal Advisor, Department of Planning and Zoning, which said, "The balance of the building should be considered as automobile storage areas."

Ms. Calas said that nothing had changed. She said the Public Works Department did not consider the cars stored vertically were the same as surface lot storage because it was an air conditioned environment.

Commissioner Martinez questioned how the Lexus of Pinecrest and the Collection in Coral Gables were assessed.

Mr. Larry Jensen, Manager, Planning & Zoning Department, said all of the Lexus of Pinecrest was assessed as sales, and the Collection in Coral Gables was assessed as office

and sales. He pointed out the recent Development Impact Committee (DIC) ruling that said an entire building could not be charged as car sales.

Ms. Calas said the Public Works Department thought a new classification should be created for indoor car storage, and now warehouse was the closest classification.

Mr. Diaz de la Portilla cross-examined Ms. Calas about vertical car storage and its impact on traffic.

Commissioner Gimenez said he did not see a nexus for the road impact fee. He said he thought the outside appearance of the building looked like all the floors were showroom and the County should correlate the impact fees with the number of customers rather than building components.

Commissioner Heyman said she limited her inquiry to this legal challenge and the County's study revealed that this application would have no road impact. She expressed concern that the County needed to clarify County policy about how to classify car dealership building structures, and the policy needed to be adaptable to new trends and architecture. She said the vagueness of land use did not justify what was measurable. She asked Assistant County Attorney Armstrong-Coffey to define "measurable" as it related to land use, and with the possibility of shared land use and changed land use.

Commissioner Sorenson expressed concern about the applicant's original appeal to the DIC about every floor being classified as showroom. She expressed concern about the financial impact on the County from other car dealerships appealing their impact fees if the County Commission ruled in favor of the applicant.

Commissioner Jordan said she thought storage was the wrong classification. She said that the air conditioned environment made the correct classification either sales or showroom. She said she thought building use was more important than road impact. She concurred with Commissioner Sorenson's concern of financial impact.

Commissioner Moss said the applicant had a valid argument. He expressed concern about setting a precedent. He said the County Commission should review the policy.

Chairman Barreiro said he wanted to encourage other car dealerships to store cars vertically. He noted he thought the issue of classifying vertically stored cars deserved careful attention. He expressed concern that surface lots had no impact fee.

Commissioner Martinez concurred with his colleagues that the County policy needed to be changed. He said the County should assess a fee for surface lots.

Mr. Torres said the County did not assess a fee for surface lots because that was not in the ordinance. He said staff classified the use of a building subjectively.

Commissioner Martinez expressed concern about changing the impact fee solely because of the air conditioning.

Commissioner Gimenez suggested the County assess the impact fee based on the number of cars at the dealership and not the size of the showroom. He said he thought other car dealerships would appeal because the County did not use logic in assessing the fees.

Commissioner Gimenez asked Mr. Torres to quickly study the issue of how fees were assessed and how buildings were categorized depending on where cars were located on dealership property.

Commissioner Sorenson questioned why the ITE Trip Generation Report was part of the applicant's argument.

Assistant County Attorney Armstrong-Coffey said that the ITE Trip Generation Report was used to validate the County's classification of land use.

Commissioner Sorenson expressed concern that the County would lose millions of dollars by ruling in favor of the applicant.

Commissioner Martinez stressed the importance of the County Commission reviewing the land use policy very quickly.

It was moved by Commissioner Martinez that the County Commission approve the applicant's appeal. This motion was seconded by Commissioner Gimenez.

In response to Commissioner Moss, Assistant County Attorney Armstrong-Coffey said a company could only request a different fee calculation within 6 months after the building permit was issued. She noted that the County Code did not limit when a company could appeal the assessed land use. She explained the appeals process for impact fees. She said that the County Commission could clarify an existing land use when it passed an ordinance and it could be specified to apply retroactively.

Assistant County Attorney Coller pointed out the State Statute that said changes to impact fees could not be effective for 90 days after they were passed. He said the meaning of the statute was not clear about what could not be effective for 90 days.

Commissioner Moss strongly recommended making a proposal to close the loop hole in the policy.

The County Commission proceeded to vote on this application, and upon being put to a vote passed 8-2 (Commissioners Sorenson and Jordan voted "no," Commissioners Diaz, Seijas, and Sosa were absent).

Commissioner Heyman asked Assistant County Attorney Armstrong-Coffey and Coller to work to clarify all of the classifications of building use, including: warehouse, sales,

residential, conversion, mix use, land use, and change over impact fees; to clarify what would constitute road impact; to consider revising the County code, in anticipation of change of use, new use, and different use, so that all cases would have a clear answer; and to be mindful of existing State statute.

Commissioner Moss said he did not think many car dealerships in the County qualified for fee waivers and the County would not lose too much money.

There being no further business to come before the Board, the zoning meeting adjourned at 11:42 a.m.

Chairman Bruno A. Barreiro

ATTEST: HARVEY RUVIN, Clerk

By: _____
Kay Sullivan, Deputy Clerk