

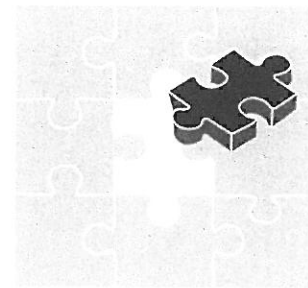
08//31/12

2012 AUG 31 PM 1:5

KEY WEST, FLORIDA

Ms. Cheryl Smith  
City Clerk, City of Key West  
3126 Flagler Avenue  
Key West, FL 33041-1409

TREPANIER



& ASSOCIATES INC

LAND USE PLANNING  
DEVELOPMENT CONSULTANTS

**Re: Appeal of the attached administrative decision of city planner  
Douglas House Guesthouse,  
417, 419, and 423 Amelia and 418 Virginia**

Dear Ms. Smith,

Please accept this letter as a formal request to appeal the attached administrative decision of city planner dated 08/21/12<sup>1</sup> regarding the calculation of back fees associated with the Douglas House Guesthouse<sup>2</sup>. If you require further documentation, please let me know.

Thank you.

Sincerely,

Owen Trepanier

Cc: City Attorney, City of Key West  
City Manager, City of Key West  
Douglas House Guesthouse  
Mr. Richard Klitenick, Esq. – Attorney for Douglas House Guesthouse  
Planning Director, City of Key West

<sup>1</sup> Exhibit A

<sup>2</sup> Exhibit B



THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

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August 21, 2012

Via Electronic Mail

Owen Trepanier  
Trepanier & Associates  
402 Appelrouth Lane  
Key West 33040

Dear Mr. Trepanier,

This letter is sent in response to your request for determination sent July 19, 2012. With regards to whether hotel rooms are considered one third of a dwelling for the purpose of calculating garbage rates, our office concurs with the City Manager. There is not, and has never been, a provision in the Code of Ordinances to that effect. Additionally, there is no provision authorizing the then City Manager to make that determination. Therefore, the perceived instance of "over billing" is considered invalid and the amount due stands. Any appeal to this matter shall be made to the City Commission.

Respectfully,



Donald Leland Craig, AICP  
Planning Director

C: Larry Erskine, Assistant City Attorney

TREPANIER



& ASSOCIATES INC  
 LAND USE PLANNING  
 DEVELOPMENT CONSULTANTS

07/19/12

Mr. Donald Leland Craig, AICP, Planning Director  
 City of Key West  
 3140 Flagler Avenue  
 Key West FL 33040

**RE: Douglas House Guesthouse  
 Interpretation Request re: Back-Fee Calculation**

Dear Mr. Craig:

Thank you for your assistance with the unit recognition process for the Douglas House Guesthouse. The Planning Department's Unit Recognition letter<sup>1</sup> directed us to contact the Revenue Department in order to assess and pay any outstanding back-fees, associated with the five previously unrecognized units, from 1994 to present.

Following the letter's direction, we contacted the Revenue Department and began the process of assessing the back-fees. Revenue staff calculated the fees<sup>2</sup> and invited us to review the calculation with them. During that meeting, it was discovered that Douglas House may have been over-charged for garbage services based on the long standing "Garbage Rate Policy"<sup>3</sup> in effect at the time<sup>4</sup>. The Garbage Rate Policy laid out the billing structure for guesthouse garbage accounts.

The Garbage Rate Policy affects the Douglas House back-fee calculation because the policy mandated one garbage account for every three guesthouse rooms. After our meeting with Revenue staff, we re-calculated the Douglas House back-fees based on the Garbage Rate Policy. Our calculations revealed that the Douglas House was over-charged for the garbage service of its 10 recognized units by \$9,743.84 between the years of 1994 and 2011. The policy also affected the amount owed in back fees for the five recognized units. We summarized and submitted our findings in a letter to Revenue on 02/01/12<sup>5</sup>. We requested that the overpayment of fees be applied to the outstanding back-fees (garbage, sewer & stormwater) related to the five recently recognized units. Revenue informed us that they would have to submit our request to the Utilities Manager for consideration.

We received an email response from the Utilities Manager on 03/30/12<sup>6</sup> rejecting our calculation of the back fees based on the Garbage Rate Policy. Attached to the email was a recently written, but undated, memo from City Manager Jim Scholl<sup>7</sup> rescinding the long standing Garbage Rate Policy.

<sup>1</sup> Exhibit A (Unit Recognition letter dated 12/07/11)

<sup>2</sup> Exhibit B ("Undisclosed Unit Back Charge" calculation)

<sup>3</sup> Exhibit C ("Garbage Rate Policy" memo, dated 07/10/84)

<sup>4</sup> Exhibit D; The "Garbage Rate Policy" memo, dated 07/10/84 was not rescinded until the undated memo by Manager Jim Scholl was issued. While the memo itself is undated, Trepanier & Associates received an Adobe .pdf copy of the memo from the Utilities Manager. The document's .pdf metadata shows the document was created on 03/30/12.

<sup>5</sup> Exhibit E (Letter to Revenue Dept. from Trepanier & Associates, dated 02/01/12)

<sup>6</sup> Exhibit F (Email from Utilities Manager)

<sup>7</sup> Exhibit G ("Solid Waste Units" memo, undated)

We met with the City Manager on 4/13/12 to discuss the issue and he asked us to direct our request for reconsideration to the City Planner.

We, certainly, believe it is well within the City Manager's authority to rescind a previous City Manager's policy directive; however, we also believe the application of that policy rescission to the Douglas House's back-fee calculation for the time period under which the previous policy was in effect constitutes an ex post facto application of the City Manager's rescission action.

We, therefore, respectfully request your review of the facts and determination that the City of Key West should base the garbage-related back-fee calculation for the Douglas House Guesthouse on the Garbage Rate Policy, given that the Policy was in effect<sup>8</sup> at both the time the fees were accruing and at the time the request for the back-fee calculation was made.

Thank you for your consideration. Please don't hesitate to call if you have any questions or need additional information.

Best regards,



Owen Trepanier

Cc: Mr. Richard Klitenick, Esq. – Attorney for Douglas House Guesthouse  
Mr. Robert Marrero, Owner – Douglas House Guest House  
Mr. Jim Scholl, Manager – City of Key West

---

<sup>8</sup> The "Garbage Rate Policy" memo, dated 07/10/84 was not rescinded until the rescission memo by Manager Jim Scholl was issued. While we do not know, from the memo alone, when the rescission memo was actually written, Trepanier & Associates received an Adobe .pdf copy of the memo from the Utilities Manager. The .pdf meta data shows the document was created on 03/30/12.



# Exhibit A

## THE CITY OF KEY WEST

Post Office Box 1409 Key West, FL 33041-1409 (305) 809-3700

December 7, 2011

VIA ELECTRONIC MAIL

Mr. Owen Trepanier  
Trepanier & Associates, Inc.  
402 Appelrouth Lane  
Key West FL 33040

**RE: Douglas House –Unit Recognition  
419 Amelia Street**

Dear Mr. Trepanier:

This letter is sent in response to your Unit Recognition request regarding the Douglas House Guest House. I have reviewed historical records and determined that this request does not require a Lawful Unit Determination under Sec. 108-991(3). These five units, subject to your request, were previously recognized by the City of Key West through a determination by the Board of Adjustment ("BOA") on 10/05/94 at a time which the City Commission, acting as the BOA could recognize previously unrecorded dwelling units by means of a special exception.

Given the above, the Planning Department is able to support that 15 transient units at the Douglas House are lawfully established under the Building Permit Allocation System. However, the records also appear to show that the BOA action on 10/05/94 required the payment of a parking related impact fee of \$2,000 per parking space (for two parking spaces). It is our understanding that the Douglas House has not yet paid that fee. Payment will be required along with any other associated fees that remain unpaid for the five recognized units.

### **Analysis:**

The Douglas House applied for transient unit recognition on, or about, 05/03/94. The City and the Douglas House moved through the process and the Douglas House eventually disagreed with the City's parking-related impact fee calculation and subsequently appealed to the BOA (Attachment 1). The BOA upheld the Douglas House appeal on 10/05/94 overturning the decision of the Licensing Division thus recognizing the Douglas House transient units with the condition that Douglas House pay a \$2,000 per parking space impact fee (Attachment 2) associated with impacts resulting from the Douglas House's inability to provide the additional off street parking spaces associated with the recognition of five units (two parking spaces were required at that time).

No further appeal was filed disagreeing with the BOA's decision and the BOA's action became final. Notwithstanding, the Douglas House never paid for and never received the licenses associated with the units recognized by the BOA.

The following is an overview of our understanding of units and licenses at the Douglas House:

Address	Trans units applied for Recognition	Trans. units Recognized by BOA	Trans units recognized by KW Licensing (licenses)	Trans units recognized by FL DBPR (licenses)	Trans units recognized by Mo.Co. (licenses)	Actual Transient Units
417 Amelia	11		3	11	11	11
419 Amelia			6			
423 Amelia			0			
418 Virginia	4	15	1	4	4	4
<b>Total</b>	<b>15</b>		<b>10</b>	<b>15</b>	<b>15</b>	<b>15</b>

After the consideration of available information, the Planning Department is able to support that 15 transient units are lawfully established under the Building Permit Allocation System at the Douglas House Guest House in the configuration outlined above.


Units acknowledged by this finding are presumed to be legally established if the following requirements are met:

1. The determination of payment in-lieu of parking amount must be remitted.
2. Building Department Submittals and Inspections: Per Ordinance 2009-07, units which have not been recognized by the Administrative Official but are presumed to be lawfully established must meet the requirements in the Florida Building Code. This can be accomplished through as built inspections and certifications or other means acceptable by the Building Official.
3. Impact Fees and / or Back Fees: As the additional units were in place in 1994, impact fees and back fees for sewer and solid waste back to that year need to be assessed and paid. Please contact the Revenue Department at 809.3861.
4. Utilities: Provide proof via new account status, service acknowledgement and / or payment for additional meters for both Keys Energy Services and the Florida Keys Aqueduct Authority recognizing the additional units.
5. Monroe County Property Appraisers Office: Please inform the MCPA of the additional units if not already assessed. Provide documentation of the notice via a copy of an e-mail or a modified Property Record Card.
6. You will need to update your Occupational License to reflect all additional units.

Please note that this letter does not grant building permit allocations, but rather recognizes that fifteen transient units exist at the Douglas House in the above-noted configuration.

Please do not hesitate to contact me at 809.3724 with any questions or comments that you may have.

Respectfully,

Brendon Cunningham   
Senior Planner

Attachments

C: Donald Craig, AICP, Planning Director  
John Woodson, Building Official  
Carolyn Walker, Licensing Official  
Shirley Sealey, Revenue Department

# Exhibit B

Undisclosed Unit Backcharge per residential unit 419 Amelia Street				
Period	#Months	Charge	Total	
Oct 94 - Sep 95	12	\$ 17.54	\$	210.48
Oct 95 - Sep 96	12	\$ 17.54	\$	210.48
Oct 96 - Sep 97	12	\$ 17.54	\$	210.48
Oct 97 - Sep 98	12	\$ 17.54	\$	210.48
Oct 98 - Sep 99	12	\$ 17.54	\$	210.48
Oct 99 - Sep 00	12	\$ 19.09	\$	229.08
Oct 00 - Sep 01	12	\$ 19.09	\$	229.08
Oct 01 - Sep 02	12	\$ 19.09	\$	229.08
Oct 02 - Sep 03	12	\$ 19.09	\$	229.08
Oct 03 - Sep 04	12	\$ 19.57	\$	234.84
Oct 04 - Sep 05	12	\$ 20.06	\$	240.72
Oct 05 - Sep 06	12	\$ 20.76	\$	249.12
Oct 06 - Sep 07	12	\$ 21.63	\$	259.56
Oct 07 - Sep 08	12	\$ 22.21	\$	266.52
Oct 08 - Sep 09	12	\$ 22.91	\$	274.92
Oct 09 - Sep 10	12	\$ 23.23	\$	278.76
Oct 10 - Sep 11	12	\$ 23.23	\$	278.76
Dec 11 -	3	\$ 23.23	\$	69.69
	<b>SEWER</b>	<b>TOTAL</b>		<b>\$ 4,121.61</b>
Period	#Months	Charge	Total	
Oct 94 - Sep 95	12	\$ 25.66	\$	307.92
Oct 95 - Sep 96	12	\$ 24.58	\$	294.96
Oct 96 - Sep 97	12	\$ 24.58	\$	294.96
Oct 97 - Sep 98	12	\$ 23.33	\$	279.96
Oct 98 - Sep 99	12	\$ 23.33	\$	279.96
Oct 99 - Sep 00	12	\$ 22.50	\$	270.00
Oct 00 - Sep 01	12	\$ 22.50	\$	270.00
Oct 01 - Sep 02	12	\$ 22.50	\$	270.00
Oct 02 - Sep 03	12	\$ 22.50	\$	270.00
Oct 03 - Sep 04	12	\$ 22.84	\$	274.08
Oct 04 - Sep 05	12	\$ 22.84	\$	274.08
Oct 05 - Sep 06	12	\$ 23.50	\$	282.00
Oct 06 - Sep 07	12	\$ 24.25	\$	291.00
Oct 07 - Sep 08	12	\$ 25.02	\$	300.24
Oct 08 - Sep 09	12	\$ 25.84	\$	310.08
Oct 09 - Sep 10	12	\$ 25.84	\$	310.08
Oct 10 - Sep 11	10	\$ 26.60	\$	266.00
Dec 11	3	\$ 26.60	\$	79.80
	<b>GARBAGE</b>	<b>TOTAL</b>		<b>\$ 4,925.12</b>
Period	#Months	Charge	Total	
Aug 02 - Sep 02	2	\$ 4.00	\$	8.00
Oct 02 - Sep 03	12	\$ 4.00	\$	48.00
Oct 03 - Sep 04	12	\$ 5.00	\$	60.00
Oct 04 - Sep 05	12	\$ 5.16	\$	61.92
Oct 05 - Sep 06	12	\$ 5.34	\$	64.08
Oct 06 - Sep 07	12	\$ 5.87	\$	70.44
Oct 07 - Sep 08	12	\$ 7.05	\$	84.60
Oct 08 - Sep 09	12	\$ 7.35	\$	88.20
Oct 09 - Sep 10	12	\$ 7.35	\$	88.20
Oct 10 - Sep 11	10	\$ 7.50	\$	75.00
Dec 11	3	\$ 7.68	\$	23.04
	<b>STORM</b>	<b>TOTAL</b>		<b>\$ 671.48</b>
	<b>TOTAL CHARGES</b>		<b>\$ 9,718.21</b>	<b>\$ 48,591.05</b>
			<b>Per Units</b>	

FOR THE 5 UNITS THE AMOUNT IS GOING TO BE \$48,591.05



CITY OF KEY WEST, FLORIDA

OFFICE MEMORANDUM

DATE July 10, 1984

TO: Sharon Murphy, Supv. Division of Revenue

FROM: Joel L. Koford, City Manager

SUBJECT: GARBAGE RATE POLICY

In order to be consistent in our application of rates, the following applies to new applicants for service, but will not be placed into effect for current billing until the next annual billing cycle.

GUESTHOUSES: definition of a living unit:

One (1) living unit equals one kitchen and three (3) rooms *1 Unit*

Two (2) living units equals one kitchen and six (6) rooms. (or more than three (3) rooms). *2 Units*

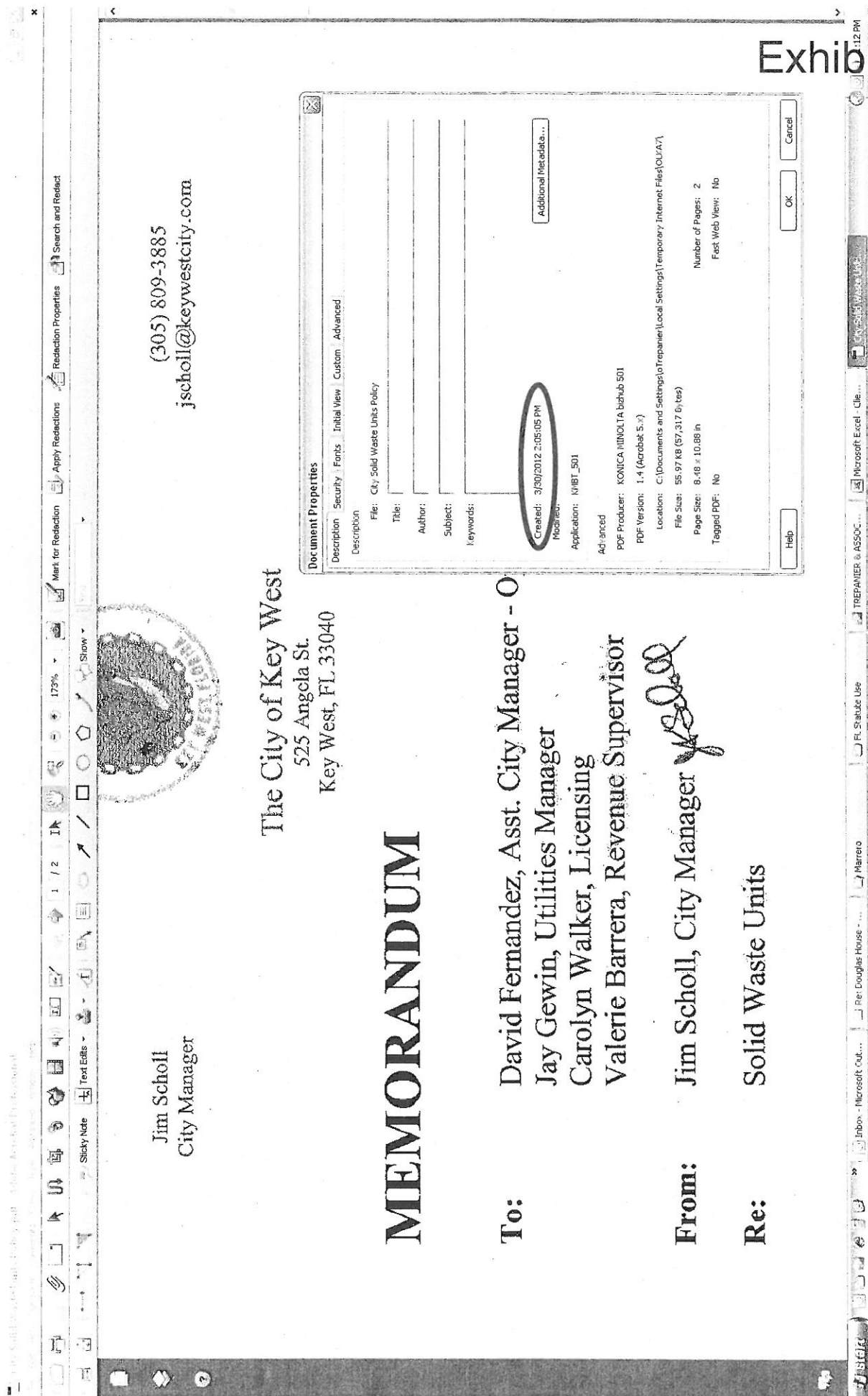
Three (3) living units equals one kitchen and nine (9) rooms, (or more than six rooms). *3 Units*

Errors detected, other than through the amnesty program will be corrected with future billings.

*[Signature]*  
Joel L. Koford  
City Manager

JLK/dm

cc: William Overfelt, Asst. City Mgr. Fin/Admin.  
Michael Simmons, Finance Director



(305) 809-3885  
jscholl@keywestcity.com



The City of Key West  
525 Angela St.  
Key West, FL 33040

Jim Scholl  
City Manager

# MEMORANDUM

**To:** David Fernandez, Asst. City Manager - O  
Jay Gewin, Utilities Manager  
Carolyn Walker, Licensing  
Valerie Barrera, Revenue Supervisor

**From:** Jim Scholl, City Manager *[Signature]*

**Re:** Solid Waste Units

**Document Properties**

Description    Security    Fonts    Initial View    Custom    Advanced

Description: File: City\_Solid Waste Units Policy

Title: \_\_\_\_\_

Author: \_\_\_\_\_

Subject: \_\_\_\_\_

Keywords: \_\_\_\_\_

Additional Metadata...

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Advanced

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File Size: 95.97 KB (97,317 bytes)

Page Size: 8.48 x 10.88 in

Number of Pages: 2

Tagged PDF: No

Fast Web View: No

Help    OK    Cancel

# Exhibit E

## TREPANIER

02/01/12

Ms. Shirley Sealy, Customer Service Representative  
 City of Key West Finance Department  
 3106 Flagler Avenue  
 Key West, FL 33040



**RE: Douglas House Guest House**

& ASSOCIATES INC  
 LAND USE PLANNING  
 DEVELOPMENT CONSULTANTS

Dear Ms. Sealy:

Thank you for your assistance with the final stage of the unit recognition process for Douglas House Guest House. In this letter, we will attempt to layout what we understand Douglas House has paid to date for garbage-related services, what they should have paid for those services, what amount is outstanding for the non-garbage-related back fees and the total due from Douglas House in relation to the unit recognition process.

My understanding is that the City has been billing the Douglas House Guest House for 11 full units as follows:

Existing Garbage Billing	
Address	No. of Garbage Bills Existing
418 Virginia St.	2
417 Amelia St.	3
419 Amelia St.	2
421 Amelia St.	2
423 Amelia St.	2
<b>Total</b>	<b>11</b>

It is also my understanding that garbage accounts are assessed on the following basis:

- Transient apartments (units with a kitchen) require 1 full account; and
- Transient units without kitchens require 1 full account per 3 units

The Douglas Guest House has the following breakdown of unit attributes/ configuration:

Existing Unit Attributes/ Configuration				
Address	Unit No.	Kitchen	No. of Garbage Bills Req'd	Newly Recognized
418 Virginia St.	12	No	0.33	Yes
418 Virginia St.	13	No	0.33	No
418 Virginia St.	14	No	0.33	Yes
418 Virginia St.	15	No	0.33	Yes
418 Virginia Subtotal			1.33	
417 Amelia St.	1	No	0.33	Yes
417 Amelia St.	2	Yes	1.0	No
417 Amelia St.	3	Yes	1.0	No
417 Amelia St.	11	Yes	1.0	No
417 Amelia Subtotal			3.33	

419 Amelia St.	4	No	0.33	No
419 Amelia St.	5	Yes	1.0	No
419 Amelia St.	10	No	0.33	No
419 Amelia Subtotal			1.7	
421 Amelia St.	6	No	0.33	Yes
421 Amelia St.	7	Yes	1.0	No
421 Amelia St.	9	No	0.33	No
423 Amelia Subtotal			1.7	
423 Amelia St.	8	Yes	1.0	No
423 Amelia Subtotal			1.0	
<b>Total</b>			<b>9.0</b>	

Based on the above analysis, Douglas House should be charged for 9.0 full garbage accounts. However, our understanding is Douglas House has been charged for 11 accounts. Therefore, based on the billing schedule below, it appears Douglas house has overpaid for garbage-related services by \$9,743.84.

Period	#Months	Charge	Total
Oct 94 - Sep 95	12	\$ 25.66	\$ 307.92
Oct 95 - Sep 96	12	\$ 24.58	\$ 294.96
Oct 96 - Sep 97	12	\$ 24.58	\$ 294.96
Oct 97 - Sep 98	12	\$ 23.33	\$ 279.96
Oct 98 - Sep 99	12	\$ 23.33	\$ 279.96
Oct 99 - Sep 00	12	\$ 22.50	\$ 270.00
Oct 00 - Sep 01	12	\$ 22.50	\$ 270.00
Oct 01 - Sep 02	12	\$ 22.50	\$ 270.00
Oct 02 - Sep 03	12	\$ 22.50	\$ 270.00
Oct 03 - Sep 04	12	\$ 22.84	\$ 274.08
Oct 04 - Sep 05	12	\$ 22.84	\$ 274.08
Oct 05 - Sep 06	12	\$ 23.50	\$ 282.00
Oct 06 - Sep 07	12	\$ 24.25	\$ 291.00
Oct 07 - Sep 08	12	\$ 25.02	\$ 300.24
Oct 08 - Sep 09	12	\$ 25.84	\$ 310.08
Oct 09 - Sep 10	12	\$ 25.84	\$ 310.08
Oct 10 - Sep 11	10	\$ 26.60	\$ 266.00
Dec 11	1	\$ 26.60	\$ 26.60
<b>Garbage Subtotal [per account]</b>			<b>\$4,871.92</b>
<b>Total Garbage Fees paid by Douglas House<sup>1</sup></b>			<b>\$53,591.12</b>
<b>Total Fees Due [based on the above analysis]<sup>2</sup></b>			<b>\$43,847.28</b>
<b>Total Due</b>			<b>\$(9,743.84)</b>

We calculate Douglas House owes \$23,656.35 for non garbage-related back fees. Given that there appears to be an over payment for garbage-related services of \$9,743.84, we ask that the overpayment be applied to the outstanding amount due and accept our payment of \$13,912.51 as payment in full for current back fees associated with the unit recognition process.

<sup>1</sup> Yearly Fee x No. of Full Equivalent Units Charged = Total (\$4,871.92 x 11 = \$53,591.12)

<sup>2</sup> Yearly Fee x No. of Full Equivalent Units Existing = Total (\$4,871.92 x 9 = \$43,847.28)

February 1, 2012  
Page 3 of 3

Thanks again for your assistance; please don't hesitate to call if you have any questions or need additional information.

Best regards,

A handwritten signature in cursive script, appearing to read "Owen Trepanier".

Owen Trepanier

Cc: Ms. Valerie Barrera, Customer Service Supervisor – City of Key West  
Mr. Richard Klitenick, Esq., Attorney for Douglas House

# Exhibit F

## Owen Trepanier

---

**From:** Jay Gewin [jgewin@keywestcity.com]

**Sent:** Friday, March 30, 2012 2:51 PM

**To:** Owen Trepanier

**Subject:** Re: Douglas House

**Attachments:** City Solid Waste Units Policy.pdf

I apologize for the delay, it took longer than I anticipated for relevant departments to review it, but I've attached this memo from the City Manager. We will not be able to convert existing units to 3-1.

*Jay Gewin  
Utilities Manager  
City of Key West  
305-809-3902*

On Fri, Mar 30, 2012 at 12:20 PM, Owen Trepanier <[owen@owentrepanier.com](mailto:owen@owentrepanier.com)> wrote:

Hey Jay!

Any word?

Thanks.

O.

---

**Trepanier & Associates, Inc.**

Land Planners & Development Consultants

402 Appelrouth Lane, P.O. Box 2155

Key West, FL 33045-2155

Ph. [305-293-8983](tel:305-293-8983)

Fx. [305-293-8748](tel:305-293-8748)

Jim Scholl  
City Manager




(305) 809-3885  
jscholl@keywestcity.com

The City of Key West  
525 Angela St.  
Key West, FL 33040

## MEMORANDUM

**To:** David Fernandez, Asst. City Manager - Operations  
Jay Gewin, Utilities Manager  
Carolyn Walker, Licensing  
Valerie Barrera, Revenue Supervisor

**From:** Jim Scholl, City Manager 

**Re:** Solid Waste Units

The attached memo from former Key West City Manager Joel Koford dated July 10, 1984 titled "Garbage Rate Policy" is rescinded.

There is no basis in the City Code of Ordinances that would give Mr. Koford the authority to make this directive.

The City's Code of Ordinances is our guiding document for how solid waste units should be defined. If a unit does not meet the residential definition according to the Code, then that unit should be billed according to the commercial rate.

CITY OF KEY WEST, FLORIDA

OFFICE MEMORANDUM

DATE July 10, 1984

TO: Sharon Murphy, Supv. Division of Revenue

FROM: Joel L. Koford, City Manager

SUBJECT: GARBAGE RATE POLICY

In order to be consistent in our application of rates, the following applies to new applicants for service, but will not be placed into effect for current billing until the next annual billing cycle.

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Two (2) living units equals one kitchen and six (6) rooms. (or more than three (3) rooms). *2 Units*

Three (3) living units equals one kitchen and nine (9) rooms, (or more than six rooms). *3 Units*

Errors detected, other than through the amnesty program will be corrected with future billings.

*[Signature]*  
Joel L. Koford  
City Manager

JLK/dm

cc: William Overfelt, Asst. City Mgr. Fin/Admin.  
Michael Simmons, Finance Director



TREPANIER & ASSOCIATES INC.  
P O BOX 2155 PH. 305-293-8983  
KEY WEST, FL 33045

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DATE 8/31/12

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FOR

Douglas House Appeal

MP