

IN RE: SHORES AT PALMETTO BAY, LLC, vs.
VILLAGE OF PALMETTO BAY

ORIGINAL

CASE NO: 12-029
Village Resolution Number: 2011-85

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9705 Hibiscus Street
Palmetto Bay, Florida,
Thursday, 7:00 p.m.,
August 30, 2012.

APPEARANCES:

Ron Williams, Village Manager
Eve Boutsis, Village Attorney
Shelley Stanczyk, Mayor
Howard Tendrich, Council Member
Brian Pariser, Vice Mayor
Joan Lindsay, Council Member
Patrick Fiore, Council Member

1 MS. BOUTSIS: Thank you everyone for
2 being here. As the Village Attorney I have
3 requested the Mayor and Village Council to
4 hold a shade session in the defense of the
5 matter called The Shores at Palmetto Bay,
6 LLC, versus the Village of Palmetto Bay,
7 Appellate Court case number 12-029, under
8 the Village Resolution number 2011-85.

9 I am seeking advice from the Village
10 Council regarding litigation strategy and/or
11 settlement.

12 It is now 7:01 on Thursday, August the
13 30th, 2012. We are at Village Hall, 9705
14 East Hibiscus Street in the small conference
15 room downstairs.

16 We are going to go around and have
17 everyone introduce themselves. There is a
18 court reporter here, so she will report the
19 time and termination time of each of the
20 sessions. All discussions and proceedings
21 that occur, names of all persons present at
22 anytime during the session, and the name of
23 all persons speaking. The transcript will
24 be made part of the public record at the
25 conclusion of the litigation.

1 I'll start, my name is Eve Boutsis, the
2 Village Attorney.

3 MR. STANCZYK: Shelley Stanczyk, Mayor.

4 MS. LINDSAY: Joan Lindsay, Council
5 person District Three.

6 MR. PARISER: Brian Pariser, Vice
7 Mayor.

8 MR. WILLIAMS: Ron Williams, Village
9 Manager.

10 MR. FIORE: Patrick Fiore, Councilman,
11 District One.

12 MR. TENDRICH: Howard Tendrich,
13 Councilman, District Two.

14 MS. BOUTSIS: Thank you everyone for
15 being here. As you know, approximately
16 eight months ago the Shores of Palmetto Bay,
17 LLC, filed a petition for writ of
18 certiorari. There was a hearing before the
19 Village Council on application for review of
20 a charter school site across the street from
21 Village Hall.

22 The application was deficient as you
23 may recall. It was procedurally deficient
24 in that they did not have a lot of
25 documentation relating to the application,

1 including an active workable charter for the
2 charter school.

3 The order gave them -- it was a without
4 prejudice decision, so they could have come
5 back in six months for a new application if
6 they did not have this appeal going on.

7 The petitioner has filed a claim
8 basically arguing that we are preempted,
9 that the state law has completely excluded
10 municipal rights and municipal zoning and
11 review from the process. And they site to a
12 couple of cases on code review and some
13 other miscellaneous matters.

14 Their initial brief was nine pages
15 long. We filed our response basically going
16 through the process that the state school
17 system has two different divisions. It has
18 the traditional public schools which are
19 completely regulated by the school system
20 organized under the state charter and under
21 the state statute. And the charter school
22 provision which is a hybrid, although it's
23 considered a public school it is run by a
24 nonprofit allowing the administration to
25 actually be a for profit organization.

1 We went through all of the
2 distinctions. We have the support that
3 basically this is a procedural issue, that
4 their due process rights were not violated,
5 that we have applied the correct law and
6 there was competent substantial evidence to
7 support our decision.

8 You may recall that even the owner of
9 the property the first day of the hearing
10 before it had been continued, they asked for
11 the continuance so that they can get their
12 charter and they actually told the Council
13 that the matter could be dismissed if they
14 did not timely have the charter and they
15 wound up not having a timely charter.

16 So where are we now.

17 You may recall that there have been at
18 least two different letters issued by the
19 property owner, Mr. Rosen, on behalf of the
20 petitioner and the property the Parkside
21 Shores of Palmetto Bay, LLC, and he has
22 indicated that he sent each one of you a
23 separate envelope with site plans. I have
24 never seen it, I don't know if -- as far as
25 I know that never happened. I think he was

1 misinformed by his own people.

2 Is that correct?

3 MR. PARISER: I have never seen them.

4 MS. LINDSAY: I have never seen them.

5 MS. BOUTSIS: We informed him that we
6 never received it. All of us meaning the
7 Clerk, Mr. Williams and myself.

8 MR. PARISER: Did the other council get
9 anything?

10 MR. FIORE: I don't recall getting it.

11 MR. TENDRICH: I didn't get anything.

12 MS. STANCZYK: I didn't see anything.

13 MS. BOUTSIS: Mr. Williams and I about
14 ten days ago did meet with Mr. Rosen and JC
15 Planas.

16 MR. WILLIAMS: Who serves as his
17 attorney.

18 MS. BOUTSIS: JC Planas is the
19 appellate attorney. Let me cut off from
20 that discussion for a moment.

21 Recently I was in the City of Doral and
22 JC Bermudez called me and wanted to talk to
23 me. You know he is the Mayor of Doral and
24 his term is almost up. So I went to see him
25 in his office and he said, look I have just

1 been retained by Mr. Rosen only for
2 settlement purposes, JC Planas is still
3 handling the appellate litigation, but I
4 have been retained to handle possible
5 settlement negotiations.

6 I then called up JC Planas to confirm
7 this conversation, because normally you
8 don't have two separate lawyers from two
9 separate law firms doing this. And yes, it
10 is a true statement, they are working
11 together, one is doing the appellate work
12 and one is doing the settlement work.

13 MR. WILLIAMS: He called me as well.

14 MS. BOUTSIS: Mr. Bermudez has
15 registered as a lobbyist and he is asking to
16 meet with each of you individually to go
17 over the proposal.

18 As long as it's the context of
19 settlement and whatever you discuss
20 individually with him is understood to be a
21 settlement communication and you are not
22 conveying what another council person is
23 talking about, then you certainly can have
24 that communication and if you want me
25 present I certainly can be present. If you

1 want to have it one-on-one I have enough
2 faith in Mr. Bermudez that he is not going
3 to do anything he shouldn't, but if you want
4 me present I do believe that if you have
5 either the Clerk or myself there or Mr.
6 Williams there, that is sufficient.

7 Let me give you the proposal. I
8 received it this afternoon in writing.

9 MR. PARISER: This would be a third
10 letter?

11 MR. WILLIAMS: A third letter.

12 MS. BOUTSIS: A synopsis of all of his
13 different letters.

14 It is number one, "The City would
15 approve the charter school site plan along
16 with the 1,400 student stations with minor
17 changes to the site plan that would permit
18 the building of a maximum number of 92
19 residential units on the site. We believe
20 that this could be accomplished without
21 substantive changes to the plan and without
22 a need for variances."

23 Just so you know, currently it's 18
24 units an acre, so this would exceed the
25 number of units per acre.

1 So there would have to be some sort of,
2 if you were to proceed to go forward with
3 that, we have to figure out something,
4 whether it's a variance, whatever, and I
5 don't know how that's possible, and it will
6 be a comp plan change which is a huge
7 change.

8 The reason I am telling you all of
9 those details is so you understand all of
10 the steps that we would have to go through.

11 Number two, Reimbursement of expenses
12 incurred by the Shores as a result of the
13 delay of being able to have the original
14 proposal timely approved. We are in the
15 process of figuring that out.

16 He told us it was a couple hundred
17 thousand dollars.

18 MR. WILLIAMS: Mr. Rosen.

19 MS. BOUTSIS: Mr. Rosen informally. I
20 asked for a breakdown and that's been ten
21 days coming and I guess they still don't
22 have it.

23 Number three: "A settlement would be
24 contingent on the aforementioned site plan
25 being agreed upon and approved by the

1 Council."

2 Number four: "Upon final approval by
3 Council and the Village, Shores would drop
4 any pending litigation concerning or
5 resulting from this application."

6 Now, this is really one proposal,
7 because when I talked to Mr. Rosen and JC
8 Planas was present, Mr. Williams was also
9 present, there were several proposals on the
10 table.

11 The other proposal was that he was
12 interested in doing a couple hundred units
13 on the site and no charter school, which
14 would also, again with a commercial on the
15 bottom, make it look like a mixed use
16 district, but he was looking for a couple
17 hundred.

18 MR. WILLIAMS: And parking.

19 MS. BOUTSIS: And parking.

20 MR. PARISER: And parking on site?

21 MS. BOUTSIS: It was parking on site.

22 The design criteria, the FT&I District, but
23 it was a very large number of units, close
24 to 170, 200 units.

25 MR. WILLIAMS: We didn't clarify, Vice

1 Mayor, clearly because we were not able to
2 verify from the plans that he thought we
3 already had which we did not.

4 MS. BOUTSIS: We never have received
5 the plans. I actually asked for the plans
6 that he said that he had hand delivered to
7 each of you separately and I never received
8 it from him. Whatever this plan is, I have
9 never seen it.

10 And in addition, I explained to him
11 that this request was a couple of hundred
12 units which is well beyond the comp plan,
13 that this would be truly a, not only be a
14 major comp plan, but you get the idea.

15 The third proposal was, so you had the
16 current proposal for the 1,400 students, a
17 proposal for several live-in units.

18 The third proposal was well, do you
19 want to buy the land. And we asked for him
20 to give us what is the offer that you are
21 looking for, and he said that he had
22 purchased the property for at least six
23 million dollars including his cost, so he
24 was looking at a six million dollar number
25 but then he said give him an offer.

1 The last offer was to become partners
2 with him, and I just rejected that outright,
3 because why would we want to become partners
4 -- maybe I shouldn't have rejected it
5 outright, but why should we become partners
6 with someone who sued us, that doesn't
7 really logically work. If you have problems
8 in the beginning you are going to have
9 problems all the way through.

10 Those were his proposals. At least we
11 have clarification from his first letter
12 which we all understood that he wanted
13 everything that he asked for, plus four
14 million dollars to be partners with him and
15 everything else. There were different
16 proposals, or they were intended to be
17 different proposals. So that's where we
18 are.

19 We spent about an hour and-a-half
20 talking to Mr. Rosen and to JC Planas. I
21 will tell you, JC Planas was very aggressive
22 in his belief that he will win this lawsuit.
23 You know, he thinks it's clearly we are
24 preempted and his seven page brief will
25 cover that.

1 I don't want to ever predict again what
2 the Court's will do. I don't think that his
3 case is as strong as he is making it out
4 because there is no clear, you are preempted
5 language in there. There is some fuzzy
6 language, there is some complicated
7 language, but I don't believe it to be a
8 complete preemption.

9 Having said that, as you know, it was a
10 procedural issue for us, so in six months
11 time he could have come back and gotten
12 exactly what he was asking for. And I
13 actually said that to Mr. Rosen. I said, I
14 don't know why we are here, we are in month
15 eight, you can drop your lawsuit and apply
16 tomorrow, what do you expect the Village to
17 do.

18 The issue was a procedural defect in
19 that you didn't actually give us a charter,
20 which is a legitimate argument. Give us an
21 actual charter and what is it that is the
22 problem. He didn't want to go there. He,
23 Mr. Rosen was a bit aggressive I think is
24 the right word.

25 MR. WILLIAMS: To be mild about it.

1 MR. BOUTSIS: Angry may be a better
2 word. And he thinks that his lawyer is
3 right and that he wants money. I think is
4 the way to put it, he wants money.

5 MR. PARISER: What's their response
6 that they weren't procedurally prepared or
7 complete?

8 MS. BOUTSIS: He didn't even bother
9 addressing it. He didn't bother addressing
10 it.

11 Now, if there is a preemption then
12 there is no reason to the hearing, to the
13 argument, and that's why he didn't address
14 it. But either way, I hate to say it like
15 this, but either way based upon the code and
16 the State law, we didn't have anything
17 really else.

18 So I am not saying it was unjustified,
19 we were justified in requesting a complete
20 application. We are justifying in knowing
21 who is the charter school going to be there
22 and what years it's going to be there.

23 We certainly have a right to make sure
24 that if they are asking for 1,400 students
25 and they are entitled to 1,400 students,

1 it's solely 1,400 students.

2 The application that were from other
3 sites that they provided for us were way
4 more than the 1,400 students.

5 Having said all that, if they completed
6 those defects, we would go to our hearing
7 and I don't see an inability to not grant
8 them what they were asking for.

9 MS. STANCZYK: He assured that he would
10 provide the charter. He understood the
11 deficit and he agreed to it and he agreed
12 that he would have it cured by the next
13 hearing. So it's not even his silent
14 assumption, a responsibility, it was his
15 voiced assumption.

16 MR. PARISER: He went beyond that, he
17 said if I don't have it you can deny me.

18 MS. BOUTSIS: That is one hundred
19 percent correct. And we brought that all
20 out in the briefing.

21 MR. PARISER: What was he asking for
22 originally on the mixed use, the number of
23 students and the number of units?

24 MS. BOUTSIS: He was asking for a
25 higher number ---

1 MR. PARISER: I am talking about what
2 he had in his application.

3 MS. BOUTSIS: He was asking for I think
4 18 times five, but staff had given him a
5 letter saying because you have used
6 basically three acres for the school you are
7 only entitled 18 times two. That's what he
8 was originally requesting.

9 He believes that a higher number is
10 justified and that's what he is asking for.

11 MR. WILLIAMS: As a matter of fact, he
12 wanted 200 units initially and we had that
13 discussion that there is no way that he can
14 get there.

15 MS. BOUTSIS: Some people were out of
16 town, some people were on vacation, but I
17 wanted to make sure that he had our public
18 notice before the session started which is
19 why I announced it yesterday.

20 I don't see much room here, unless you
21 are interested in buying the land and I
22 don't think it's worth six million dollars.

23 MS. STANCZYK: I thought at one point
24 he mentioned four and-a-half.

25 MS. BOUTSIS: His offer now is six.

1 MR. WILLIAMS: There was a four million
2 dollar number, that was part of the
3 confusion that would buy a partnership as I
4 believe that he proposed it.

5 MS. BOUTSIS: It was a joint venture
6 for the sum of four million dollars, which
7 represents a 50 percent ownership in
8 interest to the property. That was his July
9 12th correspondence. So he did say make an
10 offer.

11 Now he mentioned six million, but then
12 he said make an offer.

13 MR. WILLIAMS: He went through a, sort
14 of a verbal calculation of what he thought
15 he had invested at this point.

16 MR. BOUTSIS: Between purchasing the
17 property, between legal fees and drawings,
18 and I don't know, he thinks it's like six
19 million dollars.

20 MR. PARISER: As far as the value of
21 the land for what he purchased it or what he
22 put in, a lot of people bought high and
23 everything is underwater now, so that's the
24 way things are.

25 But this 1,400 students -- but the 92

1 residential units doesn't make sense.

2 MS. BOUTSIS: I will tell you one other
3 statement, I believe that he said this
4 during our meeting Mr. Williams and just
5 confirm for me.

6 He is under the impression that this is
7 another school that we have had some
8 litigation with, and that he is -- maybe he
9 didn't tell you that, I may have heard that
10 from somebody else, that may have been from
11 JC Bermudez, and I said one thing has
12 nothing to do with the other. One has
13 nothing to do with the other.

14 We had a hearing process in one and
15 there were findings. We went through that
16 process. And here it's a very legal
17 argument, you were deficient. I really
18 don't know why we are having this discussion
19 or this appeal at this point when you can
20 come back in and get your application.

21 MR. PARISER: No hearing has been set?

22 MR. WILLIAMS: He has not come back.
23 They have indicated that they have the
24 charters.

25 MS. BOUTSIS: They do. They do.

1 MR. WILLIAMS: But they have not
2 scheduled the hearing.

3 MS. BOUTSIS: There is no hearing
4 before the Eleventh Circuit yet.

5 MS. STANCZYK: If he has the charters
6 he would no longer be deficient and his next
7 step would be to schedule a hearing.

8 Why would we be penalized for the fact
9 that he hasn't filed and done what he is
10 responsible for?

11 MS. BOUTSIS: I can't tell you what his
12 thought process is other than he believes
13 that economically the building would work
14 better for him at 92 units.

15 MS. STANCZYK: It would work better at
16 one thousand.

17 MR. PARISER: It's zoned 18 units per
18 acre and the school he is proposing in this
19 letter would take up at least three acres?

20 MS. BOUTSIS: Approximately.

21 MR. PARISER: Unless he is planning to
22 put 1,400 kids in an acre.

23 MS. BOUTSIS: The way he reconfigured
24 it for the final hearing, the parking garage
25 is shared by the two. So it's hard to do an

1 exact calculation of how many acres are
2 involved. But it's at least two for the
3 school exclusively and then the parking
4 garage is a mixed-sharing component.

5 MR. WILLIAMS: Some of that discussion
6 going back to the planning director Julian
7 Perez having to do with that section of the
8 five acres, three, verses two, verses their
9 believe that the entire five acres was part
10 of the density discussion, et cetera.

11 MS. BOUTSIS: Just so we are clear, it
12 wasn't just Julian Perez, but it was I
13 believe CT3S was our consultant for the
14 traffic and they are all planners and they
15 all read the comp plan and came to the
16 decision and recommendation that that's the
17 only way to read the comp plan and issued
18 the letter based upon both of their thought
19 processes.

20 MR. PARISER: So the best, as far as
21 units that he could get, assuming two acres
22 is for the school, would be 54 units and
23 this would go over that density, which would
24 mean to accomplish this we have to amend?

25 MS. BOUTSIS: We have to change our

1 comp plan density.

2 There could be an alternative ---

3 MR. WILLIAMS: That process is not what
4 it used to be. I sat in on those meetings
5 they have almost eliminated the comp plan
6 amendment.

7 MS. BOUTSIS: A comp plan amendment is
8 a much easier process than it used to be, in
9 that I think the regional planning council
10 gets a copy and you can share a copy with
11 your neighbors but you are not necessarily
12 required to and the State has 30 days to
13 review.

14 MR. WILLIAMS: They are eliminating the
15 30 days.

16 MS. BOUTSIS: They are even eliminating
17 that?

18 MR. WILLIAMS: As of last week.

19 MS. STANCZYK: But what are we required
20 to do? Because what we are talking about is
21 eliminating to change the rule on density,
22 but the density is not related to the
23 school. The school is legislative, we have
24 to agree to. Nobody says we have to agree
25 to the density on the townhouses.

1 MS. BOUTSIS: No, that's why he is
2 asking for settlement. There is one thing
3 that I haven't mentioned that I have told to
4 both JC Planas and Bermudez, as far as I am
5 concerned the change in density is contract
6 zoning.

7 MR. PARISER: I would think it is.

8 MS. STANCZYK: I think this whole
9 process is, what we are doing right now.

10 MS. BOUTSIS: We are just discussing
11 his offers. And I don't know that JC Planas
12 understands. I am not sure Planas
13 understands the nuances of the contract
14 zoning, Bermudez I believe does.

15 MR. PARISER: You can't contract zone,
16 that's against the law.

17 MS. BOUTSIS: I will tell you that some
18 cities and one city is, it's Shabbat versus
19 the Village -- it's one of the little beach
20 towns.

21 MS. LINDSAY: Surfside.

22 MS. BOUTSIS: Thank you.

23 MS. LINDSAY: You are welcome.

24 MS. BOUTSIS: They had a zoning issue
25 with the church, but ultimately what

1 happened was they did a settlement that
2 granted them what they were looking for this
3 church in a zoning district it didn't belong
4 in and it was a settlement. And the way
5 that they got around the contract zoning is
6 they did it as part of the settlement and
7 they did all of these things.

8 Now they are being sued by the
9 neighbors that never wanted to see the
10 temple there in the first place for contract
11 zoning.

12 So there are a lot of smart lawyers in
13 the world. I don't know how I can see
14 around the contract zoning issue. The only
15 one that I see is viable, if you want to
16 give them their current application which is
17 the 1,400 at, what is it -- I am not talking
18 about in the settlement offer, but whatever
19 the original application was, provided that
20 they provide you the information that they
21 were supposed to provide and we go to our
22 hearing.

23 Or if you want to buy the property and
24 you give them an offer of what you think
25 it's valid at.

1 MR. WILLIAMS: Plus his two hundred and
2 so whatever that number proposal is that he
3 claims.

4 MR. PARISER: The original application
5 involved all of the five acres?

6 MS. BOUTSIS: Yes.

7 MR. PARISER: Was that a package deal?
8 In other words, if he comes back again and
9 says he just wants a charter school.

10 MS. BOUTSIS: It was one application.

11 MR. PARISER: Can he come back and not
12 ask for residential or can he ask for a
13 charter school that only takes up two acres,
14 two and-a-half acres?

15 MS. BOUTSIS: The code requires him
16 mixed use.

17 MS. LINDSAY: The number of units
18 specified in this particular area, isn't
19 that designated in the land development
20 code?

21 MS. BOUTSIS: Not for this section,
22 it's actually in the comp plan.

23 MS. LINDSAY: It's in both the land
24 development code and the comp plan?

25 Where in the comp plan?

1 MS. BOUTSIS: Under the FT9 for the
2 specific area, and it specifically
3 delineates in the comp plan. I remember
4 having to read it over and over and over
5 again.

6 So that's where we are. Are there any
7 interests in negotiating? Is there any
8 interest in settlement, is there any
9 interest in an offer?

10 MS. STANCZYK: If we were to go forward
11 with just the hearing, in other words tell
12 them to bring his application forward, is
13 the 1,400 going to create a density issue
14 with the school that we then can adjust the
15 number in the school, can we adjust the
16 number of students in the school?

17 MS. BOUTSIS: The density works on the
18 structural wise, it's not a density for the
19 comp plan purposes as far as living units.
20 Student population is not the same thing as
21 living dwelling unit density. And because
22 of Dade County is a traffic exemption zone,
23 no.

24 MS. STANCZYK: I think the 1,400 is so
25 intense for the site, is there any way to

1 modify that?

2 MS. BOUTSIS: I don't see how because
3 of the traffic exemption.

4 MR. WILLIAMS: Didn't they have
5 something higher than that originally or
6 wanted it?

7 MS. BOUTSIS: 1,800.

8 MR. PARISER: The original was for
9 1,400.

10 MS. BOUTSIS: 1,800, they changed it to
11 1,400. Most of the time you will find that
12 a lot of these issues are traffic driven,
13 the issue of traffic doesn't work if you can
14 make each project smaller. Here they are in
15 a traffic exemption zone, it's Dade County
16 imposed because it's an enterprise zone.

17 MS. LINDSAY: When was that designated?

18 MS. BOUTSIS: Before the Village
19 existed.

20 MR. WILLIAM: A long time back.

21 MS. BOUTSIS: With the effort I think
22 of the Beacon Council.

23 MR. WILLIAMS: Wasn't it after '92,
24 after the storm?

25 MS. BOUTSIS: Early '90s.

1 MS. STANCZYK: What benefit has it for
2 us?

3 MR. WILLIAMS: Not much.

4 MS. STANCZYK: Because we only have a
5 tip of it. Is the tip in that property?

6 MS. BOUTSIS: Yes.

7 MR. WILLIAMS: Eve, if I may just make
8 a -- Mr. Bermudez will presumably ask
9 everyone to meet with him, I don't know
10 everyone's schedule, but I know he plans to.
11 Eve, I know you mentioned it, but to
12 emphasize it, the discussions have to be
13 only on the issue of settlement. I don't
14 know what he plans on talking about.

15 MS. BOUTSIS: He has told me several
16 times it's only on settlement and the offer.
17 And it should only be on the settlement and
18 the offer. That's the only thing that he is
19 registered as a lobbyist for and we don't
20 want it to go beyond the scope and break the
21 confidentiality.

22 MR. WILLIAMS: He has also asked to
23 meet with Darby Delsalle and I am sure that
24 he wants to talk all of the density and
25 zoning to Darby, but we'll make sure that

1 that specific conversation is very clear and
2 by the book with regards to zoning.

3 MS. STANCZYK: What's the repercussions
4 if the confidentiality is broken?

5 MS. BOUTSIS: The transcripts become
6 readable before the end of the litigation.

7 MS. STANCZYK: What's the potential
8 damage for the Village if it happened?

9 MS. BOUTSIS: In this case they have to
10 go to court to get it. It would be more
11 litigation to get it, but in reality there
12 hasn't been that many attorney/client
13 sessions in this matter and I don't think
14 that we have had real substantive
15 discussions in here, so it probably wouldn't
16 be that great.

17 MR. WILLIAMS: The other letters were
18 not clear. And that's why we want to get
19 some clarity before we came back.

20 MR. PARISER: Is that even proper, to
21 lobby somebody on a pending litigation
22 matter? I don't think that's proper,
23 personally. My policy personally is not to
24 meet one-on-one with any lobbyist, I don't
25 know do it.

1 MS. BOUTSIS: Technically as he is
2 doing this he is registered, but there can
3 be one-on-one discussions on settlement, I
4 have seen that done. But it's hard for you,
5 none of you are going to be designated as
6 the person, and if you were designated that
7 would have to be a public meeting.

8 So if you are comfortable doing it, I
9 am not prohibiting it. It's not something I
10 am inclined to do, but if you want to I am
11 not going to preclude you from doing so.

12 MR. WILLIAMS: You don't have to.

13 MS. BOUTSIS: No, you don't have to you
14 can say no. And if you want me to say no
15 for you I will say no for you, I have no
16 problem with that.

17 MR. FIORE: It sounds like he wants --
18 he is not going to come back to a hearing
19 until he gets an agreement, that's what it
20 sounds like. He wants an agreement from
21 this Council before a hearing is held.

22 MS. BOUTSIS: He doesn't want a hearing
23 at all unless it's a settlement hearing.

24 MS. STANCZYK: So in other words, what
25 he is saying is he wants us to contract zone

1 before a hearing so that when he walks in he
2 knows what he is getting.

3 MS. BOUTSIS: I don't want to call it
4 contract zoning because I can't let you do
5 contract zoning because that's against law.

6 He wants a settlement agreement and
7 that has to be announced at a public meeting
8 with a common session.

9 There is a concept, I don't know how
10 amenable you are to the concept but I will
11 raise it to you. There is a concept of
12 transfer of developmental rights, we have
13 the right to enter a code.

14 But in short, whatever residential
15 units, for example, we are not using, to
16 transfer to him to get him a higher number
17 of units, residential units. But I don't
18 know what that number is. I don't know that
19 that would equal anything.

20 I am giving you an option that's not
21 necessarily contract zoning but could get
22 you where you can get a settlement. It's
23 not something that I am recommending,
24 meaning I am just throwing it out there, but
25 that's the only thing outside of the box

1 that I have been able to think of. The
2 safest route is if you want to purchase it,
3 but I don't think it's worth six million
4 dollars.

5 MR. PARISER: So procedurally they
6 didn't comply, his application was
7 incomplete, he is asking for more than he is
8 entitled to under the present zoning code,
9 he is requesting in addition a change in
10 zoning code and ---

11 MS. BOUTSIS: Probably a comp plan
12 amendment and zoning.

13 We can leave it as is. Worse case
14 scenario, he comes back with every document,
15 he gets the 1,400 students plus a few mixed
16 units, or we lose and he gets 1,400 students
17 and a few mixed use. That's the worse case
18 scenario, what he asked for originally.

19 You know, I don't like losing and I
20 hope I never lose, but I have looked at this
21 from day one, what is the worse case
22 scenario. Worse case either way is he gets
23 the application that if was completed he
24 would have gotten.

25 MR. PARISER: That's how I see it, why

1 doesn't he come back?

2 MR. FIORE: Let's be frank here, Mr.
3 Vice Mayor, the reason he doesn't come back
4 is because he thinks he is going to lose
5 again, it's that simple.

6 MS. STANCZYK: There is nothing for him
7 to lose on. He is justifiably due what he
8 had applied for.

9 MS. STANCZYK: His scheme all along was
10 to put us in a position where he got more
11 than what he was ---

12 MR. FIORE: They are probably
13 emboldened by the missteps of the last six
14 years, I don't want to have to say the name,
15 and we weren't that successful in court and
16 that's probably why they are doing this, I
17 don't know.

18 What's wrong with the residential?
19 What's wrong with taking -- if we can change
20 it?

21 MS. STANCZYK: It's too much. It's not
22 what the Council voted on putting in this
23 zoning district. Why would we build more or
24 allow more intensity when this Village has
25 said they don't want intense development?

1 MR. FIORE: Excuse me if I don't
2 believe you, Mayor, from what I remember of
3 the hearing, and I said this in the last
4 attorney/client session, the 1,400 or 1,500
5 students on three acres is an awful lot of
6 kids, right? Don't you agree? So what's
7 wrong with putting residential there?

8 MR. PARISER: He was getting
9 residential, he has 28 units.

10 MR. FIORE: I am talking, Mr. Vice
11 Mayor, with no charter school now.

12 MR. PARISER: With no charter school he
13 would get 92 units.

14 MS. BOUTSIS: No, he is asking for
15 about 200.

16 MR. PARISER: Presently he is entitled
17 18 per acre.

18 MS. BOUTSIS: Patrick Fiore is saying,
19 why don't you look at the option where there
20 is two hundred units and no charter school
21 at all.

22 MR. FIORE: No pickup, no drop off.

23 MS. BOUTSIS: His offer in the letter
24 is 92 plus the 1,400.

25 MR. PARISER: Right, it has to be mixed

1 use.

2 MS. BOUTSIS: The residential would be
3 the residential with the commercial on the
4 bottom.

5 MR. PARISER: Would he be allowed two
6 hundred units?

7 MS. BOUTSIS: That's the whole point.
8 We have to do the comp plan amendment and
9 the zoning change and try to avoid contract
10 zoning.

11 MR. FIORE: What's wrong with that?
12 You get no charter school then.

13 MS. BOUTSIS: These are the offers.

14 MR. FIORE: Well, that's what I am
15 putting out there. I don't want to go
16 through this again with another school. And
17 obviously he is not willing to come back at
18 this time for -- like you said, why don't
19 you come back to rehearing.

20 MS. BOUTSIS: He does not want to.

21 MR. FIORE: It's just an option, that's
22 all I am saying.

23 MS. BOUTSIS: I specifically asked him
24 why didn't he come back, it's been eight
25 months, the six month period is over, come

1 back and get your hearing and get your 1,400
2 kids.

3 MR. FIORE: That's a lot of kids.
4 People talked about safety issues and
5 traffic and here we go again. You have a
6 choice here. You want to have the
7 residential units or do you want to have a
8 charter school with 1,400 kids?

9 I am just putting it out there to my
10 colleagues for thought.

11 MS. BOUTSIS: Are there any other
12 thoughts?

13 MR. PARISER: My thought is to have him
14 come back.

15 MS. LINDSAY: I think he should come
16 back.

17 MS. STANCZYK: He should come back.

18 MS. BOUTSIS: Anything from you?

19 MR. TENDRICH: No.

20 MS. STANCZYK: Would you mind
21 reiterating the confidentiality.

22 MS. BOUTSIS: These proceedings are to
23 remain confidential until the end of the
24 litigation. Once litigation is completely
25 over, all appeals are over, then the

1 transcript will be made readily available to
2 anyone. Thank you, everybody.

3 (Recess in Proceedings).

4 MR. WILLIAMS: Let's go back on the
5 record.

6 MS. BOUTSIS: Okay, back on the record.

7 MR. TENDRICH: Like you said, you said
8 we can discuss other settlement, correct?
9 It's not just this one settlement that he is
10 going to talk about?

11 MS. BOUTSIS: It's going to be one of
12 the four or five options.

13 MR. TENDRICH: Maybe if we talk to him
14 we can be reasonable or he can be
15 reasonable. I would talk to him. I might
16 not agree with anything that he says, but
17 then again I might suggest something and he
18 might say, you know, that's not a bad idea.
19 If it happened before I think we would have
20 not have been as deep as we got. I we would
21 had talked before we wouldn't be this deep.

22 If I am meet with him I am making sure
23 that the Clerk is with me.

24 MS. BOUTSIS: I just want to be clear,
25 keep it confidential, no third party can be

1 in that meeting. We are administration, we
2 can be in that meeting.

3 It can't be that Gene Flynn is walking
4 by and he might say, let me hang out because
5 he is a former Mayor.

6 MR. WILLIAMS: Just to comment and we
7 are back on the record. And Eve was clear I
8 just want to be extra clear. Her
9 communications back to JC Planas now based
10 on the decision to ask them to come back,
11 means a full rejection here, because they
12 are absolutely clear that they were not
13 coming back out.

14 So I don't want anybody to leave here
15 thinking that Eve is going to call him up
16 and they are going to start filing an
17 application.

18 He was abundantly clear, again people
19 say things, but he and his attorney were
20 absolutely clear that the only reason they
21 would come back before this Council is under
22 these settlement conditions.

23 MS. BOUTSIS: Or they lost the court
24 case and they had no choice.

25 MR. WILLIAMS: So when Eve is telling

1 them to come back it means that we have
2 rejected this offer. I wanted everybody to
3 be clear on that.

4 MS. BOUTSIS: I am not going to say
5 anything right away in case any of you want
6 to meet with Mr. Bermudez you can. And if I
7 don't hear any rumblings for another shade
8 session I am going to give it a week. And
9 in a week I am going to let him know that it
10 has been rejected and there is no interest.

11 MR. TENDRICH: He hasn't called me to
12 set up an appointment.

13 MR. PARISER: He hasn't called me
14 either.

15 MS. LINDSAY: He hasn't called me
16 either.

17 MR. TENDRICH: You have a holiday.

18 MR. FIORE: Then what is he going to
19 do, he is going to go back to court?

20 MS. BOUTSIS: We are already in court.

21 MR. FIORE: Then we go by whatever the
22 decision is rendered judicially?

23 MS. BOUTSIS: Either they win or I win.
24 If they win they don't have to come to a
25 hearing and they get the 1,400 which is what

1 they asked for, plus the 30 number of units.
2 If I win they come to a hearing and they get
3 the 28 to 30 something and 1,400 units. So
4 the only difference would be ---

5 MR. FIORE: Does everybody understand
6 that? I am just saying, that's why I put
7 out the residential thing. Do you
8 understand that?

9 MS. LINDSAY: Yes, Patrick.

10 MS. STANCZYK: I think we have got it,
11 except it goes against what we have decided
12 to go with.

13 MR. FIORE: I wasn't here, Madam Mayor,
14 I am only here for the last 20 months, I am
15 just trying to put something out there and
16 be reasonable so there is another option for
17 us, that's all that I am saying.

18 MR. TENDRICH: That's why I say ---

19 MR. FIORE: We just went through, my
20 God almighty, six years and it's not ending.
21 I mean, hello! That's all that I am trying
22 to say people. I just want to give
23 everybody an option that we don't have to
24 stick 1,500 on three acres.

25 MR. TENDRICH: That's why I am saying,

1 if we meet with him individually we can
2 discuss things with him.

3 MR. FIORE: I am sorry to get upset, I
4 don't want to go through this again. I know
5 you don't like me being here but that's the
6 way it is, I am sorry.

7 MR. TENDRICH: If you meet with him or
8 if he calls me or you, we can discuss it,
9 because their attorney said, he has his
10 proposal which no one feels is right, and I
11 understand my thought and your thoughts of
12 1,400 students on three acres is a lot worse
13 than 1,150 students on 47 acres. You are
14 saying traffic ---

15 MS. STANCZYK: Because we are an
16 enterprise zone.

17 MS. BOUTSIS: It's exempt.

18 MS. STANCZYK: Those are the rules
19 about an enterprise zone, it's to build
20 incentive by removing obstacles, and the
21 obstacle to development is traffic.

22 MR. FIORE: And I understand,
23 Mr. Tendrich and Madam Mayor, but the
24 traffic is still going to be there, we just
25 can't rule on it.

1 MS. BOUTSIS: You are correct.

2 MR. FIORE: I would think you of all
3 people would understand where I am coming
4 from based on events of the last few years.
5 I am trying to avoid that and give us an
6 option that residential live and they pay
7 property taxes, there is a commercial
8 component, they pay taxes, that's all that I
9 am saying.

10 MR. TENDRICH: The only proposal that
11 he brought was this one. He didn't bring
12 up, it's not in writing the two hundred
13 units. That's why I am saying if we meet
14 with him and discuss with him maybe we can
15 come into a more reasonable figure. You
16 understand what I am saying?

17 MR. FIORE: Reasonable figure of what,
18 the 1,400?

19 MR. TENDRICH: Of the two hundred.

20 MR. PARISER: How much of the area
21 would open up to increase density? You
22 can't allow one person to have 40 units an
23 acre, that opens up the whole area.

24 MS. STANCZYK: Once you have done it
25 you have done it, you have to do it again

1 each and every time that you ask.

2 MR. FIORE: Obviously I am not getting
3 through which I am not surprised.

4 MS. BOUTSIS: I will call Mr. Bermudez
5 and have him contact those of you that have
6 not been contacted so we can close this
7 down.

8 MR. TENDRICH: I don't think it's
9 necessary for you to contact him because he
10 is the one that said that he is going to
11 contact us.

12 MS. BOUTSIS: I am putting out the
13 artificial deadline.

14 MR. TENDRICH: You have Monday, the
15 attorneys I am sure don't work Monday.

16 MS. BOUTSIS: No comment. Two weeks,
17 then and I will let him know the artificial
18 deadline of two weeks.

19 MR. FIORE: So we can ask for a lower
20 number?

21 MS. BOUTSIS: You can ask whatever you
22 want and bring it back here for proposal
23 discussion.

24 MR. FIORE: That's fine.

25 MS. BOUTSIS: Thank you everyone, good

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night.

(Whereupon, the deposition was
concluded at 7:55 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA :
 : SS.
COUNTY OF DADE :

I, ADRIADNA GONZALEZ, Court Reporter,
Notary Public in and for the State of Florida at
Large, do hereby certify that I reported the
Attorney/Client Session called by the Village
Attorney in the above-styled cause, and that the
foregoing pages, numbered 1 to 44 inclusive,
constitute a true and correct transcription of my
shorthand report of the Attorney/Client Shade
Session.

I further certify that I am not an
attorney or counsel of any of the parties, nor a
relative or employee of any attorney or counsel
connected with the action, nor financially
interested in the action.

WITNESS my hand and official seal in
the City of Miami, County of Miami-Dade, State of
Florida, this 3rd day of September 2012.



Adriadna Gonzalez

Adriadna Gonzalez
Court Reporter
Commission # EE041583
Expires Nov. 29, 2014