

VILLAGE OF PALMETTO BAY
PRIVATE ATTORNEY/CLIENT SESSION
OF MAYOR AND VILLAGE COUNCIL

ORIGINAL

The above meeting was held at the offices of the Village of Palmetto Bay, 900 Perrine Avenue, Palmetto Bay, Florida, on Wednesday, August 27, 2008, commencing at 6:00 p.m.

APPEARANCES:

MAYOR EUGENE FLINN
VICE MAYOR LINDA ROBINSON
COUNCILMAN EDWARD FELLER
COUNCILMAN PAUL NEIDHART
COUNCILWOMAN SHELLEY STANCZYK
VILLAGE MANAGER RON WILLIAMS

EVE BOUTSIS, ESQ.
JAMES MONTALVO, ESQ.
3225 Aviation Avenue
Third Floor
Miami, Florida 33133

1 MS. BOUTSIS: Good evening, everyone. It's
2 6:05, on August 27. Thank you for being here.

3 The reason I asked that we have this
4 attorney/client session is because I'd like to
5 discuss the Village defense settlement
6 possibilities and certain legal actions. And
7 those are Palmer Trinity Private School versus
8 the Village of Palmetto Bay, under Circuit Case
9 No. 08-28977, and Palmer Trinity Private School
10 versus the Village of Palmetto Bay, Appellate
11 Court case No. 08-245 AP.

12 At this point we are looking for some
13 advise and guidance as to litigation strategies
14 and/or settlement.

15 Present today we have Mayor Eugene Flinn,
16 the Vice Mayor Linda Robinson, Councilman Edward
17 Feller, Councilman Paul Neidhart, Councilwoman
18 Shelley Stanczyk, and of course, our Village
19 manager, Ron Williams.

20 We are 900 Perrine. A certified court
21 reporter is present and shall take record of all
22 statements and discussions with me during this
23 attorney/client session. And it will be made
24 public at the end of the litigation.

25 The only thing we can talk about tonight

1 are those two cases. And the only thing I ask is
2 that one person speak at a time because the court
3 reporter can only take down one person at a time.
4 And try to speak with yes and no. No shaking of
5 the head, that kind of thing, uh-huh, uh-uh. The
6 court reporter cannot get that. It doesn't come
7 through in the transcript.

8 Councilwoman Stanczyk, you have a question.

9 MS. STANCZYK: I have a question. The
10 mediation that's been scheduled for the court
11 case against us, not for the appeal. I believe
12 you listed two cases.

13 MS. BOUTSIS: I listed both cases to note
14 for discussion.

15 MS. STANCZYK: That's not the purpose of
16 the mediation. The mediation is for the case
17 only?

18 MS. BOUTSIS: It is listed under the first
19 case. I don't know if they are going to try to
20 put it on the table for both. Mediation is not
21 required in the appellate case.

22 MS. STANCZYK: Then I suggest that we
23 eliminate that case from this discussion.

24 MS. BOUTSIS: We can. To be fair, both
25 cases have the same basic issues, so the same

1 issues are going to come up.

2 MR. FLINN: Eugene Flinn, for the record.

3 The issue I have is if we resolve the case,
4 this becomes public and it becomes a public
5 hearing under zoning issue. They would get the
6 inside on our thought process.

7 I think we need to discuss only the
8 litigation itself, unless for some reason we need
9 to expand that to discuss the litigation, but I
10 don't think we should go into our thought
11 processes or anything at this point that will be
12 used in the future zoning hearing.

13 MS. BOUTSIS: I agree 100 percent.

14 So you know, even though I listed both
15 cases and they intertwine in the same type of
16 issues, let me start with this, the appeal is
17 based upon --

18 (Thereupon, Mr. Montalvo entered the room.)

19 MS. BOUTSIS: Also with us now is Jim
20 Montalvo from my office, my partner who's been
21 helping me with all of the litigations. I wanted
22 him here for these discussions.

23 The appeal had several issues. And the
24 appeal matter basically was a due process, saying
25 that because there were ex parte communications

1 and perhaps the notice was bad and the
2 advertising, that kind of thing.

3 Then they argued that we applied the wrong
4 law and that the evidence doesn't support our
5 decision. That's basically what they argued.

6 In the new case, the second case, they say
7 that we are inconsistent with the comp. plan,
8 which basically is them arguing the same kind of
9 thing, that we applied the wrong law, I guess,
10 the parallel of the appeal.

11 Ex parte communications, which is our due
12 process argument on the appeal and they are
13 arguing discrimination, which is different than
14 the other causes of action than what was listed
15 in the appeal, because the argument is that Dade
16 County and the Public School System does not have
17 to go through a hearing process and private
18 schools do.

19 We don't have control over that, other than
20 state law exempts them. But we do, as you know,
21 have a review process for charter schools, which
22 is the other arm of public schools.

23 That being said, the issues for the non
24 appeal case, again -- can you hear me well?

25 MR. NEIDHART: I am okay.

1 MS. BOUTSIS: The argument is that we're
2 being inconsistent with the comp. plan. That we
3 have this, quote, unquote, ex parte communication
4 during the judicial process. That we are
5 discriminating against private schools and
6 private religious schools versus public schools,
7 and that we have violated the citizens bill of
8 rights in the way that we held the hearing.

9 We have tried to communicate with Stan
10 Price and his associate, whose name is Mitch
11 Widom, to try and get an idea of what they are
12 trying to propose by the settlement conference.

13 The conference is currently scheduled for
14 September 3. And --

15 MS. ROBINSON: That's when?

16 MS. BOUTSIS: That's the settlement with
17 the mediator. We picked out a mediator, and it's
18 not just us. And there are two parties that have
19 intervened. That's the Residents For Save Our
20 Palmetto Bay, represented by W. Tucker Gibbs has
21 intervened, the Court agreed, as well as the
22 residents from the homeowners association from
23 Cutler Bay represented by John Shubin.

24 MS. ROBINSON: At mediation we'll all be
25 there?

1 MS. BOUTSIS: Yes, they have all agreed to
2 the date.

3 The request for mediation was made by
4 Palmer Trinity. It is also a requirement in that
5 kind of litigation that we hold mediation at some
6 point.

7 All the parties agreed to the 3rd, so we
8 are holding it on the 3rd, but it was at Palmer
9 Trinity's request.

10 At this point I want you to understand one
11 thing. No matter what happens, whether we are
12 dealing with the original action or the appeal
13 action, let's say they try to combine everything
14 in that mediation and they try to put everything
15 on the table. No matter what happens, you don't
16 have the ability to redo anything on zoning. You
17 cannot rezone in a settlement agreement. That
18 would be considered contract zoning.

19 We faced that issue in South Miami with the
20 infamous parking garage down there. We were sued
21 under similar circumstances to get zoning, and
22 the settlement that was reached in that case, we
23 agreed to have a hearing, but we cannot agree to
24 anything else because that would be contract
25 zoning. Just so we are clear.

1 So even under their best case scenario,
2 even if they want to walk away with a settlement,
3 there is no way they could get everything they
4 want because you cannot agree to anything on
5 zoning. They have to have a public hearing, go
6 to that process and prove with substantial
7 evidence to get what they want.

8 We have been brain storming, trying to
9 figure out what it is, other than getting the
10 parties to the table and having a true discussion
11 with the attorneys and the representatives in the
12 room and to hear what Palmer Trinity is looking
13 at, what is in their heads, what are their
14 thoughts, what are their impressions, what are
15 they looking for.

16 And to really, I think just to get a clear
17 voice through to the parties, what positions are,
18 as far as the residents from Sabal -- Palmetto
19 Bay or from the homeowners association.

20 We don't necessarily have to give away our
21 hand and tell them what our position is.

22 We have five council members and that is a
23 hard thing to, but it would be a good thing for
24 us to know what Palmer Trinity is willing to put
25 on the table.

1 We were trying to brain storm, and the most
2 I came up with is that they ask for a rehearing.
3 That's the most I can come up with, because I
4 just can't imagine that anyone here would agree
5 that there were improper ex parte communications,
6 considering we did our disclosures and I think we
7 followed the law.

8 I don't see how we can agree that Dade
9 County Code is discriminatory, specially since we
10 don't have any choice on private schools. But we
11 also regulate charter schools and we have a
12 process.

13 MS. ROBINSON: We did not form that.

14 MS. BOUTSIS: Yes. I have contacted the
15 county, so you know. They'll be willing to
16 intervene or get involved. And to this point all
17 they have done is give me case law and support on
18 different issues that they have dealt with the
19 county relating to their code and applications
20 for schools. But they have not offered to
21 intervene or gone that route.

22 MS. STANCZYK: How can we consider or even
23 be covered under the charter school law since
24 they don't follow the law?

25 MS. BOUTSIS: What I meant to say is, they

1 are arguing that we are being discriminatory to
2 private schools because we have this hearing
3 process for private schools.

4 That's true. We have a process for them.
5 We cannot control normal public schools because
6 the county and the state has exempted that.

7 But the county has agreed and has put into
8 place a process for reviewing the other branch of
9 public schools, which is charter schools.

10 So it's sort of disingenuous to say that we
11 are discriminating against private schools when
12 there is a process for charter schools.

13 MR. FLINN: They are also leaving out the
14 fact that public schools go through the same
15 public hearing process before the Miami Dade
16 School Board and there's been plenty of examples
17 of schools that were planned for areas, and after
18 hearings, schools were not built, schools were
19 modified.

20 And in fact, those are examples of where
21 they work with neighborhoods.

22 So I think that Palmer Trinity is being
23 disingenuous in their arguments in regard to the
24 fact that we know what they really want. They
25 want to have an absolute, unfettered ability to

1 do what they want.

2 That's not just provided for either,
3 because public schools have a public hearing
4 requirement, a public hearing process.

5 We sit just like public school does when
6 they evaluate having a hearing in place and a
7 school. Am I right or am I wrong?

8 MS. BOUTSIS: You are right.

9 MR. FELLER: There is also a perfect
10 example that happened recently in the area of the
11 Experimental Property, west of Dixie Highway,
12 around 120th Street. The county was going to
13 build a middle school and they had public
14 hearings. And the neighbors and everyone
15 convinced them not to.

16 MR. FLINN: Also Ron Ehrman Park, next to
17 Killian High, in that area, there's been plenty
18 of the homestead procedures gone through public
19 hearings down there.

20 So you know, they don't have a remedy that
21 they can really put in place. I doubt the Court
22 would construct the same type of procedure that
23 Dade County School Board. I guess we can review
24 it the same way Dade County School Board does.

25 However, what they are missing here, if

1 they really want us to act that way, the school
2 board made a decision that that's not an
3 appropriate place for a school, like they did on
4 120th Street, like they did at Ron Ehrman.

5 And if they want to empower us to make the
6 same decision on these 33 acres, be careful what
7 you wish for.

8 Again, the School Board has determined some
9 areas are appropriate. They also review the
10 needs of the surrounding area for the school.

11 I would venture to say from a CDMP type
12 evaluation, our overall school capacity in the
13 area and how many student seats we have per
14 population, I wonder -- I have not made a
15 decision on that, but I'll be willing to look at
16 the numbers, whether there is a need for more
17 student seats, whether public or private in that
18 area. I think those are some of the factors for
19 Dade County School Board to look at in
20 determining whether to locate a school area.

21 MS. STANCZYK: Those studies take five
22 years to impact on a school and they go back and
23 check for demographic changes, potential changes,
24 road patterns, aging of neighborhoods, before
25 they place a school. Plus they have many

1 meetings with the surrounding neighbors and the
2 parents of the children who will attend.

3 And those people and those parties impact
4 design of the school and the fee to the school,
5 none of which was done.

6 MR. FLINN: I would suggest probably start
7 taking discovery, other public schools, the
8 public school system, and start venturing into
9 what they do in evaluating whether a school is
10 necessary, their public hearing process, because
11 if we apply the same thing here -- I actually
12 think they are under a better process, what we
13 give them, than what the public schools get.

14 And I think they are under the mistake and
15 impression that they can just walk in and say, we
16 are a school, we get to build.

17 And you know, that's not the way it happens
18 with the Miami-Dade County Public School System.
19 They still go through the evaluation process.
20 There is still evaluations done.

21 And if they would like, once we investigate
22 what they do, we can start the public school type
23 process.

24 MS. BOUTSIS: We can look at that.

25 MR. FELLER: Does a private school by state

1 law have to go through that process?

2 MS. BOUTSIS: It's regulated by zoning
3 code.

4 The answer is, not necessarily the same
5 thing because public schools have a process set
6 that goes through the school board.

7 We cannot control that, but we can control
8 what we do in zoning, what uses we allow. That's
9 why they have this special use process at the
10 county for schools within the Districts, the
11 different zoning Districts.

12 We currently, Jim and I and Mr. Williams,
13 are going to the mediation, and I want to talk
14 about one of you attending.

15 There was a recommendation, as you know, I
16 think I have e-mailed you all the council. I
17 think I would like to see Mayor Flinn there.

18 MR. FLINN: What time is that?

19 MS. BOUTSIS: In the morning.

20 MR. MONTALVO: 10 o'clock.

21 MR. FLINN: How long is this expected to
22 run?

23 MR. MONTALVO: Two hours.

24 MS. BOUTSIS: I don't see us getting that
25 much accomplished.

1 MR. FLINN: I have two mediations that day.
2 One at 10:30, and one at eleven or 11:30.

3 MS. STANCZYK: I will go.

4 MR. FELLER: What day of the week is that?

5 MS. BOUTSIS: September 3. So it's a
6 Wednesday.

7 MS. STANCZYK: I will do it.

8 MR. FLINN: We will reimburse you for it.

9 MS. STANCZYK: I asked for the day. I will
10 take the two hours.

11 MS. ROBINSON: You want me to go?

12 MS. BOUTSIS: Are you going out of town?

13 MS. STANCZYK: I was. But I will do it.

14 MR. FLINN: Why can't we reschedule the
15 mediation?

16 MS. BOUTSIS: Unfortunately we have a
17 cancellation fee. It's expensive for the
18 mediator.

19 MR. FLINN: Not ahead of time.

20 MR. MONTALVO: 30 days.

21 MR. FLINN: What kind of crap mediator you
22 are using? That's absolutely ridiculous. And as
23 a client, I absolutely don't like the fact that
24 we are with that kind of mediator.

25 I would suggest that we not even use him or

1 her. I mean, that's absolutely ridiculous. I am
2 not going to put up with that crap. I am ashamed
3 of you.

4 MR. MONTALVO: There is also --

5 MS. BOUTSIS: Wait out.

6 MR. FLINN: Things come up all the time.
7 In customary law you got clients that are multi
8 state, multi parties. And you tell me we cannot
9 move because of 30 days, that is ridiculous.

10 MR. FELLER: I can go. I don't work on
11 Wednesday.

12 MS. STANCZYK: It's my District. It's
13 either the mayor or me.

14 MS. BOUTSIS: It's up to you what you want
15 to do. I work for the five of you, so you give
16 me directions.

17 MR. NEIDHART: Why don't you --

18 MR. FLINN: Things come up all the time.
19 Did you hold the date before now?

20 MR. FELLER: Yes.

21 MS. STANCZYK: Yes, we were --

22 MR. FLINN: I find that ridiculous.

23 MS. STANCZYK: I am there --

24 MR. FLINN: Don't you ever again use
25 somebody with that long a cancellation.

1 MS. BOUTSIS: Yes, sir. I've gotten the
2 message loud and clear.

3 MR. FLINN: Who is the mediator, for the
4 record?

5 MR. MONTALVO: Joel Levine.

6 MR. FLINN: Why is he that important?

7 MR. MONTALVO: Everybody just agreed with
8 him.

9 MS. STANCZYK: Who brought his name?

10 MR. MONTALVO: Several lawyers.

11 MS. STANCZYK: Whose side?

12 MR. MONTALVO: Both sides.

13 MS. BOUTSIS: The first pick as you know, I
14 sent you the resumes --

15 MR. FLINN: I will be calling his office
16 confirming the 30-day cancellation.

17 MS. STANCZYK: I remember the contract.

18 MS. BOUTSIS: I will talk to him to see
19 if --

20 MR. FLINN: I've never seen -- things come
21 up in the middle of trial. Sometimes you have to
22 take a deposition for a trial so you have to move
23 the mediation if you don't have a trial date
24 coming up. That's absolutely unheard of.

25 MS. BOUTSIS: I will talk to him.

1 Let's plan like it's going forward. If it
2 is not, I will talk to him to waive it.

3 MR. FELLER: If we don't have a major delay
4 because of problems getting all the attorneys,
5 because there are a lot of people going to this,
6 it got delayed until now --

7 MS. BOUTSIS: It's about two months that
8 took us to schedule this.

9 MS. ROBINSON: They were on vacation.

10 MS. BOUTSIS: W. Tucker Gibbs was on
11 vacation. Before that was John Shubin. After
12 that I lost track.

13 MR. FLINN: We are back into the work
14 season, with the exception of the period of time
15 between Thanksgiving and New Year's, and we are
16 now in the heavy work schedule. Everybody's work
17 picked up. Everybody is busy at this point.

18 MS. BOUTSIS: I guess my next question,
19 though, is if we are to hold it on the 3rd, can
20 we hold a half hour A/C session that evening? So
21 that way, whoever is going with us, we can report
22 back and talk about it and figure out our next
23 step, if there is a next step. Maybe we'll just
24 litigate. But at least report back so that
25 everybody is on the same page.

1 MR. FLINN: I have a conflict that night.

2 MS. BOUTSIS: Do you want to do it the next
3 night?

4 MR. FLINN: I have a 30-day cancellation on
5 that evening.

6 MR. FELLER: I can't do it Thursday.

7 MR. NEIDHART: Wednesday is fine with me.

8 MS. BOUTSIS: Mayor, what time is your
9 meeting?

10 MR. FLINN: It's at 5 o'clock. It's up in
11 West Palm Beach.

12 MS. BOUTSIS: Any recommendations that you
13 would like to see? Would you like to do it
14 Friday or do you want to hold it --

15 MR. FLINN: Why don't we just hold it and
16 discuss it later?

17 MS. BOUTSIS: We can hold it on the 3rd,
18 and I can always report to the mayor if he's not
19 there, and go from there.

20 MR. FELLER: I will put it temporarily on
21 my calendar.

22 MS. BOUTSIS: At 6 o'clock. Let's do it at
23 the Village Hall.

24 MS. STANCZYK: Six o'clock on the?

25 MS. BOUTSIS: The 3rd.

1 MS. STANCZYK: Please make Meighan aware of
2 the date.

3 MS. BOUTSIS: Yes, I will.

4 Regarding the attorney/client session, we
5 are going to have to publish it on the board and
6 that kind of thing.

7 So like I said, I don't believe that we
8 have much to really negotiate with and I don't
9 see us giving in, saying that the lawsuit is
10 discriminatory, whether we violated the comp.
11 plan.

12 MR. FLINN: Bottom line, they can come back
13 in six months -- what was the date that I heard?

14 MS. BOUTSIS: It's actually a year, a year
15 or two years. But yes, they could have come
16 back. If it's a substantial change, it could
17 have been six months. And the date of that
18 hearing was May -- May 20, something. I think it
19 was May.

20 MR. FLINN: I mean, even if this mediation,
21 you agree to give them another hearing, by the
22 time you notice it, you are talking December
23 anyway?

24 MS. BOUTSIS: Yes.

25 MR. FLINN: We could have all done this in,

1 you know --

2 MS. ROBINSON: It shouldn't be maybe
3 because I can't be here.

4 MS. BOUTSIS: So you know, on September 10,
5 is our motion to dismiss this lawsuit. So --

6 MS. STANCZYK: Sorry?

7 MS. BOUTSIS: September 10, is our motion
8 to dismiss this lawsuit. It's not just our
9 motion. W. Tucker Gibbs has joined in our
10 motion. John Shubin has done his own motion, but
11 it's basically the same basic argument --

12 MR. FLINN: By the way, let me go back to
13 something else.

14 We apparently agreed to this mediation, an
15 expedited mediation, and we have not even done
16 any discovery to try to position this case.

17 We are walking into a case, knowing really
18 no more than what we knew the day the cases were
19 filed.

20 So as far as I am concerned, you have not
21 prepared this case for mediation.

22 Who is paying for the mediation?

23 MS. BOUTSIS: All parties.

24 MR. FLINN: We are splitting the
25 cancellation fee? It's split in how many ways?

1 MS. BOUTSIS: Four ways, I guess.

2 Now as far as discovery, the only thing I
3 have to say is, we have the entire record. We
4 know what the issues are.

5 MR. FLINN: We are going in a mediation.
6 When is the motion to dismiss?

7 MS. BOUTSIS: The 10th.

8 MR. FLINN: The case could be dismissed and
9 we wouldn't even need to go to mediation and
10 spend the time on crap.

11 MS. BOUTSIS: We had the motion to dismiss
12 scheduled and it happened to be canceled the day
13 of Fay.

14 MR. FLINN: Why a 30-day cancellation was
15 done within 30 days of the motion to dismiss? It
16 is not really well founded. I mean, it would be
17 kind of silly to go to mediation and agree on
18 something -- because I assume you filed the
19 motion to dismiss in good faith. So if we have a
20 motion pending in good faith, we believe this
21 case should be dismissed for the reasons we plead
22 out in the motion.

23 MS. BOUTSIS: Correct.

24 MS. STANCZYK: I'd say we don't need
25 mediation following the motion to dismiss. There

1 is no reason to assume we are going to settle if
2 we are going to have it dismissed.

3 MR. FLINN: Or I don't know why we are
4 spending money on a motion to dismiss. We should
5 just answer and move on. We don't even have an
6 answer filed. We are going to mediation in a
7 case we are not even close to completing yet. We
8 have a complaint and we have not answered it.
9 We're not required any affirmative defenses.

10 So we are basically walking in there just
11 to try to get together and hash things out over a
12 very, very expensive cup of coffee.

13 MS. STANCZYK: Which I am not even sure I
14 want to do.

15 MS. BOUTSIS: I will figure out about how
16 to cancel the mediation.

17 MR. FLINN: Mr. Montalvo, how many cases
18 have you mediated pre motion to dismiss?

19 MR. MONTALVO: Many. I'd like to get to
20 know what the plaintiffs are thinking. It's
21 always good to know your opponent's position
22 early on. If we can resolve the case earlier, I
23 always think sometimes that's more inexpensive.

24 MR. FLINN: Are those cases where you filed
25 motion to dismiss pending or in good faith,

1 thinking it's going to be dismissed?

2 THE WITNESS: Yes, absolutely.

3 MR. FLINN: Can you point me to any of
4 those so I can take a look?

5 MR. MONTALVO: I will do so.

6 MS. BOUTSIS: In reality, we are looking to
7 try and make sure you are keeping your costs
8 down. And if there is a way of getting the
9 people to the table and hear what the issues are
10 and see if there is anything there. And it is a
11 requirement under the litigation to have
12 mediation.

13 And if it's a bust, it will be a short
14 mediation and you go on. At least you know what
15 your party's positions are and you have done it
16 in good faith and you meet your obligation.

17 MR. FLINN: It's just like I said, I can
18 see mediating before a motion for summary
19 judgment. The uncertainty gives you reason to go
20 in there and try to compromise before you know
21 why you had the uncertainty of what may or may
22 not happen, or even before trial.

23 But I mean, if we have got a motion to
24 dismiss pending, that we in good faith think this
25 case should be dismissed, I think we should get

1 the case dismissed. That would be the most
2 expeditious way to do it.

3 If we don't think the case should be
4 dismissed, we shouldn't be wasting our time with
5 the motion and just go there and file it as a
6 customary step. We should write the answer and
7 move forward.

8 MR. FELLER: Why -- the other two attorneys
9 representing the homeowners know, I am sure, that
10 there is a motion to dismiss?

11 MS. BOUTSIS: Yes.

12 MR. FELLER: Why -- I am not an attorney.
13 It seems to me mediation -- why should mediation
14 not come after a motion to dismiss if you lose,
15 rather than talking about it before? I don't
16 understand the issue.

17 MS. BOUTSIS: That's basically what the
18 mayor has said. And the answer is --

19 MR. FELLER: I am asking this because I
20 know the way the mayor feels, but I don't
21 understand even why we are going to mediation if
22 your motion to dismiss may win.

23 MS. BOUTSIS: I think we have good
24 arguments in our motion to dismiss.

25 Our courts, circuit courts likely to -- no

1 matter how good your arguments are, often they
2 say, wait for summary judgment. That's a
3 reality. A lot of courts do that.

4 So I think of it as a 50/50 type thing.

5 MR. FELLER: Is there a time issue,
6 though --

7 MS. BOUTSIS: No.

8 MR. FELLER: -- that we can't have the
9 mediation after, do we lose anything?

10 MS. BOUTSIS: No. If you wanted to settle
11 also, if you have any desire to settle that was
12 reasonably acceptable to any of the parties --

13 MR. FELLER: We cannot make a decision
14 until you come back to us. You may not come back
15 to us before the motion to dismiss.

16 MS. BOUTSIS: In reality, I have already
17 scheduled the A/C session the same day. That's
18 the whole point.

19 Litigation is expensive. That's what it
20 comes down to. You are on a tight budget here.
21 Not that that's an excuse, but it was a part of
22 our rationale in agreeing to the mediation --

23 MR. FELLER: I understand. It's not a
24 question of not trying to settle and not have a
25 mediation. But if you filed a motion to dismiss,

1 going to court, that's an expensive court visit.

2 MS. BOUTSIS: Originally it was scheduled
3 before mediation.

4 MR. FLINN: Did you file any documents with
5 the court indicating we are going to mediation?

6 MS. BOUTSIS: Yes.

7 MR. FLINN: So basically you have alerted
8 the judge that in your opinion the case will move
9 forward. So when the judge looks at the court's
10 file, I think it's going to weigh on the
11 appropriateness of our motion to dismiss in
12 whether we're coming in with guns blazing and the
13 case should be dismissed and shouldn't be a cost
14 to the taxpayers to move forward anyway. And
15 they can say, why are we even here?

16 MS. BOUTSIS: I don't know that I
17 necessarily agree with that.

18 You can say, look, Your Honor, we have
19 tried to resolve it, if it doesn't work out. If
20 you work it out and you work it out, you got the
21 result you want. If you haven't worked it out,
22 you can honestly say -- we know we were right.
23 We filed a motion to dismiss. You know, we have
24 done our best efforts to try and keep costs down.
25 We've done our best efforts to try to get this

1 resolved. We even met early. It's not going to
2 happen.

3 That would be important for the judge to
4 know.

5 MS. STANCZYK: My only problem is, I have
6 never seen a step taken on Palmer's side to give
7 it all.

8 So if they are feeling in pushing for this
9 is that we are going to hand them back something,
10 then we need to forget it.

11 MS. BOUTSIS: Understood.

12 MS. STANCZYK: They have had plenty of
13 opportunities to give. And the reason they have
14 not given, they have not talked, they have not
15 done anything, that's why we are here.

16 We have taken very little on our part to
17 avoid the entire scenario. I can probably list
18 five things --

19 MR. FLINN: I'd rather you not list them
20 because number one --

21 MS. STANCZYK: What I am saying is that I
22 can probably think of five things that could just
23 support the issue.

24 MS. BOUTSIS: Regardless, the traffic
25 issues we don't --

1 MS. STANCZYK: That would be number one.

2 MS. BOUTSIS: Look, I will talk to the
3 mediator and talk about trying to reschedule it
4 for a later date after the motion to dismiss.

5 If that's not something easily achievable,
6 then we will go on the 3rd, and go from there
7 with an attorney/client session the same evening.

8 MR. FELLER: Fine by me.

9 MR. FLINN: So basically, the whole point
10 of this attorney/client session was to tell us
11 that we have a mediation coming and to schedule
12 another one for the night of the mediation.

13 I see nothing substantive, no decisions
14 made today.

15 MS. BOUTSIS: No final decisions on
16 anything, no. It is to have a representative, to
17 determine who the representative would be at the
18 mediation, lay out the parameters of what could
19 happen in the mediation and what cannot. And
20 what cannot happen at the mediation is a contract
21 zoning.

22 According to our review of the issues, I
23 don't think there is certain things that you as
24 council would want to agree to, and I have laid
25 those out.

1 And from their point of view, they probably
2 will try to have another public hearing.

3 MR. FLINN: This is what troubles me,
4 because someone is going to come back and read
5 these transcripts one day. And we have learned
6 from other litigations with the county.

7 And I don't like laying out my thought
8 process because often times I use my thought
9 process in other matters. I don't know why we
10 cannot do it like the county does it.

11 We are here tonight. We are not taking any
12 vote or formal action. And we kind of --
13 obviously if we were going to have to vote on
14 whoever that representative was going to be,
15 there would have been a motion, a second and a
16 vote taken on that.

17 And I think this could have been done
18 individually with people and we could have talked
19 more frankly here.

20 Things that I said today out of passion
21 will not be part of the record. It disturbs me.

22 I want to keep costs down and expeditiously
23 move things. So I think there's got to be a more
24 efficient way to do these things than to have to
25 be here. It would move much quicker and we

1 wouldn't need to worry about when everybody is
2 available. This could have been done days or
3 weeks ago.

4 So my point is I don't think we should have
5 another attorney/client session on any issue,
6 unless there is a need for a motion or some
7 formal action. Otherwise, we can just meet
8 individually. And I don't think the sum of all
9 the different briefings would exceed the time and
10 expense of putting these meetings together.

11 MS. BOUTSIS: I can do it anyway you like
12 me to do it. Just understand that by doing
13 individual briefings, I can't communicate to you
14 what the other council members say. You will not
15 have a meeting of the minds. I can't say I
16 talked to Shelley and her position is this. That
17 would be polling and that's a violation --

18 MR. FLINN: My impression is that we don't
19 have a meeting of the minds here. I got some
20 people upset, some people wondering and --

21 MR. FELLER: Let's say, Gene, that you have
22 the mediation happen. And the attorney can
23 contact us, whether there is anything concrete to
24 even talk about. If there is nothing concrete to
25 talk about, there is no reason to have a meeting.

1 MR. FLINN: What I understand from this
2 meeting, the only thing we can talk about is
3 whether or not we'd be willing to go back and
4 have a hearing on the issue --

5 MR. FELLER: Because there may be a zoning.

6 Let's say they offer to do A, B, C, and we
7 want to talk about A, B, C, D. We cannot talk
8 about that because it might come back to zoning.

9 MR. FLINN: Well, the lawsuit is not going
10 to end. Let's say we agree and we settle the
11 lawsuit. And the agreement is that we are going
12 to go back and have a hearing. So the litigation
13 is now at rest. It's been dismissed with
14 prejudice.

15 This transcript is public. They are going
16 to go look at this transcript and say, look,
17 Councilwoman Stanczyk says there are so many
18 things they could have done to avoid the
19 situation. She must be prejudiced against me. I
20 move to recuse her.

21 MR. FELLER: I don't think that would be
22 prejudiced.

23 MR. FLINN: I am not admitting that. I
24 think they would be wrong in doing it. You've
25 got to separate out intent and attempt.

1 The issue versus -- you know, somebody
2 wants to raise, I assume the standard for recusal
3 in a zoning is the same as it is in a court of
4 general jurisdiction in terms of it's a
5 reasonable fear not receiving a -- you don't have
6 to prove up actual prejudice.

7 MS. BOUTSIS: They would have to go to the
8 zoning --

9 MR. FLINN: They have to file a legally
10 sufficient motion. And a legally sufficient
11 motion may be that based upon a statement made
12 during the client/session, she has a preconceived
13 opinion toward the intent of Palmer Trinity and
14 their willingness to negotiate.

15 MS. BOUTSIS: For her or for anybody else
16 in the council. And that would be true of any
17 statements made in the past, whether at a private
18 hearing or some other hearing, some statement to
19 a resident which is the whole ex parte
20 communication issue.

21 I mean, they are networking that those ex
22 parte communications have prejudiced them in the
23 process.

24 So you should always be careful what you
25 say, because yes, your record is published.

1 But as your counsel, for going through
2 these things, and for you to be able to
3 communicate and to get a consensus of what you
4 want to do, this is the way to do it. Any other
5 thing would be a violation.

6 MR. FLINN: So I would suggest to this
7 council that for future meetings, the discussion
8 will go, basically a presentation by the attorney
9 and we will ask if we need to make any motions or
10 any actions.

11 And other than that, any other comments or
12 general discussion or statement of opinion or
13 fact should not be made, because of the fact that
14 this is all going to be discoverable before we go
15 back to a hearing.

16 Now, I would suggest that nothing be set
17 unless there is a stipulation that these remain
18 sealed until the zoning portion of Palmer Trinity
19 is resolved.

20 MS. STANCZYK: The lawsuits or just the
21 zoning?

22 MR. FLINN: I think all lawsuits. And if
23 you tell me it cannot be done, I think that
24 Shelley wasn't probably properly cautious.

25 Now, I understand that she did not mean it

1 as a fact. I think she was laying it as a
2 possibility or some surmising but --

3 MS. ROBINSON: How quickly does this become
4 public?

5 MS. BOUTSIS: At the end of litigation,
6 once the final judgment or a dismissal is
7 entered. So there is ways of working through all
8 that.

9 MS. ROBINSON: It shouldn't come up before
10 the final --

11 MS. BOUTSIS: There is a way of working
12 through all that. We have done it before. But
13 you are right, eventually it does become public.
14 That's always been true.

15 Do I agree with the law? No. In labor or
16 negotiation, you don't have any record or a court
17 reporter, period. But I don't control how the
18 law is written.

19 MR. FLINN: I also don't understand why we
20 need a verbatim record when we can use summary
21 minutes on a session like this.

22 MS. BOUTSIS: I don't disagree, but the
23 statute says --

24 MR. FELLER: Can I make a suggestion?

25 MR. FLINN: Yes, sir.

1 MR. FELLER: Let's terminate the session.

2 MR. FLINN: Absolutely.

3 MS. BOUTSIS: It is now a quarter to seven.

4 The session is over so we can allow the public
5 in.

6 And if I can take care of the fee issue, I
7 will.

8 (Thereupon, the proceedings were concluded
9 at 6:45 p.m.)

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STATE OF FLORIDA)
) SS
COUNTY OF DADE)

I, SONIA E. ARAGON, Shorthand Reporter and Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did report the foregoing proceedings and that the transcript is a true record.

Dated this 10th day of September, 2008.



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