

PALMER TRINITY PRIVATE SCHOOL,

Plaintiff,

vs. Circuit Court Case No. 08-28977 CA 30

VILLAGE OF PALMETTO BAY,

Defendant.

ORIGINAL

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PALMER TRINITY PRIVATE SCHOOL,

Plaintiff,

vs. Appellate Court Case No. 08-245-AP

VILLAGE OF PALMETTO BAY,

Defendant.

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Village of Palmetto Bay,
8950 S.W. 152nd Street,
Palmetto Bay, Florida
Tuesday, 6:04 p.m.,
December 2, 2008.

NOTICE OF ATTORNEY-CLIENT SESSION

1 APPEARANCES:

2 EVE A. BOUTSIS, Village Attorney.

3 EUGENE P. FLINN, JR., Mayor.

4 BRIAN PARISER, Vice Mayor.

5 ED FELLER, Councilman.

6 HOWARD TENDRICH, Councilman.

7 SHELLEY STANCZYK, Councilwoman.

8 RON E. WILLIAMS, Village Manager.

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1 MS. BOUTSIS: Good afternoon, everyone.

2 It is December 2, 2008. It is now 6:04 p.m.

3 And as the Village attorney, I have
4 requested that you come together here at Village
5 Hall at 8950 S.W. 152nd Street, Palmetto Bay.

6 Present tonight, I'll go around the table,
7 is Councilman Ed Feller, Councilman Howard
8 Tendrich, Vice Mayor Brian Pariser, Village
9 Manager Ron E. Williams, Councilwoman Shelley
10 Stanczyk and Mayor Flinn.

11 As you know, I have requested an
12 attorney-client session to go over litigation
13 strategy and budgets and other issues, including
14 settlement related to several matters, and I'm
15 going to read those actions.

16 Palmer Trinity Private School vs. Village of
17 Palmetto Bay. Circuit Court Case No. 08-28977 CA
18 30.

19 Palmer Trinity Private School versus Village
20 of Palmetto Bay. Appellate Court Case No.
21 08-245-AP.

22 And, finally, Village of Palmetto Bay versus
23 Miami-Dade County. Case No. 08-14156 CA 27.

24 As you know, a court reporter is here taking
25 down testimony. So if everybody could speak one

1 person at a time so we are not speaking over each
2 other because the court reporter cannot get that
3 information down.

4 And to facilitate our new court reporter,
5 before anyone speaks, if you would just introduce
6 yourself. Say this is Councilman Feller or Mayor
7 Flinn speaking and let the court reporter take
8 that down.

9 I know most of you are familiar with this
10 process and I'm sure our vice mayor is, but,
11 Councilman Tendrich, I don't think you've ever
12 been in an attorney-client session before for
13 anything.

14 COUNCILMAN TENDRICH: Correct.

15 MS. BOUTSIS: The easiest way of handling
16 this, if you have any questions, ask them.

17 Try not to talk over each other, like I
18 said. Don't do what I'm doing, which is uh-uhs,
19 uh-huhs, because they don't get picked up by the
20 court reporter.

21 If the court reporter would just separate
22 these into separate matters, Palmer Trinity into
23 one and the other case, which is the case against
24 Dade County separately because they are separate.

25 Where would you like me to start?

1 Would you like me to start with Palmer
2 Trinity, since we had mediation and we have
3 others here who attended mediation with me and
4 they were very helpful?

5 In the Palmer Trinity matter, you may
6 recall--was it two Fridays ago we had mediation?
7 It was an all day event. I think it started at
8 10:00. We were there until at least 6:00. And
9 there were 24 people in the room, 25 people in
10 the room. OCCI was present, as was their
11 attorney, Tucker Gibbs. Palmer Trinity
12 representatives were there, including four of
13 their attorneys. Stan Price, Carter Mac Dowell,
14 Alexander Deas and Mitch Widom.

15 The mediator, Joel Levine was present. And
16 I think it is safe to say that he probably
17 aggravated Palmer Trinity and OCCI, the Old
18 Cutler group, let's do that in case I got the
19 acronym wrong, the Old Cutler group aggravated.
20 I think he pushed both of them to try to come to
21 some sort of middle ground.

22 Ultimately we did not come to an impasse but
23 we did not come to a final resolution and I'll
24 ask Councilwoman Stanczyk to give her impressions
25 of the mediation and Mr. Williams, as well.

1 There was a lot of discussion and quite a
2 few options were thrown out for discussion,
3 whether it was going to small groups for
4 discussion purposes, whether it was relating to
5 number of students or expansion, not expansion.
6 The gamut was raised by the mediator.

7 I did neglect to say that there was also a
8 representative present, which was another law
9 firm, the Shubin & Bass law firm was present with
10 their clients, two representatives from the
11 Cutler Bay Homeowners Association.

12 The Cutler Bay Homeowners Association
13 basically said we just want a more liveable
14 condition, I think is what they phrased their
15 position as, and basically indicated they could
16 live with about 900 students at the expanded
17 campus. That was their line.

18 And you may recall this is an expansion or
19 proposed expansion request and there are two
20 lawsuits, the appellate request from the
21 decision, the council to deny the request for a
22 change in zoning, variances and the special
23 exception to expand the school from an existing
24 parcel onto two other parcels, which would extend
25 the property to 55 acres, starting at S.W. 176th

1 Street and going all the way to S.W. 184th
2 Street.

3 The second lawsuit Palmer Trinity had filed
4 was a lawsuit mirroring their appellate court
5 action but calling it something else, basically
6 alleging the process violations, a violation of
7 the system's bill of rights and equal protection
8 arguments.

9 I had asked that Mr. Williams and
10 Councilwoman Stanczyk really not offer too much
11 information because this was a way of us
12 gathering information from the other sides and
13 not put ourselves out on the record too much out
14 there and I don't think we did.

15 We didn't say yes or no to anything and,
16 obviously, we said we would have to come back to
17 the council for any future action and agreement
18 of this council and, of course, as a zoning, we
19 can't contract zone. So we couldn't agree to
20 anything at a mediation to actually agree to a
21 number of students or to an expansion.

22 That being said, I think the mediator sort
23 of beat up the other two sides, meaning Palmer
24 Trinity and the residents from Old Cutler, and it
25 finally came out that the residents from Old

1 Cutler were very disinfranchised or I think they
2 felt very disinfranchised and they felt very
3 distrustful of all the representatives of Palmer
4 Trinity, including their attorneys.

5 They did not feel that there was honesty and
6 trust to be had with Sean Murphy or with any
7 other of the representatives from Palmer Trinity
8 that came to the mediation, except for perhaps
9 the person that we finally chose and his name
10 escapes me at the moment.

11 COUNCILWOMAN STANCZYK: Calback.

12 MS. BOUTSIS: He's the chairperson.

13 COUNCILWOMAN STANCZYK: He is the chairman of
14 the board. Calback was one of the attorneys.

15 MS. BOUTSIS: I'm sorry. His name just
16 escaped me.

17 Before further discussion was had, because a
18 number was bandied about, about a number of
19 students if it was an expansion and what the
20 residents could possibly live with.

21 Originally the position was 600 and I think
22 600 is the number they would like to see, but
23 there was some concession, perhaps they could
24 live with up to about 800 students?

25 COUNCILWOMAN STANCZYK: That was a concession

1 when people were reaching for concessions to be
2 made on their side. It wasn't something they
3 offered, well, we could live with 800 or
4 whatever. It was because they were giving a
5 genuine effort at giving and expecting something
6 in return when the other side offered actually
7 less than what they had given in the original
8 plan.

9 They had actually added three items.

10 Their settlement document was the original
11 plan with three additional items they wanted that
12 were not allowed in the original plan when it
13 went through zoning.

14 MAYOR FLINN: Eugene Flinn.

15 We didn't even reach those issues at our
16 hearing.

17 MS. BOUTSIS: We did not.

18 The only thing that was actually resolved at
19 the zoning hearing was that there was a denial of
20 the rezoning and the other two items were never
21 ruled upon.

22 MAYOR FLINN: So what is their theory that
23 somehow they can reach through?

24 It seems to me the best they are going to do
25 is get a redistrict, a new district to the

1 single-family district from the agricultural and
2 not an entire approval of the site plan if I'm
3 correct.

4 MS. BOUTSIS: They are pushing the opposite
5 position. They would like to be able to get
6 everything but I think they realize there is a
7 weakness in that position.

8 MAYOR FLINN: I mean, a bifurcated hearing,
9 you got it.

10 Basically, that's what it was. I don't see
11 how the judge can reach back. It takes findings
12 insofar as the variances they want. I don't
13 think a judge can award that. I think the only
14 thing he can do is remand it and have us change
15 the districts and have a hearing.

16 MS. BOUTSIS: On the remainder of the issues.

17 Palmer Trinity did come back with about 100
18 students less and the second time maybe another
19 100 students less.

20 But at some point the--it just appeared that
21 the parties were way too far apart and there
22 shouldn't have been any more concession I think
23 by the Old Cutler residents and Mr. Gibbs
24 expressed those opinions.

25 We really have come in here in good faith.

1 We have gone up to 800. We are talking about
2 possibly 900.

3 VICE MAYOR PARISER: An additional 800 or
4 total?

5 MS. BOUTSIS: Total.

6 VICE MAYOR PARISER: From 600 to 800. Okay.

7 MS. BOUTSIS: And Palmer Trinity was asking
8 for basically 1400 students and then they went
9 down to 1300 students and then down to 1200
10 students.

11 COUNCILWOMAN STANCZYK: They started at 1600.

12 VICE MAYOR PARISER: They came up 200 and
13 they came down 200?

14 MS. BOUTSIS: Yes.

15 VILLAGE MANAGER WILLIAMS: The final number
16 was around 1150.

17 VICE MAYOR PARISER: That's when everybody
18 left the table.

19 COUNCILWOMAN STANCZYK: That was a mutual
20 1150?

21 VILLAGE MANAGER WILLIAMS: That was Palmer's
22 number.

23 VICE MAYOR PARISER: Palmer left at 1100?

24 MS. BOUTSIS: What happened next was there
25 was a discussion had, how can we deal with a

1 number when there are so many other issues,
2 especially trust issues that are a problem.

3 There are noise issues.

4 There is traffic issues.

5 There is all these other issues.

6 So I think it was a good idea that a small
7 group was created. One representative from
8 Cutler Bay Homeowners Association, one
9 representative, which was Joan Lindsey, from the
10 Old Cutler group, one from Palmer Trinity, who
11 happens to be the chairman of the board and that
12 was the person that was selected they felt they
13 could have a trustworthy relationship with and to
14 have a small group to continue the negotiations.

15 They would be privileged but they would be
16 informal without the mediator there.

17 Perhaps one at Palmer Trinity, one at Joan
18 Lindsey's home, that kind of thing to get the
19 dialogue going and build the trust.

20 I will tell you, they already had the first
21 meeting and I spoke with Mr. Gibbs yesterday. He
22 indicated to me that that meeting went very, very
23 well. That for the first time Joan Lindsey, she
24 represented she felt she was listened to. She
25 wasn't just a body in the room just being talked

1 at. And that they actually had some good
2 communication.

3 So they are scheduling the second meeting to
4 see if they can actually come to some sort of
5 terms or agreements on some of these issues and
6 then we can all come back together at another
7 mediation and hopefully come back with an offer
8 to you all for whether it is a settlement offer,
9 whether it is to have another hearing, whether it
10 is not to have another hearing. I mean, the
11 options are open.

12 But I do think it was progress. As part of
13 that plan and as a concession to both sides--when
14 I say both sides, I mean the Old Cutler and
15 Palmer Trinity--we sort of stayed neutral during
16 most of this discussion agreed to stay the
17 litigation for the next month so that matters
18 could be discussed.

19 The homeowners group did agree to stay the
20 filing of a petition on a different issue. It is
21 their charter petition. But as a concession to
22 the concept of working together, they agreed to
23 not file until after the negotiations are over
24 and probably that will not occur until January
25 because of the holidays.

1 Ms. Stanczyk, did I get the flavor right?

2 COUNCILWOMAN STANCZYK: I think pretty much.

3 I think probably one little bit of taste
4 that we need to understand is that Palmer
5 actually gave up very little.

6 They really appeared to come with no genuine
7 interest to mediate in the full sense of the
8 word.

9 When you present a document that was what
10 was prepared when they filed their zoning
11 application and added items that had already been
12 negotiated through our zoning department and
13 expect that to be their final settlement, they
14 didn't move off of it.

15 That's kind of truth telling.

16 MS. BOUTSIS: What Councilwoman Stanczyk is
17 talking about is to start the conversation going,
18 and I think it is a ploy of the lawyers, they
19 came in with their numbers and said we are
20 willing to concede on these issues and there was
21 the items that Ms. Weintraub had placed in the
22 zoning agenda as the 12 or 15 conditions for
23 moving forward on the entire application.

24 The way it was expressed I think by Mr.
25 Levine and Mr. Price at some point and I don't

1 know if it was during the mediation or
2 afterwards, after the mediation to me, you know,
3 your village through your zoning director got a
4 lot of these concessions for the recommendation
5 going forward, so we thought we were doing this
6 in good faith by saying this is our starting
7 point, we are willing to not fight overall the
8 things that Ms. Weintraub wanted. We will give
9 them to you.

10 I will say they were willing to do those at
11 the original hearing in the first place.

12 COUNCILWOMAN STANCZTK: Then she added three
13 items.

14 MS. BOUTSIS: Then she added three items.

15 Thereafter they did come down a couple of
16 hundred in the number of student enrollment over
17 a 15-year period.

18 In addition to that, they wanted to go
19 through each item and say let's work on the
20 lights, let's work on this, let's work on that
21 and go through the different individual items.
22 But because of the level of lack of communication
23 and I think some of the distrust between the
24 parties, it was better--it was a better decision
25 to have the parties actually communicate and get

1 that communication going so a level of trust can
2 be built and then come back to the table.

3 Mr. Williams, do you have anything to add to
4 that?

5 VILLAGE MANAGER WILLIAMS: Not much.

6 I think that's a very good summary.

7 Just a couple of points that I would make
8 is, first, I thought the mediator did a really
9 good job of nudging both sides forward and he did
10 it with ideas, as well. He didn't leave it to
11 you to come up with stuff. He had ideas to
12 present that I think we were able to grab ahold
13 of and move forward.

14 As a matter of fact, we were expecting a
15 shorter session.

16 We didn't leave downtown until well after
17 5:00.

18 MS. BOUTSIS: 6:00.

19 COUNCILWOMAN STANCZYK: We started about
20 9:30.

21 VILLAGE MANAGER WILLIAMS: He clearly kept
22 people moving forward.

23 Just one note and it is not so substantial,
24 but I think some of the progress that the Old
25 Cutler group might be feeling is they were very

1 insistent upon meeting or having this chairman
2 whose name we will get to you as a part of the
3 small subgroup I think was an important point
4 because this gentleman--first of all, they felt
5 very strongly about this person meeting with them
6 as compared to anybody else on the Palmer side,
7 but they went back and suggested someone else and
8 the someone else was not accepted because this
9 chairman really I guess because of business has
10 been spending half of his time in Chicago and was
11 not available as readily as others. But he made
12 the commitment to regardless of his tough
13 schedule to be a part of the group and obviously
14 he will be there at the initial meeting and will
15 be there at others.

16 Where it would have been convenient for
17 someone else, there was an objection. But I
18 think the positive side was this chairman thought
19 he would work around whatever schedule he needed
20 to move forward.

21 MS. BOUTSIS: As far as discovery-wise, as
22 you know, they were trying to schedule the
23 depositions of the then council, also Vice Mayor
24 Linda Robinson and Councilperson Knightheart.
25 All of the discovery has been stayed at this

1 point in order to accommodate the settlement
2 negotiations.

3 COUNCILWOMAN STANCZYK: However, let's
4 mention that the discovery hearing that they had
5 set, they had set without notice.

6 MS. BOUTSIS: Oh, yes.

7 COUNCILWOMAN STANCZYK: It was going to be
8 cancelled anyway.

9 VICE MAYOR PARISER: So what is your
10 feeling--as far as I'm concerned, follow--settle
11 it, fine with me.

12 COUNCILMAN FELLER: Asking about two issues
13 whether they were discussed at this full day
14 session.

15 One was the issue of not having two traffic
16 egress and ingress to the property discussed.

17 MS. BOUTSIS: It was raised at some point,
18 yes.

19 COUNCILMAN FELLER: The second thing is with
20 the number of students vacillating back and
21 forth, did that relate at all to the level of the
22 students they were at?

23 COUNCILWOMAN STANCZYK: Yes, they talked
24 about eliminating or possibly eliminating the
25 elementary level.

1 COUNCILMAN FELLER: If they eliminated the
2 elementary level, might the small group talk
3 about closing the entrance on 176th?

4 COUNCILWOMAN STANCZYK: I don't know.

5 VILLAGE MANAGER WILLIAMS: It did not get to
6 that point.

7 COUNCILWOMAN STANCZYK: Because they never
8 gave anything. So it was hard to make any
9 progress.

10 COUNCILMAN FELLER: That would be progress
11 for a good portion of the people who live in that
12 area.

13 VICE MAYOR PARISER: Do you have a concern
14 the groups that were involved in this don't
15 represent the majority of the opinion?

16 COUNCILMAN FELLER: I don't know.

17 VICE MAYOR PARISER: My view of it is they
18 are in negotiations, they seem to have the
19 loudest screams and again if it is possible for
20 them to come to a settlement, you know, I would
21 rather stay back except for maybe technical
22 things and let it be done.

23 But I'm curious that I don't know if the
24 economics worked for Palmer Trinity at one level
25 of student population?

1 It just doesn't work for them.

2 Is that a killer?

3 But that's up to them.

4 COUNCILWOMAN STANCZYK: At this point what I
5 heard, I did hear a few comments that were made
6 during their meeting on their walk around the
7 block in the community and their drive around.
8 They admitted they are already at 641. They have
9 641 students enrolled and that is well over a
10 million dollars in extra income they are bringing
11 in in banking.

12 MAYOR FLINN: It expenses that, too.

13 COUNCILWOMAN STANCZYK: When you take 41
14 students and amortize it over the 600, you are
15 supposed to have--actually, it only gives them
16 about two or three extra kids per class.

17 So the expenses to that are minimal.

18 MS. BOUTSIS: To answer your question.

19 Lots of different issues were brought up.

20 I had a communication with Carter Mac Dowell
21 I think before the lawsuit was filed, it may have
22 been after the hearing, and Carter represented to
23 me at that time that he was looking to as a
24 concession at the hearing but he never made it at
25 the hearing that I recall, to reduce the number

1 of students to 1100, which was a number that our
2 zoning director had placed in her memorandum
3 originally. She had put in that number versus
4 the number they had given and when Ms. Weintraub
5 met with them, she said that's an arbitrary
6 number, how did you come up with 1100?

7 We need the criteria under A, B, C, D, E.
8 We are entitled to this number and I think from a
9 technical point of view they were right, so she
10 took out the number.

11 VICE MAYOR PARISER: What is the break point
12 for the OCCI people as far as number of
13 students?

14 MS. BOUTSIS: I don't know.

15 VILLAGE MANAGER WILLIAMS: We know their
16 upper number.

17 MS. BOUTSIS: Their position has been 600.
18 There is an upper number. I don't think they
19 expressed what the upper number is. They
20 represented their upper number was 800. I don't
21 know they can't go a little higher or a little
22 lower, but between 600 and 800 are the numbers
23 they represented.

24 But my feeling on this is if these small
25 sessions work, I think we can actually make

1 progress towards really getting this resolved.

2 MAYOR FLINN: It looks to me the things are
3 progressing but nothing to report. I think we
4 have a pretty good feeling and how much we want
5 to discuss under this session unless we have a
6 concrete thing to make a motion and move on.

7 I believe at this point you can talk
8 separately with people and get a flavor on what
9 they want to do. If there is---

10 MS. BOUTSIS: There is no motion.

11 VICE MAYOR PARISER: The only motion would be
12 to continue mediation in the matter.

13 MAYOR FLINN: Good progress. Let's keep
14 going. But we have to remember the fact we have
15 to do zoning by law.

16 MS. BOUTSIS: We can't contract zoning.

17 MAYOR FLINN: It is a quais hearing.

18 We have to do it based on the facts and
19 evidence presented.

20 I think we profited the first time.

21 Otherwise, I wouldn't have ruled that way.

22 I'm comfortable with how I ruled and I think
23 we need to continue and move forward and see.

24 If they come back with an agreement, I think
25 it is still incumbent upon us to review those

1 items and make sure they are factually correct
2 and legally sufficient. Otherwise, we could find
3 a group suddenly springing up and appealing that.

4 MS. BOUTSIS: Correct.

5 MAYOR FLINN: So regardless of what these
6 groups do, I would rather have people come to an
7 agreement, but people could come and agree to
8 something that is totally outside of what is
9 appropriate.

10 The only thing I might add to put things at
11 rest is that we do need some enforceability to
12 this agreement and I think at some point now is
13 not the time or probably if it gets to the point
14 where they are going to come back to the hearing.

15 I think the final point doesn't come out
16 until the hearing itself is that we need
17 reporting, we need verification and we need a
18 sanction ability if they violate the student
19 numbers.

20 MS. BOUTSIS: On that note I should tell you
21 those issues were raised and that the parties
22 have agreed in concept to putting that language
23 down into paper, including the law firm of Shubin
24 & Bass that represents the Cutler Bay residents,
25 Mr. Gibbs and our firm.

1 MAYOR FLINN: And I also think if they want
2 to be part of the community, they need to open up
3 to the community and if they truly say they are a
4 benefit to the community, they are in looking at
5 that map behind Councilman Feller, they are in an
6 enclave divided by a canal.

7 I don't see any reason they can't open up to
8 the residents who clearly live east of the C100
9 as it meets up with 180 and south of 184 where it
10 is heading out to the bay and they have tennis
11 facilities, they have walking facilities and they
12 should really create a neighborhood friendly,
13 they want to have a park-type campus, they should
14 open it up to the neighbors there and really try
15 to develop things, allow these people to come to
16 their shows.

17 I mean, I don't think they want to do it
18 village wide and everything else, but I think
19 they really--don't play the game they are going
20 to be neighborhood friendly and create a wall
21 around themselves.

22 To me that's very inconsistent.

23 MS. BOUTSIS: That was I think the
24 interesting part of our mediator. He actually
25 raised all those kinds of issues for selling

1 purposes.

2 Opening it up, giving night classes, even if
3 they wanted, inviting to performances, football
4 games, even perhaps a reserve on a portion of
5 their property so it is a natural park and buffer
6 sort of thing and the rest be school.

7 All these things were raised at some level,
8 some were discussed more than others, but they
9 were raised as a part of possible settlement.

10 Alright.

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1 VILLAGE OF PALMETTO BAY,
 2 Plaintiff,
 3 vs. Case No. 08-14156 CA 27
 4 MIAMI-DADE COUNTY,
 5 Defendant.
 6 -----/

10 Village of Palmetto Bay,
 11 8950 S.W. 152nd Street,
 12 Palmetto Bay, Florida,
 13 Tuesday, 6:04 p.m.,
 14 December 2, 2008.

16 NOTICE OF ATTORNEY-CLIENT SESSION

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1 APPEARANCES:

2 EVE A. BOUTSIS, Village Attorney.

3 EUGENE P. FLINN, JR., Mayor.

4 BRIAN PARISER, Vice Mayor.

5 ED FELLER, Councilman.

6 HOWARD TENDRICH, Councilman.

7 SHELLEY STANCZYK, Councilwoman.

8 RON E. WILLIAMS, Village Manager.

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1 MS. BOUTSIS: We are going to move onto the
2 second matter, which is against Miami-Dade
3 County.

4 This is really just a short status report on
5 the Miami-Dade County litigation.

6 As you know, two weeks ago the county
7 commission approved two resolutions relating to
8 the Village of Palmetto Bay. Resolution No. 1
9 was to end litigation. No. 2 was a resolution to
10 end specialized police services and elimination,
11 meaning removal from our charter.

12 There is a process for doing that under the
13 county charter. A super majority vote was needed
14 and we did get the super majority vote.

15 Going forward, the next step would be for
16 our community to--well, my office really to draft
17 the language with a ballot question and then to
18 pass that onto the County Attorney's Office for
19 approval and to coordinate with the elections
20 department to schedule the election for the vote
21 of our electorate.

22 The concept was since Doral has a similar
23 resolution and Miami Lakes has a similar
24 resolution is to have three cities get their
25 ballot language in around the same time, have

1 their councils approve the sitting of an election
2 for the same date, with the same effective date.

3 Meaning let's say we meet on Monday, Doral
4 meets on a Wednesday, Miami Lakes meets the
5 following Tuesday, we all have the same effective
6 date for our resolutions let's say a week later
7 and start the time period for the election
8 process and have the same election dates and the
9 reason for that is the county is paying for the
10 election, they still have not determined whether
11 it will be an actual go pull your ballot election
12 of a mail in.

13 MAYOR FLINN: Let's push for a mail in
14 ballot.

15 MS. BOUTSIS: They are looking at mail in
16 because it will be cheaper.

17 COUNCILMAN FELLER: It will be much easier.

18 COUNCILWOMAN STANCZYK: If it were to be
19 combined with another item, such as the charter
20 change for the referendum.

21 MAYOR FLINN: That could be on the mail out
22 ballot, as well.

23 VICE MAYOR PARISER: The same election?

24 MS. BOUTSIS: It could be. Yes.

25 VILLAGE MANAGER WILLIAMS: The county would

1 obviously have to agree to that second election.

2 MAYOR FLINN: No.

3 The county would agree to it. We would have
4 to pay for the coding and any additional cost.

5 MS. BOUTSIS: That's correct.

6 MAYOR FLINN: I have all the confidence in
7 the world it will be done, but I think a mail out
8 would be much more effective. They have to have
9 an on-site campaign.

10 VILLAGE MANAGER WILLIAMS: They are looking
11 to do a mail in?

12 MAYOR FLINN: Yes.

13 That would be in the best interest of the
14 issues to do a mail out ballot.

15 MS. BOUTSIS: That being said, simultaneously
16 with the election, we would be required to
17 dismiss our lawsuit with prejudice. That is the
18 way the resolution from the county has been
19 authorized.

20 The numbers I think I have sent everybody a
21 copy of.

22 MAYOR FLINN: Let me ask you something on
23 that.

24 We voluntarily dismiss our lawsuit with
25 prejudice. I guess that does become a res

1 judicata.

2 We can't file again?

3 Why don't we voluntarily dismiss it without
4 prejudice now?

5 MS. BOUTSIS: Why do you want to do it before
6 the election?

7 MAYOR FLINN: Because we are filing without
8 prejudice now.

9 MS. BOUTSIS: Without prejudice now?

10 MAYOR FLINN: We don't have a lawsuit
11 pending.

12 What are they going to do? Make us refile
13 it and voluntarily dismiss with prejudice?

14 MS. BOUTSIS: The problem is the county
15 resolution currently says for you to go forward
16 with the election, you have to dismiss with
17 prejudice.

18 VICE MAYOR PARISER: I don't have a problem
19 with that.

20 My concern, as I raised this before, this
21 whole thing of mitigation, depending how good our
22 chances are, no attorney can guaranty 100 percent
23 the outcome. I wouldn't mind spending 300,000 to
24 get three and a half million in escrow.

25 Assuming that's so, so I don't want to be in

1 a position that--and I heard there was some
2 hesitation or some stuttering on Miami Lakes'
3 part.

4 MAYOR FLINN: Yes, there is.

5 VICE MAYOR PARISER: I don't want to be the
6 odd man out or holding the short straw where this
7 isn't done simultaneously with everybody and we
8 go forward and they hold back and they get
9 another million or two back and we are sitting
10 there with cottage cheese on our face.

11 MAYOR FLINN: That's why I think we should
12 act last.

13 I believe in my conversations with Juan
14 Bermudez, mayor of Doral, they may be taking
15 action tomorrow night. So let's see.

16 VICE MAYOR PARISER: My suggestion was--and I
17 don't want to make you do anything more than you
18 have to--is possibly since everybody is on the
19 same wavelength, the mayor and the city council,
20 all three sit down at the table, you show me
21 yours, I'll show you mine, what is on your
22 mind---

23 MAYOR FLINN: We've been in communications.

24 VICE MAYOR PARISER: You think Miami Lakes
25 has a real---

1 MAYOR FLINN: Miami Lakes wants to get
2 together. The mayor wants to get with me on
3 Thursday.

4 I'm trying to see if I can put that together
5 and finalize it.

6 VICE MAYOR PARISER: The other discussion we
7 had was as far as the county's view of this, it
8 is all three or nothing or all three with
9 different degrees or nothing?

10 MS. BOUTSIS: I have been told time and again
11 by Craig Coller, who is the county attorney, that
12 his instructions from Commissioner Seijas has
13 been all three, same deal, same time.

14 VICE MAYOR PARISER: Same deal, same time.

15 MS. BOUTSIS: That is his walking papers.

16 MAYOR FLINN: Because technically now we only
17 got--let's just go through the deals real quick
18 because this is really, I think the deal it was
19 really poised quite a bit to put on Katie because
20 we were the only ones to pay money out of our
21 escrow. The way this is timed Miami Lakes gets
22 to go back and retain one year's worth of escrow
23 on this, plus not pay for this year.

24 We were originally going to pay 100 percent
25 of this year and then Doral was going to have

1 their mitigation reduced for the three years they
2 didn't pay, the county keeps it. For the four
3 years they didn't pay do you recall or just for
4 background they pay 1.5 million. Remember that
5 all came about a formula based on the ability to
6 pay, based on the net surplus.

7 So that was really comparing apples to
8 apples back then.

9 I don't buy the argument they were paying
10 more. Mitigation is based upon your net surplus,
11 not just a flat cost of going out. Because I
12 argued to the county they still prevented what is
13 the island out there, Fisher Island from going
14 because when they came up with the \$1 million
15 deal, Fisher Island walked up and said we will
16 take that. Let us go. They could still knock
17 their thing down to \$1.5 million because they
18 would probably get a quarter to a have million of
19 stuff back because everything was thrown out.

20 They told Fisher Island that's kind of
21 cute. But no. Obviously, they are an enclave
22 and they met all the nonmitigation.

23 Back to Doral. The last four years the
24 money they have in there, they are reducing their
25 mitigation by one-third. In other words, from

1 \$1.5 million back down to \$1 million and they are
2 also reducing their CVI, which was 100 percent
3 increase each year in mitigation based upon 100
4 percent of the increase in the value of the
5 commercial area, they would be knocking that
6 off.

7 So the net result of that is they are going
8 to be able to pay off their mitigation in five
9 and a half years, even though technically it is
10 seven.

11 Miami Lakes pays for the seven years. We
12 came up with an argument and I don't think Katie
13 got it, I think the manager did but Katie didn't
14 get it and the thing that came back was we paid
15 13 months our first year because we paid three
16 weeks for 2002 because we were incorporated
17 September 10th, so we paid from September 11th
18 through September 30th of that fiscal year and
19 then we paid 12 months of 2003, whereas both
20 Doral and Miami Lakes, they were incorporated in
21 the say March or April of those years.

22 So they started where Miami Lakes paid seven
23 months in year one, we paid 13 months and Doral I
24 think paid five. We came up with a formula where
25 we are paying 82 months and technically the

1 manager got it and I think he agreed to it.

2 I don't know if it was an agreement for
3 convenience or they appreciated the argument. In
4 any event, that's the only bone we got out of the
5 county.

6 VICE MAYOR PARISER: What would Miami Lakes
7 possibly be thinking other than saying we want to
8 just take it to the mat and see if we win on the
9 merits?

10 MAYOR FLINN: In a lot of ways they are
11 pulling money out of their escrow. So they have
12 a forced savings that is there. It is really a
13 good deal for them. For Doral, they can pay
14 their mitigation based upon cash they have on
15 hand even though their clock is still running.

16 In fact, if they still have time to pay it
17 on a yearly basis, they are going to make
18 interest on that money remaining, that they don't
19 have to cough up out of their escrow.

20 VICE MAYOR PARISER: It is just interest?
21 They want to squeeze a few more months of
22 interest out of the deal?

23 VILLAGE MANAGER WILLIAMS: I think they are
24 going to take the deal.

25 MAYOR FLINN: I think they are going to take

1 the deal.

2 VICE MAYOR PARISER: When do you think you
3 will know?

4 MAYOR FLINN: I think I'll know Thursday.

5 MS. BOUTSIS: I have a call into their
6 attorney, Nina Boniske to find out where they
7 are. She had held two or three attorney-client
8 sessions. The problem is general counsel or the
9 city attorney, she was not in charge of the
10 separate contract action.

11 In other words, like we have our lawsuit,
12 she is not in charge of that lawsuit. They hired
13 another firm to do that lawsuit and that firm is
14 on a contingency fee and they really have been
15 pushing not to settle the case.

16 MAYOR FLINN: They are probably negotiating
17 some sort of payment.

18 MS. BOUTSIS: Actually, right now he gets
19 nothing.

20 MAYOR FLINN: Really?

21 MS. BOUTSIS: He gets nothing.

22 MAYOR FLINN: They can walk away and say
23 there is not a quantum merit argument for his
24 fees?

25 MS. BOUTSIS: He's very upset about it.

1 Never mind. Shame on him.

2 Any other questions?

3 MAYOR FLINN: Well, what I would like to do
4 is the question is--and I think this is
5 appropriate for motion--if Doral and Miami Lakes
6 take the deal, what I propose is we simply, I
7 think we have discussed enough in private--here
8 is my proposal.

9 I think what we ought to do is if Doral and
10 Miami Lakes do take the deal, I think that really
11 drives everything.

12 We do have the ability to hold out because,
13 remember, I negotiated the Miami Lakes reduction
14 factor, which means we can't be charged any more
15 in an equivalent year than Miami Lakes, which
16 means if their mitigation ends in 82 months, our
17 mitigation should have ended in 82 months.

18 I'm even going beyond the fact that we have,
19 whether or not you want to argue, we would still
20 have to pay the full seven years and not get the
21 benefit of 400 plus that we got back, but we do
22 have that. So we are pretty much in the driver's
23 seat and we are protected.

24 But my thing and I think the motion here is
25 do you all feel that we need to meet again in

1 executive session because if Doral and Miami
2 Lakes pass theirs, I would suggest we schedule an
3 emergency meeting, a regular meeting, which would
4 require what, 72 hours notice?

5 MS. BOUTSIS: 48 hours notice.

6 MAYOR FLINN: I would suggest we schedule a
7 48 hours meeting. Why don't we do this. Call
8 Miami Lakes, find out the date it is coming up on
9 their agenda.

10 Schedule a meeting 24 hours later. We can
11 always cancel the meeting. If they take action,
12 we can do it at a public meeting and we are going
13 to have to pass a resolution adopting this in a
14 regular meeting, wouldn't we?

15 MS. BOUTSIS: There should be no reason to
16 adopt this. All we have to do is once the ballot
17 language is approved between Craig and I, so I
18 can be working on the language with the County
19 Attorney's Office, you just set the date for the
20 election. That's all you have to do. You don't
21 have to accept their terms. That's irrelevant.

22 MAYOR FLINN: We have a very long period of
23 time before the end of this budget year. So
24 we've got some time I don't want to say play
25 with, we have some time to work out some

1 details.

2 I would suggest we move that date out ways
3 to give us time to consider whether we want to
4 add anything else to that election.

5 MS. BOUTSIS: Understood.

6 So just so we are clear.

7 I'm going to keep the litigation to a
8 minimum.

9 MAYOR FLINN: I would set all their depositions.

10 MS. BOUTSIS: Would you really at this
11 point?

12 MAYOR FLINN: I think you should call Collier
13 and say you are setting a deposition of every county
14 commissioner.

15 VILLAGE MANAGER WILLIAMS: We should keep the
16 costs down.

17 COUNCILWOMAN STANCZYK: We should not be
18 setting the depositions for the other ones.

19 MAYOR FLINN: The tone of my voice should
20 have told you I'm yanking your chain.

21 MS. BOUTSIS: And working on the ballot
22 language so we can proceed if Miami Lakes and
23 Doral are ready, we can all proceed together in a
24 streamlined fashion.

25 MAYOR FLINN: Why can't we have the residents

1 vote to dismiss the case?

2 MS. BOUTSIS: The county commission has to
3 approve ballot language.

4 MAYOR FLINN: Whatever.

5 MS. BOUTSIS: On that note, thank you, unless
6 you have any other questions.

7 If you want to talk to me one-on-one, please
8 do so.

9 It is now ten to 7:00 and we are done.

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CERTIFICATE

1
2 STATE OF FLORIDA)
3 COUNTY OF MIAMI-DADE)

4 I, JOSEPH DANIELS, do hereby certify that in the
5 case of PALMER TRINITY PRIVATE SCHOOL VS. VILLAGE OF
6 PALMETTO BAY, Circuit Court Case No. 08-28977 CA 30
7 and PALMER TRINITY PRIVATE SCHOOL VS. VILLAGE OF
8 PALMETTO BAY, Appellate Court Case No. 08-245-AP and
9 VILLAGE OF PALMETTO BAY, Case No. 09-14156 CA 27;
10 that I was authorized to and did report in shorthand
11 the proceedings and that the foregoing pages,
12 numbered from 1 to 41, inclusive, constitute a true
13 and correct transcription of my shorthand report of
14 the proceeding.

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 8th day of December, 2008.

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19 

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21 JOSEPH DANIELS, CSR
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