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IN RE: VILLAGE OF PALMETTO BAY.
vs. PALMER TRINITY

CASE NO: 08-28977 CA 30

ORIGINAL

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16701 S.W. 72nd Avenue
Palmetto Bay, Florida,
Wednesday, 5:30 p.m.,
March 11, 2009.

APPEARANCES:

- Ron Williams, Village Manager
- Eve Boutsis, Village Attorney
- Shelley Stanczyk, District 3, Council Member
- Eugene Flinn, Mayor
- Edward Feller, Council Member, District 1
- Howard Tendrich, District 2, Council Member
- Brian Pariser, Vice Mayor

1 MS. BOUTSIS: On the Palmer Trinity
2 litigation, as you know, we received in the
3 appellate action a procuring decision in
4 your favor within the time period for
5 requesting a rehearing before the panel.

6 Palmer Trinity has requested a
7 rehearing based upon the case that I
8 forwarded to each of you which was issued by
9 the Third District a week after our
10 decision.

11 And this case basically says in that
12 situation in Miami Dade County under the
13 similar zoning code, actually the same
14 zoning code, the property was going to be
15 rezoned agricultural to an estate density
16 use, and the Court in the Third District
17 found that the community counsel had
18 conducted reverse spot rezoning in their
19 action, but there are major differences in
20 the opinions.

21 Just so you know, in that case the Dade
22 County Zoning Department did not want the
23 property owner to be able to use the
24 property, they wanted the property owner to
25 do drainage for adjacent property owners, so

1 that's a huge difference.

2 Here as you know, the property can be
3 used currently under a used zoning or EU2
4 zoning that was underlying the request for a
5 school. And it could be used for
6 residential, they can split up the acreage,
7 so it's not like there is preclusion of use.

8 MR. FLINN: And if they brought in a
9 plan that didn't have the same traffic
10 impact it would move forward as well.

11 MS. BOUTSIS: Exactly, because in their
12 scenario the traffic impacts are one of the
13 five factors of rezoning and we have the
14 expert testimony supporting it.

15 The motion, I have talked to the other
16 two interveneners, which is the CCOCI and
17 the residents of Cutler Bay Homeowners
18 Association, and they are both of the
19 opinion that their motion is sort of weak.
20 They are pleading with the Court to look at
21 this. They don't say you have to look at
22 this, you have to make a decision. I can't
23 predict what's going to happen. We are
24 filing, our firm on behalf of the Village is
25 filing our position and the two other

1 groups, CCOCI and the Cutler Bay, have a
2 joint motion together basically attacking
3 and requesting that the opinions stay as is.

4 Courts don't like to be reversed,
5 hopefully there is nothing to appeal as far
6 as the appellate action, but I will let you
7 know.

8 MR. FELLER: What do you anticipate the
9 timing to be on this appeal?

10 MS. BOUTSIS: Well, they had 15 days,
11 they being Palmer Trinity, had 15 days to
12 file a motion for rehearing.

13 This has been an active court and
14 within a week of hearing oral argument they
15 issued their decision, so I think it will be
16 quick. I do think it will be quick.

17 MR. FELLER: You mean weeks or months?

18 MS. BOUTSIS: Days.

19 MR. FELLER: I'll anticipate a week.
20 Can they even file a supplemental authority
21 on the fact that the rehearing time on the
22 Third District case hasn't expired yet?

23 MS. BOUTSIS: They can, but the chance
24 -- I don't want to talk about the chance of
25 a different case, but ---

1 MR. FLINN: We are just lucky that the
2 attorney for Palmer Trinity pulled off the
3 table the offer to forego oral argument and
4 go back to mediation, because had we done
5 this, this case would have been available
6 president at the time of the oral argument
7 and would have different weight than it does
8 for a motion for rehearing.

9 MR. BOUTSIS: Exactly. Thank you,
10 Mayor.

11 Any other questions on the appellate
12 action?

13 MR. PARISER: If Palmer Trinity loses,
14 on this appeal, do we have any other avenues
15 that they can follow?

16 MS. BOUTSIS: There is still on the
17 other case, they still have their other case
18 pending which is their original action for
19 declaratory action that we have filed our
20 --- one of the basis we are trying to get
21 the case, that case dismissed, is based upon
22 the decision from the Appellate Court case
23 saying three of the five counts were already
24 ruled upon and those should go away.

25 We are also, we have filed a motion for

1 protective order because as you know,
2 several of you have been scheduled for
3 deposition. Those of you who were part of
4 the decision-making process back when the
5 zoning application was heard, which
6 Ms. Stanczyk and Dr. Feller and Mayor Flinn,
7 and also former Vice Mayor Linda Robinson.

8 So we have done a protective order for
9 several reasons. We actually got, the day
10 after we filed a motion for protective order
11 the Judge gave us a hearing the next morning
12 without communicating with Palmer Trinity.
13 And we did communicate to Palmer Trinity
14 because we got the call around 4:30 in the
15 afternoon, they threw up a fit because they
16 had no notice. And the Court finally said
17 we'll reset it to 12 which is tomorrow, and
18 they filed another opposition and the court
19 gave them until the 17th.

20 So the hearing on that motion for
21 protective order is scheduled on the 17th.

22 MR. PARISER: Procedurally if they,
23 Palmer Trinity loses, when can they possibly
24 come back with another application, number
25 one? And if they did that I think they'd be

1 shooting themselves in the foot.

2 MS. BOUTSIS: To answer the question,
3 regardless of what happens in these cases,
4 they can come back with a new application,
5 so they could do it tomorrow.

6 They will probably have to abandon
7 their appeal rights if they came in with a
8 new application.

9 MR. PARISER: And probably abandon the
10 other case.

11 MS. BOUTSIS: Exactly. But if they
12 were interested in filing a new application
13 they could do so on any date, there is no
14 date restrictions on application unless they
15 are filing the same exact application which
16 would make no sense.

17 MR. PARISER: So normally when you are
18 denied, when somebody comes in front of us
19 for an application and they are denied, is
20 there a time limitation?

21 MR. FLINN: Vice Pariser, I prefer you
22 have this conversation in private.

23 MR. PARISER: She can answer this
24 question.

25 MR. FLINN: I don't want it on the

1 record.

2 MR. PARISER: Normally what happens,
3 how soon can somebody come back?

4 MS. BOUTSIS: If it's the same
5 application I think it's a one or two year
6 prohibition. If it's a different
7 application there is no time period. And
8 often a lot of people who lose on an appeal
9 do not re-file.

10 All right. Thank you. That's the end
11 of the update and I will keep you posted as
12 far as the discovery goes and the motion for
13 protective order. It is now 6:20 p.m.

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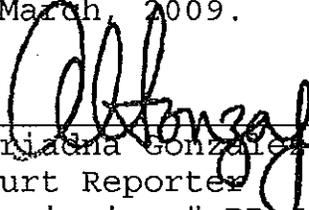
CERTIFICATE OF REPORTER

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 above-styled
cause; that the said session was duly sworn; and
that the foregoing pages, numbered 1 to 9
inclusive, constitute a true and correct
transcription of my shorthand report of the
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 25th day of March, 2009.



Adriadna Gonzalez
Court Reporter
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