

1 IN RE: PALMER TRINITY PRIVATE SCHOOL VS.  
2 VILLAGE OF PALMETTO BAY

3

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CASE NO: 08-28977 CA 30

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ORIGINAL

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17641 Old Cutler Road  
Palmetto Bay, Florida,  
Wednesday, 5:30 p.m.,  
April 22, 2009.

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15 APPEARANCES:

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

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MS. BOUTSIS: It's 5:30 on Wednesday, April 22nd of 2009. This is my request for an attorney/client session. Otherwise known as an executive session on the matters of Palmer Trinity Private School versus the Village of Palmetto Bay and the Circuit Court Case Number is 0828077. And Palmer Trinity Private School versus the Village of Palmetto Bay Appellate Court Case Number 08245AP.

I requested this meeting seeking advice from counsel regarding litigation strategy and/or settlement.

Some of the counsel members are eating food and grabbing some food, so I am going to go ahead and announce everyone that's present.

Mayor Eugene Flynn, Junior. Vice Mayor Brian Pariser. Councilman Howard Tendrich. Councilman Ed Feller. Councilwoman Shelley Stanczyk and Village Manager Ron E. Williams and I am Eve Boutsis, as the attorney for the Village.

As you know, the court reporter will record the time and termination of the

1 has been taken as of yet by the panel.

2 One of the Judges is up for federal  
3 courtship so it's probably going to be on  
4 the wayside for a while, she is looking at  
5 her appeal appointments. So there is no  
6 action in that case.

7 As you know, there has been a lot of  
8 litigation, however, in the original action  
9 under the circuit court case and we were  
10 scheduling depositions and ultimately all  
11 those were terminated at this point and will  
12 be rescheduled.

13 Because you may recall in November we  
14 had gone to similar discussions and we had  
15 pending, we the Village had to respond to a  
16 Request For Production request by Palmer  
17 Trinity and it got lost in the shuffle  
18 during the continued discussions between the  
19 parties, and so we have to make that  
20 production. That production will be done  
21 within the next 10 days or so.

22 Once that production is done the  
23 depositions of the Palmer Trinity Board will  
24 take place, the depositions of counsel will  
25 then be scheduled and a rescheduled summary

1           judgement hearing will be set. It has been  
2           taken off the calendar and we are waiting to  
3           hear from the Judge on the next available  
4           date. So that's where we are as far as  
5           discovery.

6           Now, the reason I am here tonight is to  
7           advise you that I have received a few  
8           requests by Palmer Trinity's counsel, both  
9           Mr. Stan Price and Eileen Melita, looking to  
10          see if the council will be interested in  
11          having settlement discussions.

12          They have contacted me twice last week  
13          and once this week. And they have also  
14          requested that Mayor Flynn participate in  
15          those settlement discussions. And I am  
16          obligated to bring all of those settlement  
17          discussions to you and this is the place for  
18          us to discuss them.

19                 MR. FLINN: Are they serious?

20                 MS. BOUTSIS: I have asked that  
21                 specific question and the answer is yes and  
22                 everything is on the table. From street  
23                 closures from different streets, size of  
24                 population, size of project, etcetera.

25                 MR. FELLER: I think that we should try

1 and negotiate. But I feel whenever we  
2 negotiate it has to be set right now,  
3 everyone is in compliance about the 600  
4 student cap and they are above the 600  
5 student cap. If we say we are going to give  
6 you just for let's say 800 students, it has  
7 to be proven that that is 800 students,  
8 whether they are going away to college or  
9 going away to high school in Spain or  
10 Europe, that's one of my things that I feel  
11 is important.

12 MS. BOUTSIS: Just so we are clear.  
13 The resolution prepared by the County did  
14 not specifically address how do you define a  
15 number of students. So if you were  
16 interested in talking settlement and come to  
17 at that point to any kind of consolidated  
18 effort, that will be something that we'll  
19 have to define. I am very aware from every  
20 councilman here that that's something that  
21 has to be specifically defined and through  
22 the enrollment and perhaps through  
23 enrollment and records through the State of  
24 Florida what are the number of students.

25 Please be aware that this is a unique

1 chances are the appeal will end before.

2 MR. FELLER: I would like to add that  
3 anything that we say be kept under wraps  
4 until all of the litigation is finished, not  
5 have it come out openly when one is going  
6 and all of the sudden another lawsuit  
7 appears.

8 MR. BOUTSIS: Because the third lawsuit  
9 has not been filed, I can't guarantee that  
10 this litigation would not still be ongoing  
11 or would have not ended.

12 If for example if this litigation has  
13 ended and they still file the third lawsuit,  
14 I can't guarantee that this transcript would  
15 still be confidential.

16 MR. FELLER: Let's make an assumption  
17 that it would be disseminated.

18 I am not happy with part of the school  
19 administration. One because of their lack  
20 of trying to see what people want before  
21 they came up with their plan and stood firm  
22 with it. And two because they didn't follow  
23 up with what they promised several years  
24 ago.

25 Independent of that, though, I really

1 don't want on a time when our income is  
2 falling, to wind up having us in  
3 undetermined litigation costing us hundreds  
4 of thousands of dollars. That doesn't mean  
5 we should give up and walk away and say  
6 don't spend the money, because the people  
7 don't want that, but I think that we should  
8 try and find something that neither side  
9 likes.

10 My feeling about a successful mediation  
11 is that neither side walks away happy from  
12 it.

13 Maybe the Village might walk away  
14 happy, but neither the litigant nor the  
15 people fighting the other side walk away  
16 happy.

17 Some of the thoughts that I have been  
18 thinking of and I want to discuss with you  
19 is. One is that the school close 176th  
20 Avenue. Our reason and from my point of  
21 view is that I believe that our traffic zone  
22 was correct and legitimate and therefore my  
23 vote was on the basis of our traffic zoning.  
24 Our traffic zone had to do with 176 street.

25 184 is a main thoroughfare. The kids

1 go running down 176th and it's a residential  
2 street and people living around it and it's  
3 been a big problem for years and years.  
4 176th is an emergency exit for fire, police  
5 etcetera, not for students, parents and  
6 faculty, etcetera, and everything comes  
7 through 184.

8 Number two, they should give up the  
9 Elementary school which they don't have to  
10 begin with any way.

11 Three, the ball field should be very  
12 very well -- where you really don't see  
13 anything.

14 And the issue about how many students  
15 they have in the middle school and high  
16 school is a matter of main discussion. I am  
17 not going to go into suggestions on a number  
18 now, but I would like to find some  
19 settlement.

20 On the other hand, I think it has to be  
21 realized that we have a ballot issue coming  
22 up and if the ballot issue is not found to  
23 be incorrect legally, passes and the courts  
24 don't throw it out, everything is a moot  
25 point.

1 MS. BOUTSIS: I think that the argument  
2 would be if they win their lawsuit would it  
3 relate back to the time that they filed.

4 So that ballot initiative if it is  
5 successful would not necessarily affect this  
6 litigation. It will affect any future  
7 filings by any private school. And it would  
8 be only as to the number of students.

9 MS. STANCZYK: The lawsuit can only be  
10 based on the fact that they didn't get  
11 zoning. Zoning has nothing to do with the  
12 number of students.

13 MS. BOUTSIS: Their application when it  
14 was first filed did involve a number of  
15 students and that was something that we did  
16 not address at that hearing. So there can  
17 be an argument made on both ends, but  
18 ultimately I think that a court could find,  
19 I am not saying that it will find, I am  
20 saying there is a possibility that the Court  
21 will find that it related back to the time  
22 of our original decision, which happened a  
23 year before the ballot.

24 MR. FELLER: If the school offers to  
25 close 176 our reason for turning down the

1 zoning and our traffic studies conclusion  
2 disappears?

3 MS. BOUTSIS: Well they have to do a  
4 new traffic study and show the impact of all  
5 of the students coming onto 184th, and we  
6 don't know the answer to that, but it's  
7 supposed to be a major arterial road.

8 As it was proposed, you don't know how  
9 it would be affected by the new ---

10 MR. FLINN: If they reduce numbers and  
11 eliminate the elementary school then the  
12 numbers ---

13 MS. BOUTSIS: We don't know the answer.

14 MR. STANCZYK: You have to do a study  
15 and you can't make an assumption, there is  
16 going to be other traffic.

17 MR. PARISER: The approach for the  
18 discussion, is that only between the Village  
19 and Palmer Trinity or does that include the  
20 other participants?

21 MS. BOUTSIS: I will tell you what's  
22 been represented to me by both Mr. Price and  
23 Ms. Melita. They would like to continue to  
24 talk to the residents. They do not feel  
25 it's being successful from their point of

1 view, they don't feel that they will ever  
2 reach the same page, but this opportunity  
3 for negotiation is requested between the  
4 Village and Palmer Trinity.

5 MR. PALMER: Only?

6 MS. BOUTSIS: Only at this time.

7 MR. PARISER: Procedurally these two  
8 groups are allowed into the lawsuit as  
9 parties?

10 MS. BOUTSIS: Yes.

11 MR. PARISER: So procedurally, for  
12 whatever reason, Palmer and the Village come  
13 to a happy conclusion bilaterally, how does  
14 that affect or not affect the lawsuit going  
15 forward with the other two party litigants?

16 MS. BOUTSIS: They are now included as  
17 parties so they can voice their objections  
18 and still try and go forward.

19 I think ultimately the decision --  
20 because remember any settlement we were  
21 trying to do would be based upon a public  
22 hearing, so ultimately it would come back to  
23 a public hearing.

24 MR. PARISER: But there would still be  
25 a lawsuit pending regardless between these

1 two remaining.

2 MS. BOUTSIS: But there is no  
3 counter-claim. So if after the public  
4 hearing there is a decision and there is an  
5 agreement to be bound by that decision by  
6 Palmer Trinity and the Village, then that  
7 lawsuit could be dismissed by the Plaintiff.

8 MS. PARISER: Because there is no  
9 counter-claim pending.

10 What you are saying is, worse case  
11 scenario procedurally, if Palmer Trinity  
12 were to win it will go back on their old  
13 application?

14 MS. BOUTSIS: Absolute worse scenario,  
15 yes.

16 MS. PARISER: For the original 1,400  
17 students?

18 MS. BOUTSIS: The worse case scenario  
19 is you were wrong, Village of Palmetto Bay  
20 you should have granted the rezoning and the  
21 Village of Palmetto Bay you are wrong in not  
22 listening to their other two applications.  
23 I don't see that happening, the second part.  
24 Even though worse case scenario, I don't  
25 see the second part happening.

1 MR. PARISER: So it would be sent back  
2 for a hearing on the zonings saying whether  
3 you made a mistake granting or not granting  
4 them, but then the other exception has to do  
5 with the number of students.

6 What was the other part, the second  
7 part?

8 MS. BOUTSIS: The application was for  
9 the rezoning which is part one.

10 MR. PARISER: Which they claim we never  
11 got to.

12 MS. BOUTSIS: No, that part we did get  
13 to.

14 Part two and part three which is what  
15 we did not rule on are variances and there  
16 were several variances, for the auditorium,  
17 the gym and a number of stories to the  
18 administrative building, those were the  
19 three. And because they are tied to a site  
20 plan they had to get a modification of their  
21 1999 site plan to allow their new site plan  
22 which included the number of students of  
23 1,400 students.

24 That's not a variance request because  
25 based upon the formula under the Dade County

1 Code they met the basic criteria. The basic  
2 criteria.

3 MR. PARISER: So that those two parts  
4 would still be heard, worse case scenario?

5 MS. BOUTSIS: Yes, I believe so, yes.

6 MS. STANCZYK: Why can't we wait until  
7 the moratorium and new land development ---

8 MR. BOUTSIS: Put it this way, it's the  
9 appellate court case so if they decide to do  
10 the rehearing they reverse themselves. They  
11 will issue an order saying, you are mandated  
12 to issue an order approving the EUM zoning,  
13 and to finish your hearing. And then you  
14 have the moratorium doesn't matter because  
15 it was filed a year before.

16 MS. STANCZYK: So in other words, they  
17 are saying that it's already in the  
18 appellate court's hand to rule?

19 MS. BOUTSIS: Yes.

20 MR. PARISER: It's up for rehearing for  
21 reconsideration to try and reverse and if  
22 they don't do that my understanding is if  
23 it's stands there wasn't any ability to  
24 appeal. They couldn't take a basic assert  
25 saying due process to get to a third DCA?

1 MS. BOUTSIS: Courts usually don't  
2 agree to that.

3 MS. STANCZYK: How often do they  
4 reverse?

5 MR. PARISER: Probably one percent.

6 MS. BOUTSIS: The judges usually don't  
7 like to reversing themselves.

8 The unique facts that we have here is  
9 that there was a case a week after our case  
10 that was decided by the Third District on  
11 similar facts. It was not a school, let's  
12 understand that, it's a different situation.

13 There was inability to use the property  
14 for a school parking without using the  
15 rezoning. It's a very different set of  
16 facts, but it happened to be a development  
17 where it was previously agricultural to a  
18 residential zoning and it happened to be the  
19 same residential zoning we are talking  
20 about, Palmer Trinity, and the Third  
21 District ruled in favor of the property  
22 owner.

23 Again, it's very distinguishable and we  
24 have done so in rehearing response, but you  
25 never know what a judge will do.

1           MR. TENDRICH: One of the things that I  
2 agree with Dr. Feller is, I looked at last  
3 months bill, the attorney bill and \$20,000,  
4 is almost half of the bill was spent on  
5 Palmer Trinity and I don't feel that the  
6 Village can continue to spend ten, \$20,000 a  
7 month.

8           I feel if we can get together, and if  
9 they want to speak to the Mayor it's fine.  
10 I feel they should speak, if it's legal, to  
11 try and come up with something and then  
12 bring it to the counsel.

13          MS. STANCZYK: How far do you want to  
14 go on this? Because what you are saying is  
15 you are running because of money, you are  
16 running because you are afraid of costs, you  
17 are going to run and what will you take?

18          MR. TENDRICH: I am not running because  
19 of money, I am running because they are part  
20 of our Village and I feel that they are  
21 always going to be part of our Village and  
22 we should try and work out something so we  
23 can be friends and not be at each others  
24 throats.

25          MS. STANCZYK: That's when they start

1 paying taxes and, I probably shouldn't say  
2 what I have to say.

3 MR. TENDRICH: I mean school and  
4 churches and synagogues, they will have ---

5 MS. STANCZYK: They are part of the  
6 fabric of our Village. They are an  
7 important part of our Village that one would  
8 always want to support because we look to  
9 them to cultural support. And when I say  
10 cultural I don't mean art and music, they  
11 are part of the culture of our lives, it's  
12 an important part.

13 MR. TENDRICH: I agree. We should try  
14 to settle and become friends again. I think  
15 right now they look at us like the evil.

16 MR. PARISER: The fact of the matter is  
17 we won at the primary trial level so the  
18 Village council officially at this point in  
19 time did nothing wrong, we won. They didn't  
20 want to -- they called off discussions the  
21 night before, which is fine, and I thought  
22 we should go and get a standup up or down  
23 and that usually determines the direction of  
24 litigation.

25 I have no problem talking in my private

1 practice with opposing counsel at any time  
2 or whatever, talking is talking. If nothing  
3 else, you find out where they are coming  
4 from. You may not agree but at least you  
5 know that may get a sense of drawing the  
6 line in the sand and then you engage going  
7 forward what the value of the fight is.  
8 What are we fighting about.

9 MS. STANCZYK: You are fighting about  
10 five cents or five million.

11 MR. PARISER: Exactly. And you want to  
12 see and you want to know if it's worth  
13 hundreds of thousands of dollars of legal  
14 fees or not because legal fees usually are a  
15 factor in litigation. But I have no problem  
16 talking to them, if there are talks I would  
17 suspend any court action. There is no sense  
18 spending any money if it involves coming  
19 into some sort of settlement.

20 As farce as the delay in their motion  
21 or reconsideration or not, are there talks  
22 timed to when in their mind there may be a  
23 decision or not on their motion for  
24 reconsideration?

25 MS. BOUTSIS: I don't think so. I

1 think more than anything it's more tied --  
2 let's put it this way. I don't know the  
3 answer to that because I don't think they  
4 know when the appellate court is going to  
5 rule. The appellate court ruled originally  
6 in less than a week, so I thought, we all  
7 thought that a decision would have already  
8 come out.

9 MS. STANCZYK: We are at a point where  
10 we are waiting for a response from the  
11 court. We have all of the motions in, the  
12 arguments have been made, what work is left  
13 to be done and billing to be done before ---

14 MS. BOUTSIS: On the appellate action  
15 there is really nothing, and I really  
16 haven't been billing on the appellate action  
17 it's all in the actual trial case that's  
18 going to be heating up again. We are  
19 getting a new summary judgement date. We  
20 have to take the five or six people from  
21 Palmer Trinity, their depositions.

22 MS. STANCZYK: My point is, if we wait  
23 for the summary judgement, if we wait for  
24 the response from the court on the one,  
25 before we move to settle ---

1 MS. BOUTSIS: The answer is on the  
2 appellate case the decision could come out  
3 today, it could come out nine months from  
4 now.

5 MS. STANCZYK: In the meantime if we  
6 are waiting for that we are not going to be  
7 pending anything on that?

8 MS. BOUTSIS: We haven't been.

9 MS. STANCZYK: And that's the case that  
10 decides the zoning.

11 MS. BOUTSIS: Although they are the  
12 same case in a different form --

13 MS. STANCZYK: If this case comes back  
14 and says Palmer Trinity you are wrong, you  
15 are done in the other case?

16 MS. BOUTSIS: They are done in one case  
17 not both. The Court has ruled so far,  
18 because we argued that already, and the  
19 Court says it's a different due process so  
20 they are not done. I disagree with the  
21 Court on their analysis but they are saying  
22 Jennings is broader than the requirement  
23 under rezoning for due process purposes, so  
24 because of the broader standard it gets to  
25 go forward. So far that hasn't worked yet.

1 MR. PARISER: I would say talk to them,  
2 just put a stay on any court proceedings or  
3 pleadings or anything else if they want to  
4 talk.

5 MS. BOUTSIS: We are still in the  
6 process of rescheduling all of these  
7 depositions and everything else. I think  
8 their timeframe would be, let's try and talk  
9 in the next couple of weeks. I don't know  
10 that they are necessarily going to agree to  
11 stay everything because there was a stay  
12 between a month and-a-half between November  
13 and actually through January, so about a two  
14 month stay there because they were still  
15 trying to work, particularly with the  
16 residents.

17 So is it a deal-breaker for you if I  
18 can't get them to agree, I need to ask the  
19 question?

20 MS. STANCZYK: I wanted to mention  
21 something. Several residents have mentioned  
22 to me that they have been trying to set  
23 further meetings on the settlement with  
24 Palmer and they have only had a couple of  
25 meetings and the other guy won't return the

1 calls.

2 MS. BOUTSIS: I will follow up to find  
3 out more about it. All I can tell you is  
4 what they have represented to me which is  
5 that they have met and they would like to  
6 still meet. They don't think it's  
7 productive at this point, but they would  
8 like to still meet and hopefully get  
9 somewhere. That's all I can tell you,  
10 that's what they represented to me.

11 I hear at least three of you interested  
12 at least in discussions of settling. Is it  
13 something that you would like the Mayor to  
14 represent you at for these discussion  
15 purposes?

16 MR. PARISER: I would like to hear what  
17 they have to say at this point. The only  
18 variable, if we are upheld on the  
19 reconsideration, that's another peg in their  
20 coffin. They may want to think twice about  
21 what they want to say.

22 MR. BOUTSIS: I am of the opinion that  
23 I don't necessarily think that we need a  
24 official mediator at these discussions.

25 Do you want to expend the funds to have

1 another mediator present?

2 MR. FLINN: I hire mediators to help  
3 the other side gain control of their clients  
4 and settle to where I want to go, so I don't  
5 see a mediator offering much in this case.

6 We can always reconvene if we get close  
7 and we have concepts down.

8 MS. BOUTSIS: That's really what you  
9 will be doing at this point, conceptual and  
10 then have to go to a hearing.

11 And again one more thing, is it the  
12 deal-breaker for you that litigation has to  
13 be halted, I understand that costs is  
14 involved?

15 MR. PARISER: Either it's halted or you  
16 push it off. You want to schedule something  
17 in three weeks, schedule it in eight weeks?  
18 I don't know when they want to meet, but  
19 enough time to have discussions and you talk  
20 and okay, maybe this will go somewhere, but  
21 to take five, 10, 15 depositions and then  
22 wind up settling the case on the first go  
23 around.

24 MS. BOUTSIS: I think Councilwoman  
25 Stanczyk asked a question and I didn't

1 finish answering you, "Why now, why are they  
2 coming now?" I do not think it's about the  
3 appellate case, but I do think it's because  
4 they did file the Bert J. Harris letter  
5 which gives you a six month window of  
6 negotiations before they file their third  
7 lawsuit. And as part of settlement I would  
8 think that they would want that tied into  
9 all of this.

10 At least if we were going to settle  
11 that it would be my requirement that  
12 everything be finished, all potential  
13 threats of litigation, everything would be  
14 tied up here and no more. You don't need  
15 that out there and you don't need that  
16 expense.

17 MS. STANCZYK: When would be a time  
18 that we set the parameters or how would we  
19 set the parameters in which we'll feel  
20 settlement would go forward?

21 MR. BOUTSIS: We would have to come  
22 back to another AC session and get a consent  
23 from you. Although you were at that  
24 original mediation from the point person,  
25 the Mayor doesn't have settlement authority,

1 he would have to come back and then consent  
2 from you and then we would set parameters of  
3 how it will go forward.

4 MS. STANCZYK: How are we going to set  
5 parameters at our level of discussion before  
6 he goes to settlement?

7 MS. BOUTSIS: You can't, is the answer.

8 MS. STANCZYK: I would like to add that  
9 because I have certain opinions as to where  
10 we should be and certain information that,  
11 for instance, we have two people that  
12 decided that we should settle who are not  
13 part of the original application and didn't  
14 have firsthand knowledge of the information  
15 that is important and they don't even have  
16 the e-mails, the application or anything,  
17 all they are doing is sitting here. And  
18 while I respect their opinion greatly, they  
19 do not understand from where we are coming.  
20 And the fact that we want to run from  
21 spending a few dollars after what we have  
22 invested and our residents have invested,  
23 our residents who pay us, who elected us  
24 have invested, and that deserves respect.

25 MR. TENDRICH: We are not running from

1           it, we are not running from the problem, we  
2           are trying to resolve a problem.

3           MR. PARISER:   Who is we?

4           MR. TENDRICH:   Me, I am not running  
5           from a problem.  I feel that the problem  
6           should be solved.  The fact is that there  
7           has been a lot of controversy doesn't  
8           necessarily mean it was right.

9           I mean, I have my opinions that have  
10          been good and bad about some of the things  
11          and I feel that compromise is part of life  
12          and I feel that that's my feeling.  I am not  
13          running from a problem.

14          MR. PARISER:  I have no problem  
15          discussing it.  If Shelly wants to put forth  
16          a discussion as to what the parameters are  
17          so that if the Mayor goes there and they  
18          throw out something at him he can say ---

19          MS. STANCZYK:  You have to go with a  
20          realistic idea of what you expect in  
21          settlement.

22          MR. FLINN:  I am going to go and talk  
23          to them and see what's on the table.  I am  
24          not going to make any agreements.  We can't  
25          contract zone, but I have to be able to go

1           there and sit down and negotiate with full  
2           authority.

3           I expect them to come to the table with  
4           full authority. If they come to the table  
5           and tell me, well the Board of Director says  
6           I can only discuss this, and this, and this,  
7           within that parameter, I get up and I leave  
8           the room.

9           MR. FELLER: I think you are right on  
10          that. I was there from the beginning on  
11          this and as I mentioned before, I think the  
12          school was arrogant, wrong, unwilling to  
13          speak to their neighbors at the beginning,  
14          came up with a plan and said we are going to  
15          get the whole thing, we are not going to  
16          move one inch and were very surprised when  
17          they didn't get it.

18          On the other hand, we also have some  
19          neighbors who are angry at the school for  
20          just reason. But the result of their anger  
21          is to say you want them to do nothing,  
22          period. I think both are wrong.

23          MS. STANCZYK: I don't think their idea  
24          is for them to do nothing, not at all. I  
25          think they are truly understanding of the

1 facts that you cannot endanger someone's  
2 right to their property and the development  
3 of their property.

4 MR. FELLER: Well, let's see if we can  
5 come to something, as I said at the  
6 beginning, neither side is a terribly happy  
7 but both sides could live with.

8 MS. PARISER: Procedurally it's a very  
9 interesting scenario. If the Village and  
10 Palmer, who can't contract zone were to, I  
11 don't know how to phrase it, agree in  
12 principle, I don't know what they are doing,  
13 and the other two party litigants do not  
14 agree, that potentially could be farther for  
15 an attack for an agreement as contract zone.

16 MS. BOUTSIS: It's actually something  
17 that I have faced in the past and it happens  
18 to be the parking garage in South Miami. 12  
19 years of litigation over a parking garage  
20 against Greenberg, Traurig, and I will tell  
21 you we came to a settlement agreement that  
22 said you will agree to hold the hearing on  
23 these variances, you will agree to have  
24 impartial decisions on these things and if  
25 that all happens and if this is done this is

1           how the case will settle. And we actually  
2           had to go and then hold the hearings, have  
3           the advertised notice and have the public  
4           hearing.

5                   And I will tell you that I didn't know  
6           which way the hearings were going to go,  
7           because again counsel changed and it was a  
8           close vote, but the variance did pass, the  
9           building was constructed and ultimately the  
10          litigation ended, so there is a way of doing  
11          it.

12                   Will everybody be satisfied, I doubt  
13          it. I think in any discussion that you have  
14          in settlement, whether it's Palmer Trinity  
15          or the residents or the Village, I don't  
16          know that anybody is going to be completely  
17          satisfied with anything except what they are  
18          looking for.

19                   But if you are willing to listen you  
20          can at least see where you are.

21                   MR. PARISER: It will appear to me the  
22          only thing that you could agree to is to  
23          have a new hearing, otherwise I don't see  
24          how you escape the contract of contract  
25          zoning.

1 MR. FLINN: You are obviously going to  
2 have a new hearing.

3 MR. FELLER: What if you have a new  
4 hearing and the school requests are a  
5 different application?

6 MS. BOUTSIS: It will be their existing  
7 application, but they can make concessions  
8 at the hearing.

9 MR. FELLER: That's what I meant, they  
10 can modify.

11 MR. TENDRICH: I think that we should  
12 have the Mayor meet with them and if  
13 Councilwoman Stanczyk wants to give certain  
14 parameters that definitely she will not ---

15 MS. STANCZYK: My reason for doing that  
16 is not really to be critical it's really to  
17 say, if you walk in there and they say, this  
18 is what we want to do and you come back and  
19 say we need mediation, it wasn't very  
20 successful and mostly the lack of success  
21 was on their part.

22 MR. FLINN: I am not sure -- mediation  
23 is supposed to be confidential. If you put  
24 it on this record it's no longer  
25 confidential.

1           A party still has the right to expect  
2           that those comments made during mediation  
3           remain confidential.

4           MS. BOUTSIS: If I could, there would  
5           never be any mediations with a political  
6           entity, per se, it can never be communicated  
7           to you because the only way I can  
8           communicate this to you and have a  
9           discussion on it is through an AC session  
10          that's then published after the fact, so  
11          it's a catch 22.

12          MS. STANCZYK: My point is, you kind of  
13          need to know if you are being productive  
14          when you get there. If you walk in with a  
15          blank slate and they have the slate on their  
16          side filled --- I think if you have some  
17          realistic markers, so to speak, knowing what  
18          the application was in the past, knowing  
19          what the points of discussion are and that  
20          you know what you need to kind of push for,  
21          I think it gives you a better heads up than  
22          if you go there with a blank slate.

23          MR. FELLER: I think without us saying,  
24          "Do you want this number? Do you want this  
25          number?" Which we can't do, I trust the

1 Mayor who has been involved in this for many  
2 years pretty well knows how we all think to  
3 go into this knowing that he can't make any  
4 promises for the Village and has to get back  
5 to us.

6 MS. BOUTSIS: You are welcome to  
7 express your concerns so that the Mayor goes  
8 into the meeting ---

9 MR. FLINN: I have a pretty good idea  
10 where everybody is at. That's the joke of  
11 this whole thing with Palmer Trinity, they  
12 go cry-babying around about the Jennings  
13 stuff. When you deal with a small town you  
14 deal with both sides.

15 It's not made easier because you listen  
16 to one side and we are going to roll over  
17 the other one, it made it more difficult  
18 because there were people on both sides that  
19 were equally on the issue, and the so-called  
20 buzz that was out there was strong both  
21 ways.

22 So the joke is that they want to act  
23 like it made it easy for us to roll over,  
24 but in fact it made it harder because it  
25 made us be that much more on point to play

1           it straight down the middle or whatever,  
2           because all eyes were on us and we knew that  
3           people were not going to like it either way,  
4           so we were definitely going to rule in the  
5           way that we felt was most appropriate and  
6           most supportive one based upon the evidence  
7           before us, because either way we are going  
8           to anger people.

9           But what the heck, you charge your  
10          clients \$500 an hour you are going to spend  
11          it any way that you can.

12          MS. BOUTSIS: Just so we are clear,  
13          that's not me.

14          MR. PARISER: It's not a matter of  
15          negotiation, it's a matter of hearing what  
16          they have to say.

17          MR. FLINN: It may be a matter of  
18          saying after listening to them, hey thanks  
19          guys you are going to have to take it from  
20          us because you are not giving us an  
21          alternative. At some point, I know the  
22          object of mediation and I know the hardest  
23          thing to do is to bring someone close to  
24          where they want to go and not quite and get  
25          up and walk away and give them something to

1 chew on. The easy part is to walk away from  
2 is when people are not negotiating in good  
3 faith. I am not going to go there and beg  
4 for anything, I have a lot of things to do.

5 MR. PARISER: I don't think you have  
6 to. I think you just have to maybe just  
7 hear what they have to say and hear it  
8 firsthand and if they say okay, and that may  
9 last 10 minutes.

10 MS. STANCZYK: And you know that you  
11 are doing the right thing.

12 MR. FLINN: That's one reason why I  
13 don't want a mediator there.

14 MR. FELLER: Why don't we empower Gene  
15 to go there.

16 MS. BOUTSIS: I think you ought to  
17 consider it at this point. And once on the  
18 schedule I will then contact you for another  
19 AC session and tell you what happened.

20 MS. STANCZYK: When will this take  
21 place?

22 MS. BOUTSIS: I cannot give you any  
23 dates yet because I did not tell them that  
24 we would mediate in anyway, shape or form,  
25 so as soon as we leave I will contact them

1 and I will keep you updated.

2 On that note I am going to end the AC  
3 session so we can get into other business.

4

5 (Whereupon, the deposition was  
6 concluded at 7:00 p.m.)

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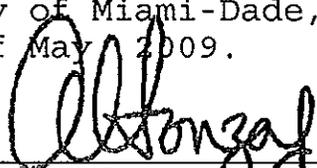
CERTIFICATE OF REPORTER

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 39  
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 12th day of May, 2009.



Adriadna Gonzalez  
Court Reporter  
Commission # DD 610641  
Expires Nov. 29, 2010