

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

CASE NO: 08-28977 CA 30  
08-245-AP

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17641 Old Cutler Road  
Palmetto Bay, Florida,  
Monday, 6:45 p.m.,  
May 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: Good evening everyone, I  
2 am the Village Attorney and I have requested  
3 from the Mayor and Village Council that we  
4 hold an attorney/client session in the  
5 defense of these certain actions, entitled  
6 Palmer Trinity versus the Village of  
7 Palmetto Bay, Circuit Court Case Number  
8 0828977 and Palmer Trinity versus Village of  
9 Palmetto Bay Appellate Court Case number  
10 08-245-AP.

11 This is because I am seeking advise  
12 from the council regarding litigation  
13 strategy and/or settlement.

14 The meeting is now being held at a  
15 quarter to seven on Monday, May 11th of  
16 2009.

17 And just so we have it for the record  
18 we'll go around the room.

19 MR. PARISER: Vice Mayor, Brian  
20 Pariser.

21 MR. TENDRICH: Councilman, Howard  
22 Tendrich.

23 MR. FELLER: Councilman, Ed Feller.

24 MR. FLINN: Mayor, Eugene Flinn.

25

1 MS. STANCZYK: Councilwoman, Shelley  
2 Stanczyk:

3 MS. BOUTSIS: I am Eve Boutsis, Village  
4 Attorney.

5 MR. WILLIAMS: Ron Williams, Manager.

6 MS. BOUTSIS: As you know, there is a  
7 certified court reporter present who will  
8 record the start time and termination of the  
9 session. All discussions and proceedings  
10 that occur, the names of all persons present  
11 at the time during the session and all  
12 persons speaking. The transcript shall be  
13 made a part of the public record at the  
14 conclusion of the litigation.

15 Let me start off with one thing because  
16 I think it's been a while since we have this  
17 conversation or this discussion.

18 The reason for the AC session as you  
19 know is to have, this is your time to talk  
20 about this litigation, and what happens in  
21 this room is supposed to stay quiet in this  
22 room and between us until the end of  
23 litigation. That's why there is a court  
24 reporter here and the transcript becomes  
25 available later on.

1           I ask that people take that seriously  
2           because I have been hearing certain rumors  
3           in the community and I want to make sure  
4           that we don't have any problems with waiver  
5           or our attorney/client privilege. I don't  
6           have any substantiating statements, but I  
7           want to make sure that Palmer Trinity, and  
8           their attorneys, and as you know at the  
9           Appellate hearing there were six of them, so  
10          I want to make sure that we are not going to  
11          be finding a challenge to the waiver of our  
12          attorney/client session privileges and  
13          everything that we have said during this  
14          litigation including any strategy be  
15          revealed before the end of litigation.

16                 That being said where are we?

17                 Let me give you a recap. You know  
18                 there was a zoning hearing just about a year  
19                 ago now, on the request by Palmer Trinity  
20                 private School to have a rezoning and to  
21                 have a variance and site plan modification.  
22                 Actually, it was three variances.

23                 At that hearing on the first part of  
24                 the application which was for a rezoning,  
25                 the Council denied it based upon one of the

1 five factors which is on transportation.  
2 And I am raising that specifically because  
3 of what we just accomplished in our special  
4 Council meeting.

5 The rest of the application was not  
6 heard. Since the first part was denied we  
7 couldn't consider the rest.

8 There was an appeal taken by Palmer  
9 Trinity, knock on wood, we were successful  
10 in that litigation, but, and there is  
11 unfortunately a but, there was a request for  
12 a rehearing. And the basis for that request  
13 for rehearing was a case that came out a  
14 week after our decision by our panel from  
15 the Third District Court of Appeals, Judge  
16 Schwartz wrote the opinion and basically he  
17 had very similar circumstances. It wasn't a  
18 school, but it was agricultural land EUP  
19 under the county code. And here we have a  
20 rezoning of agricultural land EU2 land to  
21 EUM land.

22 There are factual differences. Like I  
23 said, it wasn't a school, in that scenario  
24 it was for a development of single family  
25 homes and the main basis of the difference

1           was that the county wanted this property.  
2           This property that was agricultural they  
3           wanted it to be continued to be used for the  
4           benefit of surrounding neighbors as a  
5           drainage field.

6                     That being said, the holding of that  
7           case basically said this, this property was  
8           completely surrounded by EUM, you can't look  
9           at all these other factors use provided  
10          under that district and it was reversed spot  
11          zoning.

12                    So that is a concern out there. The  
13          court hasn't ruled yet on the request for  
14          rehearing and that makes me nervous because  
15          it's been two months and I don't know what  
16          will happen. I want to go through the  
17          different scenarios.

18                    One scenario is the court does nothing  
19          and it says you are affirmed, there is  
20          nothing to appeal Palmer Trinity can't  
21          appeal. Best case scenario for us.

22                    The next case scenario is if the court  
23          reverses its original decision to us based  
24          on the decision from the Third District.

25                    Our chances on an appeal to the Third

1 District to Judge Schwartz who wrote the  
2 original opinion.

3 MR. FLINN: We have been before  
4 Schwartz before.

5 MR. BOUTSIS: So that's the two  
6 scenarios for the appeal. You have the  
7 possibility of the court leaving the  
8 decision as it is or hitting us with a  
9 reversal. And hitting us with a reversal  
10 and our chances of appeal are minimal and it  
11 will go back before the Judge and the ruling  
12 that he made.

13 Let's talk about the original action.  
14 Palmer Trinity filed an appeal, they filed  
15 an original action. What does an original  
16 mean, it means basically it's not an appeal  
17 it has five reasons for the case being  
18 filed.

19 The first is that we were inconsistent  
20 with the comp plan under Chapter 163 of the  
21 Florida Statute. There was a separate and  
22 distinct due process clause violation. At  
23 least that's the violation under Jennings.

24 There is a request for declaratory  
25 relief under Chapter 86 of the Florida

1 Statute treating private schools differently  
2 from public schools which they did ask for a  
3 jury trial in those issues that could be  
4 heard by the jury.

5 That being said, that's still the  
6 beginning stages. We haven't had the motion  
7 for summary judgment hearing yet. We  
8 haven't taken the depositions yet so that's  
9 quite a bit of litigation that will be  
10 coming forward.

11 There is approximately seven  
12 depositions being scheduled for the members  
13 of the Palmer Trinity Board of Directors.  
14 There is also the deposition of our Mayor,  
15 Mayor Flinn, Councilwoman Shelley Stanczyk,  
16 and Dr. Feller as well as our traffic  
17 consultant from the Corrodino Group. That's  
18 for now, I don't know who else they are  
19 going to try and depose. Right now that is  
20 who is scheduled. And they also asked  
21 Arlene Weintrap to come back and be deposed  
22 as well.

23 Now, there is a fourth claim, and if we  
24 are going to be talking about settlement we  
25 need to think globally about all the

1 different issues so I am going to raise the  
2 Bert J. Harris Act which basically is pre  
3 filing suits, time period and in six months  
4 they can file their third lawsuit should  
5 they so chose. And that's basically saying  
6 by our actions of denying their zoning we  
7 have devalued their property from  
8 approximately ten to 13 million to 2.5.

9 And on top of all that we have this  
10 pending Senate decision and house decision  
11 to bring forward this growth management bill  
12 which could take away the one factor that we  
13 always had in our pocket which gave us the  
14 ability based upon the traffic experts to  
15 say this application is not consistent and  
16 therefore the rezoning should not occur,  
17 which is traffic.

18 MR. FLINN: Let me start off with one  
19 thing. Without going into what was said,  
20 basically it was made very clear that what  
21 we did and how we did it, I know we did it  
22 properly and in the best interest of the  
23 Village. With that in mind that's one  
24 overriding concern, the best interest of the  
25 Village.

1                   And one of the things I have thought  
2                   about consistently through all of the  
3                   overplay, and I don't know what if anything  
4                   is really going on as far as discussions  
5                   with the neighbors and with the Cutler Bay  
6                   residents and with Palmer Trinity, and what  
7                   makes us three groups happy may not make the  
8                   rest of the Village happy. I can see a  
9                   scenario where some of the neighbors from  
10                  Palmer Trinity, quote/unquote strike a deal  
11                  with Palmer Trinity and we would be like,  
12                  that's nice, but that's not what we feel is  
13                  the best interest of the Village and we'll  
14                  deny that. You know different things could  
15                  happen in there. So we need to be very  
16                  mindful of the best thing to do for the  
17                  Village and we need to figure out and be  
18                  able to tell people what happens if we  
19                  don't. The whole point of negotiations is  
20                  to try and bring people together to make  
21                  them equally happy or equally unhappy and  
22                  try and do for the best of the Village.

23                         I never like a motion, a post judgement  
24                         motion like that rehearing to linger out  
25                         there. Obviously the easiest answer is to

1 rule on it and deny it. Everything after  
2 that is not a denial, everyday that goes by  
3 on after that is not a denial. So there is  
4 no finality there.

5 If this growth management bill takes  
6 away our right to deny, then we lose all of  
7 our authority to mitigate, we can start to  
8 use that word again, to mitigate any adverse  
9 impacts because if they can do it as a  
10 matter of right they don't need to consult  
11 us. So it's like, I hate wood fences but my  
12 neighbor puts one up he had the right to do  
13 it. To get something out of somebody you  
14 have to kind of move forward and extract it,  
15 but if you let someone else make the  
16 decisions for you it's not necessarily going  
17 to be what you like.

18 MR. TENDRICH: Can you discuss with us  
19 what you all discussed in your discussions?

20 MR. FLINN: I can discuss a lot of it  
21 because I was kind of shocked. In terms of  
22 there was no real, I don't think there was  
23 one substantiative thing discussed. I think  
24 we kind of just looked at each other eyeball  
25 to eyeball and I said, I am going straight

1 down the middle buddy and that middle lies  
2 in between the two of them, but I called it  
3 as I saw it and you know, I don't care what  
4 kind of position they tried to manufacture  
5 or shout, and however they shouted, I rule  
6 based on what I felt was right. And I  
7 talked to them about it, I have got a lot of  
8 friends on both sides so I made a lot of  
9 people unhappy.

10 MR. PARISER: Who was there?

11 MS. BOUTSIS: Stan Price, the  
12 chairperson of Palmer Trinity and Sean  
13 Murphy.

14 MR. FLINN: I was kind of surprised  
15 about that too, I would have thought there  
16 would have been more people there. Because  
17 Sean Murphy I don't consider him to be a  
18 decision maker on this.

19 MR. BOUTSIS: Although he is the  
20 president of the board of directors.

21 MR. PARISER: How long did it last?

22 MR. FLINN: The president works for the  
23 chair and the board of directors.

24 MR. PARISER: How long did this last?

25 MR. FLINN: It started around three,

1                   didn't it?

2                   MS. BOUTSIS: You came about two.

3                   MR. FLINN: I came to the pre meeting  
4                   and it started about three because they were  
5                   late because they came to the wrong place.  
6                   And I was out of there before five and there  
7                   was a long period of time I was in your  
8                   office and not part of the meeting.

9                   MS. BOUTSIS: We're looking at about  
10                  two hours in the actual ---

11                  MR. FLINN: My part of the meeting was  
12                  about 45 minutes to an hour and it really  
13                  was just like he tried to get a little bit  
14                  excited with me and the manager tried to  
15                  calm him down. But you know, none of that  
16                  bothers me because as I said, I do rest very  
17                  comfortably at night.

18                  The one thing I don't like, the nice  
19                  thing about being Mayor is we get to make  
20                  the decisions that we think are right, we  
21                  have to answer to ourselves and the voters,  
22                  but still, I am sure there are some things  
23                  that you guys would vote regardless of your  
24                  reelection because it's based upon  
25                  principle.

1 MS. BOUTSIS: Just so we are clear, any  
2 idea of settlement. You cannot contract  
3 zone, so the concept would have to be that  
4 either all of the cases are dismissed or  
5 stayed or denied have floated out there that  
6 I want the cases dismissed, and the appeal  
7 with prejudice. So you understand if it's  
8 with prejudice it can't come back and we  
9 agree to have a hearing, that's all that you  
10 can do in this type of case because we can't  
11 agree to a number of students, you can't  
12 agree to site plan, you can't agree to any  
13 of those things here.

14 MS. STANCZYK: I guess my foundation,  
15 my question is, because we never got to the  
16 zoning plan we were at a yes or no, do they  
17 get the zoning, so when you go for  
18 settlement we are going for settlement to  
19 decide to do ---

20 MR. FLINN: Will be a do over.

21 MS. STANCZYK: So we would start first  
22 with the zoning and then they will have to  
23 bring forward.

24 MS. BOUTSIS: The remainder.

25 MR. FLINN: We could come to the exact

1 same decision. Of course that same decision  
2 would be after that other appellate decision  
3 that came down, it would be after the  
4 governor takes action on this growth  
5 management bill and it would be after any  
6 number of things.

7 MS. STANCZYK: That would be a horrible  
8 thing if we came to the same decision. That  
9 would be a terrible thing because we are not  
10 going anywhere but we are at a negative  
11 stance.

12 But my question really is, we go back  
13 and we do a do over, now if you do a do over  
14 we would get the zoning application for  
15 rezoning, we would get the plan application  
16 which is a set plate, would we go through  
17 the process of saying that this is a  
18 settlement process, would we be encouraging  
19 them to modify their plan?

20 MS. BOUTSIS: Ultimately whatever is  
21 presented would have to have a complete  
22 review. Meaning it would require our  
23 traffic consultants to review whatever the  
24 resubmitting would have and have our new  
25 zoning directors analysis.

1 MS. STANCZYK: It doesn't start like a  
2 do over of that night, you have to go all of  
3 the way back?

4 MS. BOUTSIS: Overall yes.

5 MR. FLINN: And the original staff  
6 recommendation would be null and void and  
7 would be replaced just like you have a new  
8 plan.

9 And that staff's recommendation would  
10 be what would be before us at that hearing;  
11 is that correct or incorrect.

12 MS. BOUTSIS: That's correct.

13 MR. FELLER: Would the judge not rule  
14 yet on the 360 bill coming up in congress?  
15 Could the judge just be waiting to see if  
16 the governor signs it or not?

17 MR. BOUTSIS: I don't think so.

18 MR. FELLER: Number two is, if the  
19 governor signs it in the middle of June  
20 which is when the governor usually signs all  
21 of the bills he signs everything at one  
22 time, would that affect issues that happen  
23 prior to the signing of the bill and what  
24 would the issue be?

25 MS. BOUTSIS: I would look at it, it

1           hasn't been enacted yet and I don't know  
2           what kind of arguments Palmer Trinity would  
3           try and make. It's supposed to date back to  
4           when they filed back in 2007, so I would try  
5           and argue that you will have to comply with  
6           any traffic requirement based upon ---

7           MR. FELLER: But if you have a new  
8           hearing as we are talking about?

9           MR. BOUTSIS: You are talking about not  
10          really from scratch you are giving them a  
11          right to modify the application.

12          MR. FELLER: Could they put out the  
13          application and put out a new one under the  
14          new law if the governor signs it?

15          MR. BOUTSIS: Under the new law they  
16          could do that, yes.

17          MR. FLINN: Remember, a denial is not  
18          forever, a granting is forever.

19          MS. BOUTSIS: In other words, any time  
20          after the hearing of the first case they  
21          could have filed a new application any time,  
22          and in fact the have filed an application,  
23          right, the day before we finalized or  
24          moratorium.

25          MR. PARISER: Was that an amended

1 application or a new application?

2 MS. BOUTSIS: They haven't clarified it  
3 and I haven't clarified it with them only  
4 because I said they are subject to the  
5 moratorium. So it's just sitting there  
6 right now, but that application is basically  
7 I believe they consider it an amendment.

8 MR. TENDRICH: Would they be better off  
9 just waiting to see what the governor does,  
10 if the governor signs it and they don't have  
11 to come to us?

12 MR. FLINN: You have to be smart about  
13 these things, too. An even though, I am not  
14 worried about keeping any sort of decision  
15 for or against anybody. Again, this is  
16 based upon the evidence, this is based upon  
17 what we are doing. But getting back to it,  
18 remember we almost had a deal struck where  
19 we were going to put off the litigation in  
20 the oral argument to go to a mediation.  
21 They before or after our meeting, but before  
22 we could contact them and communicate with  
23 them that we were going to do that, they  
24 sent in a fax saying that they were  
25 withdrawing. They were so smart in doing

1           that they got it handed it to them at oral  
2           argument and were made to look pretty  
3           foolish. No one can predict what's going to  
4           happen.

5           Like I said, going back to hearing  
6           doesn't guarantee anybody a result, it does  
7           guarantee a whole new analysis and possibly  
8           a restart of all this litigation, so that's  
9           why you have to consider.

10          Maybe the best answer is to sit there  
11          and fold our arms and let the court make a  
12          decision and then every one of us can look  
13          everybody in the eye and say, hey, that's  
14          what the Judge ruled don't blame be.

15          MR. PARISER: Procedurally, though,  
16          Council made the proper decision based upon  
17          the evidence. The fact that there was a  
18          motion for rehearing with this new case I  
19          thought it was a little distinguishable, but  
20          the fact that they haven't ruled on the  
21          other case, ten and-a-half million dollar  
22          case went to rehearing to the Supreme Court  
23          and the Appellate attorney said it's going  
24          to be turned around in 30 days, three  
25          and-a-half months later, I am saying, what

1 goes, they rule for us so they deny the  
2 motion for rehearing so it's possible. But  
3 if we win as I understand a couple of things  
4 number one, the other Circuit Court case  
5 doesn't necessarily go away.

6 MR. FLINN: It doesn't go away at all  
7 it raises other grounds.

8 MR. PARISER: If we win then they say  
9 you were properly denied they can come back  
10 again.

11 MR. FLINN: Just file a new  
12 application.

13 MS. STANCZYK: What does it mean, it  
14 raises other grounds?

15 MR. FLINN: They have a Jennings claim  
16 in the lawsuit that's pending and that's  
17 what the depositions would be about in terms  
18 of who did we communicate with, were they  
19 prejudiced by that even though we have a  
20 statute, we cured the prejudice by  
21 disclosing it in e-mails, they are going to  
22 look and see if they discover more.

23 MR. BOUTSIS: They may depose the  
24 people in the e-mails and ask, did you have  
25 communications with the Council, what was

1                   said, how was it said, when was it said.  
2                   This could go on and on and on.

3                   MR. PARISER:  Whether it would be  
4                   successful, but assuming they are not even  
5                   successful with the Circuit Court action,  
6                   they can still come back again with another  
7                   application.

8                   MR. FLINN:  Denials are never forever.  
9                   The only thing that is forever is, obviously  
10                  you grant it wide open they always have the  
11                  vested rights.

12                  MR. PARISER:  What bothers me on the  
13                  contract zoning is even if they said instead  
14                  of 1,400 students we'll agree to 1,000  
15                  students, you can't make that deal it just  
16                  has to come back.

17                  MR. FLINN:  It becomes arbitrary at  
18                  some point.

19                  MR. PARISER:  When we are talking  
20                  settlement discussions the only settlement  
21                  discussion would be, and this is what  
22                  bothers me, we'll withdraw your lawsuit and  
23                  we'll allow you another shot.  What does  
24                  that mean?

25                  MR. FLINN:  Let me just say one thing

1 and I'll let you speak.

2 MS. STANCZYK: That's what I am trying  
3 to clarify and understand.

4 MR. PARISER: That's all you can do is  
5 you get another hearing.

6 MR. FLINN: Going back to it, though,  
7 is ---

8 MS. BOUTSIS: Ultimately the answer is,  
9 I think after there has been a lot of  
10 communication from the community at large at  
11 what they want to see regardless of numbers  
12 and everything else. I think it would be  
13 prudent of Palmer Trinity to take some of  
14 those things into consideration, but it's  
15 not something that we can take into  
16 consideration right at this moment.

17 MR. FLINN: This Council has been very  
18 consistent from day one. We talk about  
19 things with variances, we don't want things  
20 being left out there for a while. I want it  
21 written in our ordinance that hey, you get a  
22 variance and you don't act on it in five  
23 years and pull a permit, it expires and your  
24 right evaporates.

25 Enforceability, we have seen other

1 issues specifically to Palmer Trinity.  
2 Defining what a student is or who a student  
3 is, re portability, enforceability. And  
4 these don't go to the merits of application,  
5 so I feel comfortable discussing them  
6 because I think it protects Palmer Trinity  
7 as well because instead of just denying them  
8 based on the allegation that they didn't  
9 comply with prior things, we would try and  
10 come up with something regardless of what  
11 they were granted or denied even if it's ten  
12 percent of what they were asked for of  
13 putting in place.

14 We are all aware of the problems and I  
15 don't think that we are going to get fooled  
16 again on that. And I think Palmer Trinity,  
17 I think the neighbors, I think the Village  
18 any future Council would be protected,  
19 because you know that you have to dot the  
20 I's and cross the T's. I don't know there  
21 is anything wrong in discussing it out here.

22 And that's not a matter of contract  
23 zoning, but part of the special land  
24 development code you continuously look for  
25 when we enact a final code, because it's not

1 fair to the current Palmer Trinity code if  
2 they get denied based upon a former Palmer  
3 Trinity Board and we are saying, you know  
4 what, this is the way it's going to be, this  
5 is the decision. But everybody knows their  
6 rights and knows their obligations as far as  
7 we think that we need to set them and I  
8 wouldn't be surprised if any resolutions get  
9 granted anything to Palmer Trinity. It  
10 wouldn't be a 20-page resolution of all  
11 kinds of things sitting there, all kinds of  
12 nothing left to the imagination or hand  
13 shake deal, this is a going to be like  
14 closing a house, your financing has to be in  
15 place and everything else. There is going  
16 to be nothing left for after closing  
17 details.

18 They have a way out at some point too.  
19 At some point you have to bring a community  
20 together, at some point you have to move  
21 things and we either wait for the Court, but  
22 we need to decide, do you want to wait for  
23 the Court, do you want to take action, do  
24 you think both parties will ever be able to  
25 agree.

1 MR. TENDRICH: I thought when you and  
2 Eve met that's what you were supposed to be  
3 talking about settlement, but I guess not.

4 MR. FLINN: As it stands here today, I  
5 have never met with the neighbors and  
6 discussed what it would take with them to  
7 get this resolved. I still have not met  
8 with the -- we have had some kind of  
9 nebulous discussions in terms of discussions  
10 that they have had. They said they wanted  
11 to bring forward a plan that would require  
12 no variances, which by the way having no  
13 variances makes it very hard to deny.

14 MS. STANCZYK: Why don't we set  
15 something up with the neighbors and with the  
16 people and see what it does take to make  
17 them happy.

18 MR. FLINN: I would be happy to meet  
19 with the neighbors too. We have 45 days, no  
20 more than that when the senate bill hits the  
21 Governor's desk. We thought it was  
22 important enough that we bring it up at a  
23 special Council meeting to do it, but you do  
24 this the day after the bill was signed, you  
25 do this the day after the rehearing is

1 granted, you do this a day after anything  
2 falls awry, just remember what happened to  
3 Stanley Price getting cute with us on that  
4 thing in regards to -- I am just putting  
5 this out there so when he reads it later on,  
6 but you know what, if he would have kept  
7 that offer on the table we would have gone  
8 to oral argument with a rewrite of their  
9 brief with that notice of supplemental  
10 authority in advance of oral argument, not  
11 notice of supplemental authority after the  
12 decision was rendered.

13 MS. BOUTSIS: In other words, by taking  
14 the offer to settle on the table prior to  
15 oral argument, we got a favorable verdict.  
16 If we had waited and whatever or tried to  
17 settle, we would have gotten the opinion  
18 that came out a week later and we would have  
19 been in a worse scenario.

20 MR. FLINN: Do you think that case was  
21 on point or not? I don't think that it was  
22 but ---

23 MS. BOUTSIS: I have the case here from  
24 the Third District. I am just going to  
25 read, this is the key, "The undisputable

1 evidence is that the previous agricultural  
2 nature of the area no longer prevails."

3 You have to figure out if that's true  
4 about our community.

5 "So that the surrounding property is  
6 now used as permitted either by EU zoning  
7 district or if anything even more liberal."

8 You have to think if that applies to  
9 our area.

10 "In these circumstances" and that's the  
11 key, "In these circumstances," that's what  
12 makes it unique. "It is obvious that  
13 continuing the EU designation result in an  
14 instant of an impermissible reverse spot  
15 zoning which cannot be sustained."

16 MR. PARISER: I'd like to hear from the  
17 EU what are the ranges of exposure as far as  
18 the Village, as far as what we could max ---  
19 what, we win and what, the Village could  
20 potentially lose and what, we can accomplish  
21 maximum zoning versus minimum zoning.

22 I mean, the thing that bothers me about  
23 this like Gene said, a denial is not  
24 forever. Even if we win this case they can  
25 keep coming back.

1 MS. BOUTSIS: That's true.

2 MS. STANCZYK: If the Mayor and whoever  
3 goes to talk with the neighbors and gets  
4 their input and we get input from Palmer  
5 Trinity and we have a hearing and we draft a  
6 plan that we approve, because I would  
7 imagine that they would put something  
8 similar to what they have or somewhat modify  
9 and we may change it on the dais, will they  
10 then accept it, are we going to go back to  
11 the same thing?

12 MR. FLINN: There is two different  
13 things that can happen. Remember I always  
14 ask the question, will the applicant accept  
15 those conditions. If they say yes, I mean,  
16 we still have to have the hearing in terms  
17 of we need to take the evidence and make the  
18 decision based upon the hearing. But if  
19 they accept it the applicant has waived his  
20 rights to appeal that condition.

21 If he craft it saying, these are the  
22 conditions would you accept those  
23 conditions, if they say yes, the applicant,  
24 their attorney has entered into a  
25 stipulation at that point. And though

1           somebody from the outside if they have  
2           standing could sue or intervene and try to  
3           appeal assuming that they have standing, but  
4           the applicant who had authority to bind at  
5           that hearing they are bound by that.

6           MS. BOUTSIS: For example, at the  
7           original hearing there was a number of  
8           conditions laid out in the zoning analysis  
9           as to the other two parts which we never got  
10          to, but they stayed on the ground that we  
11          stipulated to those 20 items.

12          So to answer the question, Vice Mayor,  
13          there is a whole sector. Ultimately, if you  
14          go to a hearing and they agree to certain  
15          stipulations, things that they wouldn't  
16          appeal because they have agreed to them and  
17          perhaps even assert a time period where they  
18          can't come back to redevelop it, they are  
19          tied to this site plan for a number of  
20          years, that's one scenario.

21          MR. PARISER: There is a new hearing?

22          MS. BOUTSIS: Yes, the new hearing.

23          MR. PARISER: In other words, if we say  
24          okay we'll agree to a new hearing?

25          MS. BOUTSIS: Yes. Those are your

1 choices, you either have a new hearing or  
2 you don't.

3 Two, let's say if you come out with the  
4 same basic decision that you had last time,  
5 there is potential of a new appeal, again  
6 all the other cases went away.

7 Three, it might be slightly different,  
8 it might be agreed upon some portion of what  
9 they have asked for, denial of some and it  
10 might be an addition of facts in law that  
11 could be appealed by either party, because  
12 remember anybody can sue, anybody who has  
13 participated in the hearing. So the  
14 residents can sue or Palmer Trinity can sue,  
15 that's all true, but what you are dealing  
16 with is going forward. If we do not win the  
17 appeal and it comes back to us the Court  
18 will just order --

19 MR. PARISER: Tell us what we did  
20 wrong.

21 MS. BOUTSIS: They say, you should have  
22 granted the rezoning, you have to grant  
23 rezoning. So that's out of your control and  
24 then you have to deal with the rest of the  
25 application, which according to the staff

1 analysis done back then they qualified for  
2 the number of students of 1,400. And you  
3 still would be facing the original action  
4 for the Jennings violation alleging the Dec  
5 action on the constitutionality basically of  
6 our ordinances as it applies to private  
7 schools.

8 MS. STANCZYK: Can I ask an opinion of  
9 people here what they feel like if -- I  
10 think everybody has done a great job in  
11 terms of you have been so successful so far,  
12 knock on wood. Is it a good time to do it  
13 and I am not asking in the negative I am  
14 asking in the positive?

15 MR. FLINN: I am going to interrupt you  
16 right there. I think now is a beautiful  
17 time, there is a lot of uncertainty out  
18 there.

19 MS. STANCZYK: For them as well?

20 MS. BOUTSIS: For everyone.

21 MR. FLINN: Now you are throwing a lot  
22 of balls in the air and now I think is the  
23 time that gives us maximum ability to act  
24 and craft a solution, because they have  
25 already seen us for -- we slammed the door

1           on them the first time, we have let the  
2           gates of hell out on them. We have  
3           litigated on all the cases and we still have  
4           a great zoning appeal record, and why do we  
5           have a great zoning appeal record, because  
6           we render great zoning decisions based upon  
7           the evidence.

8           But the neighbors, they should be  
9           getting a little nervous, Palmer Trinity,  
10          they should be very nervous and it's really  
11          time I think to sit there and say, we are  
12          going to step in and get this tidied up with  
13          a new planning director because we have a  
14          new planning director.

15          Assuming that they will agree to  
16          sufficient ground rules, because I am not in  
17          favor of giving anybody any sort of  
18          one-upmanship on this one, i would want a  
19          new planning evaluation, a new record  
20          created on this, don't you think?

21                 MS. BOUTSIS: Yes.

22                 MR. FLINN: Don't you think?

23                 MS. STANCZYK: That's part of my  
24          question that I have been asking all along,  
25          exactly where do we begin again? And like

1           you said, we do start from the beginning and  
2           we go all the way back, we don't start in  
3           the middle.

4                     But my other question was, are we  
5           sending a message to anyone that would want  
6           to litigate us that we are strong?

7                     MR. PARISER: There is a new factor  
8           that pops up to mind. If they take  
9           transportation away from local  
10          municipalities and if we win and then they  
11          file a new application. That's a big  
12          unknown.

13                    MS. STANCZYK: I mean, in the global  
14          sense we have set a standard that makes us  
15          look strong, we have not looked weak, that  
16          we are making a strong decision here that's  
17          a smart decision not based on fear on  
18          something coming down the pikes, you  
19          understand what I am saying?

20                    MR. FLINN: Fear, that's the other  
21          guy's problem. I think the message that we  
22          sent is not one of weakness but one of, we  
23          want to continue to control the destiny of  
24          this Village. We are not willing to put in  
25          the Court and we are not willing to just

1 hand it off to a group of neighbors and we  
2 are certainly not letting a school make its  
3 own decision without any consultation of the  
4 neighbors.

5 MS. STANCZYK: That's how I want it to  
6 look.

7 MR. FELLER: I would like to go a step  
8 further. I think that everyone at this  
9 table is looking out and has looked out,  
10 including previous people, on what's good  
11 for the Village not for any single group or  
12 any individual. And that, even though it  
13 may be costly, we can come up with a  
14 methodology. If anything, I don't think we  
15 should say well, you know, we can't afford  
16 litigation because when we are spending  
17 money for litigation we are spending the  
18 money of 25,000 people who live in Palmetto  
19 Bay and if we have to raise more money for  
20 taxes for litigation all 25,000 people are  
21 being charged for litigation, like any one  
22 organization that litigates against us  
23 whether it's this person or any other group  
24 in the future, and as long as we honestly  
25 feel that we are looking out for the best of

1           the whole Village and anyone who litigates  
2           against us has to understand that we are not  
3           going to run out of money or they are going  
4           to get 25,000 people very angry for higher  
5           taxes.

6           MR. FLINN: I think we are in good  
7           shape. My problem with this whole spending  
8           litigation is the lack of control. We have  
9           got meritorious defenses, we have always  
10          done very well. I think the only thing we  
11          ever backed off on would be when we did not  
12          go through on the motion for attorney's fees  
13          in the previous litigation, and that did  
14          look a little heavy-handed, but I think we  
15          said hey, one bite and we moved forward, but  
16          we have a duty to recover money, and quite  
17          frankly we continue to prevail in front of  
18          Palmer Trinity, and I would be looking for  
19          them to pay our legal fees.

20                 Are they willing to pay our fees to  
21                 date to move forward?

22           MS. BOUTSIS: I have not asked them  
23           that question.

24           MR. FLINN: If they pay it that might  
25           look like they are buying us.

1 MS. BOUTSIS: He is meaning as far as  
2 settlement.

3 MR. FLINN: Look, I guarantee you that  
4 they are not going to get everything that  
5 everybody wants and I guarantee you that  
6 there is a solution out there, we are just  
7 not able to access it while we continue to  
8 wait for a Court to see what the Court is  
9 going to do.

10 MR. PARISER: I think now is a good  
11 time to act. As far as the reason why we  
12 became a Village is to control our own  
13 zoning, which means to draw a line in the  
14 sand and have the Village fight for  
15 decisions, which may not benefit 25,000  
16 people but a good segment.

17 So spending money is not a problem, but  
18 this is something that can come back in  
19 various forms over and over again.

20 You are right, and you've got to wonder  
21 about what does affect them, because like  
22 you just said, they can voluntarily waive  
23 that application never a prejudice to them,  
24 re file based on the new current law, and I  
25 am not even sure of any new factors that

1           might come up after anything on this ballot  
2           for special election or anything else or  
3           where that would come into play in things  
4           either.

5           MR. BOUTSIS: The only thing that I  
6           would say, as to your community, what the  
7           community would want to see if there was an  
8           idea to move forward with a hearing, I would  
9           recommend instead of meeting with the Mayor  
10          or anybody in this Council, it is a meeting  
11          with the zoning director and let him ---

12          MR. FLINN: I think the neighbors  
13          should be entitled to meet with you.

14          MS. BOUTSIS: But I don't want you  
15          getting into details of an application and  
16          what you want to see and what you don't want  
17          to see, that gets into the whole idea of  
18          contract zoning.

19          MR. FLINN: Let me run through this  
20          real quick, if I hear the consensus if they  
21          agree to stop the litigation with finality  
22          not a stay.

23          MS. STANCZYK: Who is they?

24          MR. FLINN: Palmer Trinity. If they  
25          stop the litigation, because if they are

1           denied again they can start the litigation  
2           up all over again, but it has to be with  
3           prejudice in so far as any action that we  
4           take in a hearing is all fair game but we  
5           start clean. I meet with the neighbors one  
6           time and I mean in the next three to five  
7           days. The new planning director, new  
8           record, new record. We don't have to make  
9           new disclosures on the old stuff, we have  
10          already made our disclosures, I am not going  
11          to go back, but we have to make our  
12          disclosure anew of anything that's happened  
13          since that hearing or whatever. But I want  
14          to even include these current discussions,  
15          and then we tee it up and move forward.

16                 MR. PARISER: I'll tell you what I feel  
17                 nervous about. I mean, because this  
18                 contract zoning we could agree to that and  
19                 then they get a new chairman of the board  
20                 and say I didn't agree with that.

21                 MR. FLINN: They have a binding  
22                 agreement.

23                 MS. BOUTSIS: We'll have an agreement  
24                 that says you will dismiss, you will have a  
25                 public hearing within a certain amount of

1 time.

2 MR. PARISER: But at the public hearing  
3 they can come back and say, we want 1,400  
4 students.

5 MR. FLINN: Sure they can. That's  
6 absolutely true. They know how popular that  
7 was the first time. I think they would come  
8 back with a little better attitude and I  
9 think the neighbors will come back knowing  
10 that something is going to happen this time,  
11 this is going to be the time to get it done.  
12 And I think if this thing fails it's because  
13 we weren't able to craft something that we  
14 felt would be in the best interest of the  
15 Village based upon the evidence in front of  
16 us and at that point we know it's to the  
17 wall, there is going to be litigation at the  
18 very end.

19 MR. PARISER: My other comment was  
20 going to do with, we did this on another  
21 case in the Third DCA, we enter a  
22 stipulation from process to the Third DCA to  
23 hold off rendering a rehearing decision  
24 because the parties want to negotiate.

25 MR. FLINN: I think we should ask for a

1           ten to two-week period for the Circuit Court  
2           and the Appellate capacity to hold off  
3           rendering a decision to give us time to  
4           negotiate.

5           MR. BOUTSIS: I agree on the appeal and  
6           that's what I recommended, and I threw that  
7           out and they are willing to listen to that  
8           on the appeal.

9           MR. FLINN: If they grant a judgement  
10          of dismissal we can do it on the facts but  
11          not the law.

12          MS. BOUTSIS: It will probably be as to  
13          the due process.

14          MR. FLINN: A serious applicant would  
15          be able to find a way to accomplish it.

16          MS. BOUTSIS: I have raised the  
17          question and I am waiting for an answer  
18          back. And then of course I will also want  
19          withdrawal of their letter for the Bert J.  
20          Harris.

21          MR. FLINN: Yes, they will want to  
22          withdraw that because it will stop the six  
23          months. That will be something they should  
24          want to do, because after all agree in the  
25          stipulation that does not constitute notice

1 in case they say we have withdrawn it, we  
2 could waive our assertion of a defense that  
3 they sat on their rights.

4 MS. BOUTSIS: Got you.

5 MS. STANCZYK: I think -- never mind. I  
6 am done.

7 MS. BOUTSIS: So we have a consensus  
8 that I should contact them about this  
9 concept and I will also contact OCI and the  
10 Cutler Bay firm that represents the  
11 residents and hear from them.

12 MR. FLINN: This is a limited time  
13 offer, though.

14 MS. BOUTSIS: Give me three to five  
15 days to get together with the neighbors and  
16 within two weeks to have some sort of  
17 stipulation settlement to be brought up;  
18 correct?

19 MR. FLINN: June 4th, we would have to  
20 be ready to go by June 4th.

21 Can we have an attorney/client session  
22 before that?

23 MS. BOUTSIS: You can have an  
24 attorney/client session before that.

25 MR. FLINN: I thought you had to ask

1 for it in front of a meeting.

2 MS. BOUTSIS: As long as I give you  
3 adequate notice you can do it. It's usually  
4 done before a meeting but I can do it by  
5 e-mail. As long as it is posted.

6 MR. TENDRICH: You are asking the  
7 people what they want, what they are willing  
8 to accept and that's what you are sort of  
9 saying, correct?

10 When you met with Palmer Trinity I  
11 thought you said they were going to ---

12 MR. FLINN: I thought they were going  
13 to sit there and say, look we will go down  
14 900 or 1,100 or 1,400 students or get rid of  
15 this building and move it over here and  
16 we'll take traffic off of 176th and move it  
17 over here.

18 MS. BOUTSIS: I think they were looking  
19 for an opening for us to do that and just we  
20 are not going to contract zone, we are  
21 willing to listen to you, and you know Stan  
22 Price --.

23 MR. FLINN: I think Stan Price wanted  
24 the full-on Flinn experience.

25 MS. STANCZYK: Did you give it to him?

1 MS. BOUTSIS: He did. The chairman of  
2 the board just basically ended the meeting  
3 with, look, we want to move back to being  
4 educators not litigators, we'd like to get  
5 back to a hearing and resolve it. The  
6 meeting just didn't work that way, it was  
7 the dynamics of the meeting.

8 MR. FLINN: The problem with the  
9 mediator is --- never mind.

10 MS. BOUTSIS: On that note I think I am  
11 going to end here if that's okay. Thank  
12 you.

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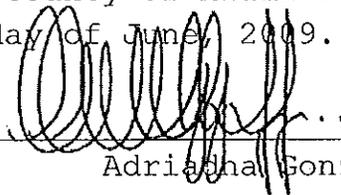
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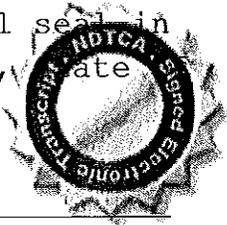
STATE OF FLORIDA :  
 : SS.  
COUNTY OF DADE :

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 44  
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  
Florida, this 7th day of June, 2009.





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