

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

3
4 CASE NO: 08-28977 CA 30

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7 _____/

9 17641 Old Cutler Road
10 Palmetto Bay, Florida,
11 Wednesday, 5:30 p.m.,
12 ~~April 22, 2009.~~
13 *June 8, 2009*

10 ORIGINAL

14
15 APPEARANCES:

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

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1 MS. BOUTSIS: As the Village attorney I
2 have requested that we sit down for an
3 attorney/client session in the legal action
4 of Palmer Trinity Private School versus the
5 Village of Palmetto Bay, Circuit Court case
6 number 08-28977 CA 30. And the other
7 litigation which is the appellate number, to
8 seek advice from council regarding
9 litigation strategy and settlement.

10 It's approximately 6:20 on Monday, June
11 8th, and I will have everyone go down the
12 row and introduce themselves. Remember that
13 the court reporter will take down
14 everybody's statement, so please talk one at
15 a time, and the transcript will be made
16 available at the end of all of the
17 litigation.

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

20 MR. TENDRICH: Howard Tendrich,
21 Councilman, District Two.

22 MR. FELLER: Edward Feller, councilman
23 District One.

24 MR. FLINN: Eugene Flynn, Mayor.

25 MS. STANCZYK: Shelley Stanczyk,

1 Councilwoman, District Three.

2 MS. BOUTSIS: Eve Boutsis, Village
3 Attorney.

4 MR. WILLIAMS: Ron Williams, Village
5 Manager.

6 MS. BOUTSIS: Thank you again for
7 coming in tonight. After our attorney
8 session last week which was pretty much a
9 status update, the council had directed that
10 we hold another attorney/client session for
11 today because part of our discussions as to
12 strategy or settlement depend in part based
13 upon the enactment or failure to enact
14 Senate Bill 360.

15 As you know, I think it was the same
16 evening but we didn't learn about it until
17 the next day, Senate Bill 360 did pass. So
18 before us tonight is the discussion of
19 whether we want to proceed with settlement
20 discussions and in that vein whether we want
21 to go ahead and give a hearing.

22 Again, the appellate matter would be
23 stayed, the original action would be
24 dismissed, the Bert J. Harris claim would be
25 dismissed and then we would have the hearing

1 as to the application as amended.

2 They have stated that they would submit
3 an application for 1,150 students and no
4 variances. Of course, I have told you that
5 we do not contract zone so we do not have to
6 accept that, but we have to hear the
7 application on what they are putting
8 forward.

9 MR. FLINN: I don't think we need to
10 discuss much in terms of personal feelings
11 here, they are largely irrelevant. This is
12 a quasi judicial board zoning and it's time
13 for everybody to state their intensions as
14 to whether they are going to settle it or
15 drive this thing or are we going to let this
16 thing be driven.

17 Now, as an attorney I know that you
18 have your best ability to get extractions
19 or compromises when you have a issue in
20 controversy, because tomorrow if we win
21 everything, they still have the right to
22 make a substantial change to their plan,
23 come back before us and they can bring
24 forward anything that doesn't require a
25 variance. Am I right or wrong about that?

1 MS. BOUTSIS: Yes, they actually have
2 an application pending for just the other
3 two parcels for over 1,800 students. So
4 with the 600 plus the 1,800, that's 2,400
5 students that they can go forward with and
6 not have to deal with traffic impact under
7 360.

8 MR. FLINN: So Vice Mayors, Districts
9 one, two and three, how do we resolve this
10 matter in the best interest of the Village
11 if we have no jurisdiction to affect
12 anything that they have because they have an
13 application that doesn't require any
14 variances?

15 MR. PARISER: I haven't heard anything
16 from the Palmer Trinity people. I think
17 that they are -- personally, I think they
18 are belligerent, I don't think they want to
19 settle and I don't think that we have any
20 leverage over them until we maybe slug this
21 out a little more.

22 MR. FLINN: You know, let me ask you
23 something Brian. If Schwartz picks up and
24 reverses and makes us go back and enter a
25 zoning district change and they don't have

1 any variances, I mean, everybody here I
2 think realizes that we are absolutely not in
3 a position to do anything about it.

4 Certainly we've won back then on
5 everything, but I mean, that's the way we do
6 zoning hearings in terms we litigate them
7 until the end or do we try to -- I thought
8 there were things that we could be doing at
9 that last zoning hearing. I thought we'd
10 give them a chance to sit down and
11 negotiate.

12 At this point I don't think there is
13 going to be any negotiations between the
14 neighbors and Palmer Trinity and I am not
15 planning on any at this point. I think it's
16 a matter now of sitting down and seeing if
17 something can be done that's in everybody's
18 best interest. It would probably be a lot
19 more toward the neighbors than toward the
20 school.

21 But you know, let me know guys, do we
22 have the authority to drive this thing or do
23 we sit back and let other people drive this
24 thing? I mean, if we defer all of our
25 authority to other people are we just

1 letting the school and neighbors take us
2 along for the ride or we drive this?

3 MR. PARISER: They filed a notice of
4 appeal to the Supreme court or they ---

5 MS. BOUTSIS: They filed it to the
6 Third District.

7 MR. FLINN: When did they file it, I
8 didn't see it?

9 MS. BOUTSIS: It's being filed this
10 week. I think the deadline is Wednesday or
11 Thursday of this week.

12 MR. PARISER: They haven't filed it.
13 It's to the Third DCA.

14 MR. FLINN: And are we going to file
15 67 105 on attorney's fees response?

16 MS. BOUTSIS: No, because there is case
17 law on it.

18 MR. FLINN: I am done wasting my time,
19 guys. Are we going to take any action or
20 are we just going to ride it out, that's
21 what I want to hear on?

22 MR. TENDRICH: You say they have a plan
23 that requires no variances. What does that
24 mean that they can build there?

25 MS. BOUTSIS: They have so much land

1 that by the county code which we are
2 traveling under they can put the number of
3 students that they are looking to put on the
4 other application of 1,600, maybe more.

5 MS. STANCZYK: What kind of square
6 footage can they put on the property?

7 MS. BOUTSIS: Pretty extensive.

8 MR. PARISER: I am all confused
9 procedurally. They go the Third DCA, that
10 is on the original application?

11 MS. BOUTSIS: It is on the zoning
12 portion of the application only.

13 MR. PARISER: They win.

14 MS. BOUTSIS: It would be a remand to
15 us saying that you were in error.

16 MR. PARISER: But now they have amended
17 their application.

18 MS. BOUTSIS: Again, remember it's only
19 as to the site plan it's not as to the
20 zoning, their zoning application is the
21 same.

22 MR. PARISER: How does that tie in
23 students? You mentioned they amend --

24 MS. BOUTSIS: They have an offer on the
25 table of zoning purposes at 1,150 students.

1 MR. PARISER: For all of their land?

2 MS. BOUTSIS: For all. But right
3 before we did our moratorium they filed an
4 application under an existing code for 1,600
5 additional students -- 1,800 additional
6 students plus the 600 that are existing
7 which is 2,400.

8 MR. PARISER: 1,800 on the new pieces?

9 MS. BOUTSIS: Yes.

10 MR. PARISER: So again, if the Third
11 DCA says you own the zoning and it comes
12 back here they can go forward on their
13 amended?

14 MS. BOUTSIS: I would.

15 MS. STANCZYK: They don't have to come
16 to us for hearing?

17 MS. BOUTSIS: They do, they still have
18 to go for a hearing, but the law says that
19 they are entitled to -- it gives you
20 parameters. It says you have this square
21 footage you can have this many students.

22 MR. TENDRICH: My question is, does it
23 take a variance to put a stadium?

24 MS. BOUTSIS: No.

25 MR. TENDRICH: You can put a stadium

1 without a variance?

2 MS. BOUTSIS: No. There is no
3 variance. The variance that they previously
4 sought had nothing to do with the stadium,
5 it had nothing to do with the baseball
6 fields.

7 Let me give you the short of the
8 original application. There were three
9 parts to the original application. We only
10 heard the first part which was the zoning
11 part to rezoning.

12 The second portion was to have a
13 hearing on the site plan. The site plan was
14 the entire plan all together, but the
15 parameters of the site plan are tied to
16 zoning which is why you didn't hear i
17 because the second application, because they
18 didn't get the rezoning.

19 The site plan has eight pages of
20 criteria and it's very detailed, and it says
21 you have to have this much square footage
22 for each classroom for each student, play
23 area, cafeteria. It gives you detail for
24 detail eight pages long, eight pages long
25 single spaced.

1 There is a one line provision out of
2 all of the different criteria that says,
3 there should be some compatibility with the
4 neighborhood. That's why you have some
5 discretion.

6 Now, when you have eight pages of
7 criteria and one little discretion you have
8 to balance it out, that's where your task
9 would come in.

10 Third criteria, third application, I
11 should say, was the variances. They asked
12 for one, two, three variances, each of them
13 were as to height. Actually, two were to
14 height and one was to the number of floors.
15 So they had a gymnasium and they had a
16 performing arts center and they were
17 parallel to each other. They went 54 feet.

18 The zoning category required 35 feet
19 maximum. So they were asking for the
20 difference on the other side partly for
21 aesthetics so the two buildings looked, at
22 least this is what they presented, looked
23 aesthetically pleasing and balance on the
24 site plan but for the auditorium due to the
25 crawl space for the theater, the fly space,

1 there was no real need as far as I could
2 understand on the gym building.

3 The third variance was for the
4 administrative building that straddled the
5 two in a perpendicular fashion, like an H.
6 And the bar to the H, the center bar to the
7 H was at 35 feet, but it would have three
8 stories versus two stories which is required
9 for the zoning. So those were the variances
10 they were asking for.

11 Their current application, although
12 again we can't contract zone, would get rid
13 of all of the variance requests. There
14 would be nothing as to setbacks, nothing as
15 to height, none of those things. And the
16 stadium as it was diagramed is not a
17 variance.

18 MR. PARISER: Do the co-counsel on this
19 case what you have explained to us that they
20 have put in for the two parcels an
21 additional 1,800 just on there, do they know
22 that that's out there?

23 MS. BOUTSIS: Yes.

24 MR. PARISER: And they are aware of the
25 risks?

1 MS. BOUTSIS: Yes. They are aware --
2 there are different perspectives on how
3 entrenched each client is. And there are
4 also other hopes because of other factors
5 out there, but ultimately, you know, there
6 is, I believe that there is some related to
7 this charter amendment, whether it applies
8 to Palmer or not, there is some thought that
9 that be an issue.

10 There are some other issues that are
11 thought to be out there, but ultimately all
12 that means is more litigation for you if
13 they become as entrenched. And from every
14 indication so far they have been entrenched
15 so far in Palmer Trinity, I don't see why
16 they wouldn't continue to be entrenched.

17 MR. PARISER: Again, we make the
18 decision but we also make a decision from
19 what the community's sentiments are.

20 It's our final decision.

21 MS. BOUTSIS: Ultimately you have to
22 adhere to whatever the law is and whatever
23 you as council think the right decision is
24 for your community.

25 MR. PARISER: And at least at this

1 point in time we were upheld by the Court
2 that we did the right thing.

3 The other thing that we were thinking
4 last time is how 360 is going to affect us,
5 and I think that we are clear that the
6 transportation part of why there was a
7 denial may not be viable this time if it
8 comes back.

9 MS. BOUTSIS: Correct.

10 MR. PARISER: And there is also,
11 whether it's ever effectuated or not, this
12 ballot issue that's on our ballot that
13 unfortunately the results of that won't be
14 heard until the 25th. And if I recall last
15 time, if they are going to file a cert, you
16 may get a turnaround on that date for a
17 response depending on how quick the Third
18 DCA is.

19 So if they are going to file this week,
20 you may get a turnaround and litigate it
21 and, you know, the other parties that are
22 involved or if they are hanging their hat on
23 this amendment to the charter, you know, I
24 think our intensions were vis-a-vis a
25 settlement to resolve all parties, but it's

1 our decision in the end, we don't have to go
2 along with what the other parties have to
3 say because it is our decision.

4 It's unfortunate there is almost
5 another gap to fill to see how that election
6 will go, because if that election fails, you
7 know the anti Palmer people are going to
8 have to think about that and, you know, that
9 may be persuasive to some people on the dais
10 also.

11 MR. TENDRICH: I am going back to the
12 stadium again.

13 They can build a stadium. Is there a
14 limit as to -- there is a limit I am sure as
15 to the height of the stadium, but is there a
16 limit as to the time it can be used?

17 MS. BOUTSIS: Those are all conditions
18 that you can do as part of your application.

19 MR. WILLIAMS: We would recommend.

20 MR. TENDRICH: We could say, I mean,
21 they can build it, but does it include
22 lights or would that be something that they
23 have to go for ---

24 MS. BOUTSIS: The application for the
25 site plan would be before you as long as you

1 are acting with competent evidence and your
2 decision could be supported it should be
3 upheld.

4 MS. STANCZYK: And remember it has to
5 go through the planning department as well;
6 right?

7 MS. BOUTSIS: Right.

8 MS. STANCZYK: So staff will review it
9 and they will make their recommendations and
10 what they will allow to go forward and we do
11 have a new staff person in zoning.

12 MS. BOUTSIS: And even under your last
13 staff person when the recommendations of a
14 site plan was brought forward there was
15 about 20 conditions as to lighting, as to
16 parking, as to noise as to different things.
17 And I think over time we have learned
18 certain things about, for example, the
19 number of students and how to define number
20 of students. There is also ways to take
21 away a lot of issues that were raised at the
22 first hearing. I am not advocating one way
23 or the other, ultimately you tell me what
24 you want.

25 The only thing I was going to say is,

1 even though the Mayor has heard this little
2 speech. In litigation you never know what's
3 going to happen, and I think the Vice Mayor
4 understands that we have had a very good
5 record so far and we have been very
6 successful and I am proud of that. Having
7 said that, you never know what Judge
8 Schwartz of the Third District will do,
9 especially when he wrote the opinion that
10 was the reason for the request for the
11 rehearing.

12 And ultimately Palmer Trinity is a
13 school within your community and their track
14 record show that their firm is obstinate in
15 that they are willing to go the mile in
16 litigation. It goes to whether you want to
17 be doing that.

18 MR. TENDRICH: I think that I
19 understand. If the Governor signed that
20 bill our traffic survey that we had is null
21 and void?

22 MS. BOUTSIS: We can't take traffic
23 into consideration.

24 MS. STANCZYK: But there are other
25 options.

1 MS. BOUTSIS: Now, you could go forward
2 and hire a traffic consultant to do a report
3 and prepare some sort of fee ordinance which
4 we'll talk about and put that in place and
5 try and get money from the various
6 development ultimately, but that's a good
7 six month process.

8 MR. FLINN: There is 19,000 trips down
9 184th a day, they are going to be
10 responsible for 2,000 trips and so they are
11 going to have to pay a percentage of a
12 percentage, where do I write my check.

13 MR. FELLER: The longer this goes on
14 the more I feel they are going to win. They
15 have won on the 360.

16 MS. BOUTSIS: Not them personally.

17 MR. FLINN: Well, it was a big thing.

18 MS. BOUTSIS: It's huge.

19 MR. FELLER: Let me finish what I am
20 saying. They won on the 360, they can
21 resubmit an application and we can't stop
22 the rezoning.

23 If the ballot issue passes they can
24 form a second school, an independent school
25 that's connected any way they want to

1 connect it just with a different name, and
2 even if they don't want to challenge the
3 thing itself, which I am not sure they won't
4 win on, but even if they don't want to they
5 can win by putting another school and
6 putting as much kids as they want in it. I
7 think our best chance of controlling the
8 size is to try and settle something quickly
9 and take the initiative which either side
10 wants it.

11 MR. FLINN: I think it's a perfect time
12 to do it. Look, people can read this later
13 on and they are going to see all of this
14 discussion. I think we need to move on from
15 the discussion stage. If there is not any
16 will to move forward then I want to have no
17 more of these meetings and after the
18 litigation is over we can figure out where
19 we lie. But I've got enough meetings to
20 attend guys.

21 MR. FELLER: How much money are we
22 going to spend on litigation between this,
23 and now we are going to go to the amendment
24 when it comes in? How much money is the
25 Village going to spend on legal fees and

1 litigation over a year or two, because you
2 are sure that's going to be challenged?

3 MR. BOUTSIS: I think when you look at
4 it, let's say that they come back with
5 saying 1,150 students, which is a lot
6 compared, but you are adding 33 more acres
7 and really only increasing the school by 550
8 students, and it's over a course of not
9 going from 600 to 1,150 the next year, I
10 don't believe, it's over like a 15-year
11 period.

12 MR. FLINN: Would there be a set period
13 to say 100 a year?

14 MS. STANCZYK: We don't have to give
15 them 1,150, that's their number that's not
16 our number. And we can space it out. We
17 can do things like give them a time period
18 in which they have to do the plan and the
19 plan expires.

20 MS. BOUTSIS: You did that at
21 Westminster where they had a certain number
22 of years and if they didn't do it it would
23 expire.

24 MR. FLINN: One of the things we talked
25 about in the OCPC issue, we didn't want to

1 see the variance hang out there for 20
2 years. And you have the ability to do that,
3 it's just a matter of making sure. You guys
4 want enforceability, you have the option now
5 through past behavior perceived or actual,
6 to sit down and put in place an ironclad
7 time enforceability and if they don't agree
8 to certain things you don't agree to certain
9 things, to move forward.

10 The question is again, and I am just
11 going to put it on the record, whether this
12 Board wants to move forward and do its job
13 as a zoning board or are we just going to
14 let the parties fight this out on the
15 Village.

16 MR. FELLER: I will say it again, I
17 think we move forward and try to come up
18 with a compromise that's best.

19 MR. PARISER: The only thing to move
20 forward is to say, okay, you get a new
21 hearing, that's the only thing that you
22 could do.

23 MS. STANCZYK: I would like to bring
24 the people and work towards something. We
25 can take some ideas and we can work on their

1 application, but I would like to see the
2 election finish first.

3 MR. PARISER: In response to that, I
4 mean, we are talking settlement and as a
5 mediator and attorney, what have you, when
6 you talk settling there are two components
7 that are out there.

8 First of all, we have been legally
9 correct. They are appealing to the Third
10 DCA. I would like to see what that brings.

11 The second thing is the election. And,
12 you know, at that point in time I think that
13 then all of the variables are in place and I
14 think that it's going to go back and they
15 may get one hundred percent of what they
16 want if the election, if the ballot issue
17 loses and the Third DCA reverses.

18 MR. FLINN: Can we wait until the 25th?

19 MS. BOUTSIS: The only thing I can do
20 is be working on settlement strategy and
21 getting the documents ready with the other
22 side as far as dismissal of the other
23 claims, because that litigation is currently
24 stayed based upon our trying to work things
25 out.

1 MR. FLINN: Let me explain something
2 for whoever is going to read this record
3 later on.

4 I don't put any credence in Palmer's
5 lawsuits, the Bert J. Harris, those are
6 desperate ploys. If they would have come
7 before us, if they would have sat down with
8 the neighbors, we have granted things over
9 neighbors' objections before. The key is
10 that people work it out.

11 In fact, maybe as we finish our code we
12 should probably make a mandatory -- we
13 talked about this back with OCPC, mandatory
14 mediation session, where we hold a public
15 meeting, we talked about that. We even
16 talked about sending out notice and putting
17 it on the website and inviting as part of
18 the public notice saying, a pre-whatever
19 application meeting will be held on this
20 date for interested people.

21 Because again, I don't believe that,
22 you know, I don't necessarily believe that
23 you get a right to dictate what somebody
24 else does with their property. But you
25 don't have a right to do something with your

1 property that's going to reduce the quality
2 of life for the surrounding area. But, you
3 know, if you guys want to let the Court
4 decide that that's fine.

5 MS. STANCZYK: I think she said that we
6 want to wait until the election was held and
7 we wanted to discuss and work on that.

8 MR. FLINN: You want to set a meeting
9 on the 29th?

10 MR. FELLER: There is two
11 possibilities. The election either passes
12 or fair. I will go on the record saying
13 it's going to pass because almost 2,000
14 people came out to the school and those
15 people haven't changed their mind on
16 anything. That's what I think is going to
17 happen.

18 They are going to get go on record and
19 I think they are going to get whatever they
20 want because the law has changed. It's
21 really only limited what we can do. They
22 have ways of getting around what the ballot
23 issue says very easily, and I think that we
24 should try and get as best as we can get for
25 the Village and not let them basically

1 dictate anything that they want to get.

2 MS. STANCZYK: Who is they?

3 MR. FELLER: The school. And from what
4 our attorney has said they have an excellent
5 chance to get much more students than they
6 initially asked for and we can't stop them.

7 MS. STANCZYK: That's what I am saying,
8 we need too work on it.

9 MR. PARISER: I have a question. If
10 the ballot issue passes, if we were to say
11 today to Palmer Trinity, okay, you get a new
12 hearing and they come before us on the
13 amended application, if that hearing occurs
14 after June 25th, doesn't that apply?

15 MS. BOUTSIS: The arguments will be
16 raised by the community that the ballot
17 should kick in. In reality in your part of
18 settlement you are going back to an
19 application from two years earlier. It's
20 back to the day that it was going to be
21 heard that you never heard the site plan.

22 MS. STANCZYK: My question is, if the
23 ballot is already in place and the residents
24 win and Palmer loses or the school loses,
25 whatever, it's a vote yes, and it's in

1 place, is there not a little bit better
2 leverage to get them to settle and go back
3 to the original application? Because if
4 they go forward with a new application they
5 come under all of the new laws?

6 MR. PARISER: But they have amended
7 their application.

8 MR. FLINN: What is the effect of the
9 law on a brand new school?

10 MS. BOUTSIS: On a brand new school it
11 doesn't have an effect, at least that will
12 be the argument that I would make if I were
13 them saying it's a brand new school it's not
14 an extension of an existing school.

15 MR. FELLER: You can have a Palmer
16 Trinity Two.

17 MR. FLINN: Palmer Trinity Elementary.

18 MS. STANCZYK: Even with their
19 application we can still tell them how many
20 kids they can have.

21 MR. FLINN: How?

22 MS. STANCZYK: When they apply.

23 MR. FLINN: How?

24 MS. STANCZYK: When they apply for some
25 zoning.

1 MR. FELLER: Eve just mentioned they
2 don't have to apply to any variance notice
3 law.

4 MS. BOUTSIS: Under the existing code
5 from the Dade County Code they can put in
6 1,800 students on the 30 acres.

7 MS. STANCZYK: That's the new property?

8 MS. BOUTSIS: Yes.

9 MR. PARISER: If the ballot issue
10 passes does a hearing on the amended
11 complaint, is that subject to the
12 fourth/fifth vote, to the amended
13 application, is that subject to the
14 fourth/fifth vote?

15 MR. FLINN: I think it all relates
16 back.

17 MS. BOUTSIS: That's my position, it
18 relates back, because it's part of the
19 settlement and we didn't hear it way back in
20 2008.

21 MR. FLINN: So it relates back to ---

22 MS. BOUTSIS: No, it does not.

23 MR. FLINN: Let me ask you something.
24 If it passes and you have 800 people line up
25 and say that they should get their vote, you

1 guys are going to go forward?

2 MR. PARISER: That's a risk. You know,
3 if they have 1,800 new people, that's a risk
4 and the parties who are interested in this
5 should realize that.

6 MR. FLINN: You know, the bottom line
7 is, if they can't do what they want to do
8 they are going to end up doing what they can
9 do, so you have to figure it out.

10 I am not very comfortable even having
11 this level of discussion. I think our
12 discussion is all about are we going to move
13 forward or not. We are sitting here
14 discussing what we are going to do, how we
15 want to go and I think you all are setting
16 up for when this litigation ends for showing
17 a predisposition one way or another and
18 that's why attorney/clients are really for
19 updates and deciding where you want to go.

20 If you guys want to discuss the ins and
21 outs you should do it privately with the
22 attorney, but to have these lengthy
23 discussions here.

24 MR. FELLER: What do you recommend we
25 should do?

1 MR. FLINN: I don't know. I just don't
2 think there is any consensus to move
3 forward. We are just going to allow the
4 neighbors and the school to fight it out and
5 hold the rest of the Village hostage.

6 MR. FELLER: But the neighbors and the
7 schools are not fighting it out because the
8 Village is involved in it on a legal basis
9 and has to keep being involved.

10 MR. FLINN: That's why we are asking
11 you, are you guys going to make the decision
12 or are you going to let neighbors and the
13 school ---

14 MR. TENDRICH: I think we should make
15 the decision.

16 MR. FLINN: The other question that I
17 have is, if we do this we are talking about
18 the fact that the Palmer Trinity wants to
19 keep the old record if they are not happy
20 with the hearing; correct?

21 MS. BOUTSIS: For the appeal.

22 MR. FLINN: It would be basically no
23 prejudice to them, they don't care what
24 happens in the second appeal, if they don't
25 get what they want they want to continue the

1 appeal based on the first record; correct?

2 MS. BOUTSIS: Right.

3 MR. FLINN: If we grant them and it's
4 acceptable to them, the neighbors will be
5 able to appeal our second hearing because we
6 can't bind the neighbors to that agreement?

7 MS. STANZCYK: Explain that to me.

8 MS. BOUTSIS: At the last meeting I
9 told you that originally I had asked them to
10 dismiss all of their claims. They agreed to
11 the original action, they didn't agree to
12 the appeal because there is a case out there
13 and there are several cases out there, that
14 say if they dismiss their appeal without a
15 -- they cannot re-file the rezoning request
16 without a substantial change in
17 circumstances. And they are afraid that
18 their circumstances are not substantially
19 different because it's the same basic
20 application with the same zoning.

21 Therefore, they are willing -- they
22 want to file their appeal but they are
23 willing to stay their appeal so no action
24 can be taken on it. But they don't want to
25 forfeit that right because then they are

1 afraid that they will not be able to have
2 the rezoning hearing that would be a
3 challenge for the anti Palmer Trinity
4 community.

5 MS. STANCZYK: So what you are saying
6 is that we hear them on another hearing?

7 MS. BOUTSIS: Only as to the rezoning
8 issue, they don't want to dismiss the
9 appeal.

10 MR. TENDRICH: If we wanted to do a
11 settlement how does that work?

12 MS. BOUTSIS: We write it down and
13 bring it back to you. Dismissal of the
14 original action, dismissal of the Bert J.
15 Harris. Probably a withdrawal also, if any,
16 pending other application out there like the
17 1,800 one. I would insist on that.

18 Then agree to go to a hearing on the
19 application of 1,100 with no variances. You
20 don't have to agree to give them anything,
21 it goes to a fair hearing and you let your
22 zoning staff evaluate it, put down
23 recommendations and then you have a full
24 hearing.

25 MS. STANCZYK: In other words, we are

1 going to grant the zoning?

2 MS. BOUTSIS: No, you are not agreeing
3 to grant anything. You are going to have a
4 hearing.

5 MS. STANCZYK: You are having the
6 hearing on zoning and site plan and the
7 appeal remains on the zoning but not on the
8 site plan.

9 MS. BOUTSIS: Because we never heard
10 the site plan.

11 MR. FLINN: But the neighbors could
12 appeal. If they don't like what we did they
13 can appeal what we do at the hearing they
14 don't like. But the school can only deal
15 with the record that was created that exists
16 now, not based upon any new hearing.

17 MS. BOUTSIS: I am sorry, they would
18 not waive their right on the site plan to a
19 hearing.

20 MR. FLINN: Because they haven't had
21 their hearing yet. But we are not going to
22 hear -- we are going to look -- never mind,
23 I am not going to say that for the record.

24 MS. BOUTSIS: Did I answer your
25 question?

1 MR. TENDRICH: I would like to have a
2 settlement with them. I think that's the
3 way to go. They are part of our community
4 and they are not a bad part.

5 MR. FLINN: They are a little bit
6 obnoxious.

7 MR. PARISER: We looked at that one
8 case that they are throwing their full
9 weight on and we thought it was
10 distinguishable.

11 MS. BOUTSIS: Just remember it was
12 Schwartz who wrote the appeal on the Third
13 District Court of Appeals saying it was
14 reverse spot zoning. After that, without a
15 record, take it for what it is.

16 MR. PARISER: We approached them the
17 last two times and they turned us down. Let
18 the Court decide as far as I am concerned.

19 MR. FELLER: Did they turn us down Eve?

20 MR. PARISER: Every time we wanted a
21 stay they said no. The last two times.

22 MS. BOUTSIS: No, they have stayed.
23 This time they did stay and the time before.
24 Not to the oral argument, it was the day
25 before oral argument and they said no the

1 day before oral argument. They wanted to
2 finish the oral argument and then they would
3 agree to stay.

4 MR. TENDRICH: I would rather us solve
5 it than the Judge.

6 MR. FLINN: The Judge isn't going to
7 have the same concerns about the quality of
8 the neighborhood that we have.

9 MR. FELLER: Getting back to some
10 things, though. Again, let's say we have a
11 consensus that we want to try and solve
12 this, how do we go ahead and do it this time
13 because so many additional factors keep
14 coming in?

15 MR. FLINN: You have people that want
16 to fight to the death and you have people
17 that want to come to agreements and, you
18 know, that's why we are all in this
19 position, because zoning issues are not
20 easy. I'd rather be code designating
21 streets and kissing babies, but this is what
22 we have signed on for.

23 A lot of people don't understand
24 property rights and at the same time I'm not
25 sure if Palmer Trinity understands how

1 important it is to work with neighbors. I
2 think we have been a very good council in
3 regards to we may say some things, but I
4 think we are much bigger than that.

5 Just like, you know, I am offended, for
6 the record, by their advertisements, but I
7 can rule fairly based upon everything. They
8 are out there baiting and, you know, you try
9 and be professional and everything else on
10 that.

11 MR. FELLER: Eve, may I ask a question?

12 MS. BOUTSIS: Yes, sir.

13 MR. FELLER: They submitted a new
14 application?

15 MR. FLINN: Yes, but it's in limbo
16 right now.

17 MS. BOUTSIS: They have an application
18 which is the 1,800 that was filed the day
19 before the moratorium. They then submitted
20 for settlement discussion purposes this
21 other application which is for all three
22 properties.

23 MR. FELLER: These have already been
24 filed, the ballot issue is not applicable to
25 them.

1 MS. BOUTSIS: I have rule due to the
2 moratorium that they are zoning in progress
3 and that we are not going to be reviewing
4 that other application.

5 MR. FLINN: I don't think we should be
6 reviewing it any way since they have a
7 pending application. You don't get multiple
8 applications, I think it's irrelevant.

9 MR. WILLIAMS: We are not reviewing it.

10 MR. FELLER: Even that first
11 application, with 360 passing it will be
12 difficult not to accept the first
13 application.

14 MR. FLINN: By the way, first of all,
15 legislature has to set the fee mechanism, so
16 you know, it's not going to be owneres.

17 MR. PARISER: That's for the
18 transportation?

19 MR. FLINN: Yes. Which by the way
20 means that they get to -- anybody gets to
21 increase our road use and our tax payers
22 have to pay to fix the level of service, so
23 it's basically a tax increase.

24 MR. FELLER: You have three people
25 that, at least three people who want to

1 proceed to some degree of settlement.

2 MR. FLINN: I think we need to have
3 five, if we don't have five I don't want to
4 go forward. I think this is an important
5 thing, we either drive it or we don't, so if
6 we are not united we are not going forward.

7 MR. TENDRICH: I would like to go for
8 settlement.

9 I'd make a motion to work with them to
10 make a settlement.

11 MR. FLINN: There is a motion.

12 MR. FELLER: I second it.

13 MR. FLINN: Any discussion?

14 MS. STANCZYK: I think that we have an
15 opportunity during the settlement process or
16 during the hearing process, let me say that,
17 that we can rely on staff to work on
18 crafting an application that comes to us and
19 that we have the opportunity to craft the
20 final product that we vote on. I think that
21 we can be successful, because we can make
22 changes. The application is not a yes or no
23 when it comes to us, we get to say and put
24 conditions on things. I think if we read the
25 application carefully and input conditions

1 that are constructive and bring us to a
2 point where we want to be we can be
3 successful.

4 MR. TENDRICH: But they don't have to
5 accept the conditions, that's the problem.
6 If the condition is somehow limiting the
7 number of students.

8 MS. STANCZYK: It's either yes or no.
9 This is not a contract zoning. This is, we
10 have an application before us that's zoning
11 here. It's like somebody putting in a pool
12 in, they say they want 50 trees between a
13 one foot barrier and we tell them they can't
14 do it. That's the condition.

15 MS. BOUTSIS: I can give more
16 explanation on the zoning process.
17 Basically as long as you have a competent
18 substantial record to support your
19 conditions you can be upheld and that's what
20 you need to be thinking about.

21 What it is that your record shows, your
22 zoning staff, your experts, the testimony
23 that you have heard the record that you have
24 created.

25 MR. FELLER: We can't use traffic

1 anymore?

2 MS. BOUTSIS: If we are dating back, I
3 am arguing that we can because it's dating
4 back to 2008.

5 MS. STANCZYK: They can't have
6 everything both ways.

7 MR. FLINN: That's why we want to be
8 very clear.

9 MS. STANCZYK: They can't have their
10 cake and eat it too, so they have to
11 understand they have to have a new
12 application which gives them new rules or
13 they get an old application with old rules.

14 MR. PARISER: I have a question on the
15 motion. The way that I am hearing it is, if
16 you want to settle, that means a vote yes
17 for the motion would mean that we withdraw
18 the case from the Court and that we give
19 them a new hearing, that's what it means?

20 MS. STANCZYK: They get to cancel their
21 cases.

22 MR. FLINN: No, they agree to the stay
23 on the last remaining appeal to the Third
24 DCA. That we would move forward under the
25 conditions that you would set and that they

1 would -- if we get to the point where we
2 move forward to a new hearing, they would
3 dismiss the Bert J. Harris, they would
4 withdraw their motion of that and they would
5 dismiss their original action which is based
6 upon the Jennings violation and other
7 things.

8 MR. PARISER: Do we have that in
9 writing from them?

10 MS. BOUTSIS: What I would recommend,
11 if that is the way that you want to go.
12 Give me the direction to go ahead and
13 prepare the agreement so that I can bring it
14 back to you so I can work out the details on
15 that.

16 MR. FELLER: My feeling, whether
17 unanimously or not, I think that's the way
18 to go because I think otherwise in the end
19 result the people in our Village are going
20 to feel worse off than if we proceed in that
21 matter.

22 MS. STANCZYK: I think your operative
23 word is feel. They are better off because
24 we have done a good job during a hearing.

25 MR. FELLER: I am not interested in

1 their feeling whether the council did a good
2 job or didn't do a good job or worked hard
3 or listened to them or not listened to them,
4 I am saying that 10 years from now, 15 years
5 from now when it is all built, which way is
6 going to be better for the Village and the
7 people. And I think that there are a lot of
8 things that have come up in the past couple
9 of months that are all in favor of the other
10 side not in our favor, that's all.

11 MS. STANCZYK: The other side as in?

12 MR. FELLER: Potential lawsuits, mainly
13 with the school.

14 MS. STANCZYK: They keep suing us all
15 the time.

16 MR. FELLER: That's not the point. I
17 think the laws have changed potentially,
18 they can get everything that they want
19 without us being able to do a thing.

20 MS. STANCZYK: That would be the point
21 why you want to want to move forward now.

22 MR. FELLER: Yes, that's exactly the
23 point.

24 MS. BOUTSIS: So if I understood, you
25 would be directing me to try and work on

1 this agreement to bring it forward to you
2 for your review and/or approval?

3 MR. FLINN: We have a town meeting
4 when?

5 MS. BOUTSIS: Next week, the 17th.

6 MR. FLINN: Work out the details,
7 ironclad and bring it forward. The only
8 purpose for the attorney/client meeting
9 would be a motion to either approve or deny
10 moving forward based upon the plan that
11 you --

12 MS. STANCZYK: If that comes to the
13 meeting does that mean that we have gone
14 forward on the settlement?

15 MR. FLINN: No, that's the
16 attorney/client meeting just before.

17 MS. STANCZYK: That would actually be
18 to review a document to see that we are
19 prepared?

20 MR. FLINN: That you think it
21 safeguards everything.

22 MS. STANCZYK: All right. That will
23 not have involved any approaching to Palmer?

24 MR. FLINN: Yes, it will involve
25 Palmer because it will set down the terms of

1 what's going to happen in this hearing.

2 It's going to be no handshake stuff, we need
3 to really lay down the rules, the game plan
4 for this.

5 MS. STANCZYK: I'd like to see what's
6 brought to Palmer before it goes to Palmer.

7 MR. FLINN: Okay, you have the right
8 to sit down and talk about that.

9 MS. STANCZYK: I think we all need to.

10 MS. BOUTSIS: I have been pretty good
11 about always communicating with you about
12 what I do, so I can definitely e-mail you
13 drafts before they go out, I don't have a
14 problem with that.

15 MR. PARISER: Yes, drafts.

16 MS. BOUTSIS: And I would say, it's
17 seven o'clock tonight, I would like to
18 distribute it by noon tomorrow.

19 MS. STANCZYK: Are we saying then that
20 at the 17th if we take a vote and we vote on
21 the documents, that by the 17th we'll go
22 forward with the settlement process?

23 MR. FLINN: That would be to go forward
24 with the process, we are not agreeing to
25 settle on the 17th.

1 MS. STANCZYK: What I am saying is, is
2 that going to complete the process before
3 the vote is finished?

4 MR. FLINN: I think it's going to lay
5 down the ground rules so we all know what's
6 going to happen. There will be no
7 uncertainties as to who gets to appeal from
8 what and what's going to happen here and --

9 MS. BOUTSIS: Ultimately your final
10 decision to settle on a final document has
11 to go in a public form, so to answer your
12 question, unless we schedule a special
13 council meeting there is no way that would
14 happen on the 17th.

15 MS. STANCZYK: So in other words, we
16 potentially could not finish this until
17 after the vote is finished. I think with
18 the effort and what's gone on in the past
19 week, I think that we should do everything
20 that we can, it needs to be after a vote.

21 MR. FELLER: We have a special council
22 meeting after the vote.

23 MS. STANCZYK: I know.

24 MR. PARISER: So the attorney/client
25 session is going to be what, to review the

1 document agreement and then the final vote?

2 MR. FLINN: The vote is to whether move
3 forward in settlement and hearing. To move
4 forward on hearing, not to approve a plan on
5 the 17th, we will not have a plan in front
6 of us. We are going to have the procedure
7 not the substance set in front of us on the
8 17th.

9 MS. STANCZYK: What's going to happen,
10 we are going to look at the document on the
11 17th that we are going to present to who, to
12 Palmer?

13 MS. BOUTSIS: You will be reviewing it,
14 you are not going to be making a final
15 decision on the 17th, you will be reviewing
16 it and seeing if I need to tweak it.

17 MR. PARISER: Before it gets passed to
18 Palmer?

19 MS. BOUTSIS: Before it gets to Palmer.

20 MS. STANCZYK: I want us to review it
21 and hash it out before Palmer sees it.

22 MR. PARISER: How does that procedure
23 and that time table interact with their 30
24 day period to file their cert?

25 MS. BOUTSIS: Remember, they were going

1 to file their cert but then a stay.

2 MR. PARISER: They have 30 days, don't
3 they?

4 MS. BOUTSIS: I am saying, they are
5 going to be filing it this week.

6 MR. PARISER: So they are going to file
7 it any way?

8 MR. FLINN: They have to, it's
9 jurisdictional.

10 MR. PARISER: My point is that it may
11 be turned around very, very quickly.

12 MS. BOUTSIS: No, but they agreed when
13 they filed it that they immediately filed
14 the stay preserving their rights and working
15 on settlement.

16 MR. FLINN: I don't know, maybe we
17 should wait. Maybe we should only agree to
18 a stay once they enter their order to show
19 cause and set a response time to us, because
20 if they pre-functionally deny and they
21 don't have jurisdiction why waste our time.
22 I don't see much of a chance they are going
23 to do that, but there is a chance they are
24 going to look at it and say, we have no
25 jurisdiction and take it back.

1 MS. BOUTSIS: The court might do it
2 anyway.

3 MR. PARISER: They may do it.

4 MR. FLINN: There is nothing they can
5 do, there is 40 days to respond and that
6 would be the time for us to go ahead and
7 agree to settlement.

8 MR. PARISER: Gene, they may do that
9 because there was no opinion.

10 MR. FLINN: Yes.

11 MS. BOUTSIS: Regardless of whether we
12 agree to a stay or not, the Court might do
13 it any way.

14 MR. FELLER: They can withdraw
15 everything that's going on without prejudice
16 and next month, regardless of what passes,
17 submit an application under the new rule
18 with, assuming the moratorium is going,
19 under the new law for two separate schools?

20 MS. BOUTSIS: I am not going to concede
21 that because it is my job to defend you all
22 and I'll tell you that there are probably
23 positions out there that would also appeal
24 such a decision, whether it's because of a
25 charter and their interpretation of a

1 charter or, etcetera, or any new zoning
2 codes that we have in place, or any new
3 legislation that we could have in place
4 relating to traffic impact.

5 I don't concede it outright because
6 there are so many permutations, but without
7 any other action there is a chance of it,
8 yes.

9 MR. FLINN: All right, so we'll see
10 everybody on the 17th then?

11 MR. TENDRICH: What time?

12 MR. FLINN: I think it's going to be
13 very short. I think it's going to be 20
14 minutes before our CAL meeting.

15 MS. BOUTSIS: We have a motion on the
16 table, are we going to vote?

17 MR. PARISER: On a draft settlement
18 proposal.

19 MS. STANCZYK: I don't understand why
20 Palmer has to see what our conditions are --

21 MR. FLINN: Because they have to agree
22 to it.

23 MR. PARISER: Why waste our time if
24 they say off the bat we don't ---

25 MR. FLINN: Then we don't get the

1 settlement.

2 MS. STANCZYK: Why can't we discuss
3 what we want to give to Palmer?

4 MR. FLINN: I think we can discuss it
5 with Eve.

6 MS. STANCZYK: You don't want us to do
7 it as a group?

8 MR. FLINN: No, because I think at some
9 point you go so deep you show leaning
10 towards not being impartial in discussing it
11 here.

12 MS. BOUTSIS: I would like to receive
13 input from each of you. I will start
14 drafting the document and we'll begin
15 circulating it.

16 MR. FLINN: I don't want to create too
17 big a record.

18 MS. STANCZYK: My only point is, the
19 way that my mind operates and gets things in
20 order is that I like everybody to have the
21 input, it's drafted and it looks like this
22 and then you show it to them.

23 MS. BOUTSIS: You just want me to work
24 on it on our side only, not to give it to
25 them for any input?

1 MS. STANCZYK: That's my question, I
2 don't understand. I want us to craft it and
3 then present it to them.

4 MR. FELLER: If you want to get a
5 settlement they have to have input so you
6 know what they want.

7 MS. STANCZYK: I understand that, but I
8 want us to have an opportunity, that was my
9 point.

10 MR. FLINN: Go through your thing right
11 now.

12 MS. BOUTSIS: I can ask them to put in
13 writing their exact proposal and in the
14 meantime I can be drafting on our side for
15 the 17th, having at least gotten their
16 initial input on what they are drafting and
17 what they are proposing.

18 MR. TENDRICH: I thinks that's a good
19 idea because that way they don't know what
20 we are thinking about but we know what they
21 are thinking about.

22 MR. FLINN: They are not going to come
23 back with an offer on how many students ---

24 MS. STANCZYK: Is that how you think
25 that would work?

1 MS. BOUTSIS: It can.

2 MS. STANCZYK: That's what I would be
3 afraid of.

4 MS. STANCZYK: That's why I want our's
5 crafted first.

6 MR. FLINN: I don't think that they are
7 going to be asking for the moon. I think
8 right now the best -- I think our best
9 position right now is to resolve this thing.

10 MS. STANCZYK: I am not disputing that,
11 I am just saying that I'd like to have
12 everything hashed out on our side as a group
13 before we give it to them, because I think
14 it's a stronger position.

15 MR. FLINN: What would you like to see
16 in this?

17 MS. STANCZYK: I don't know what it
18 even looks like.

19 MR. FLINN: Well, how do we discuss it
20 now.

21 MS. STANCZYK: I am not saying now, I
22 am saying the 17th.

23 MR. TENDRICH: The Mayor said each of
24 us can contact Eve and this is what we would
25 like in it.

1 MS. BOUTSIS: I am going to be sending
2 you the draft during the week for your
3 input. Call me, write me, e-mail me.

4 MR. FLINN: Do you want to meet before
5 the 17th?

6 MR. PARISER: Are you going to call the
7 other side, Price, and say this is what we
8 are thinking and if he hangs up the phone on
9 you on the first phone call there is nothing
10 for you to do?

11 MS. STANCZYK: What I wanted to have is
12 us as a committee, working together as a
13 committee, looking at a document that Eve
14 has prepared and going over it and in
15 discussion there is construction, it's a
16 constructive process. But I am not
17 understanding why we are rushing to the 17th
18 to hand it over to them. What is so
19 important about the 17th that we can't use
20 an hour before our committee hall meeting
21 and use that as a committee meeting to go
22 over the documents then?

23 MS. BOUTSIS: I don't think there is a
24 time period issue with five days. I think
25 the only thing is that if we have no input

1 during this five-day period or seven-day
2 period from Palmer Trinity, then we are
3 negotiating with ourselves and we have
4 gotten no input.

5 MR. FELLER: It's the same as our talk
6 tonight, there is nothing different.

7 MS. BOUTSIS: I think there has to be
8 some dialog with the other side. No
9 agreement. Until you have the public
10 hearing there is no agreement but at least
11 in dialog to get their input so that I can
12 bring it to you so you can be thinking about
13 it over the next few days. Not necessarily
14 that you have a final decision, but at least
15 we are getting that input and we are not
16 just working from our point of view, we at
17 least know what their position is on these
18 things. That's the way that settlement
19 works.

20 MR. TENDRICH: I think that's fine.

21 MS. BOUTSIS: Do we have a vote for
22 that?

23 We are going to start.

24 District Three?

25 MS. STANCZYK: Yes.

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MS. BOUTSIS: District Two?

MR. TENDRICH: Definitely yes.

MS. STANCZYK: District One.

MR. FELLER: Yes.

MS. BOUTSIS: Vice Mayor?

MR. PARISER: Yes.

MS. BOUTSIS: Mayor?

MR. FLINN: Yes.

MS. BOUTSIS: What time on the 17th?

MR. TENDRICH: 5:30.

MR. FLINN: Set it a half hour before
the meeting and if goes more we can delay
the meeting a half hour.

MS. BOUTSIS: June 17th at 5:30.

(Whereupon, the deposition was
concluded at 7:20 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 Meeting in the above-styled cause;
and that the foregoing pages, numbered 1 to 55
inclusive, constitute a true and correct
transcription of my shorthand report of the
meeting.

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 10th day of July, 2009.



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