

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

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CASE NO: 08-28977 CA 30
3D09-1587

ORIGINAL

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16701 S.W. 72nd Avenue
Palmetto Bay, Florida,
Thursday, 6:00 p.m.,
August 20, 2009.

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APPEARANCES:

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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

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1 MS. BOUTSIS: Thank you everyone for
2 being here. It's August 20th of 2009 at
3 6:15 p.m. I have asked for this
4 attorney/client session on the matter of
5 Palmer Trinity versus The Village of
6 Palmetto Bay in two cases, it's the
7 appellate case number 3D091587 and Circuit
8 Court case 08-28977.

9 We are here to talk about settlement
10 strategy and strategy for the case.
11 Proceeding relating to same. The certified
12 court reporter will record the time and
13 termination of the session, all discussions
14 and proceedings that occur, the names of all
15 the persons present and the name of all
16 persons speaking. The transcript should be
17 made a part of the record upon the
18 conclusion of the litigation. Let's make
19 sure that one person talks at a time so that
20 the court reporter can take everything down.

21 Since our last attorney session we,
22 very briefly, had sent out a settlement
23 proposal, a very detailed settlement
24 proposal and we have gotten responses back
25 from CCOCI, which is the Citizens of Old

1 Cutler Organization and also from Palmer
2 Trinity. The residents from the town of
3 Cutler Homeowners Association have not
4 responded.

5 Because of the fact that I previously,
6 I believe on the 10th if not before that,
7 gave you their responses over when we were
8 meeting at the library for architectural
9 services, but I tried to make a synopsis of
10 what everybody said because it was long and
11 wordy. So in front of you you have an
12 attorney/client confidential document that's
13 only for your eyes. And basically I tried
14 to give short answers to all of the
15 different provisions that we requested in
16 our settlement offer.

17 There are 34 items and I tried to make
18 them one word, yes or no, or as close to
19 that as possible. After that if you would
20 like to talk about settlement options, if
21 you would like to talk about where we are.

22 I will tell you that we have filed our
23 responses to the petition for the appeal.
24 We have filed our response. Their reply,
25 meaning Palmer Trinity's reply is due, so I

1 am waiting for that to come in and as soon
2 as it comes in I will forward it to you and
3 then we'll wait for a day for oral argument
4 before the Third District Court of Appeals.

5 As to the Circuit Court action we are
6 trying to schedule some depositions of
7 staff.

8 Mayor, do you want to start?

9 MR. FLINN: I have nothing to say.

10 MR. PARISER: I do. I wanted to have
11 this session in particular, three points I
12 want to make.

13 Number one, I think it was perfectly
14 proper for the council to have sent out a
15 formal settlement letter and to see what the
16 response would be from the Palmer Trinity
17 people and also from the CCOCI people.

18 I mean, my personal philosophy, you can
19 always talk and even if someone says no you
20 can always continue talking about it. But
21 having seen the response from the Palmer
22 people and talking to our Village Attorney
23 where they want to resume litigation and
24 discovery, it looks like this matter is not
25 going to be able to be settled outside of

1 litigation, at least not at this point in
2 time. I just want to express to the Council
3 to understand at least my opinion, and I
4 think the Village Attorney has the same
5 opinion.

6 I did look at the reply that our
7 Village Attorney filed to the Cert petition
8 and I thought it was very good. And I mean,
9 if that's what the record is I think they
10 are going to have a hard time but you never
11 can tell.

12 I also, however, have a concern about
13 the potential Bert J. Harris claim and the
14 range of exposure that they allege to their
15 appraiser.

16 MS. BOUTSIS: Just so we are clear, the
17 Bert J. Harris isn't subject to
18 attorney/client, so we can't actually go
19 into too much on that here.

20 MR. FLINN: Only as it relates to the
21 current suit.

22 MS. BOUTSIS: Only as it relates to the
23 current suit and as to a possible
24 settlement. Sort of like keep it short so
25 we don't break the privilege.

1 MR. PARISER: Why wouldn't Bert J.
2 Harris ---

3 MS. BOUTSIS: Because they haven't
4 filed suit yet and the law hasn't been
5 interpreted ---

6 MR. FLINN: Because there is no pending
7 suit and we give away a lot of attorney
8 client thought here and they can go ahead
9 and get ahold of that.

10 MR. PARISER: Then I'll hold my
11 thought.

12 MR. FLINN: You can go slightly into
13 it, let's not go into the workings -- you
14 are making me talk. Go back, I am
15 listening, go ahead.

16 MR. PARISER: My concern as an attorney
17 is that other than some procedural decisions
18 there is not much in the way that these Bert
19 J. Harris cases have been reported at all,
20 whether it's coming to a final conclusion,
21 whether there was some sort of -- they don't
22 use the word taking, but I don't know what's
23 the phrase they use, whatever, and my
24 thought was that I am pleased with the work
25 that our attorney is doing, but possibly in

1 advance of a potential claim maybe seek out
2 somebody who can be an expert or give
3 counsel co-counsel or something to us to
4 see.

5 MS. BOUTSIS: I don't have a problem
6 looking into that. I honestly don't know of
7 any attorneys in Dade County that are
8 experts on it. As a municipal attorney,
9 City of Miami Beach has actually faced the
10 most cases.

11 MR. PARISER: My thought was outside of
12 Dade County, by the way, for a reason that
13 it would be an independent evaluation and
14 what have you, because when push comes to
15 shove what they are alleging, it's an
16 exposure and you have to evaluate these
17 things and they are talking a 10 to
18 13-million exposure, that's a substantial
19 concern.

20 MS. BOUTSIS: What I would like to do
21 is let's keep the Bert J. Harris to about
22 that statement and not go further.

23 I have prepared, on a separate note, a
24 memorandum to each of you on like a hornbook
25 synopsis on what's Bert J. Harris.

1 MR. PARISER: I saw that, very good.

2 MS. BOUTSIS: Thank you. What I would
3 like to do is talk to each of you separately
4 about the Bert J. Harris claim. And just to
5 let you know, there is a statutory period
6 where we have to give them a settlement
7 offer or write them a letter saying that we
8 are not going to give them a settlement
9 offer on Bert J. Harris before they can file
10 suit, and that due date is in October so I
11 will be contacting you over the next couple
12 of weeks about that. So let's shift gears.

13 As you can see from the 34 proposals, I
14 don't think that either party is on the same
15 page in relatively almost every item. Even
16 on what processes should be applied, they
17 are not on the same page.

18 I don't know if you want to go through
19 each item or you just want to see how the
20 third DCA action goes, because we are close
21 to having an oral argument and go from
22 there.

23 MR. PARISER: Did they give you a date
24 for oral argument?

25 MS. BOUTSIS: Not yet. But I am

1 assuming now that the brief is due they are
2 going to give us one anytime. August they
3 are usually out on vacation.

4 MR. PARISER: Or they may just rule.

5 MS. BOUTSIS: Or they may just rule.

6 Although the parties have requested oral
7 argument.

8 MR. FLINN: Why didn't we dispense with
9 oral argument --

10 MS. BOUTSIS: To be fair, I didn't file
11 one way or the other, but Palmer Trinity did
12 and CCOCI did.

13 Just so we are clear, what it means is,
14 the Court can rule on the papers or if we go
15 to the actual oral argument you can go and
16 present your case to the panel of judges
17 and the judges can ask you questions.

18 MR. PARISER: Yes, and if they think
19 there is no merit in their appeal they can
20 say deny it and deny oral argument.

21 MS. BOUTSIS: They can.

22 MR. PARISER: Did you say that Shuben's
23 client ---

24 MR. PARISER: They have not. I have
25 reached out to them but they have not.

1 MR. FLINN: We need to do it on our own
2 or not do it at all. It's clear the parties
3 are not going to work anything out. Quite
4 frankly we maybe just ought to let it ride.

5 The parties need to understand, Palmer
6 Trinity needs to understand that both Palmer
7 Trinity and the CCOCI group lose control of
8 the process. One of the two drastically
9 loses control of the process based upon the
10 ruling of the Court.

11 MS. BOUTSIS: That is correct.

12 MR. FLINN: And the other side needs to
13 understand.

14 DR. FELLER: Do you want to explain
15 that.

16 MR. FLINN: If we get a reversal and
17 sent back to a hearing in regards saying
18 that we are directed to give them the
19 rezoning back to the EUM, which is what they
20 were seeking. It comes back via as a
21 perfunctory matter and the only discretion
22 that we have is on the variance. And so all
23 of the -- on the other side of it, if it
24 comes back affirmed, they are at the end, it
25 probably takes care of the Bert J. Harris

1 fact as well and then they have to come
2 forward with a whole new application that
3 subjects them to a lot of different things.
4 But basically you are looking at 2,200
5 students or zero students and somebody is
6 going to be very unhappy.

7 And by the way, as we all know, a
8 granting with the vesting of rights is
9 permanent but a denial never is.

10 Am I right or wrong?

11 MS. BOUTSIS: You are correct.

12 It sounds like basically I am giving
13 you a status report and at this point we are
14 not going to take any further action on the
15 settlement proposal.

16 Then I am going to end this A/C
17 session, it's now 6:30 and it's the shortest
18 one that we have had in a while. Thank you.

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20 (Whereupon, the deposition was
21 concluded at 6:30 p.m.)

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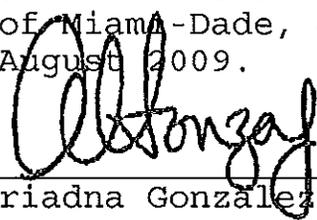
CERTIFICATE OF REPORTER

STATE OF FLORIDA :
 : SS.
COUNTY OF DADE :

I, ADRIADNA GONZALEZ, Court Reporter,
Notary Public in and for the State of Florida at
Large, do hereby certify that I reported the
Attorney/client session of in the above-styled
cause; and that the foregoing pages, numbered 1 to
12 inclusive, constitute a true and correct
transcription of my shorthand report of the
attorney/client session.

I further certify that I am not an
attorney or counsel of any of the parties, nor a
relative or employee of any attorney or counsel
connected with the action, nor financially
interested in the action.

WITNESS my hand and official seal in
the City of Miami, County of Miami-Dade, State of
Florida, this 29th day of August 2009.



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