

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,  
Wednesday, 6:30 p.m.,  
January 27, 2010.

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15 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: As the Village Attorney I  
2 have requested this attorney/client session  
3 tonight. It's being held here at Village  
4 Hall. It is now 20 to seven, Wednesday,  
5 January 27th of 2010.

6 I have request us here tonight so that  
7 we can discuss certain legal actions  
8 relating to strategy and settlement. These  
9 legal actions are Palmer Trinity Private  
10 School versus the Village of Palmetto Bay,  
11 under circuit court case number 0828977 CA  
12 30. That's the original action. And Palmer  
13 Trinity Private School versus the Village of  
14 Palmetto Bay, appellate court case number  
15 3D091587.

16 Everybody is here tonight, we are going  
17 to have everybody announce themselves so  
18 that the court reporter can take down  
19 everybody's testimony as well.

20 The transcript will be made available  
21 at the termination of the litigation.

22 And please do not do what I just did,  
23 uh-uh and uh-huh. Don't use that kind of  
24 language because it's hard for the court  
25 reporter to take down that, so try to say

1. yes and no.

2 Mayor, we will start with you.

3 MR. FLINN: Thank you. Eugene Flinn,  
4 Mayor.

5 MR. TENDRICH: Howard Tendrich,  
6 Councilman District two.

7 MR. FELLER: Ed Feller, Councilman  
8 District One.

9 MR. STANCZYK: Shelley Stanczyk,  
10 Councilwoman District Three.

11 MR. PARISER: Brian Pariser, Vice  
12 Mayor.

13 MR. WILLIAMS: Ron Williams, Village  
14 Manager.

15 MS. BOUTSIS: Eve Boutsis, Village  
16 Attorney. Thank you for being here  
17 everyone.

18 As you know, oral argument on this  
19 Third District Court of Appeals matter is  
20 coming up. The oral argument date is  
21 February 27th at 9:30 a.m. What does that  
22 mean. That is the day that the court gets  
23 to ask questions of all of the sides and  
24 thereafter makes a decision on the appeal.

25 The appeal is related to two issues,

1. whether there is competent substantial  
2 evidence in the record and whether we have  
3 followed the correct law.

4 Palmer Trinity has raised a third issue  
5 of constitutionality of our ordinance as to  
6 zoning. That's not part of the original  
7 action. That's nothing that you need to  
8 consider but it can be raised at any time  
9 and they have done so. We have objected to  
10 that, but we'll see what the court says.

11 I will tell you that I have heard  
12 speculation from several of the attorneys on  
13 others, whether it's an intervenor attorney  
14 or the opposite side attorney, that the fear  
15 is that the senior judge will be on this  
16 case. The senior judge is the gentleman who  
17 issued the ruling that came out shortly  
18 after our decision and Palmer Trinity with  
19 the similar scenario. Not identical  
20 scenario but a similar scenario where a  
21 property was zoned an AU and was going for  
22 the same estate density and special zoning  
23 district as we were and the court had found  
24 reserved spot zoning which is one of their  
25 arguments. Their, meaning Palmer Trinity's

1. arguments.

2. Why are we here. We should talk about  
3. strategy, but more importantly I think at  
4. this point, this is a time where if we want  
5. to settle and make a decision where we are  
6. in control of making this decision, that  
7. this is the time to do it. Oral argument is  
8. on the 22nd, we don't know what a court will  
9. do.

10. We've been successful through now, we  
11. have had an opinion from the original court  
12. without an opinion which was very favorable  
13. to us. Again, this is the time where we can  
14. make the decision on what we want to do  
15. versus being dictated what to do.

16. What could the court do. The court  
17. could deny their petition and we win all  
18. around and they can go and try for another  
19. appeal. I think it's harder and harder to  
20. go for appeals every tier you go, but they  
21. could try and they can continue with their  
22. constitutional argument.

23. Alternatively we could lose, and if we  
24. lose we remand it back for this council to  
25. make the decision on the zoning item and

1 then also on the other items.

2 You may recall this council has only  
3 made a decision on the rezoning or otherwise  
4 know as the distribute boundary change. We  
5 could not get to the other issues because  
6 without the zoning change we could not hear  
7 the variance request. So that's where we  
8 are. Those are the two options before us.

9 Ultimately if the Court were to make a  
10 decision in Palmer Trinity's favor, it still  
11 has to come back to you. You are going to  
12 be in the same boat that you are dealing  
13 with whether we settle or you don't settle  
14 in that sense. And if we win we may be  
15 facing more litigation and we still have the  
16 original action which is the circuit court  
17 case and that case doesn't go away either  
18 way unless we settle.

19 MR. FLINN: Eve, refresh me, when was  
20 the hearing?

21 MS. BOUTSIS: The initial hearing was  
22 in February 2008 and second hearing was in  
23 April of 2008.

24 MR. FLINN: So we are now almost two  
25 years and basically, two years from the

1 initial hearing and basically what's 16  
2 months from the -- or 18 months from the  
3 rendering of the decision?

4 MR. BOUTSIS: Yes.

5 MR. FLINN: I didn't think that we'd be  
6 sitting here, I thought this thing would be  
7 resolved within that time.

8 You know, we now have seven council  
9 members that have been involved in this  
10 case. Vice Mayor Pariser and councilman  
11 Tendrich are those looking over the record  
12 not having been part of the record not  
13 having been part of the decision-making  
14 process.

15 I am looking at a couple of things.  
16 Number one, I don't know what my successor  
17 will do. We don't know, we have elections  
18 coming up, which way the door will swing if  
19 at all or the same way, but I made a  
20 commitment to the residents that I would  
21 fairly and properly, not just the residents  
22 but to anybody that appears before me,  
23 obviously, I have taken my duties very  
24 seriously. I think that I have a duty when  
25 we had the last community hall meeting you

1. heard Terry Templer come to the mike and say  
2 that he is very pleased with this council  
3 but his concerns are in the IUZ District is  
4 what's the next council going to be like and  
5 we don't know what that's going to be.

6 But I just want to ask everybody here,  
7 number one, we are in litigation. Now, if  
8 we get overruled and they tell us to -- I  
9 mean, they can remand it with direction,  
10 quite frankly I think if they overturn that  
11 section I believe they will remand with  
12 instructions to grant the district boundary  
13 change and then hold a hearing on the rest  
14 of the application including the variances.

15 MS. BOUTSIS: An application, that's  
16 probably what happened.

17 MR. FLINN: What concerns me is number  
18 one. We had a PCA no opinion decision, very  
19 tough to get appealed. They appealed it and  
20 we thought they were hanging from their  
21 fingernails. They appealed it, it didn't  
22 get denied. We filed our response, it  
23 didn't get denied and they requested oral  
24 argument. They are under no obligation to  
25 order oral argument.

1. MS. BOUSTIS: They are not. And also  
2 they added in a new count, this  
3 constitutional thing we moved to strike it  
4 and the court denied that as well.

5 MR. FLINN: So that could be what they  
6 are looking at. And what the new count  
7 gives them, by the way, is this is their  
8 first time that this is being adjudicated.  
9 So I think they do get a appeal as a matter  
10 of right on the initial determination of  
11 that constitutional issue. And being a  
12 constitutional issue, if they find it valid  
13 or if they strike it down, there is  
14 different things that come from that. Of  
15 course Brian knows full well the appellate  
16 ramifications of that.

17 But I have to say, I am pretty much  
18 unimpressed that nobody has come forward  
19 with any sort of resolution on this, and  
20 quite frankly it's our obligation to bring  
21 this to a close. And I want to go around  
22 the room and I want to ask everybody what's  
23 the endgame here on this litigation. It's  
24 costing us hundreds and thousands of  
25 dollars. We have watched, and I went down

1 there, I don't think that anybody else went  
2 down with me to go appear before the water  
3 management district, but we are watching the  
4 endless cycle of what's going on there with  
5 that Old Cutler LLC property down there.

6 Where the South Florida Water Management was  
7 denied and then they tried to buy and then  
8 they didn't and then there was an inverse  
9 condemnation suit, which is pretty similar  
10 to a Bert J. Harris Act.

11 MS. BOUTSIS: Let's not try to go too  
12 much into that, it's all derivative.

13 MR. FLINN: The reason why it is is  
14 because it's germane to the discussion of  
15 what action we take here today.

16 And you are watching the price go from  
17 potentially it went from 27 to 40 million  
18 dollars on 33 acres of largely unusable  
19 land.

20 So what I am curious about is, what if  
21 do we win if we win this thing. They are  
22 still going to be coming back to the school,  
23 they just have to tee it up again and come  
24 back again. We are not going to get them to  
25 build houses. And by the way, building 80

1. homes in there could be even worse than the  
2. school, we haven't even considered that.  
3. You know, bigger impact on the area.

4. There is a lot of things that they  
5. could do. What I am trying to figure out  
6. here is, what is this litigation going to  
7. gain us, because if we lose with  
8. instructions to grant them the district  
9. boundary change and they withdraw all of the  
10. portions of their thing and say fine we  
11. don't want any variances, don't grant us any  
12. variances, we are going to construct the  
13. buildings without variances then what  
14. authority do we have over they. Other than  
15. approval of the site plan.

16. MS. BOUTSIS: Just approval of the site  
17. plan.

18. MR. FLINN: They have approval of the  
19. site plan but under order of the court,  
20. under mandate of the court to grant the  
21. district boundaries.

22. MR. PARISER: If it's just a matter of  
23. the variances, won't the way, the criteria  
24. of traffic, impact of traffic and number of  
25. students, stuff like that is a variance,

1. isn't it?

2. MS. BOUTSIS: Not as to the variance,  
3. because remember the variance is not tied in  
4. as to those items. Here in this case a  
5. variance would not be affected, it was a  
6. variance on the number of parking spaces or  
7. variance on the extent of the population of  
8. students or something like that, that would  
9. be something like that, that would be  
10. something that you consider those parking  
11. issues, the parking item on. The traffic  
12. item on.

13. MR. PARISER: The traffic was on the  
14. ruling for the zoning?

15. MS. BOUTSIS: Yes.

16. MR. FLINN: Remember, I went as far as  
17. riding with our traffic consultant to get a  
18. very accurate picture. I took this very  
19. serious. I wanted to see what the traffic  
20. impacts were and understand what the traffic  
21. impacts were. And I wanted to see what went  
22. on at 184th and Old Cutler in the morning,  
23. and what happened on 176th street.

24. We all go out there and observed these  
25. things and we went out there and we observed

1           these things.

2           MR. PARISER:  If they hypothetically  
3           win that and it goes back to all they need  
4           is a variance for the amount of parking  
5           spaces---

6           MS. BOUTSIS:  Just so we are clear.  
7           The original application was for district  
8           boundary change.  Private schools have to  
9           have a site plan, public review of the site  
10          plan.  There is a bunch of criteria there.  
11          The criteria is about three pages long.

12          MR. PARISER:  That has nothing to do  
13          with the number of students?

14          MS. BOUTSIS:  The number of students is  
15          a formula in that site plan review.

16          MR. PARISER:  What is that number, by  
17          the way?

18          MS. BOUTSIS:  The number that  
19          originally applied for was over 1,400.

20          MR. PARISER:  What's the number allowed  
21          under our site plan review?

22          MS. BOUTSIS:  I don't know what the  
23          maximum is because their space so far  
24          exceeded that that we never did the  
25          calculation.

1 MR. PARISER: What do you mean so far  
2 exceeded?

3 MS. BOUTSIS: In other words, under.

4 MR. FLINN: The property is 25 acres or  
5 33 acres.

6 MS. BOUTSIS: Actually, 50-something  
7 acres. Because it would have been the  
8 entire ---

9 MR. FLINN: Let's just look at the  
10 acreage alone, 33 acres. I mean, you are  
11 talking about comparability. You are not  
12 talking about comparability with a house, we  
13 know a school is not compatible with a  
14 house. You have to look at the general area  
15 in total.

16 When you look at Southwood, when you  
17 look at Coral Reef, when you look at  
18 Perrine. Perrine is probably the most  
19 buffered school of all of them, but when you  
20 look at Coral Reef, the fact it goes up, how  
21 long, how wide.

22 MS. STANCZYK: May I ask why we are  
23 discussing if it's parallel with a public  
24 school as part of your argument?

25 MR. FLINN: Because you cannot

1. discriminate against a private school.

2. MS. STANCZYK: It's not discrimination.

3. MS. BOUTSIS: Let's get away from that  
4. let's go to a private school.

5. MR. PARISER: So it's 1,400.

6. MR. FLINN: I thought the number was  
7. closer to 2,500. I thought it was 2,250.

8. MR. PARISER: Somewhere along the way  
9. they had gone up to 2,100 but I believe it's  
10. somewhere along the way it went up to 2,100.

11. MR. PARISER: And also setbacks, we do  
12. have some say on setbacks and height?

13. MS. BOUTSIS: Yes. If they get the  
14. zoning that they are asking for, it's a 35  
15. foot height limitation except for bell  
16. towers. There is an exception under the  
17. county code of the towers. That being said,  
18. it's 35 feet and it's two stories.

19. The original application that they  
20. asked for was the rezoning site plan review  
21. and then the variances, they were asking for  
22. three variances. They wanted a variance on  
23. height for the auditorium and the gymnasium.  
24. They wanted a variance to have 35 feet but  
25. three stories, so that they could put

1. offices and make each one nine feet high or  
2 whatever the math is. And the third  
3 variance was the second height point.

4 MR. PARISER: Do we have any discretion  
5 or is there a standard buffer from their  
6 property line under that zoning?

7 MR. FLINN: Under that zoning isn't it  
8 35 feet?

9 MS. BOUTSIS: I believe 25 feet was the  
10 actual required buffering. They had done a  
11 larger buffer than that.

12 MR. FLINN: But that's from the  
13 property line or from the setback, but there  
14 is no dedicated roadway so you are talking  
15 feet from existing property lines from the  
16 adjoining neighbors.

17 MS. BOUTSIS: Right.

18 MR. PARISER: Unless they agree to it,  
19 they get a 25 foot setback?

20 MS. BOUTSIS: Under a pure just  
21 calculation, yes. Under the site plan you  
22 can take into some consideration, there is  
23 some wiggle room in that there is some  
24 compatibility language. So you could ask  
25 them to expand the setbacks. You have to

1. have some kind of competent evidence in the  
2 record to do that, otherwise you can be  
3 subject to challenge.

4 MR. PARISER: What's wiggle room, five  
5 feet, 50 feet?

6 MR. FLINN: You can't be arbitrary.  
7 What I am trying to figure out here and is a  
8 fair analysis for today is, if we win what  
9 do we get and if we lose what do we get.  
10 And you know, bottom line, no matter what  
11 the parties agree to, and we do know we can  
12 talk about it now, we know the Old Cutler  
13 people did settle and they now are out of  
14 it.

15 MS. BOUTSIS: I don't know what they  
16 did.

17 MR. FLINN: We don't know what they did  
18 but we do know they did settle and they are  
19 out.

20 MS. BOUTSIS: Yes, the Old Cutler Glenn  
21 Homeowners Association has been dismissed as  
22 a party. Maybe this is a good point for  
23 Mr. Williams and I to start talking.

24 MR. FELLER: Let me ask one question.  
25 Did they not submit a plan that did not

1. require any variances?

2. MS. BOUTSIS: The answer is, there has  
3. been a submittal but two days before our  
4. moratorium went into effect they submitted a  
5. plan which has not been reviewed because we  
6. are in a moratorium and they qualified for  
7. that area that should not be reviewed. And  
8. from what I understand that plan does not  
9. contain variances.

10. MR. FLINN: They have presented ---

11. MS. BOUTSIS: They have represented  
12. that it does not contain variances.

13. MR. FELLER: The second question is,  
14. does all this precede the referendum and  
15. does the referendum, does it apply or not  
16. apply in this case?

17. MS. BOUTSIS: It should precede the  
18. referendum and let me explain why.

19. The entire litigation occurred a year  
20. before the referendum. The court, when it  
21. remands back it doesn't remand back to  
22. whatever the code is now, it remands back to  
23. the code that was in place when you made  
24. your decision.

25. MR. FELLER: So the referendum is moot

1 in regard to this case?

2 MS. BOUTSIS: Yes.

3 MS. STANCZYK: Even in regards to the  
4 second application?

5 MS. BOUTSIS: There is an argument to  
6 be made either way. I had said there is  
7 zoning in progress, so they knew it was  
8 coming, bla, bla, bla. In reality they  
9 could argue that they got in before we did  
10 the moratorium and we didn't have an  
11 ordinance on the zoning in progress and it  
12 just leads into more litigation is the  
13 reality.

14 The ordinances that we have adopted now  
15 have a zoning progress process and going  
16 forward we'll never have that issue again.

17 An applicant on an application, Shelley  
18 you and I have talked about this in the  
19 past. An applicant can from the public  
20 hearing make concessions, make  
21 constitutions, make changes. So the plan is  
22 not a static thing, it's not this is the  
23 plan and there are no changes, because you  
24 all are proposing changes from the dais.  
25 Staff proposes changes or staff proposes

1 recommendations, and an applicant along the  
2 way proposes that.

3 MR. FELLER: It's still the same plan  
4 as of the same date of submission?

5 MS. BOUTSIS: Or they want to do a  
6 substitution. I think all of that is on the  
7 table. I have seen it done over and over  
8 again.

9 MS. STANCZYK: When it's done is it  
10 done with agreement of parties or the  
11 counsel or is it just us?

12 MS. BOUTSIS: Think of it this way.  
13 It's the applicant's application, so it has  
14 to be his plan or her plan or the entity's  
15 plan. If they don't want to do that plan  
16 anymore they can come to you with the  
17 recommendations, we have tweaked it based  
18 upon what we heard from the audience and  
19 this is what we are going to show you. It  
20 was for example, what happened with Stifen  
21 Homes (sic) where they had 24 homes and by  
22 the time we came back we continued the  
23 hearing and it was 18 or 17 homes and it was  
24 the same application.

25 MS. STANCZYK: But they did that

1. because of input from the Village at the  
2 time and we allowed that to happen and  
3 accepted it.

4 MS. BOUTSIS: But it couldn't be done  
5 if the applicant didn't want to do it.

6 MS. STANCZYK: But could it be done  
7 without approval?

8 MS. BOUTSIS: Yes. You can deny it,  
9 you can reject it. You have that much  
10 discretion. You can reject and say no, this  
11 was the original application and we reject  
12 it, but ultimately it's within your  
13 discretion and the applicant's application.

14 Let me tell you what has been  
15 represented to me by the Bilson Firm as to  
16 his client's communications with the  
17 resident group.

18 MR. FLINN: Can we can talk about this?

19 MR. BOUTSIS: He didn't say that I  
20 couldn't talk about it. He didn't give it  
21 to me in a confidential --

22 MR. FLINN: That's really strange, the  
23 Bilson firm is waiving confidentiality of  
24 negotiations with the other side. Usually  
25 negotiations are confidential.

1. MR. PARISER: They gave her the letter.

2 MR. FLINN: I am saying should they  
3 have written the letter.

4 MS. BOUTSIS: Actually, I wrote it  
5 down.

6 MR. FLINN: Going back to this now,  
7 they can agree to something and it comes  
8 before us and we can totally reject it.  
9 It's like a plea agreement.

10 MS. BOUTSIS: Whatever any other party  
11 settles, whether it's Old Cutler Glenn or  
12 the residential group, you are not bound by  
13 any of that. You cannot even agree to  
14 rezone, you can only agree to have the  
15 hearing, to have the public hearing for the  
16 judicial process to hear the rezoning.

17 MR. FLINN: Listen, you are going to  
18 get to the part where they ---

19 MS. BOUTSIS: Basically I think what  
20 the concept is that I understand and I think  
21 it's what you have talked about  
22 Mr. Williams, we are all on the same page,  
23 it's not talking outside of boundaries.

24 There is as a possible number floating  
25 around of number of students over a phasing

1 period with an actual tie in into a table  
2 for phasing of students, a defining of  
3 students with registration under State law.  
4 The limitations of heights of building 35  
5 feet, setbacks of at least 75 feet. And  
6 some relocation of parking on the original  
7 site that's near residential areas and some  
8 concept of dealing with lighting at night.  
9 I am not sure of the details of this. But  
10 basically allowing the parking lighting of  
11 low voltage, low level parking requirement  
12 lighting that's required under the building  
13 code and perhaps some lighting for sports  
14 activities on occasional things but I don't  
15 have the details on that and I am not sure  
16 how much in agreement the parties are on  
17 that portion.

18 Mr. Williams, you want to talk?

19 MR. WILLIAMS: As each of you know and  
20 I have spoken to you individually about the  
21 fact that I was contacted by a  
22 representative of Palmer Trinity and  
23 subsequently met with them to talk. And  
24 basically met with them because they  
25 expressed an interest in asking the question

1. is there any possible way that the Village  
2. would consider a way to settle these issues.  
3. Of course, I talked to the Village attorney.

4. The Village attorney has not directed  
5. or involved in of those discussions which  
6. included the president of the board, I  
7. believe his title is and the headmaster and  
8. a couple members of their board.

9. They have indicated as the Village  
10. attorney says, two issues that relatively  
11. reaffirm on the number of students and a  
12. timeframe for implementing that growth in  
13. students. And something that I think we  
14. have all had to talk a lot about and that  
15. was a clear definition of enrollment going  
16. back to some of the other ---

17. MR. FLINN: I am not understanding when  
18. you say affirm on two things. You mean they  
19. have reached affirm, they have represented  
20. that they have reached a firm or at least  
21. what they feel are firm discussion points  
22. with the other side or their bottom line?

23. MR. WILLIAMS: Their interest in  
24. proposing a firm number. I have not, and  
25. going back to your comments with the Village

1 attorney about confidentiality, I did have a  
2 very clear understanding of confidentiality.  
3 I have not shared their conversations that  
4 they have had with me and I presume that  
5 they have not done the same.

6 So they have indicated that they want  
7 to lock in and proposed a bottom line or a  
8 number of students in a phasing program and  
9 a clear definition of what that enrollment  
10 is.

11 They are interested in trying to find a  
12 way to settle, they have represented to me  
13 very strongly by both the president of the  
14 board and the headmaster, they have  
15 indicated a number of reasons for wanting to  
16 do that. Of course, you know continuing  
17 litigation is a major issue as to why they  
18 are concerned about that.

19 I have also had the opportunity to meet  
20 with one representative of the community and  
21 they have indicated to me that the other  
22 party, and I am not sure how we define them,  
23 they are a party to the lawsuit.

24 MS. BOUTSIS: The citizens of Old  
25 Cutler Bay, CCOCI.

1 MR. WILLIAMS: Correct. They have  
2 indicated as well that they are working with  
3 Palmer Trinity and they are working towards  
4 some solutions. Working toward trying to  
5 find any agreement on solutions. I don't  
6 think that anyone has represented anything  
7 firm, and certainly I didn't have the  
8 authority to come to firm terms without  
9 coming back to council. And there have been  
10 no attorneys at any meetings that I have  
11 held and nothing has been written, it's just  
12 been discussions.

13 MS. BOUTSIS: The same is true with  
14 Palmer's meeting with the residents, there  
15 have been no attorneys. Their profession  
16 may be attorneys but they are not the  
17 attorneys litigating the cases.

18 I spoke with Mr. Gibb's as well, he  
19 sent a letter late last week, you also  
20 received a copy, and he represented to me  
21 that things were working along and that he  
22 believes that they were close to a number  
23 based upon the representations of his  
24 client, because the Palmer Trinity appears  
25 to be bending the elementary school portion

1. of their application.

2. MR. FLINN: That was the biggest issue  
3. that I had, the elementary school portion.

4. MS. STANCZYK: Can I ask a question  
5. about that. If they are abandoning their  
6. portion of the elementary school building,  
7. does that mean that we then eliminate the  
8. number of students that would have been part  
9. of the elementary school application?

10. MS. BOUTSIS: From 2,100?

11. MR. FLINN: I am sure their business  
12. plan, we all know that a private school  
13. business plan requires a certain number of  
14. students.

15. MR. WILLIAMS: They have not said to me  
16. that. I have not talked to them about  
17. abandoning or not.

18. MR. FLINN: It comes back to why we  
19. denied the zoning district change, I think  
20. it keeps coming back to traffic.

21. MR. WILLIAMS: And I have talked to  
22. them about that, I have told them that as  
23. any discussion going forward, I told Palmer  
24. Trinity this, that any possibility of  
25. settlement going forward had to include if

1 not be prefaced by a strong issue of traffic  
2 resolution. At this point that's nothing  
3 but a verbal conversation, I have not asked  
4 them to present a plan or anything.

5 MR. FELLER: Are we allowed to talk  
6 about details of this?

7 MR. FLINN: I think we can talk about  
8 conceptually. My number one issue on this  
9 too is enforceability, define definitions.  
10 I don't want any -- I want everybody to have  
11 a clear understanding of what they are  
12 entitled to.

13 In other words, if the number is 1,150  
14 or 1,200 or 900, whatever it is, that's the  
15 number of students enrolled not average  
16 daily attendance.

17 MS. BOUTSIS: And from what I  
18 understand there is an agreement on that.

19 MR. FLINN: And that's among enrollees  
20 that pay.

21 Where I am flexible is, if they are  
22 going to have an exchange student program  
23 and they have 100 students that are in  
24 Zimbabwe and they take in 100 students to  
25 replace them from Zimbabwe, that technically

1           may give them instead of 1,200 1,300, but  
2           only 1,200 are going to be there for that  
3           semester because the other ones are  
4           scheduled to be in Zimbabwe the whole  
5           semester, I don't have issues with that, but  
6           I want it to be defined. The expectation is  
7           that campus is going to have a certain  
8           number.

9                    Enforceability, things like that, in  
10           terms of I think we ought to have as a  
11           matter of concept, I think it would be great  
12           if they had a neighborhood board.

13                   One of things that also disturbed me  
14           too is they want to be part of the community  
15           and I think this is where the neighbors are  
16           going to be most resistant, I think their  
17           campus should be more open to the  
18           neighborhood.

19                   MR. PARISER: Even though the Village  
20           council has a responsibility to rule on  
21           zoning application based upon the law and  
22           certain criteria, we also are involved in a  
23           lawsuit and there is three parties involved  
24           in a lawsuit and the law favors settlement.

25                   My understanding from talking to OCI

1. without any details of that, the  
2. quote/unquote leadership has become more  
3. flexible at Palmer and reasonable. There  
4. was a reach out not only to the Village but  
5. to them.

6. There is parallel discussions going on.  
7. We sent them a laundry list of items way  
8. back when and they responded. Apparently  
9. one of the things in the lawsuit framework  
10. is we have some organized residents who  
11. according to the lawsuits have certain  
12. concepts that may not be what we would  
13. consider if they were to vote straight up on  
14. a zoning request.

15. If there has been, and the  
16. characterization is, there has been a  
17. substantial shift in what the parties were  
18. first butting heads on, that numbers are not  
19. the most important things anymore,  
20. conditions are the most important thing.

21. I think that at this point in time,  
22. because the appeal, whoever wins the appeal  
23. one way or another is, somebody is going to  
24. have a leg up and it's going to go a  
25. different way I think between now and that

1. appeal, and they don't give a decision that  
2 day it usually takes whatever, it could take  
3 a day, it could take a year to decide, but I  
4 think that if one side -- there is three  
5 sides, and I think if there is a mechanism  
6 to get three sides at this point in time in  
7 a room and in particular if the neighbors  
8 are satisfied with that laundry list being  
9 cut down or they can agree or at least  
10 narrow the issues in confidential  
11 discussions.

12 MS. BOUTSIS: Let me just interrupt  
13 that because understand that although we put  
14 a lot of things in our laundry list, there  
15 are a lot of things that we really cannot,  
16 we cannot contract zone, we are not allowed  
17 to contract zone.

18 So the citizens can agree to a  
19 rezoning. That has nothing to do with us in  
20 the sense that we have to go to a public  
21 hearing and decide, and after the public  
22 hearing that we have there is going to be a  
23 rezoning. They can agree to 75 foot  
24 setbacks. We put it in our original  
25 settlement agreement but in reality you have

1 to hear the evidence at the meeting. It all  
2 comes down to, we can't put it in a  
3 settlement agreement everything that we  
4 want. We have to give ourselves some wiggle  
5 room to understand that we don't want to do  
6 contract zoning.

7 MR. FLINN: Let me reverse this, because  
8 I think one thing that we can do, I think  
9 there is procedural things, there is  
10 evidentiary matters.

11 Let me ask you this; could we work on  
12 beforehand what I would call the  
13 enforceability factors, definitions and  
14 things like so that all of the parties know  
15 where we are going?

16 MS. BOUTSIS: I think we can work out a  
17 lot of things.

18 MR. FLINN: Because the evidence is  
19 going to go to number of student, and even  
20 that we have very limited control of based  
21 upon traffic and projection and things like  
22 that. And there is things that they can do.  
23 I mean, you give them a second crack at the  
24 apple and they can do more things.

25 Let me back up a little bit. The nice

1. thing about settlement here is, that for  
2 instance take a parking lot example. The  
3 code allows you to put 30 foot cobra  
4 headlights in that area, and by the way they  
5 are residential areas you can see them in  
6 some areas, because with special taxing  
7 districts you can either get the standard  
8 lights or you can either get the lights over  
9 there by 163rd, what they call the black  
10 lanterns out there that look very nice. I  
11 think they paid extra in special taxes.

12 So you can agree to be nice or you both  
13 can assert your maximum right. You have the  
14 right to say no, fine, I have the right to  
15 do this with the property.

16 MS. STANCZYK: Can I ask a question?  
17 Is it possible, now I know we can't contract  
18 zone, but what if there were certain terms  
19 that they agreed to with the other parties,  
20 could they modify their application to  
21 reflect those changes?

22 MS. BOUTSIS: Sure they could.

23 MS. STANCZYK: So that in other words,  
24 we can agree to it, we can vote yes, but we  
25 have not contract zoned when their

1. application comes to us eventually?

2. MS. BOUTSIS: The two parties let's  
3. say, and we only have one intervenor here.  
4. The one intervenor and Palmer Trinity come  
5. to an agreement on ten conditions that they  
6. can agree with. The current application  
7. would be their current application and they  
8. would represent that they are making these  
9. modifications to it.

10. MR. FLINN: Let me interrupt you  
11. because there is a simpler answer. If one  
12. hundred percent of the neighbors all sign  
13. under that agreement, they change it and  
14. came before us, as a matter of evidence,  
15. they come before us and say we all agree to  
16. this, there really would be nothing to hear.  
17. And the difficulty comes in and where we  
18. can't contract zone is the CCOCI people  
19. could say that's fine with us, and Palmer  
20. could say, well, we agree with them that's  
21. fine, but anybody else could come out of the  
22. bushes and object to it, and that's why it  
23. would be contract zoning if we just gave it  
24. the rubber stamp.

25. MS. BOUTSIS: And zoning would have to

1 review it to make sure that everything is  
2 proper as well.

3 MS. STANCZYK: Is there one way that  
4 they can interact and put forward their  
5 agreement?

6 MR. FELLER: A couple of things. One,  
7 I agree with the Mayor's concept that this  
8 should be settled if at all possible,  
9 because all it's leading to is both sides  
10 continuing litigation on and on.

11 MR. FLINN: It doesn't have any  
12 direction.

13 MR. FELLER: There is nothing to be  
14 gained one way or the other.

15 MS. BOUTSIS: To say that also is, the  
16 litigation in the original action now is  
17 starting to heat up. We are going to be  
18 taking a lot of depositions. I have been  
19 putting them off, but Corodino, we have the  
20 traffic consultant, Rafael Arasosa who  
21 worked for Corodino, Mayor's Flinn's  
22 deposition is coming up, and then  
23 Dr. Feller.

24 MR. FELLER: I also want to mention  
25 again and remind those who didn't vote on it

1 the first time, that the single issue by my  
2 memory that the variation was denied was the  
3 traffic report.

4 MS. BOUTSIS: Correct, that was the  
5 main reason.

6 MR. FELLER: And in speaking to our  
7 traffic consultant, the traffic report that  
8 he said was significant was 176 not 184.

9 MS. BOUTSIS: Correct.

10 MR. FELLER: He said 184 despite the  
11 crowd, would have not have been acceptable  
12 to deny it and 176 was.

13 I would like, if that is an issue, it  
14 seems to me when people are trying to give  
15 and take, and this is just an idea it's not  
16 anything coming up in a hearing, 176 should  
17 only be for emergency vehicles and that  
18 since the new property abuts on 184 with a  
19 major entrance and they are rebuilding a  
20 school, all traffic come in and out through  
21 184. That would help a large number of  
22 residents and a good safety factor for all  
23 of the kids in the school.

24 Number two, one of the problems that  
25 has been going on for years which has to be

1. approached again, this is procedural with  
2. any agreement that gets made, is that the  
3. school and in some regard the Village, live  
4. up to what the agreement is because the  
5. there have been agreements in the past that  
6. have not been lived up to.

7. MS. BOUTSIS: You are talking about  
8. enforcement?

9. MR. FELLER: Yes.

10. MR. FLINN: And I'd like to see, and I  
11. think we can I don't think it's a matter of  
12. contract zoning, I'd like to see both sides  
13. agree to what those enforcement provisions  
14. are and if they can't agree to that we make  
15. the decision on it. We'll make the decision  
16. on any terms that they can't agree upon.

17. But again, I think that everybody  
18. should agree what a student is, how many  
19. students are there, what happens if they  
20. have too many, which way the traffic is  
21. going to flow, who is the cop out there  
22. controlling traffic or whatever it all  
23. takes.

24. MR. FELLER: And what the landscaping  
25. is going to be around it.

1. MR. FLINN: That gets back to we may  
2 have a 22 point list. Ideally what will  
3 happen is a 22 point list, and it will come  
4 back to hearing and we are deciding over a  
5 final four or five.

6 MR. FELLER: If both sides and everyone  
7 goes into the hearing with a conceptual  
8 idea, we can't be involved in doing this,  
9 but if the parties and our attorneys,  
10 attorney to attorney conference totally  
11 independent or the Village Manager and the  
12 school come up with something that may be  
13 workable, then it comes down to a public  
14 hearing and we make a decision in a public  
15 hearing.

16 MR. PARISER: And if they agree to it  
17 they agree to it. I mean, Palmer has  
18 certain property rights, there may be  
19 certain standards and what have you, they  
20 only have to set back 25 feet, but they  
21 agree voluntarily in their application to  
22 put 50 or 60 feet, it's fine with me.

23 My understanding is that the Palmer  
24 people and the OCCI people are meeting again  
25 this week. And I still take the view of

1 this oral argument being a good drop dead  
2 date for them if there is a possibility of  
3 them saying we have agreed to modify our  
4 application.

5 MR. FLINN: We have to move quickly on  
6 this.

7 MR. PARISER: It's not our discussion,  
8 it's between OCCI and Palmer.

9 MR. FLINN: No, it's between us because  
10 if we leave it to them, they have had 18  
11 months to do this. I did not think this  
12 issue would still be here today. I thought  
13 this issue would have been decided within 60  
14 to 120 days after that hearing.

15 MS. STANCZYK: Who are you saying is at  
16 fault?

17 MR. FLINN: I am not saying anybody is  
18 at fault. I am saying we are at fault  
19 because we need to light a fire under them  
20 and nothing gets movement, this is why  
21 judges tell you you are going to trial if  
22 you don't settle, because nothing gets  
23 people moving like a deadline.

24 MR. PARISER: I am saying they have to  
25 be told. They have to go as far as they can

1. go with Palmer.

2. MR. FLINN: Let me put it to you this  
3. way Shelley, these are very unpleasant  
4. decisions for both sides. Neighbors might  
5. not want to see a school there and the  
6. school doesn't want to recede back from  
7. their property rights. And so long as  
8. people have the comfort of you can continue  
9. to push things off, heck, I'll just take  
10. another appeal, heck, I'll just go ahead and  
11. continue to fight it. And that could be  
12. coming from the school and it could be  
13. coming from the neighbors, and it could even  
14. be coming from the council if ---

15. MS. BOUTSIS: You know what we could  
16. do, is do a very simple going forward  
17. settlement in the sense of that we agree to  
18. have the hearing. And set it for a time  
19. certain that we have the hearing within 60  
20. days or 30 days. 30 days is impossible.

21. MR. PARISER: We have one February  
22. 23rd.

23. MS. BOUTSIS: I am talking about a  
24. zoning hearing. And that gives the other  
25. parties a deadline of 60 days or 90 days to

1 get their agreement done and come to the  
2 hearing.

3 MR. PARISER: Where everybody agrees to  
4 abandon the litigation?

5 MS. BOUTSIS: No, basically relinquish  
6 jurisdiction at this point so that we -- or  
7 whatever point, even if it's after oral  
8 argument, it's up to you how fast you want  
9 to move this, how much risk you want to  
10 take, but you could ask to take it off of  
11 oral argument.

12 MR. FELLER: If we are going to set a  
13 hearing, the way that the hearing was set up  
14 I understood was no variance or discussion  
15 about the project because the zoning was  
16 changed.

17 MS. BOUTSIS: Technically I asked for  
18 two separate hearings. The parties said, we  
19 just want to give you one presentation.  
20 Staff never gave you the presentation on the  
21 variance and you never ruled on the variance  
22 because you denied the first part.

23 MR. FELLER: It would seem to me the  
24 only way this would be useful is if all  
25 parties have a general concept of what they

1. wanted. We are standing away from this.  
2. The parties are talking to each other, we  
3. are standing, when it comes to a hearing we  
4. have to give also a decision.

5. MS. BOUTSIS: If you want to take it to  
6. that basic level, and it's whether you want  
7. to settle to hold a hearing within a certain  
8. amount of time to rehear it and then let the  
9. other parties try and negotiate a settlement  
10. among themselves or hold a new hearing.

11. MR. WILLIAMS: I think the other party  
12. doesn't have any ability to affect the final  
13. decision. The OCCI is not the final  
14. decision-maker.

15. MS. BOUTSIS: No, but they can amend  
16. their application to get rid of their  
17. opposition. Palmer Trinity could amend  
18. their site plan to get rid of the  
19. opposition.

20. MR. PARISER: I think we have a date  
21. certain now as far as the OCCI people are  
22. concerned and even Palmer of February 23rd.  
23. That's a lot closer than another 60 days or  
24. whatever. And they are supposedly talking  
25. and coming back and talking again either

1 today or tomorrow.

2 MS. BOUTSIS: I believe it was the  
3 29th, January.

4 MR. PARISER: I don't know if they want  
5 to talk to you. They are either going to  
6 narrow the issues from 28 to 10 or to two,  
7 or have one or two drop-dead issues that  
8 they are not going to agree on. Somehow get  
9 yourself privy to that or it blows up or  
10 they just give up. I am curious to know  
11 where they are going with that. I want them  
12 to have the opportunity.

13 MR. FLINN: We'll give them the  
14 opportunity but we have to pick up and make  
15 a decision. We may reject a lot of their  
16 agreements, their agreement may be to pick  
17 up and move the school to somebody else's  
18 neighborhood.

19 MS. STANCZYK: They are trying to say  
20 something and you are saying it's an  
21 agreement. No one makes an agreement  
22 between the two of them to move the school  
23 to another neighborhood, that's a stupid  
24 comment. But what they are trying to do is  
25 they are trying to come together.

1. MR. FLINN: Of course they are, but  
2 they will come together a lot better, I  
3 suggest -- what's our notice requirement, we  
4 have to give at least 30 days notice?

5 MS. BOUTSIS: It's at least 30 days  
6 notice and Julian would have to review the  
7 application, so we are looking at like 45  
8 days, we have to give Julian two weeks.

9 MR. FELLER: That would be after the  
10 court hearing.

11 MS. BOUTSIS: What I recommend at this  
12 point if you are serious, I want you to  
13 brainstorm and maybe we hold another  
14 attorney/client session on Monday.

15 MR. FLINN: We can hold another one  
16 Monday, I think we pick a date tonight,  
17 though.

18 MS. BOUTSIS: What I was recommending  
19 is, you can either, there are two things, we  
20 can either try and present an offer of  
21 scheduling a date for the hearing or asking  
22 to stay jurisdiction on the oral argument  
23 and pick a date.

24 MR. FLINN: I suggest we use our March  
25 date for our zoning hearing because we don't

1 have time to do it within our notice time  
2 requirements.

3 MS. BOUTSIS: And Mr. Perez needs time.

4 MR. FLINN: And I believe that would be  
5 March 15th is our zoning hearing date.

6 MR. STANCZYK: There is three parties  
7 to this litigation, and if one says I don't  
8 want to stay the oral argument I want to  
9 hear it?

10 MR. PARISER: Then the court is then  
11 obligated to go ahead and hear oral  
12 argument.

13 MS. BOUTSIS: But we can still go  
14 forward with our schedule.

15 MR. FELLER: Eve, what if two of them  
16 want to settle, what does the court do?

17 MS. BOUTSIS: The two can settle and  
18 the one can continue to litigate against  
19 them.

20 MR. FLINN: Do we still have three or  
21 do we have two parties now?

22 MS. BOUTSIS: We are the third.

23 Put it this way, if we agree to hold a  
24 hearing the neither party could prevent us  
25 from holding the hearing. There could still

1. be challenges. And I would think in that  
2 scenario the challenge would be by the  
3 intervenors, because Palmer Trinity has been  
4 asking for a hearing forever.

5 MR. FELLER: I would think the  
6 intervenors would have less standing to  
7 challenge than the school.

8 MS. BOUTSIS: Technically the law is  
9 once they are a party they are a party,  
10 there is no lesser party.

11 MR. PARISER: This is my idea, I want  
12 to keep the pressure going. They are  
13 talking -- and I don't want to give them an  
14 out knowing that there may be some date  
15 further down the road. I want to push them  
16 to see. They can agree or they continue,  
17 one way or the other you got to let us know  
18 -- because time is of the essence for them  
19 and I want to get them within the next week  
20 or so and then we can ask them, how close  
21 are you guys and if they say we are not, we  
22 are just whatever, we can have another  
23 attorney/client session to consider another  
24 hearing.

25 MR. FELLER: We can't have a hearing

1. for at least 30 days.

2. MR. FLINN: From when we set the date.  
3. We can always cancel that hearing.

4. MS. STANCZYK: Can we arbitrarily set  
5. the hearing and if neither party wants to go  
6. forward that day ---

7. MR. FLINN: We can cancel the day of  
8. the hearing.

9. MR. PARISER: Technically if we are  
10. setting a hearing, doesn't that make the  
11. lawsuit moot?

12. MR. FLINN: No.

13. MR. PARISER: We are setting a hearing  
14. while there is an appeal on abeyance, I  
15. don't understand how we can set a hearing  
16. when there is an appeal on abeyance on the  
17. same application?

18. MS. STANCZYK: If we are looking at  
19. settlement, how can we set a hearing without  
20. another party agreeing to it and saying that  
21. we are going to rule on something that we  
22. haven't settled on.

23. MR. WILLIAMS: Eve is saying that they  
24. have been asking for a hearing. So they  
25. should be inclined to be willing to set

1. that.

2. MR. PARISER: Yes, but the appeal still  
3. goes forward and they may the very next day  
4. before the hearing they may say you were  
5. wrong Village.

6. And then we lose everything. Then we  
7. have dissuaded these guys or pissed them off  
8. because we are pushing a hearing down their  
9. throat threatening with a hearing down their  
10. throat.

11. I think if you come out and announce a  
12. hearing you are just going to piss off one  
13. group or another and I want to keep the  
14. pressure and let them talk.

15. At the same time, if they refuse to  
16. talk then I am willing ---

17. MR. FLINN: I want to interrupt you.  
18. The oral argument is going to be the 23rd,  
19. and it's going to be a hot bench, I would  
20. imagine. There is going to be a lot of  
21. discussion one way or another and I have  
22. seen it go differently from the discussion,  
23. sometimes they like to play devils advocate  
24. so you are not going to be sure -- you know,  
25. it's not uncommon for someone to walk away

1. thinking they won and they didn't.

2. I have had a written opinion that beat  
3. meet back to my office. I have almost had a  
4. PCA without opinion beat me back to my  
5. office. I have waited months for a PCA  
6. without opinion where you call and you ask  
7. what's going and hey, nothing, nothing.

8. But we are going to have the opinion  
9. one way and then someone is going to file  
10. for a motion for rehearing and then that's  
11. going to sit for a while and it's going to  
12. take a while before the mandate comes down  
13. and then I am out of office.

14. So if your goal is to push it off to  
15. the next council, then this is the way to do  
16. it.

17. MR. PARISER: I want to get it decided  
18. within the next three weeks. I want them to  
19. come with a revised application.

20. MR. FLINN: They can't agree to revise  
21. their application so long as we treat them  
22. as zoning in progress and arguing that they  
23. don't have the right to do that.

24. MR. PARISER: They sit down and hammer  
25. it out like they want.

1. MS. STANCZYK: How can we violate the  
2 moratorium and have a hearing?

3 MS. BOUTSIS? It's part of settlement.  
4 And the moratorium is over at the end of  
5 February.

6 MR. FLINN: This is a unique  
7 circumstance the fact that we are under  
8 litigation and we are doing things because  
9 of the pending litigation.

10 MR. PARISER: I want to push them,  
11 heads up, show us your hand, you guys can  
12 either you want to settle or don't want to  
13 settle.

14 MR. FELLER: If you set a hearing date  
15 in mid March, if all parties know that the  
16 hearing date will go ahead only if there is  
17 a chance that the hearing will reach a  
18 conclusion that will be acceptable and that  
19 if there is no acceptable agreement before  
20 the hearing date, it takes the council out  
21 of it, I am talking about between the  
22 parties, then we can cancel the hearing. It  
23 seems to be that pushing them --

24 MS. BOUTSIS: Why would you cancel the  
25 hearing. They may never agree.

1 MR. FELLER: It depends how far apart  
2 they are.

3 MS. STANCZYK: That's what I am  
4 thinking. What if we schedule it not for  
5 March 15th which is almost like there is no  
6 option, we are right on a deadline of  
7 setting it basically. What if we did it for  
8 April and we don't announce that we are  
9 setting it for April, an April hearing for  
10 another couple weeks, that gives them a  
11 couple weeks of slush, because they have a  
12 couple meetings coming up. Let them get  
13 through that, maybe have one more meeting,  
14 get a feeling of where they are going  
15 without any urgency and then decide to set  
16 it for April. That will give Julian without  
17 the moratorium time to prepare, without  
18 absolute pressure, because that's how we  
19 have operated since we became a board with  
20 writing all of the zoning ordinances and  
21 everything. Give him sometime to be  
22 adequately prepared and then we announce the  
23 hearing.

24 MR. FELLER: The problem with that has  
25 to do with the lawsuit. Because I agree

1 that I'd like this done before the result of  
2 lawsuit comes in or there may be no  
3 settlement from either side.

4 MR. PARISER: One way or the other if  
5 we win we win again.

6 MR. FELLER: If the judge knows that  
7 there is a hearing in a couple of weeks  
8 after oral argument they may not come up  
9 with an opinion.

10 MS. BOUTSIS: I think in order to  
11 schedule a hearing we have to have some sort  
12 of agreement in place. We just can't  
13 schedule a hearing it has to be, we are  
14 trying to settle and we agree to have the  
15 rehearing. And it has to be some sort of  
16 settlement because otherwise why does Palmer  
17 Trinity have to show up there, they can just  
18 wait for oral argument.

19 MR. WILLIAMS: I think that goes to  
20 Brian's point.

21 MR. FLINN: We have to light a fire  
22 under them because they have had 18 months  
23 to do this. I am not faulting anybody other  
24 than the fact that maybe it's our fault that  
25 we haven't given them guidance and brought

1           them back. A decision, however the court  
2           rules, it's still comes back to the council  
3           for a decision.

4           MR. PARISER: I think the match for the  
5           fire is the 23rd for both Palmer and the  
6           CCOCI people. That's my opinion. I think  
7           that's what the match is. You guys better  
8           do something because it's going to fall one  
9           way or the other.

10          MR. FLINN: I don't think it's up to  
11          them because we can come up with something  
12          that's mutually disagreeable to both  
13          parties.

14          MR. PARISER: First let's see what they  
15          have.

16          MR. FLINN: They have had a ton of  
17          opportunity to do it.

18          MR. STANCZYK: Let me ask you a  
19          question. You put your hand out and nobody  
20          answers and now they are finally getting it  
21          together, why would you punish them?

22          MR. FLINN: I am not, I am giving them  
23          a date certain to do something.

24          MS. STANCZYK: But your comment right  
25          now was ---

1 MR. FELLER: His answer to that request  
2 was why are a hearing if they don't agree,  
3 the answer was, we can make a decision.

4 MS. FLINN: We have to consider all  
5 25,000 people here and we have to consider  
6 the school.

7 MR. FELLER: We represent everyone in  
8 the Village, not just one school and the  
9 people that live around it.

10 MR. FLINN: Dr. Feller, do you want to  
11 set a date?

12 MR. FELLER: I think a date would help  
13 push people to move a little quicker.

14 MR. FLINN: Why don't you move to set a  
15 date.

16 MS. BOUTSIS: Can I make a  
17 recommendation. Can we have another A/C  
18 session on Monday, let me think through this  
19 factor of this hearing and perhaps what we  
20 do is we propose ---

21 MR. FLINN: I would suggest we set a  
22 hearing, we can rehear it on the first if  
23 you change your mind.

24 MR. FELLER: If we set something for  
25 March 15th, that means we have until

1 February 15th to notice it; correct?

2 MR. FLINN: No, I don't I think we do,  
3 I think we have more than a 30-day  
4 requirement. Plus we have to produce the  
5 notices and they need to be mailed.

6 MR. FELLER: What's your requirement?

7 MS. BOUTSIS: There is a 30-day notice  
8 requirement.

9 MR. FELLER: Add a week to 30 days, so  
10 make it 37 or 40 days. If we take March  
11 15th, we are saying that we are going to do  
12 it but we are not sending it out, yet the  
13 parties can know we are planning it, we have  
14 our attorney/client meeting Monday the 1st,  
15 we can decide then whether or not we carry  
16 through with this.

17 MR. PARISER: I am very confused. I  
18 just don't understand. The hearing that  
19 Gene is talking about is on their original  
20 application, which is in litigation in  
21 court. So we are saying, we want to hear  
22 your application again. How does that not  
23 moot our position in court?

24 MS. BOUTSIS: That's why I want to wait  
25 until Monday.

1 MR. PARISER: It says you won, we did  
2 the hearing incorrectly we are having the  
3 hearing again.

4 MS. BOUTSIS: If I may, there is a day  
5 between the two which is why I wanted to  
6 have the meeting on Monday so we can get the  
7 details down without a rash decision.

8 I think the only way that you can do  
9 the hearing date is with an agreement,  
10 saying we are willing to remand back.

11 MR. PARISER: Saying what, win or lose  
12 or only if we lose you get a hearing?

13 MS. BOUTSIS: Can I work on the details  
14 by Monday?

15 MR. WILLIAMS: Maybe the agreement that  
16 Eve is saying that we need to have before  
17 the hearing can get worked out between now  
18 and the 23rd.

19 MR. PARISER: The agreement being their  
20 proposed amended application?

21 MR. WILLIAMS: And some form of  
22 agreement between now and the 23rd, then you  
23 do sort of unmoot the point if you have got  
24 an agreement before the 23rd or by the 23rd.

25 MR. FLINN: The only problem is if you

1 agree to have a hearing after they have a  
2 settlement it has a contract zoning  
3 situation, which is why I think that you  
4 should set a hearing before that.

5 MS. BOUTSIS: I need to think out  
6 procedurally how we get there. I think the  
7 only thing, what I am thinking of doing, and  
8 it's the only way legally that I see of  
9 doing it, is making a proposed settlement  
10 offer on Monday, after Monday's  
11 attorney/client session, to have it remanded  
12 back to the council to have the public  
13 hearing and only deal with that issue.

14 In other words, the cases don't go  
15 away, everybody reserves their right on the  
16 litigation, but we go back to have the  
17 hearing which is what Palmer Trinity  
18 originally asked for in their settlement  
19 proposal. And we give everybody tomorrow  
20 and Friday and the weekend and everything  
21 else to continue to work on something and  
22 then send out the proposal for settlement.

23 MR. PARISER: When you say proposed  
24 settlement agreement, I want all three  
25 parties in on that discussion.

1 MS. BOUTSIS: The only thing I am  
2 saying to settle on is that we were willing  
3 to remand, and let them continue to work out  
4 the details on what they want. Because  
5 ultimately, let's face it, you can't say I  
6 agree to rezoning, that's contract zoning.

7 MS. STANCZYK: That's what we are doing  
8 now if we are saying we are pulling it back  
9 and you are setting a hearing up that you  
10 haven't even notified the other party of.

11 MS. BOUTSIS: No, that's not what I am  
12 saying to do. I am saying doing a very  
13 simple agreement, we reserve all of our  
14 rights, everybody reserves their rights, but  
15 we are agreeing to hold a hearing. That's  
16 it.

17 MS. STANCZYK: And all three parties  
18 agree.

19 MR. FELLER: They don't have to  
20 agree.

21 MR. WILLIAMS: We can't get them to  
22 agree.

23 MS. BOUTSIS: I think they will agree.

24 MS. STANCZYK: Why not? Why wouldn't  
25 you do that when they are one-third of the

1 party and what you are doing is you are  
2 saying the settlement agreement that you are  
3 trying to work out is meaningless.

4 MR. WILLIAMS: Because we have no  
5 control over their decision-making we only  
6 have control of ours.

7 MS. STANCZYK: I understand that but  
8 what I am saying is, make it a three party  
9 agreement, otherwise without making it a  
10 three-party agreement to remand it, what you  
11 said is we give up.

12 MR. WILLIAMS: No.

13 MR. FLINN: Not taking any action is  
14 saying we have given up, we are just going  
15 to ride it out, spend the Village's money  
16 and see where the chips fall and say don't  
17 blame me blame the courts. And I am not  
18 willing to do that.

19 MR. FELLER: I think unless we take  
20 some action lighting fires no solution is  
21 going to be gotten unless the court forces  
22 someone and even then it's going to lead to  
23 ongoing litigation.

24 MR. STANCZYK: This is so unusual when  
25 you have a party that was reached out to

1. numerous times by CCOCI, they never  
2. responded, refused to respond. Now that  
3. they have reached out to us and they have  
4. reached out to them in response to their  
5. repeated request which they gave a request  
6. to them shortly before Christmas, then we  
7. suddenly take control and leave them out of  
8. the decision-making.

9. MR. FELLER: They are not being left  
10. out.

11. MR. FLINN: First of all, we don't  
12. defer authority to them and make any  
13. decisions, we are making a decision with  
14. their interest in mind and we are making a  
15. decision based on everybody's interest in  
16. minds. Just like we aren't deciding for or  
17. against Palmer, we are deciding what's  
18. compatible on that piece of property and  
19. what fits within our area.

20. MS. STANCZYK: That's jumping ahead.  
21. What I am saying is, you are taking control  
22. of the situation before they finish their  
23. now in-progress settlement process.

24. MR. FELLER: Shelley, what I don't  
25. think that we want to happen is for the

1 court to suddenly basically say Village, you  
2 can't do anything, they can have 2,100.

3 MS. STANCZYK: I don't think they are  
4 going to say that because the answer is  
5 where we get zoning.

6 MR. FELLER: If they say you didn't do  
7 the zoning, you have to zone it by the size  
8 of the property. Purely by the size of the  
9 property will explain to me that we have no  
10 control over the number of students.

11 What I am saying is that we have no  
12 control over a lot of things if the court  
13 says that we have to zone.

14 MR. FLINN: I will tell you, Shelley,  
15 what it does, today they can go in and get  
16 1,150 students but the only way you can put  
17 a covenant or any sort of agreement on there  
18 is if they agree to it as part of the  
19 hearing.

20 Today they can go in there, ten years  
21 from now they can go in there and they can  
22 just keep going. Only through negotiations  
23 do you have any control. You are talking  
24 about peoples' property rights on their 35  
25 acres or 33 acres and you know, the courts

1 take it very seriously, people have property  
2 rights.

3 MS. STANCZYK: They do and that's what  
4 I am saying. They are hashing those out,  
5 they are working on it.

6 MR. PARISER: I think if you come out  
7 with an announcement of setting a date it's  
8 going to upset with their talks. I am  
9 interested in letting them talk and they  
10 have time. I want to know a week from now  
11 whether their talks are --

12 MR. FLINN: We have Monday. We have an  
13 attorney/client session the 1st.

14 MR. FELLER: We are not announcing  
15 anything.

16 MR. PARISER: We can schedule a meeting  
17 in May for all I care, I just want to know  
18 from these guys if they are serious or not  
19 if this is just vertical, if they are just  
20 pulling each others chains.

21 MS. BOUTSIS: What would satisfy you?

22 MR. PARISER: What would satisfy me. A  
23 phone call to you jointly from Price and  
24 Gibbs saying, I just want you to know for  
25 whatever the Village wants to do, we have

1           agreed on 90 percent of the issues, 95  
2           percent of the issues, 70 percent of the  
3           issues.

4           MR. STANCZYK: I would say the phone  
5           call wouldn't have to come from the  
6           attorneys since they are not a party to the  
7           discussion, I would say it would have to  
8           come from CCOCI or ---

9           MS. BOUTSIS: They are represented by  
10          counsel, they have to --

11          MR. PARISER: Their client says,  
12          counsel, I am paying your bill, you tell  
13          them A, B, C.

14          MS. BOUTSIS: You want to give them 10  
15          days to negotiate and hold our A/C session  
16          and make our final decision on what we do?  
17          Give them 10 days more?

18          MR. FELLER: I would like to have our  
19          session before the last possible moment to  
20          have a meeting put out.

21          MR. PARISER: What does it matter if  
22          it's April or May?

23          MR. FELLER: What I would really like  
24          to do is have a meeting, something going on  
25          before the litigation, before the court

1. hearing. What I don't want is a result of  
2 the court hearing coming down and screwing  
3 one side or the other side.

4 MR. FLINN: The problem that I have  
5 with April is then is going to be in May and  
6 then school is out and they want to have it  
7 in September.

8 MR. FELLER: I don't want one side or  
9 the other side winning totally. The second  
10 thing with this though is that if the court  
11 hearing runs the 23rd of February, you have  
12 no idea how soon the court is going to  
13 remand the judgement from that.

14 If the court knows there is a hearing  
15 on this two weeks after oral argument ---

16 MR. PARISER: They may not necessarily  
17 know that. They just want to clear their  
18 docket.

19 I want to see if these people are  
20 really serious on the 23rd. So the 23rd  
21 one way or another, if we win fine, if they  
22 win Palmer Trinity is going to do what they  
23 want to do.

24 MR. FELLER: We have more control.

25 MS. BOUTSIS: So we make a decision to

1. set a hearing on the 15th of February.

2. MR. FELLER: We have no control if  
3. there is no court ruling on it.

4. MR. PARISER: I am just afraid if you  
5. upset them, I think negotiations are very  
6. delicate and that's just going to throw  
7. something in their direction that you don't  
8. have to do at this point in time.

9. MR. WILLIAMS: Why do you think it's so  
10. delicate.

11. MR. FLINN: I don't understand what  
12. these conversation are that you are hearing.

13. MR. PARISER: That they are very close,  
14. that numbers don't mean anything, that  
15. conditions mean everything. So I said fine,  
16. put it in writing and do something, I don't  
17. want to hear this nebulous stuff.

18. MS. STANCZYK: But I think if you take  
19. control and take it away from them why would  
20. you do that?

21. MR. FLINN: How do you know they are  
22. getting close to a settlement?

23. MS. STANCZYK: Because they say they  
24. are. If they say they are then they are,  
25. it's not up to me to decide if they are

1 close.

2 MR. WILLIAMS: They meaning OCCI?

3 MS. STANCZYK: Right.

4 MR. PARISER: They supposedly it's not  
5 the numbers anymore, it's conditions and  
6 fine. Now that may be a misperception on  
7 their part, and if we let them know through  
8 counsel we are going to have another  
9 attorney/client session, but if I were you  
10 guys let us know if you are close or not and  
11 if you are let us know if it's A, Z or if  
12 it's only A and B.

13 MR. FELLER: Let us have the  
14 attorney/client, no comments now, have the  
15 attorney/client before the meeting Monday  
16 and see what you have received from the  
17 people Monday.

18 MR. PARISER: My only point is, it's  
19 Wednesday night, I don't know when they are  
20 meeting, unless they ---

21 MS. BOUTSIS: Give them until a week  
22 from today. We can do a seven o'clock A/C  
23 session so that it doesn't interfere with  
24 your schedule, so that gives them a week for  
25 the parties to come to terms and report back

1. to me where they are. And in the meantime I  
2. can work on this language of what we should  
3. do.

4. MR. PARISER: Just as a practical, I  
5. don't know if what I am hoping for can be  
6. accomplished.

7. MS. BOUTSIS: Let's meet in a week, we  
8. give them an actual week to get something  
9. accomplished.

10. MR. FLINN: That's not what I get. I  
11. mean, I am really disgusted that both  
12. parties need some engraved invitation to  
13. talk. I have got a deposition tomorrow  
14. eight o'clock on a trial that I have got  
15. started for Monday. You know when I agreed  
16. to that depo, probably about an hour  
17. and-a-half ago.

18. They have had 18 months to establish  
19. the ground rules, let's get this thing  
20. moving, I am at the end of my rope.

21. MS. STANCZYK: Why are you taking it  
22. personal?

23. MR. FLINN: I have no confidence that  
24. they are going to come to an agreement.

25. MS. STANCZYK: I actually do.

1 MR. FLINN: How do you know?

2 MS. STANCZYK: I don't know. You know  
3 what I don't know? I don't know why we want  
4 to take charge of what they are doing.

5 MR. FLINN: Because they are creating  
6 anxiety, and I mean they as in Palmer and  
7 the parties in there.

8 First of all, we are the ones that are  
9 responsible to make the zoning decision. We  
10 have not deferred to either Palmer and we  
11 have not deferred to any specific groups.  
12 We are the party.

13 I have made a commitment as Mayor to do  
14 proper decisions and do everything that I  
15 can and I am not sure that what the parties  
16 put together is going to be the final.

17 How long do they need, they have had  
18 years to talk. I think it's going to take

19 ---

20 MR. FELLER: Again, let me just ask  
21 this. What is the best in your opinion, the  
22 best timing and way for us to proceed so  
23 that a decision does not override everything  
24 that we are doing and make it worse for one  
25 side or the other side without us really

1. having much control over what to do?

2 MS. BOUTSIS: The best way that I can  
3 see so far and which is why I wanted to  
4 continue to think over the weekend, is to  
5 propose "settlement" to both parties, saying  
6 stay the oral argument, 45 days from now we  
7 have the hearing and let's hear it. And if  
8 they come to terms over the 45 days and they  
9 come up with some agreement that's great and  
10 if they don't ---

11 MR. FELLER: Why don't we delay a  
12 decision on this until Monday and you report  
13 to us on Monday.

14 MR. PARISER: Just because they have  
15 come to an agreement, that doesn't mean we  
16 are going to agree to what they agree?

17 MS. BOUTSIS: Right. Which is why my  
18 proposal for settlement is that simple.  
19 Stay oral argument, here is the specific  
20 date for the hearing. If they come to an  
21 agreement they won't be oppositioned from  
22 thousands of people at this hearing and they  
23 go and give their presentation. But you  
24 make the decision in 45 days, A or B,  
25 whatever it is.

1 MR. FLINN: My hurry on this is, we  
2 have a date certain by the court of oral  
3 argument. At some point, and based upon the  
4 oral argument, I have never had an oral  
5 argument where both sides walk out not  
6 knowing what's going to happen.

7 And I have had people walk out thinking  
8 they have won and lost and I have had people  
9 walk out and thinking they have won and  
10 lost. We right now are in the zone of  
11 maximum flexibility of parties due to the  
12 uncertainty, and once you -- it's like when  
13 I win a case against somebody and they say,  
14 is that offer still on the table.

15 MR. PARISER: My opinion is if you  
16 announce, I believe, if you announce we are  
17 staying a hearing now, Palmer is going to  
18 take that as we've done our part and a  
19 victory on our part and that's going to  
20 throw off whatever they are discussing.

21 MR. FLINN: Fine, we'll consider this  
22 on Monday on the first. It gives them three  
23 business days to talk.

24 My God, I don't know why I can take a  
25 deposition on the weekend and nobody else

1 seems to be able to talk on the weekend.

2 MR. PARISER: How is this going to be  
3 communicated to Palmer and OCCI?

4 MR. FELLER: Our attorney. It should  
5 be from no one else.

6 MR. FLINN: I don't know why anybody  
7 but Palmer should think they are going to  
8 get what they want.

9 MR. PARISER: It's perception. I think  
10 it's just perception. I think that right  
11 now nothing said, if things are critical  
12 between now let's hear what they have to  
13 say. If they come Monday and say it doesn't  
14 matter if we have 120 days, we are not going  
15 to agree, then I want to hear that.

16 MR. FELLER: Then you throw it to the  
17 court and say screw them.

18 MS. STANCZYK: No, you then throw it to  
19 the zoning hearing, but I think deciding  
20 now, I am beginning to wonder if there is  
21 something out there that we don't know  
22 that's come through to the Village that we  
23 don't know.

24 MR. WILLIAMS: Why are you making that  
25 statement? What are you implying?

1 MS. STANCZYK: Because all of the  
2 sudden we want to do a hearing and I had no  
3 idea that we were this close to setting a  
4 hearing.

5 MR. WILLIAMS: As to what you have  
6 implied, we have been forthcoming about  
7 everything.

8 MR. FLINN: The reason for setting a  
9 hearing is because we have got to do  
10 something to get this off neutral. We can't  
11 make a decision in a closed room, we can't  
12 make a decision by telephone conference and  
13 quite obviously I am looking at this and I  
14 wish we would have had this meeting probably  
15 in December when we could have had some ---

16 MR. PARISER: I think that other group  
17 that asked for three extensions.

18 MR. FLINN: True, they asked for three  
19 extensions and they hurt us, didn't they?  
20 Nonresidents to this Village put this in a  
21 different -- so how long are we going to  
22 allow people to basically put this Village  
23 in a disadvantage. You know what that  
24 means, we didn't take control on it and I  
25 think it's time to take control.

1 MR. FELLER: Gene, it is time, but the  
2 people involved are Village residents also.  
3 This is not the non village residents.

4 MR. FLINN: And I am not doing this to  
5 spite either our corporate or individual  
6 residents, I am doing this to do what I can  
7 in I think the most effective way to make  
8 people talk.

9 MR. FELLER: You heard my opinion, it's  
10 similar to yours in that regard.

11 MR. FLINN: Meet Monday at 6:30 then.

12 MR. WILLIAMS: Eve, you're going to  
13 communicate to the lawyers?

14 MS. BOUTSIS: Yes, sir. And I will  
15 schedule an A/C session.

16

17

18 (Whereupon, the deposition was  
19 concluded at 8:30 p.m.)

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