

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

3

4

CASE NO: 08-28977 CA 30

5

Appellate Court Case No: 3D09-1587

ORIGINAL

6

7

8

9

10

16701 S.W. 72nd Avenue
Palmetto Bay, Florida,
Wednesday, 6:30 p.m.,
February 1, 2010.

11

12

13

14

15

16

APPEARANCES:

17

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

18

19

20

21

22

23

24

25

1. MS. BOUTSIS: The Village Attorney
2. advices the Mayor and Village Council that
3. we are representing the Village in defense
4. of certain legal actions styled; Palmer
5. Trinity Private School versus Village of
6. Palmetto Bay. Circuit Court Case number
7. 08-28977 CA 30 and Palmer Trinity Private
8. School versus Village of Palmetto Bay,
9. Appellate Court Case number 3D09-1587 and
10. desires advice for the Village Council
11. regarding litigation strategy and/or
12. settlement.

13. It is now approximately 6:35 on Monday
14. February 1st, 2010 and we will just go down
15. the row here.

16. Vice Mayor, Brian Pariser is present,
17. council member Howard Tendrich is present,
18. Dr. Feller is present, Mayor Eugene Flinn is
19. present, Councilwoman Shelley Stanczyk is
20. present, Eve Boutsis Village attorney and
21. Ron Williams Village Manager is present.

22. We have a certified court reporter who
23. shall record the time and termination of the
24. session, all discussions and proceedings
25. that occur, the names of all persons present

1. at any time during the session and the names
2 of all persons speaking. The transcript
3 shall be made part of the public records
4 upon conclusion of the litigation.

5 Thank you for being here. As you may
6 remember at the attorney/client session last
7 week we had discussed coming here tonight.

8 I have talked with both Mr. Gibbs and
9 Mr. Price over the past couple of days.

10 MR. FLINN: Before we start I have a
11 disclosure to make.

12 MS. BOUTSIS: Yes, sir.

13 MR. FLINN: One of the reasons we have
14 got to really keep a tight rein on this is,
15 we have a lawsuit pending, two lawsuits
16 pending. We made disclosures on the dais
17 and I am disappointed to have to report, I
18 need to make a disclosure in regards to
19 direct communication that I had on Saturday
20 night. And for the record, I am going to
21 present an e-mail from Joan Lindsay sent to
22 me on Saturday January 30th, 2010 at 6:43
23 p.m.

24 The subject line says, "Interesting
25 meeting - Kelbac gave you up. You in all

1. caps. And it says, "Joe says you," in all
2 caps, "want everything done before your
3 deposition. And Joe told us what you," in
4 all caps, "won't agree to. How does he," he
5 in all caps, "know? Not political???" And
6 three question marks. With a signature
7 block for Joan Lindsay.

8 This really bothered me, because I have
9 had absolutely no ex parte communications
10 with anybody on this matter. In fact, the
11 only meetings that I have had have been a
12 matter of record, as you know, in your
13 office I think we met with all parties
14 separately.

15 MS. BOUTSIS: That was the scheduled
16 mediation conference per direction of the
17 council.

18 MR. FLINN: And other than that I did
19 call her, I spoke with both her, I spoke
20 with her husband and I just want to say,
21 because I don't believe it goes to anything
22 regarding the lawsuit or anything pending
23 about that, but I want to disclose for this
24 record my knowledge and my meeting Kelbac
25 and I want it very clear.

1. Number one, I know who Joe Kelbac is.
2 Two, I don't know if I have ever met him
3 personally I don't know if I would recognize
4 him. It may be one of those epiphany
5 moments when you see him in the room and
6 say, "ah, you are Joe Kelbac."

7 I know that his brother, Dan Kelbac --
8 in fact, for a while I had them confused, I
9 thought Joe Kelbac was Dan Kelbac, who is an
10 orthopedic surgeon, who again I think the
11 only time that I saw him face to face was
12 when he was on his boat just putting his
13 boat in the ramp at the Coral Reef ramp one
14 time. And I think I might have actually
15 gone into his boat and it was probably in
16 2006, I believe it was campaign time then,
17 and I was shooting some pictures with Andy
18 Newman a volunteer friend of mine. I
19 believe that's the time that I met him.

20 I do know that Dan Kelbac's son goes to
21 Palmer Trinity. I do know that Dan Kelbac's
22 son was the one pictured in one of the
23 flyers coming out and that Dan Kelbac's son
24 had a very serous illness, and I think that
25 discussion was with Grant Miller that knows

1. Dan Kelbac and that's the extent of the
2. communications that I have had.

3. As far as Joe Kelbac, I understand he
4. is an attorney. The only meetings that I
5. have met with is Palmer, which was with the
6. prior board of directors, and basically that
7. was my disclosure to them.

8. This is not a rumor that should be
9. going around, because number one, it's
10. incorrect and number two, everyone that
11. knows me knows that I have to be able to
12. look people in the face when we do our
13. disclosures and we do an accurate disclosure.
14. I can be fair, I will be fair and it's
15. always been my belief that I have been
16. nothing but fair. And actually, I guess we
17. can substitute fair with consistent.

18. I want this for the record, because as
19. I said, I don't want anything coming up
20. later on as to any conversations that I had
21. with people, any exchange of e-mails.

22. I do not believe this e-mail goes to
23. the heart of anything of the ongoing
24. negotiations. I do not believe my
25. conversation is relevant to any of the

1. ongoing things. This is purely procedural
2 or outside stuff. Maybe they heard a rumor,
3 maybe it's better that they brought it to my
4 attention and I was able to address it.

5 But obviously, when I get this on the
6 Blackberry it looks much longer. It was
7 sent to my Eugeneflinn@bellsouth.net address
8 and I got it while I am in a mess hall
9 camping with my daughters up there spending
10 some family time. So of course at this
11 point I left the mess hall and called them
12 immediately on this.

13 But that's the end of my disclosure and
14 I want that out there to protect both them
15 and myself as well as Palmer that there is
16 certainly not any kind of ongoing ex parte
17 communications going on in regard to this
18 case. I do take this case very seriously.
19 I take my duty to the public very seriously
20 and I take my legal and my political career
21 very seriously and that's why I am bringing
22 this up. It's most unfortunate, and I am
23 sure that they had no intent with doing this
24 other than somebody trying to get them fired
25 up and at least they came to me and I was

1. able to allayed their fears.

2. MS. BOUTSIS: I guess that being said,
3. you should be aware that settlement
4. negotiations are ongoing and there are
5. discussions among the parties that you
6. should be careful because from what I
7. understand they are a very large
8. organization and you never know when you are
9. going to be approached.

10. We don't want to break the privilege of
11. this attorney/client session and all of our
12. discussions and strategies for the general
13. public and if we start talking that can
14. happen so we need to be careful.

15. And just remember that ultimately this
16. is the one place where we can talk and come
17. up with our strategy as to how we want to go
18. forward.

19. So that being said, I have talked with
20. both Mr. Price and Mr. Gibbs. Stan Price
21. called me Friday night to tell me that
22. negotiations were going well and that he was
23. instructed to work on a document of some
24. basic terms that they had agreed to.

25. I talked to Mr. Gibbs today, he told me

1. they were talking and they were working
2 through things. He didn't seem as
3 optimistic, but he did say that he had
4 instructed his client to make a list and to
5 go through that list and they were supposed
6 to meet today and that was rescheduled for
7 tomorrow. So there are still discussions
8 ongoing, but I don't have any definite
9 points at this point of what they have
10 agreed to because Mr. Gibbs wasn't aware of
11 what those points were if there were any,
12 and Mr. Price indicated some points, but
13 until they come and meet and look at the
14 terms how can I advise you.

15 I did tell them that we have a Warlord
16 Ordinance, which means if we were to go to
17 hearing all of these kinds of agreements
18 would have to be disclosed to make sure that
19 they are aware of that during the
20 negotiations.

21 That being said, we had talked about
22 coming here today to see about what we
23 wanted to do as far as settlement
24 negotiations with them.

25 MS. STANCZYK: Can I ask a question

1. about a Warlord. As far as the settlement,
2. Palmer had settled with Cutler ---

3. MS. BOUTSIS: We have to get there when
4. we get to the public hearing part.
5. Mr. Price is aware of our Warlord Ordinance.
6. We'll get there when we get there.

7. MR. FELLER: Can you define that for
8. us, please.

9. MR. FLINN: If you recall, that was
10. legislation that we all passed that we
11. worked, Rubin and I, we sat down with
12. attorneys from Luis Figueredo's office and
13. what that says is, far too often you find
14. there are people that get paid to support or
15. stay home and not -- or they were threatened
16. to bring the angry mob if they are not paid
17. off. This is an ordinance that we have so
18. that everything is fair. You have to
19. disclose whether you have been paid or
20. offered any other sort of consideration to
21. either act affirmatively ---

22. MR. FELLER: What is the term used?

23. MS. BOUTSIS: Warlord. The nickname
24. from Cutler Bay.

25. MR. FLINN: That was an affection term.

1 Warlord is a person that has a capability to
2 get an angry mob up. It's a person that you
3 can tip some money to and can set up a lot
4 sign holders or put signs up.

5 MR. BOUTSIS: When we talked about
6 having the attorney/client session tonight
7 we talked about scheduling a hearing. The
8 only thing that I can tell you, and I have
9 thought this through and I have also talked
10 to some other lawyers. Conceptually the way
11 that we would have to do that is only
12 through a settlement, we couldn't just
13 schedule the zoning hearing.

14 That being said, what I would like to
15 seek at this point from you is direction to
16 go ahead and work with the parties to come
17 to a very simple settlement on the Village's
18 behalf. The other parties can negotiate a
19 much more detailed settlement agreement with
20 everything that they want to see, but for
21 our settlement to be very basic, the concept
22 being we agree to the hearing, because
23 otherwise we start getting into the fine
24 lines of where contract zoning can occur.

25 As far as the rezoning issue, it's the

1. only issue that's on appeal. Obviously we
2 can't agree to resolve, we have to go to a
3 public hearing and we still have not
4 technically heard the other part of the
5 application which is the site plan and
6 variance. They may present their positions
7 on it, meaning the homeowners and Palmer
8 Trinity, but our staff has not and we have
9 not and the council ruled on it.

10 So what I would like the direction for
11 is to try and work out the terms of that
12 language, of that settlement agreement, go
13 to the hearing to stay the litigation, the
14 decision is not taken away from this council
15 by the Third District Court of Appeals one
16 way or another. And perhaps in 60 days have
17 a hearing or however long it takes to come
18 back with a hearing and hopefully by then
19 the parties will have their signed
20 agreement.

21 MR. WILLIAMS: Talk a little bit more
22 about that because councilwoman Stanzcyk and
23 I had a brief conversation about the very
24 issue that obviously you are better able to
25 clarify. It has specifically to do with the

1. contract zoning issue and whether or not
2. however way this comes together, whatever
3. words you would use to make sure that we did
4. not find ourselves subject to that concern.

5. MS. BOUTSIS: What I have done is
6. gathered a bunch of settlement agreements
7. which I have done, I have very extensive
8. ones after 12 years of litigation with the
9. parking garage. And I have also gathered
10. from Mr. Gibbs and from Mr. Price, from the
11. various cases that they have done and how
12. they worked with language so we can work in
13. the language.

14. Originally when we did our settlement
15. offer we put a whole laundry list on and I
16. put in all the safeguard language settlement
17. negotiations with Palmer Trinity that we
18. cannot contract zone, but I never really
19. addressed rezoning because that's the main
20. issue on the appeal. We started getting
21. into these other matters so we are not
22. challenged for getting into these other
23. matters. K-I-S-S, Keep It Simple Stupid and
24. do you it as a remand down by agreement of
25. the parties--

1. MR. FLINN: Temporary remand.

2 MS. BOUTSIS: A temporary remand down,
3 by the parties and hear them out.

4 MS. STANCZYK: When we decide to hear
5 it does that mean that they have to put a
6 plan forward and that's where the agreement
7 comes together with the other party?

8 MS. BOUTSIS: Yes.

9 MS. STANCZYK: That's what I was trying
10 to figure out.

11 MR. FELLER: My question is, I still
12 don't know what application they are talking
13 about, the original or the amended that they
14 submitted two days before?

15 MS. BOUTSIS: I think the best way to
16 answer is, we are on appeal on a certain
17 application from 2007. As far as I am
18 concerned the 2007 application that they may
19 amend prior to the hearing or at the
20 hearing, but it's a 2007 application.

21 MS. STANCZYK: When you say that they
22 can amend it at the hearing, we have the
23 obligation to publically notice what's being
24 heard and we need to follow through on that.

25 MS. BOUTSIS: That is true, but

1. understanding that that zoning is somewhat
2 fluid, it is presented to this council and
3 it is industry standard to allow the
4 application to be changed or modified as the
5 hearing progresses. So that's the standard.

6 MR. PARISER: When we last left, my
7 concern was, and I was e-mailed back and
8 forth with Eve today, my concern was that in
9 their lawsuits their primary demand for
10 relief was for a new hearing because
11 allegedly they didn't get a proper hearing
12 or fair hearing or what have you. And if we
13 set a hearing that would be an admission on
14 our part that yes, you didn't get a hearing
15 and that their relief basically would be
16 granted.

17 On the other hand, I had a concern with
18 what are they going to have a hearing on.
19 Are they going to have a hearing on their
20 application that was litigated or their
21 amended application, because if it's their
22 amended application then they have a problem
23 procedurally because to me that's an
24 admission in their interest that they have
25 abandoned their first application.

1 Having said that, what I was hoping to
2 hear was a report that the parties have come
3 close and that possibly Palmer would amend
4 their application or give us at least an
5 indication not officially without prejudice,
6 but a profer in a form of a settlement today
7 that they are intending to amend their
8 application and we can see if the parties
9 that are mainly affected by this can agree,
10 God love them.

11 My understanding is that there is going
12 to be another meeting as soon as tomorrow
13 with these people, and I don't know what the
14 outcome of that would be. I was hoping that
15 the parties would settle or say, this is as
16 far as we can go, this is what we can do and
17 we can't do, but in terms of a settlement,
18 particularly as it involves vis a vis
19 litigation, I want a finality to these
20 things. And I was pushing, I was hoping to
21 push and as farce I am concerned February
22 23rd is oral argument, is the date that
23 these people better give us what they can to
24 whatever extent to have a settlement and to
25 allow it to go forward with these lawsuits

1. pending by Palmer. And then if they don't
2 get their way at a hearing to say, we didn't
3 get our way we are going to resume suing
4 you, that's not a settlement.

5 To me I wouldn't even consider a
6 hearing without them dismissing with
7 prejudice their lawsuit.

8 MR. FLINN: I think this almost like a
9 mediation in terms of trying to get the
10 settlement. If that's your position Brian,
11 there is no way that we can come to a
12 hearing until the litigation is at end,
13 years and years and years down the road.
14 Because no one is going to dismiss a case
15 and lose their rights without knowing what
16 they are going to get.

17 And also by the way, there is no
18 guarantee that whatever we decide is not re
19 appealed or a new lawsuit is filed by Palmer
20 with additional counts, or the neighbors can
21 file a lawsuit or somebody previously
22 unrelated to the litigation pops up.
23 Because remember, this is a private group,
24 CCOCI and they do not bind anybody.

25 MR. PARISER: What are we giving them a

1. hearing on?

2. MR. FLINN: We are trying to get the
3. parties together and to get it resolved.

4. MR. PARISER: On what application?

5. MS. BOUTSIS: You have to understand
6. their application dates back to 2007. It's
7. a 2007 application.

8. MR. PARISER: Not the amended?

9. MS. BOUTSIS: No.

10. MR. PARISER: If we give them a new
11. hearing on the old application, does that
12. mean that by implication or by operation
13. they have waived their amended application?
14. I think it does.

15. MS. BOUTSIS: Under our new code that
16. probably would be true because under our new
17. code you cannot have more than one
18. application pending. Under the prior code
19. it did not. Under the Dade County Code you
20. can have ten application with the same
21. property and they cannot be superceded.

22. MR. PARISER: You give them a hearing
23. and they play games with us. They don't
24. like what they are hearing and they either
25. hit us with a new application or they say we

1. want to stick with the old application. I
2 don't see what the benefit of that is to the
3 Village, I really don't.

4 MR. FLINN: I haven't seen what the
5 benefit of endless litigation is. And it's
6 got to come to the decision point. I never
7 anticipated that we would be going this far
8 in litigation. I think there is a very
9 close and either a mutually satisfactory or
10 very close mutually dissatisfactory issue
11 out there. And there is a whole group of
12 people out there in terms of neighbors that
13 aren't part of CCOCI and people that are
14 just generally affected that aren't included
15 in these years of discussion and the only
16 way that they are going to be included is if
17 it comes to a hearing.

18 MS. BOUTSIS: The problem with zoning
19 and settlement, as you know, is that
20 contract zoning part. It's much easier if
21 we can say we agree to this and no we don't
22 agree to that and go through a laundry list
23 and be able to do it in the privacy of this
24 room and come back with a written document.
25 We don't have that luxury.

1. The intervenor, CCOCI, they have that
2 luxury, they can do that. They can go
3 through every little detail. Our problem as
4 a Village council is that we are quasi
5 judicial and so we can't do that. So in
6 that concept to be fair, and trying to be
7 fair to both sides, Palmer Trinity has
8 invested two years of litigation in what
9 they believe their position is and for them
10 to give up their property rights that they
11 believe in just on the basis of allowing a
12 hearing, they are not willing to do.

13 The same thing on CCOCI, they have
14 invested two years and time and energy, and
15 they would like to work out the details
16 beforehand so that they have some security.
17 I am hoping that the parties will do that.

18 I had a very optimistic talk with
19 Mr. Price about they believe they are coming
20 to a settlement and he was directed to work
21 on an agreement. But until it's signed and
22 until the parties do that, I can't represent
23 that they have come to an agreement.

24 MR. PARISER: That's why I am a little
25 disappointed, I hoped there was a message

1. put to them so they can push it to get
2 something resolved. I don't think these
3 parties are going to meet forever, I think
4 maybe this last meeting ---

5 MS. BOUTSIS: That I don't know. I can
6 tell you they met for three and-a-half hours
7 on Friday, they were scheduled to meet today
8 and it was canceled for today, I believe
9 that CCOCI canceled.

10 MR. PARISER: My thought is if it's at
11 all possible that these parties who are
12 parties to the same lawsuit that we are in,
13 somehow come to an agreement and somehow
14 make a proffer to one another without
15 prejudice as to an amended application
16 between themselves and that gets put to us
17 as an amended application, that's the
18 application that's being submitted.

19 MR. WILLIAMS: I believe that
20 application, any application can be amended
21 during the hearing process.

22 MS. BOUTSIS: You may not take what
23 they have to offer.

24 MR. PARISER: That's the problem. I
25 want to know up front. I think it's going

1. to be dissatisfying to all parties if we
2. give them a new hearing ---

3. MR. WILLIAMS: There may be evidence to
4. come forward that warrants a change in the
5. plan one way or the other. You have to open
6. the hearing with some understanding that you
7. are going to listen to various proposals and
8. options and some you will agree with and
9. some you won't agree with.

10. MS. BOUTSIS: And expert testimony that
11. they have.

12. MR. WILLIAMS: And expert testimony.
13. And through this deliberative process you
14. get to something that you think that you can
15. approve or not approve.

16. MR. PARISER: I agree with everything
17. that you say, but in the context of a
18. lawsuit hanging over the Village's head, to
19. allow Palmer to get the relief that they are
20. seeking only to hold in reserve that they
21. can continue a lawsuit against us.

22. MS. BOUTSIS: But understand that even
23. though the relief they are seeking is a
24. hearing, it doesn't mean that you grant them
25. the ultimate result that you are hearing.

1 MR. PARISER: They are saying if you
2 don't give it to us we are going to sue you
3 again. So if we are having a settlement, we
4 are not getting -- settlement is two ways,
5 we are not getting anything in return for
6 giving them a new hearing.

7 MR. WILLIAMS: What do you think that
8 we want?

9 MR. PARISER: We'll give you your new
10 hearing if you dismiss the lawsuit with
11 prejudice.

12 MR. WILLIAMS: Our objective here is
13 to, I believe, is to resolve our concern
14 from the first hearing which caused it to
15 not be approved. Our objective is to
16 further the benefit of the community so that
17 it's not harmed by any action of this
18 council or the school being in the
19 neighborhood.

20 I think the win for us is it to move
21 this process forward as compared to, you
22 know, a group outside who is looking for
23 some different kind of relief. We don't
24 really have a dime and a quarter that asked
25 us for any particular -- that they are

1. asking for any particular relief or benefit.
2. Our benefit is on behalf of the concerns
3. that the council had when this was
4. disapproved or would have been approved.

5. MR. PARISER: I agree with everything
6. that you just said, but they are not giving
7. us anything. I don't want to give them a
8. hearing and then they say, we don't like how
9. this hearing goes we are going to continue
10. on ---

11. MR. WILLIAMS: They have a right to a
12. hearing.

13. MR. PARISER: They have a right to a
14. hearing presumptively on the basis of their
15. litigation that the prior council who acted
16. fairly and substantially and competent and
17. evidence and everything else did things
18. right. Fine. You challenged us and you are
19. basically giving them a hearing and they are
20. not giving us anything back for a
21. settlement.

22. MS. STANCZYK: In other words, they are
23. asking for the hearing that they feel that
24. they did not get that they have challenged
25. us --

1. MR. WILLIAMS: They did not ask for a
2 hearing.

3 MS. BOUTSIS: That's the relief.

4 DR. FELLER: One, when we had the first
5 hearing you divided it up into two parts?

6 MS. BOUTSIS: Yes.

7 DR. FELLER: We never spoke about that
8 plan, all we spoke about was rezoning to
9 agricultural and we turned that down solely
10 on the basis of traffic?

11 MS. BOUTSIS: Correct.

12 DR. FELLER: The issue of traffic has
13 not changed. The state law which would have
14 made it a moot point, we don't know how
15 that's going to end up or what the
16 interpretation of that is going to be.

17 MS. BOUTSIS: They could present
18 further traffic testimony or different
19 traffic testimony or a modified traffic
20 plan.

21 DR. FELLER: Now, it seems to me having
22 a hearing doesn't necessarily mean we'll
23 change or not change what we are going to
24 say, because we are having a hearing to hear
25 testimony, because we are not making

1. decisions on something that we may have
2 heard or think of or anything. Nor are we
3 making decisions absolutely on the basis of
4 what the school wants nor what the
5 homeowners association wants. We are making
6 decisions on what we feel is best for the
7 Village which includes the homeowners
8 association and includes the school.

9 MS. BOUTSIS: Correct.

10 DR. FELLER: We are hoping that the
11 homeowners association and the school both
12 of which are litigants with us in the suit,
13 come to some settlement plans so that when
14 we hear their testimony, obviously we won't
15 know what it is completely before because we
16 can't talk about it, but when we hear their
17 testimony if they come up with the same
18 goals and we have no objection to those
19 goals, that makes the hearing very easy.

20 MS. BOUTSIS: Correct.

21 DR. FELLER: On the other hand, if we
22 have a hearing and one or the other parties
23 comes up with what seems to be to us a fair
24 approach and we like it, that doesn't in any
25 way stop the other litigant from pursuing

1. their litigation whichever way it turns out.
2. So what's the down side for having a
3. hearing?

4. One, we may do the same thing, we may
5. change, we have to agree that the other two
6. litigants are not bound by anything that we
7. say because they wouldn't be. And the third
8. point in this is, if something comes up in
9. the next several weeks we can always cancel
10. the hearing before it even comes about. But
11. if we need six weeks in advance to get the
12. hearing by notification and everything, and
13. the longer we delay it I think the more
14. chance of this coming to a fruition without
15. the court's saying, you do this, you do that
16. and then one side is going to be happy and
17. the other side is going to get very angry
18. and no one might be happy from it, I see no
19. reason not having the hearing.

20. MR. FLINN: Is there a motion?

21. DR. FELLER: We have the hearing, you
22. pick the dates.

23. MS. BOUTSIS: Just so we are clear, to
24. get this hearing I have to have a settlement
25. agreement to get us to a hearing.

1. MR. PARISER: I have a question, a
2 settlement of what?

3 MR. FLINN: Keeping it very simple in
4 terms of, I like as Dr. Feller said, if it's
5 blowing up we can cancel it, but we might as
6 well be ready for it. If the parties are
7 ready to go and they can come to an
8 agreement, we can bring it before the
9 residents and come up with hopefully with a
10 good plan and get this moving.

11 MS. STANCZYK: We are at the position,
12 if I can speak at this time. We are in a
13 position right now where they haven't given
14 anything up, that they will continue the
15 litigation and not stay it or stop it?

16 MS. BOUTSIS: No, that's not my
17 intention from the motion.

18 MS. STANCZYK: What I am getting out of
19 it is, it's going to be stayed but not
20 ended. So that when they go to the hearing
21 and they don't like what they got out of it,
22 it starts all over again and we have gone
23 through another hearing, we have had our
24 residents all in an uproar again and we have
25 spent the money in preparing for the hearing

1. and the announcements and everything else,
2. and we'll be back to square one.

3. So my comments to you earlier, what
4. will prevent the circle, because it's a
5. circle? It's a continuous circle.

6. MR. FLINN: I guess that's one way of
7. looking at it. I don't necessarily agree
8. with you that way.

9. MS. BOUTSIS: What I have seen from all
10. of the settlements that I have looked at,
11. including Tucker Gibbs and Stan Price and
12. from Eileen and Greenberg Traurig, I haven't
13. seen any of them actually dismiss their
14. lawsuits, because they are giving up their
15. rights. And we can't contract zone, so it's
16. this catch 22.

17. I think if they can get, they being the
18. parties that are suing, could get a final
19. resolution from a council that's said yes, I
20. will agree to your zoning or not agree to
21. your zoning and agree to certain heights and
22. setbacks or anything else, we wouldn't be in
23. this situation, but because we didn't they
24. have an uncertainty that you can deny them
25. again. So it's a catch 22 on both sides.

1. Ultimately a zoning application is not
2 static. Remember they can keep on applying
3 and keep on applying even after this hearing
4 and everything else. So that is something
5 that you have to take into consideration.
6 It's not our cost for the hearing, they pay
7 for the fees and everything associated and
8 all of that. It does require your time, but
9 there is no way that I would set a hearing
10 without a settlement that reserves our
11 rights to preserve the appeal, because
12 either way I want to preserve our right to
13 go forward as well, I don't want to give up
14 our right. But I would like to keep your
15 cost down.

16 MS. STANCZYK: So by following this
17 motion they will have an opportunity to come
18 to some agreement, the two parties out
19 there?

20 MS. BOUTSIS: Yes.

21 MS. STANCZYK: Because we are urging
22 them to reach out to each other and do that
23 very thing.

24 MR. FLINN: So we are authorizing you
25 to do the agreement, we are authorizing the

1 hearing to be set in six to seven weeks and
2 that gives us time to meet again and
3 basically --

4 MS. BOUTSIS: Push it forward.

5 DR. FELLER: The only purpose of this
6 is to push it forward, that's all.

7 MS. STANCZYK: How many weeks before
8 the hearing should you expect to have
9 something in hand that tells you what's
10 going to be on the agenda for the hearing?

11 MS. BOUTSIS: At least 30 days. It's
12 the '07 plan if the parties are coming to
13 some agreement.

14 MR. FLINN: If they agree to that.

15 It's been moved, it's been second and
16 it's been discussed. All in favor signify
17 by saying I.

18 MS. BOUTSIS: Vice Mayor Pariser?

19 MR. PARISER: No.

20 MS. BOUTSIS: Howard Tendrich?

21 MR. TENDRICH: Yes.

22 MS. BOUTSIS: Dr. Feller?

23 DR. FELLER: Yes.

24 MR. BOUTSIS: Mayor Flinn?

25 MR. FLINN: Yes.

1. MS. BOUTSIS: Councilwoman Stanczyk?

2 MS. STANCZYK: No.

3 MS. BOUTSIS: Thank you. I believe
4 this concludes this session. It is now ten
5 after seven.

6

7

8 (Thereupon, the attorney/client session
9 ended at 6:50 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1.
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

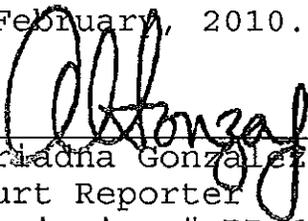
CERTIFICATE OF REPORTER

STATE OF FLORIDA :
 : SS.
COUNTY OF DADE :

I, ADRIADNA GONZALEZ, Court Reporter,
Notary Public in and for the State of Florida at
Large, do hereby certify that I reported the
attorney/client session called by the Village
Attorney in the above-styled causes, and that the
foregoing pages, numbered 1 to 33 inclusive,
constitute a true and correct transcription of my
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 26th day of February, 2010.



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

Eugene Flinn

From: Joan Lindsay [jslindsay1@aol.com]
Sent: Saturday, January 30, 2010 6:43 PM
To: 'Eugene Flinn'
Subject: Interesting mtg - Kelbac gave YOU up

Joe says YOU want everything done before your deposition.

And Joe told us what YOU won't agree to. How does HE know?

Not political???

Joan Lindsay
305-251-1737 Home
305-297-2617 Cell
JSLindsay1@aol.com