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

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

ORIGINAL

_____ /

16701 S.W. 72nd Avenue
Palmetto Bay, Florida,
Wednesday, 9:00 p.m.,
February 24, 2010.

APPEARANCES:

- Ron Williams, Village Manager
- Eve Boutsis, Village Attorney
- Shelley Stanczyk, District 3, Council Member
- Eugene Flinn, Mayor
- Edward Feller, Council Member, District 1
- Howard Tendrich, District 2, Council Member
- Brian Pariser, Vice Mayor

1 MS. BOUTSIS: I have requested this
2 attorney/client session relating to the
3 Village and the defenses on certain legal
4 actions entitled Palmer Trinity Private
5 School vs. The Village of Palmetto Bay,
6 Circuit Court Case Number 08-28977 CA 30 and
7 Palmer Trinity Private School versus the
8 Village of Palmetto Bay Appellate Court Case
9 Number 3D09-1587. To provide an update to
10 seek advise from the Village council with
11 regards to litigation strategy and/or
12 settlement.

13 The meeting was originally scheduled
14 for 7:00 p.m. we had a public meeting
15 scheduled at the same time so it's now 9:00
16 p.m. on Wednesday, February 24th of 2010.

17 Present is, and I will go down the row,
18 Vice Mayor Brian Pariser, Councilman Howard
19 Tendrich, Councilman Dr. Ed Feller, Mayor
20 Eugene Flinn, Councilwoman Shelley Stanczyk,
21 Eve Boutsis Village Attorney, Ron William
22 Village Manager.

23 This meeting is taking place at the
24 Deering Estate at 16701 S.W. 72nd Avenue. A
25 certified court reporter shall record the

1 time and termination of the session, all
2 discussions and proceedings that occur, the
3 names of all persons present at any time
4 during the session and the names of all
5 persons speaking. The transcript shall be
6 made a part of the record upon the
7 conclusion of the litigation. Thank you for
8 being here tonight.

9 Two of the council people were actually
10 at the Oral Argument in the Appellate matter
11 on Monday, and I would like their input as
12 well. Basically this was the argument
13 before a three-Judge panel of the Third
14 District Court of Appeals before presiding
15 Judge Rothenberg, then Lagoa and Salter.

16 I think my e-mail said it best where I
17 basically described what were the statements
18 made during the Oral Argument. It appears
19 that the Judges are going to find that there
20 was reverse spot zoning. Their opinions are
21 usually issued on Wednesday afternoon and
22 there was no opinion issued in this case.

23 There were a few softballs to Mr. Price
24 on behalf of Palmer Trinity relating to
25 reverse spot zoning, and several heated

1. questions to both Mr. Gibbs and Montalvo on
2. that issue.

3. It appears that the tone, and again we
4. don't have a final decision, but the tone
5. was that in a rezoning you just look at the
6. comprehensive plan, you look at the one
7. square mile around it and that's how you
8. make your decision. The traffic analysis
9. shall be done on the site plan review,
10. amongst the other factors.

11. I gave the rule here from the Florida
12. Rules of Appellate Procedure relating to a
13. request for rehearing en banc and it's a
14. very strict proceeding, I am not quite sure
15. that we would get there.

16. The thought process in talking to
17. Mr. Gibbs and Mr. Price is probably that
18. based upon the opinion of Richard Roads,
19. which was issued a week after our Circuit
20. Court Appellate ruling in our favor, the
21. Richard Roads case was issued by the Third
22. District that basically said spot rezoning,
23. that was the argument of the Appellate
24. Court. It is believed that the opinion that
25. will be issued will be based upon that

1 opinion and will be probably a short
2 opinion.

3 So I am not sure that we really have
4 the ability to get -- we can always request
5 the hearing en banc, meaning the entire
6 Third District panel not just the three
7 Judges, but all of the judges to hear it. I
8 don't think we meet the criteria but we can
9 always try.

10 The criteria is before you, I am not
11 going to go through it, I will let you go
12 read it on your own, but basically it has to
13 be of such great importance or something
14 that was materially different, beyond
15 materially different.

16 MR. FLINN: We need to see the opinion
17 first. I am disappointed in how the Oral
18 Argument went. I think the opinion that was
19 released a week after ours is clearly
20 distinguishable. And from what I have heard
21 from counsel the argument was made that it
22 was clearly distinguishable. You took a
23 good shot, this is why you try and negotiate
24 things, when you leave it in other peoples
25 hands different things can happen.

1 Obviously I disagree with reversal on
2 this, if that's what happened. I have often
3 found that I never disagree with a Judge who
4 finds in my favor and only those opinions
5 that are contrary to the opinion that I have
6 taken or at least the result that I have
7 taken. That's my thought.

8 We'll look at the opinions but we are
9 looking at a very, very tiny window of -- a
10 Court doesn't get it wrong, you don't really
11 see anything. What's significant right now
12 is you don't have Schwartz on the panel, you
13 will have him on the en banc panel.

14 MS. BOUTSIS: And the reason that's
15 important is, he is the author of the
16 Richard Roads case and he is also the Senior
17 Judge.

18 MR. FLINN: I was concerned, my concern
19 was that we would not have him on this
20 panel, that we would win the appeal and that
21 would create what they call Intra-District
22 conflict, which would be grounds for an en
23 banc rehearing and actual Oral Argument
24 before all of the judges.

25 It's clear to me they are going to find

1 and say that this is consistent with the
2 Roads decision and you are not going to have
3 the grounds of an Intra-District conflict.
4 It's a case that's out there, I don't think
5 it's a case of any -- Intra-District
6 conflict, and as far as exceptional
7 importance, let's not confuse what's
8 exceptionally important to us which is what
9 is exceptionally important of a legal
10 decision to outside objective people. So
11 we'll see how it goes. It doesn't sound
12 like it went very well and so let's discuss
13 it.

14 MS. BOUTSIS: On that note, if there is
15 something that you would like to see,
16 perhaps if we can try and get to a
17 settlement before a decision ---

18 MR. PARISER: Eve, before you get to
19 that let me give the council my impression
20 of what went on.

21 Just so you know, counsel for Palmer,
22 Price, opened up with, This is ridiculous,
23 this is a 50 year system with a
24 comprehensive plan, this is a ridiculous
25 thing that the Village Council did and we

1 should be granted, and threw in that
2 decision which I read and I think is
3 distinguishable, the Schwartz decision.

4 And countered by that and what concerns
5 me, and of course reading a panel sometimes
6 is like reading tea leaves or herding cats,
7 is then doing something and sometimes you
8 will be surprised and we don't have an
9 opinion. I think an opinion will be
10 written, that's why I think it didn't come
11 down.

12 The thing that bothered me is, Tucker
13 as well as Jim said to the Court, the Court
14 was of the opinion, it was questioning him,
15 we'll you are looking at the use of traffic,
16 you can't look at traffic. And they said,
17 wait a second, we have a standard for zoning
18 and one of the elements is traffic. We
19 wouldn't have had two days of expert
20 witnesses on the traffic issue. We were
21 told by counsel, the council was told by Eve
22 that this is a valid standard to look at and
23 that traffic you can make a determination of
24 zoning on traffic.

25 They just completely ignored that and

1. wouldn't respond to it. It was not put to
2. them bluntly enough, so I guess this Court
3. is saying that's an invalid standard, that
4. that shouldn't be looked at. Basically you
5. are putting the cart before the horse.

6. There was not one word mentioned about
7. due process. I think we had some due
8. process arguments, there was not one word
9. mentioned by the judges or by any counsel
10. during argument about their due process
11. argument.

12. MR. FLINN: Which ironically was how
13. they got in front ---

14. MR. PARISER: They just seemed to have
15. the opinion but you are just looking at the
16. use. And if we were to lose this, as far
17. as, and it depends on what the opinions say,
18. I as a council person, I think it is of
19. exceptional importance because if they say
20. you couldn't look -- which was argued by
21. Tucker and repeated three or four times,
22. they just should have said, hey Court, what
23. are you telling us, that's an invalid
24. unconstitutional standard it can't be looked
25. at. Dade County has been using them, we

1 borrowed it from the County Code, that's
2 been used for 40, 50 years.

3 If we lose and to what extent they
4 mention whether that's a standard or not, I
5 want to know as a council person whether if
6 this comes up before us again or somebody
7 else for a change of zoning, that that's a
8 valid element that we can look at. I think
9 that would be an exceptional circumstance
10 and get them to tell us whether that's a
11 valid standard or not.

12 MR. FLINN: The only problem with that
13 is, Brian, respectfully, is in my field
14 there is a lot of things where we think we
15 have been wronged but we don't appeal
16 because you don't want to create bad law and
17 I think you are just going to get further
18 explanation and a further bearing of things
19 out there.

20 Unfortunately, you had the Roads case
21 which I think people could have looked at as
22 an anomaly. Now we have made bad law. Bad
23 law that now goes a step further. Now you
24 have two cases out there and you just made
25 it a little tougher now for the people

1. because we couldn't get the parties together
2. and get an agreement done. And you know, we
3. can just keep dragging it because right now
4. the rumors that I hear out there from
5. developers just is, prepare for litigation
6. because you are not going to get from the
7. community council boards and everything else
8. and you are just creating a block of law
9. that's going to create the new field for
10. these development lawyers to prepare your
11. case at hearing to go into the court system
12. afterwards.

13. I am all great, I am all great about
14. motherhood and apple pie and I understand
15. all that, but I don't want to further submit
16. bad law so that it makes it tougher on
17. future councils to do that. I mean, that
18. Roads case was tough enough. Now they are
19. going to string cite Roads, Palmer Trinity
20. versus Village of Palmetto Bay, rehearing
21. denied, bla, bla, bla, and I think we have
22. got to decide whether we are going to move
23. forward or keep doing it on a wing and a
24. prayer.

25. MS. STANCZYK: One thing that I

1 mentioned very strongly on several different
2 points and different occasions during the
3 hearing was the fact that they were two
4 separate issues. And that the zoning,
5 number one, needed to be decided, but number
6 two, that was a separate issue that needed
7 to be decided on a separate day. That was
8 where we had the control and that we needed
9 to exert the control on the three separate
10 issues on the cite plan and they reiterated
11 that on a number of occasions. That was our
12 opportunity to decide the future as opposed
13 to denying the zoning.

14 MR. PARISER: They also were voicing,
15 and this is a discussion, it's not -- which
16 confused me a little because the point of
17 their questions tend to be that if traffic
18 is an issue, just traffic, that can't be
19 dealt with, cannot be dealt with, cannot be
20 considered for zoning change only for
21 variance. The strongest thing on traffic
22 was on zoning change.

23 MS. STANZCYK: That was right, but we
24 had a bifurcated case, there was supposed to
25 be two steps to that.

1. MR. PARISER: That's one standard,
2 negative impact including transportation.
3 It was like that just went over their heads.

4 MS. BOUTSIS: Just so you understand,
5 you know that the appeal was because we had
6 basically two items before the council. The
7 first was a rezoning which required two
8 hearings and an ordinance. If it got passed
9 that then you looked at the site plan based
10 upon that rezoned land and the site plan
11 with all of the special exceptions and
12 variances. We never got to B because we
13 denied at A and after a two-day public
14 hearing on the first reading.

15 And again, as the Vice Mayor said, one
16 of the main criteria that has been through
17 Dade County and through our Village was the
18 traffic component of that. There is
19 actually under the site plan no specific
20 traffic component.

21 MR. PARISER: So it would be totally
22 irrelevant for traffic experts to come?

23 MS. BOUTSIS: I am not going to go
24 there because we have a hearing coming up
25 and I am not going to make that concession,

1 it's not specifically listed.

2 MR. PARISER: Is that peculiar to us?

3 MS. BOUTSIS: That's Dade County Code.

4 MR. PARISER: That we adopted?

5 MS. BOUTSIS: Yes.

6 MR. FLINN: Anything from Council
7 Feller or Howard Tendrich?

8 MR. TENDRICH: I feel that the
9 negotiations between the parties and us is
10 important. I feel that some how we need to
11 come up with Palmer Trinity -- the neighbors
12 I understand their problems, and I also
13 understand Palmer Trinity, but we were
14 elected by the people to make decisions, and
15 I feel it's up to us because we don't know
16 what a court is going to do. We know what
17 we can do as a council and I think that we
18 should be able to have a discussion with
19 Palmer Trinity and hopefully the neighbors
20 will be pleased with what we have come up
21 with. But I feel that we are elected
22 officials and it's our job to try to solve
23 the problem.

24 MS. BOUTSIS: If I can, without the
25 agreement of all of the parties in the

1. litigation there was not away to stop Oral
2. Argument from going forward.

3. MR. FLINN: There was a request to do
4. that and we did not have agreement from all
5. parties to forgo Oral Argument, and now
6. we've got bad law out there that's going to
7. negatively impact future residents from any
8. area within Miami Dade County that wants to
9. fight off a zoning issue.

10. MS. BOUTSIS: In theory I have been
11. working with Mr. Price on a simple agreement
12. as far as the Village in having a hearing
13. and staying of all of the litigation so that
14. a public hearing and the process can go
15. forward on the original application. And if
16. the appeal goes down the way it's been
17. portrayed, we have to have that hearing
18. anyway, and it would be that simple of an
19. agreement.

20. That being said, I can tell you because
21. I have spoken with Mr. Gibbs today, that he
22. is still in contact with Palmer Trinity.
23. They, I understand received an offer, I
24. don't know what the offer is.

25. DR. FELLER: I am not talking as an

1 attorney, I am talking as a --

2 MR. FLINN: Good, because I don't talk
3 as a gastroenterologist.

4 DR. FELLER: Your legal background
5 always comes into what you are saying in
6 this because this is not a medical issue
7 this is a legal issue.

8 I agree with councilman Tendrich that
9 we are elected by the whole Village, that we
10 have to look at what's good for the Village,
11 that we can't in the end result when there
12 is a conflict everyone cannot be happy. And
13 if one side or the other side is exquisitely
14 happy then it's the wrong answer. They both
15 should be upset about something if you want
16 to compromise. I think this should have
17 happened a long time ago.

18 I did not like the original proposal of
19 the school. I felt the school had done bad
20 things for ten years or so and not followed
21 the previous agreements, I have said that
22 openly and I will say it again. But I think
23 that if you can get certain concessions at a
24 public hearing from the school, they do have
25 a piece of land, they have some property

1. rights to that land and I think you should
2. have a hearing and come to a conclusion and
3. if the representatives of the people living
4. right around the school don't like it, they
5. can continue legal litigation, the Village
6. doesn't have to be part of it.

7. MR. FLINN: This hearing happened under
8. a prior council, neither the Vice Mayor or
9. Councilman Tendrich were part of the
10. decision-making process. We are now in year
11. three of this current council and more than
12. a year into the current terms of the Vice
13. Mayor and this thing has been going on.

14. DR. FELLER: Eve, how much money have
15. we spent on litigation?

16. MS. BOUTSIS: I answered that to the
17. Mayor recently and as of a month ago over
18. the two years or so, two and-a-half years,
19. it's been about one hundred and sixty
20. thousand.

21. DR. FELLER: And I see this, if we
22. continue with appeals, I see this markedly
23. escalating. And if the Judge comes down
24. with a ruling they don't have to give
25. anything. That's why I was hoping we would

1 have an appeal even before this happened.

2 MR. FLINN: You mean an agreement.

3 DR. FELLER: I mean an agreement. And
4 as the Mayor said, we wouldn't have had bad
5 law. I have no way of interpreting if a law
6 is good or bad.

7 MR. FLINN: Either it's for you or
8 against you.

9 DR. FELLER: Okay. I think if we can,
10 we should go ahead with the hearing which we
11 talked about before which we noticed or
12 potentially were going to notice and move
13 ahead.

14 We may not agree or like what the
15 solution is and we don't have to approve it.

16 MR. FLINN: Well, we also held off some
17 period of time to give the neighbors time to
18 talk. They talked, apparently there is no
19 agreement. I don't have confidence that
20 anybody is going to reach an agreement. I
21 have not had any indication of any pending
22 break through. Sometimes the only way that
23 will happen is because you get to a hearing
24 date.

25 But we have been well over a year now

1 of negotiations, we gave them a month of
2 some very intense period of time to
3 negotiate, nothing happened there. We
4 couldn't even get them to agree to take the
5 Oral Argument off, which is going to have
6 lasting repercussions for anybody involved
7 in zoning fights with that decision now.

8 So I think that we need to move forward
9 before we get yet another council on this
10 matter. We have got to look out for the
11 interest of the Village. This is not
12 someone's personal case, this is the
13 Village's case and we have got to move
14 forward on it.

15 MS. BOUTSIS: Councilwoman Stanczyk had
16 asked me a question while you were talking,
17 Dr. Feller, she wanted to know, are we
18 talking about a hearing on the rezoning.

19 The answer is, the original application
20 was a joint application, so the first part
21 would be on the rezoning. The second part,
22 they are entitled to a hearing on the
23 remainder of it.

24 MR. FLINN: Are they entitled to a
25 second hearing, because I thought we had

1. both hearings together?

2. MS. BOUTSIS: We never ruled on item
3. number two.

4. MR. FLINN: But it's right for a
5. decision, isn't it? My impression was we
6. had both hearings together, if we decided
7. yes on one we would move for a decision on
8. two. We denied number one therefore we
9. never reached two.

10. MS. STANCZYK: They actually mentioned
11. they should be bifurcated.

12. MS. BOUTSIS: No, they said that we had
13. bifurcated, which is what I had specifically
14. delineated at the beginning of the hearing.
15. You never actually heard staff testimony on
16. item number two.

17. MS. STANCZYK: So it should remain
18. bifurcated then?

19. MR. FLINN: No. First of all, they are
20. going to get their district boundary change
21. by appeal. Now we need to go into the site
22. plan review for number two and then a
23. hearing on the variances and those other
24. items that we did not hear the first time,
25. and that's what needs to be done.

1 DR. FELLER: When can we do it by?

2 MR. FLINN: I'd like to do it in April.

3 MS. BOUTSIS: Well, I will try and move
4 this forward, but again I need to get an
5 agreement from, at a minimum, the Billson
6 Firm to go to the hearing or else I have to
7 wait for an order. I just can't schedule it
8 because then we are abandoning our rights.

9 MR. FLINN: We are not abandoning our
10 rights. We can schedule now, they are not
11 going to re-notice for a while. If
12 something freaky comes up from the Court,
13 the opinion is going to be out within the
14 next week or two. I am not going to wait
15 for other people at this point. There is
16 going to be no agreement, there is only
17 going to be more argument before a zoning
18 hearing. And even if you had an agreement
19 by the way from the neighbors, you may still
20 have aggrieved people that are still going
21 to come forward that do not accept the
22 agreement of specific neighbors.

23 MS. BOUTSIS: That's correct, they only
24 represent that group. And your decision may
25 be different from what the neighbors agree

1. to.

2. MR. FLINN: And that's very true too,
3. they may come to some agreements that we
4. don't think is in the best interest of the
5. Village and we may actually put more in
6. place on Palmer Trinity than the neighbors
7. may.

8. MR. PARISER: I have a question.
9. Procedurally since there is three parties
10. involved in this lawsuit, does the third
11. party -- I mean, what's your concept on this
12. Mr. Mayor, that no opinion be rendered?

13. MR. FLINN: I think we can begin to
14. move forward on the hearing --

15. MR. PARISER: Procedurally, can we only
16. say that and if the homeowner attorney says,
17. no, I want an opinion.

18. MR. FLINN: That would be so out of
19. bounds, because he is a party to the
20. lawsuit. Let him file for a writ of
21. prohibition. If that's what they want to
22. do, they want to be obstructionist, they
23. think they make all of the decisions.

24. MR. PARISER: They may want to assert
25. their rights.

1 MR. FLINN: They can go ahead and
2 assert their rights. But the problem is if
3 we won the appeal certain damage elements go
4 away. And was there not talk about property
5 rights at that Oral Argument?

6 MS. BOUTSIS: Yes, there were.

7 MR. FLINN: Unless we can put that
8 attorney on notice that they are going to
9 bear any cost or damages that they create,
10 then we need to do what we can to protect
11 the Village.

12 And by the way, my position is not
13 rolled over, my position is to properly and
14 completely discharge our obligations as a
15 zoning council to act in the best interest
16 under the law to do the right thing for the
17 Village and the constructive proper
18 decisions.

19 MR. PARISER: You did the best. It was
20 in the best interest when you voted the
21 application down.

22 MR. FLINN: It was maybe in the best
23 interest, it might not have been according
24 to the law, according to the appellate
25 court.

1 MR. PARISER: What you are saying is,
2 and again it's procedurally, you want to
3 give them a hearing. That means that they
4 win the case and they win whatever property
5 rights they want to slam us with?

6 MS. BOUTSIS: I am not going there
7 people because we have another claim that's
8 not technically in litigation yet which is
9 the Bert J. Harris claim so I am not making
10 any admission.

11 MR. PARISER: I don't know what the
12 intent is. I am not trying to be
13 argumentative. Is this a hearing with some
14 sort of an agreement with the Palmer School
15 people that they are not going to do
16 something?

17 MR. FLINN: This would be what I would
18 think we ought to do at this point. Is
19 empower our attorney to reach an agreement
20 with all parties if possible, but certainly
21 with Palmer if they are the only party
22 willing to agree to anything at this point.
23 Conclude our appeal and move forward to
24 hearing as soon as April. It's got to be
25 done before August. When we lose people we

1 traditionally don't do zoning hearings in
2 July or August.

3 DR. FELLER: I am not hear part of May
4 and I would like to be here for this.

5 MS. BOUTSIS: Just so you understand,
6 there was a question at the last
7 attorney/client and I believe it was by you
8 the Vice Mayor, asking what are they giving
9 up and what's the litigation.

10 If Palmer Trinity was to dismiss the
11 litigation versus to stay it, there is what
12 is called administered of res judicata.
13 What that means is, unless there was an
14 incredible change of circumstances, they can
15 never bring another action back on the same
16 application on the same project. So if they
17 were to dismiss before they had their
18 hearing in the settlement purposes, they
19 would not be able to re-file, and they won't
20 give up that right.

21 The same could be true under the Cert
22 action, because it's the same element and
23 they're arguing the same claim on the idea
24 that perhaps some charter amendment that has
25 been enacted could be used against them and

1. they are not going to give up their rights
2. to the pre-filed litigation in 2007. But if
3. the zoning goes forward they will dismiss
4. all of the litigation including the proposed
5. Bert J. Harris.

6. MR. PARISER: If the zoning goes
7. forward?

8. MS. BOUTSIS: If the zoning and a site
9. plan is approved that allows them a certain
10. criteria. I haven't gotten that far as to
11. what the criteria is.

12. MR. WILLIAMS: It would have to be
13. within the guidelines of the zoning
14. approval, whatever that is.

15. MS. BOUTSIS: In other words, we don't
16. have to vote for what they are asking for,
17. but for them to dismiss their action and I'm
18. assuming five things; certain number of
19. students, certain number of buildings.

20. MS. STANCZYK: In other words, they are
21. extorting us to get their site plan approved
22. with the invasion of the lawsuit. In other
23. words, give us what we want and we'll stop
24. suing you, but you have to give it all to
25. us?

1 DR. FELLER: I don't think that's their
2 approach. I'd like to move that we -- I'd
3 like to make a motion that we move rapidly
4 forward to have our attorney set up a date
5 for a hearing in April.

6 MS. STANCZYK: I'd like my answer to my
7 question. I don't think that I got what I
8 really wanted to know.

9 What I wanted to know is, if they have
10 got a site plan and they are putting
11 conditions on ceasing the lawsuit, are those
12 conditions, since they are tied to the site
13 plan and the number of student, are they
14 things that we will either grant at the
15 hearing or are they asking ---

16 MS. BOUTSIS: No, they will have to be
17 granted at the hearing. It's all
18 conditioned upon a hearing.

19 MS. STANCZYK: So if we go to the
20 hearing and their conditions would be 1,400
21 students and they don't get 1,400, where
22 does that leave us with the lawsuit?

23 MS. BOUTSIS: They go back to their
24 lawsuit.

25 MR. FLINN: You can never make them

1 waive their rights to their lawsuit. And we
2 may just face a lawsuit if we give them
3 something incomplete. And that is something
4 that we'll have to wait, but quite frankly I
5 am not going to make a decision based upon a
6 fear of a lawsuit. We have obviously shown
7 our will to litigate.

8 DR. FELLER: If it was a choice between
9 them saying, we want everything that we ask
10 and if you don't give us A, B, C, D, and E,
11 we are going to sue you, you give us all and
12 that's the only way that we are going to
13 take it, then I would say, use the Village's
14 money and that's why we have money and the
15 tax payers would be happy to fund the
16 lawsuit and keep going in the court. I
17 don't think that's going to be the case.

18 I think the school is just as much
19 looking for a settlement and not going to
20 want A, B, C, D, and is somewhat flexible.
21 This is not from any discussion from anybody
22 at all but just over the last several years
23 of looking at things, and they would be
24 amenable to a reasonable approach in which
25 they will give something and we'll give

1. something.

2 MR. WILLIAMS: I have been told by
3 their president that and their attorney has
4 said the same thing.

5 DR. FELLER: And I'd like to move ahead
6 with that because I think that's the only
7 solution to this.

8 MR. PARISER: So what would we be
9 doing, staying all litigation including the
10 release of an appellate opinion?

11 MS. BOUTSIS: We can only request I
12 think the stay of the release of an opinion,
13 I don't think we can ever tell the Third
14 District that they can't issue the ---

15 MR. PARISER: Well, if all the parties
16 agree ---

17 MS. BOUTSIS: If all the parties agree
18 it probably can happen.

19 MR. FLINN: We'll probably not get an
20 agreement from Tucker Gibbs to do that.

21 MR. PARISER: So what are we telling
22 our constituents, that we are abandoning the
23 appeal? What are we telling somebody who
24 comes to the council or comes to the Mayor's
25 door saying, what happened to the court

1. case?

2. MR. FLINN: Well, let's let the opinion
3. issue then, I am all for it.

4. MR. PARISER: What are you going to
5. say?

6. MR. FLINN: I am willing to do it any
7. way you want to. I am willing to say --
8. because it wasn't that long ago we had an
9. attorney/client meeting where we did discuss
10. even putting off the appeal. People didn't
11. want to put off the appeal. We went
12. there -- from what I really hear from our
13. attorney it was handed to us and, I mean, we
14. can just -- we don't have a favorable Third
15. District Court of Appeal. The next level
16. has the Chief Judge that wrote the opinion
17. that's apparently now consistent with it.

18. I am trying to look at the big picture
19. and figure out my odds and I am thinking to
20. myself, I can sit there and say maybe the
21. 300 will hold off Persians, but I am not --
22. we are really upside down on this one right
23. now. If you think we are really going to
24. call up, get this to the Supreme Court and
25. have an opinion that says ---

1. MR. PARISER: Nobody said ---

2 MR. FLINN: I am just saying, that's
3 why I am looking at this how this goes. So
4 that's why I think that Dr. Feller made the
5 motion to empower our attorney to go ahead
6 and take the action necessary to get this at
7 hearing before May, before he goes out of
8 town. I didn't hear a second to that.

9 MR. TENDRICH: I second it.

10 MR. FLINN: So now there is a motion
11 and a second. I think we need to vote on a
12 motion and if it passes we are done tonight
13 and if it doesn't we will continue
14 discussion until we get a resolution if
15 there is any.

16 There is a motion and there is a
17 second. All in favor say "I".

18 MR. PARISER: I want some discussion on
19 it. I don't understand. This is a hearing,
20 but a hearing and what happens to the court
21 case, what's the hearing?

22 MR. FLINN: We talked about the fact
23 that we have empowered her to see, number
24 one, all of the litigation is stayed.

25 MR. PARISER: Including a request that

1 the opinion of a Third DCA be stayed?

2 MR. FLINN: All three parties have to
3 agree to that. We have indicated an
4 interest to doing that. Palmer may be
5 willing to do that. Although quite frankly
6 if I was Stan Price I'd want that decision
7 out there because that decision is going to
8 be a very big hammer in their favor on any
9 future district boundary changes anywhere
10 within Miami Dade County. I mean, that's an
11 important tool. If we can get him to forgo
12 that, that would be great, but the answer
13 from our attorney was, we can request it,
14 but it's up to the Third DCA to decide
15 whether or not they will issue an opinion
16 and then subsequently a mandate.

17 Did I define that correctly?

18 MS. BOUTSIS: Yes.

19 MR. FLINN: So we can ask, and part of
20 that motion allows her to ask that. But
21 that also requires an agreement from the
22 CCOCI party to this as well. They may
23 decide that they want to go ahead and
24 proceed and basically they have their own
25 separate appellate rights. And they can

1 continue to make bad law or they can get a
2 reversal of an opinion on an en banc
3 rehearing. There is a lot of things that
4 they can do on that.

5 MR. PARISER: Basically their primary
6 request was for a new hearing because the
7 council was in error and did not apply the
8 proper law. So you are basically admitting
9 error by giving them a new hearing?

10 MR. BOUTSIS: If you are doing it in a
11 settlement you are not admitting anything.
12 If you get a final order Judge unless you go
13 on a further appeal, because I don't see the
14 en banc working, but let's say we go to the
15 en banc and we go to the appeal, yes, you
16 have to follow the Court.

17 MR. STANCZYK: If we get the opinion
18 from the Court and the Court says we erred
19 in zoning, what is the implication of that
20 in terms of having to follow what they want
21 as a result of the site plan?

22 So in other words, right now we settle,
23 they are trying to tell us what to put in
24 the site plan and what they will agree to.

25 MR. FLINN: Let me step into that. No,

1 because what you do is if you get them to
2 agree not to issue an opinion, it's still
3 subject to interpretation what we want to
4 do. If you get a very strongly worded
5 opinion reversed and to grant a boundary
6 district change, there is a lot of things
7 they can put in there or they can put in
8 there nothing in regards to directions for a
9 hearing. So it can be just to go ahead,
10 enter the boundary change and have a hearing
11 in a further proceeding or there could be
12 directions, so it could be quite onerous.

13 I would suspect it's not going to be.
14 I would suspect that the decision is going
15 to be reversed, remand with direction to
16 enter the boundary change, the district
17 change and then continue the hearing on the
18 other issues in regards to the remaining
19 issues.

20 MS. STANCZYK: That's basically what
21 Judge Rothenberg said. She said that
22 everything else was fair game under the
23 second part of the hearing. That the only
24 thing they were considering was the boundary
25 change and that everything, the control as

1 to traffic and all other considerations on
2 the application were under our control on
3 the second part of the hearing.

4 MR. PARISER: As far as traffic,
5 counsel is telling us that that's not an
6 element.

7 MS. STANCZYK: That's not what she
8 said.

9 MS. BOUTSIS: Hold on. The Court did
10 not have the Site Plan Review Regulations in
11 front of them. They were only looking at
12 the district boundary change and they are
13 saying as case law presidents, our standard
14 is going to be just consistent with the
15 section 33-311 which is the five elements in
16 traffic. That's by implication what they
17 are saying.

18 That being said, you have site plan
19 review, and you look at the criteria for
20 site plan review. As I said earlier, I am
21 not going to concede traffic, but traffic is
22 not specifically listed as a criteria in the
23 Site Plan Review Section. So we will have
24 to figure out to reconcile that when we get
25 there because the Court did direct that

1 traffic should be looked at there, but it's
2 not listed in the criteria.

3 DR. FELLER: Eve, when we first had
4 this hearing three years ago you separated
5 it out. Why can't we go back to the same
6 approach that we did before, by hearing the
7 other side without making a decision on the
8 first part but still hear the second part?

9 MS. BOUTSIS: You can switch away the
10 round when you do the hearing and we can
11 discuss that when we get to the hearing part
12 in the public forum.

13 DR. FELLER: If you do the second part
14 ---

15 MS. BOUTSIS: Understand you just need
16 two hearings for the rezoning, you only need
17 one hearing for everything else. And you
18 can only do the second part if you approve
19 the first part.

20 MS. STANCZYK: One is the result of the
21 other.

22 DR. FELLER: What if you change and put
23 them together in one hearing?

24 MS. STANCZYK: You can't, it's a
25 bifurcated process.

1 MS. BOUTSIS: Although I said it's
2 bifurcated, they actually did all testimony
3 as one hearing.

4 DR. FELLER: If you did it in one
5 hearing you would have an idea of what the
6 final picture of what it might come out
7 would be.

8 MS. BOUTSIS: I think by practical
9 implication that's exactly what happened,
10 despite Ms. Weintraub not giving her
11 testimony the parties themselves said they
12 would rather just do one presentation, so in
13 reality I think in application that can
14 happen. Just understand at the end when we
15 are writing the ordinance one requires two
16 hearings and one requires one, but you can,
17 yes, you can hear everything all jumbled.

18 MS. STANCZYK: But they recommended the
19 bifurcated process and they made sure that
20 it remained that way.

21 MS. BOUTSIS: I did it to make it
22 clear. I did that. I wanted to be clear.

23 MS. STANCZYK: I am talking about the
24 Judge, she discussed that and spoke to that
25 issue.

1. MR. FLINN: Well, the discussions of
2 the Judges on the panel, that's not
3 recorded, there's no transcript, unless that
4 shows up in the opinion that has no force
5 and effect.

6 MR. PARISER: I have another question.
7 If there is a settlement motion that's
8 passed, is that put on a council agenda?

9 MS. BOUTSIS: It would only if we have
10 an actual agreement for me to bring it
11 forward. In other words, if I don't get an
12 agreement from the parties I can't bring
13 anything forward.

14 MS. STANCZYK: In other words, you
15 would have an agreement that would spell
16 things out ---

17 MS. BOUTSIS: It would have to be done
18 in a public meeting. The settlement
19 agreement to go to the public hearing for
20 the zoning itself has to go to you as a
21 council.

22 MS. STANCZYK: I understand that, but
23 what we are talking about is the fact that
24 they are willing to make a settlement based
25 on certain issues, and if we don't vote

1. according to those issues or to those limits
2 that they want to set, they are not going to
3 agree and then once again resume litigation.
4 Are we going to know what those items are?

5 MS. BOUTSIS: That would have to be
6 part of the agreement for you to be aware
7 of, yes.

8 MS. STANCZYK: Who is going to make a
9 decision that we agree to that?

10 MS. BOUTSIS: I will take the offer to
11 you, you are the ones that make that
12 decision.

13 MS. STANCZYK: They are going to draw
14 up the guidelines and we are going to have
15 to decide to agree to it?

16 MS. BOUTSIS: No, this is a
17 negotiation, you go back and forth. If you
18 don't like it you tell me no.

19 They are telling you, they are
20 preserving their rights, these are their
21 rights and this is what the minimum they are
22 willing to do to move forward on a
23 settlement. If you don't want it we keep
24 litigating or we give them a counteroffer.

25 MR. PARISER: You are going to

1. negotiate it and then bring what's --

2. MS. BOUTSIS: The final result to you
3. and I would probably recommend a another A/C
4. session before or the same night of the
5. council meeting so that you can look at it
6. all at one time.

7. DR. FELLER: Is this a council meeting
8. or a zoning meeting we are talking about?

9. MS. BOUTSIS: Just for the approval of
10. the agreement is any meeting, special
11. council meeting, regular council meeting,
12. that kind of thing. Then after you approve
13. that, if you approve and agreement that says
14. we are going to go to a hearing, then we go
15. to a zoning hearing and I have to do the
16. notices to the community, I have to do the
17. paper advertisement.

18. DR. FELLER: Can we get this done for
19. April?

20. MS. STANCZYK: What we are talking
21. about is the process where we walk in and we
22. already have the zoning result?

23. MS. BOUTSIS: No, no, no, please
24. understand. They are saying, we are looking
25. for, I am assuming based upon what they are

1. telling me, they are looking at like 1,100
2 kids, they are looking for a certain amount
3 of square footage. Let's say that's what
4 they are saying. If you approve the
5 rezoning and an application based upon these
6 two factors or five factors, whatever they
7 are, then all of the litigation goes away.
8 We understand we may have litigation from
9 other parties because somebody else can
10 challenge the hearing. Then if that's the
11 case, all the litigation goes away if we
12 vote that away.

13 If we don't and you vote the way that
14 you think it should be, meaning maybe the
15 number is not an issue, maybe the size of
16 the building is not an issue but everything
17 else is an issue, that's not an issue ---

18 DR. FELLER: Doesn't this have to be at
19 a zoning hearing, otherwise it's contract
20 zoning?

21 MS. BOUTSIS: What I am saying is, they
22 are saying in the settlement agreement what
23 they are proposing. You don't have to go
24 through this, but what they are proposing
25 is, we will settle to go to a hearing ---

1 MR. PARISER: For rezoning only?

2 MS. BOUTSIS: It's a joint application,
3 it's both items. For our application. We
4 are looking for two things or three things.
5 If those two things or three things are
6 decided at a public hearing in our favor,
7 all of our litigation goes away, the Bert J.
8 Harris, the original action and the appeal.

9 If not, those litigations continue.
10 That still allows you the opportunity to go
11 to the hearing.

12 MR. WILLIAMS: The intervenors, Vice
13 Mayor, may not agree with that, because we
14 have had, we being the Village and Palmer,
15 have had much more success in coming close
16 to an agreement and it appears the
17 intervenors and Palmer are getting wider and
18 wider. So take into consideration that it
19 is very possible that the intervenors will
20 not agree with what we agree to and we have
21 to make a decision based on what we think is
22 best for our Village.

23 DR. FELLER: It's also very possible to
24 say that we either give them what they want
25 even at that point or they continue the

1 litigation at the zoning hearing as is the
2 concept of the zoning hearing. We may come
3 up with something that's not quite what they
4 are insisting on, but they are willing to
5 settle with rather than go to endless
6 litigation.

7 MS. BOUTSIS: That's true.

8 MR. FLINN: That's the whole thing.
9 They have to make a value judgement at the
10 end of all this, is it worth suing on or
11 not. It may get partial and move, and maybe
12 we want to pay damages to have something
13 smaller, I don't know, but we have to move
14 forward.

15 You know, the court case was a big
16 hammer on the side of the head. If anybody
17 thought that our side was so obvious, three
18 Judges, three Judges from the Third DCA,
19 very objective people that sit there and
20 decide things back and forth, clearly told
21 our attorneys and the intervenors attorneys,
22 we all thought we were so right and so
23 comfortable with that, but they told us
24 quite the opposite from what I heard in very
25 strong terms.

1. MS. BOUTSIS: It was very strong.

2 MR. FLINN: So we should not think that
3 we are so right. And we have to think about
4 our personal involvement on these things and
5 think about quite frankly stepping back and
6 saying okay, three judges who reviewed all
7 of the facts, reviewed the records, told us
8 that it's not as easy, it's not as
9 distinguishable, it's not as simple as we
10 thought it was.

11 MR. TENDRICH: You are saying that they
12 can bring us a plan before we approve the
13 zoning?

14 MS. BOUTSIS: No, it's not a plan. In
15 other words, it's not contract zoning
16 because you are not tying yourself in that
17 you are agreeing to their three conditions.
18 But they are going to write an agreement
19 that this is what they are looking for. And
20 they have been very explicit about it to me,
21 they are looking for three conditions,
22 because for them to go to a settlement and
23 give up their rights to the Bert J. Harris
24 and everything else they need three things,
25 a certain amount of students and a certain

1 amount of school.

2 MS. STANCZYK: That's somewhat
3 extortion because they are telling you
4 clearly if we don't get what we want on our
5 site plan that will be agreed upon before a
6 hearing ---

7 MS. BOUTSIS: It's not agreed to before
8 a hearing, you are agreeing to consider
9 those terms.

10 MS. STANCZYK: They are agreeing with
11 the Village to agree to cease litigation if
12 they get what they want subsequent to a
13 hearing. And I don't see how you can do
14 that.

15 MR. WILLIAMS: That's where the
16 property rights issue comes in that the
17 court talked about. They have the right to
18 protect their interest in their property,
19 and if that means continuing their ability
20 to have the Court make these decisions, they
21 are not going to give up their rights in
22 that regard.

23 MS. BOUTSIS: Perceptually I understand
24 where you are coming from. You need to
25 understand, though, that in zoning cases

1 these are how settlements are written.

2 Tucker has written a lot of them.

3 Tucker has written a lot of them with
4 Mr. Price, and they have given me copies of
5 their settlement agreements that they have
6 written in other cases. This is how they do
7 them to preserve rights and get to
8 settlement.

9 Now, when you are dealing with a
10 private party, however, a private party can
11 contractually say, I want this number of
12 students, I want this number of buildings, I
13 want all of these concessions which we
14 cannot do. So CCOCI has less handcuffs than
15 us in that they can come to a direct
16 agreement on many items.

17 MR. FLINN: We have already had a
18 direct agreement and we don't know what it
19 is with the people from Cutler Bay and
20 that's going to be an issue when we get back
21 to the hearing, by the way, because a
22 Warlord Ordinance doesn't play on this
23 thing.

24 MS. BOUTSIS: I understand that and I
25 am not going there yet either.

1. MR. PARISER: It's not extortion if
2 they are trying to compromise.

3 MR. FLINN: I mean, is it extortion if
4 the neighbors don't agree and keep us to
5 continue to litigate if they don't get what
6 they want?

7 MS. BOUTSIS: And if you truly believe
8 it's extortion then give me the direction to
9 keep on ---

10 DR. FELLER: Gene said, it's the same
11 on both sides. It's true in many lawsuits,
12 people do whatever they can to get what they
13 want.

14 MS. STANCZYK: I have another question.
15 If there is things that they would agree to
16 that they would present to us, say for
17 instance it's the number of students or
18 square footage, and we put a condition on
19 it, will we be able to put conditions on
20 certain things?

21 In other words, they come forward and
22 they have the simplistic, I want one
23 thousand square feet, because we know it's
24 more, but we want a thousand square feet,
25 and we say to them, okay, you can have one

1. thousand square feet but it must be done
2. this way. Can we do that?

3. MS. BOUTSIS: I don't see why not. It
4. depends on the language of what we write in
5. our agreement but I don't see why not.

6. DR. FELLER: Isn't that the purpose of
7. the zoning hearing?

8. MR. FLINN: The leverage on that before
9. the Oral Argument is different on the
10. leverage now. The leverage before decision
11. is different from post decision for either
12. side and rehearing.

13. I mean, we are not going to settle this
14. thing here today.

15. MR. PARISER: Let me wear my mediator's
16. hat. I always encourage people to talk, I
17. don't mind you -- I would be really curious
18. to see what kind of document is going to
19. come forward from Stan Price, whatever. I
20. don't mind giving Eve the authority to talk
21. to them about a prospective settlement.
22. That's not saying I will vote for a
23. settlement because I want to see what the
24. document says.

25. The other thing is, do you get to sense

1. that you are talking, I don't know what it
2. takes, a week or ten days, you are talking
3. and all of the sudden the Third DCA comes
4. down with a decision in favor of Palmer, and
5. Price is going to say, we got our decision,
6. goodbye, forget about ---

7. MS. BOUTSIS: They still have a second
8. portion to deal with. They still have to
9. deal with the part that we haven't ruled
10. upon. They have to deal with that public
11. hearing and the consequences of the five of
12. you making a decision on criteria which
13. traffic should be an issue which we will
14. deal with at that time, I have to formulate
15. that in my head. But that is something
16. that -- they want a school, they haven't
17. been more clear about that. They have spent
18. a lot of money with lawyers three times my
19. salary rate and five of them at an Oral
20. Argument to get a school.

21. MR. FLINN: And you know what, I
22. haven't heard the neighbors say that they
23. are not going to get a school, they just
24. want it done a certain way. They are not
25. going to come to an agreement. Let's get

1. the zoning hearing, let's make a very good
2 decision.

3 You put on the question?

4 DR. FELLER: Yes.

5 MR. FLINN: A motion has been made and
6 it's been seconded. All in favor say I.
7 All opposed. Three/two. Let's call for a
8 rollcall vote.

9 MS. BOUTSIS: Vice Mayor Brian Pariser?

10 MR. PARISER: Ney.

11 MS. BOUTSIS: Council person Howard
12 Tendrich?

13 MR. TENDRICH: Yes.

14 MS. BOUTSIS: Council person Ed Feller?

15 DR. FELLER: Yes.

16 MS. BOUTSIS: Mayor Eugene Flinn?

17 MR. FLINN: Yeh.

18 MS. BOUTSIS: Councilwoman Shelley
19 Stanczyk?

20 MS. STANCZYK: Ney.

21 MR. FLINN: Thank you, we are done for
22 tonight.

23 (Whereupon, the deposition was
24 concluded at 10:00 p.m.)
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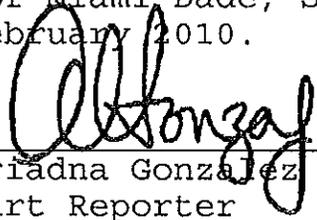
CERTIFICATE OF REPORTER

STATE OF FLORIDA :
 : SS.
COUNTY OF DADE :

I, ADRIADNA GONZALEZ, Court Reporter,
Notary Public in and for the State of Florida at
Large, do hereby certify that I reported the
attorney/client session in the above-styled cause;
and that the foregoing pages, numbered 1 to 51
inclusive, constitute a true and correct
transcription of my shorthand report of the session
by said witness.

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 council
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 4th day of February 2010.



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