

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

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CASE NO: 08-28977
10-259-AP
10-34016 CA 20

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ORIGINAL

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17641 Old Cutler Road
Palmetto Bay, Florida,
Monday, 7:10 p.m.,
December 13, 2010.

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APPEARANCES:

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Ron Williams, Village Manager
Eve Boutsis, Village Attorney
Shelley Stanczyk, Mayor
Patrick Fiore, Councilman
Howard Tendrich, Councilman
Brian Pariser, Vice Mayor
Joan Lindsay, Councilwoman

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1 MS. BOUTSIS: Good evening everyone,
2 thank you for being here. As the Village
3 Attorney I have requested that the Mayor and
4 council meet in a shade session. And we are
5 here to discuss certain litigation, the
6 defense and possible settlement in the case
7 number Palmer Trinity Private School versus
8 Village of Palmetto Bay, Circuit Court Case
9 Number, 08-28977 CA 30. Palmer Trinity
10 versus the Village of Palmetto Bay, case
11 number 10-259AP. Palmer Trinity Private
12 School versus the Village of Palmetto Bay,
13 case number 10-34016 CA 20.

14 I am seeking advise from this council
15 regarding litigation strategy and/or
16 settlement. It is now 7:10 p.m. on
17 December 13. I will have everyone go around
18 the room and state their name for the
19 record.

20 Just so we are clear, the way this
21 works. This is the one time you all get to
22 meet outside of the public, whatever is said
23 here tonight is kept private until the end
24 of the litigation. What does that mean.
25 Basically you get to talk and communicate

1 your concerns, your thoughts, your
2 strategies, and none of that is disclosed
3 until the litigation is actually terminated.
4 Then this document, the court reporter is
5 here to take down everything that we say,
6 can become public and the community can read
7 it.

8 Now, the easiest way for the court
9 reporter to do her job is for one person to
10 talk at a time and try to use real words,
11 like not uh-huh and uh-uh, because it all
12 comes out the same on the court reporter's
13 transcript.

14 There is no one else allowed at these
15 meetings, only the manager and I, and of
16 course, the court reporter in addition to
17 the council. So if you wanted to interview
18 an expert witness, for example, that could
19 not happen here, I would have to schedule a
20 one on one meeting if there was an expert
21 witness.

22 That being said, I am going to start
23 from the right and everyone introduce
24 themselves so that the court reporter can
25 get your name for the record.

1 MR. TENDRICH: Howard Tendrich.

2 MS. LINDSAY: Joan Lindsay.

3 MS. BOUTSIS: Eve Boutsis.

4 MR. MILLER: Ron Miller.

5 MR. PARISER: Brian Pariser.

6 MR. FIORE: Patrick Fiore.

7 MS. STANCZYK: Shelley Stanczyk.

8 MS. BOUTSIS: I know that I have met
9 with the two new council members and I have
10 given a short, well, for you I think it was
11 about an hour, but a shortish explanation of
12 the history of the Palmer Trinity
13 litigation. I am going to give another
14 brief overview if I can and then I would ask
15 that Brian Pariser, Vice Mayor, give input
16 on what happened at oral argument since you
17 were present, and you were also present if
18 you would give as well.

19 In 2006 Palmer Trinity filed an
20 application for expansion of its private
21 school from existing parcel on to its
22 additional parcel which is known as the
23 Hester property. Their request was to go
24 22.5 acres to 55 acres. They wanted to
25 change, at that time they wanted to change

1 the zoning. Then they had asked for several
2 variances, the height, number of stories and
3 as to parking terrane and to increase
4 students, to I believe at that time was
5 1,400 students.

6 The original council had in 2008 heard
7 the application after a couple of days of
8 testimony and denied the rezoning. The
9 zoning's denial was based upon the criteria
10 established by Miami-Dade County,
11 specifically the section relating to
12 traffic.

13 On appeal to the Circuit Court, we won,
14 and it was appealed again to the Third
15 District Court of Appeals and unfortunately
16 we lost. The court said you cannot look at
17 the specific uses, which means the traffic
18 element as to the specific uses in a
19 rezoning. There was some language during
20 the oral argument that perhaps you can look
21 at that in zoning, meaning the actual site
22 plan use, but not as far as it relates to
23 rezoning. So that matter was remanded back.
24 That happened in 2010, April.

25 By May 4th we had our final hearing and

1 the property was rezoned, but then we had to
2 deal with the rest of the application. At
3 the May 4th hearing there was testimony and
4 the application had been modified over time
5 from 1,400 students to 1,100 students. The
6 zoning resolution prepared by Mr. Perez, the
7 May 4th hearing, was about 50 pages long,
8 exactly 50 pages long and it had over 80
9 conditions.

10 The council heard testimony and at that
11 time voted to reduce the number of students
12 from 1,150 students to 900.

13 There was conditions proposed by staff
14 at that time that's relevant to the appeal.
15 It was that whatever was approved, the
16 applicant would be stuck with for 30 years.
17 There was a prohibition from expansion
18 beyond that. This was a provision in the
19 that they could eliminate the plan or modify
20 the plan to a lesser intensity but not to a
21 higher intensity of use for a 30 year
22 period.

23 Ultimately Palmer Trinity appealed that
24 decision and there were only two things that
25 they appealed. They didn't appeal the

1 entire decision. They only appealed two
2 conditions. Those two conditions are the
3 900 students and the 30 year prohibition.

4 Let me go back for a minute. In 2008
5 when they filed the original appeal they
6 also filed what's called an original action,
7 they asked for injunctive relief. They
8 amended their complaint, but basically they
9 are looking for damages from the 2008
10 hearing, and they are moving forward with
11 that and they included also a public records
12 count to that amended complaint.

13 So we have the 2008 complaint, we have
14 the 2010 complaint based upon the two same
15 conditions, and they are looking for
16 injunctive relief from those conditions, and
17 then we have the appeal, the current appeal.
18 So we have three cases.

19 About six weeks ago I received an offer
20 to settle from Mitch Widom, which he is the
21 litigation counsel from the Bilzin Firm.
22 Stan Price handles the zoning matters and
23 Mitch handles the litigation. And he has
24 offered five conditions for a settlement.

25 And just so we understand, there is an

1 issue in all zoning cases, it's not contract
2 zoning, where we can't in a shade session
3 come to an agreement and rezone property,
4 you have to go to a public hearing. So even
5 in concept you agree with some of these
6 conditions that they talked about, we still
7 have to go a public hearing and have that
8 process.

9 I am going to tell you what the offer
10 is and then maybe we take a break, let you
11 think about it and perhaps Brian, you can
12 talk about the oral argument.

13 "One. The issuance of a building
14 permit pursuant to the site plan submitted
15 to the Village of Palmetto Bay, dated April
16 19th of 2010 and which incorporate the
17 issues below."

18 So basically its the site plan that
19 they had on the hearing on May 4th.

20 "Two. "An agreement to allow 1,150
21 students pursuant to the 15 year schedule
22 attached hereto and that the resolution be
23 modified consistent with the schedule."

24 As part of their application at the May
25 4th hearing they had requested to increase

1 to that number of students over a 15-year
2 period and they would like to be stuck to
3 that period versus a 30 year period.

4 Three. "An agreement that Palmer
5 Trinity will not file any zoning
6 applications for a five year period
7 beginning January 1, 2010 and the resolution
8 shall be modified consistent with this five
9 year agreement and the thirty year
10 limitation shall be eliminated from the
11 resolution accordingly."

12 "Four. "An agreement that the berm
13 requirement in the 2010 resolution will be
14 eliminated in light of the other buffers
15 already required and pursuant to the
16 landscaping plan already submitted."

17 Let me explain the berm issue. There
18 is a 75 foot buffer all the way around the
19 site plan and there are a bunch of trees and
20 different shrubbery and a wall on the
21 outside of the property. There has been a
22 representation made by Palmer Trinity that
23 the additional requirement by zoning staff
24 that there be some berms or hills put into
25 there that would help absorb sound, would

1 not work with the types of plantings that
2 they have installed, and so they would like
3 the elimination of the berm.

4 "Five. "Upon ratification by the
5 Village Counsel of the amended resolution
6 and after all times for appeal have expired,
7 Palmer Trinity will dismiss with prejudice
8 all pending matters and will waive claims
9 for costs, fees and other monetary damages,
10 included but not limited to loss of tuition
11 revenue, punitive damages, section 57.105
12 fees, sanctions and money for the loss of
13 enjoyment of Palmer Trinity's property
14 related to the subject matters being
15 litigated."

16 That is their offer.

17 Now, when I have an obligation to relay
18 an offer to you, originally it was to expire
19 September 1st, so I had obtained an
20 extension, I got an extension on the offer
21 through December 31st so that you all could
22 meet as the new council and make a joint
23 decision together.

24 With any settlement you can say yes,
25 you can say no, you can say maybe, you can

1 make a counter-offer it's up to you what you
2 want to do. The manager pointed out to me
3 on the section 57105, and let me explain
4 what that is to the non-lawyers in the room.
5 57105 is a state statute, and basically the
6 easiest way of saying it is, if there is a
7 find that they are saying is frivolous or in
8 bad faith or in such a bad mechanism that
9 the other side after issuing this letter is
10 giving you a 30 day period to rescind that
11 condition, if you don't rescind they can
12 seek attorneys fees and costs against you
13 for pursuing that claim and being victorious
14 in the end.

15 Here 30 days before oral argument
16 Palmer Trinity's general counsel issued a
17 57105 letter to us saying you have 30 days
18 to dismiss your defense of the appeal under
19 those two counts. So that offer expired on
20 the day of oral argument. And obviously it
21 is the position of the Village Counsel at
22 that time and it still is, that you have
23 defensible argument and I think that we made
24 those arguments before the appellate court.

25 So before I go on, perhaps you would

1 like to give your impression on oral
2 argument since you were there.

3 MR. WILLIAMS: I mentioned that because
4 I believe the Village Attorney provided that
5 letter to all of you and I wanted to make
6 sure that we connected it. It's expired,
7 but I think each of you received that letter
8 because it came a different route from the
9 general counsel.

10 MS. BOUTSIS: It came from an outside
11 firm and not the Bilzin firm.

12 MR. PARISER: I believe it's 21 days.

13 MS. BOUTSIS: 21 days.

14 MR. PARISER: Three Circuit Judges,
15 appeals from zoning goes to Circuit Court.
16 Two of them, I know one of them is a fairly
17 new Judge and they don't do any zoning work
18 at all, so they do what they do as far as
19 any decision on what they read and what was
20 said at oral argument. And like counsel
21 said, there was 80 conditions and Palmer
22 Trinity agreed to 78 of them. They didn't
23 agree to the number of students and they
24 didn't agree to the 30-year limitations.
25 And I thought our brief was well briefed as

1 to whether there was competent and
2 substantial evidence that was presented
3 before the council to make an opinion.

4 Stan Price argued for Palmer said that
5 it's arbitrary, they picked 900 students out
6 of the air, it should have been 1,150. That
7 basically all of these conditions were based
8 on a number of 1,150. The rebuttal to that
9 was that is wasn't binding on anybody, we
10 can take a look as a council as to what we
11 thought would be a proper number. The other
12 thing was in my 30 years of practice I have
13 never seen a 30 year limitation.

14 The reaction from the judges were, they
15 were saying to Price, Mr. Price so you were
16 denied your zoning you can't get your
17 school, how are you damaged? And he said
18 no, we did get our zoning, we did get our
19 school, we just didn't get the number of
20 students that we wanted. One of the judges
21 asked a question, was concerned about the 30
22 year prohibition for them to come back. And
23 that was explained that that was one the
24 conditions that the council put on it.

25 You go in front of a three-judge panel

1 and sometimes you can tell if it's not going
2 well and sometimes you can't tell. It's
3 funny, the old appeal, the circuit court
4 appellate level, I really couldn't tell.
5 There was a couple of things that said maybe
6 they will go for us. When Palmer Trinity
7 appealed that to the Third DCA I can tell by
8 the questioning that wasn't going well and
9 it turned not to.

10 This panel, I don't know what they are
11 concerned about. If the concern is the
12 30-year prohibition, if they think that's
13 reasonable or not, or if there is
14 competent or substantial evidence to support
15 that. And again, that was addressed in the
16 brief. I would hope, although not all
17 judges that I go in front of read all the
18 briefs that are in front of them before oral
19 argument, I hope they read.

20 MS. BOUTSIS: They seemed versed.

21 MR. WILLIAMS: Brown was quiet.

22 MR. PARISER: Brown was quiet. They
23 are good judges, by the way. Judge Brown
24 used to be head administrative judge for
25 family court. Farina is chief judge in the

1 civil division and Lindsey is a newer judge,
2 but they are competent.

3 So the point is, those were the issues
4 that they were concerned about. And what
5 their decision could be, there is no
6 decision on whether it was reasonable
7 competent and substantial evidence before
8 the council to rule that way. And if they
9 agree with us they agree with us, and then
10 Palmer Trinity can do what they want to do
11 which is appeal to a higher court to
12 overrule them, if not they can issue I think
13 one or two of three things.

14 MS. BOUTSIS: They can split the puppy,
15 meaning vote for us in one and not the other
16 and vice-versa. They can vote us all down
17 or they can vote us all up. So at that
18 point it usually takes about 30 days, but
19 the holidays make it's a little longer. At
20 that point whatever the decision is, we can
21 have another AC session and decide what we
22 want to do, because I am assuming unless
23 Palmer Trinity is getting its way, it's
24 going to be appealed.

25 MR. PARISER: I think they would want

1 to do what they did the last time even
2 though they lost the first time. I am not
3 terribly impressed with their damage claim
4 57105, I am not particularly concerned about
5 that either, but you never know. The bottom
6 line is we don't know when they will rule
7 even.

8 MS. BOUTSIS: No.

9 MR. PARISER: It may take ---

10 MS. BOUTSIS: In the first appeal they
11 ruled rather quickly, it was like two weeks
12 and I of course was ecstatic. But with the
13 holidays and everything else, I am not
14 expecting any decision before January.

15 You were also there, is there anything
16 you want to say?

17 MR. LINDSAY: I just want to make sure
18 that everybody was aware of the argument
19 that both you and Tucker presented at the
20 Eleventh Circuit.

21 As far as the number 900 goes, there
22 are approximately 33 acres in that parcel
23 and if they were to be developed there would
24 approximately 79 homes. The average number
25 of residents per home in Palmetto Bay is

1 3.1. 3.1 times 79 is approximately 235, add
2 that to the 600 that they are entitled to
3 and that brings them to 835.

4 MS. BOUTSIS: And the additional 50
5 kids that they have onsite.

6 MS. LINDSAY: With the additional kids
7 that they have above and beyond the
8 resolution. So the 900 can be justified.
9 And we did have Mark Alvarez at the hearing
10 on May 4th and he gave testimony to that
11 effect.

12 The other thing that I think is
13 important was the point that you brought up
14 on 4.3, so if you want to take that.

15 MS. BOUTSIS: Sure. I didn't go into
16 the legal arguments. On 4.4 was the
17 condition that they appealed on the 30
18 years, and basically it said, 4.4 said, you
19 can't expand your intensity of use, you are
20 stuck with this plan, you have asked for a
21 25 year phase, we are giving you 30 years to
22 build it. 4.3 said, you can modify it, or
23 eliminate it, change it over the 30 years,
24 you just have to go to a public hearing to
25 do so.

1 Mr. Price tried to make it seem as
2 though we're horrible tough people that were
3 taking away their property rights, and I
4 argued no because you have to read the
5 entire resolution together. 4.3 gives them
6 the right to modify, gives the right to
7 amend, gives them the right to eliminate.

8 MR. PARISER: That was very important.
9 One of the judges, the way it was presented,
10 this is it, you can never do anything, never
11 modify anything, almost to the point of gee,
12 if you come in here in five years you are
13 going to have to tear down everything that
14 you have built, and it was well versed as
15 far your written brief for them to get to
16 understand that.

17 MS. BOUTSIS: They did ask me, the main
18 judge asked me towards the end, Farina, he
19 asked me, was your intent not to increase
20 students. That was the intent, yes, because
21 if you look at all of the conditions and all
22 of the testimony and all of the work that's
23 done, the number of students was a traffic
24 problem and concern to the community. So
25 yes, that was the intent, but it didn't mean

1 that you couldn't go back under the prior
2 conditions and try and come back for a
3 hearing. So those were the two main
4 arguments.

5 From my perspective I thought that the
6 appellate panel sort of beat up on Mr. Price
7 in the beginning and he didn't handle that
8 so well. And then they started asking me
9 questions, but he came back strong when he
10 had his rebuttal time. The person appealing
11 can speak twice. And he didn't argue the
12 merits of the case as much as he argued the
13 briefs which are not part of the appellate
14 review. He argued that we were
15 discriminatory, he argued that we were
16 unconstitutional and none of those criteria
17 is what the Court looks at for review.

18 He based his argument on a case from
19 1926 that has been severely eroded overtime.
20 It said that you have to treat public and
21 private schools the same and there is
22 something about how people don't like to
23 hear birds singing.

24 MR. PARISER: The other thing that was
25 favorable to the point of questioning for us

1 in the beginning was that they were saying,
2 the Judge said, Mr. Price aren't the people
3 that live in the area, isn't their
4 investment substantial to the traffic flow
5 and what have you and Price came back and
6 said, it's a level F, it's an acceptable
7 level under their plan, they can still do
8 it. And you can see the judges were going
9 level F, that's acceptable.

10 MS. BOUTSIS: You can't go any lower.

11 MR. PARISER: So there was a concern on
12 their part.

13 MR. WILLIAMS: On that note, there was
14 a kind of countering position where if you
15 had to or Tucker had to acknowledge that the
16 two traffic engineers were in agreement.

17 MS. BOUTSIS: Yes. Even Mark Alvarez
18 who is a traffic planner who also testified.
19 So all three were in agreement in a lot of
20 the conditions, but not everything. And
21 that there were certain things that were
22 failing and everybody agreed that they
23 failed.

24 So at this point in the discovery
25 phase, I issued discovery and discovery is

1 where you get to ask questions, obtain
2 documents. I asked discovery in the 2010
3 case and they responded -- basically I
4 wanted to know who their experts were going
5 to be for trial and what kind of damage they
6 are seeking.

7 In the 2010 pure litigation not appeal,
8 they are not seeking damages, they haven't
9 found an expert yet. In the 2008 case I did
10 the same kind of discovery, they have asked
11 for an extension of time so it's going to be
12 due in January. That's the claim where they
13 seek monetary damages. So we'll know by the
14 beginning of January exactly what numbers we
15 are talking about here. I have heard
16 rumors, I have heard newspaper articles that
17 it's millions and millions of dollars, but
18 it's never been presented to me in any way,
19 shape or form by Palmer Trinity. So for you
20 to make an educated decision, we need that
21 information to come in.

22 MR. PARISER: Anybody can ask for
23 damages, it's a matter of whether they can
24 prove it.

25 MS. BOUTSIS: They haven't responded to

1 discovery just so you know, so I said, look,
2 I have to do a motion to compel and they
3 said we need more time. So at that point I
4 didn't want to go into a motion to compel
5 when I knew they needed 30 days, so I agreed
6 until the beginning of January.

7 The only thing that I can tell you as
8 far as damages. I had done an analysis
9 probably a couple of months ago, somebody
10 asked me about my legal fees and I think in
11 two and-a-half years my legal fees have been
12 about 250,000 in this case. I know that
13 Stan Price's hourly rate is closer to five
14 hundred and not \$600 an hour, they have five
15 lawyers. I did up the math at just one
16 lawyer and it came to 750,000 to a million
17 dollars right there, you just go by all of
18 my billable hours. So when they talk about
19 fees, that's probably what the numbers that
20 you are looking at, but we'll know better
21 when we get the response to discovery.

22 MR. PARISER: Under what theory can
23 they be awarded fees?

24 MS. BOUTSIS: 57105. I am giving you
25 the outer limits. I don't think that's

1 reasonable to give five lawyers fees and I
2 don't see that as being possible from any
3 judge.

4 MR. WILLIAMS: All of you may know this
5 already, but as part of our financial audit
6 that's upcoming, Eve has to do an analysis
7 of all of the potential world out there ---

8 MS. BOUTSIS: I think I sent it to all
9 of you.

10 MR. WILLIAMS: There was a claim by
11 Palmer Trinity, the Bert J. Harris claim, I
12 put an audit letter explaining that to you
13 all, but I think that's dead now because it
14 was based on them getting rezoning and they
15 got it.

16 As far as the offer, would anybody like
17 to entertain the offer at this time or talk
18 about it or come to a counter-proposal or
19 what would you like?

20 MR. TENDRICH: Let's go through them.

21 MS. BOUTSIS: Sure. The first one is
22 just their current plan that was heard in
23 May 4th of 2010, so I don't think there is
24 too much to talk about that. It's whatever
25 they presented.

1 MR. TENDRICH: That's when they reduced
2 their height and ---

3 MS. BOUTSIS: It's the plan you last
4 heard that there are no variances. But I
5 think the important part is the number two
6 that goes with that, which is an agreement
7 to allow 150 students over a 15 year
8 schedule. Again, we still have to go to a
9 public hearing, we still have to have the
10 expert, get testimony from the community,
11 but that's what they are seeking.

12 MR. TENDRICH: There was an article, I
13 think it was yesterday, how some areas were
14 considering private schools and they were
15 saying, you figure one hundred students per
16 acre. So now if that was true, Palmer
17 Trinity would be allowed 5,200 students if
18 you figure one hundred students per acre. I
19 don't know, I just feel they have made a lot
20 of concessions, many more than I thought
21 that they would have. We batted them pretty
22 hard and they said, fine, I won't do this I
23 won't do that. 1,150 is down from the 1,400
24 that they wanted and it's down from I think
25 the 2,400 that we were told that they could

1 be allowed.

2 MS. BOUTSIS: There was some
3 speculation at some point of that number.
4 Actually it was 2,100.

5 MR. TENDRICH: Right, that the court
6 would allow them to have that many. I feel
7 1,150 is a lot more than most people in the
8 area would want and I understand traffic, I
9 don't know why the court doesn't take
10 traffic into consideration, but if they
11 don't take it into consideration we can't
12 make them.

13 MS. BOUTSIS: As part of the site plan
14 approval they do take traffic into
15 consideration. The evidence at the May 4th
16 hearing where three people testified, their
17 traffic expert, our traffic expert and then
18 the traffic planner Mark Alvarez, I think
19 they all came to certain agreement on the
20 numbers and the levels of service. Because
21 they reduced the number of students and
22 pushed most of the traffic a lot into 184th
23 street, most of the traffic conditions were
24 technically met from our comprehensive plan.
25 The issues that Mark Alvarez brought out

1 were the issues on leaving the premises and
2 the cueing from the premises of the school
3 out into the community. Those were the big
4 issues that he raised.

5 So traffic is an element that you can
6 take into consideration, but the problem is
7 the standard is concurrency level of traffic
8 and the testimony was that they met it.

9 MR. TENDRICH: They took it off of a
10 local street and they put it on the major
11 street.

12 MS. BOUTSIS: Put most of it on the
13 main street.

14 MR. PARISER: Just one comment. Stan
15 Price at oral argument said we could have
16 asked for 2,100 students. That's the figure
17 in his mind.

18 MR. TENDRICH: I knew it was either
19 2,100 or 2,400.

20 Again, I feel it's high 1,150, but at
21 the same token I feel I am looking at the
22 Village as a whole and that I don't want to
23 have to continue to spend disruption of the
24 Village and attorney's fees, which I know
25 that we'll have many lawsuits overtime, but

1 I feel that we have made really, as a
2 Village Council, have made very little
3 compromise to them. They have given in, the
4 way I look at it. So I am not happy with
5 the 1,150, but I would be certainly happy
6 with 1,150 rather than the court saying you
7 all couldn't make your decision, Palmer
8 Trinity has 2,100.

9 MS. BOUTSIS: Just so we are clear, the
10 appellate court cannot give them more than
11 what they have asked for, all they can do is
12 remand back for a hearing.

13 MR. PARISER: They have agreed to the
14 78 out of the 80 conditions, so they are not
15 -- they can't back out of the 78 out of the
16 80.

17 MS. BOUTSIS: No.

18 MR. PARISER: So the only thing that
19 the appellate court can say is, give them
20 the 1,150, they can't say give them 2,100.
21 They can say give them the 1,150 and modify
22 the 30 year or take off the 30 years.

23 MR. TENDRICH: But there is five
24 things, so it's really 75 out of 80.

25 MS. BOUTSIS: In reality on appeal it's

1 only two issues. Here in the letter it's
2 really three things that they are asking
3 for. It's the 15 years, get rid of the 30,
4 replace it with five and get rid of the berm
5 and in exchange we'll get rid of all of our
6 litigation.

7 MR. FIORE: Isn't there two other
8 lawsuits?

9 MS. BOUTSIS: This would resolve all
10 three.

11 MR. FIORE: What's the other two?

12 MS. BOUTSIS: The 2008 case, the
13 companion case to the appeal, that's the
14 case that they are seeking damages on. In
15 that case they basically argued we have
16 violated their due process right and that we
17 had acted unconstitutionally. And all of
18 our actions on appeal, what they consider
19 delays and everything else have damaged in
20 loss of tuition, etcetera, and they are
21 looking for damages.

22 The reason they amended that complaint,
23 it was a mirror image of their appeal. When
24 they won the appeal I had filed a motion to
25 dismiss that case because they got what they

1 through the Dade County School Board for
2 your jurisdiction.

3 Charter schools, just to give you a
4 point of reference, they are considered
5 public schools and they go to a zoning
6 process through the Village. Private
7 schools who are using the Dade County Code
8 have a special hearing process and every
9 private school in Dade county has to use
10 that process. So after 30 years of using it
11 and it being appealed up and down Dade
12 County, I don't see it legitimate that a
13 court would find it unconstitutional. But
14 they are looking for damages in the one
15 case.

16 MR. PARISER: What they are looking for
17 is damages under the Citizens Bill of Rights
18 for what?

19 MS. BOUTSIS: Under both of them. The
20 hearing process that we have, the special
21 exception process that we have, because they
22 had to go to public hearing and public
23 schools do not and so therefore it's
24 unconstitutional and we are violating the
25 Bill of Rights.

1 Under the 2010 case they are arguing
2 the Bill of Rights and their right to the
3 access to court's under the state
4 constitution because of the 30-year
5 condition, saying that they can't get access
6 to the courts for 30 years.

7 MR. PARISER: I don't know if that's
8 damages. Is the Citizens Bill of Rights
9 tied into treating us differently than
10 public schools when there is no cases of
11 record to substantiate their position, but
12 what does the record claim?

13 MS. BOUTSIS: Finally the new claim is
14 the public records claim, they had issued
15 five public records request between the
16 hearing in February and let's say August of
17 2008, and we gave them whatever we had.
18 They are not happy with it, they say that we
19 have not disclosed records, and we as
20 council ---

21 Patrick, I think that you were in the
22 Kendall Zoning Board?

23 MR. FIORE: West Kendall.

24 MS. BOUTSIS: Their public records
25 request were based upon the 2008 hearing,

1 and they said we want a copy of all of those
2 disclosers and if they were disclosed
3 anything from the community, we want those
4 documents. And literally we have thousands
5 and thousands and documents on this case. I
6 think that I have produced in this case, you
7 know, 150,000 documents. Between site plans
8 and drafts of recommendations, and every
9 council person who has gotten an e-mail,
10 it's from that council person, so it may be
11 five e-mails of the same e-mail but it's
12 from five different people. So I am not
13 aware of any document that we haven't
14 produced.

15 I guess the only other thing that I
16 should say is, there was supposed to be a
17 hearing, it was canceled and it is on
18 spoliation of evidence claim. And the only
19 concern that we have as the Village Council
20 about this claim, is that one the damages
21 that they are seeking is the presumption
22 against the Village Council that we did
23 something wrong. If this evidence was lost
24 then they are asking the Judge to presume
25 that there was improper communication with

1 the counsel that wasn't disclosed or a
2 public record that wasn't disclosed. I
3 don't see that really getting to that
4 extreme because when you look at the case
5 law that's for a very extreme situation.
6 But having said that, it's something that we
7 need to defend at the hearing to make sure
8 that everything is okay because if that
9 presumption comes, they have a good argument
10 to go for a due process claim.

11 A due process claim is against the
12 Village. Meaning, if there is a -- let me
13 get the language right. If the presumption
14 is against us, then it's a better
15 opportunity for them before the jury to find
16 a claim against us. And that concerns me
17 because all of the documents that I have
18 show no violations. So at the hearing I am
19 going to bring that up, that I have all of
20 these communications from the citizen
21 groups, from the public, they have been
22 disclosed, there is no evidence brought
23 forward by Palmer Trinity that there was
24 ever a violation of the Village Council so
25 it shouldn't be taken against the Village.

1 MR. FIORE: Let me appeal to my
2 colleagues here, and I am going to go by
3 what I said when I got sworn in. I believe
4 that we have a fiduciary responsibility to
5 the tax payers of this Village. Period,
6 that's it. The other issue that I have seen
7 and I saw is, this issue has driven a wedge
8 in this community that I don't like to see.
9 I meant what I said when I got sworn in and
10 I still believe that. I don't want to see
11 anymore tax payers money spent on this if
12 it's going to put the tax payers at risk.

13 And I want to remind everybody here, we
14 were elected to be the representatives for
15 this Village, from 136th Street to 184th
16 street, from the water to US-1, not just for
17 the people that live next to that school.
18 And I would hope that everybody realizes
19 that. I don't think that anybody want to go
20 to another hearing. I don't. I don't know
21 if what they are asking is that out of line.
22 If the traffic seems to be an issue then
23 let's fix the traffic, whatever that problem
24 is. I wasn't on the board, I don't know,
25 but that's how I feel.

1 MS. STANCZYK: No. No, we'll go to the
2 hearing. That's the settlement. The only
3 thing that we can give them is the response
4 to go to another hearing, we cannot say
5 we'll accept that, in my mind.

6 MS. BOUTSIS: Just so we are clear.
7 You cannot irrevocably accept the condition.
8 You have to go to the public hearing. There
9 have been cases where the language ---

10 MS. STANCZYK: That's not what we are
11 going to do. You told us that before.

12 MR. PARISER: I am a little confused.
13 You are saying give them another hearing ---

14 MS. STANCZYK: I am saying, we'll take
15 a motion, you vote yes or no.

16 MR. PARISER: I want to find out if we
17 are saying you have another hearing, does
18 that mean the 78 conditions that they agreed
19 to they are thrown out, that means everybody
20 starts over from scratch if you give them
21 another hearing?

22 MS. BOUTSIS: Yes.

23 MS. STANCZYK: But at the same time
24 when we go to another hearing you get the
25 opportunity to further enforce any condition

1 that you put on that may have not had the
2 support or that they feel did not have
3 evidence to support it. Am I right?

4 MS. BOUTSIS: The public can do
5 absolutely anything.

6 MR. PARISER: What you are saying is,
7 we have another hearing and somebody wants
8 to come in with 29 traffic experts, we'll
9 hear all 29 traffic experts against one side
10 or the other, but at the same time you are
11 throwing out the 78 conditions that they
12 agreed to.

13 You are giving them a brand new
14 hearing, de novo, as they say, from the
15 beginning.

16 MR. TENDRICH: Again, having 80
17 conditions and then accepting 78, I think
18 that's a pretty good percentage for us of
19 what they have accepted, it's like 90
20 percent. What you are saying, in a way if
21 we do another hearing and those conditions
22 can't be --

23 MS. BOUTSIS: They can still be made or
24 modified, but the point is everything is on
25 the table.

1 MR. TENDRICH: And they don't have to
2 accept them.

3 MR. STANCZYK: They don't have to
4 accept them anyway.

5 MS. BOUTSIS: Accept that in the past
6 record they did.

7 MR. TENDRICH: I don't know see the
8 berm issue, I don't know why they don't like
9 it. I mean, you change the type of trees
10 that you are going to plant.

11 MS. BOUTSIS: They don't sue on that,
12 that's part of their settlement request.

13 MR. PARISER: So the issue is, if you
14 give make a counter-offer and give them a
15 new settlement, you are giving up all of the
16 conditions that they agreed to. To give
17 them a new hearing you are giving up all the
18 conditions that they agreed to? It's a
19 brand new hearing.

20 MS. LINDSEY: If we wait until the
21 Eleventh Circuit makes a ruling, either they
22 go with us or they don't. If they don't go
23 with us we go back to the hearing anyway
24 with the 78 conditions.

25 Why would you -- some of these 78

1 conditions quite frankly are terrible for
2 the neighborhood. First of all, 11.3 says
3 that they can have bells, pulses or
4 buzzards, other signs signalling class times
5 at 65 decibels above ambient sound. Ambient
6 sound is approximately 45 in the
7 neighborhood. This puts the bells and
8 buzzards at the threshold of pain according
9 to sound experts. Some of these conditions
10 were not well written.

11 I brought them to the attention of
12 Mr. Perez before the hearing, not once, not
13 you twice but three times and they remain in
14 the document. I brought it up after the
15 hearing before the resolution was written,
16 some of these are still here, so there may
17 be a substantial number here not all of them
18 are beneficial to the people in the
19 neighborhood.

20 MR. WILLIAMS: I am in strong
21 disagreement with you. Those were heard by
22 the Village Council and agreed.

23 MS. LINDSAY: I understand that.

24 MR. WILLIAMS: Those were heard by the
25 Village Council, regardless of your own

1 this already.

2 MS. LINDSAY: I am saying that the
3 noise ordinance allowed noise to be at 65
4 decibels and ambient sound is the sound in
5 the area normally. So in some areas of the
6 village it might be 45, it might be 50, it
7 might be 55, when you tag 65 onto that level
8 you are exceeding.

9 MR. PARISER: That wasn't intended.

10 MS. BOUTSIS: The point is it's above
11 ambient.

12 MR. TENDRICH: It was written
13 incorrectly, but however, they agreed not to
14 do it so it doesn't matter.

15 MS. BOUTSIS: There is no point of
16 arguing this at this point.

17 MR. WILLIAMS: It's been argued, we
18 have heard this for months.

19 MS. BOUTSIS: It's not important to
20 argue now only because it has to come back
21 to you. The point is the Mayor's request,
22 do you want to entertain her or not?

23 MR. PARISER: If we are still having a
24 discussion on it. I personally don't want
25 to give up the 78 conditions that they

1 agreed to. And the upside of the downside
2 of it is, the downside is the Court says you
3 have to give less than 30 years and worse
4 case scenario or have a rehearing on the
5 number. The issue is 30 years is legitimate
6 or not legitimate prohibition. And as far
7 as the number of students here, either they
8 say for whatever reason, give them 1,150 or
9 have another hearing.

10 Now, if that's the case, they have
11 asked for a maximum of 1,150, so it gets
12 remanded back, they cant all of the sudden
13 say five thousand or 2,500. If you give
14 them a new hearing you are throwing out the
15 78 conditions that you have already gotten.
16 I don't see an upside.

17 MR. TENDRICH: If you give them a new
18 hearing don't you also throw out the number?

19 MS. BOUTSIS: But their application is
20 1,150. They have not applied for more than
21 that. And if they do a new application for
22 more then we have our charter amendment
23 which I don't know if you are familiar with
24 the charter amendment. There was a last
25 election, not this one, a prior charter

1 amendment that basically said if a private
2 school wants to expand they have to get 75
3 percent approval within everybody, I believe
4 it's 2,000 feet of the site who is a
5 citizen/resident of Palmetto Bay. That's a
6 hard task. So they have to go through that
7 first before they can come to apply for a
8 public hearing. And should they ever go
9 down that road I believe that we'll have
10 litigation all over the place. I do know
11 that it's something that Palmer Trinity has
12 been avoiding. They have specifically told
13 me that they have avoided it. So they are
14 not looking to do that.

15 MR. TENDRICH: The way that you
16 discussed the 30 years, you're an attorney
17 and they obviously have their attorneys, but
18 you are saying even if the 30-year
19 limitation that we put on them which I
20 thought was a little strict, but it doesn't
21 really mean anything because they can always
22 come to the council again?

23 MS. BOUTSIS: They are still given the
24 opportunity to come back to a public hearing
25 for a modification.

1 MR. TENDRICH: Any time?

2 MS. BOUTSIS: Yes. The thing that it
3 does preclude is intensity. It precludes --
4 unless they abandon it and they go for
5 another hearing on a completely new plan,
6 which they can do, and then it can be much
7 more intense and go to a public hearing, but
8 without eliminating the plan they cannot
9 become more intense.

10 MR. PARISER: Just so everybody
11 understands, the definition of more intense?

12 MS. BOUTSIS: More building, more uses.

13 MR. PARISER: What about students?

14 MS. BOUTSIS: That includes students.

15 MR. PARISER: There is a 30-year
16 prohibition on the number of students that
17 they put there.

18 MS. BOUTSIS: Unless they abandon the
19 plan.

20 MR. WILLIAMS: That was in closing
21 arguments.

22 MS. BOUTSIS: Yes.

23 MS. STANCZYK: And then you are stuck
24 with the charter.

25 MS. BOUTSIS: That's true you are stuck

1 with the charter?

2 MR. PARISER: I don't want to give up
3 the 78 conditions.

4 MS. BOUTSIS: They didn't raise the
5 charter in the appeal.

6 MS. LINDSEY: It wasn't in their brief.

7 MR. FIORE: For the tax payers what's
8 the worse case scenario for the Village?
9 The case for the tax payers, what's the
10 worse case scenario? I'll tell you, the tax
11 payers and the Village have a lot of money
12 to pay and Palmer Trinity wins their thing
13 anyway and puts whatever the judge says. If
14 that's the odds we want to play -- again, I
15 appeal to my colleagues, I would like to do
16 what's in the best interest of the tax
17 payers of this Village. However, I agree
18 with the Vice Mayor, I wouldn't want to give
19 up the 78 conditions, I agree to that, and
20 the other issue was, Mr. Pariser, about the
21 monetary damages we wouldn't know for a
22 couple of weeks.

23 MR. PARISER: I was just in a mediation
24 today, they claim not only the client but
25 the attorneys owed their client millions and

1 millions of dollars ---

2 MR. FIORE: They can claim whatever
3 they want. When would we get that
4 information?

5 MS. BOUTSIS: First week of January.
6 The only thing that I can also recommend is
7 instead of making a decision now, you can
8 stew on it, look at the transcript, look at
9 the history to get a better feel of the
10 order and I ask them for an extension
11 through the 12th of January or the 15th of
12 January so you have the holidays to think
13 about it and by then I should have the
14 discovery in.

15 MR. WILLIAMS: What happens if the
16 Court rules in the interim?

17 MR. PARISER: They owed it to us and we
18 have asked, you are overdue on it and give
19 it to us. I personally would like to see
20 what they are claiming for damages. What I
21 want to see if they are claiming some theory
22 that's so farfetched that no other case has
23 ever been on it. Good luck.

24 MS. BOUTSIS: That's a good basis for
25 me to say, look, my council needs this

1 information to make a decision, give us an
2 extension.

3 MR. FIORE: I want to say one more
4 thing for the record. I have never spoken
5 with anybody from Palmer Trinity, ever. I
6 only moved here three and-a-half years ago.
7 I don't have any relationship with anybody
8 that runs that school. I think their
9 community outreach was not the best from
10 what I know and I would put that on the
11 record.

12 MR. TENDRICH: It makes sense, how can
13 you vote on something when it's not complete
14 since we don't know -- they might say the
15 damages are \$10,000 which that would be
16 great but they won't. We can't really vote
17 on something unless we know ---

18 MS. BOUTSIS: What our exposure is.
19 Do we have a consensus on that, to
20 request at least an extension.

21 MR. WILLIAMS: You okay with that?

22 MR. PARISER: I think, so. The other
23 thing is, Pat is talking about healing the
24 community and what have you, I don't know
25 what Palmer Trinity is thinking, but if the

1 Court says 30 years is no good, modify it or
2 give the 1,150, if they are such uprights
3 people who don't want to cause the Village
4 any harm, they still want to pursue a damage
5 claim, hopefully not, they will have gotten
6 what they wanted and we still get our 78
7 conditions.

8 MR. WILLIAMS: Supposedly this case
9 will go away.

10 MS. BOUTSIS: He is talking about if
11 the court system rules.

12 MR. PARISER: Court systems rules and
13 they get everything that they want.

14 MS. BOUTSIS: They want to get good
15 neighbors they get rid of their lawsuits.

16 MS. LINDSAY: I believe this is
17 originally a 25 year plan; is that right?

18 MS. BOUTSIS: Yes.

19 MS. LINDSAY: Why then have they said
20 that they only want it to be for five years?

21 MS. BOUTSIS: I can't tell you. I
22 mean, the only example that they have given
23 me, they gave during the hearing is, well,
24 what if we want to cover the pool or we have
25 some -- what if we have some requirements

1 that we need to do and we want to do those,
2 we would be precluded from doing so. And
3 they make that argument on appeal.

4 MR. PARISER: The five years also, I
5 think that I asked you this question was
6 theoretically they want to be able to in
7 five years to come back for more students.

8 MS. BOUTSIS: That's not what they have
9 admitted she asked me what did they say.

10 MR. PARISER: That may be a horse
11 trading argument ---

12 MR. WILLIAMS: Five years is on the
13 zoning.

14 MR. PARISER: Five years is on the
15 physical plan.

16 MR. WILLIAMS: So they are saying.

17 MS. BOUTSIS: Technically the number of
18 students is part of the zoning application
19 so they can do a modification of the 15 year
20 schedule and number of students, even though
21 they are saying they are stuck with 15 years
22 and there could be a loophole. We don't
23 have good language.

24 MR. WILLIAMS: You all have good
25 language.

1 MR. TENDRICH: I think you said they
2 threw out the pilot, I think that would be
3 so ---

4 MS. BOUTSIS: A pilot is a payment in
5 lieu of taxes. And in the original hearing
6 in 2008 I got them to the table to offer a
7 title. It was the only private school in
8 Dade County that was willing to offer money.
9 That was the first hearing. And it would
10 have been the equivalent of -- I want to say
11 around 30,000 a year.

12 MR. WILLIAMS: I remember we tied it to
13 this tax base form.

14 MS. BOUTSIS: It was about 30,000.

15 MR. WILLIAMS: A little more than that,
16 somewhere in the thirties.

17 MS. BOUTSIS: Maybe 34, I don't
18 remember the exact number, and they got
19 angry and withdrew it.

20 MR. TENDRICH: I guess you take the
21 total tax value of your property and you
22 take the Palmetto Bay portion and then pay
23 that to Palmetto Bay. And to me that's good
24 faith, because they are using our roads,
25 they are using our police.

1 MS. LINDSEY: Our fire.

2 MR. TENDRICH: And I feel to me, good
3 neighbors would say, you know -- I don't
4 know, I just think ---

5 MS. BOUTSIS: We can think of making a
6 counter-offer including a pilot again.

7 MS. STANCZYK: Was the term of the
8 pilot the 30 years?

9 MR. WILLIAMS: I don't know that we had
10 30 years on the table at that time but it
11 was some term, I don't remember.

12 MS. STANCZYK: I remember something
13 about the 30 years as if it was a mortgage.

14 MS. BOUTSIS: It was a long time. I
15 don't remember how long it was.

16 MR. TENDRICH: I think it's an annual
17 thing for however long the school -- I mean
18 you pay taxes on your house for as long as
19 you live in it or on it.

20 MR. WILLIAMS: I think it was more.

21 MS. BOUTSIS: It was a huge concession
22 at the time. It was the only private school
23 that was going to be doing this.

24 MR. TENDRICH: You think maybe we can
25 get Westminster to do it? I am just trying

1 to increase our revenue.

2 MS. LINDSEY: I just want to point out
3 the fact that there have been traffic
4 problems there for many, many, many years,
5 and one week before the last hearing they
6 did hire a Palmetto Bay police person and
7 the day after the hearing she was fired. So
8 we haven't had a lot of good faith from them
9 to genuinely want to work on some of the
10 problems that they are causing in the
11 neighborhood and it's really unfortunate
12 because they know what they are and they
13 know how they can take care of some of these
14 things and they don't.

15 MS. BOUTSIS: I didn't hear about the
16 firing, but I did know ---

17 MS. LINDSEY: The Mayor told me the day
18 after the hearing she was gone.

19 MS. BOUTSIS: I know it made traffic
20 worse that day. Traffic was worse because
21 the police officer was there.

22 MS. STANCZYK: No one says their
23 community outreach was the best.

24 MS. BOUTSIS: The one thing that I will
25 tell you is that Ms. McDowell and Stan

1 Price, I respect them, we work in the same
2 field, I deal with them on a regular basis,
3 but their community presentation can often
4 --- it's horrible. No arguments there. And
5 I don't know that Palmer Trinity handled
6 this in the right way in anyway, shape or
7 form as far as the community outreach.

8 I think that I have a consensus, I will
9 ask them for an extension to get the
10 response to the interrogatories as to
11 damages and we'll try and schedule a new
12 meeting after that.

13 MR. PARISER: The only thing is that
14 just so everybody knows, the Court can give
15 an opinion tomorrow.

16 MS. BOUTSIS: Or any time between now
17 and then. Okay. Thank you everyone.

18
19
20 (Whereupon, the Attorney/Client
21 Session was concluded at 8:45 p.m.

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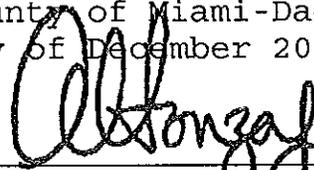
CERTIFICATE OF REPORTER

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 60
inclusive, constitute a true and correct
transcription of my shorthand report of the
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 23rd day of December 2010.



Adriadna Gonzalez
Court Reporter
Commission # EE041583
Expires Nov. 29, 2014