

IN THE CIRCUIT OF THE ELEVENTHS JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY FLORIDA

CASE No.. EFS01020881001-001
CIVIL DIVISION

SESSION T VILLAGE OF PALMETTO BAY,
_____ /

MEETING AT VILLAGE OF PALMETTO BAY,
VILLAGE HALL
9705 S.E. HIBISCUS STREET,
FIRST FLOOR,
PALMETTO BAY, FLORIDA
7:00 - 7:30 p.m.

March 1, 2011

proceedings taken before:
Rosie uribe
Notary public, State of Florida

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APPEARANCES

SPEAKERS:

- MS. EVE BOUTSIS
- MS. JOAN LINSAY
- MR. HOWARD TENDRICH
- VICE MGR. BRIAN W. PARISER
- MAJOR SHELLEY STANCZYK
- MR. PATRICK FIORE
- MGR. RON G. WILLIAMS

E X H I B I T S

(None)

1 ATTY BOUTSIS: It's 7 o'clock. Good
2 evening everyone. As the village attorney I've
3 requested the mayor and village counsel meet in
4 the defense of certain legal actions. I'm
5 going to read the case styles. It's Palmer
6 Trinity Private Schools versus The Village of
7 Palmetto Bay. Circuit Court case number --
8 actually, I'm going to concentrate on the
9 appeal right now and this will be the Appealic
10 Court case number 10259 AP. We can go into the
11 other cases should we need to, but I'd like to
12 concentrate on the appeal.

13 The meeting is to be held now at 7 o'clock
14 on Tuesday, March 1st, 2011. Present and I
15 will have everybody introduce themselves for
16 the record for the court reporter. The Village
17 counsel and the Village manager and myself. We
18 are here at 9705 East Hibiscus Street in
19 Palmetto Bay. A certified court reporter shall
20 record the time and termination of this
21 session. All discussions and proceedings that
22 occur. The names of all persons present and at
23 any time during this session and the names of
24 all persons speaking. The transcript shall be

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1 made apart of the public records on conclusion
2 of the litigation. Additionally, just to
3 refresh your memory try to keep the speaking to
4 one person at a time because the court reporter
5 can't take two people down talking at the same
6 time and don't do what I just did um. It
7 doesn't work and the court reporter can't take
8 it down so you can't tell the record if it's
9 uh-uh, uh-huh, you get the idea. Yes, no,
10 maybe so. Okay.

11 Having said that the reason we are here
12 today -- well, actually let's do the
13 introductions. I am Eve Boutsis, I am the
14 Village attorney.

15 MS. LINDSAY: Councilwoman, Joan Lindsay.

16 MR. TENDRICH: Howard Tendrich.

17 MR. PARISER: Brian Pariser.

18 MR. FIORE: Patrick Fiore.

19 MR. WILLIAMS: Ron Williams.

20 MS. STANCZYK: Shelley Stanczyk.

21 ATTY BOUTSIS: Thank you, everyone. The
22 reason we are here as you know there was a
23 decision by the 11th Circuit. It was filed on
24 the 9th of February and issued on February
25 11th. It was an appeal from the decision of

1 the people of Palmetto Bay dating back to May
2 4th of 2010. The appeal was by Palmer Trinity
3 Private School as to the zoning hearing
4 resolution on the site plan approval. To be
5 clear, there were only two items appealed by
6 Palmer Trinity the rest of the zoning
7 resolution was not appealed. The two items
8 related to two items. The first -- obviously,
9 the first item was relating to a condition
10 imposed by staff of a 30-year condition that
11 they could not come back for a public hearing
12 request for the site. And the second condition
13 was that the student population they had
14 requested over 1150 students and the counsel
15 had reduced that amount to 900 and that was the
16 second item appealed.

17 The Court, I believe, I sent everybody a
18 copy of that decision of the Court ruled in
19 favor of Palmer Trinity on both items. I have
20 previously and I'm going to give this to the
21 court reporter for the record, on February 22nd
22 provided some information to the counsel
23 relating to appeal procedures and some
24 recommendations. The time period for a
25 rehearing has now passed. It was last week and

1 we really do not meet the criteria for a
2 rehearing. There -- we are within a time
3 window to file an appeal. March 13th is the
4 actual 30 days that's a Sunday so it will be
5 March 14th, Monday for an appeal. As you know,
6 there are two standards for an appeal to the
7 Third District Court of Appeals that is where
8 the procedure with due process was provided and
9 whether the essential requirements of the law
10 have been observed. There was really no
11 procedural argument made or ruled upon by the
12 Court so that problem will go away so the real
13 issue was whether the essential requirements of
14 the law have been observed.

15 As it relates to the 900 number the Court
16 evaluated based upon the competence substantial
17 evidence which is not appealable so that part
18 is not an appealable process unless we
19 determine that the Court did not follow the
20 essential requirements of law and reviewing
21 that and that's going to be very hard to do.
22 The other item which is the 30-year provision
23 basically the Court said, you know, we took our
24 discretion too far. That yes a council can
25 create conditions during his own adhering item

1 for the health, safety and welfare of the
2 community, but to do so for 30 years when we
3 don't know what will happen in 30 years is
4 excessive. So therefore, it could be a taking
5 of a property right and did not adhere to the
6 essential requirements of law. It's our
7 recommendation that -- before I go there. The
8 Court then has remanded this matter to the
9 council for a public hearing unless it is
10 appealed. It is our recommendation that the
11 matter go to a hearing before the council and
12 to not appeal based upon the items I've just
13 discussed.

14 So today we are here to talk about whether
15 -- since we are in a time period for an appeal
16 whether we should appeal. I've given you my
17 recommendation and as well to then, I guess, we
18 are going to have to coordinate if you do agree
19 for the rehearing. And again, it would be
20 based upon -- we would have to get the
21 advertisements out. We would have to have a
22 zoning director in place so that would probably
23 be about a 90-day window from now minimum. And
24 we have to competent substantial evidence on
25 the record to support the decision of the

1 council.

2 Are there any questions?

3 MS. LINDSAY: Eve, are we allowed to vote
4 on anything here tonight?

5 ATTY BOUTSIS: Not voting, just giving
6 direction.

7 MS. LINDSAY: Okay.

8 ATTY BOUTSIS: Any vote that we -- you
9 give direction, for example, to go for a
10 hearing and then we can go to the dais at a
11 public meeting and announce a schedule for a
12 hearing. If there was a settlement, the same
13 thing would be true you can talk about
14 settlement, give direction on a settlement, but
15 you actually would have to vote on a settlement
16 at a public meeting. That having been said I
17 just want to give you two other updates. I
18 sent everybody a copy of an e-mail I received
19 from Mr. Price today indicating that the
20 school, Palmer Trinity Private School, is still
21 interested in trying to resolve all the cases
22 and in settlement. I contacted Mr. Price and
23 the reason I did so was because I know that --
24 although he is handling the appeal there is
25 another the 2010 original action and briefly a

1 2008 action that I wanted to make sure Mr.
2 Price had the authority to represent all the
3 cases could be settled. He said, he believes
4 he does, but he was going to confirm and I will
5 get back to you when I get that confirmation.
6 I did want to advise that the other attorney
7 who is Mr. Cleary he is on a contingency fee
8 basis. Yes, sir?

9 MR. TENDRICH: Do we need to appear --
10 you're talking about a public hearing like we
11 had --

12 ATTY BOUTSIS: Just like in May 2004, but
13 you would have -- because we will be having a
14 new zoning director --

15 MR. WILLIAMS: May 4th, 2010.

16 ATTY BOUTSIS: What did I say? May 4th,
17 2010 which means that there will be the 30-day
18 advertisement. There will be the notice cards
19 sent out with, I think, a 2,500 square-foot
20 radius. And whoever is hired as your new
21 zoning director would have to do, you know,
22 either a new report or a modification of a new
23 report because obviously the zoning director is
24 subject to cross examination and he will be
25 presenting the case at that point.

1 MR. PARISER: I'm a little confused about
2 what exactly is going to be heard on remand.

3 ATTY BOUTSIS: Technically, the entire
4 application is going to be heard, okay.

5 MR. PARISER: A new?

6 ATTY BOUTSIS: A new.

7 MR. PARISER: Not just these two
8 conditions?

9 ATTY BOUTSIS: Not just these two
10 conditions. It's the entire application. That
11 being said, Palmer Trinity, excepted all the
12 other conditions and did not appeal those so
13 they can be bound by those prior conditions.

14 MR. PARISER: I have a question, but is
15 that they can be bound, but that's because
16 their application was for a 1,150. In other
17 words --

18 ATTY BOUTSIS: They can be bound to the
19 100 conditions that were placed in the --

20 MR. WILLIAMS: The 80.

21 ATTY BOUTSIS: I think, when we broke it
22 down it was like 100 and some parts.

23 MR. PARISER: So the conditions that they
24 did not appeal doesn't matter whether they come
25 back for a hearing if the Village says 600

1 students or 12,000 students or 1,150 or 900
2 they are bound by those 78 conditions?

3 ATTY BOUTSIS: They are currently bound to
4 those conditions. Now, if we change any of
5 those -- for example, your new zoning director
6 may change some of those conditions. I'm
7 assuming one of the conditions will be removed
8 will be the 30-year provision, for example.
9 But your new zoning director may come up with
10 additional conditions or slightly different
11 conditions. So then we would have a new --
12 they will have a second bite at the apple in
13 challenging any of those new conditions.

14 MR. PARISER: Only the new conditions.
15 You're saying they foreclose from challenging
16 maybe the 78?

17 ATTY BOUTSIS: If it's up 1,150 yes, they
18 will be foreclosed. If there is competent
19 substantial in the record otherwise as to a
20 different number or two other conditions that
21 is all new.

22 MR. PARISER: Okay. So if somebody comes
23 forward with competent substantial evidence
24 that either 1,400 or 900 should be the number,
25 then all those conditions are out the window

1 unless they agree?

2 ATTY BOUTSIS: If it's a higher number
3 than 1,150, it's irrelevant because that is not
4 their application. You can't go higher than
5 their application. But as to a lower number if
6 it is competent substantial evidence and if the
7 applicant has met its burden as the Court
8 stated in their opinion is that there's
9 competent substantial evidence to support a
10 contrary number and that it's for basically the
11 health, safety and welfare of the community.

12 MR. PARISER: Right.

13 MS. STANCZYK: But they don't get a
14 choice; isn't that correct?

15 ATTY BOUTSIS: What do you mean? Who?

16 MS. STANCZYK: In other words, if we were
17 to present a number different than the 1,150
18 with competent substantial evidence a Court
19 can't pick and choose @11:38 of Court?

20 ATTY BOUTSIS: No. As long as the record
21 supports it no, the Court cannot do that.
22 That's @11:44 the evidence.

23 MR. PARISER: Right. That's another
24 issue. What I'm trying to figure out if they
25 come forward again and then there's competent

1 substantial evidence in the council's opinion
2 for 900, are they stuck with 78 conditions as
3 originally stated.

4 MR. WILLIAMS: Or are they reopened?

5 MR. PARISER: Do they reopen the case
6 because they -- they said we agreed to these
7 conditions because there was 1,150 students we
8 were asking in our application, but because
9 that's changed we are not going to agree with
10 the 78 --

11 MS. STANCZYK: Well, they also could have
12 appealed that @12:20. And they never did.

13 MR. PARISER: I understand that, but
14 that's not, you know.

15 MS. LINDSAY: I understand what you're
16 saying.

17 MR. PARISER: My point is, is that if it
18 comes back and you want to change their
19 applications for 150 if one of the reason the
20 council says 1,149. Can they say oh, okay
21 well, you know what we are not agreeing to the
22 other 78 conditions because we based this on
23 1,150.

24 ATTY BOUTSIS: Chances are in the public
25 -- because it is a public hearing they can

1 rescind their agreement. They can rescind
2 their agreement. Does anyone have any -- are
3 we clear in the direction, are we in agreement
4 as to the direction to go to a rehearing?

5 MR. PARISER: I mean, I think, we can go
6 to a rehearing. Basically, if there are two
7 issues one of them they said it wasn't any
8 basis in law for the 30-year -- can't come back
9 for that 30-year --

10 ATTY BOUTSIS: For that extensive period.

11 MR. PARISER: For that extensive period,
12 you know. And the other one was that you're
13 saying there wasn't competent substantial
14 @13:39 point. You can't even go to a higher
15 Court on that.

16 ATTY BOUTSIS: You can not. The only
17 thing I would recommend and this is, I think,
18 within the scope of this AC session should the
19 council at the public hearing make a decision
20 which make it clear on the record that it is
21 based upon the record that you heard that night
22 or, if not, reopen the public hearing to get
23 comments on those items.

24 MR. PARISER: I'm sorry. Not to or --

25 ATTY BOUTSIS: To reopen.

1 MS. STANCZYK: That was the one flaw that
2 we had.

3 MR. PARISER: I'm sorry. So what they
4 only be limited to the two items every year?

5 ATTY BOUTSIS: No, no, no, no. That's not
6 what I'm saying. For example, let's say
7 there's -- that we get rid of the condition on
8 the 30-year because, I think, the Court gave us
9 clear direction on that.

10 MR. PARISER: Right.

11 ATTY BOUTSIS: And your new zoning
12 director puts in a different condition whatever
13 that condition is.

14 MR. PARISER: Okay.

15 ATTY BOUTSIS: And no -- make it even
16 simpler. There is no other condition. This
17 council decides to make a new condition
18 whatever that condition is. You need to tell
19 on the record, what you heard in the evidence
20 to support that and perhaps if it's something
21 new, open the hearing again to get any
22 testimony from the applicant or anybody else on
23 that issue and reclose the public hearing.

24 MR. PARISER: Right. One of the things
25 procedurally that was not done properly at

1 least seems to be the 900. It was done after
2 the public hearing testimony was closed so if
3 somebody is thinking about adding a
4 condition -- whoever is thinking about doing
5 that the council person has to make sure they
6 question or cross examine you with their
7 experts or our experts. You have a basis --

8 ATTY BOUTSIS: Right. Or if it happens
9 during deliberation you reopen the public
10 hearing.

11 MR. PARISER: Saying somebody says
12 something, but I'm not sure if it will be open
13 to ask Mr. so and so the traffic guy to --

14 ATTY BOUTSIS: Yes. Yes.

15 MR. PARISER: I think, my opinion is we
16 don't appeal.

17 ATTY BOUTSIS: Okay. On a similar note do
18 you want -- once I find out from Mr. Price that
19 he has authority, do you want me to try and
20 work on any kind of settlement to get rid of
21 these cases or do you want me to just leave it
22 as it is for now?

23 MR. PARISER: I always think you should
24 talk to the side in my position to see what
25 they have to say. I'm a little concerned that

1 Price doesn't control anything anymore and I'd
2 hate to see a peace -- final solution on this
3 thing or settlement can't settle because
4 @16:24, but, you know, I think, you were right
5 in asking him where it stands, is this
6 everything or you just @16:31. Everybody has
7 to settle.

8 ATTY BOUTSIS: Okay. I will do so and I
9 will report back to you.

10 MS. STANCZYK: Is that the consensus of
11 everyone else? I haven't heard from anyone
12 else?

13 MR. TENDRICH: I definitely agree that a
14 hearing outside -- it would be great if you
15 could get to them and negotiate and we don't
16 have to have a hearing or we still talking
17 about that?

18 ATTY BOUTSIS: You always have to have a
19 hearing.

20 MR. TENDRICH: But at least that way --

21 MR. PARISER: I prefer not have anymore
22 appeal hearings.

23 ATTY BOUTSIS: Okay. Three of you would
24 like to say anything? I guess, I just would
25 like a word of the director that you're agreed

1 with the direction or silence means --

2 MS. STANCZYK: I'm ready to go to a
3 rehearing.

4 MS. LINDSAY: I'm ready to go to a
5 rehearing.

6 ATTY BOUTSIS: Sir?

7 MR. FIORE: Well, I'm not ready to go to a
8 rehearing, but if the Court is remanding it
9 back to us then that's what we have to do. I
10 agree with the vice and mayor that, I think, we
11 should settle all of this stuff before we go to
12 a rehearing, if possible.

13 ATTY BOUTSIS: Just so we are clear even
14 if we try to settle, we still have to go to a
15 rehearing because we can't contract zone, but
16 if we can get -- it would be a good idea to try
17 to get everything resolved, if possible.

18 MR. FIORE: That's correct.

19 ATTY BOUTSIS: Fair enough. Are there any
20 other questions or comments that you would like
21 to make before adjourning the attorney/client
22 session?

23 MR. WILLIAMS: Are you going meet with
24 Stanley?

25 ATTY BOUTSIS: Yes, I am. Mr. Price I am

1 going to meet with him and I'm also going to
2 ask too that Mr. Cleary be present so that I
3 can make sure that there's a consensus on the
4 litigation.

5 MR. WILLIAMS: Let me know.

6 ATTY BOUTSIS: Absolutely. All right.
7 Well, thank you everyone. I appreciate this.
8 It is now 7:20. We are adjourned. Thank you.

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1 REPORTER'S CERTIFICATE

2
3 STATE OF FLORIDA:

4 COUNTY OF MIAMI-DADE:
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6
7 I, ROSIE URIBE, Court Reporter and Notary Public
8 in and for the State of Florida t Large, do hereby
9 certify that I was authorized to and did report the
10 meeting proceedings in the above style cause; that the
11 foregoing pages constitute a true and complete recod of
12 my notes.

13 I further certify that I am not a relative,
14 employee, attorney of counsel of any of the parties,
15 nor related to any of the parties, nor financially
16 interested in the action.
17

18 Dated this 3rd day of October, 2012.
19
20

21 _____
Rosie uribe

22 Court Reporter
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