

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

APPELLATE COURT CASE NO:  
10-259-AP  
2010-48 and 2011-53

**ORIGINAL**

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9705 Hibiscus Street  
Palmetto Bay, Florida,  
Thursday, 7:00 p.m.,  
September 1, 2011.

APPEARANCES:

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

Also Present: Rauol G. Canter, Esq., and  
Evan Goldenberg, Esq.  
White & Case, LLP.

1 MS. BOUTSIS: Thank you all for being  
2 here. As you know, I have requested an  
3 attorney/client session in the matter called  
4 Palmer Trinity Public School versus the  
5 Village of Palmetto Bay. Court case number  
6 10-25918, under the lower tribunal  
7 resolution numbers 2010-48 and 2011-53.

8 I am seeking advice from counsel  
9 regarding litigation strategy and/or  
10 settlement.

11 It is now 7:34 on Thursday, September  
12 1st of 2011. A transcript will be  
13 maintained of the proceedings here today.  
14 We have quite a few people, so let's try and  
15 keep it one person talking at a time so the  
16 court reporter can get everyone down. And  
17 the transcript will be made available at the  
18 end of the litigation.

19 Let's have everybody go around and  
20 state their names for the record and so the  
21 court reporter can figure out who is who. I  
22 will start.

23 MS. BOUTSIS: Eve Boutsis, Village  
24 Attorney.

25 MS. LINDSAY: Joan Lindsay,

1 Councilwoman.

2 MR. PARISER: Brian Pariser, Vice  
3 Mayor.

4 MR. CANTERO: Raoul Cantero, Counsel  
5 for the Village.

6 MR. GOLDENBERG: Evan Goldenberg, White  
7 and Case, Counsel for the Village.

8 MR. WILLIAMS: Ron Williams, Village  
9 Manager.

10 MR. TENDRICH: Howard Tendrich, Council  
11 District Two.

12 MR. STANCZYK: Shelley Stanczyk, Mayor.

13 MR. FIORE: Patrick Fiore, Councilman,  
14 District One.

15 MS. BOUTSIS: I thank you all for being  
16 here. As you know, we have received last  
17 Friday and I forwarded it to everyone, the  
18 Motion to Enforce the Mandate or the  
19 alternative, the Motion for Extraordinary  
20 Relief which is their Certiorari Petition.

21 I have invited Mr. Cantero, and his  
22 partner is with him, to talk about the  
23 appeal and I was hoping to obtain their  
24 representation in this appeal as to the  
25 matters presented tonight. And I will ask

1 Mr. Cantero to start, if you would like.

2 MR. CANTERO: I can start and we'll  
3 share time.

4 I have spoken to Eve about the appeal.  
5 I have read the Motion to Enforce  
6 Mandate/Petition. There is a huge appendix.  
7 They included the appendix from the prior  
8 petition, so when you add up all the  
9 appendixes, it's just under one thousand  
10 pages, so I haven't read all those thousand  
11 pages yet, but I have enough knowledge of  
12 the issues to kind of wing it, to fake a  
13 little bit about what the issues are.

14 The first thing they do is they file it  
15 as a Motion to Enforce a Mandate. And the  
16 reason they do that is to try and get it in  
17 front of the same panel it had in the prior  
18 appeal. That would be bad for us if it got  
19 in front of the same panel, so we'll try to  
20 characterize it as a completely separate  
21 petition.

22 It is from a new order of the Council,  
23 it is after a new hearing, so our argument  
24 would be that it's inappropriate to  
25 pretermite a Motion to Enforce the Mandate,

1           it's more properly denied the petition, or  
2           second petition for Re-Certiorari.

3           So I think our first goal would be to  
4           try to nudge it in front of a different  
5           panel without seeming to blatant that we  
6           want that, because presumably the first  
7           panel would be just as objective, but as a  
8           practical matter they will be a little more  
9           sensitive to what they perceive as a  
10          violation of the prior order. Whereas  
11          maybe a new panel would have more objective.

12          On the merits there are several issues  
13          that they raise. The issue on which we are  
14          probably the strongest. Not to say that  
15          it's strong, but it's the strongest of our  
16          positions, is actually on the merits and  
17          whether the council had the authority to  
18          deny the application outright or whether it  
19          simply had to strike out the condition of  
20          nine hundred students and approve the  
21          condition of 1,150 students.

22          On that issue I think the law is strong  
23          for us in that the cases prohibit a  
24          reviewing court from dictating to the  
25          municipality what to do on remand. They can

1           only decide whether what they actually did  
2           was legal or not, was appropriate or not,  
3           and if not appropriate remand it to the  
4           municipality for further consideration.

5           So our argument on that issue would be  
6           that the prior panel of the Circuit Court  
7           could not have directed you to merely strike  
8           out the condition of limitation to nine  
9           hundred and approve the application at  
10          1,150, because the law would not have  
11          allowed them to do that so they could not  
12          have meant that.

13          That kind of argument I feel is what  
14          would be more appealing to a new panel than  
15          to the old panel that may be more protective  
16          and say, no, we already told you to do this  
17          you should have done it. So on that issue I  
18          am not saying that I feel totally  
19          comfortable but I think that we have good  
20          arguments.

21          The next issue is the recusal of  
22          certain council members.

23          I haven't delved into the file deep  
24          enough to opine on what our chances are, and  
25          ultimately no matter how deep I delve into

1           it, it's very subjective to tell you that  
2           you have X percent chance or Y percent  
3           chance, it's really taking numbers out of  
4           the air. But I will tell you the problems  
5           with our position.

6           Even though the rules of judicial  
7           administration don't apply to you because  
8           you are not judges, judges understand  
9           recusal in terms of the rules of judicial  
10          administration, which are the rules that  
11          bind them when they are asked to recuse  
12          themselves. And under those rules it is  
13          very liberal toward recusal.

14          Under the rules of judicial  
15          administration if the motion is facially  
16          valid and presents to an objective viewer  
17          that the movement has a feeling that the  
18          judge is bias against that party, then  
19          regardless of the truth behind those  
20          feelings, and whether they are justified or  
21          not, the judge must recuse himself.

22          And so even though those rules don't  
23          apply to you, in the back of a judge's mind  
24          those are the rules that they kind of are  
25          comfortable with and that they are going to

1 apply indirectly if not directly. And so if  
2 they apply those rules then it's going to be  
3 very hard to affirm those decisions.

4 So the recusal issue is going to be one  
5 in which we are going to have some troubles.

6 The next issue is the ex parte  
7 communications. As to that, from what I  
8 have seen so far, we certainly have  
9 arguments. We presented them with  
10 everything. They did not request a  
11 continuance of the hearing so that they  
12 could review what they say is the 3,000  
13 e-mails.

14 MS. BOUTSIS: To be fair, this is  
15 information that you don't have in front of  
16 you. They had the information over ten days  
17 before. They indicate otherwise in their  
18 pleading, but they had the information ten  
19 days before and they knew that they were  
20 coming in. The facts are a little bit  
21 different from what they were saying.

22 MR. CANTERO: That's another argument  
23 that we are going to have to make and  
24 respond to and they are going to try to --  
25 their entire position is trying to paint the

1 proceedings as if they were doomed from the  
2 start and they didn't get due process.

3 The last issue I think is the issue  
4 that's the most troublesome, and that is the  
5 remaining conditions on the project. And  
6 they have a good point when they say, well,  
7 if you denied the application, then the  
8 condition that require traffic improvements  
9 and noise mitigation and things like that,  
10 don't belong there because all those  
11 mitigation measures assume an increase in  
12 the student body from six hundred to at  
13 least nine hundred and perhaps to 1,150.

14 So that's, I think, certainly their  
15 strongest argument and we may want to  
16 pretermite that argument by asking the Court  
17 to relinquish jurisdiction so that we can  
18 remove those conditions which don't apply if  
19 the application is denied.

20 Evan, I don't know if you have anything  
21 to add to what I have said.

22 MR. GOLDENBERG: I think on the first  
23 point, the issue of whether we end up with  
24 the same three-judge panel that had been  
25 deciding the previous Cert Petition and the

1 previous Motion to Enforce Mandate and  
2 previous Motion for Clarification, having  
3 read through those and the posture of that,  
4 I would say the chances of success if we end  
5 up with those same three judges is  
6 minuscule, it's very small. I don't want to  
7 put a number on it.

8 But it's pretty clear that what  
9 happened at this last hearing was not what  
10 those judges had envisioned when they  
11 granted the previous Motion to Enforce  
12 Mandate and the Clarification Order.

13 That said, I don't think that it's a  
14 given at all that we end up with those same  
15 three judges.

16 About five years ago I had a case where  
17 I was representing a developer for the City  
18 of Miami and my client was in a very similar  
19 position to what the school is in this case  
20 in that we had had a hearing, we won a cert  
21 petition, we got remanded, we moved to  
22 enforce the mandate, the court gave  
23 clarification telling the city what they  
24 were and weren't supposed to do. The city  
25 went ahead and did a hearing again, and

1           again turned out adverse to my client and we  
2           then filed in the second circuit a Motion to  
3           Enforce Mandate or in the alternative a  
4           petition for Certiorari the second time  
5           around. We had a very receptive set of  
6           judges that had ruled in our favor the first  
7           time and ruled in our favor on the  
8           Clarification and Motion to Enforce the  
9           Mandate, but when we filed that second  
10          motion as the Motion to Enforce Mandate or  
11          in the alternative petition for Certiorari,  
12          the court treated it as a new petition for  
13          Certiorari.

14                 And under the procedures for the  
15                 Appellate Division of the Circuit Court in  
16                 Dade County, that gets randomly blind  
17                 assigned to a new panel of judges if it's  
18                 viewed as a new petition for Certiorari.

19                 So one of the most important things is,  
20                 at least as a threshold issue, doing what we  
21                 can do or at the very least crossing our  
22                 fingers and praying hard that it gets  
23                 treated as a new petition for Certiorari and  
24                 gets reassigned to three different judges  
25                 that might not have the same mindset as the

1 three that handled this the last time. And  
2 that as Raoul said, probably wouldn't be as  
3 protective as to what they had done  
4 previously.

5 Because a part of our argument is  
6 essentially telling the Court that they  
7 overstepped their bounds to the extent that  
8 they tried to tell you what to do and how to  
9 rule. They overstepped their bound, that  
10 the law is pretty clear that they are not  
11 allowed to do that. That's a tough argument  
12 to make to the people that did that. It's  
13 easier to make it possibly to a different  
14 group of three judges. So I think that as  
15 an initial matter is very, very important  
16 piece.

17 I think some of the other things, it's  
18 not so much that each of the individual  
19 arguments that the school is making are that  
20 strong, but they have done a pretty good job  
21 of stringing them together in a way that  
22 does give the appearance that something  
23 wrong happened, that this didn't -- they  
24 were kind of railroaded and that this was a  
25 predetermined outcome from the beginning and

1 all of that. It creates that appearance. I  
2 am not saying that that's what happened, but  
3 they have done a nice job of piecing  
4 together things that make it seem like this  
5 wasn't fair.

6 And so each of those arguments while  
7 not all that strong independently and  
8 legally, I think together combine, make  
9 their motions/petition more compelling than  
10 any of those individual arguments are  
11 individually.

12 Not to say that they are bad arguments,  
13 but none of them are super strong legal  
14 arguments in my opinion, but they all have  
15 enough juice to them that it does create  
16 some sense of equity on the school side, I  
17 think, certainly to the last three judges  
18 that already found that there was equity on  
19 the school side.

20 And even for a new set of three judges,  
21 they are probably going to look at it, and  
22 at least as currently postured, are probably  
23 likely to think, yes, this seems like the  
24 school kind of got the short end of things  
25 here. That's something that can be

1           difficult to overcome with technical legal  
2           arguments.

3                   Not that you can't win on technical  
4           legal arguments, but it makes it a little  
5           harder each time if the judge or judges  
6           think that what happened is not fair.

7                   MS. BOUTSIS: You may recall that when  
8           Jeff Hochman was here in the other  
9           litigation with Palmer Trinity, that we were  
10          talking about going from federal court to  
11          state court, and the opinion of the federal  
12          Judge and his interpretation of Jennings  
13          without studying Jennings. They cite that  
14          opinion here as if it's law, which is really  
15          dicta, but meaning it's not relevant to what  
16          the Judge ruled, but in short they keep  
17          pounding in this concept that poor Palmer  
18          Trinity.

19                   MR. GOLDENBERG: I think for that they  
20          do a pretty good job of making it look like  
21          this was a very unfair and unjust result,  
22          and so that makes even the arguments that  
23          will be stronger a little bit harder to  
24          make.

25                   MR. CANTERO: One thing I asked Eve

1           when we were talking was whether the council  
2           had any inclination to approach the other  
3           side about settlement.

4           As a lawyer just coming in, I really  
5           feel the responsibility to bring that up  
6           because there are certain moments in  
7           litigation that are propitious towards a  
8           settlement and this is one of them when we  
9           are about to embark on a whole new appeal.

10           I know Eileen Mehta and Stanley Price  
11           professionally. I have no idea whether they  
12           would be inclined to settlement. Perhaps  
13           the parties are so entrenched in their  
14           position now that there is no way, but I  
15           always think it's in my client's best  
16           interest always to try to settle something.  
17           So I wanted to bring that up to see if there  
18           is any inclination on the council to make  
19           that kind of approach.

20           MR. TENDRICH: I feel that negotiations  
21           between the two parties is better than going  
22           to trial. I thought that all along, I don't  
23           know why the attorneys can't get together  
24           and try to come up with a settlement that  
25           would be -- because in the case, in every

1 case, somebody is going to get what they  
2 want, they are not going to get everything  
3 and we are not going to get everything.

4 To me, if the attorneys can get  
5 together and come up with ideas that are  
6 agreeable to them and to us, I think to me  
7 is a no-brainer, if it's possible to happen.

8 But like you say, they might be so  
9 upset, they are saying we are going to go  
10 for the juggler vein.

11 MS. BOUTSIS: The last conversation  
12 that I had about settlement with anyone from  
13 Palmer Trinity was probably six months ago.

14 MR. WILLIAMS: Longer.

15 MS. BOUTSIS: Mr. Price indicated that  
16 let's talk settlement and a meeting was set  
17 up with Mr. Kalbach who is the chair of the  
18 Board of Directors of Palmer Trinity,  
19 Mr. Price did not come to that meeting he  
20 wasn't invited by Kalbach. And Mr. Kalbach  
21 looked and me and said, why are you hear,  
22 what's your offer and Stan said, we gave you  
23 our offer, it's in writing and our offer is  
24 we want A, B, C, D, including the 1,150,  
25 basically taking the Resolution with all of

1 conditions at 1,150. And I think he wanted  
2 money at that time for some fees. I think a  
3 million dollars for fees. Take it or leave  
4 it.

5 MS. STANCZYK: He wanted the limit on  
6 the insurance.

7 MS. LINDSAY: That's when he wanted the  
8 five million.

9 MS. BOUTSIS: It was before the five  
10 million under our policy limits, from Sean  
11 Cleary, their new counsel.

12 I can always talk to them again but  
13 that was their last position. And your last  
14 position to me was let's proceed.

15 So if there is interest I can approach  
16 it.

17 MR. PARISER: I have a question. I  
18 think you have to appreciate the dynamics, I  
19 am not a zoning attorney, there is a damage  
20 case and a zoning case. We have always been  
21 advised and a concern is that there is also  
22 an intervener and a whole bunch of  
23 residents. We don't necessarily do what the  
24 residents want, but there is another party  
25 and any settlement which says if you do

1           this, this, this, this, we'll give you  
2           1,150, that may be construed as contract  
3           zoning and I understand that you can't do  
4           that.

5                   And if you do that, and even if Palmer  
6           and the Village are okay with that, you have  
7           the intervenors that are going to say well,  
8           we are going to sue you, you have contract  
9           zoned, don't do it. So that's a dynamic.

10                   The other dynamic is, even if we were  
11           able to go and give them everything that  
12           they want tomorrow, they are still going to  
13           sue us on the damage case. That's not going  
14           away.

15                   They think that they have been damaged  
16           greatly and they are throwing all sorts of,  
17           in my opinion, new and unmeasured theories  
18           of liability in their case which they keep  
19           amending and amending and amending.

20                   One of the things that I had difficulty  
21           with and I think this appellate panel, the  
22           Circuit Court Appellate panel, and that's  
23           when we pulled you in for clarification was,  
24           I think they understood, as I understood,  
25           they can't tell this tribunal, you have to

1 do this, and so in legales, whatever, you  
2 have to remove this and this and nothing  
3 more. And I think they understood, and we  
4 said, what does that mean. And they said,  
5 we told you, do this and this and this, and  
6 do this and this and nothing more.

7 When we had the hearing, I mean in the  
8 context of the hearing of the transcript,  
9 the intervenor came up and their argument  
10 was well, you should do nothing more, we  
11 literally take the verbiage of the Order, we  
12 remove the 900 and we remove that and we do  
13 nothing more and technically the argument  
14 was made, by the way, you never asked the  
15 Court to rule on to restore the 1,150. And  
16 I think the dais voted five zero, and I  
17 asked Price, and I said okay, let's make  
18 this simple and stupid. So they are saying,  
19 only remove it, nothing more, and by the way  
20 Mr. Price, your law firm blew it, you didn't  
21 add a third request for relief to get the  
22 1,150 that 1,150 is appropriate, and so  
23 either we are right, either Price is right  
24 or they are right, and that was the context  
25 of, okay, I think we voted five/zero.

1                   Now I understand this is the way it  
2                   turns out, the way they phrase it is, to  
3                   enforce mandate. Hey, and I don't know, I  
4                   guess at one point if it's a Motion to  
5                   Enforce Mandate, the Appellate Panel says,  
6                   hey people, give them the 1,150, but that's  
7                   sort of telling us what to do and I thought  
8                   you can't do that.

9                   And the other part is, okay, if you  
10                   can't do that then we have the whole big  
11                   appendix and that was the issue whether we  
12                   should open up the testimony or not open up  
13                   the new testimony. And okay, Palmer Trinity  
14                   is saying, the way that I read it is, okay,  
15                   if that wasn't an enforce and mandate thing,  
16                   they still don't have competent substantial  
17                   evidence to deny it. So what does that  
18                   mean, a new appellate panel is going to say,  
19                   what, you must give them 1,150, I don't know  
20                   if they can order us to do that.

21                   There was some genuine peak my interest  
22                   arguments, that Jesus fellowship they said  
23                   1,044. If they meant to say 1,150 they  
24                   should have said 1,150. That may hold water  
25                   in the appellate panel.

1                   So even if we get by the recusal, which  
2                   I don't know the vote wouldn't have turned  
3                   out differently anyway, it would still be  
4                   three/zero against them even if we get by  
5                   Jennings, if they persuade the circuit court  
6                   that there still wasn't competent and  
7                   substantial evidence, so where are we?

8                   I understand they had a good argument  
9                   to the point that well, obviously, you have  
10                  all of these conditions were geared to  
11                  1,150, so if you are giving us six hundred,  
12                  if we blew it or whatever, we didn't  
13                  properly appeal it, then we shouldn't be  
14                  obligated to do that on our building  
15                  permits. They are probably not going to  
16                  pull permits, and that's probably a valid  
17                  argument on their part, because if you have  
18                  six hundred you are only doing these  
19                  conditions for an increase number.

20                  So I don't know at the end where we are  
21                  on this. I mean, assuming the recusal is  
22                  not an issue and whatever, then we are back

23                  ---

24                  MR. GOLDENBERG: One of my thoughts on  
25                  this is, in terms of the additional

1 conditions, Raoul mentioned the idea of  
2 possibly asking the Court to relinquish  
3 jurisdiction, taking that back and  
4 eliminating those conditions voluntarily,  
5 because I think it would be hard to defend  
6 their existence as new conditions if they  
7 are not getting more students.

8 Once you are doing that, then kind of  
9 the next step or next possible question,  
10 which in a way arguably takes the heart of  
11 their argument, would be to take it back and  
12 say, you know what, we'll do a do over.

13 We'll do a do over, we'll end up taking  
14 back the conditions, we will recuse the  
15 members of the board that you want to  
16 recuse, you will have plenty of time with  
17 all of your Jennings ex parte communication  
18 stuff and you can play with that stuff to  
19 your heart's content. And then we will come  
20 back in and we'll have a new hearing, we are  
21 going to reschedule the hearing and we are  
22 going to do it with the non-recused members  
23 and you vote on it in the same basis that it  
24 was voted on this last time.

25 That would basically moot out this

1 appeal. They would presumably appeal it  
2 again if the result was the same, but they  
3 would lose a lot of their pyrotechnics.  
4 They would lose the recusal and the  
5 unfairness of the tribunal and the Jennings  
6 stuff and they would lose a lot of those  
7 things that add, like you said, kind of the  
8 juice to their argument. And then it would  
9 be, the Court can't tell us what to do,  
10 there is competent substantial evidence in  
11 our mind to support the denial of 1,150  
12 based upon it not being in the public good.  
13 Based upon traffic, based upon noise, based  
14 upon all of those things.

15 There is evidence of plenty of people  
16 complaining about those things and we are  
17 the fact finders, meaning you, you are the  
18 facts finders, you are the ones that make  
19 those discretionary decisions and not the  
20 Court, and it can only be reversed if the  
21 Court says, you have no evidence to base it  
22 on, no competent substantial evidence to  
23 base it on.

24 I think that's a much stronger or  
25 better appeal for the Village, because the

1 current one is kind of handicapped in my  
2 mind by some of the these arguments about  
3 due process and fairness and Jennings and  
4 public records request and all of those  
5 things that make it all look worse than the  
6 actual decision is.

7 So whether there is receptiveness to  
8 doing that, that kind of in some way, that  
9 kind of takes their heart out.

10 MR. PARISER: I don't want to hog the  
11 conversation. We discussed this maybe about  
12 a year ago, what have you. One of the  
13 things is, and counsel can correct me,  
14 technically based upon the parameters of  
15 whatever the heck they are doing or want to  
16 do, they can technically get up to 2,200  
17 students or something like that. And one of  
18 the things that I didn't want to give up  
19 personally as a member is, when the 1,150  
20 came up they agreed to 80 conditions. And I  
21 have a feeling if this -- and I don't know  
22 if it follows what you are saying, if this  
23 goes back for a whole new hearing, obviously  
24 all of those conditions go out the window  
25 and it's a free-for-all.

1 MS. BOUTSIS: I think you are talking  
2 about eight conditions, if I understand the  
3 appeal correctly.

4 MR. WILLIAMS: I think Pariser is  
5 talking about the original 80.

6 MS. STANCZYK: The 80 concessions that  
7 they made that were some ---

8 MR. GOLDENBERG: What I am talking  
9 about isn't having them submit an  
10 application for 2,000 students. I am  
11 talking about saying look, we got your  
12 petition, we recognize some of your  
13 concerns, we are going to go back, we are  
14 going to issue an amended order, we are  
15 going to have a hearing on the same  
16 application with the same conditions of  
17 their application, and we are going to do  
18 some or all of the following.

19 MR. PARISER: That was the quandary and  
20 the question that we had last time.

21 Does that mean if we did that, do we  
22 rule on what is in the record or do we open  
23 a whole brand new public hearing, because  
24 people were questioning the validity of the  
25 traffic reports?

1 MS. BOUTSIS: It's still true, even  
2 from last year, and I told you if there is  
3 some new evidence coming forward, any  
4 extraordinary changes due to time or  
5 anything else, you could have opened the  
6 evidentiary hearing. I told you that on the  
7 hearing that we had on the 19th and it was  
8 the decision of the council not to open it  
9 up. And Mr. Gibb's agreed, Mr. Price was  
10 happy to hear it. But if you had opened it  
11 up on that limited basis and the evidence  
12 came in, it could happen. So I think that  
13 could be true on any new hearing that he is  
14 talking about.

15 What I understood from the appeal is  
16 really the idea of striking the eight  
17 conditions that they are referencing that  
18 would relate to number of traffic and police  
19 officers because of traffic and you don't  
20 have that increased traffic.

21 MR. PARISER: That would be if we are  
22 left with 600 and not one more?

23 MS. BOUTSIS: Correct.

24 MS. STANCZYK: Let me ask a question  
25 here. If that's true and you are left at

1           600 and you have stricken anything that  
2           relates to managing more than 600, how do  
3           they come back and get more students and  
4           then how do we -- what would the process be  
5           for giving them a resolution that manages  
6           those additional students.

7           MR. CANTERO: I think we are talking  
8           about two different things. The first one  
9           is where we are relinquishing jurisdiction  
10          simply to take away the conditions that they  
11          are complaining about that have something to  
12          do with increasing the number of students,  
13          and since we denied that we shouldn't have  
14          those conditions attached, and we can also  
15          agree to their recusal motion so that we can  
16          clean up everything.

17          The other issue is whether we want to  
18          discuss settlement where we do increase the  
19          number of students and therefore those  
20          conditions would be relevant again.

21          But we can relinquish jurisdiction  
22          without discussing settlement and without  
23          discussing increasing the number of  
24          students. So it's really a two-track thing.

25          MR. PARISER: If we do that, I mean,

1           that's a five minute hearing. Relinquish  
2           these eight and the two recusals are  
3           granted, but they still lose three/zero.

4           MS. BOUTSIS: I could be a five minute  
5           hearing where he opened it up and we get  
6           that other testimony and it may help your  
7           record.

8           MS. STANCZYK: The problem that I see  
9           with the recusal is that they have had a  
10          number of cases all along that I am not sure  
11          accepting the recusal would cancel, in other  
12          words we are saying they are right.

13          I have a really hard time with that  
14          because they are trying to recuse me for  
15          something that's now approaching 12 years  
16          old, at a time when they denied ever going  
17          beyond 600 students.

18          So if you are to accept the fact that  
19          they denied 62 times that they would never  
20          go beyond 600 students, and I stood there as  
21          a citizen not as an elected official, and  
22          they are recusing me for that today.

23          MR. PARISER: Even if you didn't recuse  
24          and they win that, the vote is still three  
25          nothing.

1 MS. LINDSAY: The vote stands, it's not  
2 a new vote.

3 MR. CANTERO: It would have to go to a  
4 new vote. What Councilman Pariser is saying  
5 is then it would be a three nothing vote.

6 MR. GOLDENBERG: It would be a much  
7 cleaner process to do a revote without the  
8 alledgedly conflicted council members.

9 If it ends up as the same result and  
10 the explanation, and if maybe there were  
11 more evidence that were in the record that  
12 helps bolster it and say, hey, there is  
13 competent substantial evidence that 1,150  
14 will cause an adverse impact that are  
15 adverse to the public's interest.

16 The Court doesn't get to reweigh  
17 whether that's the right decision or not,  
18 it's just whether there is competent  
19 substantial evidence of any kind to support  
20 it.

21 What I am trying to say is, if you take  
22 away some of these extra issues that give  
23 the juice to their motion and then you boil  
24 it down to, the Court told us to take out  
25 nine hundred, the Court told us to do

1 nothing else, we have a choice between the  
2 600 and 1,100, there is evidence to support  
3 either one, but we chose the 600 we don't  
4 chose the 1,100, we think that is adverse to  
5 the public interest and we have discretion  
6 as a judicial body to make those factual  
7 decisions, it kind of turns their whole  
8 thing into, they are not complaining about  
9 fairness, it's not due process, it's not  
10 Jennings, it's not ex parte, it's not all of  
11 these things that they are kind of relying  
12 on to carry the day for them on the fairness  
13 part. And so I think that's a much stronger  
14 position.

15 The reality is, even with this motion  
16 as it is, all they can get still is a  
17 remand. Eventually this thing comes back to  
18 you. So if you said voluntarily now let's  
19 cut out the middleman, why spend the time  
20 arguing with this Court, fine, we'll do it  
21 over, and we will do it over procedurally  
22 the way that you want us to do it. We are  
23 not acknowledging that anyone has a conflict  
24 of interest, but for the sake of appearance  
25 or whatever, we'll do it.

1 I think that that's at least something  
2 to think about, because it would be a much  
3 stronger position in my opinion than where  
4 we are now where we are kind of defending  
5 attacks from seven or eight different  
6 directions.

7 Now, just to address on the settlement  
8 issues, which is a good and fair question  
9 about the contract zoning issue and the  
10 complication of settling when you have  
11 intervenors. It wouldn't be contract zoning  
12 because this isn't zoning, per se, it's land  
13 use.

14 MS. BOUTSIS: The original was zoning.

15 MR. GOLDENBERG: The original was, but  
16 the matter that we are on here now is not  
17 zoning.

18 MS. BOUTSIS: It's a zoning hearing on  
19 special exception.

20 MR. GOLDENBERG: It's a land use  
21 decision. There are cases that say that and  
22 some that say otherwise, but the better  
23 cases say that contract zoning is limited to  
24 actual zoning, a change in a zoning  
25 classification for a particular.

1 MS. BOUTSIS: Which is where we started  
2 in the first place.

3 MR. GOLDENBERG: That's probably right.  
4 I don't think that's the issue anymore.

5 I think you probably could, if people  
6 were inclined to, settle through a  
7 development agreement which gives some kind  
8 of -- provides a statutory process for  
9 addressing some of the concerns about  
10 settling when you have multiple parties in  
11 interest that have different positions on  
12 land use matters.

13 So I think it probably could be done,  
14 but I think it would require to some degree  
15 some participation of the intervenors at  
16 least. And there is some other procedural  
17 bells and whistles if it were done as a  
18 development agreement.

19 MS. BOUTSIS: You still have to bring  
20 it back. Stan Price has written a few of  
21 these, basically, if you give us this we'll  
22 dismiss our lawsuits, but we have to go to a  
23 public hearing and do the public process.  
24 It's basically what I have described to you  
25 in the past, the same kind of process.

1 MR. GOLDENBERG: Yes, there is lot's of  
2 procedural bells and whistles, it's not just  
3 sign on the dotted line and we are done.  
4 There is due process for the various  
5 interested parties, but if you and they were  
6 interested in doing it, I don't think a  
7 settlement is an impossibility just because  
8 you have intervenors and some other citizens  
9 and constituents that have their own issues.

10 MR. CANTERO: As far as the other  
11 lawsuit for damages, first of all, I am not  
12 too concerned about that lawsuit. I have  
13 only read the complaint, I haven't done any  
14 research on it because we haven't been  
15 retained on that end, but it is in their  
16 appendix. Other than the pure  
17 constitutionality of the ordinance which is  
18 not a damages issue, I am not worried about  
19 liability of the Village for its actions.  
20 You don't get sued for denying somebody  
21 zoning, but to the extent in that they  
22 somehow can be correct in that whatever we  
23 do is mitigating their damages. So if  
24 anything it would help our case.

25 MR. GOLDENBERG: I think in that regard

1           it's definitely generally true that there is  
2           not any kind of damages for the result of an  
3           adverse land use or zoning decision made by  
4           a governmental body.

5                     There are some potential exceptions for  
6           that when you get into things that make it  
7           seem like there was malicious or malfeasance  
8           or things that make it seem like this wasn't  
9           a fair fight, that we got railroaded, which  
10          I guess in my mind might be another reason  
11          for trying to trim out some of those issues  
12          that they have complained about here. Not  
13          only in this Motion to Enforce Mandate and  
14          Cert Petition, but to the extent that the  
15          lawsuit isn't just based upon stuff that has  
16          happened so far, but is presumably going to  
17          be based on or enhanced by anything that  
18          goes forward where they continue to argue,  
19          look, this was a preordained result from the  
20          beginning because there were council persons  
21          who were opposed to this project from the  
22          get-go and they did everything in their  
23          power to make sure it didn't happen and we  
24          got railroaded.

25                     Those type of arguments at least get

1 close to opening the door for possible  
2 damages. Whereas if it's like look, there  
3 is nothing to complain about from a  
4 procedural standpoint, and nothing to  
5 complain about anyone having a conflict of  
6 interest, about any due process issues,  
7 about any of those things, if those things  
8 get stripped away, I think it also weakens  
9 their damages lawsuit.

10 MS. LINDSAY: What happens to, what I  
11 think is a fact that they asked the Court to  
12 mandate something, to quash the nine  
13 hundred, we did what the Court asked us to  
14 do, we eliminated the nine hundred, and the  
15 law of the case remaining was a denial of  
16 the 1,150 from the prior hearing. Because  
17 at that hearing in 2010 the law of the case  
18 says that that was denied, that there wasn't  
19 evidence to support that.

20 In fact, there is testimony on the  
21 record from that hearing in 2010 to support  
22 the fact that almost every council member  
23 who testified was concerned about traffic  
24 and noise. So I am a little unclear about  
25 any shakiness here. Because they asked the

1 Court to tell us to do something, and the  
2 Court told us to do it and we did it and now  
3 they are saying, oh, but wait a minute, that  
4 isn't what we meant. Well, it's a little  
5 late, remember they told us this is not a  
6 due over. Most of us would have liked a do  
7 over.

8 MR. GOLDENBERG: I think that those  
9 arguments, is sort of what I am saying,  
10 viewed that way in isolation, those  
11 arguments that there is force to that. And  
12 although I would point out, that the council  
13 person's statements aren't testimony or  
14 evidence, they don't constitute.

15 MR. LINDSAY: I understand that, but I  
16 thought that competent substantial evidence  
17 was evidence that a reasonable person would  
18 consider supportive of the argument and you  
19 didn't have to have a title necessarily to  
20 be delivering competent substantial  
21 evidence.

22 MR. GOLDENBERG: You don't have to have  
23 a title. In other words, you folks are  
24 sitting there as judges, so your statements  
25 aren't evidence. The evidence has to come

1 from the other people.

2 MS. LINDSAY: If the council in the  
3 deliberation has gleamed from the testimony  
4 that what they have heard has established in  
5 their minds competent substantial evidence  
6 to support that perhaps 1,150 is too much,  
7 and think that was the argument in 2010,  
8 let's drop the number back to nine hundred  
9 because we do believe 1,150 was too much,  
10 and that was all in the law of the case.

11 Now, my biggest problem with all of  
12 this is that during this last hearing in the  
13 weeks leading up to the hearing, I spent a  
14 tremendous amount of time reviewing all of  
15 the documents pertaining to the hearings and  
16 I examined the 2007 traffic study, there was  
17 a revision done in 2008 and there was a  
18 further one done in 2010. And through my  
19 inquiries and my observations, I discovered  
20 as well as my phone calls to the Public  
21 Works Department at the county, that their  
22 traffic study was never approved by the  
23 county.

24 This particular area that's affected is  
25 a unique area because there is only really

1 two ways to get in and out and they have  
2 essentially blocked off one road. And with  
3 this new study that was necessary, they had  
4 to demonstrate that they weren't degrading  
5 the other intersection that was paramount to  
6 the project.

7 They have in fact degraded the  
8 intersection, it was not approved by the  
9 County. They were told they would have to  
10 ameliorate the problem. They never  
11 resubmitted the revised study to the County,  
12 and it is my firm belief that based on what  
13 I have learned, and it's a considerable  
14 amount, I might add, in terms of this  
15 traffic study, they can't fix it. They  
16 can't fix it. And I believe that's why they  
17 never resubmitted it and I believe that  
18 firmly.

19 This is my problem with having a  
20 settlement. We've got a traffic study that  
21 is degrading the intersection at 184. We  
22 have already degraded the intersection at  
23 176. We are literally boxing in an entire  
24 neighborhood during their arrival and  
25 departure times for this school, which makes

1           it a safety issue for these people, and we  
2           are talking about 300 homes in here.

3                       Now, over the years, I happen to live  
4           in this neighborhood, not the one that's  
5           boxed but on the other side, and over the  
6           years I have tried very hard to work with  
7           these people to settle. They don't settle.  
8           They want what they want and that's what  
9           they want. And they will put the pressure  
10          on us and they will continue until you  
11          either win in Court or you give in. And  
12          this is what they are about. And it's  
13          really sad, it's really sad to put all of us  
14          through this, to put the residents through  
15          this. It seems so unnecessary. If we could  
16          have a spirit of cooperation.

17                      But as the Mayor has said, in 1999 when  
18          a lot of the discord began, they asked for  
19          an expansion and they told the community, as  
20          I believe you just said, 62 times, it was  
21          sixty some-odd times, that if the community  
22          council granted them the expansion of  
23          buildings, it was square footage of  
24          buildings, classroom space only in 1999,  
25          that they would never ask for more.

1                   And then they came back with this  
2 humongous, they blew it way out of  
3 proportion, ask for pie in the sky and then  
4 come back and shave it down and make it look  
5 like you have really compromised.

6                   So they started at 1,400 and they  
7 backed down to 1,150 and now people are  
8 going, but look what they gave up. They  
9 didn't give up anything. They promised this  
10 community six hundred and now they want to  
11 go to 1,150. And the community doesn't have  
12 a problem so much with 1,150 but with the  
13 consequences of that.

14                  And one of the worse things here is  
15 this traffic. And the fact that they can't  
16 get their traffic study through the county  
17 should be a big red flag to everyone. So  
18 what are we going to do, we are going to sit  
19 here and compromise, negotiate a settlement  
20 with a traffic study that is flawed and  
21 never approved by this county.

22                  MR. CANTERO: Why not make that  
23 condition?

24                  MS. LINDSAY: I think it should be. If  
25 they have to do a complete new traffic study

1 and we have to start over with a traffic  
2 study, that's something that's reasonable in  
3 my opinion.

4 MR. CANTERO: You can start with a  
5 settlement that says, conditioned upon  
6 traffic study approved by the County.

7 MS. LINDSAY: I think that's something  
8 that might be something to talk about. It's  
9 a big hurdle.

10 MR. PARISER: What council Lindsay  
11 brought up is obviously -- my concern was,  
12 so okay, even if they agree to these  
13 conditions and two or three or four of them  
14 for mitigating the traffic, substantial  
15 conditions, have to do with county roads and  
16 the county never signed off on it, I don't  
17 know if it's shame on us or shame on them,  
18 and it went forward to a hearing and it was  
19 passed in whatever form by the Council based  
20 upon the conditions and then they get their  
21 right to go get permits and their  
22 development order and the County says, over  
23 my dead body, we are not going to allow  
24 this, what does that mean, then Palmer can  
25 say, shrug our shoulders, we set it but the

1 county said no and now we have gridlock.

2 MR. CANTERO: That's a condition of the  
3 approval. If they can't get that, a  
4 condition hasn't been met.

5 MS. LINDSAY: It's so much more than  
6 just the County's approval, because the way  
7 they allocated the number of students at  
8 each driveway, they used a formula, a  
9 proportion, that's mathematically incorrect.  
10 And I am a mathematician, I was a math  
11 teacher for 30 years, and they set a ratio  
12 of equal that aren't equal. So they base  
13 their entire distribution of students and  
14 the number of people on each driveway on a  
15 proportion that's flawed to start with. And  
16 everything after that is wrong. They said  
17 that they decreased the traffic on 176  
18 street by 35 percent. In actuality, based  
19 on the condition, they increased it by 115  
20 percent. 115 percent. That was on 176  
21 street. And on 184th street they degraded  
22 the left turn lane going on to Old Cutler,  
23 going north on Old Cutler to an E. The  
24 standard for the county is a D, and they  
25 degraded it to an E.

1                   And they have got so many people on  
2                   176, that with the conditions that we have  
3                   written, one of the conditions as you may  
4                   recall, is no left turn out of the driveway  
5                   on 176. So that means everyone has to turn  
6                   right coming out there and go towards Old  
7                   Cutler.

8                   I can show you how the proportions are  
9                   wrong. I can show you how they have  
10                  increased it to 115 percent, but they told  
11                  everyone that they increased it by 35  
12                  percent, and no one checked their math and  
13                  it's all faulty, all of it, at both  
14                  entrances and for the whole project and all  
15                  of the distribution, it's all wrong.

16                 MR. CANTERO: What did the Village stat  
17                 say?

18                 MS. BOUTSIS: We hired the Corodino  
19                 Group that reviewed everything and provided  
20                 a report.

21                 MS. LINDSAY: And he said it was all  
22                 fine. They conquered with it. I can show  
23                 you, I can show all of you right now right  
24                 off the top of my head how it's all flawed.  
25                 I am not saying that he intentionally or

1 deliberately looked at something and knew it  
2 was flawed, but you have to know the  
3 conditions that are in the Resolution to  
4 understand what happened here.

5 Because this is what happened. They  
6 said they are going to have 460 students  
7 coming in on 176th street, where now they  
8 have six hundred. So right away you are  
9 thinking okay, they are dropping that from  
10 six hundred to 460 so we are reducing,  
11 sounds good.

12 Right now we have busses and vans  
13 coming in. And the Resolution says no  
14 busses and vans on 176th street, all of  
15 those will have to go to the other entrance  
16 on 184.

17 It further says that the 176 entrance  
18 will be for pickup and drop off only, which  
19 means every car that comes in has to go out.  
20 Well, they created this faulty ratio and  
21 said, okay, we did a survey, a visual  
22 survey, they actually counted and they had  
23 399 vehicles going in out of six hundred.  
24 And they said, so let's write a proportion,  
25 399 out of 600 equals X out of 460. You

1                   might say that sounds really good, let's go  
2                   with that.

3                   But here's the problem. The 399  
4                   vehicles that went in out of 600 included  
5                   busses, vans, faculty, student parking and  
6                   pickup and drop off. So the 399 is  
7                   everybody out of 600 and now they are saying  
8                   that this other ratio is pickup and drop off  
9                   only out of 460. So you can't do this, it's  
10                  mathematically incorrect.

11                  But even given that, they came up with,  
12                  if you go with that ratio and figure out  
13                  what the missing number is, it's 306. So  
14                  now they have 306 going in, but they forgot  
15                  there is no left turn coming out, and they  
16                  used the same ratio coming out as they had  
17                  before, when everybody that goes in has to  
18                  come out because now it's pickup and drop  
19                  off.

20                  The whole point is, unless you know the  
21                  conditions of the Resolution and you are  
22                  thinking about them when you are doing the  
23                  analyzing, you wouldn't know that it was  
24                  wrong. And I think perhaps that's what  
25                  happened with Mr. Corodino's evaluation,

1 that he didn't have the conditions in front  
2 of him and perhaps didn't consider them.

3 So the conditions aren't achieving  
4 what they were supposed to achieve. The  
5 study is flawed and not approved by the  
6 County and where does that leave us. To me  
7 it leaves the neighborhood and the community  
8 totally unprotected in all of this.

9 MR. PARISER: Councilwoman Lindsay did  
10 a lot of work on this stuff to her credit,  
11 and I don't know how it fits in, yes, she is  
12 up on the dais, it's not testimony to  
13 whatever degree. What bothers me as a City  
14 Council person is, I rely on staff, I rely  
15 on traffic consultants and to a degree in  
16 good faith on Palmer Trinity.

17 Let's assume Joan's calculation aren't  
18 correct, but you are still left with -- to  
19 make this work the County has to sign off on  
20 five or six of these conditions and they  
21 never did or they never will. How can we  
22 give them 1,150 if the County will never do  
23 that.

24 MR. CANTERO: To me that argument is in  
25 favor of giving it to them because they can

1 never get it done any way.

2 MS. LINDSAY: But can we be certain the  
3 County is not just going to turn their head  
4 and say, if you say it's you okay with you  
5 then that's your decision. How do we know  
6 at this point?

7 MR. PARISER: The whole idea of the  
8 conditions and the first time in 2010 was,  
9 and I was surprised, they gave a number of  
10 1,150 and the Corodino Group, our  
11 consultants staff said, for 1,150 if that's  
12 what your application is for rather 1,400  
13 and 900 or whatever, is what needs to be  
14 done, do you agree Palmer Trinity with these  
15 80 conditions and they said yes.

16 The only fundamental flaw in that is  
17 that the County did not sign off on four or  
18 five or eight, I don't know how many on the  
19 traffic, the key provision. So that's  
20 almost a basic flaw that it wasn't noticed  
21 on our part. I don't know if that's shame  
22 on us. That was our bite of the apple and  
23 that's gone, or if that would even be  
24 appropriate or if it's even able to be  
25 brought up at this point in time.

1 MR. CANTERO: I am not sure if I  
2 understand. Let's say if one of the  
3 conditions is that you have to expand the  
4 road, whatever and it's a County road. One  
5 of the conditions is, you have to expand the  
6 road, they can't get the road expanded,  
7 well, they can't go to 1,150 because that's  
8 a condition of going to 1,150.

9 MS. LINDSAY: The other thing that they  
10 wanted to do was change the signalization at  
11 two of the lights in Old Cutler and they  
12 were told by Robert Williams at Dade County  
13 Public Works that that was highly unlikely  
14 and they needed to submit it and they never  
15 did that either.

16 MR. PARISER: If the condition was, you  
17 have to do A, B and C which involves a  
18 County road, and there is no sign off, then  
19 they can't get 1,150.

20 MS. LINDSAY: That's if we can go back  
21 to the County.

22 MR. PARISER: If the County didn't sign  
23 off on it ---

24 MS. STANCZYK: Do they still have to  
25 sign off on it now?

1 MS. BOUTSIS: They could sign off on  
2 it, that's their decision ultimately.

3 MS. STANCZYK: There is an intersection  
4 on Old Cutler that needs to be addressed as  
5 well, if I am remembering that correctly.  
6 Old Cutler according to the information that  
7 I was told a couple of years ago, cannot be  
8 expanded for the purpose of development.

9 MS. BOUTSIS: You are talking to the  
10 historic nature of Old Cutler Road.

11 MS. LINDSAY: I think what the Mayor is  
12 talking about is the right-turn lane. That  
13 would be the right turn southbound lane,  
14 right turn west off of Old Cutler at 184 and  
15 that is part of the plan.

16 MR. PARISER: So if we even agree to  
17 the 1,150 and the County, that's a condition  
18 ---

19 MS. BOUTSIS: If they don't get it they  
20 don't get to move forward.

21 MR. PARISER: But if you say 1,150 and  
22 the County says okay we can find a way for  
23 this to work, then they do?

24 MR. CANTERO: As long as they comply  
25 with the other 79 conditions.

1 MS. LINDSAY: These conditions are two  
2 separate packages. One is the conditions  
3 that the Village wrote and the others are  
4 more comments to the original 2007 traffic  
5 studies submitted by David Plumber to the  
6 County.

7 The County made comments, the David  
8 Plumber Group responded to the County's  
9 comments, and some of the responses to the  
10 County's comments were not sufficient and  
11 there was never a signoff. And I have an  
12 e-mail from Dr. Shin, Dade County Public  
13 Works saying they never approved the traffic  
14 study.

15 MS. STANCZYK: That would have been  
16 part of the approval process of the packet  
17 before it went forward as opposed to the  
18 Resolution condition.

19 MR. CANTERO: So where are we?

20 MR. TENDRICH: What you have said makes  
21 a lot of sense. One of the conditions would  
22 be that the traffic probably has to be  
23 County approval and that makes sense. That  
24 would have to be one of the conditions.

25 MR. CANTERO: If that were fulfilled

1 would you be willing to go to the 1,150?

2 Let me say, you don't have to decide  
3 that, I am just asking. But if there is  
4 some kind of flexibility on the Council, at  
5 least we can broach settlement. I don't  
6 need to get into any specifics and those  
7 specifics can be discussed with them at a  
8 settlement conference, but as long as I know  
9 that we are flexible and as long as  
10 something is done here and you are willing  
11 to give some here, because it's all about  
12 the traffic, I say let's broach settlement  
13 discussions, we don't lose anything.

14 MR. TENDRICH: I feel settlement,  
15 talking together would be the way to start,  
16 or the way hopefully to finish. And I would  
17 be for it. We can't say yes we vote for it,  
18 we don't know what the settlement would be.

19 MR. CANTERO: Absolutely. This is just  
20 about do we even say the word so that we can  
21 come to the table.

22 MR. TENDRICH: I would say yes.

23 MR. FIORE: I say yes.

24 MR. PARISER: I don't have any problem  
25 talking. Talking, we can always talk. We

1 don't have to agree.

2 MR. CANTERO: Right, you don't lose  
3 anything.

4 MR. BOUTSIS: You should all know that  
5 the way that they have written back to the  
6 appeal, it's actually a two-prong process.  
7 We have like a 15-day window, including mail  
8 time, to respond to their initial motion.  
9 But the petition itself would be something  
10 that the Court gives you a date and a  
11 certain amount of time to respond to. So we  
12 have to respond timely to their motion so we  
13 don't miss their deadline. So that's about  
14 eight days away unless we get some extension  
15 of time.

16 MR. CANTERO: Maybe I can have both  
17 conversations with Eileen. Number one, we  
18 make the deadlines equal. I am sure they  
19 won't have a problem with that.

20 MS. BOUTSIS: On the idea that was  
21 presented about coming back to deal with the  
22 eight conditions that we are basically  
23 talking about that the Court would perhaps  
24 buy into the argument by Palmer Trinity that  
25 these conditions were about a higher number

1 of students and their traffic conditions is  
2 based upon a higher number of students, and  
3 those number of students don't exist based  
4 upon your ruling so let's strike those. I  
5 understand that you took the advice to do  
6 exactly this, the Court said strike 900 and  
7 do nothing else. But in light of their  
8 arguments, and I met with Ms. Lindsay,  
9 Councilwoman Lindsay, I guess after the  
10 hearing, and we talked about there were  
11 conditions that just don't apply but we  
12 couldn't do anything about them at the time  
13 because the way we understood the order.

14 But is there any interest in the  
15 concept of going back to a hearing, asking  
16 the Court to relinquish so that we can go  
17 back to a hearing and deal with those eight  
18 or nine conditions?

19 MR. WILLIAMS: Deal with them in terms  
20 of eliminating them?

21 MS. BOUTSIS: Yes, which would  
22 eliminate the arguments. I am breaking it  
23 in two, the recusal is a different issue.

24 MS. STANCZYK: Right now the argument  
25 is being posed that we are back at 600. The

1           600 is a number that's never been enforced,  
2           we don't even know how many students they  
3           have. They have publically said they have  
4           650. They have told others that they have  
5           642. They have certified on the website for  
6           the accreditation agency that they have 600.  
7           We have no idea how many students they have.

8           MR. CANTERO: Let's be more precise  
9           then. What we are talking about is not 600  
10          or 640, what we are talking about is the  
11          denial of their application to increase it  
12          to 1,150.

13          MS. STANCZYK: So what does that do,  
14          though?

15          MR. CANTERO: It keeps the status quo.

16          MS. STANCZYK: And the status quo is  
17          what?

18          MR. CANTERO: That they are approved  
19          for 600.

20          MS. STANCZYK: So I would say that  
21          that's what it must say. They are only  
22          approved for 600.

23          MS. BOUTSIS: We are getting back into  
24          an argument that we have had time and again.

25          MS. STANCZYK: That may be a

1 discussion, but it's never been enforced and  
2 it's never been in writing.

3 MR. BOUTSIS: I will disagree with you  
4 on it never having been enforced, because it  
5 was a very short resolution, it was  
6 interpreted by your planning director and  
7 their interpretation was daily attendance,  
8 they accepted that and that was a planning  
9 decision.

10 MS. STANCZYK: It may have been a  
11 planning decision ---

12 MS. BOUTSIS: It's not that it wasn't  
13 enforced.

14 MR. WILLIAMS: Mayor, you don't know  
15 how many students there are either, there  
16 may be 500.

17 MS. STANCZYK: That's what I am saying.

18 MR. WILLIAMS: But the implication that  
19 it's never been enforced to some number  
20 higher is no more valid than below. So to  
21 your point ---

22 MS. STANCZYK: Is it below 600?

23 MR. WILLIAMS: Who knows. You admitted  
24 to say you don't know what the number is.

25 MS. STANCZYK: That's right.

1 MR. WILLIAMS: Let's stick with that as  
2 compared to trying to make the accusation  
3 that someone is not doing what they are  
4 supposed to do.

5 MS. STANCZYK: Excuse me, I've got the  
6 floor. I did not make an accusation that  
7 someone is not doing what they are supposed  
8 to do.

9 MR. WILLIAMS: You are saying that no  
10 one has ever enforced it.

11 MS. STANCZYK: Yes, I did, no one ever  
12 has enforced it.

13 MR. WILLIAMS: So that's different than  
14 what you just said?

15 MS. STANCZYK: I did not accuse.

16 MR. CANTERO: I think the issue of  
17 whether they are exceeding 600 or exceeding  
18 640 now is a separate issue.

19 MS. STANCZYK: I understand, but as we  
20 go forward, the number must be certain as to  
21 where they really stand. Because they are  
22 saying that they have no number, they are  
23 saying, are we 650, are we 600, are we  
24 1,150.

25 Even at the hearing Mr. Price said he

1           doesn't know what the number is, we have no  
2           number. So as we go forward the number must  
3           be 600.

4           MS. BOUTSIS: The Resolution tells you  
5           how to do the calculation now. It has the  
6           definition on the calculation which gets you  
7           where you want to be as to the number of  
8           students. So if it's 600 and we are doing  
9           this definition, I guess once it's all final  
10          with the appeal, there is a certain formula  
11          to follow and the number of students.

12          MR. PARISER: I have a question.  
13          Technically we denied 600, and I think it  
14          was an oversight that probably these  
15          conditions that tied into 1,150, they  
16          shouldn't have to be made to do something  
17          for 1,150 if they are not getting the 1,150.  
18          But the practical matter, where does that  
19          leave them? So we say 600, if you want to  
20          build out all of these buildings and spread  
21          out your 600 kids, you can.

22                 Where does that leave them?

23          MS. BOUTSIS: Building tennis courts,  
24          football field.

25          MR. PARISER: You can do that but you

1 are limited to 600.

2 MS. STANCZYK: After we would conclude  
3 this, we know that their goal is to have  
4 more students. What would the process be  
5 then to add students, would they file a new  
6 application, what would the next step for  
7 them be?

8 MS. BOUTSIS: If there is no more  
9 appeals and we have a final order of 600 and  
10 it's not appealed, et cetera, they would  
11 have to go through a new application. To go  
12 through a new application we also have our  
13 Charter Amendment that precludes increasing  
14 the population without a certain vote of, I  
15 think the number is 2,000 feet and 70  
16 percent.

17 MS. STANCZYK: One of the conditions  
18 then would probably be no further appeals  
19 and all other cases dismissed against the  
20 Village and the intervenors.

21 MS. BOUTSIS: For settlement? What are  
22 you talking about now?

23 MS. STANCZYK: If that's what we are  
24 discussing.

25 MR. PARISER: At how many students?

1                   They are not going to do that for 600  
2                   students.

3                   MS. STANCZYK: That's their choice.  
4                   They are asking us ---

5                   MR. CANTERO: They are not asking us to  
6                   settle.

7                   MS. STANCZYK: We have to make a  
8                   decision on how to go forward. During  
9                   negotiations we are making the offer of,  
10                  let's discuss. As we draw up the document  
11                  we have to put in the things that we chose  
12                  to be included. If they don't want to take  
13                  it and they want to throw back the olive  
14                  branch, that would be their choice, but  
15                  there are certain things when you settle,  
16                  and I have given up so much ---

17                  MR. CANTERO: What are we giving up?

18                  MS. STANCZYK: We are giving a recusal.

19                  MR. CANTERO: That wouldn't be part of  
20                  a settlement. That's not a settlement  
21                  issue. They are not going to agree as a  
22                  settlement that we will recuse, go to the  
23                  hearing and vote three to nothing to deny  
24                  the application. That's not a settlement to  
25                  them because it keeps them at 600.

1           That's a different issue. That's just  
2           to get off the table their appeal so they  
3           can't make us look bad in the appeal.  
4           That's something that will benefit us to  
5           take away an argument that they have.

6           That's why I said in the beginning, the  
7           issue of relinquishment and the issue of  
8           settlement are two different tracks.

9           So the issue of settlement, it would  
10          have to be above 600. It would have to be  
11          above 900.

12          Now, we can say we'll give you 1,150 as  
13          a settlement but we need this, this and  
14          this, and let's define what we mean by  
15          number of students.

16          MS. BOUTSIS: Which is how it's been  
17          defined in the Resolution. They are okay  
18          with the definition.

19          MR. CANTERO: We are going to use that  
20          definition. We are going to comply with the  
21          80 conditions, you are going to get County  
22          approval. Whatever we can think of. We  
23          don't have to decide that now we can start  
24          thinking about it, but whatever it is, we  
25          are probably going to have to give up if we

1 want to end the case and resolve it,  
2 anywhere between 1,000 and 1,150. That's  
3 what we give up.

4 MS. BOUTSIS: You don't have to make a  
5 final decision tonight, but I have heard at  
6 least three of the council saying they are  
7 willing to entertain the concept.

8 MR. WILLIAMS: You said we have eight  
9 days?

10 MS. BOUTSIS: Eight days is to respond  
11 to one portion which is their Motion to  
12 Enforce the Mandate, and we'll do our  
13 procedural thing. Whether it's to get an  
14 extension of time or dealing with just that  
15 portion.

16 MR. CANTERO: And again, I want to  
17 clarify so that you are comfortable, that by  
18 saying that we agree to broach settlement  
19 you haven't agreed to anything. All you  
20 have agreed to is to open your mind.

21 MR. PARISER: Again, just issues  
22 strategy wise, the 1,150 conditions, if we  
23 are not giving them the 1,150. The recusal,  
24 there is two counsel persons that are  
25 involved, certainly the weaker argument is

1                   against the Mayor. I have seen their  
2                   grounds, and so that's two separate issues.

3                   I guess you can talk to them. I am  
4                   assuming that they want their number that  
5                   makes it work economically for them, and  
6                   what we are saying is, we have to look out  
7                   for the interest of the community and that  
8                   may even be, we don't know, we have a  
9                   traffic study that may be flawed or maybe  
10                  not. We have a County that maybe or maybe  
11                  not will sign off on traffic conditions,  
12                  which is a real concern.

13                  I have no problems about talking to  
14                  them, I do it all of the time in my  
15                  practice. It doesn't mean we are agreeing  
16                  to anything.

17                  MS. BOUTSIS: Do you want to entertain  
18                  the concept of doing this other hearing? I  
19                  am splitting the part where we have  
20                  discussed this recusal and hearing. Let's  
21                  just deal with the hearing portion.

22                  MR. PARISER: The hearing on the 1,150?

23                  MS. BOUTSIS: Not the 1,150, but the  
24                  eight conditions as to traffic.

25                  MR. PARISER: Geared to the 1,150?

1 MS. BOUTSIS: Yes. Geared towards 600.

2 MR. PARISER: That's sort of logical,  
3 it was probably an oversight on our part, we  
4 probably should have stated something at the  
5 final hearing.

6 I mean, if you are not giving them  
7 1,150 and you say that you have to give,  
8 this, this and this for 1,150, logically I  
9 don't think that they should have to do it.

10 MS. STANCZYK: If we have a hearing  
11 that relinquishes the eight reasons and then  
12 we have a settlement that goes to whatever  
13 ---

14 MR. PARISER: Then they put the  
15 conditions back in. Condition, condition,  
16 upon the county signing off.

17 MS. LINDSAY: But again, I reiterate  
18 that a lot of what's in there, and you and I  
19 discussed a lot of these things at length,  
20 they don't mean anything.

21 MR. CANTERO: Let me reiterate that  
22 just because we are agreeing to broach  
23 settlement doesn't mean that we are agreeing  
24 to anything.

25 You can start thinking of things to

1           make yourself comfortable with the  
2           settlement, including an independent traffic  
3           study or whatever you think would be  
4           appropriate in order to achieve that and  
5           give you a comfort level that traffic will  
6           be mitigated.

7           MS. BOUTSIS: And from the alternate  
8           tact, if we are trying to talk about  
9           settlement, we are talking about if we are  
10          going to try and do this hearing. The  
11          biggest issues that they had are these eight  
12          as to traffic that just don't have an  
13          argument, and the argument is they don't  
14          have a base when you don't increase the  
15          number of students. And it would just make  
16          it cleaner for an appeal for us to fight.

17          MR. GOLDENBERG: It also to some  
18          extent, unless there is some particular  
19          procedure that allows for it here, it would  
20          essentially moot out this particular appeal  
21          of theirs. The essentially have to start  
22          over again because the order that they are  
23          now appealing would be amended, there would  
24          be some new resulting order. So it would in  
25          some sense put them back to the drawing

1 board.

2 Maybe or maybe not there are other  
3 things that could be fixed or cleaned up,  
4 but that recusal I think is the most  
5 sensitive of those. But frankly, going back  
6 and doing a do over of some kind can at  
7 least help eliminate some of the Jennings  
8 issues and some of the non recusal aspects  
9 of the due process arguments that they are  
10 making because you have had plenty of time,  
11 you have seen all of these documents for  
12 plenty of time ---

13 MS. BOUTSIS: Understand the Jennings  
14 argument is never going to go away, only  
15 because the next hearing we are going to get  
16 another round of 3,000 e-mails. I can't  
17 control the community sending e-mails.

18 MS. STANCZYK: You know why she can't,  
19 because they make sure that they do  
20 something so outrages it makes them do it,  
21 that you can never control a community,  
22 because they will go cut another forest.  
23 They will do something else that will spur  
24 them on.

25 MR. GOLDENBERG: That's true. I think

1           yes and no. I read their Jennings argument  
2           and I don't think that's a very strong part  
3           of their thing, but it's another issue to be  
4           dealt with at least.

5                     I don't see it as a very strong issue,  
6           but the gist of it, focussing not so much on  
7           the unsolicited constituent communications,  
8           but the council initiated investigation  
9           partly seems to be what they are focussing  
10          on.

11                    I mean, every local government has the  
12          same issue that constituents want to talk to  
13          their council people about matters that are  
14          important, especially controversial ones.  
15          That doesn't mean that there is a Jennings  
16          issue of significance in every single case.  
17          That's why you have these procedures. And  
18          the best I can tell you think you all  
19          followed the procedures, so I don't think  
20          that's a strong issue on their appeal. I am  
21          just saying if you do a do-over there may be  
22          things that can be done to kind of take that  
23          out of the picture entirely, and again kind  
24          of clean it so that they lose some of the  
25          thrust of their unfairness argument.

1 MS. LINDSAY: And I have a problem with  
2 that, quite frankly, because it was their  
3 document and their traffic report that had  
4 the peoples names, and reports were missing.  
5 And I asked our Village Clerk for the  
6 documents that were indicated in their  
7 report and she did not have them. So I  
8 called the County Public Works Department to  
9 get those documents.

10 These are peoples names listed in their  
11 report, it was their traffic engineer who  
12 said she had submitted them, she had not,  
13 and I quite frankly I don't think this  
14 argument on their part is strong at all in  
15 this regard. To me it's not ex parte  
16 communications at all.

17 MR. GOLDENBERG: Again, I don't think  
18 that their Jennings argument is strong. I  
19 am not saying it's a major part but it's  
20 just another thing.

21 If you are going back and changing  
22 something so that there will be a new  
23 hearing, I am simply suggesting that if  
24 that's the tact, to clean up as many things  
25 as can be cleaned up so that there are not

1 going to be issues for the next go-around.

2 MR. FIORE: There is going to be  
3 issues. I don't want to have another  
4 hearing. I don't want to spend anymore  
5 taxpayer money on this, I'm sorry. I agree  
6 with what you guys said. You guys made six  
7 points at the very beginning. Four out of  
8 the six points were really not beneficial to  
9 the Village and the taxpayers. I am going  
10 back to the very beginning.

11 I made a statement at the end of this  
12 hearing that it's torn the community apart,  
13 that we spend all of this money, we continue  
14 to pile up money and I don't know what the  
15 gain is in the end. I would hope that my  
16 colleagues will all agree to broach a  
17 settlement and some kind of good faith  
18 effort on both ends.

19 I agree, we had a court order, I  
20 believe the Court implicitly implied we give  
21 them the 1,150 but they didn't explicitly  
22 say it. So we took a literal interpretation  
23 as the Vice Mayor said. But we have a  
24 positive recommendation from staff; is that  
25 correct, Mr. Williams?

1 MR. WILLIAMS: Yes.

2 MR. FIORE: Did we have a positive  
3 recommendation back in 2010 for the 1,150  
4 also?

5 MR. WILLIAMS: Yes.

6 MR. FIORE: I am looking beyond to put  
7 this behind us for the good of the Village.

8 MS. LINDSAY: But the good of the  
9 Village requires that we protect the  
10 citizens of the Village and we are not doing  
11 that with your approach. We are basing this  
12 on a traffic study that was not approved and  
13 it's flawed and it doesn't protect the  
14 residents of the Village.

15 MR. FIORE: I never heard anything  
16 about that prior to this meeting, whether it  
17 was flawed or not flawed. I am trying to  
18 come to a conclusion to this.

19 MR. TENDRICH: What's been said by our  
20 counsel is that you put in negotiations and  
21 it has to be approved by the County. He  
22 can't say it any simpler than that. He is  
23 saying, when you go to negotiate it has to  
24 be a traffic approved by the County. To me  
25 that's what he is saying and that's what you

1 do. I don't know why we are dragging it on  
2 because if it's flawed, the County is not  
3 going to approve it.

4 MR. FIORE: I don't understand, why  
5 wasn't this brought up before. I am not  
6 talking about this here even. This is  
7 baffling to me.

8 MS. STANCZYK: And to me as well.

9 MR. GOLDENBERG: Being new to this but  
10 having read about the history, what seems  
11 fairly clear to me is that the only way this  
12 gets put to bed is through a settlement. If  
13 they win this appeal it gets remanded back  
14 and there will be another hearing of some  
15 kind. Exactly what the hearing looks like  
16 we don't know, but that's the result of  
17 their winning.

18 If we win, they will submit another  
19 application at some point, I think. I don't  
20 know about the charter amendment, maybe that  
21 stops them in their tracks, but they clearly  
22 are pretty determined to get more students  
23 because they have all of this extra  
24 property.

25 I don't see them going away if we win

1           this appeal either. I think it makes sense  
2           to put it to bed. I think that a settlement  
3           is the only way that they actually will do  
4           that and the question is, are there  
5           settlement terms that are potentially  
6           agreeable or not that we broach that with  
7           them and start talking.

8           MR. FIORE: I conquer with that. And  
9           in answer to my colleague councilwoman  
10          Lindsay's question, the good of the  
11          community also involves the economic good,  
12          which is coming up on six years.

13          So I conquer, thank you.

14          MR. PARISER: I say talk and see what  
15          they have to say.

16          MR. CANTERO: I think that we have  
17          direction on that. I am not sure that we  
18          direction on the relinquishment.

19          MR. TENDRICH: If we are asking to do  
20          something that requires 1,150 students and  
21          we have only agreed to 600, of course it  
22          should be thrown out, it doesn't make sense.

23          MS. BOUTSIS: I was asked by  
24          Councilwoman Lindsay what the conditions  
25          were so I was just pulling it from here.

1                   The conditions imposed on Palmer  
2 Trinity are, "The responsibility to fund and  
3 construct costly roadway improvements,  
4 signalization, signage and traffic common  
5 devices. To provide police officers for  
6 traffic control and to conduct additional  
7 traffic studies."

8                   Those are the conditions.

9                   MR. PARISER: As I recall, that was all  
10 geared to the 1,150 number. If they don't  
11 get the 1,150 they are stuck with 600. So  
12 they have to comply with whatever was  
13 approved prior, the 600.

14                  MS. BOUTSIS: It's a larger piece of  
15 property now that would have another  
16 entrance, so you are not going to get rid of  
17 a separate entrance or decals or all that  
18 that's not referenced in their appeal as  
19 well.

20                  MR. PARISER: It's still the same  
21 number of trips, vehicles?

22                  MS. BOUTSIS: But it would be two  
23 different entrances now and it might  
24 alleviate the problems on 176 street.

25                  MR. CANTERO: Do we have a consensus as

1 to that, as to relinquishing.

2 MR. FIORE: Can you define  
3 relinquishing again?

4 MR. CANTERO: Relinquishing would be  
5 allowing the Circuit Court to give you back  
6 jurisdiction so that you can take this  
7 action.

8 MS. BOUTSIS: So you can have a hearing  
9 to release the eight.

10 MR. PARISER: It's like a five minute  
11 hearing.

12 MR. FIORE: It's almost like an  
13 administrative function?

14 MR. CANTERO: Yes.

15 MR. FIORE: That's what we thought this  
16 time.

17 MR. PARISER: Well, it's equivalent to  
18 the zoning part, a five minute hearing.

19 MR. FIORE: I'll conquer with that if  
20 that's what the definition is.

21 MR. CANTERO: Is that a consensus?

22 MR. TENDRICH: I agree.

23 MR. CANTERO: And then you can leave it  
24 to us as to what the timing is, whether it's  
25 settlement, relinquishment whatever, or

1           relinquishment, settlement or whatever would  
2           be best for the Village.

3           MS. BOUTSIS: Strategy wise. And I am  
4           not going to touch on anything else tonight.  
5           I think we have a lot to think about and we  
6           have still time and we can hold another A/C  
7           Session.

8           I do think, though, if we are going to  
9           go forward with the eight conditions, to  
10          have Mr. Price delineate what they are, what  
11          he is looking for so we are not at another  
12          battle over what is it, because he doesn't  
13          list them. It's very easy to write it in  
14          his freehand style and say he didn't do it.  
15          Because many of the conditions are  
16          intertwined and we know that there are  
17          certain concerns over certain language in  
18          the drafted resolution, so I would rather  
19          have that clarified than get into another  
20          battle.

21          MR. GOLDENBERG: And it may be that  
22          some of the things that they are complaining  
23          about, I think you were saying before that I  
24          just hadn't picked up, some of those  
25          conditions they are complaining about may

1 actually be things that there is legitimate  
2 reason for still requiring, if based upon  
3 the reconfiguration of the school. Maybe  
4 six of the eight get stricken and two of  
5 them you go to the hearing and you establish  
6 on the record why they are in there, but  
7 they are in there because you now have  
8 different egress and digress points and  
9 whatever.

10 MR. WILLIAMS: Wouldn't you not  
11 reintroduce some of these if an issue ---

12 MR. CANTERO: If we agree to a  
13 settlement? Yes, absolutely.

14 MR. LINDSAY: Or additional.

15 MR. CANTERO: I have no idea what their  
16 mentality is right now, but if I were them  
17 and you approached me and said, we are  
18 willing to give you 1,150, but we want in  
19 addition to 80 conditions these other three  
20 or four, I'd say fine.

21 I don't know what they are going to  
22 say. Maybe they have been battling too long  
23 to think that way. Maybe they have lost  
24 objectivity as many people do, the more they  
25 get into it and the more they are personally

1           involved in it, but I think a reasonable  
2           person would, if we are saying look, it's  
3           1,150 but we want these things to make sure  
4           that the community is not affected, I think  
5           that's reasonable, I think it's a reasonable  
6           view.

7           MR. PARISER: They probably will, but  
8           then they will say, oh, by the way, we are  
9           still suing you for damages.

10          MS. STANCZYK: That's another step.

11          MR. CANTERO: I don't see that suit  
12          going anywhere. I don't even they have a  
13          Takings Count.

14          MS. BOUTSIS: They don't have currently  
15          a Takings Count. They may be amending for  
16          the fourth or fifth time.

17          MR. CANTERO: That's the only thing  
18          that would strike at me as even a  
19          possibility, is a Takings Claim.

20          MR. PARISER: They are making up new  
21          causes of action the way that I look at it,  
22          and Hochman felt that way also.

23          MS. BOUTSIS: Most of the counts that  
24          they currently have in that action should go  
25          away. We are done at 9:00 p.m.

