

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

CASE NO: 10-259 AP

ORIGINAL

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9705 Hibiscus Street  
Palmetto Bay, Florida,  
Saturday, 10:00 a.m.,  
January 7, 2012.

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: Raoul G. Cantero, Esq.,  
White & Case, LLP

1 MS. BOUTSIS: As the Village Attorney I  
2 have requested that the Mayor and Village Council  
3 meet today in the Shade session regarding Palmer  
4 Trinity Private School versus the Village of  
5 Palmetto Bay, Appellate Court Case Number 10-259  
6 AP.

7 I am seeking advice from the Village  
8 Council regarding litigation strategy and/or  
9 settlement. The meeting is now being held at  
10 10:00 a.m. on Saturday, January 7, 2012.

11 Present are the Mayor, Shelley  
12 Stanczyk, Vice Mayor, Brian Pariser, Councilman,  
13 Patrick Fiore, Councilman, Howard Tendrich,  
14 Councilwoman, Joan Lindsay and the Village  
15 Manager, Ron Williams, along with myself as the  
16 Village Attorney, Eve Boutsis and Raoul Cantero  
17 of White and Case representing us in this  
18 litigation.

19 The meeting is being held at 9705 East  
20 Hibiscus Street, Palmetto Bay. A certified court  
21 reporter shall record the time and termination of  
22 this session, all discussions and proceedings  
23 that occur, the name of all persons present at  
24 any time during the session and the names of all  
25 persons speaking. The transcript shall become

1 effect of reducing the maximum number of students  
2 allowed from 1150 to 900, or to below 900, are  
3 not in compliance with the mandate. Based on the  
4 foregoing, this Court declines to address any of  
5 the other arguments raised. Accordingly,  
6 Petitioner Palmer Trinity Private School Inc.'s  
7 Motion to Enforce is hereby GRANTED and this  
8 matter is REMANDED to the Village of Palmetto  
9 Bay, Florida for proceedings in accordance with  
10 this Order and the Court's Mandate of March 3,  
11 2011.

12 Palmer Trinity's request for Attorney's  
13 Fees and Costs is DENIED without prejudice. The  
14 Intervenor's Motion for Oral Argument is DENIED."

15 MS. STANCZYK: Justice Cantero, what  
16 are your thoughts?

17 MR. CANTERO: Because the Court did not  
18 really address any of the merits that we had  
19 explained in our brief, the competent substantial  
20 evidence for the decision, it only addressed the  
21 mandate, it addressed it as a Motion to Enforce  
22 the Mandate as in the petition.

23 The only avenue we would have here is  
24 to file a Petition for Certiorari in the Third  
25 District Court of Appeals, and the standard or

1 involved when Eve filed her briefs in the 11th  
2 Circuit.

3 The Circuit Court cannot dictate what  
4 the municipality can do on remand, it can only  
5 hold that what it had done was incorrect and then  
6 remand for further proceedings. Which is why  
7 back in 2011 we had filed a Motion to Clarify the  
8 opinion and why we had defended against the  
9 school's Motion to Enforce the Mandate. And our  
10 position was it's not clear from your opinion  
11 what we are supposed to do. You cannot tell us  
12 that we must grant the petition because you are  
13 not allowed to do so.

14 They did not clarify it back then, it  
15 was still a vague decision and they said, go  
16 forth and do what we told you to do and comply  
17 with the law, but they didn't say you have to  
18 grant the petition at 1,150 students and I think  
19 both Eve and I believe that the reason they  
20 didn't do that is because they couldn't do that.

21 We come back now and we did what we  
22 thought were within the bounds of law to do and  
23 the Court is now essentially clarified that no,  
24 we told you to grant it at 1,150 and we believe  
25 that they were not within their power to do that.

1 And so our Petition for Certiorari to the Third  
2 District Court of Appeals essentially explained  
3 that the way that the Court has interpreted its  
4 prior opinion violates Third District Law.

5 Now, we may be absolutely correct in  
6 all that, it doesn't mean that the Court is going  
7 to take or grant this relief. There are several  
8 things that the Court can do because this is not  
9 an appeal as of right.

10 The Court can look at our petition, it  
11 will be assigned to a panel, and the panel can  
12 say, who cares, literally. They cannot care very  
13 much.

14 They can say, this is interesting,  
15 let's see what Palmer Trinity has to say and they  
16 can require a response. And once they require a  
17 response, we would then have the opportunity to  
18 reply. And then they get the response and the  
19 reply and now they have all three documents and  
20 at that point they can say, uh, yes, the Village  
21 is probably right, but we don't really care that  
22 much, 600, 1,150 to us, what difference does it  
23 make. In other words, they may not get indignant  
24 about it. Or they may become indignant about it  
25 and hold in our favor.

1           And we may not even wait for that, quite frankly,  
2           we may just say in our initial petition, because  
3           it's a fact that this has been up there before.  
4           And once they find out about that they may or may  
5           not assign the same panel just like the Circuit  
6           Court assigned the same panel, depending on  
7           whether they think it may be more efficient for  
8           the same panel to handle this appeal even though  
9           it's a very different iteration of the case.

10                   As far as what issues the Court would  
11           consider, the narrow issue before the Court is  
12           whether we violated the mandate by denying the  
13           petition of the school.

14                   I fully expect, and I would be  
15           surprised if Stanley Price did not argue in his  
16           response, if he has to file a response, all of  
17           the issues that he argued before the recusal  
18           issue and how outrages we had acted and all that.  
19           Because even if it doesn't have anything to do  
20           with what the Court just did, he will want to  
21           essentially prejudice the Court against us by  
22           making all of these arguments even if they are  
23           irrelevant to the appeal.

24                   So if the Court let's say does pull in  
25           our favor, I would expect that the Court would

1           either decide the recusal issues itself, or more  
2           probably remand the case back to the Circuit  
3           Court to decide those recusal issues. And then  
4           the Court may or may not allow us or require us  
5           to file further briefs before they decide that  
6           issue. And I think that's about it.

7                        So as far as the chances of ultimate  
8           victory, it's obviously very difficult to  
9           predict. On the one hand we have the merits of  
10          our case which I think are strong. On the other  
11          hand we have the fact that it's discretionary  
12          with the Court and unfortunately when things are  
13          discretionary with the Court, not only do you  
14          have to have the merits on your side, but you  
15          have to make the Court want to actually get up  
16          and do the work and rule in your favor, because  
17          it's much easier to just let things lie and go on  
18          to the other case, the next case, than to say  
19          well, now we are going to reverse, we are going  
20          to have to write an opinion and we are going to  
21          have to analyze all of this stuff and we have to  
22          read the appendix and all of the briefs. So just  
23          because I happen to believe that we have a strong  
24          case on the merits doesn't mean that we are going  
25          to ultimately win.

1           So I would certainly, anytime that you  
2           file a petition for certiorari that's  
3           discretionary, your chances are much less than 50  
4           percent because not only do you have to have the  
5           merits, but they have to want to go through this  
6           entire exercise. I would definitely say under 50  
7           percent, probably around 30 percent.

8           And one, I guess, piece of good news  
9           and then you may discount it, but it's quite  
10          substantial good news, is the Circuit Court did  
11          not award attorneys fees to the other side. I  
12          fully believe that if they had awarded attorneys  
13          fees they would be asking for over \$100,000 in  
14          their attorneys fees. I haven't spent that much,  
15          but they were involved a lot longer than I was.  
16          So this is a piece of good news.

17          They will request attorneys fees again.  
18          There is no guarantee that they will get it or  
19          not get it, it's just another discretionary call  
20          on the part of the Court.

21          MS. STANCZYK: I think one of my  
22          biggest concerns is by not appealing we are  
23          allowing the Court to set a number, a number that  
24          was denied. There was no approval given and it's  
25          contrary to what's mentioned and talked about in

1 Jesus Fellowship, it's actually no parallel at  
2 all.

3 So I have a real concern in terms of  
4 the broader aspect of the law, when we allow a  
5 Court to set a number. And that's a real concern  
6 in terms of development for municipalities and  
7 for us that we have lost our right to rule.

8 MS. BOUTSIS: I don't think it has a  
9 longstanding effect in that if it's not -- it  
10 stays in the Circuit Court level its not  
11 president.

12 And we now clearly know that if there  
13 is going to be any evidence on the record or any  
14 decision from the dais, that we have to make sure  
15 that we reopen the hearing if there is a change  
16 in anything so that we have the public comments  
17 and we have the evidence to support our decisions  
18 very, very clearly.

19 Regardless of whether they are right  
20 about Jesus Fellowship or not, we know that there  
21 is going to be a motion to tweak things that we  
22 should reopen the public hearing and I think we  
23 got that message across very, very clearly along  
24 the way.

25 As far as president, it's not like the

1 Third District Ruling in that we have this over  
2 our head and not just for us but for everybody in  
3 Dade County. It's present to this case. Do you  
4 agree with that?

5 MR. CANTERO: Yes. If it's an appeal  
6 that comes back to another panel of the Circuit  
7 Court, this decision will be persuasive but not  
8 binding because it's a parallel panel, they are  
9 on the same level, so another panel won't be  
10 bound by it.

11 To the extent that Jesus Fellowship  
12 still applies, they will feel bound by Jesus  
13 Fellowship and not by this case, and it's  
14 certainly not binding on any Court of Appeal.

15 MS. BOUTSIS: And in the Broward versus  
16 GBI case which says the Court can't tell you what  
17 to do remains good law it won't be subject to  
18 challenge.

19 MS. STANCZYK: If it remains good law,  
20 why would we not want to appeal if it's a  
21 stronger law than what they are telling us to do?

22 MS. BOUTSIS: It's because of what you  
23 just heard. It's a discretionary appeal that  
24 they may not want to take at all.

25 MR. PARISER: Right now they are

1           telling us hold a ministerial meeting and approve  
2           1,150? It boils down to that's what they are  
3           saying.

4                     You appeal it, they refuse to take cert  
5           or we lose. It devolves back to what the circuit  
6           appellate panel says, which is a ministerial act.  
7           If we win what are we winning? What are they  
8           going to tell us to do?

9                     If the point on appeal is you can't  
10          tell us a number, it goes back to us and what do  
11          we say, we are not going to obey the mandate  
12          because you can't tell us a number?

13                    MR. CANTERO: It would affirm what we  
14          have already done which is deny the petition.

15                    MR. PARISER: And they will be stuck  
16          with the 600 and that will end it right there?

17                    MR. CANTERO: No, except for the whole  
18          recusal issue.

19                    MR. PARISER: The other thing is, as we  
20          speak. I guess if they wanted to and what are  
21          the chances, Palmer Trinity could appeal, could  
22          they or couldn't they? Maybe they will be  
23          awarded attorneys fees, can they be awarded  
24          attorneys fees if they appeal?

25                    MR. CANTERO: I think it's very

1 unlikely that they will appeal. They may cross  
2 appeal, file a cross-petition, I am not sure that  
3 they will. I think they most likely will just  
4 defend the Circuit Court's order.

5 MR. PARISER: If the Third DCA rules  
6 for us, they reverse and say you can't tell them  
7 what to do and therefore it stands and they are  
8 stuck with 600, that's what their decision is  
9 going to say, or they can take that up to the  
10 Supreme Court?

11 MR. CANTERO: Technically they could,  
12 but the Supreme Court's jurisdiction is extremely  
13 narrow so it would have to show that either the  
14 Third District's decision conflicts with the  
15 decision of another District Court of Appeals or  
16 the Florida Supreme Court or that the Third  
17 District Court of Appeals interpreted a  
18 constitutional provision which likely would not  
19 be the case. Or the Third District certifies the  
20 question to the Florida Supreme Court.

21 I think it would be highly unlikely  
22 that there would be a further appeal by them. We  
23 may be able to appeal if the Third DCA writes an  
24 opinion that somehow contradicts the Broward  
25 County case and we can say that that conflicts

1 with the Supreme Court's decision and try to take  
2 it up on that basis, but that's way, way down the  
3 line.

4 MR. PARISER: First of all, I want to  
5 compliment you, I thought your brief was very  
6 good. Obviously for them to write a 15 page,  
7 being that they didn't sniff at it and they  
8 didn't just close the book at it.

9 The denial of attorney's fees without  
10 prejudice, I don't know what kind of message that  
11 is. So basically if we appeal and if we win they  
12 are going to be stuck with the 600?

13 MR. CANTERO: Yes, except for the other  
14 issues that I identified.

15 MR. PARISER: Except if they find that  
16 the recusal should have occurred, then they will  
17 say, go back for another hearing. And if we go  
18 back for another hearing they can open it up and  
19 organize again for the 1,150, I guess? How would  
20 that work? If they say one or two or if -- one  
21 was found to be recused, it wouldn't -- versus  
22 two people. Even if they thought that one person  
23 should have been recused, if it was a 5/0 vote,  
24 what does it matter?

25 MR. CANTERO: It may not ultimately

1 matter, but I think the law is that you still  
2 have to go through the exercise.

3 MR. PARISER: So in other words,  
4 whether it's one or two, even though the vote  
5 would still be ---

6 MS. BOUTSIS: Yes, you would still have  
7 to go through the process.

8 MR. PARISER: You still have to go to  
9 the hearing again. And if they went to the  
10 hearing again the procedural problems that were  
11 brought up this time, can they correct that?

12 MR. BOUTSIS: What do you mean, what  
13 procedural problems?

14 MR. PARISER: I mean, one of the things  
15 was we claimed that they waived something, that  
16 there was a waiver?

17 MR. BOUTSIS: That was in the original  
18 appeal. They only appealed the two issues not  
19 necessarily the entire order. So it's a  
20 technical argument that they did not appeal the  
21 1,150 denial they only appealed the cap of 900.

22 MR. PARISER: So if we go back and we  
23 win and if they order a new hearing, that new  
24 hearing is going to be on what in front of us?

25 MS. BOUTSIS: On the mandate. It would

1 be on the mandate again.

2 MR. PARISER: And we are saying you  
3 can't tell us what to do. If it's remanded to  
4 us.

5 MR. CANTERO: If it's remanded that  
6 means the Third DCA agrees with us that we could  
7 limit it to 600.

8 MR. PARISER: But if they pick up the  
9 recusal issue, what I am hearing is, even though  
10 we may be right, something may be due process  
11 wise or improper, it goes back to us for a new  
12 hearing because something may have been violated.  
13 What are we deciding at that hearing?

14 MS. BOUTSIS: It would be the mandate  
15 again.

16 MR. CANTERO: It would be the 600 or  
17 1150.

18 MR. PARISER: We have a public hearing,  
19 we don't have a public hearing, what do we do?  
20 We are being left off right after the  
21 clarification?

22 MS. BOUTSIS: Yes, we are being left  
23 off right after the clarification. Which unless  
24 you have extraordinary circumstances you don't  
25 really have a hearing you sort of just rule based

1           upon the Court's mandate.

2                   And if you have extraordinary  
3           circumstances which is the memo that I gave you,  
4           that would require you to reopen it because of  
5           some extraordinary reason.

6                   MR. PARISER: And we said at that  
7           hearing and it was agreed by both sides, Price  
8           and Tucker and I guess the Village, that okay, we  
9           are here for the mandate and they agreed that the  
10          issue was did you screw up, basically Mr. Price  
11          did you screw up your appeal, that's what we  
12          asked?

13                   MR. BOUTSIS: Yes.

14                   MR. PARISER: And that would be the  
15          issue to be decided, so that's going to be the  
16          same issue. You didn't appeal the full you only  
17          appealed two conditions and they said eliminate  
18          those conditions and we are back where we were.  
19          And if we deny it, then we appeal it again.

20                   MS. BOUTSIS: I think we would be  
21          possibly before the same panel in the Eleventh  
22          Circuit because it's going to be enforcement of  
23          the mandate again and we know how they have  
24          already ruled on that.

25                   MR. CANTERO: But we would have an

1 opinion from the Third DCA.

2 MR. PARISER: That says you can't do  
3 that. So, okay. But you can't do that, so  
4 that's what I am trying to figure out, if you  
5 can't do that, is it a full blown hearing in  
6 front of us?

7 MR. CANTERO: I don't think the last  
8 one was a full blown hearing.

9 MR. PARISER: You said eliminate it,  
10 that's the end of it, goodbye, would that be the  
11 same thing?

12 MS. BOUTSIS: Pretty much. Unless you  
13 all decided there was a substantial change of  
14 circumstances that needs to have evidence  
15 presented, but, yes that's a very narrow  
16 exception.

17 MR. PARISER: Okay. Palmer Trinity for  
18 whatever reason, I guess the ruling would be if  
19 the recusal comes into it, either one or two,  
20 they couldn't participate in that hearing if it  
21 was remanded back to the Council, I am assuming  
22 that's what would happen?

23 MS. STANCZYK: The recusal carries  
24 forward.

25 MS. BOUTSIS: Depending on how the

1 Court rules on the Third District, I would say  
2 yes.

3 MR. CANTERO: I have a question and  
4 that is, if two members are recused, do you even  
5 have a quorum?

6 MS. BOUTSIS: Yes, we have three.  
7 Three is a quorum.

8 MR. PARISER: But it would still be,  
9 that's fine, they are out.

10 MR. CANTERO: You need all three votes  
11 to do anything.

12 MS. LINDSAY: It has to be unanimous.

13 MS. BOUTSIS: But the three that are  
14 present have to rule and we have ruled two to one  
15 before.

16 MR. PARISER: But the two to one would  
17 be the same issue. Would be the same issue  
18 present to Palmer, they said eliminate it we are  
19 eliminating it.

20 MR. CANTERO: The Third DCA presumably  
21 would have told us yes, you are within your right  
22 to do it. That's what we are looking for.

23 MR. PARISER: That's our home run in  
24 the Third DCA. We are in our right to do that?

25 MR. CANTERO: Yes.

1 MR. PARISER: If you can recall, if you  
2 narrow in where they say, the way I read this was  
3 basically saying everything is always 1,150, what  
4 are you kidding, basically bought Palmer  
5 Trinity's argument saying, of course it's about  
6 1,150, basically that's what they were saying, I  
7 believe.

8 MR. CANTERO: When we said take out the  
9 condition of 900, we meant and also grant their  
10 petition at 1,150.

11 MS. STANCZYK: Even though Palmer  
12 didn't speak to it.

13 MR. CANTERO: And even though they  
14 didn't say that in the mandate, in the original  
15 opinion they never said that.

16 MR. PARISER: But now they are?

17 MR. CANTERO: Yes.

18 MS. STANCZYK: Does the Third DCA want  
19 someone to state a number? Isn't that kind of an  
20 authority that they don't have?

21 MR. CANTERO: That's our argument.

22 MR. PARISER: And the award of  
23 attorney's fees?

24 MR. CANTERO: Their motion for award of  
25 attorney's fees was on the 57105.

1 MR. PARISER: How were they proceeding  
2 on that?

3 MS. BOUTSIS: Sean Cleary who was the  
4 counsel for the 2010 separate litigation actually  
5 filed in the Appellate matter, had a motion for  
6 57105, which he has never done an appearance in  
7 this case or anything else, but they also in  
8 their briefs asked for attorney's fees.

9 MR. PARISER: Wasn't it also for  
10 violating the Citizens Bill of Rights on the  
11 recusal? What was the basis for their asking for  
12 attorney's fees again?

13 MR. BOUTSIS: On the 57105.

14 MR. PARISER: For whatever. Basically  
15 just as a plain sanction?

16 MS. BOUTSIS: Right. The only reason I  
17 mentioned it filed by Sean Cleary is because he  
18 filed it in this case even though he is not  
19 listed as a representing party in here.

20 MR. STANCZYK: Does he have a right?

21 MS. BOUTSIS: I don't know how he did  
22 it, but he did it. It's in the record file.

23 MR. CANTERO: By the way, on that  
24 issue, even though the Court denied attorney's  
25 fees here, since you have the other lawsuit

1 pending I would expect them to say part of our  
2 damages from your wrongful conduct was the  
3 attorney's fees that we had to expend in those  
4 appeals.

5 MS. BOUTSIS: The only thing we say  
6 about -- they misinterpreted Jesus Fellowship and  
7 I agree that they misinterpreted Jesus  
8 Fellowship, but Jesus Fellowship is a Third  
9 District case and did cite a number.

10 MS. LINDSAY: The number that was cited  
11 referred back to the ZAB approved number from the  
12 original hearing. The big difference here is  
13 that that was an approved number in that case.  
14 In this case 1,150 was never approved. Had it  
15 been approved then we can say they were  
16 analogous, but we missed that key element and  
17 it's stated right here in the Jesus Fellowship  
18 case.

19 The ZAB decision was appealed to the  
20 Commission by a number of objectives. "The  
21 County's professional staff continued to  
22 recommend approval with the ZAB authorized 524  
23 students".

24 We have a staff recommendation but we  
25 never had a single governing board's approval.

1           That's the crucial difference here.

2                   MS. BOUTSIS: You are one hundred  
3 percent correct.

4                   MS. LINDSAY: And that's why these two  
5 cases are truly not analogous, even though we go  
6 to the Eleventh Circuit, we go to the Third DCA  
7 and it was referred back and there are some  
8 segments that are analogous, but were are missing  
9 the key element of the original approval of  
10 1,150. It doesn't exist.

11                   In fact, quite the contrary, not only  
12 was it not approved, but it was denied and as  
13 Justice Cantero very adequately stated in his  
14 brief, we have a number of competent substantial  
15 items of evidence to support the denial of that.

16                   We don't have an analogous situation.

17                   MS. STANCZYK: Plus, I think somewhere  
18 in there they are using staff, the staff approval  
19 of the application as the justification, and they  
20 have skipped the rule that staff doesn't approve,  
21 we approve.

22                   So I think when you take it from staff  
23 and you ignore the council's role, I think that's  
24 not even the right body of government.

25                   MS. LINDSAY: I was speaking to

1 Attorney Boutsis yesterday and I noted that in  
2 Mr. Gibbs -- what do you call this? Brief.  
3 Tucker went on about the Jesus Fellowship case,  
4 and I noted that you had not included that in  
5 yours.

6 Was there a reason when you filed your  
7 brief that you did not refer back to the Jesus  
8 Fellowship case and the June 11th or the June 1st  
9 2001 ruling from the Court where they said in  
10 their decision that the two cases were analogous?

11 I am wondering why we didn't dispute  
12 that, is really my question?

13 MR. CANTERO: I know that we relied on  
14 the Broward county case.

15 MS. LINDSAY: I understand that.

16 MR. CANTERO: Which is a Florida  
17 Supreme case.

18 MS. LINDSAY: So you think that was  
19 stronger because it's a Florida Supreme case?

20 MR. CANTERO: We relied on the Broward  
21 County Case which is a Florida Supreme Court Case  
22 and crystal clear that they can't tell the  
23 municipality what to do.

24 MS. LINDSAY: I am referring to the  
25 Jesus Fellowship case which is a Third District

1 case which you are saying doesn't have as much  
2 weight?

3 MR. CANTERO: The nuances of the facts  
4 involved aren't as important as the principle of  
5 law which is whatever the Circuit Court does to a  
6 municipality's decision, it can only remand for  
7 further proceeding, it cannot dictate what the  
8 municipality does.

9 MR. PARISER: If we win on the Third  
10 DCA outright, good. If they say because of the  
11 recusal issues you need a new hearing and it  
12 comes back to us, then where we are it's the same  
13 issue and the Council how many are left to rule,  
14 either say yes or no.

15 MR. CANTERO: Or the other thing they  
16 can do is remand it to the Circuit Court to  
17 determine and the Circuit Court can say, you  
18 should have recused or you didn't have to recuse.

19 MS. STANCZYK: In other words, they can  
20 remove the recusal issue from their purview and  
21 send it back to Circuit Court?

22 MR. CANTERO: Because the Circuit Court  
23 never ruled on that. They said we have seen  
24 enough we don't have to go into the other issues.

25 So it depends on whether they feel like

1 ruling on the issue or not, they can either do it  
2 themselves. They can say Circuit Court, you were  
3 wrong on what you did, they were right to do 600,  
4 but go ahead and decide that recusal issue.

5 MS. STANCZYK: So how often do they  
6 decide a recusal and how often do they recuse?

7 MS. BOUTSIS: I am not very familiar  
8 with very many recusal cases.

9 MR. CANTERO: Most recusal cases are  
10 recusals of judges.

11 MS. BOUTSIS: Which is a different  
12 standard. It's easier to recuse a judge in  
13 someways.

14 MS. STANCZYK: It's more clearcut, I  
15 think.

16 MS. LINDSAY: Because as I understand  
17 it the law says, and correct me if I am  
18 misspeaking, but the law says that we have a duty  
19 to vote.

20 MR. CANTERO: Unless you have a  
21 financial interest you are required to vote.

22 MS. LINDSAY: In terms of this  
23 particular case, all we did was rule to support  
24 what the Court told us to do. They said, we want  
25 you to remove the 900 and we want you to remove

1 the 30 year prohibition, and there is not one of  
2 us here that didn't do exactly what the Judge  
3 said.

4 We didn't rule on the 1,150. Some of  
5 us didn't. I didn't. That was there on the  
6 record. And the 600 was determined by a  
7 community, by another board way before we became  
8 a Village.

9 So no one in this community on this  
10 Village Council now or prior ruled on that 600,  
11 we inherited. So for anyone to say that we  
12 placed that cap, that's also incorrect.

13 So not only did we not place the 600 as  
14 a Village, this Village in a prior Council in May  
15 of 2010 denied through competent substantial  
16 evidence the 1,150.

17 And then this Council, I still contend  
18 did exactly what the Court told us to do, we  
19 followed their mandate.

20 MR. CANTERO: Let me throw something  
21 else in just so you can have it in your calculus  
22 of what to do.

23 In discussing settlement with Palmer  
24 Trinity, with Joe Kalbac, he explained, and if  
25 you recall the sum of negotiations kind of

1 morphed into we talked about doing one thing and  
2 then we started to talk about another, but the  
3 reason it morphed is because Joe Kalbac said  
4 look, we are not going to get to 1,150 for 10 or  
5 15 years, I think it is. Because they have got  
6 to get the funding, they have got to build all of  
7 that, and they just don't have the money right  
8 now to do it. All they want is the approval, but  
9 by the time it gets there it's going to be, safe  
10 to say nobody here will still be on the board by  
11 the time that gets done, and they have to go  
12 through 80 conditions in there to get there.

13 They have not appealed those other 80  
14 conditions and those still stand. So they have  
15 got many obstacles left, including many that are  
16 just internal to Palmer Trinity getting the money  
17 to do all of this before they ever get to 1,150  
18 students.

19 MS. STANCZYK: I think talking about  
20 their progression towards 1,150 students is kind  
21 of a slippery slope for us, because right now we  
22 are supposed to have them at 600 but they are not  
23 at 600, they are at 652. They have substantial  
24 compliance for 642.

25 There is no mechanism being acted on by

1 the Village right now to verify and to hold their  
2 feet to the fire to stay on their schedule of  
3 600. 600 is not 652. 652 is published.

4 Now, what year do they go to 652. And  
5 they have already burned up with the appeals and  
6 whatnot four years. So they have used a date  
7 they haven't used the extended program of  
8 bringing those students in. They have added four  
9 years.

10 So that's a really slippery slope to  
11 rely on a schedule of impact like that.

12 MR. WILLIAMS: Judge, let me ask a  
13 question, please. The Mayor brings that up at  
14 every meeting and I am not sure it has anything  
15 to do with what we are doing here.

16 Explain the difference between  
17 discretionary appeal and right of appeal, please.

18 MR. CANTERO: In a right of appeal you  
19 file an appeal to the Court of Appeals and they  
20 have to decide it. They may decide against you,  
21 but they have to decide it.

22 In a discretionary appeal they can say  
23 no, we are not going to decide it, we have the  
24 discretion whether to do it. It may be what was  
25 done was wrong, but we are not going to get

1 involved, essentially.

2 MR. WILLIAMS: This would be  
3 discretionary?

4 MR. PARISER: Is it discretionary  
5 because it's a zoning?

6 MR. BOUTSIS: No, it's because we  
7 didn't appeal a year ago from the actual order so  
8 this is a mandate enforcement.

9 MR. WILLIAMS: So explain to us,  
10 because I want everybody to understand and I want  
11 everybody to remember this issue. What happens  
12 given that it's a discretionary, if the Third DCA  
13 decides not to hear it? They have the full  
14 discretion not to, what you would tell us?

15 MR. CANTERO: This decision stands.

16 MR. PARISER: Which basically says  
17 ministerially, Council give them the 1,150.

18 MR. WILLIAMS: So whatever amount of  
19 dollars later, and I'm not asking you for that  
20 number at this point, whatever amount of dollars  
21 later, the discretion of the Third DCA, this  
22 whole issues rests upon the discretion upon the  
23 Third DCA?

24 I just want everybody to keep that in  
25 mind. It's not a matter of the merits and the

1           652 the Mayor brings that up all of the time, and  
2           the this and the that, the Third DCA has the  
3           discretion to hear it or not?

4                   MR. CANTERO:   Yes.

5                   MR. WILLIAMS:   I just want that in the  
6           record.

7                   MR. CANTERO:   Even though you didn't  
8           ask this question, it raises something in my  
9           mind. There is another risk that I haven't  
10          discussed, which is the Third DCA agrees with  
11          what this Circuit Court did, and now we have a  
12          higher court opinion agreeing and holding the  
13          same weight as the Circuit Court did.

14                   Even worse, worse case scenario, we get  
15          an opinion affirming what the Circuit Court did  
16          and slamming the Village for what it did and  
17          saying, of course you knew what you were supposed  
18          to do, it was obvious what you were supposed to  
19          do and you deliberately disobeyed an order of the  
20          Circuit Court, and that's going to get published  
21          in the reporters that stay there longer than all  
22          of us will be alive.

23                   I am not saying that's going to happen,  
24          I just want to make you aware that is the worse  
25          case scenario.

1                   MR. WILLIAMS: But what you do believe  
2                   is, and I am just paraphrasing your comment, we  
3                   have a 70 percent chance that this is going to  
4                   stand and go back to the Circuit Court.

5                   MR. CANTERO: Yes.

6                   MR. TENDRICH: The thing is, in reading  
7                   this, the first paragraph says, this Court  
8                   returns for the fifth time as to a dispute  
9                   between Palmer Trinity and the respondent. When  
10                  they say for the fifth time, that's like saying  
11                  come on guys, don't you know what we are telling  
12                  you, why do you keep on bringing this back to us.

13                  I think for them, they would say, we  
14                  don't want to hear this again, and I think we are  
15                  spinning our wheels on nothing. This is like a  
16                  parent telling a child the next time you do this  
17                  you are in the corner and then the next time you  
18                  do it you are out. To me I think the Court ---

19                  MR. CANTERO: I think it is an  
20                  expression of impatience.

21                  MS. LINDSAY: And Howard, I don't  
22                  disagree with you at all, but I will point out  
23                  that the Eleventh Circuit Court has been reversed  
24                  several times in cases that directly affect this  
25                  case and also in the Jesus Fellowship case.

1           For example, the Eleventh Circuit Court  
2 upheld the Council's decision made in 2008 to  
3 deny the zoning change. That was a procuring  
4 denied. Not once, but twice. And Palmer Trinity  
5 appealed to the Third DCA, and because a new case  
6 had come to light in close proximity to the time  
7 of the appeal by Palmer Trinity, the Third  
8 District Court had this particular case and they  
9 reversed the Eleventh Circuit. That's one time.

10           Another time is with the Jesus  
11 Fellowship case. The Eleventh Circuit Court  
12 upheld what the County Commission had done in  
13 reversing what the ZAB had approved.

14           The ZAB had approved 524, the County  
15 Commission came along on appeal and said, we are  
16 going to knock it down to 150. That went to the  
17 Eleventh Circuit Court and the Eleventh Circuit  
18 Court said yes, you were right County Commission.  
19 It was appealed to the Third DCA and the Third  
20 DCA said no, no, no, to the Eleventh Circuit and  
21 they reversed it back.

22           So the Eleventh Circuit Court is not  
23 always correct. I do agree with you that they  
24 seem to be very irritated here and that's  
25 unfortunate, but they are not always the last

1 word and I think that's something that you should  
2 take into mind.

3 MR. WILLIAMS: Unfortunate?

4 MS. LINDSAY: It truly is.

5 MR. WILLIAMS: That's an expression.

6 MS. STANCZYK: Well, I think it's an  
7 expression that's fairly accurate. I think  
8 when you misstate and are not accurate in  
9 reviewing a case like Jesus Fellowship, I think  
10 that says a lot that they were reaching.

11 They can be impatient but they still  
12 should be accurate to the law.

13 MR. TENDRICH: I am sure that judges  
14 don't feel that they are inaccurate, to be honest  
15 with you. Nobody is perfect and judges do make  
16 mistakes, but when you brought it back to these  
17 guys for five times already, you know, that's my  
18 thoughts.

19 MR. PARISER: Did they mention the  
20 Broward case in their opinion, if it applies or  
21 doesn't apply?

22 MS. BOUTSIS: They don't address that.

23 MS. LINDSAY: They don't address that  
24 and they say it's analogous to the Jesus  
25 Fellowship case.

1 MR. PARISER: So our appeal would be a  
2 very narrow issue in that you didn't follow the  
3 Broward case, a Florida Supreme Court Case and  
4 Palmer can bring up whatever, their best shot.  
5 Even if that's so, Third DCA we are still  
6 entitled to a new hearing is basically what they  
7 are going to say?

8 MR. CANTERO: Yes.

9 MS. BOUTSIS: I would be remiss if I  
10 didn't say one thing, though, putting all of the  
11 cards on the table. This would go to the Third  
12 District and there is the notice that we would  
13 provide as to prior cases. There is a good  
14 chance that we can get the same panel and that  
15 Third District opinion really crucifies us. I  
16 want to put that on the table out there because  
17 it's a risk.

18 MS. LINDSAY: And I would like to say  
19 that I was present at that Third District and  
20 they crucified you, us, on the zoning issue and  
21 told us at that meeting that the site plan  
22 application was a completely separate issue and  
23 that the Village could within its standards  
24 approve the application in its entirety,  
25 partially, or not at all.

1           So if we are going to put the cards on  
2           the table, let's distinguish between what that  
3           panel said about zoning and what they said about  
4           the site plan.

5           MR. BOUTSIS: The only reason I raise  
6           the panel at all is because their opinion didn't  
7           go into that, their written opinion did not go  
8           into that at all. And their opinion crucifies  
9           us, period. The opinion itself crucifies us.

10          MS. LINDSAY: It was based on the  
11          zoning decision and they had a case that  
12          supported them and we didn't argue with them.

13          In that particular case they have a  
14          case that they had ruled on at the Third DCA that  
15          supported Palmer Trinity's claim for reverse spot  
16          zoning. We didn't have an argument and we didn't  
17          even consider trying to appeal to a higher  
18          authority because we conceded that the Court is  
19          right.

20          I'd like nothing more than to be able  
21          to sit here and say today, I have read what the  
22          Court has said, they are right, let's do what  
23          they say and let's end this.

24          I think more than anyone else in this  
25          room I would like to see this ended. But I am

1 very conflicted because I do not believe that the  
2 Court acted according to the law and I have had a  
3 real hard time here.

4 I ran for office to represent people in  
5 this Village. I cannot sit here today and vote  
6 one way to do something that I think is perhaps  
7 in my personal best interest. I have to think of  
8 the people that put me in office. And people put  
9 me in office because they knew that I would stand  
10 up for them. And as hard as it is for me to sit  
11 here today and think about being put into a  
12 position to drag this out further, I am having a  
13 very, very, very difficult time because I don't  
14 believe that the Court followed the law.

15 I am hearing from you, Justice Cantero,  
16 that they didn't follow the law. And I find it  
17 very disheartening to think that our Court system  
18 is like this.

19 And maybe it's naive on my part, I have  
20 never been involved in anything like this, but it  
21 concerns me deeply that in the United States of  
22 America that the law doesn't prevail.

23 MR. PARISER: To me that's the issue.  
24 If they decide to take Cert, the Broward case you  
25 feel is a Supreme Court case is a strong case.

1           There is no guarantee, unless they say we are  
2           just going to ignore the Broward case, I guess  
3           that's what the Third DCA would say.

4                   MR. CANTERO: They cannot say anything.  
5           They don't have to say anything. Just deny it.  
6           Petition is denied.

7                   MR. PARISER: That I understand, but if  
8           they do take it that's our argument.

9                   MR. CANTERO: They can take it and then  
10          ultimately just say denied without an opinion.

11                   MR. PARISER: And that's the end of it  
12          also. That you can't appeal a decision like  
13          that.

14                   MR. WILLIAMS: Meaning it goes back to  
15          the Eleventh District.

16                   MS. LINDSAY: Do you think that there  
17          is any room for settlement with Palmer Trinity?

18                   MR. CANTERO: I don't think so. I  
19          don't think so. The window was very narrow  
20          before this opinion and I think they are going to  
21          be very confident now that they have this  
22          opinion, why would they appeal.

23                   MS. LINDSAY: The only leverage that I  
24          think that exists here is, first of all, as I  
25          pointed out, we know that the Eleventh Circuit

1 Court has been overturned in a number of  
2 circumstances as I have already mentioned.

3 Secondly, by appealing this it just  
4 drags the process out for them as well. And if  
5 they are anxious to heal the wounds that have  
6 been created in the community and move forward,  
7 perhaps we can reach some consensus.

8 As we have all stated here, as you have  
9 stated and Attorney Boutsis and Vice Mayor and so  
10 on as many of us have stated here today, the  
11 1,150 was denied and there was competitive  
12 substantial evidence to support the denial. So  
13 for us to sit here today and say, oh well that  
14 doesn't matter, I just have a hard time with  
15 that.

16 MS. STANCZYK: The only thing that I  
17 see we have a hard time with is we have made  
18 overtures and while I can continue to support the  
19 idea of settlement that brings us together in  
20 some form, we have made overtures on repeated  
21 basis. And of course we get the, it's their  
22 fault, it's our fault, we are the ones that are  
23 the driving force, and we have made overtures  
24 over the years.

25 MR. TENDRICH: When we had the chance,

1 we hired Justice Cantero to try and negotiate,  
2 and when we had a chance for him to negotiate we  
3 voted three to two not to let him negotiate.

4 MS. STANCZYK: Not vote.

5 MR. TENDRICH: Whatever we do.

6 Technically the consensus was not to let him do  
7 it. Now you are saying let's go --- let me  
8 finish, please.

9 And so I am just saying, he offered, we  
10 hired him for that particular reason, and then he  
11 said, maybe I can negotiate, and then when it  
12 came time to vote the consensus was no. I said  
13 consensus.

14 MS. STANCZYK: It's not that we  
15 discussed the concept of settlement. He brought  
16 back to us information from Palmer Trinity that  
17 was not acceptable. And that is a difference.  
18 Because he went there, he discussed, it is a  
19 matter of record that he did it because it's  
20 included in the bills, and the terms were not  
21 acceptable.

22 So I think you have to look at it in  
23 that way. It's not that we didn't try, it's not  
24 that we didn't make overtures. We have made  
25 overtures over the years and over the years they

1 have confounded those efforts. They have  
2 confounded it during mediation, they have  
3 confounded it during many different sessions in  
4 many different ways.

5 MR. WILLIAMS: Mayor, you have to admit  
6 though, when all of us were here, so that  
7 everybody's memory is clear, the Justice asked  
8 whether or not we would consider a counteroffer  
9 and we wouldn't even consider a counteroffer, as  
10 all of us recall, and I am sure the record is  
11 clear.

12 MS. LINDSAY: Mr. Williams, and I think  
13 as I said a moment ago, the problem that I keep  
14 having is the 1,150 was denied and so I am having  
15 a hard time saying ---

16 MR. WILLIAMS: I am commenting on the  
17 negotiation. The negotiation recommendation that  
18 the Justice brought back to us.

19 MS. LINDSAY: I do realize that the  
20 record shows whose consensus, how the consensus  
21 was directed.

22 MR. CANTERO: Getting back to your  
23 question of whether negotiations at this point  
24 would be fruitful.

25 The last time we were here, I think it

1 was late November early December, I brought to  
2 you an offer from them saying we will get to 900  
3 by X date and 1,150 by Y date, I think it was,  
4 and the council rejected that, they did not want  
5 me to counteroffer. I don't see any offer coming  
6 from them now to be anymore acceptable to the  
7 Council than it was then. It's probably going to  
8 be less acceptable.

9 MS. LINDSAY: I am not sure that I am  
10 clear on the offer that you say was on the table,  
11 because the way that I understood it was that you  
12 were proposing that we move in that direction  
13 towards the 1,150 and that when we reach 900 we  
14 would have some sort of traffic evaluation. But  
15 it was my understanding when you were discussing  
16 that, that it had not been accepted.

17 Is that correct?

18 MR. CANTERO: What I recall is bringing  
19 back a proposal on certain timelines, I don't  
20 recall right now what the traffic part of it was,  
21 but the Council didn't want to do it. So my  
22 point is, any offer that they want to make now or  
23 that they would accept now is not going to be any  
24 better than that one.

25 MR. PARISER: I recall whatever was

1           discussed, your impression was, I am not even  
2           going to go back to Palmer Trinity because they  
3           are not going to listen to whatever was discussed  
4           as far as the counteroffer. That was the end of  
5           that.

6                   MS. STANCZYK: Not only that, they had  
7           actually renegotiated the resolution and  
8           accelerated the growth plan. So it was outside  
9           of the resolution that they had previously agreed  
10          to.

11                   MR. CANTERO: I think that was part of  
12          it, yes.

13                   MR. PARISER: What bothers me is they  
14          didn't even mention the Broward case in here and  
15          procedurally that seems to be the strongest shot  
16          at any appeal. They may buy it, they may not buy  
17          it. I don't know how much it's going to cost us  
18          the legal effort to get to that point, but I  
19          mean, that was part of our concern, I know mine  
20          at the last hearing in front of the Council, that  
21          they can't tell us what to do, on top of the fact  
22          that you may have waived something by not  
23          appealing everything else Palmer Trinity.

24                   MS. BOUTSIS: Whatever we decide we  
25          need to decide today because Justice Cantero

1 would need to file the appeal and the appeal is  
2 due the 23rd. That was the reason why we moved  
3 up this A/C session, so that if you give the  
4 direction he has at least sometime to work on it.  
5 Meeting next Friday would not give him very much  
6 time.

7 MR. PARISER: I am going to make a  
8 Motion to Appeal. I came in here not in that  
9 direction, quite honestly, but the fact that --  
10 of course Courts get overturned. And it's going  
11 to be a straight up or down I think on that  
12 Broward case.

13 MR. FIORE: You have to be kidding,  
14 right, Mr. Vice Mayor?

15 MR. PARISER: No.

16 MR. FIORE: Unbelievable. Listen, I  
17 came in here in a good frame of mind, I sat here  
18 and I listened. This is over folks, we lost  
19 again. How many times do we have to keep getting  
20 punched in the mouth before we stop biting. They  
21 are telling us 1,150, it's right here. I am  
22 trying to be nice, let it go people, this is  
23 over.

24 How much more money are we going to  
25 waste? Even Councilwoman Lindsay said you want

1 to heal the wounds of the City, we can start  
2 right now. I don't know if you want me to get  
3 upset, I don't want to get upset, I came in here  
4 in a good mood today. This is over.

5 MR. STANCZYK: I am not sure mood has  
6 anything to do with acting professional and  
7 serving your people.

8 MR. FIORE: Now you are starting. I  
9 came in here with a good frame of reference and  
10 this is done, let it go. We lost again. We  
11 should be very fortunate we don't have to pay  
12 attorney's fees here. If that's what you want to  
13 do publically, and will go out there publically,  
14 I am against it, period.

15 I don't think that my position has  
16 changed anytime from December of 2010 when I came  
17 in here and said the same thing all the way  
18 through. We have had court order after court  
19 order that have been in favor of the applicant.  
20 I don't know what else to tell you, and that is  
21 saying it as kind as I can. Do it at your own  
22 risk. Foolish.

23 MS. BOUTSIS: Can we have a consensus  
24 on an appeal and then on Monday night let's take  
25 a formal vote and action on the council meeting

1 to appeal.

2 MS. LINDSAY: May I ask Justice Cantero  
3 a question?

4 How long do you think the process would  
5 be extended by appealing to the Third DCA at this  
6 point? I understand we have until the 21st to  
7 file, then I assume the school would have a  
8 period of time to respond?

9 MS. BOUTSIS: If they grant the  
10 petition. If they don't grant the petition it's  
11 denied.

12 MR. WILLIAMS: That's a great question.  
13 My followup would be the time relating to the  
14 cost.

15 MR. CANTERO: We would file the  
16 petition on or before January 21st. At that time  
17 Palmer Trinity would not be required to respond  
18 unless and until the Third DCA tells them to  
19 respond.

20 As I was saying before, the Third DCA  
21 can deny our petition without even requiring a  
22 response. They can say, you let them go to 1,150  
23 or we have other things to do, however that panel  
24 feels at that moment. And each Judge will  
25 probably be looking at it isolated and in his own

1 office, not really going to be talking about what  
2 they will vote on, whether to require a response  
3 or not.

4 So if they deny it without requiring a  
5 response, that can come very quickly, within a  
6 month.

7 If they require a response, then again  
8 within a month they will require the response,  
9 let's say two weeks they will require the  
10 response. They will have 20 days to respond and  
11 then we'll have another 20 days to reply.

12 Normally the Court will not set oral  
13 argument at that time. We can request oral  
14 argument, and I suggest that we do although that  
15 will increase the cost.

16 After they receive the response and the  
17 reply, the Court can then decide on the papers.  
18 That can take -- it's very hard to predict at  
19 that point how long it can take. Just like it's  
20 hard to predict this one, because they can deny  
21 it outright again without writing an opinion, or  
22 they can deny it or grant our petition with an  
23 opinion, in which case they will have to write  
24 something like this and it can take months.

25 It all depends on the dynamics of the

1 Court who is writing the opinion, how long does  
2 it take to write, is there a descending opinion,  
3 how long is that going to take to write. So all  
4 of that comes into play. Or they can ask for  
5 oral argument in which case it will be a few  
6 weeks after the order and then that whole opinion  
7 process starts again and we just don't know.

8 So it's very hard to predict. If they  
9 require a response it can take several weeks to  
10 several months.

11 MR. FIORE: That's another couple  
12 \$100,000. How much money is that? That's a lot  
13 of money. I will vote against anymore  
14 expenditure of funds. No offense. I may not get  
15 the support, but I am not going to spend anymore.  
16 We have an order here, Judge Cantero didn't you  
17 just say when the manager asked you, we have a 70  
18 percent chance of losing this?

19 MR. CANTERO: Yes.

20 MR. FIORE: I don't know what else to  
21 say, and I am being as kind as I can be here. I  
22 am done, thank you.

23 MR. TENDRICH: I happen to agree with  
24 Patrick Fiore. When you have a 70 percent chance  
25 of losing, why go after it. Are we going to get

1 a letter that says this Court returns for the  
2 sixth time, are you kidding us now, you don't  
3 read what we told you.

4 I have to agree. I understand that  
5 maybe a case hasn't been brought forth that might  
6 be important to this, but as the Judge said, they  
7 can say we really don't care, we have said what  
8 we have said, we have done what we have done,  
9 they have spent a lot of hours. We have  
10 certainly gotten our dollars worth out of  
11 judges for what we pay for them, but I think it's  
12 foolish for us to appeal it now. I think it's  
13 gotten to the point to me where we need to listen  
14 to the Court.

15 MS. STANCZYK: Well, I support the  
16 appeal.

17 MS. LINDSAY: I would like to ask  
18 another question, if I may. I came in here today  
19 undecided and I decided to listen to you, Judge,  
20 and to hear whether or not you thought that the  
21 Court had acted within the law. And what I am  
22 hearing from you is that you do not believe that  
23 the Court acted within the law. Is that correct?

24 MR. CANTERO: I think that the opinion  
25 was incorrect.

1 MS. LINDSAY: You believe that the  
2 opinion was incorrect. I am a layperson  
3 obviously, but I am a layperson that does her  
4 homework and I have reached the same conclusion  
5 and that's why I am having such a hard time with  
6 this.

7 I agree with Councilman Fiore that we  
8 have spent an enormous amount of money, but I  
9 also think that it is our ultimate duty to  
10 represent the people of the Village and to act  
11 within the code not only of the Village but the  
12 law in its overall form. And I think that if we  
13 think that the law hasn't been adhered to, then  
14 we have a duty to ask someone of a higher  
15 authority to review that for us.

16 Now, having said that, you have  
17 mentioned that we have a 70 percent chance of not  
18 being heard.

19 Could you elaborate a little bit and  
20 tell me what you base that on?

21 MR. CANTERO: I base it on the  
22 percentage of petitions that are filed in the  
23 Third DCA and the percentage that actually get  
24 granted on a discretionary basis.

25 MS. LINDSAY: The Jesus Fellowship

1 case, the opinion was written by Judge Fletcher.  
2 This is a very recent case, 2000. A written  
3 opinion by Judge Fletcher. This is a case that  
4 was decided by this Third DCA.

5 I would think this would be important  
6 if we do decide to appeal that we use a strong  
7 argument not only of the case that you cited, the  
8 Broward County case, but it's my lay opinion that  
9 we should point to this, a case that was decided  
10 by the Third DCA.

11 I think by doing that, by showing the  
12 Third DCA that this is how they ruled and we have  
13 not gotten the same treatment here, that we have  
14 a stronger possibility of being heard.

15 Is that a faulty assumption?

16 MR. CANTERO: Council member, I can  
17 assure you that although I don't believe that our  
18 chances are great on appeal, that if you decide  
19 to take the appeal, I think we have a 70 percent  
20 chance of losing. However, I will do everything  
21 within my powers of advocacy to make the best  
22 case possible for the Village. That I can assure  
23 you.

24 And I don't have our previous response  
25 with me, but I am pretty sure that we cited Jesus

1 Fellowship there. We certainly didn't ignore  
2 that case and we certainly will cite it again. I  
3 agree with you that it is a case right from the  
4 Third DCA and that it would be persuasive to that  
5 Court.

6 I think that the problem on these  
7 discretionary petitions is not just that you have  
8 a good case on the merits. You have to create  
9 enough indignation on the part of the Third DCA  
10 that they will want to undertake the effort to  
11 write an opinion and to reverse the Circuit  
12 Court.

13 MR. STANCZYK: Don't you think that  
14 someone who misinterpreted their own work and  
15 misapplied it, wouldn't that be somewhat as an  
16 incentive since they would want to preserve their  
17 work and their opinion? Because it hasn't been  
18 reinterpreted it's been misapplied.

19 MR. CANTERO: I agree with you, but I  
20 have been involved in a sufficient number of  
21 Petitions for Certiorari to have a healthy  
22 skepticism for the Court granting petitions that  
23 I think should be granted.

24 MR. WILLIAMS: Mayor, if I may. I know  
25 the Council is deciding what you want to do, but

1 I want to follow up Councilwoman Lindsay's  
2 question which I think is a good one. I think  
3 that clearly with your experience, and if I may  
4 say credibility, and certainly that helps us  
5 maybe better than your thoughts and your  
6 conservative thoughts on probability here.

7 I'd like for the Council to hear as  
8 they decide what is the probability, if at all,  
9 that a reversal would open the door for attorney  
10 fees for Palmer Trinity?

11 And I ask that as a checkbook guy here,  
12 the financial side of it. I certainly am not  
13 asking you to crystal ball it, but I would ask  
14 the Council to have that comment from you as they  
15 make their final decision between now and Monday  
16 night.

17 MR. CANTERO: I don't think that a  
18 reversal will open the door, because a reversal  
19 would mean that we win. An affirmance sure, may  
20 open the door. I don't think it opens it very  
21 wide because the only basis for attorney's fees  
22 is I think section 57105 Florida Statue, which is  
23 a provision granting attorney's fees when the  
24 other side's position is completely frivolous. I  
25 don't think our position is frivolous.

1 I can't guarantee that the Third DCA  
2 won't think so, but I don't think it is. I think  
3 we have a good faith basis. If I did not think  
4 we had a good faith basis I wouldn't be telling  
5 you right now that we don't have a good faith  
6 basis, and if you decide to appeal I couldn't do  
7 it for you, I would be telling you that.

8 MS. LINDSAY: You are not saying that?

9 MR. CANTERO: I am not saying that. I  
10 could be wrong and they could be so indignant  
11 against us that they would grant it, but I don't  
12 think the possibilities are very large of that  
13 happening.

14 MS. LINDSAY: If I may ask another  
15 question Justice.

16 Is the worse case scenario here, we  
17 appeal, we are denied outright with no hearing,  
18 no oral argument, nothing, it's sent back, we  
19 have a ministerial meeting, we approve what the  
20 Court appears to have mandated and you believe  
21 that attorney's fees, the chance of those being  
22 awarded to Palmer Trinity are minimal?

23 MS. BOUTSIS: That's not worse case  
24 scenario. Worse case scenario is they grant the  
25 right to hear us, they hear us, they rule against

1 us, they make new law, it remands back and we may  
2 have to deal with the issue of recusal and  
3 everything else. And it may be several more  
4 years of dealing with the you do recuse or don't  
5 recuse, recuse and have what decision you have.

6 MS. LINDSAY: Perhaps if it appears to  
7 be dragging on, then that opens the door for a  
8 settlement negotiation to end it.

9 MS. STANCZYK: Because that would then  
10 eliminate their possibility for building at this  
11 point. They would have to wait until the appeal  
12 has ended.

13 MR. PARISER: I don't think that's a  
14 consideration in my mind.

15 MS. STANCZYK: If they can't make any  
16 progress.

17 MR. FIORE: How could you say that?

18 MS. STANCZYK: How can I say that.  
19 Because they haven't got their resolution.

20 MR. FIORE: It's a school. The worse  
21 case scenario is we are up to a million dollars,  
22 we lose the lawsuit. You know, I could have put  
23 seven or eight cops on the street with the money  
24 that we spent on this already.

25 MS. STANCZYK: My point was, I think

1           that you misunderstood my point, that if it drags  
2           on their is an impetus to come to settlement on  
3           their part.

4                         Right now they are not seeing any  
5           impetus. They are saying nani, nani, boo boo, we  
6           are going to continue on, you settle with us and  
7           give us what we want. If it's going to continue  
8           to drag on they may see the value of settlement.

9                         MR. CANTERO: Yes, I agree with you on  
10          that. Practically speaking, and correct me if I  
11          am wrong, it seems to me in this case that  
12          whenever one side thinks it has the upper hand  
13          they are entrenched and don't want to settle, and  
14          then when the other side thinks it has the upper  
15          hand, they get entrenched and don't want to  
16          settle.

17                        So if it drags on and this Council  
18          becomes encouraged at the prospect of appeal, I  
19          can see this Council saying no, we think that we  
20          have a good chance, let's keep on with it. Or if  
21          the Council says no, I don't think our chances  
22          are good let's try to settle, Palmer Trinity then  
23          says no, why should we settle, we are going to  
24          win this thing.

25                        MS. STANCZYK: I think I would agree

1 with you, but I think the value of coming to  
2 settlement is that everybody gives a little and  
3 right now we have never seen them give at all, we  
4 have only seen them back pedal and renegotiate  
5 the resolution each and every step.

6 MS. BOUTSIS: I will tell you from my  
7 contact with Stan Price, Joe Kalbac, and  
8 Mr. Williams was there with me in one of the  
9 meetings that we met without the attorneys just  
10 the representatives, Mr. Kalbac and Sean Murphy  
11 showed up late, they are entrenched and they  
12 believe as strongly as you do that they are  
13 right.

14 They truly believe that they have given  
15 up. They started off with 1,400 kids, they went  
16 down to 1,150 kids, that they negotiated in good  
17 faith with the Village that they gave up on 80  
18 something conditions, that they did not fight 80  
19 something conditions only two that they thought  
20 were unreasonable. That is the position that  
21 they have said, even in the rezoning process.

22 Mr. Williams, am I misstating their  
23 position?

24 MR. WILLIAMS: Absolutely not.

25 MS. LINDSAY: What they say and the

1 reality of the situation aren't necessarily the  
2 same. We know there are 80 conditions, and I  
3 don't want to drag it all up again, we can go  
4 back on the clearing of the grove and what  
5 actually happened.

6 MS. BOUTSIS: It's not about whether  
7 they are acting in good faith, I said I believe  
8 that they are entrenched.

9 MS. LINDSAY: And it's unfortunate.

10 MR. WILLIAMS: I think the Judge put it  
11 clearly, we have both been entrenched. Not to be  
12 repetitive as some of us are here, we didn't even  
13 consider their last offer. It didn't work for us  
14 and we didn't counter. I think if we had  
15 countered, at least ---

16 MS. LINDSAY: They would have been  
17 entrenched. It's sad.

18 MR. WILLIAMS: We have both been  
19 entrenched.

20 MR. FIORE: This whole episode is sad  
21 going back five years.

22 MS. STANCZYK: We had a different Mayor  
23 then and he had different play and that's where  
24 the zoning issue started. It's a different time  
25 now.

1 MR. FIORE: Do we have to have a public  
2 hearing on the appeal, we have to publically vote  
3 in front of people?

4 MS. BOUTSIS: You can't take formal  
5 action in an attorney/client session so on Monday  
6 night you would have to vote for the appeal. You  
7 can give clear direction here today so that  
8 Justice Cantero can start working, he can't wait  
9 until Monday or Tuesday.

10 MS. STANCZYK: Have we voted in the  
11 past to do that?

12 MS. LINDSAY: We are not voting, we are  
13 giving direction.

14 MS. BOUTSIS: We did announce our  
15 appeal previously, yes.

16 MS. STANCZYK: We announced it but  
17 didn't vote.

18 MS. BOUTSIS: Either way, if you want  
19 to announce it.

20 MS. STANCZYK: I think it should be  
21 announced.

22 MR. WILLIAMS: The only problem that I  
23 have got there is that at some point we are going  
24 to assign a budget to this. And I mean, we can  
25 do that as part of an amendment.

1                   And Judge, again, at some point we'll  
2                   want to do it with you and Eve, talk about a  
3                   budget associated with the cost. It may be  
4                   minimal and not require an amendment, but at some  
5                   point you all will have to act on it.

6                   MR. CANTERO: I think there is a 30  
7                   percent chance it will be minimal.

8                   MS. LINDSAY: Justice Cantero, can you  
9                   explain to me what the difference here is between  
10                  the Court on Page 15 of their opinion and the  
11                  second to the last sentence where they say that  
12                  the attorney's fees and costs is denied without  
13                  prejudice? Could you tell me what it would have  
14                  meant if they would have said with prejudice?

15                  MR. CANTERO: I am not sure it would  
16                  mean all that much. I think what they meant when  
17                  they said without prejudice is if you have to  
18                  come back here again we would consider granting  
19                  it that time.

20                  MS. BOUTSIS: And it could be all the  
21                  way back. And if it was denied with prejudice  
22                  they couldn't go back. But if we come before  
23                  them again on this matter then they can go all of  
24                  the way back. So for a year and-a-half of  
25                  litigation.

1 MS. LINDSAY: But you did say that you  
2 thought that window was a very narrow opening; is  
3 that correct?

4 MR. CANTERO: Yes.

5 MS. BOUTSIS: On appeal on the Third  
6 District. If it gets back to the Eleventh  
7 Circuit we may be hammered, but the Third  
8 District would be narrow.

9 MS. LINDSAY: One other thing. If the  
10 Third District does not hear this it doesn't go  
11 back to the Eleventh Circuit Court, we just have  
12 to do what the Eleventh Circuit says we don't go  
13 through them again we just do it? There is not a  
14 new ruling from the Eleventh Circuit?

15 MS. BOUTSIS: And if that were the case  
16 you want to do it as soon as possible so that  
17 Stan Price doesn't file one and now we have a  
18 sixth motion before the Eleventh Circuit.

19 MS. LINDSAY: Of these five motions  
20 before them, are we counting the two where the  
21 zoning was upheld?

22 MR. CANTERO: Yes, probably.

23 MS. LINDSAY: So it's not five against.

24 MS. STANCZYK: Perhaps there is value  
25 in clarifying exactly.

1 MS. BOUTSIS: I don't think that he is  
2 including the zoning. It's the Petition, it's  
3 the Motion to Enforce Mandate, our Motion for  
4 Clarification, their response to the motion to  
5 that and this one. It's five times that the  
6 Eleventh Circuit has heard this matter, it has  
7 nothing to do with the rezoning that went up to  
8 the district.

9 And I'm sorry Councilwoman Lindsay,  
10 since you were conflicted, what is your position?

11 Right now I don't have three votes it  
12 seems yet to go forward. Consensus.

13 MS. LINDSAY: Just as I said a few  
14 moments ago, when I came here today I had not  
15 made a decision. I decided that I would listen  
16 to Justice Cantero and take his advise. The  
17 Strongest advice that I am hearing from him is  
18 that he feels that the Court did not uphold the  
19 law and I think that it is my bound and duty to  
20 the people who elected me to move forward to see  
21 that the Court upholds the law, so I would vote  
22 for an appeal. I'm sorry, my consensus, I am not  
23 voting I used the wrong word, excuse me.

24 MS. STANCZYK: Thank you for that  
25 correction.

1 MR. PARISER: Is this going to come for  
2 a vote in front of Council?

3 MS. STANCZYK: We are just going to  
4 announce that the appeal is going forward.

5 MR. FIORE: I prefer a vote.

6 MR. TENDRICH: I'd ask for a vote.

7 MR. FIORE: I am going to say it  
8 anyway, I don't care.

9 MS. STANCZYK: It wasn't meant to be  
10 less than transparent or to hide the fact.

11 MR. TENDRICH: I think it does hide the  
12 fact by not having a vote.

13 MS. STANCZYK: That's fine, Howard, the  
14 point was to protect you two guys.

15 MR. FIORE: I don't need anybody's  
16 protection.

17 MS. STANCZYK: Go for it.

18 MR. FIORE: And in the end here what  
19 did we win? Nothing. The taxpayers lose. Have a  
20 good day.

21 MS. STANCZYK: The meeting is not  
22 adjourned, Mr. Fiore.

23 MR. FIORE: It is for me.

24 MS. STANCZYK: Please make a note on  
25 the record that Mr. Fiore is going to leave the

1 to get you safe, Howard, and you are walking a  
2 thin line.

3 MS. BOUTSIS: You can take a motion to  
4 vote for it yes or no, and please reframe from  
5 further discussion.

6 MR. TENDRICH: Fine, I agree with that.

7 MR. FIORE: I don't agree with that. I  
8 am going public and I am going to state this is  
9 my opinion and I am against this appeal.

10 MS. STANCZYK: How can we sanction him  
11 for breaking attorney/client?

12 MS. BOUTSIS: That's not breaking it,  
13 he is against the appeal.

14 MS. STANCZYK: We don't know how far he  
15 is going to go, he says he is going to discuss  
16 it.

17 MR. FIORE: I am going to go public and  
18 say I am against the appeal.

19 MS. STANCZYK: That's what your vote  
20 says.

21 MS. FIORE: That's what I am going to  
22 say in the meeting on Monday.

23 MS. BOUTSIS: It's not taking it any  
24 further.

25 MR. WILLIAMS: Eve, you and the Justice

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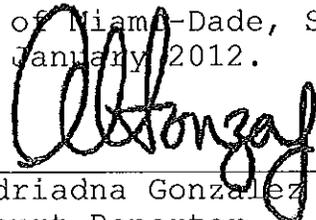
CERTIFICATE OF REPORTER

STATE OF FLORIDA :  
 : SS.  
COUNTY OF DADE :

I, ADRIADNA GONZALEZ, Court Reporter,  
Notary Public in and for the State of Florida at  
Large, do hereby certify that I reported the  
Attorney/Client Session in the above-styled cause;  
and that the foregoing pages, numbered 1 to 74  
inclusive, constitute a true and correct  
transcription of my shorthand report of the  
Attorney/Client Session.

I further certify that I am not an  
attorney or counsel of any of the parties, nor a  
relative or employee of any attorney or counsel  
connected with the action, nor financially  
interested in the action.

WITNESS my hand and official seal in  
the City of Miami, County of Miami-Dade, State of  
Florida, this 20th day of January 2012.



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