

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

APPELLATE COURT CASE NO: 3D12-190  
LOWER TRIBUNAL NO: 10-259

**ORIGINAL**

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9705 Hibiscus Street  
Palmetto Bay, Florida,  
Wednesday, 7:30 p.m.,  
July 11, 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: White and Case, LLP, by,  
Evan Goldberg, Esq. And  
Raoul G. Cantero, Esq.  
(Appeared telephonically.)

1 MS. BOUTSIS: Thank you everyone, as  
2 the Village Attorney I have requested an  
3 attorney client session in the defense of  
4 the legal action known as the Village of  
5 Palmetto Bay versus Palmer Trinity Private  
6 School, before the Third District Court of  
7 Appeals under the case number 3D12-190,  
8 Lower Tribunal Number 10-259. I am seeking  
9 advise from the Village Council regarding  
10 litigation strategy and/or settlement.

11 It is now Wednesday, July 11th at 7:30  
12 p.m. and I am going to have everyone  
13 introduce themselves around the room.

14 The only person not appearing in person  
15 is Justice Cantero who will be calling in at  
16 some point.

17 Again, my name is Eve Boutsis, I am the  
18 Village Attorney and we will go around the  
19 room.

20 (Thereupon, Justice Cantero appeared  
21 telephonically.)

22 MS. BOUTSIS: Remember that a certified  
23 court reporter is here taking down  
24 everybody's testimony, and we ask that  
25 everybody speak one at a time as Justice

1                   Cantero is on the phone and we don't have  
2                   very good technology. I ask that not  
3                   everybody speak at once for his sake and for  
4                   the court reporter's, but also to understand  
5                   that it's not a two-way phone so he can't  
6                   speak if we are still talking.

7                   This transcript will be made available  
8                   at the end of the litigation, and would you  
9                   like to start.

10                  MS. LINDSAY: Councilwoman Joan  
11                  Lindsay, District Three.

12                  MR. PARISER: Vice Mayor, Brian  
13                  Pariser.

14                  MR. GOLDENBERG: Evan Goldenberg, of  
15                  White and Case.

16                  MR. FIORE: Patrick Fiore, District  
17                  One, Councilman.

18                  MR. WILLIAMS: Ron Williams, Village  
19                  Manager.

20                  MR. TENDRICH: Howard Tendrich,  
21                  District Two.

22                  MS. STANCZYK: Shelley Stanczyk, Mayor.

23                  MS. BOUTSIS: Thank you everyone for  
24                  being here. The reason that we have asked  
25                  for the shade session or the attorney/client

1 session is due to the decision that was  
2 issued on July 5th by the Third District.

3 I believe I have sent everybody a copy,  
4 I think that everyone is familiar with the  
5 decision, and we are here to talk about any  
6 possible future litigation that may result  
7 from this and any decision that you would  
8 like to make towards that and/or settlement.

9 Evan, would you like to start?

10 MR. GOLDENBERG: Sure. I think we were  
11 certainly surprised by the decision,  
12 especially after the way that oral argument  
13 went.

14 There are certainly some things that we  
15 think that the Court got wrong in the  
16 decision, and there are things that under  
17 normal Certiorari those types of things  
18 might be readily appealable.

19 In this case that is somewhat less  
20 true, because I think the things that the  
21 Court got wrong really were factual things,  
22 they were factual matters.

23 The Court interpreted the prior action  
24 with regard to the 1,150 student application  
25 as having been first an approval at 1,150

1 and then a reduction from 1,150 to 900. We  
2 know that's not really what had happened,  
3 1,150 was never actually approved.

4 The Court factually misunderstood that  
5 portion of the record and factually came to  
6 this conclusion that there was this approval  
7 at some point at 1,150.

8 Part of the reason why I think that's  
9 problematic for appeal is that we are on  
10 certiorari review. This is what's called  
11 first tier certiorari review. We don't have  
12 an appeal of right, unlike some other cases,  
13 regular litigation where if the Court gets  
14 something wrong you have a right to appeal  
15 it and to have whatever it is that the Court  
16 got wrong heard.

17 Here we don't have a right to any  
18 further appeal. We can seek to have the  
19 Florida Supreme Court exercise its  
20 jurisdiction to hear an appeal, but that's  
21 going to be discretionary, and statistically  
22 there is only about a ten percent chance  
23 that such a case would be accepted for  
24 jurisdiction.

25 The other problem that I think we have

1 with pursuing that route is, if you are  
2 familiar with the decision, what we were  
3 asking for in this case was also a  
4 discretionary appeal. And so we were asking  
5 the Court to decide, to step in and take  
6 action to prevent a miscarriage of justice.  
7 It wasn't just a matter of saying that the  
8 Court, that the Circuit got it wrong, it was  
9 the Circuit Court got it wrong and they got  
10 it wrong such that it would be a miscarriage  
11 of justice to allow that to remain in the  
12 case.

13 The first part of the decision in this  
14 case says that we don't think, this is a  
15 high standard to meet, you have to establish  
16 more than just regular legal error, you have  
17 to show this miscarriage of justice, and we  
18 find that there isn't a miscarriage of  
19 justice.

20 I think the Court probably if they  
21 wanted to could have just stopped there and  
22 there would be nothing left for us to say  
23 about it. If they say they may have not  
24 been right, they may have gotten it all  
25 wrong or even a lot wrong, we just don't

1 think that there is enough of a miscarriage  
2 of justice for us to exercise our discretion  
3 on certiorari review and to overturn this  
4 decision.

5 So if we were to take an appeal from  
6 here, we are appealing a discretionary  
7 decision that the Court has already backed  
8 up enough by saying, even if we are wrong,  
9 it doesn't matter because there is not a  
10 miscarriage of justice going on here.

11 Our appeal, as I said, in my view to  
12 the extent it's wrong, it's factually wrong  
13 not so much legally wrong, and that's a  
14 problem for appeal because in order to get  
15 the Florida Supreme Court to exercise its  
16 jurisdiction, we would have to show that  
17 there is a conflict between this case and  
18 some other case out there.

19 I don't think that we can look at any  
20 statement of law in this decision and say  
21 that it's wrong. There isn't anything that  
22 I see where we would say, here's how they  
23 have stated a proposition of law, a legal  
24 principle and they have stated it  
25 incorrectly. I don't think they have done

1           that. I think they have stated all of the  
2           legal propositions correctly, they just  
3           miscomprehended the facts in applying the  
4           law to it. And that I think is where we  
5           find it very hard, if not -- not quiet  
6           impossible, nothing is impossible, but it  
7           makes it very hard for us to say, Florida  
8           Supreme Court, you need to hear this  
9           decision because there is some conflict with  
10          another decision, another case out there.  
11          We don't really have that kind of conflict.  
12          We think they missed applied the law to the  
13          fact, but we don't think that they made a  
14          legal holding that is incorrect.

15                 So I think an appeal from this point  
16                 would be very difficult. I guess it's not  
17                 impossible, but it would be very difficult  
18                 to have a successful appeal.

19                 There would also be the option or  
20                 possibility of seeking rehearing and going  
21                 back to this Court and saying, you know,  
22                 with all due respect, we think that you got  
23                 some things wrong here, you may have  
24                 misunderstood some of the facts.

25                         We could try doing that, but that

1                   again, you are then -- it's difficult to  
2                   convince judges that they were wrong. They  
3                   are not likely to readily accept the idea  
4                   that they didn't understand the case or  
5                   didn't understand the facts properly.

6                   So that combined with the fact that I  
7                   think they, similar to the previous panel,  
8                   although they didn't express it, explicitly  
9                   I think that they expressed a general  
10                  sentiment that this project should go  
11                  forward at 1,150 and it shouldn't have been  
12                  disapproved in the first place, I think  
13                  makes it particularly unlikely that they are  
14                  likely to accept, be receptive to a motion  
15                  for rehearing.

16                 MS. BOUTSIS: Raoul, would you like to  
17                 add anything?

18                 MR. CANTERO: I think I would like to  
19                 go back to our discussion of several months  
20                 ago when we were talking about this appeal,  
21                 because I think we all were very encouraged  
22                 after oral argument because I thought the  
23                 oral argument had gone so well. And that's  
24                 why I always tell my clients, you can never  
25                 necessarily tell what's going to happen just

1 by oral argument because the case is decided  
2 in the back room, a conference after the  
3 argument and judges can change their mind.  
4 And even after opinions are circulated they  
5 can still change their mind, it happens with  
6 some frequency.

7 So we were all encouraged after the  
8 argument, but let's remember several months  
9 back when we were talking about this and I  
10 advised the Council that our chances of  
11 prevailing on this were probably about, I  
12 don't know, I think that I said 35 percent  
13 or something like that, well below 50  
14 percent. Just because of what the Court  
15 said here was, while it wasn't expressly  
16 implied that you were supposed to approve  
17 that 1,150, it was necessarily implied is  
18 what the Court was saying.

19 I just felt that the standard of review  
20 is so high that we had a very high burden to  
21 get Court reversed, so we didn't think our  
22 chances were that great. We thought they  
23 were a lot better after oral argument, but  
24 let's remember what we were talking about  
25 back then.

1                   Now, with that said, the chances that  
2                   the Florida Supreme Court will even consider  
3                   the case based on our argument that this  
4                   decision conflicted with another decision,  
5                   and we would argue conflict with a Florida  
6                   Supreme Court decision. Statistically  
7                   speaking, those appeals are granted review  
8                   in ten percent of the cases.

9                   What I mean by granted review is, that  
10                  the Supreme Court decides to take the case  
11                  in ten percent of the cases. That doesn't  
12                  mean that they are going to reverse, that  
13                  means they are going to consider the case  
14                  because since it's a discretionary review,  
15                  they are not required to consider. They  
16                  permit it if they want to, if they feel that  
17                  there is a conflict then they can take the  
18                  case. It doesn't mean that we are going to  
19                  win when they do take it.

20                  So there is a ten percent chance that  
21                  they will take it. And then we have to  
22                  factor in the chances that we will actually  
23                  prevail. So that brings it below 10  
24                  percent, probably to five percent if you  
25                  figure we have a 50 percent chance of

1 winning on the appeal. So we have a five  
2 percent chance that they'll actually take it  
3 and that we'll win.

4 Procedurally speaking, we would have 30  
5 days from the date of the opinion, which was  
6 last week, July 2nd, 3rd, or 4th. We have  
7 30 days from then. We have to file a notice  
8 to invoke discretionary review, which is  
9 kind of like a notice of appeal, one page  
10 saying we seek review of the Florida Supreme  
11 Court.

12 Then ten days after that we have to  
13 file what's called a brief on jurisdiction  
14 to the Florida Supreme Court, which is a ten  
15 page brief telling the Supreme Court why  
16 there is a conflict with the decision and  
17 why the Supreme Court should take the case  
18 to dissolve that conflict. So we have ten  
19 days to do that and it has to be limited to  
20 ten pages.

21 Then they have the right to file an  
22 answer brief by jurisdiction, and then after  
23 the Florida Supreme Court takes it's time to  
24 decide whether to take the case. Sometimes  
25 it takes more than a month to decide that,

1 sometimes two or three months.

2 I have a case that I filed up here in  
3 February and they still haven't decided  
4 whether to take it or not, and it's been  
5 five months.

6 Then once they decide to take it they  
7 will order briefing on the merits where we  
8 get to argue the case itself not just that  
9 they have jurisdiction. And then there are  
10 the usual 50 page maximum brief, kind of  
11 like we did in the Third DCA.

12 And then the other side gets to respond  
13 and we get to reply and the Supreme Court  
14 may or may not order oral argument depending  
15 on whether they think it's appropriate or  
16 not. And then we'll get a decision within  
17 several months of that. Again, it's very  
18 hard to predict how long that would take.

19 As far as rehearing, I agree with what  
20 Evan said, and I reiterate, it's very hard  
21 to get judges to change their mind.

22 If Judge Schwartz had actually  
23 descended in the case I would be more  
24 inclined or anybody had descended, I would  
25 be more inclined to say, it may be worth to

1 file a motion for rehearing because we only  
2 have to change one judge's mind at that  
3 point, but here you have to change at least  
4 two judges minds and that gets very  
5 difficult.

6 So I don't think it's worth it or that  
7 it would be successful to file a motion for  
8 rehearing. And in fact, it may anger the  
9 Court where it starts to award attorney's  
10 fees.

11 In fact, they still have the motion for  
12 attorney's fees pending. I don't recall  
13 from the opinion, I don't think the opinion  
14 ruled on that motion, but if it didn't  
15 that's certainly still a pending motion  
16 there and there is a possibility that they  
17 would grant it. So that's about it.

18 MS. BOUTSIS: Would anybody in the  
19 council like to discuss, add or say  
20 something?

21 MR. TENDRICH: First off, I had tried  
22 to get this an unshaded meeting because I  
23 felt that the residents of Palmetto Bay need  
24 to know what's going on as it's happening.  
25 And as the judge said, the Supreme Court

1 Justice, sorry, sir, at the last prior  
2 meeting before we started, he said that we  
3 had a 30 percent chance of possibly winning  
4 our appeal.

5 Now our chances are down to ten percent  
6 and again, unfortunately, we can't tell  
7 people what is being said, so they don't  
8 really know what we are being told.

9 Again, that's why I had wanted an open  
10 meeting, but unfortunately the council  
11 didn't agree with me.

12 I feel now after hearing the response  
13 of our two counsel people, legal counsel,  
14 that I think it would really be a complete  
15 discredit to our Village if we were to go  
16 forward in anymore appeals.

17 MS. BOUTSIS: Does anybody have a  
18 question for either Evan or Raoul?

19 MR. PARISER: As far as the rehearing,  
20 my understanding is you have to show that  
21 there is either a misapprehension or  
22 misapplication of fact and law. So if they  
23 got something wrong factually, is that such  
24 a dramatic impact in your opinion that it  
25 would affect how the facts are applied to

1 the law and resulting into possibly turning  
2 somebody's decision on a rehearing at the  
3 Third DCA?

4 MR. GOLDENBERG: My view is that they  
5 did get some facts pretty wrong, but the  
6 court also included as part of its decision  
7 the first portion where the Court said, look  
8 you have a high burden and you have to show  
9 something beyond just regular legal error,  
10 you have to show there is some kind of  
11 miscarriage of justice going on here and we  
12 don't see that.

13 And like I said, I think they could  
14 have stopped there before they even got into  
15 any of these misapprehensions and  
16 miscomprehensions of the law, of the facts.  
17 So my guess is that in a normal case that  
18 wasn't on this type of certiorari review it  
19 might be enough to say look, you  
20 misunderstood the facts and when you  
21 understand the facts correctly, that  
22 necessarily would lead you to rule the other  
23 way, but that's not case here.

24 I think they have indicated that they  
25 don't think that this decision should be

1           overruled, that is the decision of the  
2           Circuit Court that we were just appealing.  
3           They don't think it would be overturned or  
4           reversed anyhow. So I don't think that  
5           rehearing, as Raoul said, we would have to  
6           convince two out of three judges that they  
7           are wrong. And that is -- the odds of that  
8           are very small.

9           And on the certiorari trying to on  
10          conflict jurisdiction to the Supreme Court,  
11          if we were to stick with our original 30  
12          percent likelihood on success on the merits  
13          that we have here, and candidly that's  
14          probably even a little lower than that now  
15          because the scope of review is now narrower  
16          even further, and then you take the ten  
17          percent chance that they accept the case, a  
18          30 percent chance that if they accept it  
19          that they rule in our favor and probably  
20          even trim that down a little bit if one were  
21          going to put a probability on it, we are  
22          probably somewhere south of a three percent  
23          chance.

24                   MR. PARISER: Misapprehension or  
25                   whatever, what caught my eye with Schwartz's

1 comment that, notwithstanding some legal  
2 procedural niceties, what was he -- any idea  
3 what do you think?

4 MR. GOLDENBERG: I think what he was  
5 getting at at the oral argument, he seems to  
6 be unsympathetic to the school's -- not  
7 their position, but the fact that the school  
8 when they appealed the 900 they didn't  
9 technically appeal the denial of 1,150.  
10 Arguably, they should have if they felt that  
11 that was incorrect.

12 I think what he was saying and  
13 obviously it was somewhat cryptic so I can't  
14 be sure, I am guessing, but I think what he  
15 was saying was they probably should have  
16 appealed the denial of the 1,150. They  
17 didn't, but the result is right and I am not  
18 going to mess with it.

19 MS. STANCZYK: Well, it kind of goes  
20 back to the entire history. You know, right  
21 now from what we can see that keeps coming  
22 back at us is our own history and the flaws  
23 in what was presented.

24 We had two hearings and the first two  
25 times it was appealed we won. And then it

1 got overturned and it got overturned why,  
2 because our own Mayor said the decision was  
3 arbitrary, the motion was arbitrary. Even  
4 though he voted to support it, it was  
5 arbitrary. And his comment of arbitrary has  
6 come back and haunted us in each and every  
7 opinion.

8 MR. GOLDENBERG: It may have come back  
9 to haunt you, but I think it could have been  
10 found to have been arbitrary even if he  
11 didn't admit to it.

12 MS. STANCZYK: I don't think that it  
13 helped us.

14 MR. GOLDENBERG: It didn't help, but  
15 the fact remains, even in the absence of  
16 that statement, that there was not any  
17 evidence to support the 900 figure. Whether  
18 he admitted it was arbitrary or not, it  
19 wouldn't have been a giant leap for the  
20 Court to conclude that was arbitrary,  
21 especially when obviously the school was  
22 spending a lot of time and effort to point  
23 that out.

24 Obviously, there is a lot of history  
25 here and it keeps coming back in the sense

1           that I believe that the perception is one  
2           thing that I think the school has done a  
3           good job, is they have done a good job of  
4           creating the perception around the judges  
5           that they have been treated improperly or  
6           unfairly over the years for an extended  
7           period of time. And they may have, they may  
8           have gained some traction with the judges to  
9           feel sympathy for that position and say,  
10          look enough is enough, let them have their  
11          expansion.

12                    So history I think is important in that  
13                    it is coloring the case. I don't think it's  
14                    important specifically for anything that the  
15                    Court held here, but I think it does color  
16                    the Court's decision.

17                    MS. STANCZYK: It certainly gave them  
18                    fire. They talk about no competent  
19                    substantial evidence in terms of our traffic  
20                    study and the traffic study supplied by the  
21                    community, and our own Mayor discredited the  
22                    witness and they used that against us. I  
23                    certainly think that was fuel for the fire.

24                    MR. GOLDENBERG: It could have been,  
25                    but in a sense that part to a certain extent

1 was done, is done there. So I think looking  
2 forward and saying where do we go from here,  
3 the question is, does the council want to  
4 throw the hail Mary, which is probably a  
5 reasonably accurate characterization of what  
6 this kind of appeal would be or not.

7 MS. STANCZYK: We have tried twice  
8 recently to go to settlement with them. We  
9 did it before the appeal and we did it  
10 after.

11 You know, I think that's something to  
12 consider at this point. What discussions we  
13 can open, but I am sorry, I don't know if I  
14 jumped over you.

15 MS. LINDSAY: I just wanted to clarify  
16 something about the Jesus Fellowship case,  
17 because there was a great deal of the  
18 opinion that was based on the analogy  
19 between the Jesus Fellowship case and this  
20 case.

21 In the Jesus Fellowship case it was a  
22 case that went before a zoning council and  
23 the zoning council supported the  
24 recommendation of staff to approve 524  
25 students.

1           It then went to the County Commission  
2           on appeal. The County Commission said, we  
3           are not going to give you the 524 we are  
4           going to give you 150. There was no  
5           competent substantial evidence for the 150  
6           and it was later overturned and rightly so.

7           But the point with the Jesus Fellowship  
8           Case is, when it was overturned it went back  
9           to the zoning board's approval of 524. And  
10          as reported in this opinion, that is not  
11          indicated.

12          What it says here, it leaves out, these  
13          people leave out the zoning board all  
14          together.

15          Now, what this means to me, and I am  
16          really asking a question here Mr. Goldenberg  
17          is, in the Jesus Fellowship case it was  
18          overturned, it went back to the board's  
19          approval, it was approved.

20          In this case 1,150 was never approved  
21          by any governing board. And that's what's  
22          troublesome to me. And this is separate and  
23          apart from a discussion on appeal. Because  
24          this says, staff said 1,150 was okay, and  
25          nowhere in the history of this case, and

1 this all happened before some of us were  
2 even on the council, nowhere was the 1,150  
3 approved.

4 So are we setting a precedent here that  
5 is a dangerous precedent that says, if staff  
6 approves it, we don't need a hearing and we  
7 don't need a council because this case says  
8 if staff says it's okay, you are done.

9 MR. GOLDENBERG: I don't think that  
10 this case is saying that staff says it's  
11 okay. The Court, what I think was the  
12 fundamental factual misunderstanding is that  
13 they say that the Village approved 1,150  
14 that we know never happened. But again,  
15 from our procedural posture that's a factual  
16 issue not a legal conflict that's going to  
17 help us with the Florida Supreme Court.

18 So I think they are wrong about it, I  
19 know that they are wrong about it, but that  
20 doesn't necessarily help us go anywhere from  
21 here because we are ---

22 MS. LINDSAY: And I understand that.  
23 And just for the record, I am trying to  
24 point out some of the reasons why some of us  
25 felt so strongly about appealing and I would

1           like this on the record.

2                   I do not think this case is analogous  
3 to Jesus Fellowship because of this missing  
4 link.

5                   I further have a problem with the fact  
6 that, as you just pointed out, the 1,150 was  
7 never approved by the previous council at  
8 the hearing in 2010, again some of us were  
9 not on that council. And it wasn't  
10 appealed.

11                   And what I find troublesome here is  
12 that we have been told by a number of  
13 different attorneys that on appeal there are  
14 three things that the court can look at, and  
15 help me with this I will try and get them  
16 right. One is whether due process was  
17 afforded. Whether competent substantial  
18 evidence existed for the decision. And the  
19 third thing is whether the law was followed.  
20 I believe that's correct.

21                   MS. BOUTSIS: It's basically the first  
22 tier on appeal, yes.

23                   MS. LINDSAY: What I find really  
24 troublesome is this 1,150 was never approved  
25 and never appealed. The decision to the

1 1,150 was never appealed.

2 And now we go to the Third DCA and it  
3 was never even opined on at the Eleventh  
4 Circuit, and now the Third DCA is saying, Oh  
5 well, let's go back and talk about the  
6 1,150. The 1,150 wasn't part of the issue  
7 that in my opinion was even up for  
8 deliberation based on what I have learned of  
9 the law. So I find that troublesome.

10 I also find it troublesome as I said a  
11 moment ago, that this it not analogous to  
12 Jesus Fellowship.

13 And I also find it troublesome that it  
14 appears that this Court weighed the  
15 evidence, which is again not as I understand  
16 the law, something that they should be  
17 doing.

18 So I want it clear to anyone who cares  
19 to read this transcript in the future that  
20 we have very good reasons to appeal. We had  
21 the facts in our favor, and we did what we  
22 thought was best for the people of Palmetto  
23 Bay and I standby that decision.

24 Whether you call this a factual problem  
25 or a legal problem, the fact is that a lot

1 of us at this table attended the oral  
2 argument that was 19 minutes of three judges  
3 letting Palmer Trinity know that they should  
4 have taken the 900, it was a compromise and  
5 they should have taken the 900. And I find  
6 it troublesome that after that 19 minutes  
7 and knowing what we know about the law, and  
8 reading this opinion and what they based  
9 this opinion on, I find no analogy between  
10 the oral argument and this.

11 So it actually bothers me a great deal  
12 that our court system operates this way.  
13 That being said.

14 MS. STANCZYK: It is kind of somewhat  
15 questioning when they told us we wilfully  
16 disobeyed, and trying to seek clarification  
17 and trying to seek adequate direction as to  
18 what to do and thought after careful  
19 examination of their opinion what we should  
20 do when it came to us and they told us to do  
21 no more.

22 I think in all fairness we did our best  
23 effort in trying to find a way to satisfy  
24 the Court in true honesty, and to be told we  
25 willfully disobeyed is very disingenuous in

1 terms of how anyone would approach the  
2 efforts that we made.

3 MR. GOLDENBERG: I think one thing that  
4 may be a propel of this issue is part of our  
5 argument here was that the Court, there was  
6 a finding by this council that 1,150  
7 students did not comply with the applicable  
8 standards.

9 Having made that finding, whether it  
10 was correct or not, it seems to me the  
11 Council was in a very difficult position to  
12 then turn around and get an order from the  
13 Court not initially specifically saying you  
14 have to approve at 1,150, just saying that  
15 900 wasn't appropriate. But how can the  
16 Council just turn around after having said  
17 1,150 doesn't comply with the standard, and  
18 then without having a new hearing on it and  
19 a whole bunch of new evidence, turn around  
20 and say yes, we are sorry, we changed our  
21 mind it does comply with the standard.

22 So I think that you were put into a  
23 difficult position to the extent that there  
24 was some suggestion that it wasn't  
25 appropriate to bring this appeal or seek the

1 clarifications.

2 Much of our position was, there is  
3 already a finding that 1,150 doesn't comply,  
4 with that finding having been made, we can't  
5 now go and approve 1,150 in part because  
6 there are other citizens that also have a  
7 stake in this matter and that have wanted to  
8 be heard and have intervened in the matter  
9 and they could have just as easily turned  
10 around and said, this is ridiculous,  
11 before you said 1,150 doesn't comply and now  
12 you are going back with no new evidence and  
13 you are saying it does comply.

14 So looking at it from the outside, the  
15 Council is in a position where it is  
16 somewhat between two different -- there is a  
17 range of constituents and this isn't all  
18 about just satisfying one particular  
19 citizen/resident of the Village that is the  
20 School, this is about standing up for and  
21 defending the factual decision that was made  
22 by the Village that 1,150 students didn't  
23 comply with the code.

24 That having been said, I think it was  
25 appropriate to have done what's been done to

1           this point.

2                   That having been said, as I have said,  
3           the likelihood of success going forward from  
4           here is very small and it's your decision to  
5           make whether you want to do that. But in my  
6           mind our chances of success have shrunk and  
7           narrowed as we have moved up the appellate  
8           ladder.

9                   MS. STANCZYK: I think in the first two  
10          years of this case we really were not able  
11          to settle. It didn't get settled in the  
12          first two years, and the last year  
13          and-a-half we have tried twice to discuss  
14          settlement that didn't work out.

15                   I think probably the time is here to  
16          see where we can take this with discussion  
17          and how we can wrap this up.

18                   MS. BOUTSIS: Just procedurally, you  
19          have until next week to file any request for  
20          reconsideration, and we have about 25 days  
21          or so left for filing an appeal.

22                   And the reason I say that, if you  
23          wanted to do any of these discussions I  
24          would assume that you want to do that before  
25          those time periods expire, before mandate

1 issue and transcripts become available.

2 MS. STANCZYK: We have had good support  
3 from our counsel in all of the decisions  
4 that we have made. The first decision to  
5 disapprove the zoning of 5/0. We as a  
6 Council approved the quashing of the 900 and  
7 did nothing more as to 5/0 vote.

8 MS. LINDSAY: What year?

9 Ms. STANCZYK: This past decision.

10 MS. BOUTSIS: 2011 vote was 5/0, yes.

11 MS. STANCZYK: So, we haven't heard  
12 from Mr. Fiore and we haven't heard from  
13 anyone else on the topic of discussion.

14 MS. BOUTSIS: Before we do that, Raoul,  
15 do you have anything to add before I get the  
16 other councilmen speaking?

17 MR. CANTERO: The only thing that I  
18 would add is, going back to Councilman  
19 Pariser's question about getting the facts  
20 wrong.

21 The Court could very well have denied  
22 our petition without an opinion. They could  
23 have released an order that said, certiorari  
24 denied. And we can file a motion for  
25 rehearing pointing out that they got the

1 facts wrong, and it is obvious from the  
2 opinion that they are bent on affirming what  
3 was done.

4 Certainly one scenario that can happen  
5 if we file a motion or rehearing is, they  
6 can say, you know, we withdraw the prior  
7 opinion and we deny certiorari without an  
8 opinion. So it's certainly one possible  
9 scenario that they say fine, we don't state  
10 any facts we just deny the position without  
11 an opinion. And I don't think that's going  
12 to get us very far.

13 As far as the Jesus Fellowship  
14 decision, I understand completely what  
15 council member Lindsay is saying, but that's  
16 not going to help us legally in this case  
17 because although that case is  
18 distinguishable from ours and we pointed  
19 that out in the reply and I was certainly  
20 ready to point out the distinctions in oral  
21 argument, but it never came up, this  
22 decision certainly does not conflict with  
23 Jesus Fellowship. It may be a different set  
24 of circumstances, but there is nothing that  
25 they said here that it conflicts with what

1 Jesus Fellowship said, so it does not give  
2 us a basis for telling them that this  
3 decision conflicts with Jesus Fellowship and  
4 they need to reconcile the two decisions.

5 I understand it's troubling that they  
6 really didn't think to analogize the Jesus  
7 Fellowship and the differences in  
8 circumstances, but they are not different  
9 enough that they conflict with each other.

10 MS. LINDSAY: Justice Cantero, what is  
11 your thought regarding the topic of bringing  
12 up the fact that -- not the fact, but  
13 asserting that the Council in 2010 approved  
14 the 1,150? That certainly wasn't the case  
15 and that's part of this opinion.

16 MR. CANTERO: That's what I was  
17 addressing myself to before in answering  
18 Council member Pariser's question about  
19 getting the facts wrong. They can simply  
20 say, we deny review without even an opinion.  
21 They can say okay, we got the facts wrong  
22 but we still don't think they should have  
23 denied 1,150.

24 MS. LINDSAY: There isn't a problem  
25 there with the fact that the Court is

1 clearly weighing the evidence?

2 MR. CANTERO: I think that was a  
3 problem but it's not going to change their  
4 mind.

5 It's very difficult to change judges  
6 minds once they have issued an opinion. It  
7 happens very rarely. They wanted to go on,  
8 they have a lot of other cases to decide,  
9 they don't want to go backwards and  
10 re-decide cases that they have already  
11 decided. And they figure, we gave this a  
12 close look once, we don't need to look at it  
13 again. And so getting panels to change  
14 their minds on issues are very rare.

15 MS. LINDSAY: As I said, it's important  
16 to me and I think to my colleagues to have  
17 some of this on the record, to note that the  
18 Court does have the facts wrong to  
19 substantiate the fact that there was  
20 legitimate grounds for appeal here.

21 MR. BOUTSIS: Councilman Fiore, I  
22 didn't allow you to speak before, I want to  
23 make sure we heard from Justice Cantero.  
24 What would you like to say?

25 MR. FIORE: Basically a few months ago,

1                   whenever we decided this, Mr. Williams sat  
2                   in this chair, Mr. Cantero sat over there,  
3                   and Mr. Williams asked Mr. Cantero what were  
4                   the chances of the Village being successful,  
5                   and you heard what was stated by Judge  
6                   Cantero and he stated 30 percent, therefore  
7                   the Village had a 70 percent chance of not  
8                   being successful. The majority of you  
9                   decided to move ahead with the appeal and it  
10                  was unsuccessful.

11                  This is over as far as I am concerned.  
12                  We are also on the hook for legal fees,  
13                  correct, which the motion has not been  
14                  decided?

15                  MS. BOUTSIS: There is a motion out  
16                  there in the lower court, I don't believe  
17                  it's in this court.

18                  MR. GOLDENBERG: No, there is a motion  
19                  here as well.

20                  MS. BOUTSIS: They haven't ruled upon  
21                  it, but it doesn't mean we are on the hook.  
22                  There is a possibility.

23                  MR. FIORE: Judging by the wording of  
24                  this Court Order by these judges, it was  
25                  very strong, and as much as it might be

1                   troublesome and you may not agree with it,  
2                   we follow the rule of law in this country  
3                   and the law has spoken. You may not like  
4                   it, but that's the way it is. And that is  
5                   as measured as I can be.

6                   So I believe this is over, was over,  
7                   and we should be moving on and moving the  
8                   Village forward not backward.

9                   MS. BOUTSIS: I think that everybody  
10                  has spoken on the issue. It sounds like,  
11                  and please confirm if I am wrong -- let me  
12                  ask it.

13                 Is there any interest in either filing  
14                 a motion for reconsideration or an appeal?

15                 MR. FIORE: No.

16                 MR. TENDRICH: No.

17                 MR. PARISER: No.

18                 MS. LINDSAY: I would like to say  
19                 before we lock this up, is there anything  
20                 out here worthy of talking to Palmer Trinity  
21                 about in terms of settling. We won't file  
22                 an appeal if you drop the motion for legal  
23                 fees?

24                 Is that something that is an option for  
25                 us?

1 MS. BOUTSIS: Do you even want to talk  
2 about settlement regardless of whether we  
3 try to put that we won't file an appeal  
4 attached to it, because I think they know  
5 the odds like we know the odds?

6 MR. WILLIAMS: Ultimately you have a  
7 timeline with regards to your filing  
8 schedule.

9 MS. BOUTSIS: Certainly, Evan and Raoul  
10 can reach out to Stan Price and Eileen Meta  
11 and throw that out there. They know what  
12 the odds are as much as we do, I don't know  
13 that it will help you in the negotiations.

14 I will tell you that despite  
15 everything, even when they thought -- I have  
16 spoken to Eileen Meta and she did not think  
17 that they were going to be successful after  
18 oral argument, let's put it that way. And  
19 Stan Price indicated a similar sentiment to  
20 me after oral argument. And they said, can  
21 we work on this Eve, can we settle.

22 Even after the decision Eileen Meta had  
23 said the same thing to me. So at least from  
24 the mouth of Eileen Meta ---

25 MS. STANCZYK: Can I ask why we weren't

1 informed that she said that before the  
2 opinion came out?

3 MR. WILLIAMS: I think you did send a  
4 note out saying congratulations.

5 MS. STANCZYK: No, she didn't.

6 I never saw a note congratulations, I  
7 never saw that.

8 MS. BOUTSIS: There was no offer of  
9 settlement, it was, we are here.

10 MS. LINDSAY: We didn't get the  
11 message.

12 MS. STANCZYK: We didn't get that.

13 MS. BOUTSIS: Then I apologize, I  
14 usually try and communicate everything.

15 MS. LINDSAY: There was a window there  
16 where we were in the driver seat and they  
17 communicated to the Village Attorney and to  
18 others that they had clearly lost.

19 MS. BOUTSIS: I was in the context in  
20 dealing with the wall permit, and if I  
21 didn't communicate I am mistaken and I  
22 apologize, but the point is you still have  
23 that window there.

24 MS. STANCZYK: But it's a different  
25 window.

1                   MR. PARISER: I was kind of surprised  
2                   and I even mentioned to Eve that after the  
3                   oral argument that they wouldn't come  
4                   approach us. And certainly if I knew they  
5                   were in that mental state, I definitely  
6                   would have sat down and talked with them.

7                   MS. STANCZYK: I would have as well, I  
8                   thought that was the best opportunity to get  
9                   anything that we would have needed in terms  
10                  of the session.

11                  MR. WILLIAMS: I thought very  
12                  differently. I thought that we felt  
13                  individually and I think collectively each  
14                  of you somewhat were feeling the same way,  
15                  that in fact we were in such a strong  
16                  position coming out of oral argument that we  
17                  thought that we didn't need to negotiate,  
18                  was my feeling from you all.

19                  MS. STANCZYK: That's one case. We've  
20                  got out there fees and everything else out  
21                  there that we could have gotten rid of just  
22                  by saying they got rid of it.

23                  MR. WILLIAMS: Did you hear what I  
24                  said?

25                  MS. STANCZYK: Yes, I did.

1 MR. WILLIAMS: Let me state it again so  
2 I can be sure.

3 You as well as everyone else in this  
4 room felt that we came out of oral argument  
5 in a very strong position.

6 MS. LINDSAY: What I think the Mayor is  
7 trying to say is, strong on this case but  
8 the other case is still out there. And if  
9 we were strong on this case, then perhaps we  
10 could have made some sort of settlement to  
11 get rid of the other case by ---

12 MR. WILLIAMS: That may very well be.  
13 And I can tell you having sat through many  
14 of these and all of us have together  
15 collectively, and of course the Justice a  
16 couple himself, there has not been an  
17 appetite here to talk settlement. And I  
18 don't know what you thought Eve, but that  
19 certainly -- it's been raised many, many  
20 times here collectively, and I have never  
21 heard any appetite to talk settlement until  
22 now.

23 MS. STANCZYK: That would be correct,  
24 because we didn't have a position of  
25 strength.

1 MS. BOUTSIS: If we are talking about  
2 time wise, literally the wall thing has been  
3 happening for about two weeks now. So the  
4 conversation may have even happened a day or  
5 two before the oral argument, the decision  
6 happened. It wasn't like I had this a month  
7 ago. We are talking about, it was a comment  
8 made in passing as I am doing an enforcement  
9 on the wall, and then within a day or two a  
10 decision came out.

11 MR. WILLIAMS: I did think it was  
12 unreasonable to think that some comment that  
13 was passed along to Eve by Eileen Meta blew  
14 our chance to negotiate, because none of you  
15 have had an appetite to negotiate that I  
16 have heard over the years.

17 MS. LINDSAY: I believe in the last A/C  
18 session before we agreed to go forward with  
19 the appeal, we sat here, Justice Cantero was  
20 at the head of the table, and we talked  
21 about settlement and he said, he said that  
22 it seems that they are not interested now  
23 because they are in the driver seat, and  
24 whoever is in the driver seat doesn't seem  
25 to be interested. So we did talk about

1 settlement.

2 MR. WILLIAMS: And we felt that we were  
3 in the driver seat coming out of this.

4 MS. LINDSAY: And you are absolutely  
5 right. And I don't think that there was an  
6 appetite to settle this case, but there  
7 might have been an appetite to settle the  
8 whole thing since everyone has had it and I  
9 think that's what the Mayor is trying to  
10 say.

11 I think what we need to do is, I think  
12 there is some consensus here not to move  
13 forward on any sort of appeal, but I think  
14 we need to talk about, if we can, if they  
15 are still interested in settling, if there  
16 is anything that we can do to end this.

17 MR. WILLIAMS: I know a number of us  
18 here are trying to make the record have a  
19 certain flavor and I think that's  
20 appropriate.

21 I think it's clear here that we not  
22 transfer, or don't transcribe the Village  
23 Attorney's comment to mean that there was  
24 this outstanding window, that was the only  
25 reason why I made some comment here for the

1 record, because I don't think that the  
2 Village Attorney intended that at all.

3 MS. BOUTSIS: This was within a couple  
4 of days of each that the comment was made  
5 and the oral argument came out. The point  
6 is even after the decision from the Court  
7 came out, I did speak with Eileen Meta and  
8 she did say they are still open.

9 MS. STANCZYK: They are still open now?

10 MS. BOUTSIS: Yes.

11 MR. FIORE: You cannot bargain with  
12 something that they don't have. And I don't  
13 know what at this conjecture with the  
14 driver's seat at oral argument -- correct me  
15 if I am wrong, Counselor, oral argument  
16 means nothing, it's the written opinion that  
17 comes out, correct?

18 MR. GOLDENBERG: Ultimately the written  
19 opinion is what matters.

20 MS. LINDSAY: You weren't there.

21 MR. FIORE: I know I wasn't there, but  
22 what difference does that make.

23 MS. STANCZYK: You didn't hear what we  
24 heard, it was amazing.

25 MS. BOUTSIS: One person at a time,

1 please.

2 MR. GOLDENBERG: I think the oral  
3 argument is just being discussed to as a  
4 settlement or the thing that's indicated  
5 what I think was a very strong consensus  
6 among people who were there. Apparently  
7 including the people on the other side as to  
8 where this thing was likely to go.

9 So in terms of settlement or who  
10 thought that they had the upper hand at that  
11 point, I think the feeling was that we  
12 thought that we were in a very strong  
13 position after oral argument.

14 It's correct that once the decision  
15 comes out in writing and it's different from  
16 what oral argument looked like, what happens  
17 in oral argument doesn't matter and it  
18 doesn't help us. But viewing things from a  
19 perspective that people had prior to the  
20 decision coming out, I think that there was  
21 reason for considerable optimism at that  
22 point based upon what we saw at the oral  
23 argument.

24 MS. STANCZYK: So where are we headed  
25 now?

1 MR. PARISER: No appeal, no motion for  
2 rehearing, Palmer goes forward with their  
3 development order and that's the end of this  
4 case and then there is the other case.

5 MR. TENDRICH: I think though from what  
6 Mr. Goldberg said was, and what Counsel Eve  
7 Boutsis said, try to negotiate and then the  
8 other case might not even be there anymore  
9 and that's what should be done.

10 I suggested some time ago, many times  
11 that we try and negotiate, and of course  
12 again it didn't fit anybody's favor, so now  
13 I think it's definitely time to negotiate.

14 And I think possibly maybe they want to  
15 try and be the good neighbor that we want  
16 them to be, and by negotiating that could  
17 happen.

18 MS. STANCZYK: I will say, though, just  
19 to be fair Howard, we did have Justice  
20 Cantero go speak with them and the  
21 information that he brought back was not  
22 overly positive in terms of settling. So I  
23 can understand why it didn't go forward at  
24 that moment.

25 MR. PARISER: At this point forward

1                   when we talk about the other case, we are  
2                   not talking about Justice Cantero and his  
3                   firm anymore, we are talking about Hochman.

4                   Look, I am always for talking, but  
5                   that's where we were being represented by  
6                   carrier counsel and legal cities so they  
7                   have a lot to say about what's going on, not  
8                   just us, so they should talk. I guess this  
9                   is the end of this, the zoning case and the  
10                  other case is the other case in Circuit  
11                  Court.

12                 MS. BOUTSIS: Did you want to perhaps  
13                 Raoul to reach out to Eileen and Stan and  
14                 see again if there is an interest?

15                 MS. STANCZYK: I think that's what we  
16                 said.

17                 MR. PARISER: To the extent that this  
18                 case, whatever can be worked out, and let  
19                 them know that the other case should be  
20                 talked about also.

21                 MS. STANCZYK: How can we tie it all  
22                 up?

23                 MR. WILLIAMS: With the condition that  
24                 we not appeal or appeal?

25                 MS. LINDSAY: I think we have very

1 little leverage here and it's worth a  
2 conversation. And if they say no, then we  
3 end this, I think it's the consensus here.  
4 And then we ask if there is anything else  
5 that we can do.

6 MR. WILLIAMS: I would like to ask Eve,  
7 I am thinking ahead of the other motion  
8 that's out there that you spoke of, whether  
9 or not -- and I don't want to get on a case  
10 that's not part of this meeting, whether or  
11 not those discussions could include some  
12 retraction or withdrawal from these other  
13 potential cases, motions? I just don't  
14 know.

15 MS. STANCZYK: That's what I just said.

16 MS. BOUTSIS: We need to keep the focus  
17 on this appeal, that's what this was noticed  
18 for, but I think that I got the indication  
19 what you are looking for.

20 MR. FIORE: Am I correct in hearing the  
21 Vice Mayor said, this is done, they have  
22 received their 1,150, they have their  
23 development order and this part is over?

24 MR. BOUTSIS: That's my understanding  
25 from the communication of the court and of

1 this group.

2 MR. WILLIAMS: Is there any Counsel  
3 action required or lack of appeal is the  
4 answer to it?

5 MS. BOUTSIS: You don't need an action  
6 you just not appeal.

7 MS. STANCZYK: When does the  
8 development order become active?

9 MS. BOUTSIS: They have ensured the  
10 decision, then it's the mandate coming back  
11 down.

12 MS. LINDSAY: Do we have to have  
13 another hearing?

14 MS. BOUTSIS: We would have to have one  
15 more hearing to affirm it, to make sure that  
16 the record is clear.

17 MS. STANCZYK: That the development  
18 order stands?

19 MS. BOUTSIS: Yes. Maybe we are  
20 looking at 60 days.

21 MS. LINDSAY: And I understand all of  
22 this and I am not arguing any of this, but I  
23 still have a very difficult time saying that  
24 we go to this Council meeting and there was  
25 competence substantial evidence to deny the

1 1,150, and now the five of us are going to  
2 go in there and we are now going to say the  
3 1,150 is fine.

4 MR. PARISER: The Court ruled that it's  
5 fine.

6 MR. LINDSAY: When we have the hearing  
7 it needs to be very clear that this is the  
8 Court's decision and not ours.

9 MR. PARISER: They agreed to 78 of the  
10 80 conditions, the two ---

11 MS. BOUTSIS: Two were quashed.

12 MS. STANCZYK: The 30 years and the  
13 nine hundred were quashed. The other 78  
14 remain.

15 MS. LINDSAY: 30 years moratorium.

16 MR. PARISER: And the time table for  
17 them getting the 1,150 would still stay in  
18 effect.

19 MS. BOUTSIS: It will start whenever  
20 we affirm it.

21 MS. LINDSAY: So the table moves up,  
22 the 15 years start in 2012 and not 2010?

23 MS. BOUTSIS: Correct.

24 MS. LINDSAY: And you are positive  
25 about that?

1 MS. BOUTSIS: Yes, otherwise they would  
2 be at 700 now and they would have to build  
3 everything.

4 MS. LINDSAY: Do we have to rewrite the  
5 schedule to indicate that there were a  
6 number of things that were time specific in  
7 that resolution?

8 MS. BOUTSIS: We probably do that as  
9 part of the resolution just to be clear.

10 MS. LINDSAY: Before we wrap this up  
11 let me just understand something here. Are  
12 we directing you all to talk to them about  
13 settlement without telling them that we have  
14 made this decision or are you telling them  
15 that we have made the decision and then  
16 asking for settlement? I think there is a  
17 little difference here and we need to be  
18 clear about how we are going forward.

19 MS. STANCZYK: I agree.

20 MR. GOLDENBERG: I will let Raoul  
21 address it because Raoul has been the person  
22 addressing this.

23 MS. LINDSAY: Is the Justice still  
24 there?

25 MR. CANTERO: Yes, I am still here.

1 The question is whether I should approach  
2 them about settlement, to what extent?

3 MS. BOUTSIS: A little bit more detail.  
4 Should we say look, we want to settle but we  
5 are thinking of appealing. We won't appeal  
6 if you are interested in settling.

7 Is there any benefit to that?

8 MR. CANTERO: I don't think that we  
9 should tell them one way or the other. I  
10 certainly don't think that we should tell  
11 them something that's not the case, but I  
12 don't think we need to tell them what our  
13 strategy is going forward.

14 We can tell them that we are interested  
15 in settling the case.

16 MS. PARISER: I agree with that, just  
17 in good faith say, we are saying okay, let's  
18 talk settlement, any way we have decided not  
19 to appeal it.

20 MS. STANCZYK: I don't know, I think  
21 Justice Cantero has done this, this is why  
22 we have hired him, I think it's like tipping  
23 your hand. They are going to guess that we  
24 probably don't want to appeal, that we are  
25 putting the olive branch out there, but I

1 don't think that you cut your nose off and  
2 ---

3 MR. LINDSAY: How do you think we do it  
4 then?

5 MS. STANCZYK: By telling them we are  
6 not going to appeal.

7 MS. LINDSAY: He is saying he doesn't  
8 want to discuss whether we want to appeal or  
9 not.

10 MS. STANCZYK: That's not on the table.  
11 You are saying tell them, and I am saying  
12 don't.

13 MS. TENDRICH: I agree with the Mayor  
14 this time.

15 MS. LINDSAY: I agree with Justice  
16 Cantero.

17 MR. WILLIAMS: I don't have a vote, but  
18 I agree with Brian.

19 MR. CANTERO: What I said earlier,  
20 which is when we were done with the Circuit  
21 Court and we were appealing to the Third  
22 DCA, we were pretty entrenched in our  
23 position and they were pretty entrenched in  
24 their position. As you recall they put in  
25 some provisions there that went beyond, at

1 least what we thought went beyond the  
2 conditions were even if the order was  
3 affirmed.

4 I don't see how they are going to be  
5 any more giving or any more flexible now  
6 that they won on this level.

7 So we can approach them, but I am not  
8 sure we are going to get any kind of  
9 favorable response, except the Court said  
10 what it said and we need to comply.

11 Eve might have a different feeling  
12 about it because she has spoken to Eileen  
13 directly, and maybe that's where this  
14 negotiation should continue, is between Eve  
15 and Eileen, because I don't think Stanley  
16 Price so far has been very amenable to or  
17 very flexible -- I am not sure who wrote  
18 that brief that they filed, but it was  
19 certainly a very aggressive brief, as you  
20 remember. So perhaps the negotiations  
21 should be conducted between Eve and Eileen  
22 not between me and Stanley Price.

23 MS. BOUTSIS: I will tell you one  
24 thing, I have spoken to Stan over this as  
25 well. Stan is as bullheaded as they come

1 right at this moment. I really respect the  
2 man, but he has been very, very tough in his  
3 position. Eileen that works with him and is  
4 his partner and co-counsel with him on this  
5 case has been very receptive, so I don't  
6 know if it's they're not talking to each  
7 other or what, but she has communicated this  
8 to me, so if you would like I could reach  
9 out to her. I am not saying that everybody  
10 in Palmer Trinity is on the same page as  
11 Eileen Meta.

12 MR. WILLIAMS: I think that's the way  
13 it should go.

14 MR. PARISER: Speak to Eileen Meta that  
15 we want to settle and see what she says.

16 MS. BOUTSIS: I will report back.

17 MR. WILLIAMS: The reason I think,  
18 Mayor, the issue of we might appeal kind of  
19 holding it in our vest, if and when it  
20 proves to be not acted upon, I think that  
21 lessens our ability to make progress on  
22 these other things, that's my opinion.  
23 Because all they have to do is wait it out  
24 to these timelines and what is that 10 days  
25 from now, and once they see that we are

1 playing poker with two deuces, you know,  
2 that's why I disagree. I just wanted to  
3 give you my view on it. I think when it's  
4 revealed that you are playing ---

5 MS. STANCZYK: They can wait it out and  
6 see the truth or you can just not discuss  
7 it.

8 MR. PARISER: You should discuss it.

9 MR. FIORE: Let's tell them the truth  
10 and move on.

11 MS. STANCZYK: I don't know that it's  
12 about truth, it's about putting the best  
13 position forward that you can. And you  
14 know, I think Justice Cantero is our  
15 advocate and the one that we trust, that's  
16 who we have hired and he's saying just don't  
17 discuss it.

18 And if they bring it up and they say  
19 what are you doing, that's truth, that's an  
20 answer that's been requested. But if you  
21 just don't throw it out there the minute you  
22 walk in the door, maybe you can engage them  
23 in a conversation before the question is  
24 asked.

25 MR. FIORE: Mayor, with all due

1           respect, I think we ran out of efforts a  
2           long time ago.

3           MR. CANTERO: If I weigh on that issue  
4           of settlement discussions I think we'll need  
5           some direction from the council, because  
6           technically it would need to be done fairly  
7           quickly, certainly within 30 days of the  
8           opinion, so they may come back and say okay,  
9           well, we are willing to listen but you guys  
10          lost so what's your compromise, what do you  
11          want to settle at. They are going to want  
12          to know what do you want to talk about. We  
13          need some guidance, and I am sure they are  
14          going to want something at 900 or above,  
15          let's say one thousand.

16          I don't know what else they would want,  
17          but we have to come up with something for  
18          them to consider.

19          MR. WILLIAMS: Would they back up on  
20          any of these other motions, is it possible  
21          that we can get any kind of movement on some  
22          of these other potential costs coming at us?

23          MR. GOLDENBERG: I think that's  
24          possible, it doesn't necessarily cost them a  
25          lot.

1                   My feeling on that is, I think you  
2                   can't go in and say, we are not appealing  
3                   because you are basically saying we are  
4                   quitting, so take it easy on us. But I  
5                   think it might be good, just considering the  
6                   history of kind of approaching them, and I  
7                   think this probably comes better not from us  
8                   as outside counsel but more inside,  
9                   basically saying we want to put all of this  
10                  behind us, we think it's time to join  
11                  together and put this behind us and try to  
12                  put this all behind us, we'll issue the  
13                  development order, you drop the motion for  
14                  attorney's fees.

15                  The other case I don't know enough  
16                  about it to comment on how that would be  
17                  characterized, but to try and approach them  
18                  as it's been a long thing and everybody  
19                  thinks that the Village and Palmer Trinity  
20                  should move on together and look to the  
21                  future and try to establish a new  
22                  relationship and move forward and see if in  
23                  the spirit of that you can get some  
24                  concession on those remaining things and try  
25                  and get rid of some of bitterness and anger

1 and whatever else has built up.

2 MR. WILLIAMS: Maybe agree on some  
3 locked in guarantees and development  
4 process. We know that's going to be a ---

5 MS. STANCZYK: What does that mean?

6 MR. WILLIAMS: You all are going to be  
7 getting calls everyday, and maybe there is  
8 some ways to lock in that tighter than it  
9 already is. Get some concessions on how  
10 they do that.

11 MS. STANCZYK: You mean clarity?

12 MR. WILLIAMS: Yes. You all are going  
13 to get calls every time a truck pulls up.

14 MR. GOLDENBERG: An offer at this point  
15 of expedited permit processing or something  
16 along those lines. Something that going  
17 forward says not only are we not going to  
18 fight you, but let's try and get this  
19 accomplished and in exchange for doing some  
20 things that will help you get your things  
21 done a little more easily and without the  
22 contentiousness we can -- whatever it might  
23 be, I don't know, we'll expedite the permits  
24 or something along those lines. Maybe  
25 that's something that could be put in as an

1 offer on our side that might entice them.

2 MR. TENDRICH: I think the important  
3 thing is 78, the 79 conditions requested the  
4 count now brings it back up to 79, the 80 is  
5 gone with the 30 years. I think like  
6 Mr. Goldberg said is, the thing that we need  
7 to try and do is negotiate so we do not have  
8 the attorney's fees, because those things  
9 would really -- we have to redo our budget  
10 before it's even done. I think that's the  
11 important thing.

12 And like you said, put an olive branch  
13 to them and hopefully they will put an olive  
14 branch to us. Like you said, then the  
15 Village can become a Village again and not a  
16 jungle where everybody is trying to step on  
17 everybody and be nasty to each other.

18 MR. GOLDENBERG: I think that message  
19 comes across better from inside than from  
20 outside counsel.

21 MR. WILLIAMS: I think it should be  
22 Eve.

23 MS. BOUTSIS: I have that kind of  
24 rapport with Eileen so I can do that.

25 MS. STANCZYK: And you are comfortable

1 with that?

2 MR. WILLIAMS: We'll support you.

3 MS. STANCZYK: In the last year  
4 and-a-half we have talked to them twice,  
5 does the attitude at this point seem a  
6 little different do we think, do we know  
7 that?

8 MS. BOUTSIS: I don't know that.

9 MR. WILLIAMS: They are holding this  
10 piece of paper that we don't know what that  
11 brings with it.

12 MS. BOUTSIS: I will let you know that  
13 as soon as I speak to Eileen.

14 MS. STANCZYK: Is it better that they  
15 know that we might be done?

16 MS. BOUTSIS: I think maybe,  
17 honestly ---

18 MS. STANCZYK: That they can take a  
19 breath?

20 MS. BOUTSIS: I think that the concept  
21 of us joining together, yes, I do.

22 MR. WILLIAMS: I have read a reading on  
23 this case today and the daily business  
24 review, and they are being quoted saying  
25 they are sure it's not over, the Village

1 keeps going. They are not sure what our  
2 next move will be, but they are certain that  
3 we'll keep going.

4 MS. LINDSAY: I think part of the  
5 reason that they say that is because they  
6 know that we know that this opinion lacks a  
7 basis of fact and so I think they know we  
8 know that.

9 And of course, we know other things  
10 beyond that that we have discussed here  
11 tonight and I won't reiterate, but it's not  
12 a case like the Third DCA ruled when we had  
13 the zoning hearing where they had Richard  
14 Roads versus Miami-Dade County and the  
15 opinions was there, the facts were there  
16 everything lined up, they reversed the  
17 Eleventh Circuit Court's ruling on the  
18 Council's decision ---

19 MS. STANCZYK: After two appeals.

20 MS. LINDSAY: That was actually the  
21 Third Appeal because it went to the Eleventh  
22 Circuit one, and it was affirmed and it was  
23 denied because they had appealed. And then  
24 a second time, and then it was overturned at  
25 the Third DCA because there was a recently



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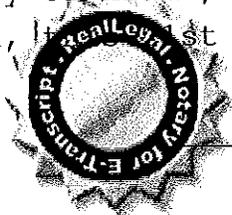
CERTIFICATE OF REPORTER

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 62  
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 1st day of July, 2014



*Adriadna Gonzalez*  
\_\_\_\_\_  
Adriadna Gonzalez

Court Reporter  
Commission # EE041583  
Expires Nov. 29, 2014