

VILLAGE OF PALMETTO BAY

IN THE MATTER OF:

CASE NO.: 12-029

SHORES AT PALMETTO BAY, LLC, VERSUS THE VILLAGE OF
PALMETTO BAY

PLACE: 9705 East Hibiscus Street
Palmetto Bay, Florida 33157

DATE: Monday, March 4, 2013

ORIGINAL

The above-entitled matter came on pursuant
to notice of attorney/client session at 6:11 p.m.

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APPEARANCES

On Behalf of the Village of Palmetto Bay:

EVE BOUTSIS, ESQ.,
FIGUEREDO & BOUTSIS, P.A.

COUNCIL

MAYOR SHELLY STANCZYK
VICE MAYOR JOHN DUBOIS
COUNCILMAN PATRICK FIORE
COUNCILMAN TIM SCHAFFER
COUNCILWOMAN JOAN LINDSAY
VILLAGE MANAGER RON E. WILLIAMS

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PROCEEDINGS

MS. BOUTSIS: All right. Well, thank everyone.

Ready?

THE COURT REPORTER: Yes.

MS. BOUTSIS: Thank you everyone for being here.

As the Village attorney I requested that the Mayor and Village Council meet on the Defense --

Oh, wait. Here we go. Entering building, John Dubois.

(Thereupon, an off the record discussion ensued.)

MS. BOUTSIS: So as the Village attorney I have requested that the Mayor and Village Council meet in the representation of that matter entitled Shores at Palmetto Bay, LLC, versus The Village of Palmetto Bay.

Appellate Court. Case No. 12-029. Florida Eleventh Judicial Circuit under the prior Village Resolution Number: 2011-85.

I am seeking advice from the Village Council regarding litigation strategy and/or settlement.

1 The meeting is being held at Village Hall
2 at 9705 East Hibiscus. It is now 6:11 p.m. on
3 March fourth.

4 I will ask everybody to go around the room
5 and introduce themselves for the Court Reporter
6 in a second.

7 Please remember that at the end of the
8 litigation, the termination of the proceedings
9 all the transcripts are made a part of the
10 public record.

11 The Court Reporter needs to take down
12 everybody who is speaking today. So let's have
13 one person speak at a time because the Court
14 Reporter can't take two people at the same
15 time.

16 And try to keep your responses clear. No
17 uh-huhs and uh-huhs because the transcript
18 doesn't delineate what that means: Is that a
19 yes? Is that a no? Is that a maybe?

20 All of the proceedings here will be
21 transcribed by the Court Reporter. Again, I am
22 Eve Boutsis, the Village attorney.

23 To my left.

24 MS. LINDSAY: I am Joan Lindsay,
25 Councilwoman District Three.

1 MR. FIORE: Patrick Fiore, Councilperson
2 District One.

3 THE MAYOR: Shelly Stanczyk, Mayor of
4 Palmetto Bay.

5 MR. SCHAFFER: Tim Schaffer, Council
6 Member District Two.

7 THE VICE MAYOR: John Dubois, Vice Mayor.

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

10 MS. BOUTSIS: Thank you for, everyone for
11 being here.

12 Just a quick recap. On
13 February thirteenth we had oral argument before
14 the Eleventh Circuit, the Dade County Eleventh
15 Circuit.

16 And the three Judge panel -- I think I
17 gave everyone a little e-mail blast on that --
18 heard oral arguments.

19 They let us go over. In fact, there were
20 no other cases heard that day. All the other
21 items had been deferred.

22 J. C. Planas presented the arguments on
23 behalf of the Shores of Palmetto Bay, LLC. And
24 obviously I was there on behalf of the Village
25 of Palmetto Bay.

1 Mr. Planas, J. C. Planas made his
2 arguments relating to the hearings that were
3 held in December of 2012.

4 In short they argued that we didn't have
5 the right to deny the application. That our
6 actions were contrary to state law. And that
7 there was no competent, substantial evidence to
8 support a decision.

9 The --

10 Obviously my arguments were that the
11 Village Council based upon competent,
12 substantial evidence presented in the recorded
13 had three options.

14 Those options were they could have
15 deferred again, they could have denied or they
16 could have granted with a condition that they
17 obtain the charter within a certain amount of
18 time.

19 The Council at that hearing based upon the
20 testimony from Mr. Rosen from the prior
21 hearing -- remember it had been deferred for
22 two months -- had said there would be no more
23 extensions.

24 He would have all of his ducks in a row.
25 In short the applicant never had a usable

1 charter by the December hearing.

2 The applicant had tried to go through the
3 School Board process. And the School Board
4 canceled two different meetings which precluded
5 it from obtaining the charters within a, within
6 the time period.

7 Allegedly the charter was obtained in
8 January. I will tell you that charter is no
9 longer viable.

10 That charter is not on the table at this
11 point because the, from what I understand from
12 Mr. Planas the charter was not renewed.

13 They have a one year life span on a
14 charter with an automatic renewal. And the
15 charter school did not seek a renewal of that
16 charter. So that charter is no longer viable.

17 The Court seemed to be depending on how
18 oral argument is perceived --

19 Sometimes you think you win and you don't.
20 And we have witnessed that in prior cases. But
21 it seemed that the panel was favorable to the
22 Village's position.

23 The --

24 The panel first said:

25 "You know, Mr. Planas, you are trying to

1 bring in outside testimony on a contract. The
2 contract speaks for itself.

3 "So you can't bring in what is called
4 parole evidence. You can't make an argument
5 that the, the system works a different way when
6 the contract we are talking about or where here
7 we are talking about the charter contracts from
8 Homestead."

9 There were two actual charter contracts
10 that were part of the record. But they were
11 dedicated according to the contracts to those
12 locations in Homestead and they needed School
13 Board approval to be moved.

14 They did not have that School Board
15 authorization to move those two charters. So
16 the School Board --

17 I am sorry. The appellate panel rejected
18 those arguments saying:

19 "You can't bring in parole evidence or
20 anything else. It is clear that the Village
21 had the authority to reject those documents
22 since they were not authorized for use
23 elsewhere."

24 The Court in my opinion and I believe in
25 J. C. Planas' opinion seemed to agree with the

1 Village that due process was provided.

2 That the essential law was complied with.
3 And that there was competent, substantial
4 evidence in this record to make a decision
5 although no order has been issued at this
6 point.

7 Mr. Planas came up to me after the oral
8 argument and said:

9 "Oh. It looks like you won this one."

10 But again you never know what happens at
11 oral argument. We all know that they may sound
12 like one thing in oral argument and the Court
13 can rule otherwise.

14 Now, a couple of days after oral argument
15 I got a call from J. C. Planas who was going to
16 be filing for a 60 day extension of time on the
17 issuance of the ruling.

18 And I contacted all of you all to see if
19 there was any objections. There were no
20 objections to this request because Mr. Planas
21 was seeking to talk about settlement.

22 So that motion was unopposed and was
23 granted by the Court. We have until late
24 April -- I think it's April twenty-fourth.

25 And then on the twenty-sixth we have to

1 provide a status report to the appellate panel.

2 So why are we here?

3 Before you all is a copy of the letter
4 that Mr. Planas has presented. There are two
5 basic options.

6 I am going to deal with the simpler option
7 first and go into the more complicated item
8 second which is the longer item.

9 The first option is that he is willing to
10 sell the property to the Village for five
11 million dollars.

12 I checked the property records. And he
13 purchased --

14 Mr. Rosen purchased the property through
15 his corporation for five million about six
16 years ago. We have not done any appraisal or
17 anything else.

18 The second option is basically they want
19 the Council to approve the application that
20 they have recently submitted.

21 You may recall we had prior discussions
22 about settlement. And that they could present
23 a settlement to us with an application, we
24 would waive the fee and try and go through that
25 process.

1 That process had devolved because
2 Mr. Planas and his client indicated they wanted
3 to go to oral argument instead of settling.

4 They want to revive that process with that
5 application. Again, the application is for a
6 mixed use project.

7 Which includes one thousand four hundred
8 school students within a school, a charter
9 school. That is the public hearing portion.

10 The remainder is a number of units with a
11 commercial and office use. There is also a
12 parking garage as part of the plan.

13 The second part is not for your review.
14 It is an administrative review through their
15 Fragile Triangle and Island District.

16 And to be honest because I haven't seen
17 the app, the new application I don't know the
18 number of units involved.

19 But the application either complies with
20 the number of units under a zoning code or it
21 does not.

22 As far as the, the charter school the --
23 we are down to the same issue. Staff is
24 willing to expedite review. Staff is willing
25 to, you know, we -- you --

1 You as a Council have already waived the
2 application fee. But it comes down to the
3 charter.

4 And let's talk about that for a minute.
5 The charter that was to be originally used for
6 Palmetto Bay is now gone according to
7 Mr. Planas.

8 They did not renew it. It's gone. The
9 two charter contracts that they have in
10 Homestead are being used elsewhere. And they
11 are no longer available to go through the
12 School Board review to get located in the
13 Village of Palmetto Bay.

14 Attached to the letter is an Exhibit A.
15 It's the last page. This is from Somerset
16 Academy indicating what two charters it would
17 like to use and quote unquote transfer to the
18 Village of Palmetto Bay.

19 They are called Somerset Preparatory
20 Academy at Silver Palms and Somerset Academy
21 High School South Campus for a thousand
22 students.

23 Understand that high school is --

24 The high school grades is always a
25 separate charter from the rest of it even if

1 it's a K. through 12. That's why it's two
2 charters.

3 Again they would be limited to the number
4 of students that would be through the accrual
5 process which they requested was one thousand
6 four hundred.

7 So even though it says one thousand nine
8 hundred students if it went forward it would
9 only be one thousand four hundred.

10 But why are we talking about this letter?

11 It's because they haven't still gone
12 through the process for transfer. So like --

13 You are in the same dilemma in the sense
14 of your hearing December 2012. You could --

15 If you were hearing the item today you
16 could defer, you could deny or you could grant
17 with conditions.

18 So knowing this I have talked to
19 Mr. Planas saying:

20 "Are you going through the School Board to
21 get your ducks in a row so that you have a
22 charter by the -- if we were to go to
23 settlement?

24 "And by the time we get to hearing will
25 you have a charter that we can use?"

1 These two charters. Because right now
2 they are usable some place else. And they
3 weren't sure.

4 So what they are proposing is going
5 through the public hearing, expediting the
6 review with the instead of approval at --

7 Okay. Instead of a denial or a deferral
8 approval with a condition that they have a
9 certain amount of time to get the charter or
10 its denied.

11 That is basically what they are seeking.
12 Those are the two options they have proposed.
13 I have --

14 As you know I have a duty to convey all
15 settlement offers to you. I don't know what
16 you would like to discuss or if anybody would
17 like to start first.

18 THE VICE MAYOR: I have a question,
19 clarification.

20 You mentioned when you first started
21 talking that the original charter that they got
22 automatically renews, but they chose not to
23 renew it?

24 MS. BOUTSIS: Academic chose not to renew
25 it. Yes. According to J. C. Planas.

1 THE VICE MAYOR: Do you know why that
2 would be?

3 MS. BOUTSIS: I asked that.

4 He said they didn't believe that process
5 would go through, they being Academic, and they
6 didn't renew it.

7 THE VICE MAYOR: Okay.

8 MS. BOUTSIS: Now I have heard in the
9 newspaper there was an article that that
10 charter is being used in Kendall.

11 So I am not sure that J. C. has all of the
12 correct information on that himself. Because
13 his statement is contrary to the newspaper
14 article.

15 THE VICE MAYOR: Okay.

16 MR. SCHAFFER: I think you meant December
17 of 2011 for the hearing, not December of 2012.

18 MS. BOUTSIS: You are correct.

19 Thank you.

20 MR. SCHAFFER: So for the record I think
21 it should reflect that.

22 MS. BOUTSIS: Yes. Thank you.

23 So does anybody want to talk about the
24 offers? We have either an offer to purchase.
25 We could counteroffer.

1 There is an offer to go through the
2 hearing process. But we are still dealing with
3 the main issue --

4 MR. SCHAFFER: The charter.

5 MS. BOUTSIS: -- with the charter.

6 I don't see --

7 I mean if you read the letter --

8 And J. C. Planas tried to make this
9 argument before the Court through this, this
10 doctrine called parole evidence.

11 Charters are meant to be flexible. Okay.
12 The school --

13 The State legislature created a process
14 that is quasi governmental/quasi private. And
15 when they did all of these rules and
16 regulations they basically made it harder for a
17 charter to be denied.

18 Whether you agree or disagree the process
19 is if you meet these criteria you get a
20 charter.

21 Well, when the legislature created the
22 language as to the charter contracts it
23 basically says if you go and you petition to
24 change location and they already met the
25 criteria there shouldn't be that -- they

1 shouldn't be denied.

2 So from J. C. Planas's point of view this
3 is just a formality. And there should be no
4 denial anywhere along the road. So the Village
5 shouldn't have the objection of denying it.

6 The Court said:

7 "That's not what the contract says. And I
8 don't care what the legislature intended. It's
9 valid argument for the Village that they need
10 to have a document. Because you need to be
11 able to hold accountable the people who are
12 building."

13 So that may be true in form versus
14 substance. But the substance says, you know,
15 it's dedicated some place else. So there you
16 have it.

17 MR. SCHAFFER: What's --

18 MR. WILLIAMS: If I --

19 No. After you Tim.

20 MR. SCHAFFER: What's that property really
21 worth?

22 Does anybody know?

23 MS. BOUTSIS: We, we don't know.

24 MR. WILLIAMS: Yeah.

25 MS. BOUTSIS: We don't know.

1 MR. WILLIAMS: I don't know what it is.
2 But if I may, Councilman, and I will come
3 back and --

4 To interrupt for a second. I have a
5 couple of suggestions. And, of course, it
6 requires the Council's -- Council's
7 authorization on its concurrence.

8 My suggestion would be that we try to
9 purchase the property.

10 MR. SCHAFFER: My ulcer is kicking in.

11 MR. WILLIAMS: You scared me.

12 THE MAYOR: What happened?

13 MR. WILLIAMS: I don't know.

14 Let me talk about that just for a quick
15 minute and really just follow through your
16 argument.

17 I think that and, and my --

18 My request to this, this Council would be
19 that, that along with the Village attorney's
20 support that I be given some authorization to
21 try to find a way to purchase this property for
22 a fair value.

23 Fair value obviously has to be determined
24 through appraisal and probably some real
25 difficult negotiation.

1 I can imagine that. I am sure of that
2 based on what we have gone through. I just
3 don't know that continuing down another route
4 will get us there, but back into Court.

5 The other side of it is I think that the
6 Village's ownership and control of that
7 property allows us -- I know your stomach
8 hurts -- allows us to consider a number of
9 different options with regards to what's going
10 on around us.

11 You know, we pursued with the County and
12 obtained control of Ninety-seventh Avenue. It
13 is now fully under the Village's control.

14 I think, you know, there is opportunities
15 for you all to consider what -- what's best for
16 the Village from a number of perspectives.

17 I think that park expansion is an option.
18 My ideas are just going around about that. I
19 think to include it in the real development of
20 walkable, livable Downtown is an option.

21 And I just believe that if we have the
22 ability to make some of these kind of
23 decisions -- you all have the decision to make
24 some of these kind of decisions with input from
25 those constituents that you obviously want to

1 hear from.

2 I think it just puts us in a very
3 different situation. I --

4 Not --

5 Not to be negative, but I just don't know
6 that the Village attorney laid out a very
7 detailed explanation.

8 I just don't know that continuing this
9 effort of -- of getting passed the legal piece,
10 then the building permitting piece;

11 The issues that we have obviously
12 disagreed continuously on over the number of
13 units, how the parking garage mixes, the -- the
14 difficult discussions, but not impossible
15 discussions on how we get the three/two mix
16 sorted out meaning the three acres for the
17 school versus the two acres for the mixed use;

18 The --

19 The density issue on the apartments and so
20 forth that I don't know that we are in full
21 agreement on.

22 My --

23 My suggestion and request quite frankly
24 would be that -- you know -- you all allow me
25 with a very short stick to try to come to some

1 agreement to purchase the property.

2 I have looked at a couple of financing
3 options with some Village skin in the game
4 versus more loan.

5 We think that the, with the Village's
6 strong bond rating the -- the -- the dollars,
7 the money comes cheaper than it was.

8 It's not free, but it's good -- less than
9 it had been in the past. And I believe with
10 real firm appraisals I am sure that the
11 property owner would want to share into that
12 appraisal decisions.

13 Two appraisals, average, negotiate and
14 then put us on a short -- you know -- short
15 time frame.

16 And if that can't happen then we, you
17 know, we are back to trying to sort through all
18 of these issues.

19 I just think that for the, for the long
20 benefit of both -- you know -- community
21 involvement and legal issues and Village's
22 control for the long, long term that
23 probably -- you know -- try and send some of
24 our work here for the long, long term the
25 control of that site next door to our Village

1 allows us a different opportunity for planning
2 long term planning for this whole community.

3 So my thought, I have given some thought
4 to it. I have gone so far as to, you know, run
5 a couple of actuarials and the numbers and
6 those kind of things just to play with things
7 and see what impact that might have on us
8 financially.

9 Obviously we will come back with those
10 details with your authorization to proceed.
11 But the --

12 That's what I think. I just think to try
13 and get a school of this size built here within
14 this community with all we have been through I
15 think would be a very difficult task and
16 probably put a lot of stress on the community
17 as a whole.

18 Just my thought.

19 MS. BOUTSIS: I will tell you that I
20 didn't get a direct confirmation.

21 But it seems that Mr. Rosen with his five
22 million dollar offer is looking to get his
23 money back out.

24 And that he may be tight with funds right
25 now. I don't know if that's true. I, you

1 know --

2 This is speculation I have from my
3 conversations with J. C. --

4 MR. WILLIAMS: I have not had any
5 conversations with anybody.

6 MS. BOUTSIS: -- Planas. Excuse me.

7 MR. WILLIAMS: But clearly all of this has
8 been through the Village attorney.

9 Just my thought. I --

10 I don't want to sound anything other than
11 fiscally responsible in offering and what in my
12 view -- correct or not -- offers the Village
13 the best opportunity for a, for long term
14 planning of -- of -- of -- of services to this
15 community.

16 And that's my thought on it.

17 MR. FIORE: Well, if we go by that we
18 control our own destiny.

19 THE MAYOR: That would be true.

20 MR. FIORE: You want to put one thousand
21 four hundred kids on three acres and go through
22 everything we went through before?

23 I don't. And I don't think the City does.
24 Now let's try to negotiate a fair deal which I
25 don't know what the price is.

1 I don't know. Maybe it's --

2 MS. BOUTSIS: We have --

3 MR. FIORE: Hopefully it's less.

4 MS. BOUTSIS: We would have to get at
5 least two appraisals.

6 MR. WILLIAMS: It has to be.

7 MR. FIORE: Because I, I --

8 I don't know what will happen in the end
9 in Court. But they have legal basis behind
10 them for what they want to do and we have legal
11 basis behind us what we want to do.

12 So the question is how long does the fight
13 go on?

14 So that's my thought.

15 THE VICE MAYOR: Could we go around the
16 room and get --

17 MS. BOUTSIS: Sure.

18 THE VICE MAYOR: -- opinion from each
19 Councilperson.

20 MS. LINDSAY: Would you like to start?

21 THE VICE MAYOR: Why don't you start.
22 Ladies first.

23 MS. LINDSAY: I will be happy to. Thank
24 you.

25 I thought for a long time that it was in

1 the best interest of the Village to acquire
2 that property.

3 I think we need a community center in the
4 Village. I think the plans that our staff and
5 the Manager has put forward in the past about
6 having Franjo Avenue be our Downtown
7 thoroughfare, having a walkable Downtown with
8 small shops, great restaurants and a place
9 to -- you know -- have the community come
10 together and, as they do in South Miami, I
11 think would be a big benefit to this area.

12 And I think purchasing that property would
13 also show people who own property in the
14 triangle and this entire area that we are
15 serious about moving forward and making this
16 the workable, livable Downtown area that we
17 have talked about -- walkable Downtown area.

18 And I --

19 I think that could be a further impetus to
20 get the ball rolling in that direction. I
21 think the community as a whole --

22 And this is my District. And I hear from
23 these people perhaps more often than some of
24 you.

25 This community especially the immediate

1 area would love to have the Village purchase
2 that property.

3 And I think everything that Councilman
4 Fiore said is right on point. And, and I agree
5 with him.

6 So that's where I am. Now I think the
7 Manager has great advice here. And not, not to
8 look into it is a mistake.

9 It doesn't hurt you. It doesn't hurt you
10 to look into it. You have nothing to lose. We
11 can come back and do something else if we
12 decide that we can't get a fair price.

13 But --

14 THE MAYOR: John.

15 THE VICE MAYOR: Go ahead.

16 MS. BOUTSIS: No. We are going this way.

17 I am last.

18 THE VICE MAYOR: You go first.

19 I have nothing to say at this point.

20 THE MAYOR: Well, if you are giving up
21 your time.

22 MR. SCHAFFER: I like the idea of
23 definitely looking to see if we can get a fair
24 price for it.

25 I don't know basically if five million is

1 a good price or not. It could be way out of
2 the market.

3 I don't know with today's market. The
4 idea of a Downtown section and having a
5 Downtown Palmetto Bay I think it's, it sounds
6 great and all.

7 I am not 100 percent sold on all the
8 aspects of getting that done. But I have got
9 to learn more about that as we go along.

10 I know it's something we got to do. But,
11 you know --

12 MR. WILLIAMS: I don't think that's fixed,
13 Councilman. I mean there is --

14 I think there is time and need for a lot
15 more input.

16 MR. SCHAFFER: Yeah. I mean so --

17 Yeah. Will that five acres help towards
18 going in that direction? I am not sure.

19 A community center? That --

20 That has been --

21 I have heard, you know, people talk about
22 community centers. But generally when you get
23 to the north end you don't hear so much about,
24 you know, what happens to the south.

25 And, you know, Patrick is up north. I am

1 a little further north. They don't talk as
2 much about this area as they do talk about, you
3 know, Coral Reef Park and some of the other --

4 Which, again, we have got to take that all
5 into conversation. But look into it. Buying
6 it we better have some real good idea as to
7 what we want to do with that piece of property.

8 Because, you know, government managing
9 properties and us managing properties is not
10 necessarily --

11 We got to be efficient and good at that.
12 And I don't know if, you know, whether we are
13 prepared to be that good at running -- you
14 know -- a piece of property.

15 My thought was if you can get that piece
16 of property for five million dollars or if
17 that --

18 And that's a good price, you know, maybe
19 it's worth six. Or maybe he sells it for four
20 and it's worth five.

21 But to buy that piece of property and then
22 turn around and find a developer who wants to
23 come in and build that piece of property out
24 the way that it matches what we want to
25 accomplish here.

1 Which means it takes us out of the -- out
2 of the property management business. Give them
3 a 99 year lease or some --

4 You know, they lease the property from us
5 for a long period of time. And yeah. We now
6 have a five million, six million dollar piece
7 of property in our books.

8 That's an asset. That's fine. But
9 someone else who is dedicated to running and
10 managing that piece of property.

11 It may be building a community center.
12 But it's all done through a, a lease type of
13 agreement.

14 That I --

15 MR. WILLIAMS: I think you are absolutely
16 correct. I don't think --

17 I totally agree with you.

18 MS. LINDSAY: Yes.

19 MR. WILLIAMS: That's --

20 MR. SCHAFFER: That's kind of like a
21 thought.

22 Again it's just --

23 It's throwing the ideas out on the table
24 to maybe since this may not -- could be a
25 forever type of situation.

1 You know, that's kind of my idea behind
2 it.

3 THE MAYOR: John.

4 THE VICE MAYOR: Go ahead.

5 THE MAYOR: All right. Fine.

6 All right. So I guess he gave his time
7 up. Over --

8 THE VICE MAYOR: Shelly, don't speak for
9 me.

10 THE MAYOR: Over --

11 THE VICE MAYOR: All right?

12 THE MAYOR: Over --

13 THE VICE MAYOR: Just go ahead.

14 THE MAYOR: I have offered you the floor.

15 Over the past couple of years the
16 community surrounding the park has come to me
17 on a number of occasions.

18 I have an e-mail I got this morning asking
19 us to buy the land. At the town hall meeting
20 it was brought up:

21 "Buy the land."

22 People in this end of town, yes. We have
23 a town that has different sites to it. But we
24 serve all.

25 We are here elected by all to serve. And

1 because this is at one end of town it will
2 serve all.

3 A community center is something that they
4 are asking for. They have come out and asked
5 for it, not because they were prodded.

6 They came to us. They came to us last
7 year and asked. So that this --

8 This is something that the community
9 desires. This is their tax dollars. This is
10 their community.

11 We only are stewards. So I think in
12 listening to them and listening to what they
13 see their future in using their community as it
14 services them.

15 But it also brings us to the vision that
16 was seen by the other Council's and the vision
17 that's coming forward in many communities
18 across this country where older neighbors are
19 being redone, rebuilt.

20 And I think that's where we are headed to
21 give better service, great restaurants as
22 Councilwoman Lindsay said.

23 I think Councilman Fiore has a very good
24 point. Do we really need to struggle to give
25 service?

1 I don't think so. I think we can make a
2 decision. We can make a good decision based on
3 the information that's brought to us on what
4 the potential is for our community in that
5 area.

6 We have done a lot of work in this area.
7 We have invested already with putting Village
8 Hall here.

9 And that makes a statement in itself that
10 we believe in it. And I think there --

11 As time passes we --

12 There was some assured done. And we all
13 know that. The assured was done. But time has
14 passed.

15 It's time to tweak it. It's time to
16 invest again and make it move forward. Because
17 right now as the, as the Manager has said money
18 is still fairly cheap.

19 And it allows us the opportunity where if
20 you wait a few years that opportunity really
21 evaporates to do a great job.

22 You know, that makes it as flexible as it
23 is today. And I agree that I didn't think we
24 would be having this discussion.

25 But I think that we can make many of our

1 residents very happy with the potential for
2 service that they will receive.

3 MR. WILLIAMS: Mayor, one of the things I
4 think we -- you know -- just to --

5 One of the, not caution, but just -- just
6 point of view. I think that we --

7 Whichever direction you all decide that we
8 should go I think we have to evaluate highest
9 and best use as well.

10 And there may be pieces of it that serve
11 this particular need. But the broader view
12 may, may serve some other need.

13 So I am just --

14 MS. LINDSAY: Absolutely.

15 MR. WILLIAMS: I just want to say that I
16 think that that's the broader view that I would
17 like for us to consider.

18 MR. SCHAFFER: Can I make another point?

19 I truly believe that a charter school in
20 itself doesn't bring our community as a whole a
21 lot of value simply because we have such good
22 public schools here.

23 I don't know what, how many of our
24 residential children will be actually attending
25 any charter school that's here.

1 And then, of course, if it falls
2 underneath a -- a tax free environment then you
3 lose the tax revenues that come off of that.

4 So yeah. I mean, but the way we sit now
5 if we do go the direction and say:

6 "No. We are not buying the property."

7 Then we have got to deal with the fact
8 that there is a charter school that can go on
9 there.

10 We can't stop it. Land use says, you
11 know, charters can go on there. So we pretty
12 much --

13 Somewhere along the line it's my
14 understanding --

15 And I am just talking. My understanding
16 is if we don't buy this piece of property then
17 the other options of what we are exploring is
18 some time in the future be it, you know, a
19 month or two years depending on how this all
20 goes if that owner wants that charter school in
21 there and he meets the criteria it goes.

22 MS. BOUTSIS: That is a correct.

23 MR. SCHAFFER: So I guess that's very
24 important for us to be able to determine
25 whether that piece of property is --

1 I mean, I didn't ask if anybody likes
2 charter schools or not. But I know residents
3 have for the most part --

4 I was at the meetings when they offered back
5 at the, the fellow room there. I have yet to
6 find a resident that had any positive input on
7 having a charter school anywhere in the
8 Village.

9 I don't care where it's at. So from that
10 standpoint I don't think the residents are
11 backing the charter school from that
12 standpoint.

13 So, you know, we can really look to see --
14 you know -- find out what its worth I would
15 think.

16 THE VICE MAYOR: Well, I have a conflict
17 of interest.

18 So I am not going to be able to vote on
19 this because I own a piece of property inside
20 the triangle.

21 And it would benefit me financially for
22 the Village obviously to buy the property. So
23 I would rather not get involved with the
24 purchase decision.

25 But I think from a process point of view,

1 first of all, to me what he is doing is kind of
2 green mail.

3 Take a piece of property that's zoned for
4 use, for use that you know the community
5 doesn't want.

6 So what do you do?

7 You extort money out of us to get us to
8 buy a property above its fair market value. So
9 I think we should be careful not to pay above
10 fair market value.

11 But the other thing I would say is really
12 I think we should start with what do the
13 residents of Palmetto Bay really want.

14 I agree with everybody here that they
15 don't want a charter school there with one
16 thousand four hundred students.

17 I think we are all in agreement on that.

18 Right?

19 So what I talked to the Manager about in
20 his office a couple weeks ago was is it really
21 necessary to put the asset for millions of
22 dollars on our balance sheet and then sell it
23 back to a developer to do whatever development
24 we agree is done?

25 Or instead down zone, write a check for

1 \$1.2 million or whatever it is to down zone
2 which is the same effect.

3 We are just not keeping it on the balance
4 sheet with an agreement that it must be built
5 with Plan X., Y., or Z. that's acceptable to us
6 like a community center, townhouse --

7 You know, whatever you want that's not a
8 charter school or that's not objectionable to
9 the people.

10 And that's certainly an option. I don't
11 know if it's a great option. If the people of
12 the Village really want a community center then
13 we should build a community center there.

14 But let's not assume that because three
15 people said they want it that twenty-six
16 thousand people really want it.

17 We have a responsibility to do our due
18 diligence and possibly even get a --

19 I mean when you are talking act spending
20 millions of dollars to do something is it worth
21 spending fifty or sixty thousand to get a
22 referendum?

23 Maybe it is.

24 All right?

25 To find out what people really want or

1 some sort of poll where you pay a professional
2 polling company six, seven thousand dollars.

3 And they will do an effective poll of the
4 people throughout the Village that's
5 statistically accurate within three percent or
6 so if it's done properly.

7 So I am just concerned that whatever we do
8 should be done to meet the needs of the
9 community.

10 And make sure that whatever we select is
11 really what everybody wants if we are going to
12 spend big money on this thing.

13 MS. BOUTSIS: John --

14 THE MAYOR: May I --

15 MS. BOUTSIS: Wait. I am sorry. Just a
16 moment.

17 Can I, can I just address one thing?

18 Because like you mentioned that you have a
19 conflict of interest.

20 THE MAYOR: And I was going to ask you for
21 an opinion on that.

22 THE VICE MAYOR: Yes.

23 MS. BOUTSIS: And --

24 THE MAYOR: Because I think you should ask
25 for an official opinion because I am not really

1 sure you have a conflict.

2 MS. BOUTSIS: Well, regardless if you had
3 a conflict then you couldn't be part of the
4 conversation.

5 You had to leave the room. That's --

6 THE VICE MAYOR: Oh.

7 MS. BOUTSIS: -- the State requirement.

8 But a conflict is --

9 THE VICE MAYOR: I --

10 MS. BOUTSIS: -- a special gain or loss
11 that is specific to you and not anyone else.

12 So you own a property within the F. T. and
13 I. which covers -- you know -- how many acres
14 and how many people.

15 So I don't see that you have a specific
16 conflict of interest. If you had an interest
17 in this property or the next door neighboring,
18 you know --

19 THE VICE MAYOR: Right.

20 MS. BOUTSIS: -- it would increase your
21 value then you would have that kind of, you
22 know, distance requirement and/or financial
23 gain or loss.

24 Everyone here when we rezone an area could
25 have an affect on that --

1 Council --

2 I am sorry. Mayor Stanczyk has her
3 property in the F. T. and I. So she could
4 theoretically then have a conflict.

5 THE MAYOR: Well, I don't own it. I just
6 exist there.

7 MS. BOUTSIS: But --

8 MR. WILLIAMS: Right.

9 MS. BOUTSIS: Well, you have a lease
10 there.

11 THE VICE MAYOR: Right.

12 MS. BOUTSIS: And you have your business
13 there. So that kind of conflicts.

14 So I don't think you have a conflict. So
15 that's a good thing. But in the future --

16 THE VICE MAYOR: Yeah.

17 MS. BOUTSIS: -- I think I sent out an
18 e-mail -- if you believe you have a conflict
19 you have to recuse yourself before.

20 And you can't be involved in the
21 conversation.

22 Okay?

23 THE VICE MAYOR: Well, let me --

24 Let me just state that even though I don't
25 have what the County or what the Village would

1 consider a conflict of interest --

2 MS. BOUTSIS: Misstatement.

3 MR. WILLIAMS: -- I consider it an ethical
4 conflict of some level because it could have an
5 affect.

6 And I probably wouldn't --

7 I would probably abstain from the votes.
8 It's just --

9 MS. BOUTSIS: Okay. I just want to be
10 clear.

11 THE VICE MAYOR: Okay.

12 MS. BOUTSIS: And that way we don't have
13 any problems.

14 Now, as far as down zoning and I am sure
15 you are aware because you raised it, Vice
16 Mayor, the --

17 Obviously it gets into either a takings
18 claim or Bert J. Harris claim and all of the
19 legal fees associated with that.

20 That being said it's not the issue of a
21 down zoning. Because we are talking about 18
22 units an acre.

23 And they either meet the 18 units an acre
24 or not. What it comes down --

25 And I am talking about residential units.

1 And they have a certain amount of ability to
2 build commercial so -- in a mixed use envelope.

3 What we are really talking about here is
4 the school requirements, the public school
5 requirement.

6 And that's not a down zoning. That's a
7 change of the comprehensive plan.

8 THE VICE MAYOR: Uh-huh.

9 THE MAYOR: Which is probably what we need
10 to make.

11 MS. BOUTSIS: Well, you have a pending
12 application.

13 So you would have --

14 You would have a big issue with that. But
15 yes. It is a comprehensive plan issue. And
16 don't forget you have an Interlocal Agreement
17 with the School Board.

18 So if the School Board ever challenges you
19 your School Board interlocal agreement says you
20 have to put it in.

21 So you don't --

22 Although you have a comprehensive plan and
23 you can choose what you put in your
24 comprehensive plan your interlocal with the
25 School Board says you have to allow it if

1 they -- under the interlocal if they want to go
2 in there.

3 So your --

4 Your ability is diminished. And after
5 that --

6 THE MAYOR: Yes, ma'am.

7 MS. LINDSAY: Yes. I just wanted to just
8 say for the people at the table here who did
9 not attend the town hall meeting that we had
10 last week one of the things we suggest was
11 right along the lines of what you are talking
12 about Vice Mayor.

13 Which is to do a survey. And a similar
14 type of one was done with a relatively small
15 sample in Pinecrest.

16 And I think it would behoove all of us to
17 find out what the residents do want us to do.
18 We talked about a lot of things at that town
19 hall meeting.

20 The different properties were mentioned
21 as, as sites that the Village might purchase
22 and other types of options were mentioned.

23 But I think it would be a great idea for
24 us to hire a professional organization to do
25 just that.

1 And that is off the subject here, but it
2 really is connected. Because I think that what
3 I am hearing is most of us are interested in
4 seeing if we could get a reasonable price for
5 the property.

6 And we need to know if we are going to
7 pursue that what the people want us to do with
8 it.

9 And a survey would be the best way for us
10 to do that. Because as we know we don't get a
11 good sampling when we have town hall meetings
12 or when we have Council meetings.

13 So I think those are all good ideas.

14 THE MAYOR: Comment. Anybody else?

15 Because we are --

16 MR. WILLIAMS: Just one comment on that.

17 I think Councilwoman is on point on that.
18 And that I think that that should be the
19 message sort of speak.

20 Because unfortunately things get, get
21 going. And people will believe they are
22 promised one thing versus another.

23 And, and I think that the -- the -- the
24 comment or the conversation on this is:

25 "We will see what our folks want."

1 As compared to any specific, you know:

2 "We are buying it for this or buying it
3 for that or not for this --

4 MS. LINDSAY: Well --

5 MR. WILLIAMS: -- or not for that.

6 MS. LINDSAY: And along those lines we --

7 We could say that we would like a little
8 extra land for a community center as an option.

9 MR. WILLIAMS: Uh-huh.

10 MS. LINDSAY: We could say that we want to
11 work a lease with a developer to put in shops
12 and restaurants.

13 MR. WILLIAMS: Uh-huh.

14 MS. LINDSAY: There are a multitude of
15 combinations --

16 MR. WILLIAMS: Correct.

17 MS. LINDSAY: -- that we could pursue to
18 satisfy many different things.

19 THE VICE MAYOR: So what --

20 MS. LINDSAY: Yeah.

21 THE VICE MAYOR: So what is our response
22 going to be to that?

23 MS. BOUTSIS: That's, that's exactly --
24 I was making sure on the record.

25 THE MAYOR: We want to get back on task

1 here.

2 MS. BOUTSIS: Yes, sir.

3 MR. SCHAFFER: Can I go?

4 We requested the shade meeting ourselves.

5 MS. BOUTSIS: We requested?

6 I requested it based upon the
7 communication from Mr. Planas in this offer.

8 MR. SCHAFFER: What --

9 What we have discussed now, of course,
10 they know nothing of.

11 MS. BOUTSIS: Correct.

12 MR. SCHAFFER: What do we want to tell him
13 going forward?

14 Now we have got 60 days --

15 MS. BOUTSIS: We --

16 MR. SCHAFFER: Well, it's less than 60
17 days now.

18 Right?

19 MS. BOUTSIS: April twenty-fourth or so.

20 MR. SCHAFFER: We don't have to really
21 communicate much to them between now and
22 April twenty-fourth.

23 Is that correct?

24 MS. BOUTSIS: Well --

25 MR. SCHAFFER: I mean what do we --

1 I don't want to say anything.

2 MS. BOUTSIS: April twenty-fourth is just
3 what the Courts said:

4 "You know, he will grant you that time and
5 give us a status report by the twenty-sixth."

6 And if we haven't settled by the
7 twenty-sixth or come to an agreement on the, by
8 the twenty-sixth then at some date after that
9 they -- they, the appellate panel, will issue
10 an order.

11 MR. SCHAFFER: What I am saying is do
12 we --

13 Is there a time frame that we have to make
14 contact with Shores? Meaning is there going to
15 be time between when we really have to say
16 something to them --

17 MS. BOUTSIS: Well --

18 MR. SCHAFFER: -- and to go out and start
19 doing a little bit of this research we are
20 talking about here?

21 MS. BOUTSIS: It is our choice.

22 But understand this which I suspect
23 Mr. Planas is going to be calling me first
24 thing tomorrow morning to -- wanting an update.

25 MR. SCHAFFER: Okay.

1 MS. BOUTSIS: And I don't have to give him
2 everything.

3 I could give him, say:

4 "We are -- we are in discussions. If you
5 would like" --

6 We are not ready to --

7 MR. SCHAFFER: What do we --

8 MS. BOUTSIS: -- tell him yet.

9 But --

10 MR. WILLIAMS: I would like for us to say:

11 "We would like to sit down with you and,
12 and, and discuss one aspect of your settlement
13 offer. And that is the purchase of the
14 property to see if we can come to terms."

15 THE MAYOR: Can we --

16 Before we sit down with him can we get an
17 idea of some pricing so that we are not --

18 MR. WILLIAMS: But see --

19 And I thought about that. I think we
20 should --

21 I think we should do the appraisal
22 together. There is going to be two. They can
23 do one. We can do one. We can pay for both of
24 them, pay --

25 Because, you know, whoever pays the price

1 sometimes gets -- gets --

2 MR. SCHAFFER: The good appraisal.

3 MR. WILLIAMS: So I think that, that needs
4 to come together and -- and some agreement on
5 how we select the appraisals.

6 And then we decide whether or not that
7 appraised value is something we want to go
8 with.

9 MS. BOUTSIS: Do you want me to announce
10 to them that we are also going to be doing a
11 survey?

12 MR. SCHAFFER: Quick question. I don't
13 know if it's answered.

14 Do we have to go out and get a full blown
15 appraisal? Can we have someone just kind of
16 tell us what they think that property is going
17 to be worth?

18 I mean not, nothing --

19 MR. WILLIAMS: Before we purchase it has
20 to be --

21 MR. SCHAFFER: Oh, no. I know we have to
22 do an appraisal.

23 But I mean, you know --

24 THE MAYOR: He is trying to get an idea.

25 MR. SCHAFFER: "Hey."

1 THE MAYOR: And I think that's what I want
2 to --

3 MR. SCHAFFER: "What's my house worth?"

4 I can ask the Realtor in the neighborhood.
5 And they are going to say:

6 "Well, your house is worth between this
7 based on comparables."

8 Is the extent --

9 I mean is that --

10 MR. WILLIAMS: Yeah. I just don't know
11 how that gets us to this, though.

12 MR. SCHAFFER: Well, just give --

13 I mean if they --

14 If somebody comes out there and says:

15 "The property is worth six and a half
16 million dollars."

17 MR. WILLIAMS: Yeah. How valuable --

18 MR. SCHAFFER: And he wants five --

19 MS. BOUTSIS: Wow. One person at a time.

20 MR. WILLIAMS: I am sorry.

21 THE VICE MAYOR: And he wants five --

22 MR. WILLIAMS: All I am saying is if we
23 are --

24 If we are going to take that serious
25 approach let's get a serious appraisal.

1 MS. BOUTSIS: It's \$2,700 cost for an
2 appraisal approximately.

3 MR. SCHAFFER: How much?

4 MS. BOUTSIS: Twenty-seven hundred dollars
5 is one quote I got. I can get more quotes
6 because obviously --

7 It's about two thousand seven hundred.

8 THE VICE MAYOR: Can I speak for a second?

9 MR. WILLIAMS: Oh.

10 THE VICE MAYOR: The way it's done on a
11 property like that is a very scientific
12 formula.

13 It's a pure cash flow analysis per --

14 It's zoned for charter school for up to X
15 and mixed use residential. So they are going
16 to calculate the maximum beneficial use on the
17 mixed use.

18 And then they plug discounted cash flow
19 numbers into it and it's a relatively
20 scientific formula, you know, basis.

21 It's a present value formula based on
22 current interest rates --

23 THE MAYOR: Highest and best.

24 THE VICE MAYOR: -- and highest and best
25 use. Exactly.

1 So I agree that if we are going to move
2 forward with that then it probably makes sense,
3 too, at this point we should just probably
4 spend the money and have it done
5 professionally.

6 MS. BOUTSIS: Okay. Do you want me to
7 mention the survey?

8 Because the idea of this survey going out
9 and all of a sudden, you know --

10 How do I put this?

11 Mr. Planas and Mr. Rosen see this flier,
12 this survey saying --

13 MR. WILLIAMS: I don't think --

14 THE MAYOR: All right. Let me --

15 MR. WILLIAMS: I don't think that's part
16 of their --

17 THE MAYOR: Well, but I want to respond to
18 that.

19 MR. WILLIAMS: -- our conversation with
20 you.

21 THE MAYOR: Because that was something we
22 were going to do any way.

23 Okay. And I think that came out at the
24 town hall meeting which you were not at. And
25 that was something that was going to go on the

1 next cow agenda as you know.

2 MR. WILLIAMS: Uh-huh.

3 THE MAYOR: So that if we are doing our
4 resident sampling of survey for uses and future
5 and goals in the Village I think that if that
6 just becomes part of it, it's not such a red
7 flag.

8 I think if we talked about the F., T. and
9 I. and that was going to be part of it as well,
10 you know, commentary on -- you know -- our
11 status there and future of the parks.

12 MS. BOUTSIS: My only concern is this.

13 We have been previously threatened with a
14 Bert J. Harris. We have --

15 Mr. Rosen has indicated prior concerns
16 that we are trying to take his property. And
17 if we --

18 You know, that --

19 THE MAYOR: He is offering.

20 MS. BOUTSIS: If we are going to be doing
21 this survey and somehow his property gets in
22 the mix I am just trying to be protective if
23 you understand.

24 I am not trying to put the blinders on. I
25 don't want him to try and use this in some sort

1 of 1983 action that we are targeting his
2 property to take it away from him and that's
3 why we didn't give him the charter school and,
4 and some other --

5 THE VICE MAYOR: You could do an appraisal
6 and not a survey.

7 MS. BOUTSIS: No. The appraisal I have no
8 problem with --

9 THE VICE MAYOR: Okay.

10 MS. BOUTSIS: -- because we talked to
11 him about --

12 Did I say --

13 Did I say appraisal?

14 THE MAYOR: Survey --

15 MS. LINDSAY: But I think the survey is
16 going to take quite some time. I mean it's not
17 next week.

18 MR. WILLIAMS: I am asking for the
19 authorization to try to negotiate a straight up
20 purchase.

21 MS. BOUTSIS: Okay.

22 MR. WILLIAMS: And then we can
23 collectively --

24 THE VICE MAYOR: At what point does this
25 have to go out to the public discussion?

1 MS. BOUTSIS: When we come to an agreement
2 like a settlement in concept with, in writing
3 saying that:

4 "We want to purchase it for this amount."
5 You go out there. And right now you are
6 just giving direction for negotiation.

7 THE MAYOR: We can do it in regular
8 Council meeting or hold a special that's tagged
9 on to another public meeting and --

10 MS. BOUTSIS: Correct.

11 MR. FIORE: Okay. But maybe you should
12 get into serious discussions here first before
13 we give the people false hopes.

14 MR. WILLIAMS: Right.

15 MR. FIORE: If you put out a survey with
16 all due respect, Mayor:

17 "Oh."

18 And then all of a sudden everything falls
19 apart. And then we are back in litigation.
20 And then there is a charter school.

21 Then the people are going to say:

22 "Well, you told us you were going to buy
23 the land."

24 So I think that should come first.

25 MS. BOUTSIS: All right. So I think we

1 have clear direction that we are not really
2 interested in the first portion of the
3 settlement.

4 The second portion which is the purchase
5 we would like to talk serious negotiation and
6 get an appraisal --

7 MR. WILLIAMS: We will go over and do the
8 best we can on establishing a price, bring that
9 number back here and either agree or not.

10 THE VICE MAYOR: Yeah. I mean
11 realistically let's say we come up with a
12 number.

13 And the number is \$3.8 million or
14 whatever. He paid --

15 He bought it during the high of the
16 market. So obviously it's worth less today
17 than, probably than it was back then.

18 Why wouldn't we expect him to go down the
19 parallel path and go ahead with the application
20 process at the same time?

21 I mean why wouldn't we recommend that he
22 does it in parallel to us?

23 MR. WILLIAMS: Because I think we want the
24 alternative.

25 Don't we?

1 Don't we want the purchase as
2 opposed to --

3 THE VICE MAYOR: I am thinking from the
4 liability point of view.

5 We don't want to represent that we are
6 going to buy the property. And if he claims
7 that's stopping him from his due process --

8 MS. BOUTSIS: Not if he is --

9 I mean he is the one asking for the stay.
10 And he is the one who asked for the settlement
11 negotiations.

12 THE VICE MAYOR: Uh-huh.

13 MS. BOUTSIS: And he gave us the two
14 options.

15 So I don't think he has --

16 I don't think he has a leg to stand on
17 that way. If we went through the, the first
18 option you could do a parallel tract.

19 But understand we still have to come to
20 the issue of what do we do about the charter.
21 And --

22 MR. WILLIAMS: Well, that's his issue, not
23 ours.

24 MS. BOUTSIS: That, but that --

25 You know, he is asking you to waive that.

1 That's basically what his first offer is.

2 MR. SCHAFFER: He is countering basically.

3 THE VICE MAYOR: How could he waive it?

4 MS. BOUTSIS: He is trying to say you make
5 it --

6 "You have your public hearing and review
7 as fast, as soon as possible."

8 THE VICE MAYOR: Subject to.

9 MS. BOUTSIS: "And you put subject to."

10 And I don't have a problem with the
11 concept. But I do have a --

12 I have a problem with if you have had
13 twelve to eighteen months to get this damn
14 charter I just don't understand why you
15 haven't gotten --

16 THE MAYOR: He has agreed to everything
17 all along the way in the hearing. So --

18 MS. BOUTSIS: But, you know, that
19 shouldn't prevent you from looking --

20 THE MAYOR: Plus he has also offered on
21 several occasions to sell the property.

22 MR. SCHAFFER: Every time I think.

23 MS. LINDSAY: Well, and --

24 And another thing if he is serious about
25 wanting to put the charter school he should be

1 pursuing the charter now.

2 MS. BOUTSIS: I have asked J. C. Planas to
3 do so.

4 All right. I think we have clear
5 direction then.

6 MR. WILLIAMS: We will come back to you as
7 quickly as we get to some form of
8 understanding.

9 MS. BOUTSIS: Thank you. It is now
10 7:00 o'clock.

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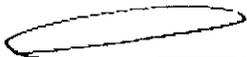
REPORTER'S CERTIFICATE

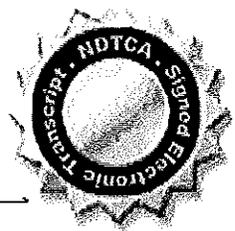
I, Elias Martinez, Reporter, hereby certify that the foregoing transcript of 60 pages is a complete, true and accurate transcript of the Village of Palmetto Bay Council meeting held on March 4, 2013 at 6:11 a.m. in the matter of: SHORES AT PALMETTO BAY, LLC, VERSUS THE VILLAGE OF PALMETTO BAY.

I further certify that this proceeding was recorded by me, and that the foregoing transcript was prepared under my direction.

Date: March 18, 2013

Official Reporter: Elias Martinez





ELIAS MARTINEZ
Court Reporter
My Commission # EE 091152
Expires: June 6, 2015

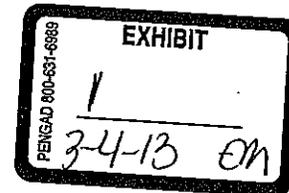


KURKIN • FOREHAND • BRANDES

J. C. Planas, Esq.
Direct: (305) 929-8507
jcp@kfb-law.com

February 8, 2013

eboutsis@fbm-law.com
Eve A. Boutsis, Esquire



Re: Shores and Town of Palmetto Bay

Dear Ms. Boutsis,

In an effort to expedite the resolution of the outstanding litigation with the Town, two of my client's associates, Mr. Rolando Llanes and Taylor Smith, met with the Town's Director of Planning and Zoning, Darby Delsalle, and Efren Nunez at the Town on Friday, February 8th to discuss my client's recent submission of the site plan package for the site, which includes the charter school and the mixed use residential/commercial building.

We are following the process outlined by you in your December 19th letter, in which you advised my Client to do the following:

- **“Submit the site plan that we desire to proceed with” to approval.** My client submitted the site plan the he desires to proceed with, as per your instructions to the Town in January, 2013.
- **“Staff will be instructed to expedite review.”** Your planning staff met with my Client's associates on February 8th. The meeting, they state, was very productive. However, during the meeting, Mr. Delsalle only explained the normal review process and forty-five day site plan approval timeline that will follow the traffic update and staff review period. He did not offer an expedited timeline, but perhaps he had not yet been authorized to compress the review timeline. Your December 19th letter stated that you can fast track the process including the public hearing portion; please advise on timing and next steps for the fast-track process. My client is ready to meet anytime and provide the necessary review inputs, including attendance at any special called Town Council meetings necessary to approve the site plan;
- **“Application must include usable site specific charter.”** We realize this has always been a sticking point with the City but we are operating under general nature that all Charters Schools do with their approval process through the School Board. We have submitted to the City, two usable charters for schools that are currently granted for another location elsewhere in the County. As we have explained before, because our partners have already met the statutory requirements for operating a charter school, they can not be denied by the School Board on moving the charter. A letter to this effect by the Charter School is attached to this letter. Once the Town Council approves the site plan, my Client will have the School Board approve the relocation of the charter schools to the site. This is consistent with Mr. Delsalle's

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October 17, 2011 staff analysis to the Council as an available and appropriate legal route for site plan approval consistent with 30-120.3 of the Village Code (see "Analysis" on page 8 and "Recommendation" on page 4). In effect, the site plan will be approved conditioned on my Client subsequently providing a copy of the School Board's consent to the relocation of the charters to the site prior to the issuance of a building permit.

- **"The Village will waive the application fee requirement."** In accordance with your advice, my Client did not submit an application fee with the site plan application submitted in January, 2013 and confirmed this with Mr. Delsalle at the February 8th meeting. Mr. Delsalle asked if my Client wishes to have the original site plan application withdrawn and replaced with the new site plan application. It is my Client's express instruction for the Town to review and approve the site plan application submitted in January, 2013. My client submitted the site plan the he desires to proceed with per your instructions to the Town in January, 2013.

Should your client show willingness to, at very least, discuss this issue further, we will immediately file a notice of settlement discussion with the Court and ask them to hold off on any ruling. Should we come to an agreement, we can execute formal documents and dismiss the appeal. Finally, as an additional show of good faith to resolve the outstanding litigation, my Client has again asked me to offer to sell the property on an "as is" basis, all cash with a quick closing to the Town for a price of \$5,000,000.

Please communicate this offer to your clients and let me know if you wish me to file any notice with the Court.

Sincerely,

Juan-Carlos Planas, Esq.
KURKIN FOREHAND BRANDES, LLP



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ATTACHMENT "A"

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January 16, 2013

Mr. Darby Delsalle, Director
Planning & Zoning Department
Village of Palmetto Bay
8950 SW 152nd Street
Palmetto Bay, FL 33157

Re: Proposed Charter Schools to be Located at the Parkside Project in Palmetto Bay

Dear Mr. Delsalle:

Attached hereto, please find copies of the current charter school contracts for the Somerset Academy Inc. schools which this Board intends to relocate and open at the Parkside at Palmetto Bay site, located at approximately SW 97th Avenue and SW 180th Street, Palmetto Bay, Florida - folio number 33-5033-000-0860.

Please be advised that the proposed schools currently operate under existing charter contracts issued by M-DCPS and are identified as follows:

- Somerset Preparatory Academy at Silver Palms – currently approved for 900 students; grades K-8
- Somerset Academy High School (South Campus) - currently approved for 1000 students; grades 9-12

The Board of Directors of Somerset Academy will formally adopt a resolution to ensure the amendment of the charter contracts to include the Palmetto Bay site as the permanent location. It is this Board's intent to apply to the School District for the permanent relocation of these charters to the subject site upon the applicant's successful obtainment of approval from the Village of Palmetto Bay. This approach is consistent with School District policy and pursuant to section 1002.33, F.S., which states that charter schools do not need to identify a location for the school at the time of the application, nor can school districts dictate a location for a charter school. Once the site has been identified, the applicant enters into the contract negotiation phase with the School Board. Only upon approval of a contract by the School Board is a charter school authorized to operate in Miami-Dade County.

Once again, the approval of the contract is, as you can see, contingent on having secured a site, something that will not be fully realized until after the Village issues its approval. At this time, and in consideration of the foregoing, the Board of Directors of Somerset Academy respectfully requests the Council's approval of the aforementioned application. In the alternative, the Board of Directors respectfully requests the Council to conditionally approve the aforementioned application upon receipt of the Amended Charter Contracts.

Should you have any questions or require additional information, please contact the undersigned via telephone at 786-586-7001 or via electronic mail at: afigueroa@somersetacademyschools.com.

Respectfully,

Andreina Figueroa
President
Somerset Academy, Inc.

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