

IN RE: SOUTH PALMER TRINITY PRIVATE SCHOOLS,  
08-28977 CA 30, and PALMER TRINITY  
versus PALMETTO BAY, 10-34016 CA 20

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TRANSCRIPT OF PROCEEDINGS  
OF ATTORNEY-CLIENT SESSION

**ORIGINAL**

Village of Palmetto Bay  
9705 East Hibiscus Street  
Palmetto Bay, Florida 33157  
March 6, 2013  
6:11 p.m.

Reported by Rochel Albert,  
Certified Shorthand Reporter

APPEARANCES:

Shelley Stanczyk, Mayor  
John Dubois, Vice Mayor  
Joan Lindsay, Councilwoman, District Three  
Patrick Fiore, Councilman, District One  
Ron Williams, Village Manager  
Eve Boutsis, Village Counsel  
Jeff Hochman, special counsel for the Village  
Tim Schaffer, Council Member District Two

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2 MS. BOUTSIS: I have been directed to  
3 start. Are we ready? Thank you everybody for  
4 being here. As attorney, I have requested the  
5 Mayor and Village Council meet in defense of this  
6 certain legal action, South Palmer Trinity Private  
7 Schools, case number 0828977 CA 30, and Palmer  
8 Trinity versus Palmetto Bay under circuit court  
9 case number 10-34016 CA 20. I am seeking advice  
10 on the litigation strategy and your settlement.

11 It's now 6:11 on Wednesday, March 6th,  
12 2013. In a second I will have everybody go around  
13 and introduce yourselves, so that the court  
14 reporter makes sure that she has everybody in the  
15 correct location. Again, try to have one person  
16 speak at a time so that we have a clear record.  
17 The court reporter can only take down one person  
18 at a time, and the only thing that we can discuss  
19 tonight is this litigation, as far as the  
20 settlement and the strategy.

21 The court reporter will take down  
22 everything that is said, like I indicated earlier,  
23 and the transcript will be made available at the  
24 end of the litigation.

25 I will start. My name is Eve Boutsis. I

1 am the Village Attorney.

2 MAYOR STANCZYK: Shelley Stanczyk, Mayor.

3 MR. HOCHMAN: Jeff Hochman, special  
4 counsel for the Village.

5 MS. LINDSAY: Joan Lindsay, Councilwoman,  
6 District Three.

7 MR. DUBOIS: John Dubois, Vice Mayor.

8 MR. FIORE: Patrick Fiore, Councilman,  
9 District One.

10 MR. WILLIAMS: I am Ron Williams, Village  
11 Manager.

12 MS. BOUTSIS: Okay. Thank you everyone  
13 for being here tonight. As you know, I did  
14 request an attorney-client session. Just as a  
15 little bit of background, Mr. Hochman's firm, and  
16 Jeff in particular, is the counsel hired by the  
17 League of Cities to represent the Village in the  
18 current litigation under the 2008 case.

19 The 2010 case was consolidated with the  
20 2008 case for discovery purposes, but it has not  
21 really been active, that actual case. I don't  
22 think there's been a pleading filed in that case  
23 in over two years.

24 MAYOR STANCZYK: However, having said  
25 that, it's not a closed case.

1 MS. BOUTSIS: No. And it has been  
2 consolidated for discovery purposes. So the  
3 discovery in one case can be used in a second  
4 case.

5 The 2008 case, just as a little bit of  
6 history, was filed on the same date as the first  
7 appeal was filed, due to the denial of the request  
8 to rezone the property. The appeal was filed, as  
9 was the civil litigation at that time. Both  
10 litigation, the appeal and the civil litigation,  
11 were handled by Mr. Price's firm, the Bilzen firm.

12 At the conclusion of the rezoning  
13 decision, which wound up going to the Third  
14 District Court of Appeals, the decision came back  
15 to the council where we had to have a hearing on  
16 the rezoning, and rezoning was done at a public  
17 hearing. The council then went to deliberate on  
18 the site plan, which required a public hearing.

19 During those deliberations in the site  
20 plan, a resolution was approved in 2010 that  
21 included quite a few conditions, and Mr. Price  
22 appealed two of the conditions that were in the  
23 zoning resolution. That was the condition as to  
24 what they characterized as a 30-year moratorium  
25 and the number of students at 900. That same day

1           they filed that appeal they filed a 2010  
2           litigation on the same operative facts.

3                     The difference between the civil  
4           litigation and the appellate litigation, the  
5           appellate litigation is the process that you go  
6           through when you have a quasi-judicial decision  
7           that you disagree with. The appeal is called a  
8           certiorari petition. That standard of review is  
9           whether the due process was provided, competent  
10          and substantial evidence and the records to  
11          support the decision in whether these central  
12          requirements involved were complied with.

13                    The civil litigation came up with a theory  
14          seeking damages, in both the 2008 case and --  
15          well, the 2010 case with a declaratory action  
16          trying to declare our process, our quasi-judicial  
17          disclosure process, invalid, unconstitutional.

18                    Ultimately, most of the claims from the  
19          2010 case were incorporated into the 2008 case  
20          through a series of amendments. So you had a  
21          second amended complaint, a third amended  
22          complaint, a fourth amended complaint, based upon  
23          the various zoning decisions, and now we are at a  
24          fifth amended complaint.

25                    Mr. Hochman became involved in the 2010

1 litigation. He was representing us, and he  
2 removed that matter to federal court before --  
3 this was all before the consolidation, challenging  
4 the constitutionality, and Mr. Price withdrew the  
5 federal claim at that time. Was remanded back to  
6 state court.

7 And then all of a sudden, we had a new  
8 attorney also involved called Sean Cleary, who  
9 took over the 2008 litigation, and combined the  
10 claims from the 2010 litigation into the 2008  
11 litigation, and then we started getting all of  
12 these series of amendments.

13 I think Mr. Hochman got involved with the  
14 second amended complaint -- I think it was the  
15 second amended complaint. Because originally, the  
16 claim did not have a damages position that would  
17 have been covered by the league. It then become  
18 covered by the league for insurance purposes.

19 So we are at the fifth amended complaint,  
20 and I will let Mr. Hochman take over from there.  
21 Do you have questions?

22 MR. DUBOIS: Yes, just clarification. You  
23 referred to the 2010 litigation as -- I understand  
24 that the discovery was consolidated into 2008 and  
25 it's still pending. Then you also said that

1 the -- there was an appeal of the hearing of the  
2 quasi-judicial action. So is the 2010 case a  
3 plaintiff/defendant or is that an appeal case that  
4 you are referring to, or are there two?

5 MS. BOUTSIS: There were two. In 2010,  
6 there were two cases filed on the same day. Just  
7 as in 2008, there were two cases filed on the same  
8 day.

9 MR. DUBOIS: Okay.

10 MS. BOUTSIS: One was the appeal and one  
11 was the claim that was consolidated eventually.

12 MR. DUBOIS: Okay. In 2008, you said  
13 there were two also?

14 MS. BOUTSIS: Yes. Which is the appeal,  
15 and then this civil litigation.

16 MR. DUBOIS: There's an appeal on another  
17 quasi-judicial?

18 MS. BOUTSIS: The first appeal was the  
19 rezoning, and the same day they filed an appeal on  
20 rezoning, they filed a damages claim based on the  
21 rezoning.

22 MR. DUBOIS: Got you. Okay.

23 MS. BOUTSIS: Okay. In short, the two  
24 cases, the appeals are simultaneous with the civil  
25 litigation and intertwined. If you look at the

1 complaints, the same allegations are made, in the  
2 civil litigation and the appellate litigation. So  
3 every time a decision is made on an appellate  
4 matter, they incorporate that decision within the  
5 complaint, making another allegation for more  
6 damages. I will let Mr. Hochman take over to --

7 MR. DUBOIS: When you say that discovery  
8 in the 2010 case has been consolidated, you are  
9 referring to the original complaint. Not the  
10 appeal case; is that correct?

11 MS. BOUTSIS: Correct, yes.

12 MR. DUBOIS: Got you.

13 MS. BOUTSIS: I guess I should explain  
14 that better. I apologize. There is no discovery  
15 in appellate litigation. It's all on the record.  
16 So, yes.

17 MR. HOCHMAN: Would you like to wait for  
18 him to possibly get here if he is not that far  
19 away?

20 MS. BOUTSIS: Why don't we wait a second,  
21 if you don't mind. Take a short break.

22 (A break was taken.)

23 MR. SCHAFFER: Mr. Schaffer.

24 MS. BOUTSIS: We're back on the record,  
25 let me just do a short recap again. Again, each

1 person speaking, one person at a time. Tim  
2 Schaffer has now joined us. Thank you, counsel.

3 MR. HOCHMAN: Can you announce your  
4 appearance for the record, please?

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

7 MS. BOUTSIS: Thank you, very much.

8 MR. HOCHMAN: Hello, everybody. I am Jeff  
9 Hochman, and I am special counsel in the  
10 litigation. Thank you. I appreciate your  
11 rendition of the little bit of history. It's  
12 easier to understand the cases if you look at the  
13 remedy being sought.

14 The remedy being sought in the appeals is  
15 for the appellate court, in this case the circuit  
16 court of Miami-Dade County circuit court,  
17 appellate division, to review the quasi-judicial  
18 decision rendered by the Village, with respect to,  
19 in the first case, the zoning decision, and the  
20 second case, the land use decision or the ability  
21 to use the premises with terms of the number of  
22 students and other issues. That is what it really  
23 was. It was the cap on students.

24 So there are decisions made by a  
25 quasi-judicial body, and in both cases Palmer

1 Trinity appealed that to the appellate decision of  
2 the circuit court. In both cases, the appellate  
3 division said, we agree with Palmer Trinity. The  
4 zoning decision should have allowed them their  
5 zoning request, and the request for the students  
6 should have been allowed. So that is the remedy  
7 part of it.

8 You have an insurance policy or a coverage  
9 agreement with the Florida League of Cities. The  
10 Florida League of Cities doesn't get involved  
11 unless you are being sued for the remedy of  
12 damages. So whenever they want to declare your  
13 ordinances unconstitutional or there's some sort  
14 of problem with your paperwork, the League of  
15 Cities doesn't get involved.

16 The reason we got involved in the 2010  
17 litigation was because the plaintiff, Palmer  
18 Trinity, asserted a claim, and therefore, damages,  
19 under a theory of federal law. When that was  
20 asserted in the trial court level in the State  
21 matter, my office removed it to the federal  
22 district court, and said this is a federal claim.  
23 We would like a federal judge to look at it and  
24 see whether there is a valid claim for damages.

25 Palmer Trinity elected that they didn't

1 want to have a federal judge look at it, and as a  
2 result they dismissed their federal claims and  
3 went back down to the trial court, and also  
4 eliminated any claims for damages. So they were  
5 just in that litigation just dealing with things  
6 that were not damages. They just wanted a review  
7 of your ordinances and your procedures.

8 The 2008 case, originally, was a case  
9 involving damages. That was also removed in the  
10 federal district court.

11 But in this case, the federal judge said,  
12 essentially, there is so much going on in this  
13 case that deals with state law, I am going to  
14 apply what they call the Pullman abstention  
15 doctrine, and I am just not going to hear it.  
16 Although there's a federal claim, I am going to  
17 send all you guys back to state court. So now we  
18 have a federal claim pending in state court.

19 And Eve is right. Most of the claims have  
20 been pushed together in a number of documents, and  
21 the operative document now is this very long and  
22 complicated document called a fifth amended  
23 complaint. Which means they have tried six times  
24 to state their claims.

25 In my opinion, there's not one claim in

1 here that has a proper claim for damages against  
2 the Village. That is my professional opinion.  
3 Sean Cleary, the attorney for the plaintiffs,  
4 disagrees with me and says that the law is  
5 sufficiently ambiguous that he has a valid claim  
6 against the Village.

7 And that is where we are right now. We  
8 have moved to dismiss the fifth amended complaint.  
9 There's a hearing coming up. The prior judge --  
10 and this is a little wrinkle in the case. There's  
11 a prior judge who denied our motion to dismiss the  
12 fourth amended complaint, and said we have to  
13 respond to certain allegations, including the  
14 federal claims.

15 There are still aspects of that motion to  
16 dismiss which need to be determined. I believe  
17 the hearing is coming up in May. And we are still  
18 at the pleading stage. As you know, this is a  
19 2008 case. It is now 2013. And we are still  
20 wondering what the pleadings are going to look  
21 like. So there's been a bit of a delay.

22 The reason I am here is because Palmer  
23 Trinity has requested an opportunity to try to  
24 resolve the case. And so there's been a question,  
25 do we want to mediate, do we want to select

1 mediators, and do we all want to get into a room  
2 and see if we can resolve the case.

3 MS. BOUTSIS: As a little bit of  
4 background -- I'm sorry.

5 MR. DUBOIS: Question on what you said.  
6 You said that you don't believe that any of the  
7 damage claims are valid and will be awarded  
8 ultimately?

9 MR. HOCHMAN: That is my opinion.

10 MR. DUBOIS: That are in the complaint.  
11 Are there any other legitimate damages that we may  
12 be exposed to that they may add or amend later? I  
13 don't need to know what they are. But in your  
14 opinion, are we exposed in that area?

15 Something that came to my head, seemed  
16 like there's more logical claims on their part,  
17 that for whatever reason they didn't put in -- and  
18 obviously, we are not going to ask them. But in  
19 your opinion, are there -- is there any further  
20 liability if they were to add and amend later  
21 other things that are yet unknown?

22 MR. HOCHMAN: I would say I would have to  
23 find out what their theory is, but probably not.  
24 And the reason for that, there's a bunch of law on  
25 this about what it is that a municipality can do

1 wrong and subject itself to damages. The word  
2 "damages" is very important because there's other  
3 exposures; for example, attorney's fees and costs.

4 And just as an example, under Florida law  
5 there is a public records request law. So if you  
6 improperly withhold documents properly requested  
7 by a citizen, you are required then to disclose  
8 the documents. If you don't do that, the remedy,  
9 again, that we are -- remedy, what can the Court  
10 do? The Court can say give them the documents,  
11 and you must do that.

12 In addition to that remedy, the remedy of  
13 attorney's fees and costs. Not a damages award.  
14 You haven't done anything wrong. But because they  
15 were required to hire a lawyer and do that, they  
16 get this extra benefit. Another remedy.

17 That kind of claim is pled in the fifth  
18 amended complaint. There's also a claim for  
19 injunctive relief. Again, not a damages claim,  
20 but telling you you have to do certain things. So  
21 there are still claims and liabilities against the  
22 Village.

23 But again, the idea is how much of a check  
24 would you have to write for this theory of  
25 damages? My opinion right now is there's nothing

1           pled that can lead to that result, and in  
2           addition, there's nothing likely to be pled that  
3           can lead to that result.

4                       However, for example, the public records  
5           request issue is, literally, they have asked for  
6           every single document ever having to do with  
7           Palmer Trinity, and if there is a document out  
8           there which has not been disclosed, as a  
9           theoretical matter they can show, oh, we found the  
10          document. It was never disclosed. And the judge  
11          could say, well, it's been a long litigation. You  
12          get fees for that. And therefore, there could be  
13          some exposure.

14                      That, again, is very theoretical. We have  
15          produced many, many, many documents, and I have  
16          yet, as I sit here, I have not been advised of a  
17          single document that they claim that they know was  
18          not disclosed. It's all a very theoretical claim.

19                      So that is where we are in terms of where  
20          the case is. I also believe that Palmer Trinity  
21          is a very motivated litigant. Obviously, they  
22          have shown you that they will -- every time an  
23          adverse result falls on their lap, they will seek  
24          appellate review.

25                      Even if you beat them, they are going to

1           come back and try again, the remedy which they  
2           think is right, until very long in the process.  
3           They are not going to take a first defeat and say,  
4           you know, we lost, we are okay with that.

5                     And therefore, the idea of trying to  
6           resolve the case or settle, there's reasons not  
7           about litigation, or not about potential exposure,  
8           but about the administration of a government that  
9           in terms of, for example, exposing your employees  
10          and people to deposition and to the litigation  
11          associate labor of your clerk and respond to  
12          public records request and things of that nature,  
13          which have to be taken into account as a, what I  
14          would call, non-litigation but business-related  
15          concern.

16                    They want to mediate the case. And the  
17          question is, what do you do in terms of resolving  
18          it when you don't believe you have any exposure,  
19          but you have a very active, aggressive opponent?  
20          And we tried to, in Eve's office, back in 2012 --  
21          I think it was September -- we had a meeting with  
22          them. They suggested to us that they wanted a lot  
23          of money from the Village in order to resolve the  
24          case.

25                    Our response was we can give you what

1 would be considered basically nuisance value. You  
2 go away. We can work it out with you, but it  
3 won't be a lot of money. We came for the prior  
4 executive session -- I apologize for having my  
5 back to you.

6 MAYOR STANCZYK: You are fine.

7 MR. HOCHMAN: The prior executive session  
8 we got approval to basically match an amount that  
9 the insurance company would consider to be an  
10 appropriate level to get the case resolved.  
11 Basically, it was some percentage of the  
12 attorney's fees that they had spent, so their  
13 lawyer would be satisfied and leave.

14 MR. DUBOIS: What do you mean by matched  
15 an amount the insurance company. Is the League of  
16 Cities the insurance provider?

17 MR. HOCHMAN: They are.

18 MR. DUBOIS: So they would come up with --

19 MS. BOUTSIS: No, the Village. In other  
20 words, the League of Cities took over the entire  
21 litigation as far as representation, but there are  
22 only certain claims that are actually covered by  
23 them. So if you want the whole claim to go away,  
24 the concept was, is there anything the Village  
25 wants to come up to the table with that the League

1 would match? And I think after long discussion,  
2 it was up to about 150-.

3 MR. WILLIAMS: It was the other way  
4 around. We would match the League.

5 MS. LINDSAY: It was 50-, 50-.

6 MS. BOUTSIS: It was 50-, 50-.

7 MS. LINDSAY: 50,000.

8 MS. BOUTSIS: I think we came up to maybe  
9 in our limits of 150-. We presented 50- at the  
10 meeting, and they walked out.

11 MR. HOCHMAN: And that is where we are.  
12 Now they want mediation again. They know that we  
13 have offered -- you know. I think the amount that  
14 we discussed at that meeting with the other side  
15 in your office was a total payment. And the terms  
16 of that proposal were the Village, from all  
17 sources, would fund a settlement to be paid to  
18 Palmer Trinity. The total amount of that would be  
19 \$50,000. The breakdown between the Village and  
20 the insurance provider wasn't discussed with them.

21 But basically, here would be a cash award  
22 in a lump sum, and they would dismiss all of their  
23 claims. And as part of that, the idea would be  
24 that the Palmer Trinity folks and the Village  
25 would go about having a normalized relationship

1           where they would act as a good neighbor, they  
2           would conduct business in a way not to be  
3           aggressive or annoying or to obstruct, and the  
4           Village would also do its best efforts to -- if  
5           they needed to provide accommodations to them in  
6           terms of their building process.

7                        Because again, they want to put up a  
8           building and they want to do it relatively  
9           quickly, and they want to people it with as many  
10          students as they can so they can have a revenue  
11          source from the parents.

12                       MR. DUBOIS: Why would having litigation  
13          in place disincen people from doing the right  
14          thing on either side?

15                       MR. HOCHMAN: For example, they claim that  
16          because there was a hostility on the part of the  
17          Village, they were required to go through certain  
18          hoops that otherwise they wouldn't have to go  
19          through. And they alleged that, for example, they  
20          wanted a fence permit and that there was a delay  
21          in the issuance of a fence permit.

22                       And our stated reasons why, which they  
23          rejected and said this has nothing to do with  
24          legitimate concern on the part of the Village, but  
25          instead was the function of animosity associated

1 with the litigation.

2 And so whenever something happened not on  
3 their schedule and to their liking, they would  
4 then point to that event and accuse the Village of  
5 acting in a way which was in a hostile,  
6 unprofessional, inappropriate fashion, no matter  
7 what the Village said in its defense as to why  
8 there was some problem.

9 Including incomplete applications,  
10 nonpayment of fees, all kinds of things that would  
11 be legitimate, but they would downplay that and  
12 instead focus on their side of it. And quite  
13 frankly, because they are advocating for their  
14 position.

15 MR. DUBOIS: Presumably, your theory on  
16 why mediation would not be productive is because  
17 there is no adjudication of legal issues by the  
18 mediator. It's simply a negotiation, and there's  
19 no opinion or weight of what the mediator has to  
20 say with respect to that claim has credibility,  
21 that claim doesn't.

22 MR. HOCHMAN: Well, I don't think that  
23 mediation won't be productive. I have been to  
24 many mediations where you go into the mediation,  
25 and you think it will not be productive, and you

1 are very surprised. I have been to mediations  
2 where I thought they would be productive, and just  
3 the opposite happens. The parties, once they get  
4 into mediation, are farther apart.

5 So in order for me to know how productive  
6 mediation would be, I have to know how motivated  
7 Palmer Trinity is to settle. I would suggest as  
8 an overall strategy that their business model is  
9 for them to get their building built, to get  
10 students in the door, and to get a normalized  
11 relationship with their parents, so that people  
12 can go there and they can build, build, build on  
13 their student body.

14 For them to be embroiled in a litigation  
15 without construction is not helpful for their  
16 business model.

17 MS. BOUTSIS: Let me interrupt you for a  
18 second. There's something you need to know.  
19 Although Sean Cleary has taken over the 2008  
20 litigation and has filed this fifth amended  
21 complaint, Stan Price's law firm is still involved  
22 peripherally.

23 They come to some of the hearings. They  
24 are a signatory on their certificate of service,  
25 and have been at our prior mediations, even our

1 most recent informal mediation. There was no  
2 mediator. It was just us in my office. Mr. Price  
3 has reached out to me, saying he really wants to  
4 work on this mediation.

5 What we haven't talked about today is that  
6 there's another group. It's the interveners.  
7 It's CCOCI. So there's another party. It's a  
8 community group that have been involved with the  
9 appeal in support of the Village's position, and  
10 was named a party in this lawsuit as a defendant.  
11 Their attorney is Mr. Tucker Gibbs, and he has  
12 also reached out to me, indicating that his client  
13 would also like to settle.

14 Prior to this, it is my understanding that  
15 Mr. Price, with Mr. Cleary, has met with  
16 Mr. Gibbs. I don't know what they have talked  
17 about. But they thought it was time, based upon  
18 their discussions, to now bring in the Village to  
19 see if we can get a global settlement.

20 MS. LINDSAY: I think another point that  
21 is worth noting is that Mr. Cleary took the case  
22 on a contingency basis. So he, to my  
23 understanding, has not been paid. And he is  
24 looking for that payment from us.

25 MR. DUBOIS: To your point, he wouldn't be

1 motivated to settle for small.

2 MS. LINDSAY: Exactly. And I'm afraid --  
3 I see that that issue will be the big hurdle. If  
4 we can get over that, I think the rest of it will  
5 fall into place.

6 MR. HOCHMAN: Tim, question?

7 MR. FIORE: What is keeping Palmer Trinity  
8 from being able to build their buildings, get  
9 their students in place, and get to make contact  
10 with their parents, and be able to move forward  
11 doing business right now?

12 MS. BOUTSIS: I can answer that. There is  
13 nothing. Please, just one second.

14 There is nothing as far as I am aware of,  
15 as far as our building department, zoning  
16 department, public works department, et cetera.  
17 Before we went to our last informal mediation with  
18 Mr. Hochman and we offered 50,000, we had one  
19 other shade session prior to that.

20 And the reason was Mr. Price, all the  
21 representatives of Palmer Trinity, came into this  
22 room, and we had our planning director, our  
23 building director, myself, Mr. Williams came for a  
24 period, to go over the plans. Let's work on a  
25 schedule. Let's get all this done. Let's get on

1 a time period.

2 At that meeting, we ran into a problem,  
3 and the problem was this. As part of the  
4 resolution there was a schedule of when the  
5 children can go in. In other words, 20 years --  
6 20 kids in year one, 20 kids in year two, whatever  
7 it was. And they are supposed to report annually  
8 how many children they have.

9 Now, at the hearing there was a statement  
10 that there was 600 and something kids. There was  
11 a whole big argument whether they were in  
12 violation because they calculated the 600  
13 differently than the actual physical heads and all  
14 this other stuff. But ultimately, they had to --  
15 there was a definition in the resolution as to how  
16 the calculation was done, and annually they were  
17 to report.

18 When the headmaster was in the meeting, he  
19 said, I have more than -- one more child than I am  
20 authorized under the resolution. Under the  
21 resolution, we could shut them down for being in  
22 violation of that schedule, because they had one  
23 kid more. That is ridiculous. But the problem  
24 was what do we do with this. We as staff don't  
25 have the discretion to say we are going to let one

1 kid slide.

2 And we were approached for a settlement.  
3 So we came to a shade session. On the basis of  
4 having discussions and trying to settle, this  
5 council agreed to basically increase the schedule  
6 to the next level, because there was an argument  
7 whether they were in year two or year three. And  
8 if they were in year three, they could be  
9 considered in compliance, and they could have 20  
10 kids extra but they only had one. Because of the  
11 economy, they couldn't get the kids.

12 So this group, as a council at that time,  
13 agreed to let's not get into that. We are here in  
14 the spirit of cooperation. Let's go to our next  
15 settlement and find out if we can settle for any  
16 monetary damages, and we are going to accept that  
17 we are at level three.

18 That was the last meeting that I have ever  
19 had with them as far as the application itself.  
20 We have tried to schedule more meetings and, hey,  
21 what are the issues. And after that, I can't  
22 speak to it. I don't know of any other issues.  
23 It may just be their own economics.

24 MR. DUBOIS: You haven't answered his  
25 question, really.

1 MS. BOUTSIS: There is none.

2 MR. SCHAFFER: Let me finish my question.  
3 I know she has got to type.

4 At this stage of the game, as far as you  
5 know, Eve -- and I will ask everybody else. As  
6 far as you know, they should be able to continue  
7 to build and go and do, and none of this  
8 litigation is holding them back from being able to  
9 move forward on what they are approved to be able  
10 to move forward?

11 MS. BOUTSIS: That is my understanding  
12 from all the staff. Mr. Williams, do you know any  
13 differently?

14 MR. WILLIAMS: Well, definitively, no.  
15 But I do know that the brief part of that session  
16 that we held at your office, before they walked  
17 out they began to talk about land that had been  
18 taken from them. Do you recall that?

19 MS. BOUTSIS: There's not -- there is no  
20 reason based upon what has been approved in our  
21 departments why they can't build. They have other  
22 issues, I think.

23 MR. HOCHMAN: I will explain that.

24 MR. WILLIAMS: You are saying those are  
25 not --

1 MR. HOCHMAN: Your question is very  
2 specific. Is there anything about the litigation  
3 or the Village's behavior now that prevents them  
4 from proceeding under their plan? The answer to  
5 that is no.

6 The reason they are not proceeding under  
7 their plan, though, is a legitimate question. If  
8 not, then why? Right? Our supposition is that  
9 they don't like the way that their site plan looks  
10 right now in terms of their business model.

11 There are a couple things that they  
12 submitted and were approved, which now they  
13 realize, now they have had the benefit of time,  
14 they have had the benefit of kind of looking at it  
15 with their designer, their builder, and they say  
16 to themselves, maybe the sidewalk would be better  
17 here. Maybe a berm that we have approved  
18 shouldn't be there. And maybe the whole layout of  
19 our design needs some tweaking.

20 So what they would have to do, under the  
21 Village code, would be come back to us with an  
22 amended site plan.

23 MS. BOUTSIS: In a public hearing.

24 MR. HOCHMAN: But the problem with that  
25 amended site plan is they believe that we will --

1 meaning the Village -- will deny it again. They  
2 will then have to go on appeal again to get  
3 approval again, and therefore, they will delay the  
4 process more months, perhaps a year.

5 And the reason now, because they -- and  
6 again, this is the business model approach. The  
7 reason possibly for their desire now to deal with  
8 us is they know that in order for them to get  
9 their optimal plan, they need our cooperation.  
10 They need the Village to say that site plan is  
11 probably going to get approved, rather than, that  
12 site plan, no matter what the situation is, is  
13 likely to hold up in some sort of confrontation.

14 MR. SCHAFFER: So what you are telling me  
15 is that they are making assumptions on decisions  
16 we may or may not make?

17 MR. HOCHMAN: Yes.

18 MR. SCHAFFER: Based on a site plan where  
19 they want to make adjustments.

20 And that happens. When you start to get  
21 into the reality of how your build-out is, you  
22 start to look and go, whoa, that is not going to  
23 function the way we really thought on paper. When  
24 it comes to reality, maybe we need to move it over  
25 here. And yes, you got to come back through and

1           you got to amend and you got to ask for changes.  
2           But they are making assumptions that we are going  
3           to deny --

4           MR. HOCHMAN:   Yes.

5           MR. SCHAFFER:   -- for whatever reasons.

6           MR. HOCHMAN:   There's a key fact which  
7           lends itself to that assumption.

8           MR. SCHAFFER:   I don't understand why they  
9           would assume that.

10          MR. HOCHMAN:   One reason is because one of  
11          the individual defendants in this case is sitting  
12          at this table.  It's Ms. Lindsay.  She is an  
13          individual defendant having to do with her prior  
14          participation with CCOCI.  So they assume --  
15          again, this is the same argument as the fence and  
16          things of that nature.  They have a working idea  
17          that the way things are going to proceed in the  
18          Village is based upon their preconceived notion of  
19          it, rather than knowledge of facts.

20          MR. SCHAFFER:   Well, that is an incorrect  
21          assumption because -- I am not saying one way or  
22          another.  They are making an assumption based on  
23          the fact that an individual is going to make -- is  
24          an individual and they are also a council member.  
25          Two different situations.

1                   So that is an incorrect assumption on  
2                   their part to think because a defendant is on the  
3                   case, that that might be the case. Unless  
4                   somebody has alluded to the fact that they are  
5                   going to say -- Joan has not come out and said,  
6                   oh, I am not going to do it because -- it hasn't  
7                   been said. I never heard anybody say that. I  
8                   understand their assumption, but I am -- we are  
9                   new council.

10                   MR. HOCHMAN: I was just addressing your  
11                   question as why would they assume that. I am  
12                   giving you facts.

13                   MR. SCHAFFER: I am stating on the record  
14                   that is not a very good assumption. In fact, it's  
15                   incorrect. Because we are a new council. There's  
16                   no indication that we are going to do anything one  
17                   way or another until we see what is in front of  
18                   us.

19                   MR. DUBOIS: I just want to know one  
20                   thing. There's an assumption before this  
21                   assumption. You are making an assumption that  
22                   that is the reason they are not proceeding to  
23                   build.

24                   MR. HOCHMAN: Yes.

25                   MR. DUBOIS: We don't know that they want

1 modifications to the site.

2 MS. BOUTSIS: This is the next -- as part  
3 of coming to meet with Mr. Price and Mr. Gibbs,  
4 but also previously when the -- our last meeting  
5 in September was the first time I ever heard  
6 anything about site plan modification.

7 Understand, when I indicated earlier like  
8 the history and -- only two conditions were  
9 appealed by Mr. Price. He made a decision not to  
10 appeal the entire order and rescind the entire  
11 order. He said whatever his choice is, I only  
12 want to deal with these two issues.

13 So now, because, okay, you have one of  
14 those two issues, but the rest of the site plan is  
15 there. All the other conditions are there. There  
16 are things in that order that they never liked.  
17 They didn't like the berm. They didn't want, I  
18 don't know, to do turning lanes and certain paving  
19 and certain tree landscapes in the right-of-way.  
20 Whatever it was, they didn't like it. They didn't  
21 appeal it. They are bound by it.

22 MR. DUBOIS: Right. You covered this  
23 before.

24 MS. BOUTSIS: What it is is. Now, they  
25 are looking -- at least according to what Stan

1       said, Mr. Price said, you know, all those things  
2       have value. And maybe we can bring those into the  
3       table. Maybe it's not necessarily so much money  
4       the Village is bringing to the table. But if we  
5       can get an agreement -- and they understand there  
6       will be some sort of public hearing in the future.  
7       We will get into that in a minute.

8               If the berm is going to cost them  
9       \$200,000, and we agree to get rid of the berm,  
10      then maybe that is a value to them because they  
11      don't have that cost.

12             MR. WILLIAMS: That's to answer your  
13      question as to why they haven't started.

14             MR. HOCHMAN: What is happening now -- and  
15      this is a business school. They are monetizing  
16      the aspects of the site plan conditions, and they  
17      realize they may be better off if they are able  
18      to, rather than get cash, if you will, as a  
19      body -- remember, you can't -- there has to be a  
20      quasi-judicial hearing. So it's an actual  
21      fact-finding determination.

22             But to the extent that they can gain value  
23      by eliminating the more difficult aspects of the  
24      existing site plan, like the berm, like the  
25      position of the sidewalk, other aspects, their

1 approach intentionally is, rather than ask you for  
2 \$2 million in damages, they will take a much  
3 smaller amount with the idea of good faith will be  
4 applied to a site plan approval process for an  
5 amended site plan.

6 And that is, I think, where they are  
7 going. And now the two factions are how much  
8 money can actually be demanded? You as a body  
9 cannot say we are going to give you whatever you  
10 want, because that is called spot zoning, and you  
11 can't do that. You can't agree ahead of time with  
12 a developer that we will approve this plan.

13 It can only be done through a  
14 quasi-judicial hearing where you hear evidence,  
15 you hear your staff, you hear experts, if  
16 necessary, and you make a determination. There  
17 has to be substantial competent evidence. There's  
18 a whole process that it goes through. So you  
19 can't agree with them ahead of time as to what you  
20 are going to do.

21 MS. BOUTSIS: But you can agree to hold  
22 the hearing and understand that these things will  
23 be on the table, but they have to be decided at  
24 the public hearing with the evidence and the  
25 competence and substantial evidence and all that

1           stuff. Which, whatever your decision is then, can  
2           still be appealed by somebody else in the  
3           audience. But hopefully not.

4           MR. HOCHMAN: Just so you understand that  
5           aspect of it. As a theoretical matter, you can go  
6           to a mediation in this case. You can resolve the  
7           entire case. Say, for example, that if you get a  
8           site plan approval with these modifications, you  
9           will dismiss the lawsuit and this is what will be  
10          paid, and that all comes to fruition.

11          When all that happens, the next door  
12          neighbor files a lawsuit saying that this Village  
13          violated their rights by allowing a site plan  
14          approval which was in violation of your charter,  
15          your site plan, your -- you know.

16          MS. BOUTSIS: And that is why they wanted  
17          the interveners who have taken the time and the  
18          money and expenditure to be part of the  
19          litigation, to be part of the settlement, so that  
20          there's an agreement. These are the people who  
21          intervened previously. We want them to be at the  
22          table so we can work out something that everybody  
23          can live with.

24          MR. HOCHMAN: And that is where we are  
25          now. Which is should we go to mediation? Should

1 we try to get the case resolved, with an  
2 understanding that settlement involves really two  
3 things?

4 Some payment by the Village to defray some  
5 of their attorney's fees and costs, and a  
6 knowledge that if the -- the lawsuit will only go  
7 away in the event of an amended site plan  
8 approval, which looks very much like the one that  
9 has been approved already, but there will be some  
10 request for tweaking, pardon the expression.  
11 Probably the removal of a berm, which has an  
12 impact on noise and other neighborhood impacts.  
13 And that is what they would like at the end of the  
14 day.

15 And so I am really here to find out, not a  
16 vote, not what you are going to do, what you want.  
17 But whether or not, as a general matter, you would  
18 suggest that we go forward with an effort to  
19 mediate, or whether, based upon the facts that you  
20 have now, you think it's something that we should  
21 not engage in.

22 MS. BOUTSIS: Just so we are clear, the  
23 reason -- we haven't had a formal mediation since  
24 Thanksgiving 2008. The litigation didn't start  
25 until 2008. So it had to be 2009. Litigation

1 started in 2008. The County had the file from  
2 2006 until 2008 in our hearing.

3 MR. WILLIAMS: Okay.

4 MS. BOUTSIS: We haven't had a formal  
5 mediation since then. We have had various  
6 different types of settlement discussions.

7 MS. LINDSAY: We had one. We had the one  
8 mediation.

9 MS. BOUTSIS: The one in November 2009.  
10 After that we haven't had --

11 MR. WILLIAMS: That was with Cutler Bay.  
12 Cutler Bay was in on that.

13 MS. BOUTSIS: There was another intervener  
14 who wound up getting paid their attorney's fees  
15 and let out. And that was a Cutler Bay business  
16 group.

17 MS. LINDSAY: Cutler Glen.

18 MS. BOUTSIS: Cutler Glen Homeowner's  
19 Association. I apologize.

20 So from my perspective, in talking to both  
21 Stan Price and Tucker Gibbs -- I talked to  
22 Mr. Hochman afterwards -- I said, look, maybe we  
23 need a real mediation with somebody who  
24 understands the rules and regulations, who  
25 understands the zoning aspects and understands

1           what is in a federal claim for damages under 1983.  
2           Because Jeff Hochman is doing this on contingency.  
3           He seemed to have won some big award previously --

4                     MR. HOCHMAN:   You mean Sean Cleary.

5                     MS. BOUTSIS:   Sorry.   Sean Cleary.

6                     MR. HOCHMAN:   I'm not handling this on  
7           contingency.

8                     MS. BOUTSIS:   Sorry.   Sean Cleary won some  
9           big lawsuit on a contingency for some wrongful  
10          death on a boat of some child.  He used to work  
11          for the chairman of Palmer Trinity's law firm, and  
12          he went on his own.  I guess he has a relationship  
13          with the chairman and he got the work and he got  
14          the contingency fee provision, and maybe he  
15          doesn't seem to understand zoning.

16                    And I can say that from his questions at  
17          deposition.  He doesn't know the difference  
18          between land use, rezoning, how the hearing  
19          process works.  He probably has gotten an  
20          education since then, but at least in my opinion  
21          he is not an expert in that area.

22                    So maybe somebody who is a judge, who is  
23          knowledgeable in these areas, can bring both  
24          sides, all sides to reality.  Meaning whether it's  
25          any naivety on our part, or any not lack of

1 knowledge as to a 1983 action.

2 Jeff Hochman has written some excellent  
3 motions to dismiss based upon 30 years of case  
4 law, that you can't get damages for a zoning case.

5 MR. HOCHMAN: Let me just as a caveat --  
6 and this is what every litigator will tell you.  
7 Again, I feel very strongly on the position of the  
8 Village. However, there are courts out there, and  
9 sometimes judges who disagree with lawyers.  
10 Although I do believe that you have a very strong  
11 position, my belief and my opinion is not worth  
12 anything. What matters is what the judge in this  
13 case believes, and if it's appealed, the Third  
14 DCA, and if that is appealed, the Florida Supreme  
15 Court.

16 MS. BOUTSIS: Correct.

17 MR. HOCHMAN: So although I feel very  
18 confident in the law, the law changes. The law  
19 has -- that is why they have trials. And that is  
20 why there is no true certainty that the Village  
21 will, at the end of the day, prevail. In fact, as  
22 you know in this case, on other proceedings the  
23 Village has not prevailed on the zoning and on the  
24 use issues.

25 Again, I don't think there's a very big

1 risk in terms of exposure, but I cannot guarantee  
2 that Palmer Trinity's -- whatever reason, whether  
3 it's legal or whether it's influence, whether  
4 there's some sort of political matter. You never  
5 know when you line it up and you try to win or  
6 lose, whether or not you are going to win.

7 MR. DUBOIS: You are making a statement  
8 based on the facts in the Complaint and what you  
9 have discovered so far in the case.

10 MR. HOCHMAN: Yes.

11 MR. DUBOIS: Is there and can there be  
12 more discovery depositions by Palmer Trinity in  
13 this case?

14 MR. HOCHMAN: Yes.

15 MR. DUBOIS: Really, until those are  
16 finished, we don't really know where we stand in  
17 terms of facts that are uncovered, correct?

18 MR. HOCHMAN: True.

19 MS. BOUTSIS: We have had lots of  
20 depositions and lots of discovery, though. So  
21 councilwoman Lindsay, Jerry Templar, Betty Pegram,  
22 the Mayor, Mayor Stanczyk, Mayor Flynn, the  
23 traffic consultant.

24 MS. LINDSAY: Joe Cordino. And his --  
25 Rafael Dearsan. I mean that is who I remember off

1 the top of my head. But yes, if we are proceeding  
2 forward, there will be a lot more discovery and a  
3 lot more expense.

4 MR. WILLIAMS: What is the estimated cost  
5 of mediation? Is that pretty -- it gets pretty  
6 expensive?

7 MR. HOCHMAN: I would say mediation would  
8 probably be in the 5- to \$8,000 range. Meaning  
9 for attorney's fees and the costs associated with  
10 the mediator, preparation.

11 MS. LINDSAY: Is that total to be split?

12 MR. HOCHMAN: Yes.

13 MR. DUBOIS: To be split between who?

14 MR. WILLIAMS: Both sides.

15 MR. HOCHMAN: All the sides pay for the  
16 mediation.

17 MR. DUBOIS: Okay.

18 MR. HOCHMAN: I am saying in terms of that  
19 process.

20 MR. DUBOIS: We basically would have no  
21 attorney's fees.

22 MR. HOCHMAN: You don't have any  
23 attorney's fees and costs in this case. Your  
24 defense is being funded right now under your  
25 insurance policy. Although, there's only some of

1           those claims are actually covered. The way it  
2           works is you get a defense for everything, but you  
3           only get covered for certain claims.

4           MR. DUBOIS: Back to the question about  
5           the mediation costs. So how does it add up to  
6           \$8,000 if we are only paying for the cost of the  
7           mediator?

8           MR. HOCHMAN: Are you -- you are asking --  
9           I'm sorry. Mr. Williams, are you asking for the  
10          actual cost to the Village?

11          MR. WILLIAMS: Yes.

12          MR. HOCHMAN: Or are you asking the cost  
13          that the bill will be issued for?

14          MR. WILLIAMS: I was talking about the  
15          broader bill, because I know that it's usually  
16          split between the two.

17          MR. HOCHMAN: Yes. But in terms of  
18          exposure to the Village, the answer to that  
19          question would be zero.

20          MR. DUBOIS: So there is no cost to us.  
21          That is the important question, right?

22          MR. WILLIAMS: Well, we would have to pay  
23          half the mediator fee.

24          MR. HOCHMAN: The Village is not paying  
25          for that, though. That cost would be borne by the

1 Florida League of Cities.

2 MR. DUBOIS: That is great.

3 MR. FIORE: Why don't we mediate? I don't  
4 see what the -- we are still -- this is going to  
5 go nowhere. This has been going on for seven or  
6 eight years. Even, we would still be paying you  
7 for answering phones and doing things relating to  
8 Palmer, right, whether we go to mediation or not.  
9 The taxpayers still have legal bills.

10 And the other reason I see is if you are  
11 telling me that Tucker Gibbs and the CCOCI group  
12 sounds like they are willing to settle, I think  
13 that is a positive development. They are the  
14 neighbors. They live there. They are the ones  
15 affected the most by this.

16 MS. BOUTSIS: That is what I was told.

17 MR. FIORE: I think that's a positive  
18 step. I think there's two positive steps here.  
19 That they are willing to settle, and they are  
20 interveners in the case. That the mediation  
21 basically costs nothing to the Village. At least  
22 not the decision, but to start up.

23 We still have to pay our attorney for  
24 anything related to Palmer. And in the end, we  
25 finally put this to bed, which has -- my

1 colleagues know it was served on me previous. I  
2 said it has torn the Village apart.

3 I think that is a very -- that is what I  
4 believe. I think that was fair. That is not  
5 speaking out of emotion. I think we had a very  
6 nice attorney-client meeting the other night. You  
7 know, the goodwill lasted at least until public  
8 comment of the meeting. I really think -- I think  
9 the key is you saying that the CCO -- who are the  
10 neighbors who want to settle?

11 MS. BOUTSIS: Councilwoman.

12 MS. LINDSAY: Yes. I am not privy to  
13 everything that has transpired in the meetings,  
14 but there has only been one meeting. To say they  
15 are willing to entertain settlement is correct.  
16 To say they have reached an agreement, they have  
17 only had one meeting and that's -- and that is  
18 where Palmer --

19 MR. FIORE: Joan, I am only repeating  
20 what --

21 MS. LINDSAY: I just want to make sure  
22 that everyone understands --

23 MR. FIORE: I know, but --

24 MS. LINDSAY: Excuse me. I am talking.  
25 They have had one meeting and they are

1 willing to work towards settlement, but I am sure  
2 they are going to have several more meetings. And  
3 I say that because I think there's a willingness  
4 here to have this mediation, but I do believe that  
5 we should allow the neighborhood group to have at  
6 least one more meeting with Palmer Trinity before  
7 we have the meeting with the mediator and the  
8 Village.

9 I think that that would be in everyone's  
10 best interest. Because there are really two basic  
11 things that are going to happen here. One is the  
12 monetary issue and payment to Sean Cleary, which  
13 is going to be up to the Village and to the  
14 League.

15 And the other issue is the conditions in  
16 the resolution, the time line, the student number  
17 and so on. And those are things that will  
18 ultimately be decided by this council, if we can  
19 agree. But it would certainly help to have the  
20 neighborhood group agree on some of those things,  
21 and it makes the mediation that much easier for  
22 everybody.

23 Because then you are just dealing with the  
24 money, as long as the issues that the neighborhood  
25 group and the school have worked out are issues

1           that the Village can go along with.

2                       MR. DUBOIS: One thing that might be  
3 helpful for both Councilman Schaffer and myself  
4 that I don't think we quite understand: What is  
5 the standing of the intervener?

6                       MS. BOUTSIS: They are a defendant in this  
7 case.

8                       MR. DUBOIS: Okay. And in terms of if we  
9 go to mediation, would it be between just us and  
10 Palmer Trinity?

11                      MS. BOUTSIS: Both Palmer Trinity and  
12 the -- well, the defendants, CCOCI, have  
13 approached me, as the Village attorney, not as  
14 litigation counsel, to schedule a formal  
15 mediation. They want it resolved. I have gotten  
16 that directly from Mr. Gibbs saying, I want this  
17 mediation. I have been dealing with Stan. I want  
18 it.

19                      Stan Price and I had the same  
20 conversation. He wants it. I can't say that Sean  
21 Cleary is necessarily on the same page as Stan  
22 Price and Tucker Gibbs, but he has agreed to  
23 mediation. He has given me the list -- these  
24 mediators as names.

25                      MR. HOCHMAN: Now, assuming that there's a

1 willingness to engage in mediation, once I go  
2 there, and possibly with Eve, the issue will then  
3 get to how much. And last time I was given  
4 authority from the council basically to match  
5 whatever the Florida League of Cities was going to  
6 offer, and that number really was in the \$50,000  
7 range.

8 MR. SCHAFFER: Before you go there, I am a  
9 little confused about what Joan was saying, again.  
10 Not --

11 MR. HOCHMAN: Let me paraphrase what she  
12 is saying.

13 I think what she is saying is it is  
14 politically easier for this body to go along with  
15 a settlement if they know that the residents who  
16 live next door, who are represented by CCOCI, also  
17 want it. It's difficult for this body to approve  
18 a settlement if you know that CCOCI doesn't want  
19 it or is complaining about it.

20 MR. SCHAFFER: Here is the question. It  
21 sounds, though -- again, it sounds from what Eve  
22 was saying is that all parties are ready to walk  
23 into mediation now.

24 MR. HOCHMAN: What Eve said is their  
25 lawyer suggested that. Eve didn't say that the

1 people that the lawyer represents are  
2 necessarily --

3 MR. SCHAFFER: I was trying to --

4 MR. HOCHMAN: That is the art of  
5 lawyering, to get a client position to soften or  
6 to be modified.

7 MR. SCHAFFER: Gentlemen, what you were  
8 saying was that the actual client to your  
9 attorneys need to be able to have meetings amongst  
10 yourselves, like we are having a meeting with the  
11 Village, like we are having a meeting as the  
12 Village people -- that sounds -- as the Village  
13 council. Like we are having our session, the  
14 residents need to have their session to discuss  
15 moving forward. Is that what you are saying?

16 MS. LINDSAY: That is part --

17 MS. BOUTSIS: You are not a member of  
18 CCOCI.

19 MS. LINDSAY: Absolutely not. I am not a  
20 member. I am not attending any of the meetings.  
21 I know the meeting took place. I do not know the  
22 scope of the meeting in terms of individual things  
23 that were discussed.

24 What I am trying to say is, I know that  
25 several members of the board had a meeting with

1 the attorneys from the school, and with their  
2 attorney, all in one meeting, and the school  
3 outlined what they would like.

4 I don't think that the neighborhood group  
5 has had an opportunity to go back to them after  
6 meeting with their group to further discuss what  
7 they were willing to do. So the school simply  
8 outlined what they wanted.

9 MR. SCHAFFER: It doesn't look like this  
10 group has discussed --

11 MS. LINDSAY: No. They had one meeting of  
12 their board. Mr. Gibbs was not able to attend.  
13 Mrs. Pegram has been out of town. They are  
14 planning to have another meeting with the board of  
15 CCOCI when Mrs. Pegram comes back to town, with  
16 Mr. Gibbs. That has not happened yet. I think  
17 that if we want to do this the easiest way  
18 possible, we should let that meeting happen, and  
19 you can get back with Mr. Gibbs.

20 MS. BOUTSIS: We will work around  
21 anybody's schedule. So if Tucker Gibbs needs 30  
22 days to get his ducks in a row, that is not my  
23 issue. At least, I don't think it's any of your  
24 issues.

25 MS. LINDSAY: Right.

1 MS. BOUTSIS: The concern is let's try and  
2 agree on a mediator. Let's try and agree on our  
3 strategy with our attorney, Mr. Hochman, so that  
4 when we schedule this -- because we are going to  
5 have to schedule -- you know, Cleary's schedule,  
6 Price's schedule, Mr. Tucker's schedule, Tucker  
7 Gibbs' schedule, Hochman's schedule, and then the  
8 mediator's schedule. It may take 60 days to get  
9 everybody's schedules in order.

10 MR. DUBOIS: Eve, a more fundamental issue  
11 that I am not clear on, with respect to CC --  
12 whatever they're called, is our responsibility as  
13 council members here is not -- I assume it's not  
14 to represent the desires of that group. It's to  
15 represent the interest of the Village of Palmetto  
16 Bay. Not to say that we are going to do anything  
17 in conflict with them.

18 Our more fundamental issue is we need to  
19 make sure that whatever we do doesn't cause  
20 litigation to continue because of them not being  
21 on board; is that right?

22 MS. BOUTSIS: Yes. That is 100 percent  
23 correct.

24 MR. DUBOIS: Okay.

25 MS. BOUTSIS: If we have a settlement that

1 includes them, then whatever our decision is, that  
2 is one less person that can challenge us.

3 MR. SCHAFFER: We are just basically  
4 saying, if we as a group move forward towards  
5 litigation, is that something -- mediation,  
6 because that is something that we want to  
7 accomplish, we want to make sure that there's  
8 enough time for the other defendant to come up and  
9 get up to speed where they're matching us and we  
10 all go in on the same page and say, okay, let's  
11 work this out at mediation and see where we go  
12 from there.

13 Is that basically what we are looking at?

14 MS. BOUTSIS: Yes.

15 MR. HOCHMAN: The analogy would be, for  
16 example, let's say a big restaurant chain wanted  
17 to come here, and you decided this would be good  
18 for business in the Village. But you knew a bunch  
19 of homeowners near there would be not wanting  
20 that. Your mission as a member of this body is to  
21 decide whether or not it's good for the Village or  
22 not. Some people may be burdened by having a big  
23 restaurant chain, do a construction and then  
24 having traffic and things like that.

25 The issue, first, is whether or not it

1 meets with the code. And let's say their parking  
2 was too big and you couldn't approve it. Then the  
3 question would be whether or not there would be  
4 some sort of waiver or variance. There's a  
5 standard process.

6 But the political issue is not what the  
7 neighbors think next to the restaurant or the  
8 neighbors think who want to go to the restaurant.  
9 The issue is what is in the best interest of the  
10 Village. So your approach to that is right.

11 And Joan is saying, or Ms. Lindsay, your  
12 councilwoman Lindsay is saying, it's probably  
13 better, though, to know going in that the  
14 neighbors are also like, hm, pretty good. So you  
15 don't have that segment of the population in  
16 opposition.

17 And what she is also saying is there's  
18 been one meeting. Have another meeting, maybe two  
19 meetings. To find out whether or not, even if  
20 there are people who are opposed to that  
21 restaurant, as the analogy is going, to kind of  
22 soften their position a little bit and say it's  
23 not so bad.

24 So that your effort as a legislator is who  
25 is for and who is against. And it's a possibility

1 that some of the against people may migrate over  
2 to the for side and make your job easier in terms  
3 of information gathering.

4 MR. DUBOIS: Can I ask a question?

5 MR. SCHAFFER: I understand.

6 MR. DUBOIS: Getting back to what we were  
7 talking about earlier with why aren't they moving  
8 forward with the site plan. What I gathered from  
9 our original briefings, I assume -- it's not  
10 exactly the same.

11 Your belief was that Stan Price, the  
12 people -- Palmer Trinity basically messed up by  
13 only appealing two conditions in their site plan,  
14 when, in fact -- or two conditions on the  
15 Complaint, when, in fact, there were others in  
16 there that they wanted and subsequently asked for  
17 relief on. Therefore --

18 MS. BOUTSIS: They never asked for relief.  
19 They are trying to get it now.

20 MR. DUBOIS: Exactly. After the fact.  
21 Subsequent to.

22 And that was a mistake on their part, and  
23 therefore, because it has value to them, they can  
24 be used as tokens in a negotiation to avoid taking  
25 money out of our pocket and paying, and League of

1 Cities paying. But we are in the same dilemma  
2 that we have been in with other cases, where it's  
3 a spot zoning issue. We don't have the right in a  
4 settlement as council people to say, okay, you  
5 have relief here and here, as a settlement offer.  
6 We can't do that.

7 MS. BOUTSIS: Right. CCOCI can agree to  
8 anything it wants. We can only agree to entertain  
9 these issues at a hearing. That is it.

10 MR. DUBOIS: Right. But from what both of  
11 you have said, the tokens that we are talking  
12 about, the conditions that they probably want  
13 removed that were not removed or changed, relate  
14 to the site plan and will require modifications to  
15 the site plan.

16 MS. BOUTSIS: Correct.

17 MR. DUBOIS: I still see no reason based  
18 on what you have said for them not to move forward  
19 with construction of the primary buildings on the  
20 site that have no bearing on a modified site plan,  
21 which they can submit at any time. Right?

22 MS. BOUTSIS: Except that they have a  
23 schedule, and the schedule requires certain steps  
24 first. The first thing that they have to do --  
25 they have a two-year schedule, let's say, for the

1 first phase. And that is to construct that entire  
2 75-foot buffer around, with the berm.

3 MR. DUBOIS: Which they couldn't comply  
4 with.

5 MS. BOUTSIS: And they have to do the  
6 berm. And they have to do the roadway  
7 improvements, and I think some of the roadway  
8 improvements may be what they are looking to  
9 change.

10 MR. DUBOIS: Okay. So they are stuck.

11 MR. HOCHMAN: It's their first step which  
12 is -- the first step in the construction effort is  
13 the first thing. In terms of their basket of  
14 wishes, they deal with that first step.

15 MS. LINDSAY: And the resolution clearly  
16 states that they must do those things before  
17 anything else. Unless this council decides to  
18 allow them to change the schedule, they are locked  
19 into that schedule.

20 MR. DUBOIS: It sounds like their lawyers  
21 did not play a good chess game on this one.

22 MR. HOCHMAN: Well, it depends. Everyone  
23 makes strategic decisions in terms of going on  
24 appeal. An appellate court normally will affirm.  
25 They will not look at it. They will say the lower

1 tribunal got it right.

2 So if you are going to go seek reversal,  
3 you want a very targeted decision that you are  
4 pretty sure you are going to win on. Sometimes as  
5 a litigation strategy you decide to not focus on  
6 things that you would love, and you focus on the  
7 good.

8 MS. BOUTSIS: They chose to target the two  
9 key points that they believe they have a strong  
10 case on, and they decided to put the others to the  
11 wayside.

12 MR. HOCHMAN: And they won.

13 So in terms of criticizing their decision  
14 as making a mistake, those are all debatable. The  
15 issue is that as you accomplish your first hurdle,  
16 then you're in a situation to reevaluate. But  
17 they had no chance to reevaluate at all if they  
18 didn't get past that first hurdle. And you can't  
19 go to an appellate court with -- you can but it's  
20 not a very good litigation strategy to have 20  
21 things on appeal.

22 MAYOR STANCZYK: Having said that, they  
23 worked in conjunction with our zoning department  
24 to create that, by in there was agreement to it  
25 all along, until they went nitty-gritty to dig

1 dirt, basically.

2 MS. BOUTSIS: Just so we are clear, at the  
3 hearings I think that Palmer Trinity actually  
4 agreed to 90 percent of the conditions. It was  
5 like eight or nine that they said they had a  
6 problem with and they appealed to.

7 But I think also because of time and  
8 because they are looking at their budgets and what  
9 Jeff has talked about as their finances, maybe  
10 there are other things that they agreed to that  
11 they just don't think work anymore.

12 MS. LINDSAY: Another point that needs to  
13 be made is, though it appears that there are pages  
14 and pages of conditions, a good portion of those  
15 conditions are contained in our code and are  
16 simply rewritten in the resolution.

17 MS. BOUTSIS: That's correct.

18 MAYOR STANCZYK: And the Village has been  
19 considerate of their desire to increase their  
20 students. They gave them substantial compliances  
21 substantially over their minimum of 600 -- or  
22 their maximum of 600. So they really are scaled  
23 up in terms of the number of students. Which if  
24 you were to consider that as the buy-in on tokens,  
25 they have actually had a substantial amount of

1 money that has already been awarded to them.

2 MS. BOUTSIS: Just a technical thing.

3 There was no substantial compliance. They gave an  
4 explanation of how they got to their number, how  
5 they qualified 600, and your prior zoning  
6 administrator, Arlene Weintraub, director, I  
7 should say, said that works. It wasn't a  
8 substantial compliance thing. She said okay, you  
9 are telling me this is how you calculated it, and  
10 she accepted it.

11 MR. DUBOIS: I thought they had 650  
12 students.

13 MS. BOUTSIS: That is the argument.  
14 Exactly. What happened was they said they have  
15 kids in Europe, and they have kids traveling and  
16 they have -- so they did a daily average  
17 attendance, which is 600, versus actual physical  
18 bodies enrolled in the school. There was no  
19 definition.

20 MR. HOCHMAN: It gave them flexibility to  
21 talk about -- the concern is traffic, for example.  
22 Traffic shouldn't be counted on a theoretical  
23 student who is enrolled, but in school at Oxford  
24 for the year in an exchange program. Or their  
25 average attendance during the year is not

1 100 percent enrollment. It's a 95 percent  
2 attendance rate.

3 So the issue is, if you are worried about  
4 traffic, give us an accommodation to actual  
5 traffic rather than this big number of actual  
6 enrollment figures, which is not necessarily tied  
7 to traffic issues.

8 MS. BOUTSIS: I think I have heard that  
9 there's a consensus to proceed towards trying to  
10 schedule this mediation. Understand what I am  
11 seeking is Mr. Williams and Mr. Hochman to go. No  
12 council members, because that would be a Sunshine,  
13 and we would have to open up to the public, and we  
14 want to be able to have this private communication  
15 and get down to the nitty-gritty for settlement.

16 A representation from CCOCI and Mr. Gibbs,  
17 a representative from Palmer Trinity and whatever  
18 attorneys he wants to bring, with the formal  
19 mediator. I gave you that resumes as recommended  
20 by Mr. Cleary. At first I was reluctant to look  
21 at these resumes, because I was looking for  
22 somebody who really knew zoning and had the  
23 experience on these 1983 civil rights claims.

24 And I didn't see anything here on these  
25 people particular. The person I would recommend

1 would probably be rejected, only because he has  
2 been city attorney before, and he has worked with  
3 Mr. Hochman extensively in representation. So he  
4 would be rejected.

5 Mr. Hochman has recommended a mediator,  
6 but I don't know the mediator well, but he has A/B  
7 rated by Martindale Hubble. Excellent  
8 recommendation. And I believe you have also  
9 worked with Mr. Silverman, who I think is very  
10 good?

11 MR. HOCHMAN: Yes.

12 MS. BOUTSIS: I don't want to make this  
13 into an argument over mediators. We want to get  
14 towards mediation. If you want to make it  
15 somewhat -- to say because Hochman has a good  
16 relationship with somebody he thought was fair and  
17 smart, and we don't have a preference, he can go  
18 there.

19 MS. LINDSAY: What about his background in  
20 land use?

21 MR. HOCHMAN: I don't think it really  
22 matters on the actual selection of the mediators.  
23 I think it's is up for you to decide. At the end  
24 of the day, what we want is we want the other side  
25 to feel comfortable so that if the mediator tells

1           them, listen, I think you got a weak case here.  
2           What you want is you want Sean Cleary feeling that  
3           he can trust the mediator. If we select a  
4           mediator that we like and think is effective, but  
5           he doesn't trust him, we are not going to get  
6           anywhere.

7                        It's not a matter of knowledge or  
8           substance. It's a matter of a feeling that you  
9           have that I am going down the right path. I think  
10          you should just -- my recommendation, just defer  
11          to me for the selection.

12                       The last thing, then, and then you guys  
13          can decide what you want. But I do think it's  
14          good for you to voice whether a certain dollar  
15          amount would be totally unacceptable or  
16          acceptable, even at the level above or below  
17          \$100,000.

18                       If you would let me know, yes, I think  
19          that if the Village were to write a check for  
20          100-, for example, as a theoretical amount, that  
21          would be no, maybe or yes. Not voting on it..  
22          Just that number. And the reason I use that big  
23          number is because I want to know where I can  
24          negotiate to and where I can't.

25                       And also, if I come back to you and say

1 here is the number that we believe we would like  
2 you to recommend, I don't want to be my number is  
3 a million, and I know you were having trouble with  
4 around 100-, and therefore it's a nonstarter. And  
5 the last time I was here, I think the number was  
6 around 50-.

7 MR. WILLIAMS: Plus 50-.

8 MR. HOCHMAN: No. I am just asking for  
9 the Village's contribution.

10 MR. WILLIAMS: Just the Village.

11 MR. HOCHMAN: The idea -- really, just to  
12 get a -- maybe bring this a little shorter, and  
13 you can certainly discuss it. But the issue would  
14 be, no matter what the Florida League of Cities  
15 had to offer, would this body be okay writing its  
16 own check for \$100,000 to ensure that the case  
17 goes away, the 2008 case, the 2010 case, and that  
18 there would be some sort of leaping away from  
19 litigation and then onto land use development with  
20 Palmer Trinity?

21 And the answer can be no. Too much.

22 MR. DUBOIS: Should we go around the room  
23 and each council person --

24 MR. HOCHMAN: Sure. I don't need you to  
25 say I am voting yes or no. But just, I think that

1 is too high, I think it should be lower, or I am  
2 uncomfortable with that and maybe a little bit  
3 more.

4 MS. LINDSAY: And are you suggesting that  
5 the League would match that?

6 MR. HOCHMAN: No.

7 MS. LINDSAY: Of that the League --

8 MR. HOCHMAN: I am not suggesting. I am  
9 simply trying to figure out where there is the  
10 money. Because they are going to ask me at this  
11 mediation, here are all the conditions, and then  
12 we are going to get to cash, and I want to be able  
13 to say, no way. Or well, we are close. Or --

14 MR. DUBOIS: Or I will bring it back to my  
15 client.

16 MR. HOCHMAN: Right. But I don't want to  
17 bring back -- the mediation will not be productive  
18 if they will not get below a million, and I know  
19 that you guys are troubled at 50,000. And it may  
20 be that -- for example, there may be a point of  
21 view that maybe even \$200,000, because of the  
22 theoretical exposure and whatever concerns you may  
23 have politically. There's all kind of reasons to  
24 drive a settlement.

25 My only point to you is I just don't know

1           what your feelings are, because there are two new  
2           council members. And I know what it was before,  
3           which was basically you didn't really want to  
4           spend that much money.

5                   MAYOR STANCZYK: One of the questions is  
6           we don't have -- we have not been able to assign a  
7           monetary value to what their wishes are. And that  
8           I think we need to do before we know how much we  
9           would offer. One. Two, we don't have a clear  
10          level as to where the League is going. The League  
11          believes they have no case.

12                   MR. HOCHMAN: True.

13                   MAYOR STANCZYK: So if the League believes  
14          they have no case, then what would the League be  
15          willing to risk? Without having that kind of  
16          belief and without the monetary value that can be  
17          assigned to their wishes, it's very difficult to  
18          do that for me.

19                   MR. HOCHMAN: Yes. I agree. It's  
20          difficult.

21                   MR. WILLIAMS: We have an estimate what  
22          the League thinks of the cases.

23                   MS. BOUTSIS: We know that 50- was on the  
24          table before, and that is what they believe it is  
25          to be as a nuisance value. I went to the League

1 and wrote a letter and got on the phone with  
2 Hochman, and tried to get \$300,000 from the table  
3 and they wouldn't do so.

4 Remember this, if not all the claims are  
5 dismissed, but the federal claim goes away, we are  
6 on the dime for the fees for litigation. It won't  
7 be the League anymore. There's a possibility that  
8 like the public records will continue on and on  
9 and on, because we still don't know what we  
10 haven't given them, and the civil rights claim  
11 goes away.

12 MR. HOCHMAN: That would be -- and Stan  
13 Price is a bright guy and he did this once before.  
14 He got me out of the case when I -- I made a move  
15 in a chess match and brought him to federal court.  
16 He then countered by dismissing those claims and  
17 eliminating me from the case, and went back down.

18 It is possible that they will recognize  
19 that the Village is in a better position with them  
20 having a lawyer from the Florida League of Cities.  
21 So there is a possibility they could say, I have  
22 an idea. Let's squeeze them by forcing them to  
23 pay attorney's fees.

24 And so that is something that could be  
25 resolved in the case, even without respect to some

1 of the issues of that, monetizing their requests  
2 and things like that, because, ultimately, you are  
3 going to be in litigation and you are going to  
4 have to pay yourself. So that is a risk.

5 MR. SCHAFFER: The strategy I have seen so  
6 far, I would be willing that card is in their hand  
7 and they are ready to toss it. Right now, we can  
8 continue on and there is no real, true cost. It's  
9 maybe a couple grand a week, a month, or whatever  
10 we see in the way of attorney's fees. We are not  
11 bleeding at this stage of the game. But they know  
12 very well that if they get League of Cities out of  
13 there, we bleed profusely.

14 MS. BOUTSIS: Remember, if they get the  
15 League out of there, they don't get the insurance  
16 policy. And that is what Cleary is banking on.

17 MR. SCHAFFER: I don't know if they are  
18 banking on the insurance policy or they are  
19 banking on getting their pound of flesh. Because,  
20 obviously, there is some absolute hatred on their  
21 part towards this Village. There is something  
22 that they don't like this Village.

23 That is the way I see it because, you  
24 know, understanding that they keep going after us  
25 and after us and after us when they have been told

1 time and time again -- you know, and they keep  
2 refiling and refiling.

3 I think that they are looking to get their  
4 pound of flesh and inflict damage on this Village  
5 for whatever reasons, and I truly think that that  
6 is part of their motivation. And you know,  
7 monetary true, but I think they probably love to  
8 get a pound of flesh out of us for some reason or  
9 not. And I think that is in consideration.

10 MR. DUBOIS: My mind just doesn't work  
11 that way. I just cannot believe that they have  
12 any other interest than just moving the ball  
13 forward, maximizing how much money they can get  
14 out of us, if they believe they are in a position  
15 to win, and/or getting their development done as  
16 soon as possible.

17 I can't see any emotion being allowed in  
18 because of their corporate structure, governance  
19 and all the rest that any entity has. So I am not  
20 as concerned about that.

21 But in order to answer the question, first  
22 of all, clarify what you mean by the insurance  
23 policy goes away. Why would that impact them? I  
24 assume you are talking about the League of Cities  
25 insurance.

1 MS. BOUTSIS: The \$5 million policy from  
2 the League of Cities. If that claim goes away,  
3 the insurance policy goes away.

4 MR. DUBOIS: Why would that matter to  
5 them? Would they think that we are not able to  
6 pay a \$5 million judgment?

7 MS. BOUTSIS: Try and collect, I guess, is  
8 the next step. I am not saying we don't have  
9 money in our coffers. But I am thinking of this  
10 as Sean Cleary, the litigant, and one of the first  
11 things he did was ask for our insurance policy.  
12 And he demanded policy limits. I think that is a  
13 factor.

14 MR. DUBOIS: The next question is then,  
15 what is League of Cities' criteria for deciding on  
16 settlement? Do they look simply at the strength  
17 of the case or do they also look at the position  
18 of the client, us in this case, which is we have  
19 more of a reason to settle?

20 We are less concerned about the monetary  
21 aspect as we are about getting this settled  
22 because it's a huge, black cloud over this Village  
23 by most people's standards, having this litigation  
24 hanging over us, and everybody in this Village  
25 pretty much wants it to go away.

1                   From a monetary point of view, it may be  
2                   theoretically a lower number for the League in the  
3                   way you adjudicate claims and assess potential  
4                   actuarials against your insurance policy. So  
5                   there's an inconsistency there. So I am curious  
6                   on how you make that decision? Is it purely on  
7                   the strength of the complaint?

8                   MR. HOCHMAN: It's on the overall benefit  
9                   for the client. I represent you. I don't  
10                  represent the League. I represent you. I am  
11                  trying to recommend to everybody what the value of  
12                  the case is. The League has their position what  
13                  they think the value of the case is.

14                  MR. DUBOIS: Based strictly on the  
15                  strength of the case and the likelihood.

16                  MR. HOCHMAN: Right. Everything. They  
17                  make an overall decision. You make an overall  
18                  decision. You both have risk that is not  
19                  identical, though. Your risk is not identical to  
20                  the League's risk.

21                  MR. DUBOIS: Our motivation is not the  
22                  same. Theirs is purely financial as a payout on  
23                  the insurance company.

24                  MR. HOCHMAN: Not necessarily. The  
25                  Florida League of Cities is not an insurance

1           company, though. They are a Florida municipal  
2           insurance trust. So you are a lot of  
3           municipalities all with the same kinds of  
4           problems. You are members. You have other  
5           benefits besides just the insurance.

6                     They are trying to get -- they are also  
7           trying to make the law in Florida uniform. It's  
8           not just this particular claim. It's not just  
9           this particular municipality. What they are  
10          trying to do is they are trying to do best by you,  
11          other municipalities, other governmental agencies.  
12          They may resolve claims, for example.

13                    Let's say the law will be bad for  
14          municipalities if they litigate a case. They may  
15          pay more money, even though the claim is weak, to  
16          avoid bad law for all municipalities. They are  
17          looking at -- there is a bigger interest than just  
18          like an insurance company, dollars and cents.

19                    And I would suggest to you, though, their  
20          interest in this case, because they have covered  
21          claims and uncovered claims, as a normal matter  
22          would be not 100 percent overlapping with yours.  
23          My job is to represent you.

24                    MR. SCHAFFER: I was thinking that you  
25          were -- the League of Cities would say no, we are

1 going to battle this case to the end, even though  
2 we want to go to mediation. That is where I was  
3 confused.

4 We want to go to mediation as a Village,  
5 and that the League of Cities is going to ballot,  
6 and all of a sudden Palmer is going to go wait a  
7 second, we will dump you and force us to settle  
8 because we can't afford to go into that long, long  
9 period of mediation. That is what I was getting  
10 at, was then they are going to get their pound of  
11 flesh out of us.

12 You represent us.

13 MR. HOCHMAN: Yes.

14 MR. DUBOIS: If I can finish, so I can get  
15 to my answer to your question about the number, as  
16 far as I am concerned.

17 MR. HOCHMAN: Yes.

18 MR. DUBOIS: The 50/50 that you are  
19 talking about before, are we to believe that  
20 whatever number, if we do come up with a number,  
21 whatever number we come up with will likely be an  
22 equal match?

23 MR. HOCHMAN: I don't know.

24 MR. DUBOIS: You are not sure. Okay. So  
25 that is not necessarily true, either.

1 MR. HOCHMAN: Eve and I had a conversation  
2 with them. At that point they had a point of view  
3 about the facts. They had my assessment of the  
4 case, Eve's assessment of the case.

5 MR. DUBOIS: I personally would not feel  
6 comfortable giving you a number to go into the  
7 mediation with. I would say, though, to be  
8 practical and realistic about going into  
9 mediation, if we decide to go into it. I think we  
10 need to be practical and realistic. And I don't  
11 know what the school has spent so far in  
12 litigation fees, but it's probably over a million.

13 MS. BOUTSIS: Stan Price's hourly rate is  
14 650. He wasn't entitled to attorney's fees on  
15 appeal, but I'm just saying, his hourly rate is  
16 650.

17 MR. DUBOIS: Right. So realistically,  
18 let's say they spent a million, hypothetically, on  
19 attorney's fees so far. To go in there and say,  
20 we are going to talk about settlement for  
21 five percent of what you spent so far on legal  
22 fees, I don't see anybody walking into mediation  
23 thinking that is going to be a realistic  
24 settlement. So I think if we are going to get  
25 somewhere in a settlement agreement, obviously,

1 it's going to be a bigger number.

2 In terms of what it's worth to the  
3 Village, personally, I think it's worth a lot to  
4 make this thing go away. But I am not going to  
5 give you a number. I don't know if you can take a  
6 break during mediation, if you feel you get to the  
7 point where there's a number, and pull the council  
8 members. I don't know if that is procedurally  
9 acceptable or not.

10 MAYOR STANCZYK: I think there's been a  
11 mention that Sean Cleary would like to take home  
12 two million. There's been discussion on that.

13 MR. DUBOIS: That is posturing.

14 MS. BOUTSIS: I will tell you they want --  
15 before mediation to go forward -- this is the one  
16 thing that Stan Price has said -- there needs to  
17 be money on the table. So if we don't have any  
18 authorization to put any kind of money on the  
19 table after today, then I think --

20 MR. WILLIAMS: We are not going to get  
21 very far.

22 MR. SCHAFFER: They are not going to go  
23 for mediation.

24 MS. BOUTSIS: No. I wouldn't do it.

25 MR. WILLIAMS: We made an offer.

1 MR. HOCHMAN: We offered them a total --  
2 like I said before, a total lump sum payment of  
3 \$50,000, and the dismissal of all the lawsuits and  
4 no promises on any site plan development, but good  
5 working, normal working relationship going  
6 forward, based upon the merits and the evidence,  
7 and they were insulted and left.

8 MS. BOUTSIS: I need to clarify one thing.  
9 When they were insulted and left, I don't think  
10 they understood that they had to go back to a  
11 hearing. And that is part of the reason I think  
12 they were insulted. I think Mr. Price and  
13 company, or I hope Mr. Price and company got them  
14 to understand that we just can't sign a settlement  
15 agreement. Regardless of money, that we can't  
16 just say go up or go away, this go away.

17 And that is one of the reasons why I  
18 wanted a mediator that understood zoning that  
19 could say, look, no matter what you want, that is  
20 not the law and it can't happen.

21 MR. DUBOIS: Price, out of anybody in  
22 town, should know what spot zoning is more than  
23 anybody else.

24 MS. BOUTSIS: Stan knows. Sean Cleary  
25 doesn't.

1 MR. HOCHMAN: Again, that is why I am  
2 trying to find out. I had 50-, and I am assuming  
3 I still have 50- in terms of that settlement  
4 number. But if I am going to go to a mediation  
5 now, my question is do I have more or not.  
6 Because if not, if there's no willingness to go  
7 above that, then the whole idea of let's see if we  
8 can get the case resolved is really going to be  
9 unproductive.

10 Again, sometimes going into unproductive  
11 mediations, I am wrong and they are productive. I  
12 am not necessarily saying to you that you have to  
13 go above. I am just letting you know I think,  
14 given the history so far, the prospects seem more  
15 dim, but it wouldn't deter me from proceeding.

16 MR. DUBOIS: Personally, I think it would  
17 be a wonderful thing if this stuff could all go  
18 away for 250- or \$300,000 payout. That is my  
19 personal opinion. I don't think anybody in town  
20 would think that is outrageous under the  
21 circumstances of what is going on and what is --  
22 how long this has been going on and how painful  
23 it's been for the Village.

24 MR. WILLIAMS: Anybody else?

25 MR. FIORE: I want to say one thing. I

1 disagree with my colleague here. We have already  
2 been bleeding profusely to the tune of  
3 three-quarters of a million dollars, to the cost  
4 of this Village and the taxpayers since this has  
5 been going on.

6 MAYOR STANCZYK: Have we spent \$750,000?

7 MS. BOUTSIS: We were at six, some months  
8 ago. I don't know where we are now.

9 MR. FIORE: The fact is it's a large  
10 number and it's going to keep -- I am standing by  
11 what I said earlier. Whatever we do, we still  
12 have an attorney to pay. There's other incidental  
13 expenses. As you said, there could be depositions  
14 to staff, public records requests, manpower hours,  
15 and it goes on and on and on. The only other  
16 positive thing -- I don't know 50,000. Obviously,  
17 that is not the number. So it's north of that  
18 somewhere. I don't know where.

19 The other thing I -- positive things, and  
20 this is not monetary, it's more community, is that  
21 the school is getting a new headmaster at the end  
22 of this school year. They do have a new chairman  
23 of the board at the end of this school year. My  
24 understanding is -- and we were all invited to the  
25 wonderful Martin Luther King event at the school.

1 They didn't say don't bring this one. They  
2 invited the whole council.

3 I really believe there's an effort for  
4 them to end this and reach out to the community.  
5 Because there's new people involved. And I think  
6 the positive news I heard was what Mrs. Boutsis  
7 said earlier, that the other group, Mr. Gibbs, are  
8 willing to try to settle this, based on further  
9 meetings, as stated.

10 MR. HOCHMAN: Can I push you just one more  
11 question? Do you echo vice mayor's sentiments  
12 about value?

13 MR. FIORE: I don't know if it's that  
14 high. I think it's somewhere around the \$100,000  
15 mark, and maybe a little north of that. I can't  
16 really say.

17 MR. HOCHMAN: Thank you.

18 MR. FIORE: I think -- obviously, the  
19 other number was too low.

20 MR. HOCHMAN: By the way, not necessarily.  
21 It may be we can successfully negotiate around  
22 that number because the other parts of their  
23 business model are now more driving forces. My  
24 issue is not how I am going to negotiate. My  
25 issue is, I just want to know the universe of my

1 negotiation.

2 If you say, listen, I think we have some  
3 flexibility, that allows me to do different  
4 things. If you say no, there's no flexibility,  
5 then I know, again -- you know, you have me on a  
6 leash. How much leash are you going to give me?

7 MR. FIORE: I think it's naive for members  
8 of this board to think that it's just going to go  
9 away on its own, after everything that has  
10 happened, and certain individuals know what I am  
11 talking about. I am just being very frank, as  
12 always. That is what I am saying.

13 MR. HOCHMAN: Thank you.

14 Mr. Schaffer, do you agree with the prior  
15 statements? Disagree?

16 MR. SCHAFFER: Which statements are you  
17 talking about?

18 MR. HOCHMAN: We're only dealing with the  
19 number.

20 MR. SCHAFFER: Yes, we have had a lot of  
21 money go out in the past. I know that. It's not  
22 as much right now in the future. You are right  
23 about that. But right now, we don't seem to have  
24 as much going out as we have had in the past. You  
25 know, I don't think it's going to go away without

1 us going into mediation, but to come up with a  
2 number, I have absolutely no idea. I couldn't  
3 begin to tell you.

4 MS. BOUTSIS: Could you live with 100,000  
5 if that was on the table?

6 MR. SCHAFFER: I don't know. I really  
7 don't know. It would be a number that I am just  
8 coming out with out of nowhere. I can honestly  
9 say I have not been involved in this thing enough  
10 and understand all the nuances from only what I  
11 have been briefed on, what I have been able to  
12 read. But all that intricacy in seeing, I really  
13 don't know.

14 MS. BOUTSIS: You do need to comment.

15 MR. SCHAFFER: I was prepared to walk in  
16 here today to come up with a number. To just come  
17 up right now and say here is the number. I am  
18 talking about spending money. It's not my money.  
19 A bit it is because I am a taxpayer. I am just --  
20 I don't have a comfortable number yet. I really  
21 don't. I am not trying to be hard about it.

22 MS. LINDSAY: Councilman Schaffer, if I  
23 could interrupt. Maybe we should go to the Mayor  
24 and then I will speak, and then you will have  
25 heard from four, and maybe by then you will be

1           able to decide where you are.

2                   MR. HOCHMAN: I don't need you to decide.  
3           If your position is you just don't know --

4                   MR. SCHAFFER: I don't know what is right.  
5           I really don't. I am not trying to be hard about  
6           it. Obviously, it's a tough decision to make.

7                   MR. DUBOIS: In addition to hearing the  
8           council members, can we also hear Ron Williams'  
9           opinion on this?

10                   MAYOR STANCZYK: I think one thing we have  
11           to recognize is the dollar value that is assigned  
12           to the things that they want. Because there is a  
13           dollar value. The berm itself is worth how much?  
14           It's worth hundreds of thousands of dollars.

15                   The number of students that they have and  
16           the accelerated rate in which they have been able  
17           to add students. Students are worth \$25,000 a  
18           piece. That in itself, once you get over about  
19           40-, you have got a million dollars. So when you  
20           look at what you are able to accelerate, their  
21           schedule, they have gained. And that in itself is  
22           worth something.

23                   I think cash to them, with that we haven't  
24           heard and we don't know what the League will do.  
25           But we are confident that the League -- if we are

1 giving, say, 100-, is the League giving 100-?  
2 They are giving money.

3 MR. HOCHMAN: Yes. The League will be  
4 giving money.

5 MAYOR STANCZYK: We have got that on the  
6 table.

7 MR. HOCHMAN: The case is going to settle  
8 in an appropriate way. The League is willing to  
9 fund a portion of the settlement, absolutely.  
10 Most litigation gets settled. Most litigation  
11 doesn't get tried. And the League is here to  
12 protect the interest of its member. And if they  
13 can resolve this case in a global way that  
14 relieves the member of liability and exposure,  
15 certainly.

16 MAYOR STANCZYK: And I think it would be  
17 fair to at least expect the League to share  
18 50 percent. I think that would be at least fair.

19 MR. HOCHMAN: That is a matter for your  
20 city attorney to deal with the League. I  
21 cannot --

22 MS. BOUTSIS: I have no problems asking.  
23 We have to see what will happen.

24 MR. HOCHMAN: My issue today is not to  
25 ask -- to tell you what the League's strategy is.

1 I don't know. My question is, if it comes to a  
2 situation where the League says our number is  
3 okay, whatever the number -- the League could say  
4 we will pay a million, but you guys have to pay  
5 150,000. Would that be okay? What if it wasn't  
6 50/50? Let's say the League said, we will go  
7 90/10, but you have got to pay the 10. The ten is  
8 200,000. Would you be okay with that?

9 MAYOR STANCZYK: Yes and no. And let me  
10 state my position on that. One, I believe what  
11 you have said about the worth of the case. We  
12 have followed your advice and your recommendations  
13 and the information that you have shared with us,  
14 and that has been in our best interest. And I  
15 think when the League, as the appraiser, has said  
16 the case has very little value. I don't believe  
17 the League should over- pay in one sense.

18 But I do understand the League's position  
19 on preserving the law, and I think that is very  
20 important. I know that as each case goes forward,  
21 we all get e-mails, or at least I do. I subscribe  
22 to services that tell me what is going on around  
23 the state of Florida in litigation.

24 And I think that is really important to  
25 understand that we can set a precedent that will

1 hurt others, and we certainly wouldn't want to do  
2 that to our brothers in the League. But at the  
3 same time, we would like this to end.

4 Would I be comfortable with 100-, knowing  
5 that the league would supplement to reserve this  
6 law? Or, I would be comfortable with 100-, if I  
7 knew that the League would then be able to  
8 preserve the good law, and to go forward with  
9 maybe they do 90. But I would hate to see 90. I  
10 think it should be a fair share in some regard.

11 If it's fair to get the litigation to go  
12 away, and keep intact what we need to keep intact  
13 legally for others, and they have to pay a little  
14 more, but I think too much is not fair to anyone.  
15 But we do need to have a full appraisal and  
16 accounting of the dollar amount that they are  
17 looking for in mediation to the value of the  
18 revised site plan.

19 MR. HOCHMAN: Okay.

20 MS. LINDSAY: There are a number of  
21 conditions there that have value, and the berm, as  
22 we have mentioned, is one of them. Another thing  
23 that we discussed at another meeting was  
24 accelerating the students' schedule, so that they  
25 could get ahead and recoup some of the dollars

1           that they haven't been able to make. Do you  
2           understand what I am saying?

3                       There's a schedule that outlines exactly  
4           how many students they can have each year. It's  
5           not uniform throughout the years. It's a 15-year  
6           period.

7                       MR. DUBOIS: Is that something not subject  
8           to spot zoning that we could negotiate?

9                       MAYOR STANCZYK: That is all part of the  
10          resolution.

11                      MS. LINDSAY: It's called contract zoning,  
12          and it would be part of something that we could  
13          say that we would put on the table, but we cannot  
14          agree to it in its finality until we would have a  
15          hearing. But that was something that we had  
16          discussed at a prior meeting, and I am still  
17          willing to do that. I think that that has a lot  
18          of value monetarily.

19                      I have Councilman Fiore, you remember that  
20          we discussed that at the last meeting, I am sure.  
21          So there are things that have a monetary value,  
22          and there are probably some others, and that is  
23          why I encourage the meeting with the neighbors and  
24          Mr. Gibbs and the counsel for the school, because  
25          I think they are working on some of those numbers.

1 MR. HOCHMAN: I pushed Mr. Fiore the same  
2 way I am about to push you.

3 MS. LINDSAY: I am getting there. I just  
4 want them to understand that it's not all about  
5 the check. I have to say that given the history  
6 of these people that I know as well as anyone in  
7 this room, they want money and they want money for  
8 Mr. Cleary, who hasn't been paid at all.

9 So I am inclined to agree with the Vice  
10 Mayor go to 250. I know you said 300, but I just  
11 don't think it's going to happen for a meager  
12 amount and it may not happen for 250. But I do  
13 agree with your position on the case.

14 I think it's foolish for us to give up  
15 conditions that protect the neighbors. And there  
16 are conditions in that resolution that have to do  
17 with noise and traffic, and I think we need to be  
18 very careful about assuming that the community is  
19 going to be happy with us writing a large check  
20 and giving up conditions that protect the quality  
21 of life of the people who live in this Village.

22 So I am willing to go to 250-. I am  
23 willing, also, to examine the conditions that the  
24 neighborhood group comes up with that they would  
25 like to give. But I think it's our responsibility

1 to make sure that we preserve the quality of life  
2 for the people in this Village to the extent that  
3 we can.

4 MAYOR STANCZYK: I think one thing that we  
5 have to be careful about, in my opinion, when we  
6 start talking about a large amount of money is  
7 that while I certainly respect Mr. Cleary's  
8 willingness to work at the school, as anyone does,  
9 anyone who works certainly deserves to be paid. I  
10 am not sure that he has extended \$2 million worth  
11 of work.

12 While he took it on contingency, his  
13 contingency idea is not the same as it is in this  
14 type of work as personal injury. Even though  
15 insurance is available, I think we are still  
16 working with a zoning process and with the  
17 outcome.

18 I am concerned that paying out a large  
19 amount of money, one, makes us assume guilt that  
20 isn't necessarily there. If someone were to say,  
21 oh, my God, you have paid X, Y, Z, so it must have  
22 been a horrible thing. Well, in fact, that it was  
23 the goal of settlement that drove the number.  
24 It's hard for me to say I would give 100,000, and  
25 would the League end up with a million. I think

1           that sends a really bad message.

2                       Having said what number you would give, is  
3           it always going to be -- for instance, Mr. Dubois  
4           mentioned 300,000. While that doesn't sound like  
5           a huge settlement overall, if we were to extend  
6           300,000, are we understanding that there always  
7           will be a part of the League involved in that?

8                       MR. HOCHMAN: I am just asking for the  
9           component that the Village could live with.  
10          Meaning that if it came to a vote, and the number  
11          was that the Village has to write a check and the  
12          check is, in this case, 250- or 300- or 100-, is  
13          anyone here saying no, that is too much?

14                      MR. WILLIAMS: Tim?

15                      MR. HOCHMAN: That is the issue. The  
16          other issues are all very complicated, and I  
17          realize that. I am sorry if it makes it difficult  
18          or in some cases I don't have a number because you  
19          don't give me enough information. I understand  
20          that. But I don't have all the information to  
21          give you.

22                      I do not know, first of all, what the  
23          plaintiff would take. Number two, I don't know  
24          what the League, in the face of an actual  
25          mediation, a case going away for a particular

1           dollar amount would say, fine, we will pay that.  
2           My only issue is I am going to have to come back.  
3           No settlement can go forward unless you as a  
4           public matter out there in front of everybody vote  
5           to write a check.

6                       MR. WILLIAMS: That is absolutely correct.

7                       MR. HOCHMAN: My question is, I don't want  
8           that to be a big meeting, and then it go zero for  
9           everybody against because the check is too big,  
10          and the reason was because I didn't do my job in  
11          finding out what the mood was of the body to know  
12          that is too big, Mr. Hochman, you should never  
13          have even brought that to their attention.

14                      MR. DUBOIS: Would this have to go through  
15          a public vote?

16                      MR. HOCHMAN: Public vote.

17                      MS. BOUTSIS: Just so we understand, we  
18          can talk about settlement here. You can give  
19          certain numbers and authorizations, but  
20          ultimately, what final thing is, it's out there.

21                      MR. DUBOIS: What happens if we give  
22          direction to our counsel, and we all kind of say  
23          100- is a good -- this is hypothetical. 100- is a  
24          good number, and they agree to settle for 100-,  
25          and then we go out there and the bunch of people

1 with eggs in the audience, and we decide, let's  
2 vote no on it.

3 MR. HOCHMAN: The answer to that is there  
4 is no settlement. I can't bind you. All I can do  
5 is tell the other side here is how it looks. I  
6 will bring it back.

7 MR. DUBOIS: In other words, what we are  
8 saying to you now, when you are asking this  
9 question, is an appetite only. It's not  
10 necessarily a commitment.

11 MR. HOCHMAN: That's exactly correct. An  
12 appetite only.

13 MAYOR STANCZYK: And that's really by the  
14 law.

15 MR. DUBOIS: Of course.

16 MAYOR STANCZYK: Having said that, is that  
17 you must have some personal commitment to what you  
18 are saying here. That you can stand by that even  
19 though the eggs are out there at that point. And  
20 that is why it's so important, one, to understand  
21 clearly what your negotiating points are and their  
22 value.

23 So that when the time comes, everyone that  
24 is here in this Village that is interested, that  
25 has a personal interest in this, understands what

1 was given up, the value of it, and what it meant  
2 to the people who live here. So that they  
3 understand that, one, we didn't write a check  
4 frivolously, and that the League certainly didn't  
5 unjustly enrich someone.

6 But at the same time, we have done our  
7 work. We said, well, these folks came to the  
8 table with us, and they said, we can back off of  
9 some of this. We can accept these changes that  
10 are being made in good conscience to allow for  
11 settlement. Settlement is always about -- and we  
12 always hear this old standard -- we are all  
13 equally unhappy.

14 And if you can be equally unhappy that you  
15 have had to give something up -- and it can be  
16 money. It can be the berm. It can be all of  
17 those things. But you still have to stand there  
18 and take it when the time comes.

19 MR. DUBOIS: So I don't want to offend  
20 anybody here. God knows, I am very good at that.  
21 But one of the things that I really don't like  
22 about the way this conversation has been going is  
23 clearly there is an edge, a line here that we have  
24 been told by our counsel that we may not cross.

25 And that line is in our settlement

1 discussions in mediation, we cannot even broach  
2 the discussion about the value of additional  
3 students being accelerated, the value of berms,  
4 because that would bring us to the potential of  
5 contract zoning or making them believe that we are  
6 predisposed to vote a certain way, which would  
7 imply contract zoning.

8 So I am of the feeling when I am asked  
9 this question, I am really not allowed to put that  
10 in the formula when I come up with a number. It's  
11 kind of irrelevant. As is the number that the  
12 League of Cities may or may not contribute to the  
13 ultimate settlement. It's really not -- it  
14 shouldn't be a factor in our decision.

15 It may be a political issue later, to say  
16 that if they spent a million and we spent 100,000,  
17 it looks like, you know, they were paid  
18 1.1 million, and therefore, we must have been  
19 wrong. No.

20 We need to stand by our decision that, at  
21 100,000 or 250- or whatever the number is, it's  
22 the right thing to do for the Village because --  
23 for the right reasons. We need to remove the dark  
24 cloud over the Village. We need to put this  
25 behind us and get everybody moving forward.

1           So even though I hear you, I understand  
2           there's value in these things, we can't really  
3           even give them the slightest feeling that we are  
4           going to be in favor of supporting removal of the  
5           berm any site plan modification.

6           So really, the only contribution we can  
7           make to this mediation is our appetite for a  
8           dollar settlement that the Village pays out. That  
9           is really all we are limited to in the discussion  
10          today, as far as I can tell. Is that right?

11          MR. HOCHMAN: The only reason I would  
12          disagree is that I think we have highlighted some  
13          of the issues, which -- the appetite to allow the  
14          berm to be removed. The appetite to allow a site  
15          plan amendment process.

16          MR. DUBOIS: But that can only be  
17          discussed in this room. The dollar amount you are  
18          being authorized to potentially discuss during the  
19          mediation.

20          MR. HOCHMAN: You are not voting on a  
21          dollar amount. I may, for example, come to you  
22          and say, here is the deal I negotiated. It's the  
23          best I could do. It's 300,000 or 350- or 400,000,  
24          you pay. The berm has to go away. The sidewalk  
25          gets changed, and they want another 1,000

1 students. And then you say, okay. You go out  
2 there and you say no.

3 MS. BOUTSIS: If you don't mind. This  
4 happens -- this is not the first time this kind of  
5 case has happened. I'll give you an example. It  
6 happened in South Miami. And the settlement  
7 agreement is written. They go to a public hearing  
8 as part of the settlement. And one of the  
9 conditions is you have to go through the public  
10 process to get the special exception or variance,  
11 whatever it was. And if it doesn't go through,  
12 this settlement fails.

13 And it would list all the things that they  
14 were seeking. So then you go to the public  
15 hearing, and you have to make a decision with the  
16 angry audience out there, pro or con, go through  
17 it. And let me tell you, you think you have a  
18 settlement when you have a settlement agreement.  
19 City of South Miami actually said no. So then  
20 they went back to litigation, and they were in  
21 litigation for 12 years.

22 MR. HOCHMAN: You understand there's two  
23 votes that occur. One is I approve the settlement  
24 agreement, and then later on you have to approve  
25 the site plan. And you may deny the site plan.

1 No, I can't do that. Then the settlement  
2 agreement gets invalidated, because the settlement  
3 agreement is contingent upon another vote based  
4 upon a quasi-judicial law.

5 MR. DUBOIS: That, I didn't understand.

6 MR. HOCHMAN: And I apologize if I was  
7 unclear about that.

8 MR. SCHAFFER: We keep talking about the  
9 berm and other items on the site plan.

10 MR. HOCHMAN: Yes.

11 MR. SCHAFFER: Nothing says that we  
12 have -- there is no power on our part at all until  
13 it goes through the zoning process, that we can  
14 say we are going to remove the berm, we are going  
15 to remove whatever other items. I don't  
16 understand how you can sit there -- when you go  
17 into mediation and they say, we want to see berm,  
18 tree, parking lot go away, you can't promise that.

19 MR. HOCHMAN: Right. All I can say is --

20 MR. SCHAFFER: We will consider it.

21 That's right.

22 MS. BOUTSIS: We may.

23 MR. WILLIAMS: That is part of the  
24 settlement package.

25 MS. BOUTSIS: We do not have a final

1 settlement if those items don't go through, is the  
2 condition.

3 MR. SCHAFFER: I understand that.

4 MR. HOCHMAN: Just so you understand.

5 MR. SCHAFFER: We are talking about here.

6 I want to focus on our meeting here. I am cutting  
7 out the whole idea of what we can do when it comes  
8 to that site plan. To me, it's one thing.

9 Dollars. How much money are we willing to write?

10 Because you can't walk in there and  
11 promise them anything when it comes to whatever  
12 list -- we don't know what their list is, but they  
13 are going to come up with a list saying things,  
14 okay, we want that off our site plan. Okay,  
15 submit. We will see what happens. That is about  
16 all you can say.

17 MR. HOCHMAN: That's correct.

18 MR. SCHAFFER: We say there's a value to  
19 the berm of \$200,000. We may not be able to  
20 remove the berm, for whatever reasons. We are  
21 purely talking about let's take out of the  
22 equation that we give them anything on the site  
23 plan. What are we willing to write a check for  
24 that might make them settle?

25 MS. BOUTSIS: Correct.

1 MR. WILLIAMS: Correct.

2 MR. SCHAFFER: We are talking about the  
3 simplest of terms. That is why all the other  
4 stuff, I am not taking into consideration. Let  
5 her finish.

6 MS. BOUTSIS: She is done.

7 MR. SCHAFFER: Uh-huh. Your turn.

8 MR. WILLIAMS: He said 100,000.

9 MR. FIORE: Can I ask a question?

10 MR. SCHAFFER: I know I am up. It's a  
11 huge decision for somebody that is walking  
12 brand-new into all this, and the same thing with  
13 John. And like you said, we are going to sit  
14 there when the eggs go flying. And there's a lot  
15 of people that have no idea this is going on.  
16 They just know there is litigation.

17 You can write a \$50,000 or a \$50 million  
18 check. There's going to be people that are mad  
19 about any of this. Part of being elected into  
20 this job is I inherited this. So my decision  
21 is -- that is why I am very -- being very, very  
22 careful in knowing what number we come up with and  
23 why.

24 MR. WILLIAMS: Tim, there will also be  
25 people that are glad to see it --

1 MR. SCHAFFER: Go away. I know that.

2 What is your feeling? You also said you  
3 wanted Mr. Williams to say something.

4 MR. FIORE: I will defer to Mr. Williams.

5 MR. WILLIAMS: Let me tell you my thought.  
6 I think that Mr. Hochman as our attorney is  
7 representing this Village very well. Just from a  
8 point of strategy, I tend to agree mostly with  
9 Councilwoman Lindsay.

10 I think that in order to go and take --  
11 and some of you heard me say this before. Take a  
12 real serious effort towards resolving this, it's  
13 going to cost the Village something. And  
14 Mr. Hochman, as our representative, as our  
15 negotiator, needs to know what that world is out  
16 there. What is that field? Where can I go?

17 If he goes in there, as he has explained  
18 earlier, with two hands behind his back, he is not  
19 going to get very far. If he goes in there with a  
20 top range, you still have a final decision to say,  
21 we are not going to go that high, and we make that  
22 decision. Let's not put him in a situation where  
23 we get -- where this mediation lasts 15 minutes,  
24 guys, if we are serious about trying to get this  
25 resolved.

1           Because if we go in there with this, you  
2           know, I don't know, I think somebody is going to  
3           complain that we paid too much, and this and that  
4           and the other, and he can't really try to extract  
5           something while he is willing to give something,  
6           we are going to have a 30-minute mediation, and we  
7           are going to be back at this table for the next  
8           months and months and months.

9           And Patrick is going to be pulling  
10          attorney's bills, and we are going to have the  
11          same bloggers going through the same stuff for the  
12          next five years.

13          If we have it, if we have three parties  
14          with an appetite, use your language to get this  
15          resolved, let's give it a realistic shot. If that  
16          is 250-, if that's 300-, if it's luckily 200-, we  
17          got to trust our attorney to negotiate in our best  
18          interest. Give him something to work with. Then  
19          I think we have got to come back and say this is  
20          the whole package. Is it in the best interest of  
21          the Village to swallow hard and move on?

22          But he has got to know where you are  
23          coming from. He has got to know what he can do.  
24          All of you are experienced negotiators. You guys  
25          do it all day, every day, in some respect. He has

1 got to be able to say my clients want to settle  
2 this, and this is the parameter -- obviously, up  
3 his sleeve, this is the parameter I have got to  
4 work with. I got to be honest with you. I don't  
5 think it's \$100,000.

6 MS. LINDSAY: I don't think it is.

7 MR. DUBOIS: It's not.

8 MAYOR STANCZYK: I agree it's not  
9 \$100,000. But we are not walking in there saying  
10 it's \$100,000.

11 MR. WILLIAMS: He is not going to say  
12 that, Mayor.

13 MS. BOUTSIS: That not our intent.

14 MR. WILLIAMS: He is the negotiator. He  
15 has done this. And we have got to trust our  
16 attorney, and I think we all do. I am speaking  
17 about myself, but I know everybody does.

18 We have got to give him something in the  
19 back of his mind, up his sleeve, that says, wow,  
20 for another 25,000 I can get this done. You know?  
21 For another 30,000, I can get this done.

22 MR. HOCHMAN: Plus, there is always a  
23 check on me, because if I come back with a  
24 \$200,000 number, you guys can say I approve  
25 everything if the number is 150-. And then that

1 is the legislations that gets passed, and then it  
2 goes back to them to approve that.

3 MR. WILLIAMS: But don't send him in there  
4 with a \$50,000 number that they walked out on us  
5 already on, and with a little bit more on there,  
6 he can nudge a bit more. And these experienced  
7 mediators know when they have got a chance to --  
8 they want to close the deal, as well. They want  
9 to close the deal, as well. When they see that we  
10 are close enough to close a deal, and he has got a  
11 little room to work with, we might get this thing  
12 done.

13 That is just my point of view. And let me  
14 tell you something. We all know the consequence  
15 on both sides. We know who is going to say what  
16 about what, and who is going to say you did  
17 something wrong, and who is going to stand up and  
18 applaud and who is going to throw eggs. But we  
19 have got to make a decision. And if we have a  
20 chance to get this things done, let's trust our  
21 negotiator here and give him some ammunition to  
22 work with. That is my opinion.

23 MS. BOUTSIS: Can I give my opinion?

24 MR. DUBOIS: Sure.

25 MS. BOUTSIS: I agree 100 percent with Ron

1 on this. Having dealt with Stan Price and Tucker  
2 and all of these people for several years, there  
3 is a certain amount of resentment. Right or  
4 wrong, there's a certain amount. I think the  
5 concessions on the site plan, whatever they may  
6 be, that would go to hearing will go a long way to  
7 resolving their financial issues and some of the  
8 resentment.

9 I don't think it will resolve all of it.  
10 I think they do want a check cut. Whether it's  
11 for symbolism or to pay Sean Cleary, there is a  
12 check cut. And there was a lot of posturing, but  
13 that \$50,000, quote, unquote, was an insult to  
14 them.

15 And I think they are bantering about  
16 \$2 million. I don't think it's worth \$2 million.  
17 I think if they -- what are their damages? You  
18 are talking about a damages of 20 kids. That is  
19 really what you are talking about. Delayed  
20 damages and 20 kids. And they can't get the kids  
21 because they only have the economy.

22 So I think the value of the case may be  
23 worth \$500,000 to a million, at the worst-  
24 scenario. In my opinion, if you want to settle  
25 and it's going to hurt us a bit, and it's going to

1 give them their pound of flesh, if that is what  
2 you want to call it, I think the number is closer  
3 to 350- to 500-.

4 MR. DUBOIS: First of all, the value of  
5 the kids is zero, as far as I am concerned.  
6 Because you can give them another --

7 MS. BOUTSIS: I am talking about for  
8 settlement purposes.

9 MR. DUBOIS: -- one hundred students.  
10 They may get 25,000 each in tuition, but their  
11 costs are going to be close to 25,000 to support  
12 the infrastructure and teachers and everything  
13 else to run the school. I am not a big believer  
14 in figuring out numbers based on number of  
15 students. They are nonprofit.

16 Anyway. If we approve 250-, does that  
17 mean you are going to go to League of Cities and  
18 try to get a number from them, and then go in and  
19 be able to say 500- if they are willing to match  
20 it?

21 MR. HOCHMAN: Yes.

22 MR. WILLIAMS: And that is his cap. He  
23 knows --

24 MR. HOCHMAN: My only issue is I want to  
25 find out what your appetite is, so if I come back

1 with a contract, and you guys look at it and say,  
2 no.

3 MR. WILLIAMS: If we are in there and  
4 there's a number that he is close to and he looks  
5 at me, and I say, he ain't going for that.

6 MR. HOCHMAN: It's not just me. It's for  
7 your city manager. He is going to be in there  
8 with me.

9 MR. WILLIAMS: We kill any chance to get  
10 this thing done.

11 MR. SCHAFFER: I am learning.

12 MR. HOCHMAN: Mr. Williams and I are both  
13 going to be there, and the issue is they are going  
14 to be out of the room. We are going to get a  
15 number in. And we are going to look at it and  
16 say, no way. Or, hmm, getting close. Yes. I  
17 want to know -- you know, it's 4:00 and the number  
18 is two million, I know that I can probably go  
19 home. If it's 4:00 and their number is 125- --

20 MR. SCHAFFER: Sign the papers.

21 MR. HOCHMAN: Not necessarily. But I know  
22 that if I come back with that number, I am not  
23 going to have a bunch of upset people.

24 MR. WILLIAMS: I cut you off. You were  
25 about to saying something when I was speaking.

1 I'm sorry.

2 MAYOR STANCZYK: That is fine. I am good.  
3 We are waiting on Mr. Schaffer.

4 MR. SCHAFFER: Going forward, I have heard  
5 250- as the number that seems to be comfortable  
6 with Patrick, John, Joan. I don't know.

7 MAYOR STANCZYK: Patrick said 100-, like  
8 me.

9 MR. SCHAFFER: He said north of 100-.

10 MR. FIORE: I said north of 100-. I don't  
11 know what that is. That could be 100-, 150-. It  
12 could be 100- to 200-. I am realistic in that  
13 range that I realize what it is.

14 But my question is, after Tim was talking,  
15 and I think the Vice Mayor -- I think he answered  
16 it based on his question. If we offer 250-, then  
17 the League gives us 250- in addition to that?

18 MR. WILLIAMS: He is not sure.

19 MR. FIORE: You don't know that? If they  
20 asked for half a million dollars, that is what I  
21 would like to know. Do we pay half a million and  
22 the League pays half a million, or do we pay 250-  
23 and the League guarantees? You don't know that.

24 MR. HOCHMAN: All I am asking is what you  
25 feel comfortable with writing your check. I have

1 to go find from the League what they're  
2 comfortable with.

3 MR. FIORE: I think that is important  
4 information for all of us to know.

5 MR. HOCHMAN: I agree, it is.

6 MR. FIORE: As Eve said, we are probably  
7 not going to go into this mediation for a couple  
8 of months yet, based on scheduling and this other  
9 group meeting and all this other stuff. I think  
10 that is plenty of time for you to understand.

11 MR. HOCHMAN: First of all, Council Member  
12 Lindsay wants to make sure that CCOCI has their  
13 own little internal meeting first. If you would  
14 like me to come back and -- for example, we can,  
15 information, collect a lot. Again, I don't think  
16 we, as an initial matter prior to mediation, need  
17 to get our number honed down.

18 All I am really trying to figure out is,  
19 again, the word appetite. What would be a total  
20 deal-breaker and what is within the realm of  
21 possibility? Again, you may not be happy with  
22 lots of features of a proposed settlement if we  
23 get a document. You are not required to say yes.

24 MR. DUBOIS: At this stage, I am at a  
25 total loss now for why it is that we now need to

1 wait for CCO -- whatever. Because all we are  
2 going to bring to the mediation is a number. They  
3 can come back and say they want this stuff. It's  
4 going to have to go to zoning anyway. The  
5 community people, they are not interested in our  
6 number. They are more interested in the terms,  
7 right?

8 MS. LINDSAY: I don't want to interrupt  
9 you.

10 MR. DUBOIS: Go ahead.

11 MS. LINDSAY: I think -- it's my  
12 understanding that what they are doing is working  
13 with their attorney to put a dollar amount on  
14 various conditions, such as the berm, such as  
15 accelerating the student enrollment, to bring down  
16 their demand for several million dollars.

17 MR. SCHAFFER: But there's no guarantee.

18 MS. LINDSAY: By letting them do those  
19 negotiations and come up with something, it may  
20 reduce what the school comes to Jeff and Eve and  
21 Ron and asks for, which is important. And I think  
22 you said you agreed with me on that.

23 MR. WILLIAMS: Absolutely.

24 MAYOR STANCZYK: While the students are  
25 important to you, this is what the fight has been

1 over. Frankly, that is the center core.

2 MR. DUBOIS: To Palmer?

3 MAYOR STANCZYK: Yes. That is the center  
4 core of their argument.

5 MR. HOCHMAN: Their business model is the  
6 number of students. They are selling a product.  
7 The product is an education, and for that product  
8 they get dollars.

9 MR. DUBOIS: I think you misunderstood me.  
10 What I was trying to say is that in terms of  
11 calculating a value and a number --

12 MAYOR STANCZYK: It's very important.

13 MR. DUBOIS: -- it's not -- I wouldn't  
14 think that any of us, them or us, would be able to  
15 take the tuition dollar amount and use that as a  
16 number. It's some portion of that.

17 MR. WILLIAMS: Expenses.

18 MR. DUBOIS: Exactly.

19 MS. LINDSAY: But there are other things  
20 that can be factored into this, such as the  
21 phasing and a willingness for us to adjust the  
22 phasing. And all of these things can have a  
23 dollar amount in terms of a settlement. That is  
24 what they are all working on.

25 So it behooves all of us to get them to a

1 point where they can get as much -- as many  
2 dollars out of that as possible, and then the  
3 demand for multimillions from us is reduced, and  
4 the number that we put on the table is more  
5 reasonable.

6 MR. HOCHMAN: What I am hearing from the  
7 Mayor and from Council Member Lindsay is this.  
8 They want a mathematical approach, which is let's  
9 find out what their damages are, as a practical  
10 matter, because of the elements of lost students,  
11 lost revenue and all that.

12 Once their gross number is on the board,  
13 let's then reduce that and find out, well, they  
14 can't have that because they didn't have a  
15 building permit. Not because of zoning, not  
16 because of site plan approval, but because they  
17 weren't ready to go. So maybe that large number  
18 comes down to a net number.

19 Now let's look at the student number.  
20 They say X, Y and Z. But again, because of  
21 various internal problems on their side, their net  
22 number actually gets netted down even more.

23 Then on top of that, comes the CCOCI  
24 issue, which is if you want us to give on our side  
25 expanded up revenue for you by more students, that

1 number comes down, comes down, comes down, and  
2 then you have a triple net, if you will, figure.  
3 And then we say those are your net damages, and  
4 how close are we on the other side.

5 MAYOR STANCZYK: And then you negotiate.

6 MR. WILLIAMS: Tim has been trying to get  
7 on the floor.

8 MR. SCHAFFER: Sounds great, but we can't  
9 guarantee them anything when it comes to any  
10 changes to the site plan.

11 MR. HOCHMAN: Precisely.

12 MR. SCHAFFER: So it comes right back to  
13 the same thing.

14 MR. HOCHMAN: We are only going to be  
15 talking about conceptual approach --

16 MR. SCHAFFER: CCOCI, it's all conceptual.  
17 If you lose the berm and if you lose accelerated,  
18 it's all conceptual.

19 MAYOR STANCZYK: Correct.

20 MR. HOCHMAN: What is not conceptual is  
21 your comfort level in saying --

22 MR. SCHAFFER: That is what I am coming  
23 right back to. It's the number that we are  
24 willing to write a check. You know something?  
25 They may not get any of those concessions because

1 we can't give it to them, for whatever reason.

2 MR. DUBOIS: Can I simplify this a little  
3 bit, maybe, to make it a little more clear? We  
4 can end up in the mediation with a settlement  
5 agreement that says 500,000 split between League  
6 of Cities and us, and conditions that the berm  
7 gets removed and blah, blah, blah, blah. Hold on.  
8 Listen to me. We then approve the settlement  
9 agreement because we only approved the dollar  
10 amount.

11 The second -- part two of the settlement  
12 agreement is the zoning and hearing. Which may  
13 get rejected, and then the settlement agreement  
14 hasn't been fulfilled in its entirety, and  
15 therefore, the plaintiff can go back and --

16 MR. WILLIAMS: It unravels.

17 MS. LINDSAY: But you see, if you will  
18 give CCOCI the opportunity to work with the school  
19 to come to some agreement on what conditions they  
20 are willing to give up, that gives all of you  
21 political cover when you have the hearing. That  
22 the neighbors have agreed to these things. So the  
23 neighbors will not be at the hearing opposing.  
24 Hopefully. We can't guarantee that either. That  
25 is the objective.

1                   MAYOR STANCZYK: Remember, the hearing  
2 involves public comment, and the public will tell  
3 us that they have agreed. We will also get a  
4 zoning packet, and if you recall, the zoning  
5 packet has the recommendation for approval. The  
6 zoning packet will be something that has been  
7 created.

8                   The resolution was created with the help  
9 of the applicant and the input. So that by the  
10 time we go to the zoning and hearing, while there  
11 may be things that we might want to change to some  
12 extent, it's going to be something that's been  
13 fairly flushed out.

14                  MR. HOCHMAN: And it has to comply with  
15 the code.

16                  MAYOR STANCZYK: Yes. And they all know  
17 that.

18                  MR. HOCHMAN: That's an overarching  
19 document that says you need 175 parking spaces.  
20 Even if you wanted to settle, you would say, I  
21 reject it because it doesn't comply with our code.  
22 Even if they were to say, listen, we don't want  
23 any money. Take zero. Here is our settlement  
24 offer. No. Why not? It doesn't comply with the  
25 code.

1 MR. SCHAFFER: On their side, have they  
2 been asking us to go make any adjustments to code?

3 MS. BOUTSIS: No.

4 MR. SCHAFFER: So they don't mind staying  
5 within code, correct?

6 MR. HOCHMAN: Again, we are not exactly  
7 sure. I have not received a list of demands from  
8 them.

9 MR. SCHAFFER: If they start asking for  
10 variances on codes saying we want to be able to  
11 have something different, that's another --  
12 they're not asking for variances at this point to  
13 any of the codes?

14 MR. HOCHMAN: Correct.

15 MR. SCHAFFER: They are just asking for  
16 changes to the site plan, which don't violate any  
17 codes. It's just a change to the existing site  
18 plan as a matter of neighborhood issues and things  
19 of that nature?

20 MR. WILLIAMS: Right.

21 MS. LINDSAY: Just as at the Westminster  
22 zoning hearing the other night, you have the  
23 opportunity, if you see that a condition needs to  
24 be added or modified, you can work with the  
25 applicant at the hearing to get them to agree on

1 it.

2 So that is a possibility, just as we did  
3 with Westminster the other night. And as you  
4 remember, I asked for something, and I said I hope  
5 you will agree to this, and they went back and  
6 talked and came back and were agreeable. That  
7 option is still open to us when we have the  
8 hearing.

9 MR. SCHAFFER: Okay. And again --

10 MS. BOUTSIS: If they agree at a hearing  
11 to something that may be a little bit contrary,  
12 that is probably something we can work on because  
13 they, at the public hearing, agreed to the  
14 condition, if you follow me.

15 MR. SCHAFFER: I understand. Okay.

16 MAYOR STANCZYK: Your number is?

17 MR. SCHAFFER: I am comfortable with  
18 \$250,000. I am not happy. I am mad as I'll get  
19 out there that we are in this position, for  
20 whatever reasons that are involved. I'm holding  
21 back. I had to make that decision, and I am not  
22 pointing fingers of blame, but I tell you, it's  
23 not a pleasant decision I had to make, and I'm not  
24 happy.

25 MAYOR STANCZYK: Mr. Fiore, did you have

1 an opinion?

2 MR. FIORE: No. I go with Councilman  
3 Schaffer, just stated what I stated in  
4 December 2010 when I took office. I know  
5 Mr. Williams and Ms. Boutsis and our clerk said  
6 the same thing. I understand how you feel. Why  
7 am I put in this situation? Why did I do this?  
8 We assume the responsibilities of the office we  
9 hold, and I understand that.

10 My other concern is basically at the  
11 hearing on the conditions, and I think  
12 Councilwoman Lindsay said it. We have the ability  
13 at this hearing to work with the applicant and  
14 change this stuff. I think it goes back to  
15 exactly what I said at the very beginning, and I  
16 am glad that Councilwoman Lindsay and Mr. Dubois  
17 echoed my sentiments.

18 It appears -- and I don't know these  
19 people at this group, CCOCI. I don't know this  
20 Mr. Cleary. I don't know -- never met him. Don't  
21 know anything about him. But if there's a  
22 willingness to settle, and as adamant as everybody  
23 was for six or seven years, I think we need to go  
24 that route, and hopefully that will happen.

25 And I really believe the overwhelming

1 sentiment in this community, from 136th Street  
2 to 184, from the water to US-1 is to finally put  
3 all of this to rest. And I think, as much as I  
4 disagree with the Mayor and Councilwoman Lindsay  
5 on items, I think they may share some of that.  
6 That is all I have.

7 MR. HOCHMAN: Thank you very much.

8 MS. BOUTSIS: It's 8:22 p.m. Thank you  
9 and good-bye.

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REPORTER'S CERTIFICATE

I, ROCHEL ALBERT, Certified Shorthand Reporter, certify that I was authorized to and did stenographically report the transcript in the above cause; that the transcript is a true and complete record of my stenographic notes; and that this computer-assisted transcript was prepared under my supervision.

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

DATED this 8th day of January, 2013.

\_\_\_\_\_  
ROCHEL ALBERT, CSR  
Notary Public, State of Florida  
at Large. My commission expires  
September 4, 2013. Bonded  
through Budget Insurance  
Commission Number DD055054