

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

CASE NO: 08-28977 CA 30

ORIGINAL

9705 Hibiscus Street
Palmetto Bay, Florida,
Monday, 7:00 p.m.,
June 20, 2011.

APPEARANCES:

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

Also Present: Jeffrey Hochman, Esq.
Johnson & Anselmo Law Firm

Attached: Form 8B

1 MS. BOUTSIS: Good evening everyone, as
2 the Village Attorney I have requested that
3 the Mayor and the Village Council meet in
4 the defense of certain legal actions
5 concerning Palmer Trinity Private School
6 versus the Village of Palmetto Bay, Circuit
7 Court Case Number 08-28977 CA 30, which is
8 now in Federal Court.

9 With us tonight is Jeffrey Hochman,
10 legal counsel from Johnson & Anselmo,
11 appointed from the Florida League of Cities.
12 Let's go around the room and introduce
13 ourselves. First, today is Monday, June
14 20th of 2011 and it is 7:05 pm.

15 I'll start. My name is Eve Boutsis, I
16 am the Village Attorney.

17 MS. LINDSAY: Joan Lindsay.

18 MR. PARISER: Brian Pariser.

19 MR. TENDRICH: Howard Tendrich.

20 MR. FIORE: Patrick Fiore.

21 MS. STANCZYK: Shelley Stanczyk.

22 MR. HOCHMAN: Jeff Hochman.

23 MR. WILLIAMS: Ron Williams.

24 MS. BOUTSIS: The court reporter is
25 here to take down the testimony that is had

1 tonight. This is in regards to settlement
2 and an update in the litigation.

3 The court reporter shall tape-record
4 the time and termination of the session, all
5 discussions and proceedings that occur, the
6 names of all persons present during the
7 session and the names of the persons
8 speaking. The transcript will be made a
9 part of public record upon the conclusion of
10 the litigation.

11 And again, please one person speak at a
12 time because the court reporter does not
13 have the ability to take two people down at
14 the same time. Try to keep your answers to
15 yes or no, not uh-huh or uh-uh, those kind
16 of things do not come up. All right. Jeff.

17 MR. HOCHMAN: Good evening everybody,
18 just to do a couple more preliminary
19 statements. Although this is a privileged
20 conversation, it is not permanently
21 privileged, which means at the end of this
22 litigation the transcript becomes a matter
23 of public record, so when litigation ends
24 there is always a chance that they can order
25 the transcript, read it and find out what

1 comments you made or didn't make that you
2 may not want to be a part of public record.
3 So those are other preliminary points.

4 This is the second time my firm has had
5 the opportunity to handle this case on
6 behalf of the Village. There was another
7 companion case that was in State Court, we
8 moved that to Federal Court. At that time
9 Stanley Price was handling the case and he
10 decided that he did not want to litigate in
11 Federal Court. He dismissed the federal
12 claims, the matter was then remanded back to
13 State Court.

14 Apparently, Stanley Price's
15 relationship with Palmer Trinity has changed
16 and then now they have a new lawyer named
17 Sean Cleary. Sean then pursued a separate
18 lawsuit, filed a number of claims in State
19 Court.

20 My firm got involved again and I wanted
21 to make sure there were no federal claims.
22 An order was entered by the State Court
23 Judge confirming that none of the
24 allegations in the first version of this
25 lawsuit were federal in nature.

1 Then Sean apparently had a change of
2 heart and he filed a Third Amended Complaint
3 which undisputedly included a federal claim.
4 My office then moved the case back up to
5 federal court. It is now pending in federal
6 Court before Judge Seitz. It was before
7 Judge Leonard, and Judge Leonard entered an
8 order recusing herself and we just most
9 recently received a Motion for Remand, which
10 is Palmer Trinity's effort to get back to
11 State Court and to avoid the Federal Forum
12 and the jurisdiction of Judge Seitz.

13 There are 11 counts in the complaint.
14 We have filed a Motion to Dismiss on behalf
15 of the Village indicating that each one of
16 the claims is facially deficient and not a
17 valid cause of action, except for one.

18 There is one claim which asserts that
19 the Village failed to provide public records
20 under Section 119.07 Florida Statute. That
21 does state a valid claim if the Village did
22 not provide the public records it was
23 supposed to.

24 The remedy would be an order by the
25 Court compelling the Village to provide the

1 public records and then to determine if
2 there was attorney's fees involved in
3 asserting that claim and prevailing on it
4 and then there would be an entitlement to
5 award attorney's fees.

6 That would be a State Law Claim and it
7 would be kind of a run-of-the-mill claim,
8 which quite frankly, I don't know whether
9 your clerk or the people that work here at
10 the Village complied with their duty under
11 the law to provide those records or not.
12 There has been lots, and lots, and lots of
13 records, but it's fairly easy to find out
14 whether they did or didn't.

15 The reason I am here is because we just
16 recently received from the plaintiff's
17 attorney, and when I say recently, it's
18 dated May 31st of 2011, a 14 some-odd page
19 Demand Letter directed to you, indicating
20 that for the bargain basement price of five
21 million dollars and a concession that
22 whatever Palmer Trinity wants to do right
23 now is fine, and they will dismiss all of
24 the claims. Both the claims in Federal
25 Court and there is also now in a separate

1 companion litigation that my office is not
2 handling, the State Law claims.

3 MS. BOUTSIS: That's the Stan Price
4 litigation.

5 MR. HOCHMAN: It's a nine-page letter,
6 but there is also an exhibit that's a
7 General Release Agreement which makes it a
8 little longer.

9 Paragraph 54 of that document says,
10 among other things, Palmer Trinity has
11 suffered compensatory damages including the
12 loss of tuition revenue, estimated at 14.4
13 million dollars. Loss of philanthropy
14 estimated at more than 1.351 million
15 dollars. Loss of fields, buildings,
16 et cetera, attorney's fees and costs at more
17 than two million, and interest, among other
18 damages.

19 So they say that the damages are more
20 than 17.751 million, which they indicate is
21 3.55 times the policy limits Palmer Trinity
22 is currently aware of in this case and based
23 upon the Village's unrepresented
24 disclosures.

25 So basically their threat to you is

1 that if they prevail on litigation they will
2 receive a judgement far in excess of any
3 insurance coverage and that the Village is
4 therefore potentially exposed to liability
5 that it would have to pay from its own
6 treasury.

7 The purpose of the meeting today is to
8 determine whether settlement should be
9 considered, the potential exposure.

10 Two issues, one is the litigation and
11 the other, as you know, is their pending
12 application for special use exception for
13 their site plan.

14 So, does anybody have any questions so
15 far?

16 One of the reasons for the executive
17 session is to determine whether there is a
18 consensus one way or the other as to what
19 would be an appropriate way to respond to
20 Mr. Cleary's letter as to whether the
21 Village would want to consider paying five
22 million dollars to settle the lawsuit,
23 alternatively, possibly authorizing me to
24 issue a counter-offer, alternatively, or
25 rather me to simply say no thank you, and to

1 get a general consensus.

2 No vote can be taken in this meeting
3 because any vote would have to be done in
4 the public forum, but this is more of an
5 information gathering session and a sense of
6 consensus to figure out the instructions for
7 me to pursue.

8 With respect to the litigation, other
9 than the public records request which is
10 section, I think it's Count Seven of the
11 Third Amended Complaint, all of the other
12 claims in my opinion at this point are
13 probably going to be dismissed.

14 There is a possibility to amend the
15 claims and there is some recent case law
16 that suggests that there may be a valid
17 claim based upon the history and the facts
18 of the case, but as of today that potential
19 valid claim has not yet been asserted.

20 And the other claims about the
21 invalidity of your ordinance, 2-106,
22 spoliation of evidence, violation of equal
23 protection under the State Constitutional
24 Law, the violation, the violation under the
25 Miami-Dade County Citizens Bill of Rights,

1 the Common Law Claim with Abuse of process
2 and the conspiracy claims, none of those are
3 valid claims right now against the Village.

4 So there isn't really any exposure, as
5 far as I am concerned, immediately with
6 respect to the complaint.

7 There is a possibility that he could
8 amend the Circuit claim, which may pose one,
9 but that's not yet posed. The 119 claim,
10 nothing you do here is going to resolve
11 that. Either the records were or were not
12 disclosed and either there is attorney's
13 fees involved in that or not, so I don't
14 look at that as being a major source of
15 exposure. And I think the five million
16 dollar demand is out of proportion with the
17 gravity of the claims framed in the Third
18 Amended Complaint.

19 MR. PARISER: It's sort of premature,
20 with things bouncing back and forth between
21 State and Federal Courts, you are not going
22 to get anybody to rule, whether any of those
23 counts state a course of action any time
24 soon, apparently.

25 MR. HOCHMAN: I will speak to that

1 issue directly, that' actually an excellent
2 point.

3 Procedurally my office filed a Motion
4 to Dismiss. Procedurally they should have
5 been responding to that this week. Instead
6 of responding to the motion with what they
7 call a Responding Memorandum of Law, instead
8 Palmer Trinity filed a Motion to Remand.

9 What they said essentially was, they
10 don't want to be in Federal Court they want
11 to get back to State Court. They filed
12 another motion requesting that The Court not
13 impose the deadlines for briefing the Motion
14 to Dismiss and instead deal with the Motion
15 for Remand.

16 We agreed with that on behalf of the
17 Village because the more time it takes,
18 obviously, the better off you are. The
19 longer that you delay adjudication from a
20 Defendant's point of view, it's usually a
21 good strategy.

22 So what we are going to do now is we
23 are going to respond to the Motion for
24 Remand and it's probably going to be a
25 number of weeks and maybe even months before

1 the Court entertains the Motion to Dismiss
2 on the merits. There will be another brief
3 and then the Court will respond, so you are
4 right in terms of scheduling.

5 MR. PARISER: I read the memorandums
6 and what have you, if it doesn't state a
7 cause of action -- I mean anybody can sue
8 anybody for anything. I can sue somebody
9 for one hundred million dollars tomorrow, it
10 doesn't mean I am going to get it, it
11 doesn't mean the law is on my side.

12 I mean, I don't know if you can rate
13 how strong or weak their claim is from what
14 I am hearing from you. The only thing that
15 might be of substance is the public records
16 request, which anybody in the Village can
17 send them a public records request and if
18 the Village doesn't comply, the Village may
19 be on the hook for their attorney's fees to
20 get those records.

21 MR. WILLIAMS: What did they ask for?

22 MS. BOUTSIS: They asked for every
23 single e-mail, document, related to Palmer
24 Trinity since 2006, I think. And your
25 zoning staff, I believe under -- I am not

1 sure who it was, if it was Julian at that
2 point, gave everything that was produced
3 from all of the hearings.

4 As far as I know there is nothing
5 missing, except relating to the litigation
6 because it was subsequent to the hearing,
7 but other than that ---

8 MR. WILLIAMS: There were some e-mails
9 that weren't provided?

10 MR. HOCHMAN: My understanding is that
11 Palmer Trinity believes that you have an
12 ordinance that requires the disclosure of
13 all communications involved in the quasi
14 judicial hearing. So if there is an
15 applicant at a quasi judicial hearing, that
16 applicant is entitled to know all of the
17 information that is before the tribunal.
18 And because of e-mail, the tribunal,
19 consisting of members of the appointed, they
20 receive communications from the public.
21 People send e-mails.

22 The issue then becomes whether as
23 applicants they are entitled to get a copy
24 of that e-mail, because that is a piece of
25 information that's before the tribunal which

1 the applicant should also have.

2 They are indicating that because they
3 did not receive all of the those e-mails,
4 that therefore they did not receive due
5 process of law. Which is, for example, if
6 you are going to go to trial, you are
7 entitled to know all of the evidence
8 beforehand and then try the evidence that
9 has been disclosed to you. And they are
10 indicating that they did not receive some
11 evidence that was being considered during
12 that quasi judicial proceeding.

13 That I believe is the substance of
14 their ---

15 MS. BOUTSIS: It went beyond that to
16 afterwards as well, but yes, that is the
17 substance of it. And as you know, we spent
18 quite a bit of time producing and copying
19 and circulating the e-mails that were
20 disclosed. I think that I have one hundred
21 thousand documents that I produced.

22 Now, if you guys missed something or
23 the prior counsel missed something, I don't
24 know, but everything that was provided to
25 the Clerk, Planning or myself was produced.

1 MR. HOCHMAN: One of the issues of the
2 law is that the person who is complaining
3 has the burden of proof. So at trial on
4 that issue, with respect to the 119 claim,
5 the public records claim, it would be the
6 burden upon Palmer Trinity to establish that
7 there was a request made for a particular
8 public record, that the request was not
9 responded to properly. And there are lots
10 and lots and lots of documents, and so far I
11 don't know what evidence they have that a
12 particular document was not actually
13 produced to them.

14 With respect to the rest of the claims,
15 for example, they have asserted that your
16 ordinance, 2-106 is invalid. Quite frankly,
17 I don't think it's a proper claim, I don't
18 think it's an invalid ordinance.

19 Whether it changed based upon current
20 law and/or other issues, it's a matter for
21 the council to take up in a different forum
22 but not a matter of litigation.

23 MR. BOUTSIS: Do you want to talk
24 about the 1983?

25 MR. HOCHMAN: Yes, in the 1983 claim

1 they're claiming they were denied their due
2 process rights under the law. Meaning that
3 they were deprived of the use of their
4 property. There is actually a lot of
5 federal law on that issue and the federal
6 law is very favorable to the municipalities.

7 There is two types of due process
8 violations, there is a substantive due
9 process violation and a procedural due
10 process violation. And both branches of
11 that claim are very favorable to
12 municipalities.

13 A procedural due process claim is a
14 deprivation of life, liberty or property
15 under the law. Basically the government
16 can't take those things from you.

17 In this case, the way that the law is
18 developed is, the permit that they want, the
19 approval of the City to build their school
20 the way they want it, according to the
21 federal courts is not a substantive due
22 process rights, it's a matter of state law,
23 and therefore, because those permits are
24 creatures of state law, there is no federal
25 claim for it.

1 And I am sorry that I am using all of
2 these lawyerly words, but that's how the
3 federal courts view it, it's basically not a
4 substantive due process violation. Buts
5 that's how the federal courts have
6 interpreted the United States Constitution.

7 They would have, however, a procedural
8 due process claim if they were denied the
9 ability to contest your decisions.

10 For example, if you said no, you can't
11 have a zoning change, and there was no way
12 to dispute that and take it to the next
13 level of review, that would provide for them
14 a procedural due process claim. Because if
15 they go to a federal court and say, the
16 state government denied me the opportunity
17 to do something and then they didn't give me
18 a way to seek a remedy for it.

19 But here, as you know, they did have a
20 remedy, they were able to appeal that
21 decision to the Appellate Division of the
22 Eleventh Judicial Circuit Court in
23 Miami-Dade County. And with respect to the
24 zoning decision, the Appellate Division
25 agreed with you and then it was appealed

1 again to the Third DCA and the Third DCA
2 reversed it.

3 So with respect to the procedural due
4 process, they did receive it, so there is no
5 federal claim for that as they have
6 mentioned in the complaint. And that's
7 really the components of their 1983 claim.
8 That's why we don't believe that there is a
9 valid claim pending right now that they can
10 succeed on with respect to the federal
11 court.

12 That's why the five million dollar
13 proposal to me at this point in litigation
14 seems out of proportion with the validity of
15 the claims and potential exposure created by
16 those claims.

17 Am I speaking in a foreign language, I
18 apologize if I am? And I have to let you
19 know, these seem to be very technical kinds
20 of claims as opposed to the other claims.

21 For example, abusive process, which is
22 for example, I cannot issue a warrant for
23 your arrest if I don't have the ability to
24 do it.

25 So the Mayor, for example, couldn't

1 sign a document saying, Bob Smith go get
2 arrested and then give it to the police
3 department and send it out. You could be
4 subject to the tort in State Court for
5 abusive process because you have issued a
6 legal process without the authority to do it
7 yourself. That's a simple claim. But the
8 procedural and substantive process
9 components of the 14th Amendment of the
10 United States Constitution is a little more
11 murky.

12 MR. PARISER: Reading your memorandum,
13 some of these claims are first case
14 impression, not even litigated before. They
15 are being very creative, he is making up
16 claims. Where would there be any exposure
17 to the Village?

18 MR. HOCHMAN: Well, there is a
19 theoretical claim for protection under the
20 United States Constitution, which would be
21 that other applicants who were similarly
22 situated to Palmer Trinity received better
23 treatment from this Council or prior council
24 than they are receiving. That the reason
25 that they were being denied was based upon

1 discrimination, that you don't like them
2 based upon whether it is a political
3 affiliation, religious affiliation, or just
4 who they are. That you now have some sort
5 of vendetta against them but you don't have
6 a rational basis for treating them
7 differently.

8 MR. PARISER: I thought it was a
9 public, private, that they were not being
10 treated the same as a public school?

11 MR. HOCHMAN: They are saying that, but
12 my understanding is that that would be a
13 similar situated categorization.

14 Right now they are saying, you can't
15 treat a private school differently than a
16 public school. I don't believe federal law
17 would agree with that so I don't believe
18 that would be a fair claim.

19 What's interesting about that is that
20 they pled in a common compliant under state
21 law, meaning a deprivation of their
22 protection under state constitution not the
23 federal constitution.

24 The difference is that there is a
25 potential protection claim under the federal

1 constitution, but Florida law does not allow
2 a State Court claim under the state
3 constitution for protection. So they can
4 amend and now assert it properly, but they
5 haven't.

6 MR. STANCZYK: Does that mean it's
7 going to go away because they haven't
8 asserted it properly?

9 MR. HOCHMAN: No, it doesn't mean that.
10 It means what's likely to happen is that the
11 court will deny the Motion for Remand, it
12 will entertain the Motion to Dismiss, it
13 will dismiss many of their claims and give
14 them leave to amend to file a Fourth Amended
15 Complaint. That's likely the result of the
16 next three months.

17 MR. PARISER: As long as it stays in
18 federal court our insurance policy, your
19 firm is in the case?

20 MR. HOCHMAN: It doesn't matter whether
21 it's state court or federal court, what
22 matters is there is a claim seeking damages
23 against the Village.

24 MR. PARISER: Damages, whatever shape
25 or form?

1 MR. HOCHMAN: Correct. You have a
2 coverage agreement under the Florida
3 Municipal Insurance Trust administered by
4 the Florida League of Cities.

5 The coverage agreement is just like an
6 insurance policy in terms of what it
7 provides to you in benefits. And it lists
8 out what's covered and what's excluded and
9 one of the items that's covered is a claim
10 for damages.

11 For example, there is a claim for
12 depriving them the evidence to assert a
13 property claim against concerned citizens
14 and Ms. Lindsay. You have deprived them of
15 that evidence. That would be a proper claim
16 under state law for spoliation of evidence,
17 it's a tort claim.

18 Theoretically, having that claim framed
19 in the complaint triggers coverage, so you
20 get me and you get my services for all 11
21 counts, even though only one may be covered.

22 MS. BOUTSIS: Just so we are clear, he
23 is looking for some sort of consensus or
24 informal action as to the settlement offer.
25 There is a memo presented to the court

1 reporter relating to Ms. Lindsay and her not
2 participating in any kind of consensus or
3 any kind of vote based upon the Attorney
4 General's opinion and direction from the
5 counsel from the Attorney General's Office
6 earlier today, and we'll incorporate that in
7 the record. She has filed a form 8B with
8 that.

9 So as for the rest of you, anything you
10 would like to add to any consensus that you
11 would like to give to Mr. Hochman?

12 MR. PARISER: Personally I think it's
13 premature. I think a Motion to Dismiss has
14 to be -- I just don't even see from reading
15 the memos whether they have an actionable
16 cause of action against the Village.

17 MR. BOUTSIS: Did you want to address
18 the Motion for Remand in the Pullman
19 argument?

20 MR. HOCHMAN: If you thought the first
21 part of this discussion was complicated, the
22 extension doctrine is even more so.

23 Let me put it this way. I do not
24 believe that having asserted a claim for any
25 protection violation in 1983 against the

1 Village seeking damages that the Pulman
2 extension doctrine applies. I think the
3 federal court will say, I am going to keep
4 the claims here, and indicate to Mr. Cleary
5 that if he wants to dismiss the 1983 claims
6 like Palmer Trinity did with their prior
7 pleading, then he can certainly deprive the
8 federal court of that jurisdiction and be on
9 his way back to State Court.

10 Let me point out that Judge Langer,
11 though, who is the State Court Judge, is
12 very competent. He understands the issues,
13 and I think he could adjudicate them in a
14 fashion that would be acceptable.

15 The reason that we as defense counsel
16 would typically remove a federal claim to
17 federal court is, federal court judges have
18 a lot more experience, they know the federal
19 law. The federal law is very favorable to
20 you, so to know the law well and have
21 someone understand it and apply it in a
22 fashion where they feel comfortable doing it
23 make sense. I feel that Judge Langer,
24 though, he's got the intellectual ability to
25 do it as well. He may not be as familiar as

1 a federal judge, but I don't think that he
2 would hesitate to rule and apply the law in
3 a proper fashion either. But federal court
4 helps the defense so we are in federal court
5 right now.

6 Let me make one more comment. Right
7 now you are in a strong position. I think
8 Mr. Cleary realizes that. He has seen my
9 motion, you were persuaded by my motion, but
10 I am an advocate, so don't be too persuaded.
11 My job is to persuade and to get a court
12 lean in a certain way or a decision-maker
13 lean in a certain way.

14 Now that Palmer Trinity also has that
15 sense of what their likelihood of success
16 is, it may be in the best interest to say,
17 well, since we have a strong position why
18 don't we try and offer something back.
19 Because the litigation does drain resources,
20 it does make the people in your
21 administrative staff have to go get
22 documents and waste their time.

23 There are reasonable business related
24 decisions to counter-offer, especially when
25 you are in a strong position, and that would

1 be something that can be discussed in this
2 evening as well.

3 MR. PARISER: I think there was
4 something technical, I think it would be
5 that he is basically asking us to contract
6 zone also. His kicker is, you give us our
7 zoning application, and I don't think that
8 you can do that.

9 MR. HOCHMAN: You have already given
10 him his zoning application, that's already
11 been approved.

12 MS. BOUTSIS: It's on the rezoning.

13 MR. PARISER: He said, and the 1,150.
14 Look at the last paragraph of his letter.

15 MR. HOCHMAN: But again, you don't have
16 to agree to everything.

17 MS. BOUTSIS: You can counter.

18 MR. HOCHMAN: You can always counter.

19 To the extent that the land use issues
20 are also relevant to today's discussion, it
21 is possible that the Village may not be able
22 to make anymore changes depending upon how
23 you read the mandate. There is a lot of
24 arguments on both sides of the issues of
25 whether you have any latitude right now even

1 to conduct another quasi judicial hearing,
2 take additional evidence and enter into any
3 other form of restrictions other than simply
4 rubber-stamping the application as present
5 form.

6 Even I can talk to you, she can play
7 the plaintiff's perspective and I can play
8 the defense perspective and give you again
9 persuasively our arguments as to what's
10 going to happen, but I don't think you need
11 to get down to that level of minutia to
12 decide whether there are any -- first of
13 all, should you counter-offer, yes or no,
14 versus, in what form of counter-offer.

15 Should you counter-offer is an easy
16 thing. If the answer is no, then it doesn't
17 matter, there is no second level of analysis
18 going on. If yes, counter-offer is probably
19 advisable, let's offer X, Y, Z, then that
20 would be something that we get down to the
21 second level and then, well, what should it
22 be X, Y or Z.

23 Keeping in mind that if you offer
24 something that is -- I think five million,
25 for example is exceptionally high. If you

1 want to send the message back five dollars,
2 obviously there is no progress going to be
3 made that way. But those are items to be
4 considered and appropriately so in an
5 executive session.

6 MS. BOUTSIS: We all know that this
7 litigation, whether it's in the appellate
8 forum or in the federal forum or state
9 forum, is probably the number one hotbed
10 topic for this community and it's very
11 polarized.

12 The discovery, other than some paper
13 discovery, really hasn't taken place. We
14 have had a few depositions but they have
15 been minor. You are going to get into the
16 expense of all that and the time of all
17 that. They want the Mayor's deposition,
18 eventually they are going to want the Vice
19 Mayor's, Howard's and you know, the
20 continuation of other depositions. And all
21 of these lead to other expenses.

22 And the 19th, whatever happens in the
23 19th, does not necessarily end this
24 litigation, the federal litigation, unless
25 the Court agrees with him on everything

1 except 119 and they don't amend again to the
2 Fourth Amended Compliant.

3 MS. FIORE: Can I speak now?

4 MR. HOCHMAN: Yes.

5 MR. FIORE: Thank you for coming and
6 explaining everything. I will agree with
7 what was said. I think this is premature
8 because we have a hearing coming up which I
9 don't even believe that we need.

10 I don't think that we should
11 counter-offer. I am hoping that this could
12 be resolved amicably, if what the Court has
13 just ruled, as you said, is rubber-stamped
14 and we provide and put an end to this.

15 I mean, maybe I am not saying it will
16 go away, but it might help resolve the
17 financial aspect. Not only the lawsuits but
18 to the Village, to the tax payers and to our
19 staff.

20 MS. STANCZYK: I am not sure when you
21 talked about rubber-stamping.

22 MR. HOCHMAN: There is an argument that
23 the Court by granting the Motion to Compel
24 with respect to the following of their
25 mandate, and again that's not the case that

1 I am handling that's the State Court matter,
2 but if you look at the way that the appeal
3 from the last request, remember there is a
4 request made, there is a quasi judicial
5 hearing on it, it was granted with two
6 conditions.

7 Palmer Trinity then appealed the two
8 conditions. The Appellate Division, The
9 Circuit Court conducted a proceeding and
10 struck down both conditions. It got then
11 remanded back to you. Then there were more
12 proceedings to say, well, what do you mean.

13 Palmer Trinity moved to compel saying,
14 approve my site plan without those
15 conditions. Or another way of looking at it
16 is, conduct another quasi judicial hearing
17 to find out whether those conditions or
18 different conditions could be established.

19 One of the arguments was that all the
20 Appellate Court did was say there wasn't
21 enough evidence to support one of the
22 conditions, so you are going to have another
23 quasi judicial hearing to have an
24 opportunity to provide more evidence. You
25 tried it once and you didn't make it, but we

1 are going to give you a second chance.

2 The most recent order issued suggests
3 that's not what the intent of The Court was
4 when it said go back. There is an argument
5 to be made, and I believe a strong one that
6 says, I want you to approve their site plan
7 without the two conditions that were the
8 subject of the appeal.

9 There is another argument to be made
10 that the Court sitting in its appellate
11 capacity did not make a correct ruling, and
12 that you still have the opportunity to go to
13 a quasi judicial proceeding and impose
14 whatever conditions are supported by
15 competent substantial evidence on their
16 project as to those particular conditions.

17 And then what would normally happen is,
18 Palmer Trinity would then appeal that back
19 up to that Appellate Division, that
20 Appellate Division then would enter an order
21 and then the issue would be whether,
22 depending upon the Appellate Division at
23 that point, whether that decision would be
24 appealed to the next higher court, which
25 would be the Third District Court of

1 Appeals. Then the Third District would make
2 a determination based upon whether the
3 Appellate Division applied the proper law
4 with respect to the issue of what was the
5 quasi judicial hearing that you are about to
6 conduct, what was its proper scope.

7 So the idea of a rubber-stamp is,
8 either approve without any conditions,
9 without the two conditions that were imposed
10 or go back and have a full blown evidentiary
11 hearing in a quasi judicial process and keep
12 that process.

13 MS. BOUTSIS: Again, when he says full
14 blown, its as to those two conditions,
15 because the Court said, you can't consider
16 the other 80, unless we can find a way to
17 appeal, which is part of a subsequent
18 discussion.

19 I have spent quite a bit of time in the
20 past weeks since this Motion for
21 Clarification, the order on the Motion for
22 Clarification came out. And I have been
23 specifically asked by at least one council
24 person here tonight, what are our chances of
25 appealing this language that precludes going

1 back and dealing de novo or review from the
2 beginning, fresh slate as to the 80 other
3 conditions that were not appealed.

4 I don't have a straight answer for you.
5 I don't think it's appealable, but I don't
6 know for one hundred percent that it isn't.

7 So my recommendation is, I went out and
8 tried to get appellate review, I had a lot
9 of problems finding people that didn't have
10 conflict. I finally had come to the
11 recommendation, and I believe I forwarded
12 you the resume, but I have other copies for
13 you. I was recommended in hiring former
14 Supreme Court Judge Raoul Cantero. If you
15 would like to pass that down.

16 He was on the Supreme Court of the
17 State of Florida between 2002 and 2008. He
18 is a certified appellate lawyer, and if you
19 are talking about somebody with clout and
20 credentials behind him, this is the person
21 who would walk into a courtroom and would
22 still be Your Honor.

23 I have asked him to give me an opinion,
24 but I can't officially retain him until you
25 have approved it, whether this Motion for

1 Clarification can be appealed.

2 I have also distributed to you the
3 memorandum from the City of Ft. Lauderdale
4 which was in a similar situation, and I made
5 copies for everyone just in case. But he
6 issued this opinion on March 10th of this
7 year in a quasi judicial hearing. The order
8 of the Appellate Court was similar to ours,
9 which was quashed and take no further
10 action.

11 Here Harris Stewart, the City Attorney
12 of Ft. Lauderdale, the former County
13 Attorney of Broward County said, you
14 basically need to make your decision upon
15 the record and not have a new hearing.
16 However, council decided to do so he said,
17 based upon a Broward case. The case is
18 Broward versus GBV, which is the case that I
19 cited to you in all of the briefs and a
20 Motion for Clarification. He said, you can
21 have an evidentiary hearing on the specific
22 issue that was remanded back should you so
23 decide.

24 I will tell you that I had a
25 conversation with Mr. Stewart about an hour

1 ago, and he said, look, I don't think there
2 is a proposition to really have the public
3 hearing. In his opinion it's law of the
4 case and you should go on the record.

5 Having said that, he thought he was
6 going to be appealed. His council did have
7 a public hearing, they were not appealed,
8 but the council had voted ultimately for the
9 applicant in the end, so there was no reason
10 for the applicant to appeal their decision.

11 I spoke with Craig Collier, the County
12 Attorney's Office of Miami-Dade County,
13 because as you know a lot of this is under
14 the county code. And I just wanted to know
15 when they get a remand that says quash, and
16 the procedures not the details of our case,
17 but procedurally how would they handle it.
18 He said they would have a public hearing but
19 they would not rule opposite to the court,
20 they would quash the two provisions and
21 grant the application.

22 There is some case law that talks about
23 that if there is a substantial change in
24 circumstances or some sort of manifest
25 injustice, that you can go against the

1 ruling of the Court in their decision
2 because there is that change in
3 circumstances or that manifest injustice.
4 And I gave you the cases early, I have been
5 forwarding them around left and right today.

6 I think we have a narrow scope for the
7 hearing on the 19th. It's whether you will
8 have the public hearing or not. And if you
9 have the public hearing I think the record
10 needs to reflect that there is a change in
11 circumstances and manifest injustice, should
12 you make a decision contrary to the quashing
13 and the granting of the application.

14 As far as the appeal, I do recommend
15 the hiring of Raoul Cantero. He is \$650 an
16 hour, but I recommend to get your final
17 opinion as to whether that decision can be
18 appealed and his interpretation of what
19 would be the success.

20 His scope can be expanded towards
21 hiring him in anticipation of anything that
22 happens on the 19th. I don't know how you
23 feel about that. I have given you his
24 resume. He is quite influential and he will
25 give you the certainty as to as far as an

1 appeal of this decision or not. I think
2 it's like a law school exercise. There is a
3 lot of different things you are appealing, a
4 clarification to an enforcement of a mandate
5 to an order that was issued in February.

6 MR. PARISER: The Order of
7 Clarification, the only thing that struck me
8 was, there is that Walt decision which has a
9 severability clause in the resolution and
10 ours didn't. And this Circuit Court
11 Appellate Panel said, I didn't mean you have
12 to have one, we are quashing it. It doesn't
13 mean you need to reopen the whole case. In
14 my opinion, they spoke clearly about that.
15 They said you can't reopen the whole case,
16 it's only on these two issues.

17 The question is, on these two issues
18 how far can you go and whether it's a full
19 hearing de novo, which with that Irvine
20 case, Florida Supreme Court case verses the
21 law in the case that you gave me recently,
22 which said on remand, that's the First
23 District Court of Appeals case that you can
24 only open the issues if there is a change of
25 circumstances with different evidence. I

1 think that it's change of circumstances
2 actually from what date, from the original
3 way back date or from our most recent date?

4 MR. HOCHMAN: From the date that the
5 quasi judicial proceedings evidence was
6 taken.

7 MS. BOUTSIS: One year ago.

8 MR. PARISER: 2010.

9 MR. HOCHMAN: Just so you understand.
10 The idea of law of the case is a kind of a
11 practical doctrine that says, an Appellate
12 Court makes a decision with all of the facts
13 and decides something, and it sends you back
14 down, you are kind of stuck within those
15 parameters. And the exceptions are, unless
16 the facts change so much that you are really
17 dealing with a new set of facts, or unless
18 the law has changed so much in that interim,
19 that it would be manifestly unjust to stick
20 with the old law that's no longer the case.

21 MR. PARISER: The interesting thing on
22 the law of the case, the First District's
23 Opinion was, there was an ---

24 MR. BOUTSIS: The Family Parker Trust
25 Case.

1 MR. PARISER: The Family Parker Trust
2 Case where there was a concurring opinion
3 which basically says, quasi judicial
4 hearing, you better do it right the first
5 time because a lot of people are not going
6 to be able to do it. If you don't dot all
7 of your I's and cross all your T's and bring
8 your experts, you are basically stuck with
9 what's there, and it goes back on remand,
10 but they still left open whether there would
11 be a substantial change of circumstances.

12 The only thing, I don't know what
13 somebody could say, but you probably have to
14 open the hearing to have people express for
15 a substantial change of circumstances.

16 As far as Raoul Cantero, what I would
17 look for him, if anything, and I know Raoul,
18 very straight guy, straight shooter,
19 competent attorney, very smart guy, but
20 short of an appeal, is just to run it by him
21 and say, look Raoul, this is the situation.
22 A, do you think that we have an appeal? And
23 the only appeal I see is whether this
24 Appellate Court Panel and the Circuit Court
25 is interpreting something that the Third DCA

1 has said has to be a severability clause.
2 Yes or no, does there have to be a
3 severability clause? And is this order at
4 this point in time appealable? Well, Raoul,
5 what do you think?

6 And if not, if it goes to hearing, do
7 we open on these two issues. Because they
8 only appealed the two, they're probably
9 stuck with the 80 that they agreed to.

10 So two, how much or to what extent can
11 we solicit evidence, I guess would be the
12 number of students. The other one, the
13 30-year prohibition would be no basis for
14 that.

15 MS. BOUTSIS: We have to strike it.

16 MR. PARISER: That's not even an issue.
17 And ask him, is it worth his opinion. And
18 he is a pretty good opinion, he is a well
19 respected guy. And if he tells us or gives
20 us some direction, at least we have a second
21 opinion. Because I am afraid of going to
22 the hearing, right at the beginning of the
23 hearing there is arguments. You hear
24 everything, you don't hear everything, we
25 have to, I guess, give some direction at the

1 beginning of the hearing, what's going to be
2 allowed to be testified to by both sides.

3 I want to know going in, I don't want
4 to leave it to the day. I want to have an
5 opinion that I can rely on from a reliable
6 source, from a Village Attorney or a second
7 opinion, what the parameters of the hearing
8 are going to be.

9 MS. BOUTSIS: After the research I have
10 done and all of the City Attorneys that I
11 have talked to, I have also spoken to State
12 Attorneys, County Attorneys, et cetera, I am
13 inclined to be Harry Stewart.

14 MR. PARISER: Stewart says ---

15 MS. BOUTSIS: It should be based upon
16 the record that if you decide not to, the
17 Broward case versus G.B.V, is the case to
18 support that proposition. And if you do so,
19 you should put on the record that what is
20 the competent substantial evidence that
21 shows that there is a change in
22 circumstances or manifest injustice. That's
23 the safest route. That's the clearcut
24 safest route.

25 MR. PARISER: You have to open up the

1 public hearing for somebody to at least put
2 forth why there has been a change of
3 circumstances. I think you just can't say,
4 we don't see it. That's what the public
5 hearing is for.

6 MS. BOUTSIS: That would be for the
7 public hearing portion, yes.

8 MR. PARISER: You would have to
9 announce a standard. We are going to open
10 this part of it up, but the standard is
11 there has to be competent substantial change
12 of circumstances significant since the last
13 time, and people will say, A, B, C. It's up
14 to the Village Council to determine if there
15 isn't any competent substantial change of
16 circumstances, then we are stuck with the
17 record from before. Is that how it goes?

18 MS. BOUTSIS: Pretty much.

19 MS. STANCZYK: Pretty much we are going
20 to be stuck with the record from before
21 anyway.

22 MS. BOUTSIS: The records are
23 incorporated clearly.

24 MR. PARISER: I guess the consensus
25 here at the Council is if you feel better

1 with the second opinion.

2 MR. FIORE: Well, I conquer, and I am
3 going to speak to my colleagues here. I
4 know my appearance on this council was not
5 well received by some of you, that's fine.
6 I believe it's time to put this matter to
7 rest. We've spent \$100,000 since I was on
8 this board in December in legal fees for
9 this. I said it before and I am going to
10 say this as kindly as I can, I have watched
11 this tear the city apart and it's time to
12 put this to rest.

13 I believe that we went to court four
14 times. Four times the school was successful
15 and I stated this earlier in other hearings
16 with everyone in here. I draw upon my six
17 years of experience on a previous zoning
18 board when the court remanded an item back
19 to us for the most part. Not for the most
20 part, every time I can recall. We were told
21 by the County Attorney that we cannot
22 violate a court order. We did open a public
23 hearing, in this case this may be a little
24 different and that was it.

25 I believed all along and I still

1 believe that we don't need a public hearing
2 and I think it's more expense to the tax
3 payers and it opens up more wounds. And
4 that's what I believe. Thank you.

5 MS. BOUTSIS: Do you want to play
6 devil's advocate to me?

7 MR. HOCHMAN: I find it to be an
8 intellectual interesting exercise to figure
9 out whether there is a proper appeal in
10 terms of procedure. It's very interesting
11 from a purely legal perspective as to, given
12 it's a quasi judicial proceeding and given
13 it was an appeal and then given what is the
14 scope of the Appellate Court's authority, is
15 great esoteric issues for a lawyer.

16 Having someone as competent as Justice
17 Cantero, from my perspective, is like going
18 to see the U.S. Open and watching great
19 golfers play and whoever wins, wins.

20 I really do not have any advice to give
21 you as to what's in the best interest of the
22 Village with respect to that part of it.
23 With respect to this litigation, I am here
24 to find out whether you want to do anything
25 about it, and so far the consensus seems to

1 be, right now we don't want to counter-offer
2 on the five million dollar demand and that's
3 what I am getting from this proceeding.

4 With respect to what you should do on
5 the 19th, I simply don't have an answer for
6 you.

7 MR. PARISER: I would feel better with
8 a second opinion. Do you have any idea how
9 many hours he would have to put in this?

10 MS. BOUTSIS: I have a call into him
11 because you had asked me that question, and
12 he wasn't available this afternoon.

13 I don't think it will take a huge
14 amount of hours for a person who this is all
15 he does and is a Florida Supreme Court
16 Justice. We can cap it at a certain amount
17 of hours if you would like.

18 MS. STANCZYK: I am just not sure I see
19 the value of the second opinion right now,
20 mainly because we know what we have to do.
21 There aren't a lot of choices.

22 MS. BOUTSIS: If he says there is a
23 good shot at an appeal and you decide to
24 appeal, the notice is due on the first of
25 July, and then he has to write the briefs,

1 and we have to write the briefs. Having
2 said that, the hearing on July 19th is not
3 going to happen if you decide to do that
4 Appeal because it changes the whole dynamic
5 of the hearing.

6 MS. STANCZYK: The outcome of the
7 appeal is going to change what?

8 MS. BOUTSIS: Whether you can have a
9 full-fledged hearing on all of the items and
10 all of the conditions or not, and whether
11 the Court circumvented its authority by
12 ruling and giving that direction.

13 MR. PARISER: If you don't have an
14 appeal you are left with an attorney's menu
15 of rubber-stamp, allow testimony that is
16 competent and substantial with a significant
17 change of circumstances, or allow open
18 testimony on that issue. So there is three
19 ways that it can go, and I would like some
20 better direction on those three.

21 MS. LINDSAY: Or perhaps another
22 selection would be to weigh the evidence
23 that is already on the record and make your
24 decision just as if you were sitting there
25 that morning having heard all of the

1 evidence.

2 MR. PARISER: That's a fourth one.

3 MS. STANCZYK: Because it's the same
4 evidence.

5 MR. PARISER: I would like a second
6 opinion as to which of the four is the way
7 to go.

8 MR. HOCHMAN: Be careful because I
9 don't think that is the scope of
10 representation that's being asked of Judge
11 Cantero. Judge Cantero is being asked to
12 determine can the Village appeal the
13 decision entered by the Appellate Tribunal
14 limiting what you can do at your hearing.
15 Not the substance.

16 MR. PARISER: I am asking if he can do
17 beyond that. Is he willing to do beyond
18 that, because that just begs the question.

19 MS. BOUTSIS: I have asked him for a
20 scope from one all the way through to any
21 possible appeal in July. So he has
22 indicated that he is available.

23 Other than understanding that he will
24 be on vacation for two weeks sometime in
25 July and we may have to have an associate

1 help us or a junior partner, but he will be
2 around.

3 MR. PARISER: He is going to be able to
4 tell you, give you an opinion pretty
5 quickly?

6 MS. BOUTSIS: On the appeal before July
7 1st, which is before his vacation,
8 absolutely, he has to.

9 MR. PARISER: And then if he says, you
10 don't have a chance at an appeal, then we
11 are left with the Chinese menu?

12 MS. BOUTSIS: Yes.

13 MS. PARISER: Then how do we determine
14 which one of the four is the way to go?
15 That's all up to you solely?

16 MS. STANCZYK: That would be up to us.

17 MS. BOUTSIS: It's up to you all on
18 what you decide to do. I have given you my
19 opinion and I will give it to you again.
20 And I have indicated to Mr. Cantero, I have
21 asked him also for his opinion and he
22 doesn't seem to have a problem giving us his
23 opinion, but it may be that he may not give
24 you a clear answer that this is what you
25 will do. He may give you, these are your

1 options. But he is willing to entertain it
2 and he is willing to try and give you
3 guidance, yes. His opinion certainly has
4 weight.

5 MR. PARISER: I don't want to have a
6 hearing done and procedurally wasn't done
7 properly.

8 MS. BOUTSIS: I think Jeff said it very
9 well, that there is a lot of esoteric issues
10 here that have not been completely resolved,
11 so I don't think anybody can give you the
12 opinion that you can't be appealed on this.
13 And if you are looking for that, I don't
14 think you are going to get that because you
15 are going to have disqualifiers in there.

16 MR. PARISER: There is two sides for
17 this issue. Palmer Trinity can appeal if
18 one of the four weren't done correctly or
19 anti Palmer people can do it.

20 MS. BOUTSIS: That is correct.

21 MR. HOCHMAN: I mean, if you are
22 concerned about the record, that's what you
23 want to do. It seems like you are at a
24 crossroads. Either you are going to have a
25 hearing, you are going to honor the mandate

1 and not have a hearing, a theoretical
2 rubber-stamp, that would be option number
3 one.

4 And then whoever is against the Palmer
5 Trinity application would then have a right
6 to appeal. And they would appeal it back up
7 to that tribunal. And in that case it would
8 seem to be an easy appeal at that level,
9 where the Village says, we read the mandate
10 and we did what the mandate told us to do.
11 Then the proponents of that appeal would
12 then have the obligation, what I would
13 expect to be an adverse ruling against them,
14 to go up to the Third District Court of
15 Appeals and argue the point that we are
16 discussing now, which is whether the
17 Appellate Court had the authority to limit
18 or not.

19 So it wouldn't be you appealing, it
20 would be you being the subject of the
21 appeal. It would be between two other
22 parties.

23 MR. PARISER: So right now the order on
24 the clarification is basically saying that
25 we said no hearing on everything remanded

1 consistent with these two issues, that's
2 what I am hearing? I believe that's what
3 they said.

4 You can't rehear the entire matter?

5 MS. BOUTSIS: Yes.

6 MR. PARISER: So we are left with two
7 issues, one which is a non-issue. The 30
8 year, and the other one is to what extent --
9 it goes back to the four issues.

10 If you are telling us the council can
11 pick one of four or can we get some
12 direction, better legal direction from ---

13 MS. BOUTSIS: Maybe I wasn't clear. I
14 am telling you that my opinion is the
15 opinion of Harry Stewart, City Attorney from
16 Ft. Lauderdale, I think it's based upon the
17 record.

18 MS. LINDSAY: That's the option that I
19 said. We go back to the hearing, we reread
20 all of the testimony and the transcript and
21 we make a decision based on the evidence.

22 MS. BOUTSIS: But not as to all of the
23 issues but as to the two quashed.

24 MR. PARISER: But there is a public
25 hearing also for those people to say, wait a

1 second, I have new ---

2 MS. BOUTSIS: If you believe there are
3 substantial circumstances that have changed
4 and/or manifest injustice, or you decide
5 that you actually want to have the hearing,
6 the basis for doing so would be the Broward
7 case versus G.B.V. International, which is a
8 Florida Supreme Court case, and you use that
9 as your basis for having your hearing and
10 you have a limited scope public hearing as
11 to those two quashed issues. And if you
12 have the hearing you should have in the
13 record either manifest injustice or
14 competent substantial evidence of a
15 substantial change to overcome granting them
16 what they are asking for.

17 MR. PARISER: That would be explained
18 as the procedure to the residents and
19 attendants of how the hearing goes?

20 MS. BOUTSIS: That's ultimately your
21 decision to make. I am giving a
22 recommendation, you make that decision.

23 MS. STANCZYK: In other words, even
24 saying, this is what your best direction is
25 in her estimation to be successful in giving

1 your vote?

2 MS. BOUTSIS: Yes.

3 MR. PARISER: So the question is, do we
4 need Justice Cantero to confer with her?

5 MS. STANCZYK: If we were to get an
6 opinion from Justice Cantero we can ask a
7 question, in other words, would we recognize
8 on the record what would be that change that
9 we would need to see, we don't know what
10 that is?

11 MR. BOUTSIS: I am sure he would be
12 willing to give you guidance.

13 MS. STANCZYK: Or do we need that?

14 MS. BOUTSIS: This is a serious matter
15 and this is something that's been affecting
16 you for three years. I certainly don't have
17 an objection to be second-guessed and
18 getting the opinion of a Florida Supreme
19 Court Justice in here to make you feel more
20 comfortable.

21 MR. PARISER: I would like it, it's my
22 opinion.

23 MS. BOUTSIS: It doesn't mean you have
24 to spend millions of dollars in the next
25 appeal, but at least you get the direction

1 on the appeal and he will give you the
2 direction whether he supports my
3 interpretation or not.

4 MR. WILLIAMS: How much time do you
5 think it would take?

6 MR. PARISER: He is going to say, I
7 probably want to read the briefs, I want to
8 see the opinion that's rendered on the
9 briefs, I want to see the Motion for
10 Clarification. 10, hours. 10, 12, 15
11 hours, I can't imagine more than that.

12 MS. BOUTSIS: You want to do up to 20
13 and call it quits? No more than 20 hours
14 hoping it's in the lesser end.

15 MS. PARISER: If we do something
16 procedurally improper it's going to be much,
17 much more in attorney's fees.

18 MR. WILLIAMS: This initially was
19 appeal or not appeal, and now we are asking
20 him to clarify, I guess in some order if
21 there is no appeal, if there is an appeal
22 that's a different track.

23 The Ft. Lauderdale decision says
24 discussion only by council.

25 MS. BOUTSIS: That's what originally it

1 says.

2 MR. WILLIAMS: If this has any basis
3 for your discussion, it only says council
4 discussion. I am not sure how valid that
5 is. I am not trying to make any legal
6 position in there. If in fact no appeal is
7 his guidance and we follow that, then we are
8 asking him to clarify the type of hearing?

9 MS. BOUTSIS: Correct.

10 MS. STANCZYK: It doesn't mean that we
11 have to follow his advice?

12 MR. WILLIAMS: Absolutely not.

13 MR. FIORE: Just by you saying that, if
14 we are asking someone of his caliber for an
15 opinion and he gives it to us, why would we
16 not follow it? That doesn't make sense to
17 me. Why you are paying someone to give you
18 -- and he is obviously a very astute person
19 in the law. If he says yes, there is an
20 appeal, then you decide whether you want to
21 do it. If he says no, you should not, I
22 don't understand why you would say no.

23 MS. BOUTSIS: I think they are talking
24 more about the second portion of it. If
25 there is an appeal you want to see if you

1 want to spend the money on the appeal and
2 whether you think it's worth while to do an
3 appeal, so you either take his
4 recommendation or not. And then on the
5 second part it's whether he may agree with
6 my analysis or he may say, she is full of
7 crap.

8 MS. PARISER: If he says that you would
9 be wasting your time and money to appeal it,
10 then we would be foolish.

11 MS. BOUTSIS: I think Mr. Williams was
12 talking more about the second part than the
13 first.

14 MR. PARISER: I think the Justice can
15 probably spend two or three hours and give
16 us a determination whether an appeal is
17 worth it or not.

18 MS. BOUTSIS: I think that is accurate.

19 MR. PARISER: The other part of the
20 time would be procedurally how to proceed.

21 MR. FIORE: He can say on the other
22 side, I am not even worried about the
23 appeal, I think it's very clearcut what the
24 Court is saying, but would he say, it's very
25 clear, same thing, you don't need a hearing

1 this is what the Court says?

2 MS. BOUTSIS: Yes, there is a
3 possibility that he will agree with what I
4 am saying.

5 MR. FIORE: That would end it?

6 MS. BOUTSIS: That's up to you all.

7 MR. PARISER: No, but it will give us
8 some direction.

9 MS. STANCZYK: It's more informational.

10 MS. BOUTSIS: More important
11 information.

12 MR. FIORE: I don't want to spend
13 anymore taxpayer money on this. However, if
14 it will help resolve this once and for all
15 and end this, I will go along with what the
16 Vice Mayor said and hopefully this will end
17 it.

18 MR. PARISER: This needs a turnaround
19 time.

20 MS. BOUTSIS: He is aware of that. He
21 said sooner rather than later, like today if
22 I could.

23 Do we have a consensus?

24 MR. TENDRICH: I agree with the Vice
25 Mayor, I feel that we should hire him. You

1 need to decide I guess how many hours.

2 MR. BOUTSIS: Up to 20 hours.

3 MR. TENDRICH: That's \$13,000.

4 MR. PARISER: Whatever his opinion is,
5 it's the Justice of the Supreme Court and he
6 is a competent guy.

7 MS. BOUTSIS: Mayor, you have been
8 silent.

9 MS. STANCZYK: I pretty much see where
10 we need to be, I am not clear that I need
11 someone to get me there.

12 MS. BOUTSIS: I think that I have heard
13 three. Councilwoman, do you want to express
14 on the hiring of Raoul Cantero?

15 MS. LINDSAY: I am not sure that we
16 need to go that route either. We have a
17 hearing set. We know what they have been
18 directed to do in terms of the two items,
19 which is not a problem if we follow the
20 Court's will and the law. But in terms of
21 getting there, I think that in fairness we
22 do things in a fair way in which probably
23 would be in my estimation a public hearing,
24 because I want all parties to always feel
25 like they were treated fairly and I think

1 that speaks of fairness.

2 I think when we get there and we are
3 able to rely on the record and have people,
4 members of the community and members of the
5 parties come forward and speak to the record
6 and go in the direction that they have had
7 competent counsel and will direct them, I
8 think that they can manage that. And we'll
9 be there to render the decision.

10 MS. BOUTSIS: Do you want to continue
11 to explore Mr. Cantero as far as the
12 possibility of the appeal which should only
13 be a few hours?

14 MR. PARISER: I am for a public
15 hearing, but the question is does it get
16 limited to substantial change of
17 circumstances?

18 MS. STANCZYK: It doesn't say that,
19 that's not what it says.

20 MR. PARISER: We are getting different
21 opinions.

22 MS. STANCZYK: That's not what he said.
23 He said that he would want that on the
24 record if it were there.

25 MR. PARISER: That's in the law of the

1 case decision. That's not in here.

2 MS. STANCZYK: That's not what we said
3 a moment ago.

4 MR. PARISER: I am telling you, that's
5 not in here, it's law of the case, it's
6 something different.

7 MS. BOUTSIS: I think that the majority
8 of you want to spend the 20 hours on the two
9 issues. If it's less, it's less; is that
10 correct?

11 MR. PARISER: Yes.

12 MR. TENDRICH: Yes.

13 MS. BOUTSIS: Is there any other
14 discussion items for tonight?

15 MR. HOCHMAN: With respect to my narrow
16 issue. Is there a more narrow consensus as
17 to whether there should be at this point any
18 response to the settlement offer? And the
19 answer would be yes response or no, not yet.

20 MS. BOUTSIS: And just for the record
21 on this one, she is abstaining, councilwoman
22 Lindsay is abstaining.

23 MR. TENDRICH: I mean, just not
24 respond, period?

25 MR. HOCHMAN: That's the option that's

1 being considered right now. Should we not
2 respond right now, yes or no?

3 MS. STANCZYK: No response.

4 MR. PARISER: No response.

5 MR. TENDRICH: I think it's rude not to
6 respond. Say we are thinking about it, but
7 law, some of the things you all do I am not
8 quite sure about anyway.

9 MR. HOCHMAN: A no thank you letter?

10 MR. TENDRICH: That's fine, that's just
11 like not returning a phone call.

12 MR. HOCHMAN: I understand.

13 MS. BOUTSIS: Thank you, it is now 8:15
14 and we are adjourned.

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20 (Whereupon, the deposition was
21 concluded at 8:15 p.m.)

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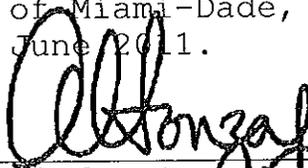
CERTIFICATE OF REPORTER

STATE OF FLORIDA :
 : SS.
COUNTY OF DADE :

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

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

WITNESS my hand and official seal in
the City of Miami, County of Miami-Dade, State of
Florida, this 27th day of June 2011.



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

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

NAME—FIRST NAME—MIDDLE NAME LINDSAY - JOAN - SMITH	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Village of Palmetto Bay Council
MAILING ADDRESS 8120 SW 82 St	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: <input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
CITY COUNTY Village of Palmetto Bay Miami-Dade	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED 6/20/2011	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Joan Lindsay, hereby disclose that on 20th of June, 20 11:

(a) A measure came or will come before my agency which (check one)

- inured to my special private gain or loss;
- inured to the special gain or loss of my business associate, See below;
- inured to the special gain or loss of my relative, _____;
- inured to the special gain or loss of _____, by whom I am retained; or
- inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

In an abundance of caution, I am not going to participate in any discussion or consensus in this "shade session" relating to PTV VPB case no. 1:11-CV-21800-SEIT 2/SIMONTON because resolution of this matter may inure to my special private loss.

Reference: 2/21/2011 Florida Commission on Ethics opinion attached and 6/20/2011 email from Attorney Eve Bontius

June 20, 2011
Date Filed

Joan Lindsay
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

Roy Rogers
Chair
Robert J. Sniffen
Vice Chair
Morgan R. Bentley
Cheryl Forchilli
L. Martin Ford
Jean M. Larsen
Susan Horovitz Maurer



State of Florida
COMMISSION ON ETHICS
P.O. Drawer 15709
Tallahassee, FL 32317-5709

Philip Claypool
Executive Director

Virindia Doss
Deputy Executive Director

(850) 488-7864 Phone
(850) 488-3077 (FAX)
www.ethics.state.fl.us

3600 Maclay Blvd., South, Suite 201
Tallahassee, FL 32312

February 21, 2011

Eve A. Boutsis, Esquire
Village Attorney
18001 Old Cutler Road
Suite 533
Miami, Florida 33157-6416

Re: Your inquiry for Councilmember Lindsay¹

Dear Ms. Boutsis:

Philip Claypool, Executive Director and General Counsel of the Florida Commission on Ethics, has requested that I respond to your above-referenced inquiry.

Initially, it is noted that Ms. Lindsay's situation, as described in the information submitted, does not, under prior decisions of the Commission on Ethics and the courts, appear to create a prohibited conflict of interest for her under Section 112.313(7)(a), Florida Statutes. This is based on her interests being personal, not hired, their arising before her election to the Council, and her removing herself from rank-and-file membership in, and offices and directorships of, interested organizations. See, for example, Fanizza v. State, Commission on Ethics, 927 So. 2d 23 (Fla. 4th DCA 2006).

¹ Thank you for supplying via email additional information. The additional information and the information in your original correspondence will be referred to, in material part, in answering your inquiry via this letter. If I have misunderstood the facts of your inquiry, please inform me; it is my intent to provide guidance herein to Ms. Lindsay, regarding the State ethics statutes.

Thus, going forward, the portion of the State Code of Ethics primarily at issue for Ms. Lindsay is the voting conflicts law applicable to local, elective public officers, such as Village Councilmembers, Section 112.3143(3)(a), Florida Statutes. The legal standard under the law is that Ms. Lindsay is required to orally announce her private interest(s) regarding a vote/measure of the Council prior to a vote being taken, is required to abstain from the vote, and is required to timely file CE Form 8B (memorandum of voting conflict), regarding votes/measures which would directly cause special private gain or loss to her, to her relative, to her employer/client, to her business associates², or to certain other persons or entities listed in the statute. However, whether this legal standard will apply to a given vote/measure will depend on the particular facts of the measure at the time of the vote.

Based on decisions of the Commission in situations arguably somewhat similar to that of Ms. Lindsay (see, for example, CEO 07-14 and CEO 07-15, Question 4), it appears that if a vote/measure of the Council would affect a lawsuit or matter in which she is a party (e.g., a vote to request rehearing by the Circuit Court, a vote to appeal the Court's decision, or a vote to send the underlying matter for a public hearing), that she should orally announce, abstain from voting, and file Form 8B. This is because such votes have the likely potential to cause her to have to keep litigating, to do away with her need to litigate further, or to cause her to have to pay costs or fees in maintenance of her end of the litigation, even if costs/fees are not payable by her as court sanctions.

Further, if the Council is presented with a vote/measure to settle the litigation or otherwise to settle the underlying matter, Ms. Lindsay should declare, abstain, and file, if the vote would affect a lawsuit or matter in which she is a party. However, if the vote would cause a land use or zoning result which would affect the private school but which would not cause an increase or decrease in the market value of Ms. Lindsay's property and which otherwise would not cause an economic type of effect on either Ms. Lindsay, her husband (relative), or any other person or entity listed in Section 112.3143(3)(a), then she apparently would not be presented with a voting conflict.

² "Business associate" is defined in Section 112.312(4), Florida Statutes.

Eve A. Boutsis, Esquire

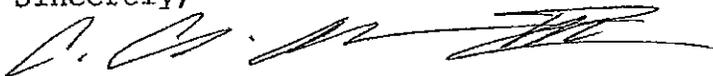
February 21, 2011

Page 3

In sum, upcoming votes/measures should be evaluated by you and Ms. Lindsay with an eye toward whether the particular measure goes to litigation or matters in which she has a party status, or whether a particular measure would create a reality affecting her financial/economic interests or such interests of persons or entities connected to her as listed in the statute; these types of matters will trigger the requirements of the voting conflicts law. However, if a vote/measure only will result in a "moral victory," a win or loss for proper zoning law application, or a similar "intangible" effect for her or the listed others, then the law will not be triggered.

If particular measures/votes present themselves in the future and you or Ms. Lindsay would like additional guidance, please telephone me.

Sincerely,



C. Christopher Anderson, III
Chief Assistant General Counsel

Eve Boutsis

From: Eve Boutsis
Sent: Monday, June 20, 2011 4:13 PM
To: Joan Lindsay
Cc: 'Ron Williams'; 'Jeff Hochman'
Subject: AG - PT v. VPB attorney client communication - exempt from public records

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CP Lindsay:

I called the Florida State Commission on Ethics and spoke with C. Christopher Anderson, III, the Chief Assistant General Counsel, that wrote the conflict of interest opinion of 2/21/2011. After some discussion he indicated that you do not appear to have the status under state law of violating a provision of 112.313, F.S. if you were to attend the shade session. However, based upon the 2/21/2011 decision, and as the state law does not define "vote", and as a consensus made at a shade session could be legally considered a vote the recommendation is that if you attend the shade session on the federal litigation the following occur: (1) state why you are not participating in any consensus or otherwise; (2) that minutes reflect that you are abstaining from the consensus and file form 8B (form is on line) and to be attached to the minutes/the transcript of the meeting.

Because of 286.0115, F.S. (Sunshine law) you, as an elected public official, in your official capacity have the right to be present at the shade session. Mr. Anderson particularly relied on Fanizza V.

State, Commission on Ethics, 927 So. 2d 23 (Fla. 4th DCA 2006) for this proposition.

That being said, because you are a party in the federal litigation you are under an affirmative duty not to discuss what will be discussed during the shade session with Mr. Gibbs or CCOCI or any third party. Doing so could be considered a willful violation of the State Ethics laws, subsection (6) "Misuse of Public Position (to provide a special privilege, benefit etc for oneself, or others) or a violation of Subsection (8), "Disclosure or use of Certain Information." (information that is not disclosed or available to members of the general public and gained by reason of your official position, which information is used for person gain or benefit).

So, should you attend the shade session relating to federal litigation - you must put on record the information contained in first paragraph and not share the information with anyone.

To be clear - I advised Mr. Anderson that the shade session may be to discuss settlement in the Federal Litigation (Clearly letter of settlement); and to discuss strategy going forward. I think I covered all the issues and scenarios and specifically requested guidance as I had informally advised you not to participate. Mr. Anderson said in "real application" it is a hard position to be in but if you adhere to the procedures outlined and there is no violation of subsections (6) and (8), you may listen and attend the shade session. He again indicated not to participate in any consensus actions made during the shade session and to fill out the Form 8B.

I have contacted Mr. Centorino of State Attorney's office to make sure he sees no issues under sunshine law.

Very truly yours,

Eve,

Eve A. Boutsis
Figueredo & Boutsis, P.A.
18001 Old Cutler Road, Suite 533
Palmetto Bay, Florida 33157
305-235-9344, Telephone
305-235-9372, Facsimile
Eboutsis@fbm-law.com

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[Electronic Communications Privacy Act of 1986. 18 U. S. C. 2701(a) and
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Eve Boutsis

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Sent: Monday, June 20, 2011 4:13 PM
To: Joan Lindsay
Cc: 'Ron Williams'; 'Jeff Hochman'
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Very truly yours,

Eve,

Eve A. Boutsis
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Eve Boutsis

From: Eve Boutsis
Sent: Monday, June 20, 2011 4:12 PM
To: Joan Lindsay
Cc: 'Jeff Hochman'
Subject: Emailing: form8b_2000.pdf



form8b_2000.pdf
(51 KB)

Eve Boutsis

From: Eve Boutsis
Sent: Monday, June 20, 2011 4:10 PM
To: 'Joe Centorino'
Cc: 'Ron Williams'
Subject: HELP please

Importance: High

I have a shade session **tonight** and wanted some guidance, if possible, prior to the shade session. I obtained a conflict opinion from State Ethics Commission - that on certain litigation a council person would have a voting conflict. However, in speaking with the State Ethics Commission today - they advised that the conflict did not mean that the council person could not participate in the shade session even if s/he could not vote, ultimately, on the matter due to the conflict under 112.3143(3)(a), F.S. That Sunshine required participation (286.0115 FS) .. And then the attorney advised me to check to Sunshine law to see if there is any conflict there. I did not see one but thought I should seek guidance from you.

The Council Person is a party to the underlying litigation. The Council Person, Per state Ethics Commission, could not share with anyone what was discussed at shade session but could participate in shade session.

Your thoughts as to any sunshine issues.

Very truly yours,

Eve,

Eve A. Boutsis
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