

VILLAGE OF PALMETTO BAY COUNCIL MEETING

IN THE CASE OF:

PALMER TRINITY VERSUS VILLAGE OF PALMETTO BAY

CASE # 08-28977 CA 30 AND 10-34016 CA 20

DATE: JUNE 26, 2013

TIME: 6:00 P.M. TO 8:11 P.M.

PLACE: VILLAGE OF PALMETTO BAY

9705 E. HIBISCUS STREET MIAMI, FLORIDA 33157

TAKEN BY: DEBORAH LIPPMAN

**ORIGINAL**

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APPEARANCES:

M: MAYOR SHELLEY STANCZK

VMD - VICE MAYOR JOHN DUBOIS

CF - COUNCILMAN PATRICK FIORE

CS - COUNCILMAN TIM SCHAFFER

CL - COUNCILWOMAN JOAN LINDSAY

VM - VILLAGE MANAGER RON E. WILLIAMS

B - EVE BOUTSIS, VILLAGE ATTORNEY

H - JEFFREY HOCHMAN ATTORNEY

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9 B: under circuit court case 08-28977 CA 30 Palmer  
10 Trinity V Village of Palmetto Bay and under circuit  
11 court case 10-34016 CA 20 we are seeking advice from  
12 the village council. This meeting is being held now  
13 6:01 PM June 26, 2013. I'm going to have everyone go  
14 around and introduce themselves. Please remember  
15 that these proceedings become public record at the end  
16 of litigation. A certified court reporter is  
17 recording the time and the termination of the session,  
18 all discussions and proceedings that occur and the  
19 names of all persons present at any time during the  
20 session and the names of all persons speaking so  
21 although it feels like we're having a conversation,  
22 one person speaks at a time so the court reporter can  
23 take down everybody's statements and instead of using  
24 shorthand like yeah or yay or whatever, please use  
25 yesses and nos so we can have a clean record for the

1 court reporter, because the transcription can't make a  
2 determination between those sounds. I'll start first,  
3 I'm Eve Boutsis, Village attorney.  
4 CL: I'm councilwoman Joan Lindsay  
5 CF: Patrick Fiore district 1  
6 VM: Ron Williams, Village manager  
7 CS: Tim Schaffer, Council Member  
8 VMD: John DuBois Vice Mayor  
9 H: Jeff Hochman special counsel for the Village on the Palmer  
10 Trinity cases  
11 M: Mayor Shelley Stanczyk  
12 B: thank you  
13 for being here. We held a mediation last month and I  
14 wanted to give you an update on that. Also earlier  
15 this month on June 12th, there was an order on the  
16 motion to dismiss the 5th amended complaint and under  
17 that order the Village was directed to provide an  
18 answer to certain counts and certain counts were  
19 dismissed from the complaint more as a procedural item.  
20 Because they weren't appropriate counts for the  
21 complaint they could be brought up at a separate  
22 evidentiary hearing. I'll let Mr.Hochman take over  
23 for now and we can start talking.  
24 H: so procedurally  
25 I'll direct you to the 5/21 demand letter. It's a

1 thick document - 9 pages. It demands \$5 Million in  
2 damages from the village. It also says according to  
3 this document that they want to proceed quickly with  
4 the lawsuit, get the case at issue and to trial but  
5 that was issued in May of 2011 and now we're in June  
6 of 2013. and the results of the recent proceedings  
7 have been that the village has to file an answer in  
8 defenses to their pending complaint with reduced  
9 claims. So there's been a long delay, essentially for  
10 the plaintiff to decide what claims he wants to  
11 provide and go for and we as of now have not filed our  
12 defenses, that's not due until July. We will file  
13 that document and at that point the case will finally  
14 be an issue. Typically discovery is then conducted on  
15 claims that are before the court. Then the court will  
16 set a trial date. As part of that effort we conducted  
17 a mediation on June 3rd, 2013. Lots of people attended  
18 including Councilwoman Lindsay in an individual  
19 capacity. Basically, the mediation was divided into  
20 two separate parts - one dealing with non-monetary,  
21 and the second monetary issues. Also I want to let  
22 you know the mediation is also a confidential  
23 proceeding, so in addition to these proceedings being  
24 confidential because it's an executive session  
25 meeting, the content of the mediation are separate and

1 independent. so anything discussed should remain  
2 confidential. So again, what is stated today needs to  
3 stay confidential. There's a theory that even after  
4 the lawsuit is resolved because of the nature of this  
5 being an executive meeting and the discussion of the  
6 mediation and the privilege it applies needs to remain  
7 confidential. Moving on, basically during the  
8 mediation, the plaintiffs requested modifications to  
9 many points that are currently being imposed upon them  
10 under the legislation that allowed them to build. So  
11 there's an ordinance that passed and has been adopted  
12 and it has many restrictions on their ability to  
13 either conduct business, have lighting, have sound,  
14 various things that involve the way they conduct their  
15 business, they have requested in mediation  
16 modifications of those that occur.

17 B: resolution

18 H: excuse me, resolution. and essentially what happened  
19 during the mediation for the most part of it we went  
20 through point by point of the resolution and in  
21 sections 4.12 through 15.2 various proposed  
22 modifications were discussed and much progress was  
23 made .and we can go through point by point, but there  
24 was a general sense that if they do certain things, we  
25 will do certain things. Certain items which were not

1 negotiable from the Village's perspective were whether  
2 they can have any kind of outdoor lighting. They had  
3 requested that and the Village's position was  
4 absolutely not. You're not going to illuminate your  
5 fields, if there's any activity on the field it will  
6 stop by natural process, that is when the sun goes  
7 down. That way the Florida High School Sports  
8 Association, they have rules and regulations for high  
9 school sports and without lights sports and activities  
10 would typically end. They also asked for the noise  
11 issues and the response is we'll let the ordinance  
12 which is now in place - noise ordinance would reduce  
13 the decibels from 65 to 60 would govern all those  
14 provisions. Some things in the ordinance would be  
15 modified mostly in favor of the village, especially in  
16 those areas. They have requested certain things that  
17 would be to their benefit - one of those issues the  
18 Village is pursuing is trying to monetize things that  
19 would benefit Palmer Trinity. For example, they have  
20 to install a sidewalk in certain areas. Under the  
21 current resolution they asked if they could be  
22 relieved of that obligation. The thinking was we will  
23 think about that - that's a possibility - what's the  
24 value of not having to build a sidewalk? Value would  
25 be credited back to the Village and that could work

1 toward the second part and that's the monetary side.  
2 With's Eve's input we have come up with a list of 22  
3 items which we will at some point, we can agree on,  
4 more specific detailed items and staff analysis comes  
5 back on these items as being acceptable. you may or  
6 may not think it's acceptable, but there's a general  
7 sense there's an ability to proceed with the  
8 settlement on those 22 terms, but then we ran into a  
9 little bit of difficulty on the monetary side.  
10 According to their letter of 3/31, they demanded \$5  
11 Million as part of the settlement terms then at  
12 mediation they reduced that demand by 50% to \$2.5  
13 Million. My understanding is that number is also not  
14 a hard number for them and they are willing to come  
15 down much more than that. Part of the negotiated  
16 aspect, it will cost them in terms of user fees and  
17 permit applications and amounts they have to pay to  
18 produce any type of building or structure, money they  
19 don't have. For example the permit fee for a  
20 construction project this big, have substantial permit  
21 fees probably north of \$1 Million.

22 VM: estimated

23 H: I'm an attorney, I'm not the person who knows the nuts  
24 and bolts, I don't even have a site plan, it's  
25 a little bit of a difficult task.

1 B: Before you go on,  
2 let me explain to the council at the mediation certain  
3 issues came up that their roadway doesn't work the way  
4 they have it on the site plan. Despite working with  
5 traffic engineers and several years looking at it,  
6 turns out they have issues with it

7 H: and to  
8 illustrate that point they provided a photograph and  
9 I'll show you all. Basically the football field in  
10 the middle is positioned in a way that the road comes  
11 and curves around and separates out. It looks nice  
12 artistically from an aerial drawing but if you're a  
13 fire truck trying to drive down that road, the job in  
14 the road creates a problem for a life safety issue and  
15 Miami Dade County doesn't believe it's an appropriate  
16 road design. That problem then causes other problems,  
17 because if they don't space it out properly they run  
18 into the buffer area, then they run into the sidewalk  
19 area. It creates an issue for them which they claim  
20 was caused by Miami Dade County. One solution is to  
21 not have the decorative alteration of the roadway that  
22 looks very nice from the aerial view that's under  
23 consideration from their site and that's some of the  
24 site plan amendment theory that may or may not be  
25 requested by Palmer Trinity. B: Other site plan

1 issues, their own attorneys weren't aware of these  
2 site issues prior to the mediation date. Mr. Price  
3 was just as surprised as we were so we don't know the  
4 extent. There may be some other issues with the  
5 driveway approach, they want to change a guard house  
6 or some other things so they have to look at this plan  
7 and see if they would have to go for modifications.  
8 H: And that's how the settlement if it were to proceed  
9 would work. There would be a document called a  
10 development agreement under which they would probably  
11 submit an amended site plan, the idea would be if  
12 the site plan is approved as modified and if other  
13 conditions of the site plan are acceptable to both  
14 Palmer Trinity and the Village and it were approved,  
15 then the case would go away, releases would be issued  
16 and there would be certain monetary consideration.  
17 Monetary consideration can be dealt with a number of  
18 ways. One way from the Village perspective we would  
19 provide credit to them, back as part of the  
20 settlement theory they would not pay 100% of the  
21 amount that they would otherwise owe to the Village.  
22 The Palmer Trinity claim is now \$2.5 Million in  
23 addition to the fees they owe, the Village would have  
24 to pay something out of pocket. More where that  
25 goes, what the fee would be is all up for discussion.

1 The purpose of today's meeting is to decide whether  
2 there's an appetite by the council to try to negotiate  
3 and get the number lower and seeing if there's an  
4 appetite for modification to the existing conditions,  
5 positive vote on a modified site plan and what looks  
6 like 22 points we discussed.

7 B: to stay within the  
8 topic, by way of an example, a charter school is  
9 required to have 2 hearings, same concept and then  
10 going to public hearing on the actual modified site  
11 plan and conditions. same format. as for the 22  
12 conditions, we were trying to give a monetary value.  
13 The concept was theirs. A 75 foot buffer, there's a  
14 berm, that berm has a value of \$300 thousand, a credit  
15 or benefit to Palmer Trinity if that berm was removed  
16 from the plan and that's probably the most extensive  
17 item that was discussed and theoretically came to an  
18 understanding on.

19 M: I have one little comment,  
20 because I know there are new council members not here  
21 from the beginning of the Palmer issue, this lawsuit  
22 has to do with zoning, not in terms of the site plan.  
23 It also involves resolutions they worked on with our  
24 zoning department and the resolution created items as  
25 a joint venture, not something created by the council

1 and then applied to them without their knowledge,  
2 just so the people new to the council understand.  
3 B: the resolution we're talking about is 2010-48 and it's  
4 been amended twice. The two amendments are relating to  
5 the appeal as to the number of students, and the 30  
6 year covenant. The Mayor's correct that Stan Price  
7 and Palmer Trinity did have input but didn't agree.  
8 There are approximately 79 or 80 conditions, most of  
9 them mirror the mobilization plan. One of the example  
10 is compliance with the noise ordinance, that's code.  
11 In a sort of delineation of items in the code specific  
12 items relating to this, a 75 foot buffer , a standard  
13 50 foot buffer is required. The resolution of 75,  
14 they never appealed that. Of the 79-80 conditions  
15 Palmer Trinity only appealed 2 conditions and  
16 ultimately those two conditions were stricken - the  
17 number of students and the 30 year covenant on the  
18 scope of development the remainder were not appealed,  
19 so they are a part of resolution and enforceable.  
20 They are looking for concessions in the civil  
21 litigation as to some of those conditions.  
22 H: Just so  
23 you understand the level of details, in 6.2 of your  
24 resolution 2010-48, so 6.2 says the applicant shall  
25 submit a proposed list of schools special events

1 planned for each school year to the Village Manager  
2 not later than August 15th of the applicable school  
3 year. So they have to provide according to this a  
4 full list of things that they're going to do for the  
5 entire school year by August 15th and their argument  
6 at mediation was it's impossible to do that, we don't  
7 even do that. It's an unreasonable condition and we  
8 ask that we post it on our website, like we do for our  
9 parents and our own folks, what the schedule's going  
10 to be every month. And that during mediation from the  
11 Palmer Trinity side seemed unreasonable. From the  
12 Village side that seems like something we can work  
13 with, that's the most mundane kind of thing, since the  
14 internet is here, people would have notice of the  
15 events. Non-starters for example, illumination at  
16 night, loud noises at night, extended hours, do  
17 you want to proceed with allowing any changes, if  
18 the answer is no the resolution should stay. Remember a  
19 lot of these provisions were included with an eye  
20 towards mitigating the impacts of children, on-going  
21 business in the middle of a residential community  
22 especially at night, during traffic and to make sure  
23 residents are not adversely impacted. Most of these  
24 inclusions are designed to reduce impacts - buffer  
25 zones, sidewalks, berms, all of these, noise, bumps

1 into something. They're asking for accommodations to  
2 reduce buffers, remove berms, items like that. If  
3 they were to perform all of them it would theoretically  
4 have an impact adversely to surrounding neighbors.  
5 Anybody have any general approach as to let's  
6 negotiate on those terms that are contained in the  
7 resolution or if I were required to vote tonight,  
8 which you are not, does anybody want to take a  
9 position where nothing is negotiable? ok. . . good.

10 B: let's make it clear for the record silence means  
11 that you're agreeing that not negotiated is not  
12 acceptable.

13 H: Is there any particular item that you  
14 as a body have decided besides what we're already said  
15 is off the table like nighttime illumination that is  
16 not negotiable? One of the issues that I am a  
17 proponent of is section - whatever that section is,  
18 and I would take that position that no modification of  
19 that is appropriate.

20 VMD: there's some things I need  
21 to understand before I can come to a conclusion - I  
22 have some questions - number 1 is you mentioned that  
23 as an example, installing sidewalks have monetary  
24 value. The implication was if we remove that as  
25 a requirement, let's say the cost of the sidewalk is

1 \$300K, say that's the number, if the settlement without  
2 any changes to conditions would be \$1 Million. We  
3 could take \$300K off that by not requiring them to put  
4 sidewalks in then the number is \$700K. The issue I  
5 have with that if the requirement was put in there for  
6 sidewalk. There's a reason to put in the sidewalk,  
7 then presumably the Village needs the sidewalk there,  
8 so there seems to be a conflict of interest between  
9 you representing the insurance company that's going to  
10 pay the settlement amount versus the Village which is  
11 going to get stuck with the \$300K sidewalk problem and  
12 you guys are going to save your insurance company  
13 \$300K by reducing the amount of your settlement since  
14 your client has to pay the check for any settlement  
15 that's negotiated, is that correct?

16 H: My client is  
17 not the insurance company, my client is the Village.  
18 My job here is to get a good settlement for the  
19 village or to prevail in the case.

20 VMD: Who makes the  
21 decision how much money the insurance company is  
22 willing to pay for the settlement? As far as we're  
23 concerned we have an insurance policy that covers up  
24 to \$5 Million in claims, why would we care if it's not  
25 going to affect the taxpayers and the residents of

1 Palmetto Bay?

2 H: I ask for the settlement authority  
3 and they have given me settlement authority.

4 B: just

5 to be clear, their current letter of 3/11, we'll  
6 settle now for \$5M, their complaint allegedly claims  
7 between \$13M and \$17M which anything above the  
8 insurance theoretically would be out of the Village's  
9 pocket. A different argument on whether truly valued  
10 at that number but that's the full disclosure.

11 VMD: The dilemma is clear as we start to charge off fees  
12 against the settlement agreement, that were put in  
13 these resolutions, if they truly needed items it  
14 actually hurts the Village to take them out because we  
15 get stuck with the missing \$300K sidewalk or missing  
16 \$300K berm that the insurance company could  
17 theoretically pay for and the school would have to put  
18 the \$300K item in, so I don't understand the benefits  
19 to us if we agree to any kind of trade off.

20 H: there's a pending claim for adjunctive relief, Palmer  
21 Trinity could win that lawsuit for whatever reason the  
22 jury could determine. Juries in the state of Florida  
23 are not going to focus on the facts of the case, but  
24 focus on overall impressions. One could make the  
25 theory that Palmer Trinity was mistreated, not that I

1 agree with that theory, set forth in the 9 page letter  
2 dated May 31, 2011. The jury could find, well, that  
3 wasn't fair treatment and therefore require you to  
4 remove all these conditions as a theoretical matter  
5 and the entire thing is invalid and they were treated  
6 improperly and one or two things could happen - a large  
7 judgement could be entered more than \$5M which would  
8 certainly result in the resources of the Village  
9 becoming exposed or as implied in the complaint, that  
10 there be some sort of adjunctive relief may or may not  
11 be required and therefore you're trading off by  
12 judicial fiat the possibility that the judge would  
13 say, let's avoid having a jury, or the judge makes this  
14 decision, let's resolve this dispute using a rational  
15 approach to risk.

16 VMD: The trade off I'm talking  
17 about is between the Village and the insurance  
18 company, the trade off you're talking about is our  
19 case being mediated and going to full adjudication in  
20 the court.

21 H: I represent you. I'm trying to get  
22 Palmer Trinity to realize that their case is of low  
23 value. Palmer Trinity has negotiated, they have a  
24 number that I think is high. The insurance company has  
25 given me settlement authority. I don't control them,

1 it's a matter of negotiation between the Village,  
2 their attorney and their carrier.

3 VMD: I'd like to  
4 hear our attorney's opinion. If there's a conflict -  
5 saving the insurance company money and it's costing  
6 the Village money - why should we trade this off?

7 B: Some of this comes as a judgement call, because this  
8 was a public hearing and it was the decision of the  
9 council whether some were recommended by staff or  
10 council, ultimately it's the council that voted on the  
11 conditions. From the staff prospective we'll do what  
12 the council says and the input was based on the  
13 community's concerns. A lot of them are pure  
14 statutory authority and those are not being changed,  
15 ordinances are not being changed, noise ordinance  
16 everyone agrees, in the resolution itself says that  
17 the noise ordinance may be amended so that the issue  
18 when raised was a non issue because you follow the  
19 code whatever the code is.

20 VMD: so I'm interpreting  
21 what you said to be agreement with my position that  
22 the trade off is somewhat of a conflict, all of these  
23 items were not put in place as bargaining chips but in  
24 anticipation of a settlement agreement rather than  
25 needed items for the village's benefit.

1 B: the council believes that all are for the village's  
2 benefit, that is true, now some of them were strictly  
3 code and can't be modified, others were concessions  
4 for the community, for example, the buffer was.

5 H: The list of all activities before the school year  
6 begins, for the entire school year is a condition,  
7 practical matter the idea was we will have a complete  
8 list 3 months in advance when the ball field will be  
9 used. Yes, agreed upon, but based on a clearer view  
10 of our actual operations. Palmer Trinity  
11 administration can do and valuation of what residents  
12 can reasonably anticipate in May as opposed to August  
13 modification. It really comes down to a judgement  
14 call, whether that pinpoint items really the subject  
15 of a dispute between Palmer Trinity and the Village,  
16 because if not, let's resolve that dispute and move on  
17 with something that could be productive.

18 VMD: The  
19 other question I have, this roadway doesn't work.  
20 That's going to require a modification to the site  
21 plan. Are we in a position where we can hold them  
22 hostage on this particular issue, is that your  
23 objective?

24 H: Here's the reason we can't hold them  
25 hostage, they have had the ability to build based on

1 the site project that exists for a number of months  
2 now, but they have not done so. This is at least some  
3 evidence that there's a problem they're having,  
4 whether that's an actual problem and therefore a  
5 significant problem, or they'd like to negotiate to  
6 see if they can get some improvement to their current  
7 situation with negotiations with the Village, could be  
8 one, could be the other. What we do know is they've  
9 come to us obliquely with a site plan. They don't  
10 want to show their hand and let you know they're in a  
11 difficult situation, but my sense is that Miami Dade  
12 county's fire department will not allow them to build  
13 the roadway system as depicted. Therefore, they do  
14 need a modified site plan, cooperation from the  
15 village. That's one idea, the other is an "as-built"  
16 drawing of the site plan. so you plan it and  
17 modifications need to be made as the process  
18 continues. This is kind of an "as-built" version of  
19 the site plan where as they got down to nuts and  
20 bolts, and how the design should look, maybe they can  
21 improve the design a little bit, probably price out  
22 some of the things that are in the actual requirements  
23 and realized that's a really expensive item, that we  
24 didn't anticipate being so expensive. If we can get a  
25 revised site plan, it saves us a lot of money, it may

1 be in our interest to see if we can negotiate that.  
2 That seems to be the posture so there's a little bit  
3 of elements of all three things, and that's what was  
4 discusses during mediation and do you have an appetite  
5 to work with them, improve upon their site plan or  
6 satisfy a critical defect.

7 B: One other thing the  
8 reason the league is involved is in the 1993 claim,  
9 once the insurance picks up that claim it picks up all  
10 the other claims. Should Mr. Hochman be successful in  
11 getting that claim removed in summary judgement, the  
12 rest of it would come back to the Village, would have  
13 to expend upon, but we no longer would have insurance  
14 coverage.

15 H: Just so you understand that part, my  
16 office was engaged to represent the Village's 5th  
17 amended complaint now which triggers coverage under  
18 the coverage agreement between the Village and FMIT,  
19 The Florida Municipal Insurance Trust. There are  
20 only some covered claims, the claims for damages under  
21 Federal law. There's a claim for protection  
22 violation, both of those claims are covered. And there's  
23 also a claim, a tort claim for abuse of process. If  
24 we prevail on behalf of the Village on those three  
25 claims, I believe the rest of the complaint involves

1 claims that are not covered because the relief being  
2 sought is injunctive relief or declaratory relief and  
3 attorneys fees. So if I'm partially successful in  
4 representing the Village, the downside I no longer  
5 provide a defense, under the coverage agreement and  
6 the Village has to pick up it's own defense and pay  
7 for all those attorneys fees and costs. So my job  
8 really is to try to get a resolution if I can or try  
9 to win on all claims, and so there is no conflict my  
10 job is to represent you folks, and I will do so to the  
11 best of my ability and quite frankly we think we have  
12 a strong defense in the case. However, like every  
13 litigation there's risk.

14 B: I guess before we  
15 continue talking about the settlement, at the hearing  
16 we have a new judge, I think it's our 4th judge.  
17 Judge Langer was the longest term. And at the hearing  
18 Mr. Hochman and Stan Price spent most of the time  
19 setting up the case explaining to the judge the  
20 history, the main argument which was the 1983 action,  
21 due process claims and really although not the main  
22 issue, ruled upon in prior hearings, it set the judge  
23 up to understand the positions of the parties and  
24 legal arguments that Mr. Hochman is basing his argument  
25 and the Village's argument rightly on the law of

1 Florida and the Federal Circuit. Stan Price and  
2 Palmer Trinity are looking beyond the borders of our  
3 jurisdiction, they're trying to change the law, that's  
4 the easiest way to put it.

5 H: So, they're trying to  
6 advance a novel theory in Florida, but one accepted  
7 and applied to the 5th Circuit, so this is one of  
8 those cases, lawyers know the argument and the judge  
9 has to decide whether there's going to be an  
10 accommodation. Another appellate court involved as  
11 Palmer Trinity knows the appellate process has it's  
12 own difficulties and challenges and unknowable  
13 outcomes, so it's in their interest to try to resolve  
14 it with you, resolve by settlement and there's an  
15 interest by the Village.

16 B: our mediation was held  
17 the last day of Sean Murphy, who was the headmaster of  
18 Palmer Trinity, that was his last day in that  
19 position. He was moving off to another school in  
20 Texas. It was also the last day of the current board  
21 of directors. Also present were the new board of  
22 directors, new chair and vice chair, so there was a  
23 continuity from the old guard and the new guard coming  
24 in. From my understanding, truly an interest for  
25 settling, they'd like to get this resolved, they are

1 looking for money, but I don't know what the number  
2 is. I believe it's less than the \$2.5 million put on  
3 the table at the last session. The mediator did not  
4 end the mediation. He thought we could come to a  
5 number, no impasse. If you'd like you can go through  
6 the 22 terms - some of them are minutia. Using police  
7 offers or use your own security type of thing. In  
8 short, the 22 items, including the concept of  
9 possibly reducing the buffer, changing the driveway,  
10 the berm brought them down to \$2.5M.

11 CS: I have a  
12 question - we have 22 items that we're looking at -  
13 these are 22 conditions they're looking to negotiate,  
14 the change or removal of any of those conditions  
15 affect revenue? Maybe the reporting of the whole years  
16 events, that can be argued or not, but those 22 affect  
17 residents, I'm more in to say what's it going to take  
18 to get those 22 off the table. It's not going to cost  
19 us, it's going to come out of the insurance policy.  
20 Take all 22 off and we settle, that means all law  
21 suits go away, no more lawsuits and the ones we could  
22 get stuck with are gone and since, again, not that you  
23 want to pay, but the reality behind it is we can kind  
24 of get our cake and eat it too, those 22 stay in  
25 place, we write them a check, everybody shakes hands.

1 All lawsuits are dropped and we're done and it doesn't  
2 come out of our pockets, it comes out of the  
3 insurance company's policy.

4 H: it's just like any car  
5 accident, if you're in a car accident and you have  
6 Allstate as your insurance company and the plaintiff  
7 says you rear ended him or her and they have a sore  
8 neck and you say, there's nothing here, pay my  
9 insurance.

10 CS: and they say no, this insurance  
11 company, this is all money, it's not involving  
12 residents, it's we got two components here, we got 22  
13 conditions, if removed are going to affect residents,  
14 some of these which could affect the village. Car  
15 insurance is all about money, it's not like anybody  
16 else is involved. I hit somebody with a car, they  
17 want my money for damage I caused to the car, for the  
18 damage I caused to them. What's the amount? And was I  
19 liable, was I negligent enough to pay that, that's a  
20 different battle. What we're talking about here are  
21 these issues on the table. In a perfect world, it  
22 would be great to say what check do you guys want,  
23 let's take those 22 off, that's a tough battle  
24 H: Palmer Trinity can always ask for a revised site plan.  
25 CS: and we're not saying that they can't but they're

1 not doing it in a court of law, they're doing that  
2 with us.

3 H: no matter how things work out they have to  
4 do it as a normal course, they have to submit a normal  
5 site plan, there would be a quasi judicial hearing you  
6 would have to approve them up or down, appealed or  
7 denied

8 CS: that's what we do, as a village staff, if  
9 they come in and they want lights that shine until two  
10 o'clock in the morning and they submit that we then  
11 say yes or no to it, the same process they come before  
12 the council within our doors here, it's something we  
13 can work with, not being determined by the courts,  
14 driven by money.

15 H: they're paring that lawsuit

16 CS: our decisions, the money is being part of it, if it  
17 was just negotiate those 22 issues, and there was no  
18 money, there's money involved here also.

19 B: before

20 you continue, we had Palmer Trinity in the room, we  
21 talked about the Village in the room, we haven't  
22 talked about the other groups, so the other 22 items  
23 were theoretically agreed to by the community group  
24 that's Concerned Citizens of Old Cutler, Inc, appeared  
25 to be the persons adjacent to Palmer Trinity impacted

1 by the 22 issues, that might factor into your analysis  
2 as to, is there benefits to the Village or harm to the  
3 Village, if there's a concession and that's what the  
4 mediation is - a concession - and the group most  
5 impacted is willing to by concessions.

6 VMD: Let me  
7 ask a question about what you said some of these  
8 conditions can go through the normal quasi judicial  
9 process?

10 B/H: all of them

11 VMD: if that's the case  
12 then for us to negotiate them in a settlement is that  
13 contract zoning?

14 H: no, you're not settling the  
15 lawsuit on that you're still conducting your  
16 quasi-judicial . . .

17 VMD: so they're still subject to  
18 . . .got it.

19 H: what Palmer Trinity is doing, is  
20 they're treating CCOCI, concerned citizens and Joan  
21 Lindsay quite frankly as the canary in the coal mine,  
22 if their requests for conditions are acceptable to the  
23 people most sensitive to the noise and the lights and  
24 the traffic, if they were sitting at the mediation and  
25 they said there was no problem, then really the

1 Village whose role it is to protect those people and  
2 they accept it, it should be easier sailing to get  
3 those conditions looked at and approved.

4 CS: representation of the residents speaking on behalf of  
5 those 22, not the 5 of us that could adversely affect  
6 those residents, that's a little different twist to  
7 you, you're saying that the group that speaks for the  
8 residents, they want to look at discussing and  
9 negotiating those 22 items?

10 H: this is what happened  
11 at the mediation, a group of residents of the Village

12 B: not the general public, not the people who filed  
13 the lawsuit

14 H: This group is called the CCOCI, the  
15 makeup of that organization is a group of people very  
16 concerned with Palmer Trinity's affect on the  
17 community. The theory is if someone is a member of  
18 CCOCI, and they were at the mediation, those persons  
19 most concerned, voices some approval, then the  
20 concerned party is already taken care of at the  
21 mediation. The Village doesn't have to act as super  
22 examiner of the conditions, most sensitive residents  
23 around were already represented and had their own  
24 voice and said ok we'll do it. That's not conclusive,  
25 you've gotten the opinion of every person in the

1 Village, but the level of changes that Palmer Trinity  
2 is requesting with respect to resolution.

3 CS: Us taking their lead as opposed for those conditions the  
4 biggest difficult is removing conditions that were in  
5 place that could affect residents.

6 B: local settlement concept, if we come to a settlement our  
7 final decision has to be made, we can't contract zone  
8 the groups, Palmer Trinity would be in agreement,  
9 CCOCI as a signatory would be in agreement, that would  
10 be presented to the public.

11 CS: CCOCI says ok, let's  
12 remove the thing about reporting for the entire year  
13 who are we to argue from a council standpoint?

14 H: whatever site plan that this will look like go to a  
15 quasi judicial body, those folks, probably you, will  
16 have to make an independent decision that can be  
17 approved under Village land use regulations.

18 B: you can't abdicate authority

19 H: the answer is yes or no,  
20 if you say no it doesn't and we reject the site plan  
21 and then the case won't be settled and we'll continue  
22 on, but if you ultimately decide based on your  
23 capacity of the quasi judicial officer and the  
24 modified site plan is acceptable, if that occurs and  
25 the other conditions of the development agreement also

1 occur or are satisfied the case is settled.

2 CS: ultimately what we end up ruling, we come up with an  
3 agreement

4 H: just because you agree, if all these  
5 things happen

6 CS: if we say no, they can go right back  
7 to the court

8 H: back to litigate

9 CS: the citizen's  
10 group is interested in negotiating some of the, or  
11 all of the 22?

12 H: yes, at the mediation they had the  
13 opportunity to express that they did so, negotiation  
14 process can continue.

15 CS: I don't know, there's no way  
16 of hearing it from them because they don't have  
17 representation.

18 B: they're represented by counsel,  
19 you have to do it at a public meeting

20 CS: you understand where I'm coming from, I want to make, if  
21 there's going to be those 22 items up for discussion  
22 and our residents or resident group are going to be  
23 comfortable with that, I understand.

24 VMD: I don't  
25 know why this is of concern to us, we're not even sure

1 of the credibility historically of the CCOCI resident  
2 around Palmer Trinity. Today the members may not be,  
3 might be a different set of people and whether they  
4 rubber stamp and endorse and put their good seal on  
5 it, it goes to a hearing we have to judge on the way  
6 we do for anyone else. Look at the law,  
7 reasonableness of giving them a variance or whatever  
8 they're asking for. CCOCI, anybody is welcome to come  
9 and provide public comment and that's the input we're  
10 really looking for. It's not the endorsement from the  
11 CCOCI, it's the public.

12 B: the only thing this does,  
13 they would be a signatory to this, support what is  
14 being presented, if we come to terms maybe a factor in  
15 your analysis, you 5 are the decision makers on the  
16 dais.

17 VMD: During mediation what happens if a third  
18 party, they don't agree, then what?

19 B: we can still go  
20 forward

21 H: go on with the non-settling parties and we  
22 settle with the settling parties, CCOCI as a party to  
23 litigation may have their own reasons to want to  
24 settle and allow some of the changes. That may not be  
25 in the best interest of some neighbors. The fact that

1 their position has changed maybe a barometer of the  
2 overall mood of some of the residents, maybe some of  
3 the opposition has cooled over the course of this  
4 litigation.

5 B: we have talked about there is a desire  
6 to discuss settlement. Do you want to talk about  
7 money, the next step?

8 VMD: I would love to talk about  
9 the insurance company's money, but they don't want to  
10 talk.

11 H: The insurance company hasn't changed  
12 positions, we were here for the executive session  
13 before the mediation, I think we went around the table  
14 and there was an expression by each of you, range of  
15 money that the Village would be comfortable with, as a  
16 possibility of sweetening the deal that might get this  
17 resolved. A benefit not discussed, fees, impact fees,  
18 permit fees associated with building the project that  
19 they may use as a credit. Here's how a normal project  
20 would go - a developer comes in and says I want to  
21 build, the municipality says your permit will be  
22 \$100K, the builder then comes in and writes a check to  
23 the municipality for \$100K. Obviously if here's a  
24 settlement and Palmer Trinity is not going to get the  
25 benefit from writing a check, that's a substantial

1 savings in their actual outlay.

2 VMD: this is exactly

3 what we talked about before, this is just moving the

4 money, the cost of settlement from the insurance

5 company who's obligated to pay for this settlement

6 since we pay for the insurance with them, taking \$1M

7 out of our pockets of revenue, it means we're paying

8 \$1M in the settlement or \$100K or whatever the number

9 is.

10 CS: \$100K

11 VMD: they're holding us hostage, we

12 should be taking all of these off the table.

13 H: what do you propose?

14 CF: this can go on forever, I agree

15 about credits but I also like what Councilman Schaffer

16 said, why can't we go back to a site plan if this

17 group agreed to most of these 22 conditions, go back

18 to the insurance company, figuring the number was less

19 than \$100K, maybe they pay \$ 200K or \$250,

20 it's insurance money, not taxpayer money and we get a

21 site plan and we go for a quasi judicial hearing. Just

22 like a charter school if it gets approved they get

23 their 22 conditions. Evidently from what you told me

24 from this mediation this group was amicable to these

25 22 conditions and end this, otherwise this goes on

1 forever.

2 H: According to Palmer Trinity \$250K won't  
3 end it.

4 CF: But we're offering a site plan at the  
5 hearing, not negotiating like the Mayor said

6 VMD: can they move ahead with Quasi?

7 H: yes

8 VMD: they can go  
9 ahead and ask for the 22 conditions?

10 B: they would  
11 file what is called a modified site plan application,  
12 pay the fee, go to a public meeting on whatever it is,  
13 understand that most of the conditions are under a  
14 declaration of restriction as well as modifications.

15 VMD: both can be done by a quasi judicial?

16 B: yes

17 CF: or the insurance comes up with a better . . .

18 H: based on the statutes of the covered claims, the 11th  
19 circuit has protection, both those claims, not valid  
20 claims, matter of law, the insurance company deals  
21 with this, relatively weak claims, and there's another  
22 claim for abusive process, looks like a weak claim so  
23 at this point remember before summary judgement has  
24 been filed, based on historical information of the  
25 insurance company, they represent many municipalities

1 in the state of Florida, they look at the law suit in  
2 terms of exposure, for financial exposure to the  
3 damages claim to be manageable. The thing they  
4 haven't expressed to me is their interpretation of  
5 what the possibility is on declaratory relief on your  
6 ordinance, declaratory relief on count ordinance,  
7 injunctive relief.

8 B: and the public records claim

9 CS: and that's what

10 Councilman Fiore was saying, we got

11 two components, you pull out the conditions component  
12 from the courts control, they go through the quasi  
13 judicial, they submit their plan, we get input from  
14 residents, gather as much information on those 22  
15 items, it comes before us whatever those 22 items, we  
16 vote, in favor, they're happy, they can go on and do  
17 what they need to do, they want their pound of flesh  
18 in money

19 H: that's the mediation

20 CS: they come before

21 us with these 22 items and we say vote a certain way  
22 they're not happy with they can turn around and go  
23 back to court but we're the one controlling that from  
24 that standpoint, they can go back to court because  
25 they didn't like what we came up with. Everyone's

1 happy, continue to battle in court, what's it going to  
2 cost in the way of a settlement, they're going to want  
3 money, the insurance company thinks \$100K, that's a  
4 battle that could go on in the courts for some time,  
5 but that's what we're looking at.

6 VMD: I have one

7 other question, let's say we agree on the example I  
8 used before, \$1M, removal of the berm, \$300K credit,  
9 now it's \$700K, we go to quasi judicial, the council  
10 then rejects the removal of the berm, does the  
11 insurance company pay the \$300K?

12 H: no, there's no settlement

13 B: correct

14 CS: I wasn't even thinking of

15 proposing that, they pay, they come in and pay  
16 permitting and all that they need to pay and not  
17 giving any credits they resubmit their site plans  
18 without us picking up the tab. They go through it,  
19 they put whatever they want it to be, it goes through  
20 the quasi judicial system and in the end if it works  
21 out great, in a great world, Palmer Trinity is happy  
22 with our vote, the citizens are happy with our vote,  
23 and we stay in the court and fight it out how much  
24 they want, it may end up being nothing, maybe we do  
25 have to go to a jury, but that one component is done

1 and we're moving on. Maybe the insurance company will  
2 up the amount of money and they're going to settle it  
3 out for more than \$100K, closer to a number that makes  
4 Palmer Trinity happy but until it get's up to \$5M it's  
5 not our tab.

6 B: procedurally the next move for Mr.  
7 Hochman assuming we file a motion for summary  
8 judgement, we've been here for 5 years and we have a  
9 mini summary judgement hearing before the court on a  
10 motion to dismiss at that time we'll know if insurance  
11 is in or out, in other words if he's right, those  
12 claims are dismissed, but he comes back without  
13 league, there's no coverage. Either Palmer Trinity  
14 appeals or we lose and it's an appellate action, it  
15 doesn't go away and we continue to litigate through  
16 this chain of command, judicial system who is  
17 ultimately right on the issues and damage claims  
18 VMD: if they win they can take it to appellate?

19 B: Palmer Trinity could, yes.

20 VMD: regardless of the outcome  
21 they can go to appellate?

22 B: yes, I thought I said  
23 that.

24 H: what happened at mediation, they've  
25 basically taken the stance that they want to resolve

1 the case, the two aspects of the case is one we want  
2 some accommodations on the site plan, we don't want to  
3 have a repeat of the last number of years. What  
4 they're essentially saying is we've beaten you a few  
5 times, we would at least like to get some recognition,  
6 they belief that the past is somewhat entitling to  
7 them to accommodations and that's their mind set. The  
8 second part of this, they would like their insurance,  
9 they'd like to be paid some amount of money.  
10 Reasonable claims, we discussed at a prior meeting  
11 where there was some suggestion there would be an  
12 amount that the Village would pay in addition. Today's  
13 discussion is a result of that mediation, the  
14 communication I'm hearing is perfectly fine, a slightly  
15 more conservative approach than the last meeting.  
16 During the last executive session there was a general  
17 consensus the Village was willing to pay out of funds  
18 to resolve the case, that expression does not seem to  
19 be consistent tonight.  
20 CS: I didn't like it back then,  
21 not thrilled last time, just throw a number out, I  
22 don't see a dime being written  
23 VMD: likely of summary judgement  
24 H: in state court, in federal court better  
25 than 50%, 1983 claim for protection and 1983 claim for

1 due process and damages claim  
2 VMD: we'll give you a  
3 summary judgement on 5 of 11 counts  
4 H: possibly, those  
5 claims there's a lot of law on those, the novel claims  
6 that are not covered, this is a new kind of issue,  
7 there's conflict between 3rd district court of appeal,  
8 case talking about what municipalities and a statute  
9 passed by Florida legislature they're in conflict,  
10 court has to make a decision about what it really  
11 means and quite frankly we don't know what court is  
12 going to do. I know our position is going to be  
13 follow the statutes, later in time it addresses the  
14 issue, but this judge is going to be puzzled and she  
15 is not going to have a clear set of laws to guide her  
16 decision making. My giving you advice on non covered  
17 claims, I'm not so confident that we can prevail on a  
18 summary judgement motion.  
19 B: one state claim goes  
20 back to Jennings rule, you've heard me talk about.  
21 Jennings was a person sued in Dade County, by  
22 judicial, court says the county wrong because they had  
23 communications out there in the real world that weren't  
24 disclosed in the hearing that could have influenced  
25 the hearing and therefore they were improper. The

1 state law says, the state legislature realized we  
2 can't control constituency from reaching out to you,  
3 gave a mechanism in the statute to do disclosures and  
4 let everybody know at the hearing who was spoken to,  
5 who received an email and let you cross examine and  
6 make sure it's a fair process, all the quasi judicial  
7 hearing Palmer Trinity counsel wants to strike down,  
8 as being contrary to the judge's rule.

9 VMD: I'm not  
10 hearing anything tonight that gives us any impetus to  
11 give you any specific direction other than we're at  
12 the mercy of the insurance company. We still want  
13 this thing settled, but it's still our opinion if the  
14 insurance company is not going to agree to it, move,  
15 our hands our tied behind our backs by the insurance  
16 company. What input can we give you tonight?

17 H: the  
18 input I would like to find out, like during the last  
19 executive session, there remains a consensus or at  
20 least an idea that the Village is willing to use some  
21 of the credit system or if not, the Village is  
22 willing like indicated to come out of pocket..

23 VMD: you're negotiating between the insurance and us

24 H: I'm not

25 VMD: you're asking to offload insurance costs

1 to the Village in two different ways, with write a  
2 check and with offsets to the conditions that we need,  
3 ok, and I don't think it's right.

4 H: so what you're saying to me is you would not be in  
5 favor of a settlement with any money coming from the  
6 Village.

7 VMD: I'm not in favor of moving economic  
8 responsibility away from the insurance company to the  
9 Village of Palmetto Bay.

10 H: OK, I understand that,  
11 does anyone have a differing opinion or different  
12 point of view?

13 CF: I agree, and I said this earlier,  
14 this has to end. It should have ended in 2010,  
15 didn't, and that was long before I got here. The  
16 insurance, I think, you offered them a number at  
17 mediation and that number was rejected?

18 H: that's correct

19 CF: soundly rejected?

20 H: yes

21 CF: so the numbers are not going to work

22 H: the number I offered  
23 was a number based upon the discussion we had during  
24 the previous executive session and seemed to be a  
25 number that if it were presented to this council

1 during a public meeting with a signed sealed and  
2 delivered settlement agreement and all they had to do  
3 was approve it up or down based on my notes and my  
4 understanding of the communications would more likely  
5 than not receive a favorable vote by the majority of  
6 the council.

7 CL: let me interrupt, the money that  
8 he's talking about are not insurance dollars, village  
9 dollars.

10 VM: combination

11 CL: I thought your portion  
12 was very small, I thought the larger portion, what  
13 you're assuming

14 VM: I think you're right about the larger portion

15 CL: I just wanted it to be clear,  
16 money from the village

17 CF: Would it be my  
18 understanding that Palmer wants to settle this,  
19 they're not moving forward. They still have to pay  
20 their attorneys, it costs them more money out of  
21 pocket, is it fair to say then because it's a financial  
22 hardship to them at this time. They don't have the  
23 money, forget the 22 or the original 28, they didn't  
24 say that did they?

25 H: no, they said nothing about the

1 reasons for the delay  
2 CL: if I could interject  
3 here, the resolution stipulates that they have to do  
4 the buffer before they can start building, they can do  
5 the road, and the driveway, they have to do that buffer  
6 so if they're trying to negotiate eliminating the  
7 berm, they don't want to go ahead and put that in and  
8 proceed that way. The other problem as Mr. Hochman  
9 pointed out even though fire signed off on this site  
10 plan they have a problem with the driveway because of  
11 the fire trucks. The vehicles can't make the sharp  
12 turns even though we gave them the go ahead to  
13 proceed with what we have approved. They don't want  
14 to do this while they're trying to negotiate, not only  
15 getting rid of the berm, but changing this  
16 configuration. What I heard, they want to reduce the  
17 width of the buffer so they can have some more room to  
18 make this driveway work for fire. They don't want to  
19 start with the other things according to the  
20 resolution.  
21 B: They're not paying the attorney, he's  
22 on a contingency fee.  
23 CL: in terms of the conditions  
24 here some of the conditions we're talking about, these  
25 22 are not conditions that are going to harm the

1 residents. A few I'd like to discuss, for example,  
2 the first thing involved giving them a little more  
3 time to remove portable classrooms, another one had to  
4 do with, as Mr. Hochman pointed out, the issues in  
5 terms of the sound ordinance. One dealt with ADA  
6 Digital Signage. They were required to put in ADA  
7 Digital Signage, as long as the bells, buzzers and  
8 whatnot comply with noise code, I don't think that's  
9 something that is going to be a problem. Another one  
10 is these two buildings, their major buildings have  
11 fishtails, they want to modify the architectural  
12 aspects of those buildings. They're also talking  
13 about interior use of the facilities, limited hours of  
14 operation and most people at the table said they could  
15 give that up. These are not 22 conditions that are  
16 going to have a large impact on the immediate  
17 neighborhood, the light was turned down, they wanted  
18 lighting on the ball field that would have extended  
19 hours and the noise, and I think for the most part can  
20 be lived with. There's a problem with the traffic on  
21 176th street that I'd like to talk with you about, but  
22 I think the bigger issue here is the money. The people  
23 at the table from the Village and the neighborhood  
24 groups were anxious to put this behind us and we  
25 wanted to work with them. The bottom line comes down

1 to the money because even though we said we can live  
2 with this and that they said they still want \$2.5 M,  
3 we had counsel say the case isn't worth that. On the  
4 issues that you covered, problem we all have to  
5 face here, if you prevail at summary judgement we could  
6 be left holding the rest of this case and we have to  
7 understand that. We've been to court a number of  
8 times and I will say myself, things don't always turn  
9 out the way you think they should based on law and  
10 what you see as a solid case. Sometimes the court  
11 doesn't agree so having a great case doesn't mean  
12 you're going to prevail and that's something everybody  
13 needs to think about. I personally would suggest that  
14 with the light modification to these conditions that  
15 we consider going back with a small monetary offer  
16 with a condition and try and put this behind us.

17 CF: that's all great but every time I bring up the past,  
18 you had the opportunity in December to end this, you  
19 didn't want to do this, you continued the appeal.

20 When the former vice mayor was here, the vote was 3 -  
21 2 to continue and you wonder why we're getting sued,  
22 the opportunity was there to end it.

23 CL: what I'm

24 trying to tell you is along with the vice mayor, we  
25 knew the case quite well, we had a very strong case,

1 and I'm not sure you were as involved with the  
2 details. I believe that at the time we were right, I  
3 would vote the same way, I just said a moment ago you  
4 don't always get the decision you want in court, and  
5 that can be for a number of reasons. It's not that  
6 simple. CF: it is that simple CS: being that we have  
7 a good case, don't think it's Mr. Hochman, the  
8 insurance company made the determination that the case  
9 is worth less than \$100K, what the actual number could  
10 be \$ 20M, could be \$10. It's not worth \$100K, so from  
11 that standpoint we don't know what the real number  
12 would be, that's the variable we're working with, even  
13 as a group willing to throw Palmetto Bay skin in the  
14 game, that still may not be good enough or it may be.  
15 I don't want to write a check at all, the reality  
16 behind it comes back to the same thing. We got  
17 conditions, if we can work on the conditions separate  
18 from the monetary law suit and then focus on the  
19 monetary lawsuit. What if the court says \$5M, who  
20 writes that check?

21 H: if the judgement is against the  
22 Village on the covered claims.

23 M: and the reason that  
24 the insurance company has said the value of the claim  
25 is only \$ 50K, but less than \$100K, because of the

1 covered claim is so strong, so if we went on the  
2 covered claims we're going to lose.

3 VMD: you bring up

4 a good point. Councilwoman Lindsay also brought up  
5 covered claims. The covered claim portion , we need to  
6 hear from out counsel what non-covered claims are  
7 worth, \$ 250K, \$350K, was that the relationship for  
8 covered claims - \$50K and non covered claims being  
9 three or four times that is that were we are coming up  
10 with. . .

11 B: the issues with claims that would  
12 remain, there are all currently covered, comes along  
13 with the covered claims, Mr. Hochman I covered on all  
14 of those, coverage representation, a fair statement?

15 H: Just so there's no confusion, once there is one  
16 covered claim payment of benefits under policy the  
17 other thing you get is a defense. Every claim is  
18 defended, not every claim is covered, so if the  
19 lawsuit proceeds and you eliminate all the covered  
20 claims, you also eliminate defense provided by the  
21 Florida Trust. There is right now exposure claims,  
22 adverse awards of costs and attorneys fees that the  
23 argument is part of and during a quasi judicial  
24 certain documents were not provided to Palmer Trinity  
25 during zoning, denial of due process, certain

1 documents were provided to quasi but not to Palmer  
2 Trinity. They were denied due process, never had a  
3 fair hearing and therefore, that's what triggers their  
4 claim.

5 VMD: if the covered claims are not all  
6 dismissed and ultimately gets a damage award from the  
7 courts, will all that damage award have a breakdown of  
8 specific amounts per claim so we know how much is  
9 covered by insurance and how much is not?

10 H: probably not

11 VMD: and then what happens? Do we have to sue the  
12 insurance company?

13 H: I don't know what happens at  
14 that point, but typically there would not be a  
15 separate given, because Palmer Trinity would request  
16 as much ambiguity as possible. They would have to  
17 decide what's in their best interest, litigation how  
18 they want. We have not answered, no summary judgement  
19 and not near a trial where there can be an evaluation  
20 or division.

21 CS: so, in theory, the judgement for  
22 \$1M, of that \$1M, \$100K, you have to write a check for  
23 \$900K.

24 H: it's a little more complicated, there's  
25 theoretically, only judge would be attorneys fees and

1 strike down ordinances, compel to engage, adjunctive  
2 relief.

3 CS: so we could end up writing, the belief we  
4 have now if the award is \$5M, we're not exposed to  
5 writing any check at all because it's covered by the  
6 insurance but in reality the insurance company would  
7 come back and say wait a second we're carving out only  
8 a portion of this, because that's what we actually  
9 covered based on the way our policy is written, so  
10 \$100K, \$500K, whatever number they come up with and  
11 they say that's what we're going to pay and you guys  
12 have to come up with the balance.

13 H: the simplest way  
14 of looking at this, this is just one example, let's  
15 say the Village wins on every claim except it loses on  
16 a public records request claim, the law requires the  
17 court to award attorneys fees and costs in favor of  
18 Palmer Trinity on that one claim, so you win. I think  
19 there's 15, 16, not all, except one claim, therefore  
20 you would be left, the Village would be left with, so  
21 the FMIT would say, thank you, we gave you your  
22 defense, have a nice day. A judgement would be  
23 entered into awarding attorneys costs and fees, losing  
24 the public records request claim, or except, if Sean  
25 is the type of lawyer I think he is, \$350 to \$500 per

1 hour, and he would say that everything I did in the  
2 case, results from that claim, because it is the  
3 genesis for all other claims, and therefore, every  
4 hour I spent attributable to my effort on that claim,,  
5 therefore you have to pay a judgement in the range of  
6 \$500 - \$600K.

7 CS: if it's \$1 or \$1M we don't want to  
8 write a check.

9 H: and yes, there is a theoretical  
10 matter, this is a novel area of the law, there are a  
11 lot of arguments that will come to bear, my only point  
12 in discussing this, is that really in response to your  
13 conflict, there is not a conflict. There's a  
14 settlement opportunity, FMIT and also the Village.  
15 this is a fluid environment and there's risk. All I'm  
16 trying to find out from this group is there an  
17 appetite to eliminate all risks, finding items that  
18 are subject to negotiation, and the first area subject  
19 to negotiation is a list of items, the second area is  
20 a willingness to say it may be worth coming out of  
21 pocket, a sum, a modest amount to eliminate all of the  
22 Village's risk.

23 B: a counter offer could be seriously  
24 be . . . let's look at different conditions, are there  
25 any conditions the community could live with and that

1 Palmer could live with without us coming out of  
2 physical pocket for any funds.

3 CS: my gut feeling is  
4 we are covered for \$100K and everything else is going  
5 to be on us, plain and simple, so let's focus on that,  
6 really that's what it sounds like to me.

7 B: that is the position of our carrier

8 CS: we don't have \$5M  
9 worth of coverage, we have \$100K worth of coverage as  
10 we stand right now.

11 VMD: and we can either use it  
12 for a settlement agreement or use it to pay the  
13 judgement, if there is a judgement, either way it's  
14 \$100K..

15 CS: you got it. As it gets whittled down,  
16 that's what it sounds like to me, we have \$ 100K  
17 coverage, we're hanging out there pretty far.

18 H: let me play a little devil's advocate here, right now  
19 there are no permitting fees because there's no  
20 construction going on, we'll just leave the school the  
21 way it is and you get 0 fees.

22 CS: different approach

23 H: at least you get a percentage of an actual number,  
24 instead of a percentage of zero.

25 CS: I see the number

1 as a lost opportunity cost, in the fact that we do not  
2 let the fees, if this was in litigation, we don't  
3 collect, lost opportunity cost.

4 VM: we don't generate the effort

5 CS: you're going to be paying for people

6 M: that works fine if you're working on the general  
7 fund. We're not working on the general fund, we're  
8 looking at a capital project here, self supportive.  
9 It's a capital fund so whatever it takes it has to  
10 support itself. So what it would be doing is running  
11 a deficit of \$1M, that fund cannot support that, and  
12 it does not bring in that much so it would be  
13 bankrupt.

14 B: if you are thinking about settlement,  
15 there is a requirement. I'm just throwing this out, I  
16 haven't talked to Palmer Trinity or anybody else about  
17 this, but we have Art in Public Places as a  
18 requirement in the ordinance. Maybe it's a concession  
19 because it's 1 and 1/4%, waiver as a concession toward  
20 settlement

21 VMD: what's the value of their project?

22 B: construction costs are over \$1M and \$50M or something

23 VMD: no, it can't be, between all the changes, how  
24 many square feet?

25 VM: I don't think that \$50M is that

1 far off, I mean it depends on what they do. There's  
2 some heavy construction, pretty good size facilities,  
3 lots of ground and drainage work.

4 CS: the stadium is \$10M

5 VMD: 200K square feet for \$50

6 CS: that's \$50M I'd like it to be that number

7 CF: that's

8 actually not too bad, if they're not going to start  
9 construction for a few years, if they don't have the  
10 funds to do it, which we don't know

11 H: there's some conflicting information, they submitted the site  
12 plan, they went through the process, they went on appeal,  
13 they went on appeal again, and they seem ready willing  
14 and able to proceed with the project. Conversely,  
15 there is an opportunity to build right now. The berm  
16 would be the first to be installed, they're trying to  
17 get an accommodation, don't do it, modify, deal with  
18 the first issue first. We're left in an environment  
19 of limited information.

20 CF: I have a meeting at 8:00,

21 I think you have my understanding, I think that's a  
22 start.

23 B: start on the 13th.

24 VMD: I'm fine with that too,

25 from what I just heard, given what we've just

1 discovered we need to do everything we can to move  
2 ahead.

3 CL: I think you have monetary value that  
4 hasn't been assigned, a monetary value and I don't  
5 know how we go about assigning monetary value, for  
6 instance on 6/23 we allowed two athletic tournaments  
7 at one time. We seem to be giving things like that  
8 and seemingly nothing in return. So I don't know if we  
9 need to put a monetary value on each one of these.

10 CS: that would make sense

11 CL: again, number 1, moving the  
12 portables, according to the 1999 agreement, they were  
13 supposed to be removed then, they still exist. It was  
14 supposed to be 18 months after the resolution was  
15 finalized. They're running out of time.

16 B: Perhaps we  
17 can come back, portables are used as classrooms,  
18 concession was 18 months. The original resolution was  
19 18, now it's the c.o. of the first guard house. How  
20 many student stations in each of these rooms and then  
21 based on the number of . . .

22 CL: good way to do that

23 B: is there anything else we want to discuss that  
24 would be on the table. If there was a concept from 79  
25 to 80 conditions, would that be amenable to the

1 council? AIPP being one.

2 CS: absolutely any creative

3 ideas whatsoever.

4 M: I think that adds up to a quite

5 a bit of money.

6 B: \$350K

7 CS: AIPP, lost opportunity

8 cost, the other one was actually writing a check.

9 B: the actual writing the check, all of these others are  
10 theoretical.

11 VMD: yes

12 CL: I don't recall that we

13 authorized \$350K

14 H: there wasn't an authorization, it

15 isn't about you voting on a particular number, it's

16 the idea of a comfort zone, in months from now if

17 something occurs and there's a settlement stipulation,

18 that number is on there. I would prefer if I were to

19 my job as a lawyer not to waste the time of this

20 council, so if that number shows up negotiating with

21 adversary that number is never going to work, I don't

22 know but I don't think it's a 5-0 against.

23 CL: I recall you were the high number

24 CS: I remember distinctly I was really fighting it, \$350K

25 CL: that was your number

1 CS: I was sitting there, you have to  
2 come up with, I don't want to, I was fighting to the  
3 bitter end, \$350K seemed to be the number, where it  
4 originated . . .

5 B: \$350K total CL: are you talking  
6 about \$100K from the insurance company? I'm not sure  
7 what they're going to fund.

8 VM: \$50K

9 H: they authorized at that mediation a total of \$50K because  
10 at that point their position was -

11 VMD: why don't we agree what we agreed

12 B: the last time we started off  
13 \$100K and then \$250K split, but he couldn't guarantee  
14 \$250K from the league so it's \$350K to \$500K.

15 M: that was not my number, mine was between \$1 and \$150K.

16 B: Councilwoman Lindsay, what was your number? We're not  
17 voting here, but we do need to have a number.

18 CL: I think it was brought out at the last session and Mr.  
19 Williams concurred if we're going to stay in the \$150  
20 neighborhood that we need to be, you're going to have  
21 to do more than that if you truly want a settlement.

22 M: one of my comments previously, we had not allocated  
23 a number to any of the items. I think that's an  
24 important item if we were to do it. AIPP that's  
25 several hundred thousand dollars that they are not

1 writing a check for. H: the Village already offered  
2 as a practical matter, although it was rejected and  
3 there's no liability for it, \$250K at the mediation,  
4 to say I'm authorized to offer less money, it's  
5 counter productive. Assuming there's no additional  
6 credit, meaning that AIPP is not another sweetener and  
7 credit is not a sweetener. VMD: you came out  
8 believing that \$250K was the number H: I just want to  
9 make sure you know what I'm thinking. At some  
10 subsequent point after a settlement document is  
11 signed, it must be approved by this council in a  
12 public meeting, you will then be required to look at  
13 the document and decide whether the \$250K number,  
14 let's say the settlement figure was acceptable or not,  
15 you have the opportunity to say I vote against it. The  
16 only result of that is the case doesn't settle. I  
17 just don't want to waste your time with a number so  
18 high. VMD: we need to refine the numbers M: if we  
19 can get some kind of allocation of a fund, changes as  
20 well as AIPP, as well as trail and sidewalks,  
21 ultimately comes out of our pocket, we do have a  
22 sidewalk program. It was a concession to the Village  
23 that would sweeten our pot then we can pick and choose  
24 which ones are important based on how we build the  
25 fund. We build a fund of \$1M or \$2M for these

1 concessions or a cashed check, we got something to  
2 talk about. Then we can say if we want a sidewalk  
3 from them or us. More concrete decision, I don't  
4 think we're there yet. VMD: let me finish what I was  
5 saying a minute ago, the two really big numbers in the  
6 formula would be the AIPP so I suggest on those  
7 interrogatories we add an estimated construction cost  
8 on what they propose, ballpark, that would give us an  
9 ability to fine tune pricing. M: I am not supportive  
10 to give them a walk on permit fees, an idea we can  
11 approach the Village with. Are there permit fees -  
12 this is a project that's going to take 20 years to  
13 build, so in 20 years we could have \$50M in  
14 construction, in 20 years what percentage of permit  
15 fees, operating permits, is it 95%? Is there some  
16 margin - it may not be 50%. This is an enterprise fund  
17 and we cannot bankrupt an enterprise fund. But we may  
18 be able to give a percentage of reduction, 5%, 2%, as  
19 a proffer, that would then continue with them for the  
20 next 20 years, only those projects on the approved  
21 site plan today. CS: so the balance sheet of Palmetto  
22 Bay will be reduced by \$1M. My thought is if we are  
23 giving permit fee breaks, we're not going to have to  
24 write a check for \$1M, not \$1M cost in one particular  
25 year, it can be spread over 10 years, given them \$1M

1 breaks, or bursting out that entity into a bankruptcy  
2 situation, we may be able to work that a little bit.

3 VMD: I think this is a non-issue, it's a balance  
4 sheet issue, general fund to enterprise funds, that's  
5 irrelevant. It's a concession of \$1M we can make it  
6 happen. We can't bank funds but we can pay the bill  
7 for the school to be in compliance with the enterprise  
8 fund. We can make it work. CL: As you're both  
9 pointing out doing it over time, it's to our benefit.

10 M: the only other thing is to look at the balance  
11 sheet on the enterprise fund.

12 VMD: it would be more profitable

13 M: further deficit

14 VMD: the enterprise  
15 fund would still get 100% of the permit fees, it would  
16 be a balance sheet from the general fund to the  
17 enterprise fund.

18 CL: over 20 years

19 B: amortized

20 M: are you going to raise permit fees?

21 CS: general fund

22 writes a check for \$80K and then the fund is whole  
23 again, finance aspects, money coming out of -

24 M: permit fees

25 CS: we have to cut a check. Whether we

1 get forced to write a check - \$1M will be coming out  
2 of Palmetto Bay.

3 VMD: balance sheet, if you start  
4 moving dollar for dollar from the reserve to the  
5 enterprise fund, you have to continue it for 20 years,  
6 oh, we have a profit this year, no, fees to everyone  
7 else shouldn't change.

8 M: is that allowable to transfer?

9 VM: yes, transfer between funds, it's a  
10 matter of appropriate accounting.

11 M: nothing that  
12 requires self supporting?

13 B: supposed to be, you can do what's recommended

14 VM: you can have inter-fund transfer

15 VMD: especially if we pay for Palmer Trinity permit fees

16 B: it sounds like we're working towards  
17 it, bringing you back to the evaluation thought  
18 processes and work towards consensus.

19 CS: do they know what the cost is to build this?

20 B: there should  
21 be evaluation permits and we can go from there.

22 H: there's other ways than discovery

23 CS: assuming they cooperate

24 B: true, I do believe they're being  
25 cooperative.

1 VMD: yes, they're also trying to be  
2 financially prudent so up front there going to take a  
3 low end figure, they have to give you an accurate  
4 number.

5 B: fair enough

6 VM: just one point, explain  
7 Councilwoman Lindsay's pricing here, the resolution  
8 obviously has some value, but speak to that, I don't  
9 want us to leave here, my belief is they went to  
10 \$2.5M after having considered, the Councilwoman was  
11 there.

12 H: this is kind of like us trying to determine  
13 a proposed project that's not going anywhere. If they  
14 lose the case, it has zero value. They're also working  
15 from this idea of creating value from a theoretical  
16 perspective. What we're doing here tonight, we're  
17 trying to get non-monetary issues resolved and then  
18 focus on a variety of ways. Whatever the Village has  
19 to pay out of pocket, that number has to be as low as  
20 possible - the midpoint - \$1.375M - the case is not  
21 going to settle for that. Can the case settle? It's  
22 going to be substantially lower than \$1.375M. We'll  
23 prepare an agreement, we're comfortable or not  
24 comfortable and it's not something that happens,  
25 whatever the figure is you'll decide if you're

1 comfortable and the case will proceed.

2 B: some of the items have value like the berm. Maybe it's actually  
3 worth \$500K - whether they buy into it or not. The  
4 valuation is \$350K, at least that's how they presented  
5 it to us. A list to the Village once a year may not  
6 have an actual monetary value, the time the staff  
7 takes to write some of these, but some of these things  
8 we can get a range. CS: you can put a price on the  
9 whole thing, that berm is a very important component  
10 to the residents. B: it's a non-start at this point.

11 M: I think we should be careful not to make the  
12 assumption about what the Village group will accept.  
13 I think they have people who have been pro-active on  
14 this issue since 2008 -that's when it started. They  
15 spent a lot of time with zoning, if they said they  
16 would give up the berm I would accede to their wishes.

17 CS: I'm saying, I think it would be pretty amazing  
18 for noise reduction, it's huge. I hope that's the  
19 case. Worth thing that could happen, we're sitting  
20 there, you're doing what with the berm?

21 B: we're waiting to hear from Mr. Price and company on this  
22 roadway, if they're moving more of the buffer and the  
23 party's agreement, value of land for use, value of the  
24 land for the extension of the roadway

25 VM: that's the real value,

1 not just construction of the berm but the  
2 value of the excess land.

3 B: that land is worth over \$2M

4 VMD: what land?

5 CS: berm

6 VM: that unusable piece, it it becomes usable

7 B: the buffer is all the way  
8 around the property, they're looking to reduce part of  
9 the buffer for the roadway, shifting the roadway. The  
10 agreement that they can use more of that and the  
11 buffer is reduced to 65 feet. The value of land use  
12 that we can increase, we can negotiate with usable land  
13 not just a buffer.

14 CS: Councilwoman, you have a better  
15 pulse of this and the organization - they're  
16 comfortable discussing that adjustment of changes to  
17 the berm?

18 CL: there's a meandering path and a  
19 maintenance path within the buffer, within the 75  
20 feet. What they said was they would be willing to go  
21 to 65 feet if it doesn't include the meandering path  
22 and the maintenance path.

23 B: but the berm would be removed

24 CL: the berm, yes

25 CS: we can still come out

1 and get ambushed

2 CL: I can't speak for everyone in

3 the community but those people were willing to forgo

4 the berm.

5 CS: that's huge

6 CL: it is huge, but you have to remember people in the community

7 are making concessions. If they are going to settle things, we

8 need monetary value. They don't have the money to

9 write the checks themselves. This is what they can

10 do. I think we should stick with the \$250K we had last

11 time and add in the other things especially the land

12 value for taking 20 feet out of that berm.

13 M: 10

14 CL: 10 from each side. I don't remember the length of the

15 field, maybe 1100 feet, but i don't think the dollar

16 figure has ever figured into that and without a

17 hardship to the Village we could forgo the Art in

18 Public Places.

19 H: just so I understand, there's a

20 value to land that's not buildable, inside the setback

21 and needs to be compared to buildable land outside the

22 setback. Those two chunks of land have different

23 values, the Village has agreed to convert certain

24 setback areas, the difference in value should be

25 credited back, is that the theory?

1 CL: I think so. Mr.Kelback

2 at some point announced a figure for the extra  
3 25 feet, buffers on the east and west of the south  
4 property.

5 VMD: AIPP, is the best and easiest thing  
6 for the Village to give up.

7 VM: and the effort's not there

8 CS: no lost opportunity cost on that

9 B: I may  
10 ask to sit down with traffic consultants or engineers  
11 to go over some of the numbers to come up with value so  
12 we have a starting point.

13 VM: I think that's important

14 VMD: does it matter what we value it at? Isn't it  
15 more important they value it at -

16 VM: maybe there's a compromise

17 H: ultimately Palmer Trinity will be given  
18 a figure and they'll reject it, and then another  
19 figure and they'll reject it but at some point they'll  
20 provide a yes to a figure, but the first figure they  
21 say yes to is lower than \$1.37M, higher than you're  
22 willing to settle for then the ball will be in your  
23 court.

24 VMD: We can work on that number assignment of  
25 a dollar amount - is \$500K altogether and 12 out of

1 these 22 concessions?

2 H: my objective today is to find

3 an appetite for negotiating.

4 VMD: all I'm saying is it's premature.

5 B: I am going to figure out some

6 numbers because we'll at least have a starting point

7 and we don't have anything to battle with.

8 VMD: the most important number, we need to get an idea for  
9 value of improvements, AIPP is a math formula at that  
10 point.

11 H: two things are going on, we're trying to  
12 create a system in the most persuasive way. They may  
13 have an organic problem and are not going to be a  
14 position to accept less without rolling the dice and  
15 they might be an area not willing to pay. All this  
16 effort, attribution of value may be for a completely  
17 good idea, but not practical use.

18 VMD: No, I disagree  
19 as a business person, Palmer has the same problem that  
20 we have with our balance sheet if it comes out to  
21 \$1.375M in cash or combination of AIPP credit that  
22 they get, they can still pay their attorneys fees out  
23 of their checkbook knowing there's \$1.375M. I think  
24 the aggregate is something important, some level of  
25 value that they tell us they agree with, we'll tell

1 them the number is acceptable. AIPP, if they tell us  
2 they agree to that, we'll tell them what the number  
3 is.

4 VM: and to the Mayor's point, waiver provision in  
5 the AIPP program, that gives us more legal bearing.

6 B: I will try and get the numbers together and if you  
7 want to hold another session - but as of right now I'm  
8 not planning another session. Mr. Hochman will reach  
9 out.

10 VM: and cash position is the same as we proposed  
11 the last time

12 B: which is \$250K

13 CS: fine with me

14 B: from the Village, not the insurance, that's where we  
15 came up with \$350K, which is \$ 100K. It is now 8:11  
16 and we are adjourned.

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REPORTER'S CERTIFICATE

1 I, Deborah Lippman, hereby certify that the foregoing transcript of 62 pages is a  
2 complete, true and accurate transcript of the Village of Palmetto Bay  
3 Council Meeting held on June 26, 2013  
4 at 6:00 P.M. in the case of PALMER TRINITY VERSUS THE  
5 VILLAGE OF PALMETTO BAY.

6  
7 I further certify that the proceedings were  
8 recorded and the foregoing transcription was prepared by me.

9  
10 DATE: July 2, 2013

11 Official Reporter: DEBORAH LIPPMAN

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DEBORAH LIPPMAN

Court Reporter

My commission # is: EE001552

Expires on: June 26, 2014

17 WITNESS MY HAND AND OFFICIAL SEAL IN THE CITY

18 OF MIAMI, FLORIDA

19 THIS 21ND DAY OF JUNE, 2013



20

21

BY: *DL*

22

DEBORAH LIPPMAN, REPORTER

23

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