



TOWN HALL MEETING
HOSTED BY COUNCILWOMAN JOAN LINDSAY
MAY 21, 2014 – 6:30 PM

JLindsay@palmettobay-fl.gov
305-297-2617

APPEALS

Note: More details on the following summary of appeals and rulings can be found in the “Village Counter-Offer-August 14, 2013” written by former Village Attorney Eve Boutsis. You may read the document on the Village website:

<http://www.palmettobay-fl.gov/content/current-litigation-village-palmetto-bay>.

- May, 2008** **VPB Council denied PT zoning change request;
PT appealed to 11th Circuit Court - Appellate Division;**
- Feb, 2009 Appellate Panel ruled in the Village's favor;
- Mar, 2009 Appellate Panel denied PT's rehearing request based on a ruling in a similar case issued in March 2009;
- Mar, 2010 PT prevailed in their appeal to the Third District Court of Appeal;
- Apr,May, 2010** **VPB held public hearings - changed zoning - approved site plan with conditions and 900 students;**
- Jun, 2010** **PT appealed 2 conditions - 900 students and 30 year provision - to 11th Circuit Court - Appellate Division;**
- Feb, 2011 Appellate Panel approved PT's petition and ordered the 2 conditions be struck from Resolution 2010-48;
- Jul, 2011 VPB struck the 2 conditions, as ordered, resulting in Resolution 2011-53;
PT, desiring 1150 students, challenged Resolution 2011-53 and renewed its order to enforce mandate;
- Dec, 2011 Appellate Panel ruled in favor of PT;
- Jan, 2012 VPB filed a petition with the 3rd DCA arguing that the Village had complied with the mandate from the 11th Circuit Court - Appellate Division;
- Jul, 2012 3rd DCA denied the Village's petition; and
- Aug, 2012** **Village Council approved PT site plan modification and enrollment expansion to 1150.
(PT had the green light to begin development.) Resolution 2012-64.**

Many settlement meetings were held during these years.

LAWSUITS

- May, 2008** PT filed a lawsuit (“**2008 Original Action**”) in the 11th Circuit Court – including requests for damages
- Aug, 2010 1st amended complaint
- Mar, 2011 2nd amended complaint
- May, 2011 3rd amended complaint
- Oct, 2011 4th amended complaint
- Oct, 2012** **5th amended complaint - 14 counts in total, 11 counts against VPB**
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- July, 2010** PT filed a 2nd lawsuit (“**2010 Original Action**”) against VPB - alleging some Village ordinances unconstitutional and seeking declaratory and injunctive relief
- July, 2010 1st amended complaint
- Aug, 2010 2nd amended complaint

LAWSUIT – 2008 Original Action

5th Amended Complaint - PT vs. VPB, CCOCI, Joan Lindsay, and Betty Pegrum

For more details, see Fifth Amended Complaint (October 15, 2012) and Village Answer to 5th Amended Complaint (June 27, 2013) on Village's website: <http://www.palmettobay-fl.gov/content/current-litigation-village-palmetto-bay>

Oct, 2012 5th Amended Complaint had 14 Counts (Counts 11, 12, and 13 are not against VPB)

Jun, 2013 Counts 3, 4, and 12 were dismissed by the Court

9 COUNTS (Pending Civil Rights' Claims)

From Village Attorney Dexter Lehtinen's Power Point on Village's website:

<http://www.palmettobay-fl.gov/content/office-village-attorney-dexter-w-lehtinen>

- 1) Ex Parte/Constitutionality/Federal and State
- 2) Ex Parte Hidden/State
- 5) Public/Private school class/Equal protection/Federal and State
- 6) Citizens' Bill of Rights/State/No monetary damages
- 7) Public Records/State/Statutory Attorney Fees
- 8) Civil Rights/US Sec. 1983/Due Process/Equal Protection/Federal and State
- 9) Abuse of Process/Civil Rights/Federal and State
- 10) Civil Conspiracy/Unclear/Federal and State
- 14) Temporary Injunction/No Monetary Damages

Two counts involving State Claims **without** monetary remedies (#6, #14)

Note: Regarding Federal Claims:

Three counts clearly alleging Federal claims (#5, #8, #9)

Two counts possibly alleging Federal claims (#1, #10)

- Substantive Law – In general, land use disputes involving delay in governmental issuance of permits or development orders do not give rise to US constitutional claims.
- Insurance covers federal claims/\$5million each occurrence and defense fees
- “DEMAND FOR ATTORNEYS' FEES: The Plaintiff's Federal claims are frivolous, unreasonable, and without foundation. Pursuant to 42 U.S.C. 1988, the Village is entitled to recover its reasonable attorneys' fees in this action.” (Attorney for VPB, Jeff Hochman from VPB’s Answer and Defenses to Fifth Amended Complaint – 6/27/13)

Note: Regarding State Claims:

Two counts involving State claims with monetary damages (#2, #7) (include also #1 and #10 if no federal claims therein)

Village is protected by sovereign immunity:

- Completely with respect to non-personal injury or non-property damage torts.
- Beyond \$100,000 for personal injury and property damage torts.

State claims will be defended by insurance coverage as long as any federal claim exists.

Damages:

Damages are not cumulative; that is, a single operative set of facts, which may hypothetically give rise to several legal claims, allows only one measure of damages.

Damages from delay would be premised upon immediate building upon receiving approval of land uses; yet no action to build taken since final approval to land uses issued August 2012.

Completed Land Use Litigation:

All Village action and litigation regarding the permitted *land uses* by Palmer Trinity School was *completed on August 29, 2012*.

Palmer Trinity School is entitled to develop its property based upon the approved site plan and development agreement.

Land use disputes and litigation ended August, 2012. Land use issues are *no longer in dispute and are no longer in litigation*.

Any application for a site plan or development agreement change after August, 2012 is to be considered on its own merits, without regard to litigation.

Settlement Discussions - 2008 and 2010 lawsuits

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|-------------------|--|
| Summer, 2013 | Mediation meeting with all parties in lawsuits -PROGRESS |
| July, 2013 | Palmer Trinity submitted a settlement offer to Village Council |
| August 14, 2013 | Council Counter Proposal (On website, Litigation page: http://www.palmettobay-fl.gov/content/current-litigation-village-palmetto-bay) |
| August 21, 2013 | Negotiations halted - Palmer Trinity submitted "take it or leave it" offer (Visit website-Litigation: Palmer Trinity Offer, August 21, 2013) |
| September 9, 2013 | Council voted 3-2 to settle with Palmer Trinity. (http://www.palmettobay-fl.gov/content/streaming-media-archive - scroll down to the September 9, 2013 First Budget Hearing and Regular Council Meeting) A quasi-judicial public hearing before the Village Council will be held in the future to review and vote on Palmer Trinity's modified site plan. |

Palmer Trinity Settlement Offer (August 21, 2013) Included:

- Removing all but 4 conditions that mitigated negative impacts on residents from Resolution 2012-64
- Reducing the buffer from 75 to 50 feet
- Providing \$200,000 in cash
- Credited \$600,000 for building permit fees, inspections, etc.
- Requesting lights on all athletic fields

Athletic Field Lights

Lights on all athletic fields were never approved, never appealed, and not allowed under current Village code.

Proposed modifications to Ordinance 30-110 would allow athletic field lighting in residential neighborhoods at religious facilities, private schools, child care facilities, and other non-governmental uses of public assembly. This matter is scheduled for first reading at the June 2, 2014 Council Meeting.

Public Workshop

Palmer Trinity has scheduled a public workshop in their Main Dining Room on June 11, 2014 at 7 pm. The modified site plan will be available for review and discussion:

<http://www.palmettobay-fl.gov/content/public-meetings>

Special thanks to Hal Feldman:

As always, Palmetto Bay resident and Realtor Hal “MiamiHal” Feldman has graciously donated his time and expertise to keep Palmetto Bay citizens informed. The entire Town Hall Meeting, as it happened, will be online for all those who could not attend. You can see this and many other stories about Palmetto Bay at: <http://www.miamihal.com/hals-blog/> (scroll to the town hall meeting and click on the start arrow in the middle) or <http://www.youtube.com/miamihal>.