



To: The Honorable Mayor and Village Council

Date: March 12, 2012

From: Eve A. Boutsis, Village Attorney

Re: Village Attorney Update

A. Ordinances –

1. A similar revision is proposed for the Alcoholic Beverages chapter, found at 30-130. This item was discussed at a COW relating to business request to allow package sales on Sundays, hours of operation the same as weekdays. First reading held on January 2012. LPA and second reading held on February 6, 2012. This ordinance has been enacted.

2. An ordinance to modify certain temporary signs. During the January 24, 2011 COW meeting Council Person Howard Tendrich requested certain revisions to the signage code - to limit the number of banners allowed during a year, and to limit political signage (limitation on length of time to install signs). Staff shall begin drafting the ordinance revisions. [Sponsored by Council Person Tendrich, VM Brian Pariser and Mayor Stanczyk]. The Ordinance for first reading and cover memorandum has been prepared. The item was heard during the May and June council meetings. The item was tabled for further discussion. The Village Council, during the July 2011 COW provided direction to staff. Item sponsored by several council persons, as to different items. This became a discussion item during the November 28, 2011 COW. Mayor Stanczyk sponsored the January 2012 first reading of a more limited sign ordinance revision, relating solely to certain temporary signs - as to size and duration, including but not limited to political signs. Second Reading and LPA held on February 6, 2012. This ordinance has been enacted.

3. Modification of Division 30-30 relating to zoning items. [Sponsored by Mayor Stanczyk]. Discussed at the October Committee of the Whole. First Reading held on February 6, 2012. Second Reading and LPA scheduled for March 12, 2012.

4. An ordinance relating to amending the Art in Public Places Ordinance to conform to the Home Rule Powers of Miami-Dade County, relating to increasing the government project funding from 1.25 to 1.5 percent and clarifying certain details in the ordinance. Discussed during the January COW meeting. First Reading held on February 6, 2012. Second Reading and LPA scheduled for March 12, 2012.

5. An ordinance creating the "Friends of Thalatta Advisory Board" with procedures, donation policies, and tenure. Discussed during October COW meeting. Update provided during the January COW meeting. First reading was proposed for February 6, 2012. [Sponsored

by Mayor Shelley Stanczyk]. This item was withdrawn. A new item, via resolution is being proposed for March 12, 2012.

6. An ordinance amending 30-30 relating to notice requirements as to public hearing items. [Sponsored by Council Person Joan Lindsay]. This item was discussed at the January 2011 COW. First reading is scheduled for March 12, 2012.

7. An ordinance amending 30-30.6 relating to variances; to modify the strict hardship standard. [Sponsored by Council Person Patrick Fiore]. Discussed during January 2012 COW meeting. First reading scheduled for March 2012.

8. An ordinance amending the Village's Cone of Silence ordinance. Discussed for past few months. First reading was held in December and tabled for a COW. Discussed again during the January COW meeting. During the February COW, Ms. Miriam Ramos, the Deputy General Counsel to the Miami-Dade County Commission on Ethics and Public Trust provided a seminar to the Council and Staff as it relates to loop holes, and concerns with the Cone of Silence. The Council provided direction to bring forward a revised Cone of Silence ordinance. First reading is scheduled for March 12, 2012.

9. An ordinance amending the Village's Landscaping ordinance to provide for landscaping mitigation as it relates to the Village's enhanced landscaping requirements - providing for payment into a landscaping fund for use in public areas, rather than requiring on-site compliance due to the size or condition of certain lots. Also, providing a fee schedule for the costs associated with such landscaping mitigation. First reading is scheduled for March 12, 2012.

10. An ordinance amending the Village's lobbying code. Municode has codified the Village's lobbying code in two sections - chapter 2 and chapter 6. The version in chapter 6 is the older version of the lobbying code, enacted in 2004, and 5. The Chapter 2 version includes the more recent changes to the code. Chapter 6 version needs to be stricken and Municode codification updated. During the February COW, Ms. Miriam Ramos, the Deputy General Counsel to the Miami-Dade County Commission on Ethics and Public Trust provided a seminar to the Council and Staff as it relates to lobbying. Certain modifications to the Village's code were proposed to ensure consistency with the Miami-Dade County Code and also to provide clarification to lobbyists. The Council provided direction to bring the item forward, as revised, for first reading at the March 12, 2012 council meeting.

11. Staff has received Council authorization to draft an ordinance to create the process for implementing the citizen initiative relating to increase of student population at private schools. A draft has been reviewed by Planning and Zoning and the Clerk's office. The draft is being distributed to the Miami-Dade County Elections Department, as the Elections Department shall have to coordinate with the Village on scheduling an election/ballot and the procedures for calculating the 2,000 foot radius from a private school, along with registered voters. A meeting was held with the MDC Elections Department. This item was discussed

during the January COW meeting and staff will begin drafting and review to bring this item to the Council. Sponsored by Council Person Joan Lindsay. Staff will bring this forward to a future COW upon review by Planning & Zoning.

12. An ordinance relating to a Code of Conduct for all public meetings. This is an ordinance for future good governance and is modeled after South Miami and Doral's ordinance. Seeking direction from the Village Council whether to bring this item to a COW meeting.

13. Upon receipt of go-ahead, drafting regulations, within one-year moratorium period, relating to pre-annexation procedures.

14. The Village Charter does not specifically designate a mechanism for an initiative or referendum by the community to amend the Charter. The Charter, at Article VI (A) states that the Village is to enact an ordinance to implement such a provision, in compliance with Section 6.03 of the Miami-Dade County Charter. Counsel seeks authorization to proceed on this item at an upcoming Council meeting. During the January 24, 2011 COW meeting, the Village Council directed that staff begin working on drafting this ordinance. Sponsored by Council Person Joan Lindsay. Staff has begun drafting this Ordinance.

15. An ordinance relating to special event process ordinance. Heard on first reading November 1, 2008. Item tabled at first reading. Further discussion had at November 19, 2008 COW meeting and direction provided to staff regarding same. Council held discussion regarding special events during their June council meeting.

16. An ordinance relating to Institutional Uses. Staff is awaiting instruction on this matter.

17. In reviewing the enacted Land Development Code and Village's general code of Ordinances it has come to staff's attention that certain edits are required, including certain "scrivener's errors" type items, and certain edits staff recommends. For example, between 2002-2007 P&Z was known as "Community Development." All the code provisions dating prior to 2008 need to be modified to reflect Planning & Zoning Department and not Community Development. Additionally, any code provisions, outside of the LDC that reference a County zoning map designation needs to be modified to reflect the current Village zoning map designation. Staff is not planning to bring this item to a COW as it truly is a scrivener's error type ordinance, due to the 2.5 year review and adoption of the LDC. Staff anticipates bringing the item to the Village Council shortly. The Ordinance for first reading and cover memorandum has been prepared.

18. A resident requested a modification to the Village's Land Development Code. The Miami-Dade Board of County Commissioners has amended the Ordinance Relating to Zoning Regulations of Awnings, Canopies and Tents by amending Sections 33-64, 33-65, 33-69, 33-71 and 33-77; and deleting Sections 33-72 and 33-81 of the Code of Miami-Dade County. This amendment, among other things, changed the backyard setback requirement for awnings

from twenty-five feet to ten feet. No action has been taken on the request to mirror the Village's Code to the modification requested to mirror the County Code. This item will be brought to a COW for direction.

19. Creation of ordinances relating to filming on private property. Sponsored by Mayor Shelley Stanczyk.

20. Modification of the Village's Noise Ordinance. Requested by Council Person Lindsay. Discussed during June COW meeting. Will be working with CP Lindsay on this item.

21. An ordinance amending section 2-49 of the Village's Code of Ordinances, relating to Village Council meeting procedures - requiring the silencing of all electronic devices during council meetings by audience, staff, and council; and providing for the Police Commander to act as "Sergeant at Arms". Discussed during the July 2011 COW. This item has not proceeded to a First Reading. Awaiting further direction from the Council. [Sponsored by Mayor Shelley Stanczyk].

B. Contracts

1. Attention to pending county ordinances that may affect the village with a county wide application.
2. Attention to charter school statutory amendments enacted by Legislature. Attended meetings with the City of Coral Gables, Pinecrest, Miami, Miami-Dade County, and School Board relating to the legislation and application of same.
3. Attention to termination of PW contractor.
4. Attention to Portland contract conclusion.
5. Attention to Village Hall contract.
6. Attention to Thalatta Contracts.
7. Drafted short term contracts.
8. Reviewed pending RFQs and RFPs for services.

C. Resolutions.

1. A Resolution creating and establishing an Educational Compact Committee.
2. A resolution relating to Friends of Thalatta.

D. Special report.

1. Continued to work with Fire Rescue on finalizing site plan and County approval process for the PBVC location.

2. Attention to FPL litigation.

3. Please continue to refrain from community contact on the Palmer Trinity matter as the Village is in litigation – three law suits – the 2008 original action, the 2010 declaratory action and the 2010 petition for certiorari. The Village held the remand hearing on the special exception and site plan modification on June 19, 2011, at Christ Fellowship Church. The Village took action and the resolution has issued. Palmer Trinity has indicated that it will probably appeal and may seek sanctions against the Village. Please do not discuss with third parties as litigation remains pending. The hearing on the Motion to Dismiss was held, waiting on Order.

4. Certain residents have inquired whether the wall permit application for the "Hester" property, 8001 SW 184th Street, Palmer Trinity property complies with the enacted zoning resolution. Careful review was undertaken and confirmed that the wall meets the purpose, intent and determination of the underlying zoning resolution 2010-048.

5. Attended Workshop for the Charter Revision Commission. After input and conclusion of Charter Revision Commission meetings our office shall work with the Clerk and committee on drafts and revisions to be placed on next Village regularly scheduled election.

E. Litigation report. Each council person should avoid discussions with the Community about this possible project to ensure compliance with the Jennings Rule and due to attorney-client privilege. Please maintain all records relating to any communications from third persons on this property – record the time, date, location, subject matter. Please advise the community to refrain from contacting you.

1. As this information is privileged, an update will be provided individually and/or at an appropriately designated attorney-client meeting.

Palmer Trinity v. Village of Palmetto Bay: (a) Oral argument was held on the Palmer Trinity v. Palmetto Bay, certiorari action (appellate matter) on Monday, February 22, 2010 before the Third District Court of Appeals. The Appellate Court reversed and remanded the litigation. First hearing on the rezoning ordinance was held on April 29, 2010. Second reading of the ordinance was held on May 4, 2010, along with the remainder of the original application. (b) The Applicant has filed two new suits against the Village: a new petition for certiorari (an appeal) and an original action. Village's response to the School's petition for certiorari has been filed. Palmer Trinity's response is due in mid-September. The Interveners have adopted our brief as their own. (c) The Village has filed an opposition to Plaintiff's motion to amend its pending 2008 original action. The Court granted Plaintiff's motion to amend. The Village has filed a motion to dismiss that is scheduled for hearing in 2011 (due to Judge's calendar). Discovery is ongoing. There may be a substitution of counsel in the two litigation matters (2008 and 2010) of Mr. Sean Cleary in place of the Bilzin firm. Jeff Hochman of the Johnson Anselmo firm, hired by the Village's self-insurance fund, shall now be representing the Village in the 2008 litigation. In the 2008 litigation with Palmer Trinity the Village has filed its motion for attorney's fees pursuant to 57.105, Florida Statutes and has prepared its motion to dismiss. Palmer Trinity has filed a third amended complaint with federal claims. The matter was

removed to federal court by the Village. All discovery was stayed pending a discovery order from the federal court. On July 29, 2011, Senior Judge Lawrence King remanded the litigation back to state court. Discovery is now ongoing and depositions are being scheduled. A new hearing on Palmer Trinity's motion for sanctions was heard on December 20, 2011. The Judge has reserved ruling.

2. Palmer Trinity v. Village of Palmetto Bay - Appeal/Certiorari Petition from the May 4, 2010 hearings – Oral argument was held on December 1, 2010. On February 10, 2011, the 11th Judicial Circuit Appellate Panel ruled in Palmer Trinity's favor on the appeal of the May 4, 2010 decision as to the site plan application. The Court in a *Per Curiam* decision, ruled and remanded by to the Village for action. See above, update as to July 19, 2011 remand hearing at Christ Fellowship Church. Resolution issued. See Section 3 for additional information.

In the 2008 litigation, the Village removed the action to federal court. Senior Judge Lawrence King remanded the matter back to state court to Judge Lester Langer. Hearings on Village's motion to dismiss was heard November 9, 2011. Judge reserved ruling and we are waiting for his final order. Discovery is on-going. Status Conference scheduled for February 2, 2012.

3. Palmer Trinity v. Village of Palmetto Bay - Appeal/Certiorari Petition/Motion to Enforce Mandate. Palmer Trinity, on August 26, 2011 filed its motion to enforce mandate or in alternative motion for certiorari (appeal) based upon the July 19th hearing after remand. Litigation is on-going. The Firm of White & Case, Justice Raoul Cantero has been retained to assist in the appeal. Answer brief filed on October 14, 2011, by both the Village and CCOCI. Decision on motion to enforce mandate issued on December 22, 2011.

4. Palmer Trinity v. Village of Palmetto Bay. - Certiorari Petition to Third District Court of Appeal. Village petition filed by 1/21/2011. As of February 27, 2012, no scheduling order has issued.

5. Victor Garcia v. Village of Palmetto Bay, Case no.: 10-61452 CA 11 (Fla. Cir. Ct). The Village has received a notice of claim as required under state law of a possible lawsuit relating to the Village's Dog Park. The matter has been referred to the Florida League of Cities, the Village's Self-Insurance Agent, and Mr. Chris Stearns of the Johnson Anselmo firm is handling the claim. The Claimant's personal property, a young canine, allegedly died at Perrine Wayside Dog Park. An investigation is under way. On December 6, 2010, the Village was served with the complaint alleging damages for conversion, battery, assault, negligent infliction of emotional distress, false imprisonment, negligence per se, and negligence. Mr. Stearns is preparing an answer on the Village's behalf. This claim shall be covered by the Village's self-insurance provider and insurance counsel. Our office is monitoring the litigation. All counts, other than the simple negligence count have been dismissed.

6. Anctil v. Village of Palmetto Bay, Case no.: 11-14303 CA (02) (Fla. Cir. Ct). Plaintiff, parents of minor child, sued village on May 11, 2011. Matter transferred to League for

representation. Child allegedly hurt his arm during summer day camp. Any additional information beyond representation in complaint will be provided during any necessary shade sessions. Discovery ongoing.

7. Shores at Palmetto Bay LLC v. Village of Palmetto Bay. Appellate action (certiorari petition filed) after denial of application by the Village Council on December 12, 2012. The Court is to issue a scheduling order to hear the item. Staff is preparing an answer brief. The applicant's request was denied due to an incomplete application amongst other things. Please refrain from speaking to anyone about this matter until after the appeal period expires. The Village filed its answer brief on February 27, 2012. The Petitioner has requested an extension of time to reply to the Village's answer brief. Petitioner has not requested oral argument.

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

K #: 12-010

Date Opened: 1/11/12

Date Closed: 2/22/12

Name of Investigator: Manuel W. Diaz

Historical:

The Village of Palmetto Bay (VPB) issued an RFP #2011-PR-002, Management and Operations of the Coral Reef Park Tennis Center (RFP) on August 1, 2011. Responses to the RFP were to be returned to the Village Clerk by August 16, 2011. The responses were reviewed by a selection committee appointed by the Village Manager. Three respondents were evaluated by the selection committee. Friends of Miami Tennis Inc. (FOMT) was rated most qualified and referred to the manager.

At the VPB Council Meeting of September 12, 2011 (in a memorandum authored September 6, 2011), the Manager recommended the award of the contract to FOMT. After discussion the VBP Council voted against the Manager's recommendation.

Carey Sochin (Sochin) filed Commission of Ethics (COE) complaint C11-037 alleging that the Village Manager violated Sec. 2-138 Code of Silence of the Palmetto Code of Ordinances. Sochin was a principal for one of the three corporations that responded to the RFP (Don Petrino, Jr. & Cary Sochin d/b/a Palmetto Bay Community Tennis Program (PBCTP)).

During an interview with the Village Manager and the Village Attorney (see report of investigation C11-037) they referred to the Council Meeting of September 12, 2011, where

Sochin, an RFP respondent, addressed the Council and advised that he had contacted and spoke to Council Members discussing the RFP.

Allegation:

An investigation was initiated to determine if Sochin contacted any Council Members prior to the meeting of September 12, 2012, and to determine the context of their conversations. Sochin, as a potential vendor, may have been required to register as a lobbyist, in addition, any conversations between Sochin and Council Members may have violated the Village's Cone of Silence.

Applicable Legislation:

Village of Palmetto Bay Code of Ordinances, Sec. 2-138. – Cone of silence

“(a) Contracts for the provision of goods and services

- (1) Cone of silence (Cone) is hereby defined to mean a prohibition on:
 - a. Any communication regarding a particular RFP, RFQ, or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the village's professional staff, including, but not limited to, the village manger and his or her staff.
- (2) Procedure
 - a. A cone of silence shall be imposed upon each RFP, RFQ and bid after the advertisement of the RFP, RFQ or bid....
 - b. the cone of silence shall terminate at the time the village manager makes his or her written recommendation to the village council...”

Village of Palmetto Bay Code of Ordinances, Sec. 6-20 - Lobbying

“As used in this section “Lobbyist” means all employees, persons, firms, consultants, entities, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of;

- (1) any ordinance, resolution, action or decision of the village council;
- (3) ...The term lobbyist shall include all consultants, as defined under this subsection (b) below. The term “lobbyist” specifically excludes the following persons:

Any principal of a local business who appears without compensation or reimbursement, whether direct, indirect or contingent, to express support of or opposition to any item; provided, however, that the principal shall sign in-in with the village clerk each time he or she meets wit the villager personnel, as provided below...”

Investigation:

1. Public Records Requests,

A Public Records Request was made to the VPB City Clerk for an audio copy of the Council meeting for September 12, 2011. A CD containing three sectors (1084, 1085, and 1086) was provided. Each sector provided a portion of the meeting. At 1085/26:30 in the recording Sochin, while addressing the Council, acknowledges that he met with Council Members to discuss the RFP. He stated, "I met with four of you, individually, pointing out numerous disturbing issues regarding this RFP." Sochin was not specific as to the dates that he contacted any of the Council members.

A copy of the VPB 2011 Lobbyist Registration Log was requested and obtained. The log does not list Sochin.

2. Interviews:

Joan Lindsay (Lindsay), Council Person, VPB.

Lindsay was interviewed. She advised that she was contacted by Sochin between Tuesday September 6, 2011 and September 12, 2011. Lindsay could not specify the date, but recalled that their meeting occurred after she received the agenda package for the meeting September 12, 2011 meeting. She advised that the agenda package was delivered on Tuesday, September 6, 2011, because of the municipal holiday on September 5, 2011. Their discussion dealt with the RFP responses.

Lindsay advised that she was familiar with the provisions of the "Cone". She advised that any discussion with Sochin were conducted after the "Cone" has been lifted. She referred to the VPB Municipal Code. According to Lindsay, it was her understanding that the "Cone" was lifted when the Manager's recommendation was made to the Council. Lindsay explained that the

“Cone” was lifted when she received the agenda package on September 6, 2011. A memorandum containing the Manager’s recommendation was contained in the agenda package.

Patrick Fiore (Fiore), Council Person, VPB.

Fiore was interviewed via telephone. Fiore advised that he was contacted by Sochin concerning the RFP. When contacted, he advised Sochin that he could not speak to him because of the “Cone” for the RFP was in effect. He was not sure as to the date of the contact.

Howard J. Tendrich (Tendrich), Council Person, VPB. Tendrich advised that he was called by Sochin to discuss the RFP. He advised Sochin that he could not speak to him because of the “Cone” being in effect. Tendrich advised that he did not initially return Sochin’s calls. He contacted the Village Attorney to verify that the “Cone” was in effect. After speaking to the Village Attorney, he returned Sochin’s call and advised that he could not discuss the RFP. Tendrich could not recall the date of the contact.

Shelly Stanczyk (Stanczyk), Mayor, VPB, was interviewed via telephone. Stanczyk advised that she was contacted by Sochin regarding the management of the tennis courts. She advised that the conversation took place before the RFP was issued. Sochin was critical of the existing VPB tennis program managers and the program in general. The Mayor believed that Sochin was attempting to secure a job with the Village to run the tennis program. She did not speak to him after the RFP was issued.

Brian W. Parisner (Parisner), Vice Mayor, VPB. Parisner was interviewed via telephone. He advised that Sochin contacted him after the RFP had been issued by the VPB. He refused to speak to him and advised Sochin that the “Cone” was in effect and that he could not discuss matter with him. Parisner did not have a date of the contact. He did recall Sochin contacted him sometime prior to the September 12, 2011 Council meeting.

Cary Sochin

Sochin was contacted. He was advised as to the COE's decision in C11-037. Sochin was advised that the investigation had found that his actions, when speaking to Council Members may have constituted lobbying. He was advised that he needed to register as a lobbyist with the VPB. Sochin disagreed with the term lobbying and insisted that he was merely giving council members critical information so they could come to an informed decision prior to voting on the award of the RFP.

A meeting was scheduled with Sochin on February 22, 2012, in the offices of the COE to discuss his lobbying activities and his need to register as a lobbyist. Present at the meeting was Michael Murawski, COE Advocate and this writer. After discussion, Sochin conceded that his actions may have constituted lobbying under the Ethics Code. Sochin agreed to inquire with the VPB to determine the cost of registering and stated that if the cost exceeds fifty dollars (\$50.00) he probably will not register. Murawski recommended that if he (Sochin) was to continue to contact officials in the Village he may open himself up to an ethics complaint being filed against him.

Summary of Findings:

1. The VPB issued the RFP on August 11, 2011.
2. The Manager's recommendation to the VPB Council was made on September 12, 2011.
3. The "Cone" was in effect between August 11, 2011 and September 6, 2011.
4. Sochin is a principal in a corporation that responded to the RFP.

5. During the VPB meeting of September 12, 2011, Sochin addressed the Council and acknowledged that he had contacted four (4) members of the Council individually to discuss the RFP.
6. The Mayor, Vice Mayor and three Council Members were interviewed. Each acknowledged that they had been contacted by Sochin.
7. The Mayor, Vice Mayor and two Council Members advised that they had refused to speak to Sochin due to the "Cone" being in effect.
8. One Councilperson, Lindsay, acknowledged that she spoke to Sochin and discussed the award of the RFP during the period of time when the Manager authored his recommendation memorandum and the date of the Council meeting.
9. A copy of the VPB Lobbyist Log for 2011 was obtained.
10. Sochin was not registered as a lobbyist.
11. Sochin met with Murawski, at the meeting Sochin conceded that he met with Village officials but only to inform them of the many flaws and irregularities in their procurement process. Murawski advised Sochin that if he had future contact with officials in the Village to discuss RFP's or bids that he can be considered a "lobbyist" and he should register as a lobbyist with the VPB.

CONCLUSION:

Sochin was given notice that prior to continuing any lobbying efforts he must register with the VPB as a lobbyist. The case is closed with no further action.