

IN RE:)
PALMER TRINITY PRIVATE SCHOOL)
V. PALMETTO BAY)
08-28977 CA 3)
10-34016 CA 20)

At: THE VILLAGE OF PALMETTO BAY
9705 East Hibiscus Street
Village of Palmetto Bay, Florida
Tuesday, September 3, 2013
7:05 p.m.

SHADE ATTORNEY-CLIENT SESSION

Reported by Rochel Albert,
Certified Shorthand Reporter

ORIGINAL

PRESENT:

Mayor Shelley Stanczyk
Vice Mayor John Dubois
Council Member Patrick Fiore
Council Member Tim Schaffer
Council Member Joan Lindsay
Village Manager Ron E. Williams
Village Attorney Eve A. Boutsis, Esq.
Attorney Jeff Hochman, Esq.

1 MS. BOUTSIS: Thank you, everyone. As the
2 village attorney, I requested that we meet here
3 today in the defense of those certain legal
4 actions entitled Palmer Trinity Private School
5 versus the Village of Palmetto Bay, circuit court
6 case number 08-28977 CA 30, and case
7 number 10-34016 CA 20. I am seeking advice from
8 the village council regarding the litigation
9 strategy, costs and/or settlement.

10 It is now approximately 7:20 on Tuesday,
11 the 3rd of September. And I am going to have
12 everybody go around the table and introduce
13 themselves in a second. We are at Village Hall in
14 the downstairs conference room.

15 A certified court reporter shall record
16 the time and termination of the session. All
17 discussions and proceedings that occur, the names
18 of the persons present at any time during the
19 session, and the names of all persons speaking.
20 The transcript shall be made a part of the public
21 record upon the conclusion of the litigation.

22 I guess I will start. Eve Boutsis,
23 village attorney. We'll go next to Mr. Hochman
24 and go around the table.

25 MR. HOCHMAN: Jeff Hochman, special

1 counsel for the Village of Palmetto Bay.

2 MR. DUBOIS: John Dubois, vice mayor.

3 MR. SCHAFFER: Tim Schaffer, council
4 district two.

5 MR. FIORE: Patrick Fiore, council
6 district one.

7 MAYOR STANCZYK: Shelley Stanczyk, mayor.

8 MR. WILLIAMS: Ron Williams, village
9 manager.

10 MS. LINDSAY: Joan Lindsay, councilwoman
11 district three.

12 MS. BOUTSIS: Thank you, everyone. I have
13 an envelope with a folder for everyone. There are
14 three tabs in each folder. The first is the
15 original offer that Palmer Trinity had made to us
16 about a month ago. The second was our
17 counteroffer, based upon our discussions, and the
18 third is the current pending offer that expires
19 tomorrow at midnight, or 11:59:59, that was issued
20 by Palmer Trinity on July 12th of this year.

21 I don't know where you would like to
22 start. Obviously, we have not met and we have not
23 had any discussions. This settlement offer
24 basically goes back to holding up certain
25 conditions, removal of all the remaining

1 conditions, and, thereafter, basically allowing a
2 ten percent deviation in the site plan, only
3 requiring a 50-foot dense landscaping buffer with
4 no berm, to have a financial aid endowment.

5 Am I referring to the right one? No, I am
6 not. Sorry. I had it reversed. It's
7 August 21st.

8 It's three pages. In short, on page one,
9 it is certain conditions. There are three
10 sections 3, 4A and 4B, and conditions 4.1, 4.2,
11 4.3 and 4.7. All other sections, conditions to be
12 voided. That the site plan be built in the same
13 location as provided in the site plan. That the
14 50-foot landscape buffer with one pathway --

15 MR. DUBOIS: Excuse me. We are on the
16 second yellow tab for anybody that is not finding
17 this.

18 MS. BOUTSIS: Allow lighting of the
19 athletic fields, and they give some language as to
20 that lighting. And they talk some more about the
21 lighting. I am not going to go into all of that,
22 but they turn off the lights at 8:30. All student
23 traffic would be at Southwest 184th Street after
24 it's open. Student drivers would not be able to
25 use Southwest 176th Street. And it goes on more

1 about that.

2 The signage of the entry feature within
3 the residential zoning district will not be larger
4 than 32 square feet. The traffic study, when the
5 school enrollment reaches 900, if the study shows
6 a need for traffic calming devices, Palmer Trinity
7 would absorb the cost of construction or
8 installation of those devices. Compliance with
9 the Village's code as to the noise level. The
10 outdoor public address system would be turned off
11 at 8:30.

12 The Village would pay Palmer Trinity
13 200,000 in cash and 600,000 in credits to be used
14 as they would like. Not just dedicated to AIPP,
15 but to whatever fee that would be available. They
16 would make that decision. And that the offer
17 expires on the 4th at 11:59:59.

18 MR. SCHAFFER: I want to discuss a little
19 bit about shade and the seeming lack thereof. And
20 again, this may or may not seem like it has
21 anything to do with our decisions that we are
22 going to be making here, but it very much does.
23 Because again --

24 MS. BOUTSIS: I'm sorry. Councilwoman
25 Lindsay was asking me if you could go there in a

1 shade session, because it's supposed to be about
2 the settlement.

3 MR. SCHAFFER: It is about the settlement,
4 because this is our -- obviously, the plaintiff
5 has got -- probably has information that was
6 leaked out of this council or out of this group on
7 what has been going on in these shade sessions.
8 Because when I get an e-mail from CCOCI that says
9 vote yes for global settlement for all parties,
10 vote yes to maintain the conditions, global
11 settlement was discussed in one meeting and only
12 one meeting in our last shade session.

13 When I read the text of this e-mail, it
14 almost talks about what we had talked about in
15 reference to whether we put our offer in for
16 global or not global. If you recall, we said,
17 have global as part of it, but give Palmer Trinity
18 option to let out of global. Somebody knows what
19 we are saying in here.

20 Somebody knows what we are saying in here,
21 because it clearly stipulates in this thing
22 that -- you know, the school has also included
23 CCOCI and several residents as defendants in these
24 lawsuits, settlement talks have been going on.
25 Fine.

1 Then it goes on to say, "This council will
2 undoubtedly vote whether or not to settle a
3 lawsuit against the Village and the individual
4 residents tomorrow. Settling all the lawsuits
5 globally with the same good degree of fairness to
6 the residents, the Village and Palmer Trinity is
7 the best interest of all parties."

8 That is almost verbatim to what we were
9 talking about in here. That means -- if this is
10 out in the public, that means the other side knows
11 what we are discussing when it came to our
12 feelings of being global or not global. That
13 means it's coming out. Somebody, somewhere, and I
14 am a hell of a detective. I am telling you,
15 somewhere this information got out.

16 And this hurts our ability to do our job
17 and what we are doing here. Because then this
18 information goes flying out to all of our
19 residents, who we have to answer to. Then
20 misinformation, here it is. Misinformation about
21 what tonight's meeting was about, which was
22 another setup.

23 This completely making a travesty of what
24 we are trying to accomplish here. I find this to
25 be just absolutely ridiculous. You know, it's

1 almost -- you know, again why are we in shade if
2 this is what is going to happen? I spoke to the
3 individual who wrote this, and somehow or another
4 they got the information out. And that is not
5 good.

6 MAYOR STANCZYK: Are you finished?

7 MR. SCHAFFER: Yes, I am finished.

8 MAYOR STANCZYK: I think over the last few
9 years, when discussions on settlements were held,
10 mediations were held, items that were of severe
11 concern to the residents and to groups, such as
12 CCOCI, other resident groups have discussed those
13 very same issues on a repetitive basis. These are
14 not new issues. This may be new to you as to your
15 position on the council and hearing it come
16 forward.

17 But I think when you have residents out
18 there that are being sued that are included in a
19 lawsuit, I think the main issues on protecting
20 what they call their quality of life, which is the
21 traffic issues, the buffer issue -- what else is
22 included? I can't even remember. I have read it
23 a couple times.

24 Those issues are things that were common
25 the entire time since I have been aware of this

1 issue, since 2007, have been the same issues that
2 have been repetitively discussed. Once residents
3 were added to the lawsuit, the question has been
4 asked on a repetitive basis, I believe, across
5 this Village. Would everything apply to them? So
6 I am not seeing this as new information.

7 MS. LINDSAY: Neither am I. I will say,
8 Councilman Schaffer, I attended the mediation
9 session and so did all parties who were both
10 plaintiff or defendants. The issues that were
11 discussed there have been brought to you by the
12 village attorney, and the issues that are
13 important to a great number of people in this
14 community all revolve around neighborhood
15 protection. And the people that are speaking up
16 now are concerned with neighborhood protection.

17 And that brings up the issue of traffic
18 and noise and buffering, among other things, that
19 were put into place by our planning and zoning
20 director in a resolution that was brought to the
21 council several years ago, and was voted on by the
22 council. And those conditions become very
23 important to the residents in this community.

24 So when we have mediation -- and the
25 residents know that settlement talks are taking

1 place because we keep having shade sessions. So
2 to say that there's a leak based on that, I don't
3 see that. I think that there are a number of
4 residents who know that there are a number of
5 different parties being sued, and they would like
6 to put it all to bed.

7 Obviously, if some parties settle and some
8 don't, it still leaves the Village open to further
9 litigation by the residents. So it's in
10 everybody's best interest to have as many people
11 come together and work this out in a positive way
12 for the community. I think that is where we need
13 to focus. And that is why we are here tonight, to
14 do that job.

15 MAYOR STANCZYK: I do have one question
16 that might go to your question. I think we all
17 got copies of the e-mails from David Singer that
18 said that he had a copy of the settlement that was
19 offered to us the last time.

20 So I think if he, in fact, says that he
21 has a copy of the last time we met after -- while
22 we were meeting, he apparently put an e-mail out
23 that said that he had gotten a copy left
24 anonymously on his windshield, that perhaps he has
25 a copy of this as well. That could be a leak. He

1 owns up to the leak. He owns up to the fact that
2 he has gotten it.

3 MR. SCHAFFER: I understand all the
4 components. What has got me is the word "global
5 settlement," and an almost verbatim quote what we
6 discussed involving global settlement. The other
7 conditions, yes. That has been part of it from
8 the first day. Lights, traffic, buffering, et
9 cetera, et cetera. That has all been part of it.
10 I understand that.

11 Where in the world did global settlement,
12 vote yes for global settlement for all parties?
13 That has not been a topic I have heard and seen
14 and read anywhere.

15 MR. FIORE: Where does it say that?

16 MR. SCHAFFER: Right here.

17 MAYOR STANCZYK: I think that is a term
18 that I have heard repeatedly in terms of
19 discussions on this case.

20 MR. SCHAFFER: I am -- at this stage of
21 the game, I take your information, thank you, but
22 I truly believe that this is something not
23 accurate. I am not -- I am not going to go into
24 global settlement and that word being put into
25 play in the text that listed in there about global

1 settlement.

2 That was only a conversation. I have
3 looked back in the records. Nobody has talked
4 about global settlement of all parties. Come on,
5 guys. Let's be real. We know something got out.
6 You don't have to admit to it. That is fine. But
7 it did. And I am done.

8 MR. DUBOIS: The only comment I would have
9 is that I think we should move on with the
10 speeches and get to the content here.

11 There is a big difference, obviously,
12 between the school, who writes a settlement offer,
13 publishes it, and one of the kids' father ends up
14 with it and says he has it, or maybe he does and
15 maybe he doesn't, which is out of our control,
16 versus what we discussed in shade session here
17 under client privilege, where only the people in
18 this room know about it.

19 We obviously have a serious obligation to
20 keep it confidential, and I would hope that
21 everybody follows that guideline. That is it.

22 MAYOR STANCZYK: Are we back on task?

23 MR. SCHAFFER: I am done. I have nothing
24 else to say.

25 MAYOR STANCZYK: We are talking about the

1 settlement that has been offered by Mr. Cleary and
2 Mr. Price.

3 MS. BOUTSIS: Mr. Cleary is lead counsel
4 now, in this matter.

5 MR. HOCHMAN: Just so you understand, in
6 terms of --

7 MR. DUBOIS: Excuse me. Did that change?

8 MS. BOUTSIS: I had always dealt with
9 Mr. Price previously, and I have been told
10 specifically I am to be dealing with Mr. Cleary.
11 I can call Mr. Price. He is not off the case.
12 But Mr. Cleary is in charge.

13 MR. DUBOIS: So you interpret that as a
14 change recently?

15 MS. BOUTSIS: Yes, I do.

16 MR. HOCHMAN: We are here discussing the
17 letter that was issued on August 21, 2013 by Sean
18 Cleary, which really outlines two types of issues.
19 One is the quality of life issues and the second
20 set of issues are the cost issues. That is how I
21 have broken it down.

22 The cost issues, they have requested
23 approximately \$125,000 more in credits and cash
24 than was offered to them. Based upon that, it
25 looks like progress has been made, and we can

1 certainly go back and say, no, we don't like that
2 number; yes, we do like that number; or we don't
3 like that number, but we will suggest this number.

4 The second set of issues are the quality
5 of life issues. They have requested that they be
6 entitled to essentially start from the beginning.
7 They will subject themselves to the normal
8 language regulations that are imposed upon all
9 residents.

10 And essentially, everything that was
11 discussed during the mediation is now really on
12 their terms. They want to have lighting. They
13 will turn off the lights at 8:30. They have given
14 us very detailed information about if there's
15 lighting, how a third-party light provider would
16 install it, maintain it, and why, in their
17 opinion, it would not adversely affect the quality
18 of life issues.

19 You may recall that the lighting, during
20 our previous discussions, was kind of a
21 gatekeeper, because if you don't have lights then
22 you also don't have noise and you don't have other
23 things. So if we are going to go back and discuss
24 lights again, I would suggest that there's a
25 variety of issues that show up once lighting comes

1 back on the table.

2 The distances buffer area has also now
3 been reduced. Again, the buffer deals with
4 distance and with the berm and with the
5 vegetation. If you are going to go back and
6 negotiate with them, realize it's a
7 three-dimensional issue, not just an issue of what
8 the distance is from 60 down to 50.

9 And then the traffic study issue, they
10 have also asked for a combination that favors
11 Palmer Trinity.

12 I will open it up. The real issue is,
13 according to the letter, you have until tomorrow
14 to say we accept. If the council -- the first
15 issue is, is everybody around the table
16 comfortable saying the Village accepts? Before we
17 get to how we could counteroffer like that, I want
18 to get some consensus. It's either a yes or no.
19 The deal is acceptable the way it is or it's not
20 acceptable the way it's been suggested, based upon
21 the August 21, 2013 letter.

22 If it's not, then we can get to the next
23 phase, which is what would our counteroffer be.
24 There may be a sentiment in the room, and I want
25 to either confirm it or rule it out, that there's

1 a general consensus to accept or not accept. I
2 will take anybody who wants to speak.

3 MR. FIORE: I accept. But one caveat, are
4 the insurance still willing to pay the \$50,000?

5 MR. DUBOIS: It was 100,000.

6 MR. FIORE: It's 100,000?

7 MR. DUBOIS: And they are asking for 125
8 ground more, which would be nice if the insurance
9 company would pick that up as well.

10 MR. HOCHMAN: My understanding is that the
11 Florida League of Cities has offered to fund
12 \$50,000 towards a settlement.

13 MR. DUBOIS: I thought we discussed 100-.

14 MS. LINDSAY: It was 50-.

15 MR. SCHAFFER: They went down to 50-.

16 MS. LINDSAY: It didn't go down. It's
17 always been 50-.

18 MR. FIORE: If it's 50- they are giving
19 us, we are down to \$150,000.

20 MR. SCHAFFER: They really said 50- to
21 100-. In the very first shade session, they said
22 50- to 100-. Last shade session they said 50-.

23 MR. DUBOIS: Given that the school is
24 asking for 125,000 more, it's only reasonable.

25 MS. BOUTSIS: You think 125- or 200-.

1 200- in cash.

2 MR. HOCHMAN: It is 200- in cash, but my
3 point was the total offer between -- the midpoint
4 between 550- and 800- was 675-. And 675- is
5 \$125,000 more than 550-, offered last time.

6 MS. BOUTSIS: You are confusing the heck
7 out of me.

8 MR. HOCHMAN: Then if it's easier, look at
9 it as the way they have offered it. I agree that
10 it's \$200,000.

11 MR. DUBOIS: Our counteroffer was 550-,
12 right?

13 MR. HOCHMAN: Correct.

14 MR. DUBOIS: Now they are asking for 800-.
15 that is 250,000 more, not 125,000 more, than our
16 counteroffer.

17 MR. HOCHMAN: Correct. I was talking
18 about a midpoint, 675- midpoint between our 550-
19 and their 800-. Typically, a midpoint is how
20 negotiations are done. You find what you have
21 offered, what they have offered, and what the
22 midpoint is.

23 MR. DUBOIS: This doesn't appear to be a
24 negotiation process at this point.

25 MR. HOCHMAN: I agree with you. I was

1 talking about -- just so it's clear, I was talking
2 about negotiating to a midpoint between their
3 offer and our offer.

4 MR. DUBOIS: Let's get back to the
5 question at hand here. Councilman Fiore asked the
6 one that I have to ask before I can answer your
7 question. Which is now that they are asking for
8 200 -- a quarter of a million dollars more than
9 what we just put on the table, how much more is
10 the insurance company going to pony up for that
11 additional quarter million dollars?

12 MR. HOCHMAN: I spoke to the insurance
13 carrier today, and they have not changed their
14 position from the last shade session.

15 MR. FIORE: They are asking for 200,000
16 cash. So if the insurance allows 50-, then it
17 would just be 150,000 cash from the Village,
18 correct?

19 MS. BOUTSIS: Yes.

20 MR. FIORE: That was my point.

21 MS. BOUTSIS: Yes.

22 MR. FIORE: Liquid.

23 MS. BOUTSIS: Anybody else interested in
24 accepting the PT offer, the Palmer Trinity offer?

25 MR. DUBOIS: Let's do it in roll call

1 session.

2 MR. HOCHMAN: No, not necessarily. If you
3 want to. It's not necessary. We are not voting
4 on it right now. We are just getting a consensus.

5 MAYOR STANCZYK: That is getting too close
6 to a vote.

7 MR. SCHAFFER: Isn't this like a vote?

8 MR. DUBOIS: That is exactly what we did
9 last time. We went through every council member
10 and asked them on every issue.

11 MAYOR STANCZYK: We asked them for a
12 consensus.

13 MR. DUBOIS: That is what he just asked.

14 MR. SCHAFFER: You are asking for a
15 consensus.

16 MR. DUBOIS: Consensus.

17 MR. SCHAFFER: You are asking for feelings
18 right now. This is not a consensus.

19 MR. HOCHMAN: Just so the vice mayor has a
20 chance, the word roll call can be suggestive of a
21 vote. I was simply trying to relate the idea that
22 we are not voting.

23 MR. DUBOIS: I understand.

24 MR. HOCHMAN: Consensus building,
25 consensus communicating.

1 MR. DUBOIS: Go around the room like you
2 did last time and ask for a consensus.

3 MR. HOCHMAN: Okay.

4 MS. BOUTSIS: We heard from district one.

5 MR. FIORE: I already said yes, plus
6 \$150,000 cash which includes the 50,000 less from
7 the insurance. That is it.

8 MS. BOUTSIS: Do we want to go to district
9 two?

10 MAYOR STANCZYK: And that includes the
11 removal of all the conditions.

12 MR. SCHAFFER: I have questions before I
13 have consensus, because I need to be clear on
14 conditions.

15 MS. BOUTSIS: Yes, sir.

16 MR. SCHAFFER: It's a huge range we are
17 talking about here. We are not going to give up
18 any of our ordinances, and I believe some of this
19 may -- if I read through it, kind of hints to the
20 fact that we are -- again, I may be wrong. I am
21 just saying what I am interpreting, that we are
22 going to be giving up ordinances that --

23 MS. BOUTSIS: I think I can help explain
24 at least what I think you are getting at.

25 MR. SCHAFFER: Yes.

1 MS. BOUTSIS: There are over 80 conditions
2 with subparts and whatever else. Most of the
3 conditions have been derived from our code. Some
4 of them are very easy. It's noise ordinance. It
5 gives you the code section for the noise
6 ordinance. You comply with the noise ordinance.
7 Easy enough.

8 The areas that don't specifically cite
9 noise in this subsection are all the traffic
10 issues, which are conditioned not only from Dade
11 County's approval, from Public Works, but the
12 Village's requirement for approval from Public
13 Works. And it's part of the evaluation criteria
14 when you look at a site plan. So that is in our
15 code. That is in our code.

16 I think that Mr. Cleary has written this
17 very inartfully, or he is trying to get rid of it.
18 I don't know which one. As the traffic issues.
19 He talks about they will pay for traffic calming
20 in the future.

21 But as long as the understanding is that
22 the traffic requirements that have been put in by
23 Public Works, whether from the county or from the
24 Village, should be adhered to, then we are on the
25 same page. If he is talking about removing those,

1 then I don't think we are on the same page, only
2 because our code requires those criteria. Did I
3 answer your question?

4 MR. SCHAFFER: Pretty much so. You know,
5 the example would be the setbacks or ordinances,
6 correct?

7 MS. BOUTSIS: Yes.

8 MR. SCHAFFER: Setbacks or ordinances.
9 The buffer was not?

10 MS. BOUTSIS: It was an addition, yes.

11 MR. SCHAFFER: It was a condition that was
12 added that was specifically a Palmer Trinity
13 situation, correct?

14 MS. BOUTSIS: The extent of it, yes.

15 MR. SCHAFFER: Correct. Now, are they
16 alluding to the fact that they want to have the
17 buffer removed and the setbacks removed, which
18 that would be contrary to our ordinances?

19 MS. BOUTSIS: It would be a reduction to
20 50 feet, which would be specifically the code.

21 MR. SCHAFFER: That is specific to code.
22 It's not less. It's not 25 feet. It's specific
23 to code. Anything else -- and again, in reading
24 this, it seems like it's a little unclear as to
25 saying that we are going to give up all of our

1 codes also. To say we agree to 50 foot, okay, we
2 agree to 50 foot. I am just being hypothetical
3 here. We agree to 50 foot.

4 But if there's other parts where they
5 don't outline these codes, then we are immediately
6 saying, yes. Well, then we just said that they
7 can build a bridge and do pretty much anything
8 they want to, outside of our ordinances, and their
9 decibels can be greater than what the decibels are
10 in our ordinances. We don't want none of that.

11 MS. BOUTSIS: No. Because it would also
12 subject you to a challenge from someone else in
13 the community, a challenge that we would lose,
14 because it would be acting contrary to our code.

15 MR. SCHAFFER: If, like for instance,
16 Mr. Fiore said that he says yes to this, anyone
17 that says yes to this, I would think, that you
18 want to say yes, but only and above those issues
19 that are -- only and above those issues that are
20 in addition to your codes and ordinances and what
21 we want to be communicated. So whatever we do
22 going forward and whatever we agree to, and
23 whatever we consent to, we have to make sure that
24 we are not circumventing our ordinances.

25 MR. HOCHMAN: So let's just assume for

1 purposes of our responding to this offer that no
2 matter what is agreed to, everything that Palmer
3 Trinity is subjected to will be applicable land
4 use regulations for both the county and for the
5 Village, and applicable Village ordinances, okay.

6 Let's just assume that for purposes of
7 anything we respond to. Because I agree there is
8 some ambiguity that could be read into their
9 document. Any response, assuming that any
10 response from the village is yes, but we are
11 assuming that whatever you have written in here
12 means that Palmer Trinity will subject itself to
13 all applicable language land use regulations, both
14 county and Village-wide. And also, all applicable
15 Village ordinances.

16 Assuming that is the landscape that you
17 are starting from, Council member Fiore already
18 indicated a willingness to say yes. And the next
19 question is, are there any other issues besides
20 the applicable land use regulations and the
21 applicable ordinances that are troubling?

22 MR. SCHAFFER: For instance, when they say
23 they are going to a traffic study when school
24 enrollment reaches 900 students, where did that
25 number come from?

1 MS. BOUTSIS: Arbitrary. They picked it.

2 MR. SCHAFFER: It goes back to that
3 meeting. We need to be clear as to, you know,
4 that 900 was an arbitrary number when it was
5 picked, back in -- when it was decided upon back
6 in that council meeting.

7 MS. BOUTSIS: I guess I shouldn't have
8 used that word. Palmer Trinity picked that
9 number.

10 MR. SCHAFFER: Who came up with the 900
11 number? How did you come up with the 900 number?

12 MAYOR STANCZYK: One, that doesn't belong
13 in this record. There was a way. But that isn't
14 part of this record, how I did that.

15 MR. FIORE: It isn't? You are the reason
16 why we are still here. Sorry.

17 MAYOR STANCZYK: Excuse me, Mr. Fiore.

18 MR. FIORE: Sorry.

19 MAYOR STANCZYK: The point, I think, of
20 the traffic study at 900 is it's a midpoint
21 between where they are and where they are going, I
22 think is one point. But I think the other shoe
23 that drops with the 900, you are on the right
24 track, is that they are having a traffic study at
25 900, which once they pass 900, this document does

1 not obligate them to a further traffic study.

2 So if 900, and they do a traffic study,
3 kind of works, they get to 1150 or 1200, and it's
4 not working, they are not obligated to anything.

5 MS. LINDSAY: May I point out that one of
6 the conditions in the resolution specifically said
7 what the parameters were for the outcome of that
8 traffic study. That included the daily trips on
9 176th Street, which were very important, and the
10 combined trips. So if you recall, the resolution,
11 and we talked about this in our last shade
12 session, required two traffic studies per year to
13 make sure that those numbers in that particular
14 condition, which I believe was 8.6, were met.

15 The original resolution was written with
16 the idea of reducing the traffic on 176th
17 Street. There's no way to measure that without
18 the traffic studies. And if you wait several
19 years until they reach 900, and then they are not
20 required to do it again, you have no way of
21 ensuring that you have adhered to the obligation
22 that we had to reduce the traffic on 176th
23 Street.

24 You will notice, also, on here that item
25 number five indicates that they are going to put

1 all the commercial traffic, the buses, the
2 deliveries, the staff, the parent drop-off,
3 through the neighborhood on 176th Street.

4 The resolution that was written and
5 accepted by the council in 2010, specifically says
6 that the deliveries, the commercial vehicles, the
7 buses, the vans, even the faculty and staff would
8 enter on the Section Line Road, which is 184th
9 Street. Now they have all of that coming through
10 the neighborhood. This cannot possibly reduce the
11 traffic on 176th Street.

12 This application would never have been
13 approved by the former council, in my opinion, if
14 the traffic conditions were not here and the
15 intent was to reduce the traffic in the
16 neighborhood, and put it on the Section Line Road.
17 So by eliminating this, you have, as far as I can
18 see, created a very, very, very large problem for
19 the people in this particular neighborhood.

20 I want you to keep in mind how this is
21 configured. There are two entrances to the
22 school, when they finish the one on 184. There
23 will be 176 and 184. Together with Old Cutler,
24 those two roads and Old Cutler, which is
25 gridlocked now, without the increase, will

1 completely block in that entire neighborhood east
2 of the school. Completely block it in.

3 I don't know how anybody in good conscious
4 could throw out these conditions that were put in
5 here to protect the residents.

6 MR. SCHAFFER: I am still trying -- the
7 question has been posed to me. I am still trying
8 to figure out why the council just didn't say no
9 to the expansion of variances right in the
10 beginning. Say no to it all.

11 MAYOR STANCZYK: I did vote no on it.

12 MR. SCHAFFER: It was -- the council voted
13 based on some adjustment. And I remember that
14 night, 2:30 in the morning or whatever it was.
15 Voted on some sort of variation, which has got us
16 where we are here now.

17 MAYOR STANCZYK: It was a compromise.

18 MR. SCHAFFER: Again, compromise leads to
19 lawsuits, and that's why we are here.

20 MS. LINDSAY: That may be true. It's not
21 moving us forward. We really need to focus.

22 MR. SCHAFFER: The traffic issue is huge.
23 Again, that is why I go back to, if we are going
24 to have something here, you know, they are
25 going -- I understand what they put in

1 number five, but number six they are talking
2 about -- excuse me. Number seven they are talking
3 about traffic studies. What does -- our codes do
4 not stipulate when traffic studies are to be done,
5 correct?

6 MS. BOUTSIS: It does not, no.

7 MR. SCHAFFER: They are putting in here --

8 MR. HOCHMAN: Just so you understand, a
9 traffic study is typically done when a project
10 site plan is proposed, to determine whether the
11 project site plan conforms what they call
12 concurrency.

13 In order for you to put a development --
14 this is a thumbnail. But in order to put up a
15 development of some sort, one of the issues that
16 is looked at is whether the traffic being
17 generated by that new use of the real estate will
18 add to the use of the roadways that are adjacent
19 to it, and they want to study it. So someone
20 comes and studies traffic.

21 If the roadway is already overburdened,
22 then they ask the applicant to try to mitigate
23 some of the traffic somehow. Once that is done
24 and the development goes up, there's normally no
25 need for additional traffic studies. They assume

1 that once the traffic has been mitigated, the site
2 plan has been approved, that that has created
3 enough availability on the roadway to handle the
4 traffic from the new development.

5 MR. SCHAFFER: Okay. This thing was
6 approved for 1150, right?

7 MS. BOUTSIS: Yes.

8 MR. SCHAFFER: All the other -- it was
9 approved for 1150. There's a traffic study done
10 for 1150, correct?

11 MS. BOUTSIS: There was a traffic study
12 done.

13 MR. SCHAFFER: Whether it's right, wrong
14 or different, there was a traffic study done for
15 1150. There's a traffic study done for 1150. It
16 outlined all the different flows in and out of the
17 location. And, in fact, there were two traffic
18 studies done. There was one done by Palmer
19 Trinity and there was one done by --

20 MS. BOUTSIS: It wasn't an actual traffic
21 study done. It was analysis done by the Village's
22 consultant.

23 MR. SCHAFFER: Analysis, okay. But the
24 actual study was done. They are saying they are
25 going to do one at 900, and if it shows the need

1 for traffic calming, will absorb the cost.

2 MS. BOUTSIS: Understand that some of
3 these terms are still even up in the air as far as
4 the traffic. Because if they are going to shift
5 their internal circulation of that, Dade County is
6 going to be reviewing, once again, which based
7 upon conditions may change things. We don't know.

8 MR. SCHAFFER: That 900 kind of bites at
9 me, because it's like it wasn't part of the
10 application. It's kind of in there -- I am trying
11 to figure out why that is being thrown back in
12 there. There's no backing to that 900.

13 MR. HOCHMAN: From your comments, I get
14 the sense that you are uncomfortable voting at
15 this point yes on what is written in black and
16 white.

17 MR. SCHAFFER: Right now, as I see it, not
18 until we are clear on ordinances, the actual
19 ordinances themselves. That is what I am trying
20 to get my arms around, is the actual ordinances.
21 I understand that some of the other components, be
22 it the money, be it the lighting, be it some of
23 the traffic -- I just want to be -- at this stage
24 of the game we need to really --

25 I am leaning towards accepting --

1 accepting the terms up to and not including
2 violating any of our ordinances, but making sure
3 that we are clear on some of these numbers that
4 are put in here that they are not just arbitrary
5 numbers.

6 And again, I would have -- I go back to
7 the fact that the council's -- this whole lawsuit
8 is for damages that they claim that they received
9 because of two rulings that our council made. One
10 was not allowing us to go -- not allowing them to
11 go to EUM from agriculture two and a half acres.
12 And we lost in court in reference to site zoning.
13 They said it was site zoning. And back then I
14 couldn't figure out why we didn't vote to allow
15 them to build single-family homes there.

16 Then the second issue that came before the
17 council, where they submitted their application
18 for expansion and variances, why the council just
19 didn't say no. And say, go build your
20 single-family homes and have fun.

21 (A discussion was held off the record.)

22 MR. SCHAFFER: Thank you very much. If
23 they wanted to take us to court, because they
24 think that they deserve more, they could have
25 taken us to court. And the courts would have

1 determined what happens, and there may never have
2 been a damages lawsuit.

3 You know, that 900 sticks. It bothers me
4 because -- and it has a lot to do with a decision
5 that we are making here today, because I have been
6 getting information in reference to that that
7 indicates the previous council may have operated
8 out of Sunshine in coming out with that 900
9 number. I am concerned that that is going to come
10 back and haunt us somewhere down the line.

11 There were discussions as to how that 900
12 came about, and it would have come about outside
13 of Sunshine. Not in this. I am talking about in
14 the council meeting, in the original council
15 meeting. You know, you say no, but all that stuff
16 is --

17 MS. LINDSAY: I wasn't on the council.

18 MR. SCHAFFER: I know. That is why I was
19 asking --

20 MAYOR STANCZYK: I think that is a really
21 salacious charge, Mr. Schaffer. I think that is a
22 salacious charge. And I have never heard a
23 comment made about the 900 in that regard, ever.
24 And I want that on the record. That is a
25 salacious, scandalous charge.

1 MR. SCHAFFER: I was told by another
2 council member, a previous council member, that a
3 discussion was had between yourself and then vice
4 mayor that came up with that 900 number, based
5 upon determining how many residents --

6 MAYOR STANCZYK: I am filing charges.
7 Eve, I am filing charges. Because that is a lie.
8 We are going to file charges about that.

9 MR. SCHAFFER: I'm just asking --

10 MAYOR STANCZYK: No. This is not the
11 topic of discussion. The charges will be made.
12 Eve, please deal with that with me in the morning.
13 That is not a topic here.

14 MS. BOUTSIS: I missed something along the
15 way.

16 MAYOR STANCZYK: He just charged the vice
17 mayor, the former vice mayor, and I had a
18 non-Sunshine meeting.

19 MR. SCHAFFER: I am not charging you. I
20 am asking. I am asking.

21 MAYOR STANCZYK: That is not a topic under
22 discussion tonight. We are limited to the
23 settlement before us.

24 MR. SCHAFFER: That has to do with the
25 settlement, because if any of that information is

1 factual, that can be part of the ongoing
2 litigation and be difficult in trying to determine
3 whether we settle or not.

4 MAYOR STANCZYK: Eve, who was vice mayor
5 when we did that?

6 MS. BOUTSIS: 2010?

7 MAYOR STANCZYK: It was Paricer.

8 MS. BOUTSIS: I'm sorry. Are you talking
9 about the resolution that went to 2:30 in the
10 morning?

11 MR. SCHAFFER: Yes.

12 MS. BOUTSIS: It was Parrish.

13 MR. SCHAFFER: Again, I am asking. This
14 is --

15 MAYOR STANCZYK: You know what? I have
16 repeatedly said, and this is my meeting, that we
17 are not under the topic of why we do things. It
18 is part of our ordinances. I do believe that I do
19 not have to give a reason for what I vote for and
20 how I vote. But that is the charge that will be
21 brought up in the future with ethics, and it will
22 go further.

23 MR. SCHAFFER: I am asking you a question.
24 If you want to charge me on it, fine.

25 MAYOR STANCZYK: Then who told you?

1 MR. SCHAFFER: A council member that is
2 not a council member anymore.

3 MAYOR STANCZYK: Who?

4 MR. SCHAFFER: I don't want to bring that
5 up.

6 MR. DUBOIS: Can we get back to --

7 MR. SCHAFFER: All I am doing is I am
8 saying is this is the stuff that I am battling
9 with to make sure. I have got stuff that says
10 global settlements that are going out in e-mails.
11 I don't know what is happening one way or the
12 other out there. But I am telling you, our
13 decisions are being made based on --

14 MAYOR STANCZYK: The 900 is not a decision
15 that is up for tonight. It's not a decision or a
16 conversation for tonight. We are here to discuss
17 the settlement. I do believe the settlement that
18 has been offered to us uses the 900. It is merely
19 a number, as the attorney has mentioned. It's
20 merely a number.

21 MS. LINDSAY: Mayor, if I can point out,
22 this is, as Mr. Hochman referred to a midpoint in
23 terms of the dollars and negotiating back, 900 is
24 the midpoint between their current enrollment of
25 650 and the 1150 that is their cap.

1 MAYOR STANCZYK: That was what I mentioned
2 earlier.

3 MS. LINDSAY: I don't see anything strange
4 or mysterious about that.

5 MR. SCHAFFER: Again, that's why I bring
6 it up in discussion.

7 MS. LINDSAY: I think sometimes we are
8 making mountains out of molehills, and I think
9 what we need to get back to is this offer.

10 MR. SCHAFFER: Fine.

11 MS. LINDSAY: If vice mayor is ready, go
12 ahead. Otherwise, I will be happy to jump in.

13 MS. BOUTSIS: Before you do, I want to try
14 and ask all of us, including myself, from
15 interrupting while somebody else is speaking,
16 because the court reporter can't get it all down.

17 We took a one-minute break to make sure
18 who was in the building, and the vice mayor asked
19 me a question outside. The way we drafted our
20 counter-proposal was we are keeping the resolution
21 unless we are specifically tweaking a section. So
22 the section relating to traffic studies was at
23 8.17.

24 And that is why it's not specifically
25 referenced in the counter-offer that we made,

1 because we are keeping it, and we only showed what
2 we were proposing to tweak, if you follow me.

3 These are the modifications.

4 MR. DUBOIS: So then you have answered my
5 question. The counter-offer that we made
6 effectively including 8.17?

7 MS. BOUTSIS: Correct.

8 MR. DUBOIS: Which was basically my
9 question. Where was our counter-offer with
10 respect to this traffic measurement issue? And it
11 sounds like the answer is in 8.17.

12 "The Village shall biannually, every six
13 months, test to ensure that there's a limitation
14 of neighborhood cut-through traffic. The Village
15 shall analyze the traffic data and determine
16 corrective measures to limit such cut-through
17 traffic. Based on the testing, the Village shall
18 implement such corrective measures needed to
19 enforce the Village's goal. This is an obligation
20 of the Village."

21 But if that is the case, it's not clear to
22 me, since we didn't make it a condition of our
23 counter-offer, why they would even offer to
24 conduct measurements. In other words, it appears
25 as though, because we excluded it other than by

1 reference to 8.17, they went above and beyond in
2 that measurement. Did they not?

3 MS. BOUTSIS: No, they didn't.

4 MR. DUBOIS: What am I missing?

5 MS. BOUTSIS: In other words, we said we
6 are keeping all 80 conditions minus whatever we
7 are changing.

8 MR. DUBOIS: So it was one of the -- it
9 wasn't 8.17. It was one of the 80 conditions.

10 MS. BOUTSIS: Minus what was changed.

11 MS. LINDSAY: It was 8.17 on the original
12 resolution.

13 MR. DUBOIS: Okay. What I am saying is,
14 the counter-offer we proposed -- I am not
15 saying -- there could have been a mistake in our
16 counter-offer and we may have meant to say that
17 they should have done measurements a certain way,
18 but we didn't in our counter-offer. We just left
19 it as --

20 MS. BOUTSIS: No.

21 MR. DUBOIS: -- referring to 8.17, right?

22 MS. BOUTSIS: Also 8.12, which says that
23 they pay for the cost of it, by the way.

24 MR. DUBOIS: Okay. 8.12 and 8.17.

25 MS. BOUTSIS: It's 8.12 and 8.17.

1 It says, "Applicant shall be responsible
2 for expenses relating to traffic control, police
3 involvement, police participation for a traffic
4 plan. The traffic plan relating to daily school
5 use and special events, the school roadway shall
6 be subject to approval of the police department.
7 Village police officers shall be hired and paid
8 for by the applicant to manage traffic and
9 entrances to school, and all site locations
10 affected by traffic conditions."

11 MR. DUBOIS: Okay. So in 8.12, them
12 bearing the costs refers specifically for all the
13 measurements that are referred to in 8.17; is that
14 correct?

15 MS. BOUTSIS: Yes. That is what I
16 understand.

17 MR. WILLIAMS: 8.17 specifically says it's
18 an obligation of the Village.

19 MR. DUBOIS: That is exactly right. It's
20 a contradiction a little bit. That gets back to
21 my point that I was trying to make, is that in our
22 counter-offer we effectively excluded any
23 specific --

24 MS. BOUTSIS: No.

25 MR. HOCHMAN: Just so you understand. Our

1 counter-offer started with conditions. Our
2 attorney --

3 MR. DUBOIS: Hold on. We excluded
4 specifics other than reference to 8.12 and 8.17,
5 which is related to this topic. That is the
6 only --

7 MR. HOCHMAN: We are not talking the same
8 language. Let's start over.

9 MR. DUBOIS: Okay. I am confused.

10 MR. HOCHMAN: We proposed to Palmer
11 Trinity everything that was a condition they still
12 have, except certain items that we were less
13 insistent upon. Their counter-offer back to us --

14 MR. DUBOIS: Be more specific. I am not
15 concerned about the 80 conditions. I am concerned
16 about one of those 80 conditions that specifically
17 addresses the latest number seven, which is PTS
18 will undertake a traffic study when school
19 enrollment reaches 900. If the study shows the
20 need for traffic calming, PTS will absorb the
21 costs of construction or installing those.

22 Where in our counter-offer, either
23 directly or indirectly, is something on that topic
24 included explicitly or by reference? That is the
25 question.

1 MS. BOUTSIS: In the beginning where it
2 says we keep everything but what we have changed.

3 MR. DUBOIS: I understand.

4 MS. BOUTSIS: Give me a second. It says,
5 owner's project or site plan, page five of our
6 development agreement proposed.

7 MR. DUBOIS: Okay.

8 MS. BOUTSIS: We define what the project
9 is as defined by the resolutions. Okay?

10 MR. DUBOIS: Okay.

11 MS. BOUTSIS: We then say it will be
12 developed by that, but -- and let's go to this.
13 At the end of five, it's C. The owner shall seek
14 a site plan modification at no additional cost to
15 the owner to modify the following conditions of
16 the resolution that has been approved.

17 MR. DUBOIS: Okay.

18 MS. BOUTSIS: Okay? Little I, little I
19 two, roman numeral three, four, five. These are
20 how those conditions that we talked about will be
21 modified. The rest remain in full force and
22 effect.

23 MR. DUBOIS: The reference to the rest,
24 related to the traffic calming, is where exactly?

25 MS. BOUTSIS: In that definition of the

1 entire resolution as previously approved.

2 MR. DUBOIS: Which is 8.12 and 8.17?

3 MS. BOUTSIS: The whole thing.

4 MS. LINDSAY: The whole section, vice
5 mayor, on page 13 of 20, with item number eight
6 regards to that. All of those items --

7 MR. DUBOIS: I got you. And I already
8 asked, and I was referred to 8.12 and 8.17.

9 MS. BOUTSIS: Because you have asked
10 specifically as to -- there's no 900 number for
11 traffic studies.

12 MR. DUBOIS: I'm not asking about the
13 number. I am asking about the specific reference
14 to --

15 MS. BOUTSIS: Studies.

16 MR. DUBOIS: Yes. And their obligation to
17 construct and do the traffic calming license. Is
18 any of that specifically referenced? Other than
19 to say, they have to do a traffic study.

20 MS. BOUTSIS: Just what you have here. If
21 there's nothing more, there's nothing more.

22 MR. DUBOIS: My whole point on this --

23 MR. HOCHMAN: Just so you understand, 8.11
24 says the applicant shall response implementing the
25 following mitigation initiatives, as delineated in

1 the David Plumber Associates report, dated
2 April 22. And then it goes through A through D.

3 MR. DUBOIS: Right. It says nothing about
4 the measurements, though, and traffic calming
5 devices in there. It says nothing about the
6 measurements.

7 MS. BOUTSIS: The measurements are
8 incorporated by reference through the study.
9 Instead of rewriting it into the resolution, the
10 study is this big, so those measurements were
11 adopted by reference.

12 MR. DUBOIS: It says somewhere in there to
13 do measurements periodically. That is all I am
14 looking for.

15 MS. LINDSAY: Biannually, every six
16 months.

17 MR. DUBOIS: We were there already, 8.17.
18 An obligation to the Village, though. That is
19 different.

20 MS. LINDSAY: No. Be careful there,
21 because you are not reading the whole thing, vice
22 mayor. It says, "The village shall analyze the
23 traffic data and determine corrective measures to
24 limit such cut-through traffic." That is not
25 traffic calming. That is cut-through traffic.

1 "Based upon the testing, the Village shall
2 implement such corrective measures needed to
3 enforce the Village's goal." For example,
4 installing no-turn signs at a certain hour.

5 MR. DUBOIS: I read all that.

6 MS. LINDSAY: That's the obligation, not
7 to put in --

8 MR. DUBOIS: But it specifically says this
9 is an obligation of the Village. None of it says
10 anywhere in 8.17 that it's an obligation of the
11 school, right?

12 MS. BOUTSIS: But 8.12 does.

13 MS. LINDSAY: Applicant shall be
14 responsible for all expenses related to traffic
15 control, police involvement, and police
16 participation and traffic movement.

17 MS. BOUTSIS: For the traffic --

18 MR. DUBOIS: It doesn't say anything about
19 periodic measurements.

20 MS. LINDSAY: Yes, it does. 8.17, that is
21 a biannual. Every six months we are going to have
22 a traffic study. And that goes back to 8.6.

23 MR. HOCHMAN: I am sorry. If you look --
24 go back to 8.5. 8.5 says the applicant shall fund
25 a series of peak hour, intersection, turning

1 movement counts, and 72 hour link counts be taken
2 by the Village along 176th Street at the end of
3 the driveway entrance on that street. These are
4 to occur on a random basis, once each semester of
5 school operations in perpetuity.

6 MR. DUBOIS: That is what I was getting
7 at. So it does give a guideline for the periodic
8 measurement and their responses one time at
9 midpoint. That is what I was trying to
10 understand, where our counter proposal was and
11 what their response was.

12 MR. HOCHMAN: Just so you understand, 8.5
13 is part of our counter proposal, because the way
14 our counter proposal is structured, everything
15 less the things we --

16 MR. DUBOIS: That part I understand.

17 MR. WILLIAMS: But we don't want to miss
18 an opportunity to have them put in the capital
19 improvements. We don't detail that here.

20 MS. BOUTSIS: That was detailed. That was
21 under the plumber.

22 MR. WILLIAMS: But that specific 184.

23 MAYOR STANCZYK: It didn't say 177.

24 MR. WILLIAMS: That is subject to 184.
25 Where the impact of the improvements would make a

1 difference would be 176.

2 MAYOR STANCZYK: If you followed the
3 cookbook that was given of moving the traffic off
4 176, but now that whole idea is moot because you
5 have now moved the traffic back to 176.

6 MR. HOCHMAN: Just so you understand, 8.6
7 also --

8 MR. DUBOIS: I am good with all that. We
9 can move off that.

10 MR. HOCHMAN: Okay.

11 MR. DUBOIS: I am now back to number seven
12 on the school's latest offer. I can live with
13 interpreting this -- and maybe some verbiage can
14 be put around it. The way I read this and the way
15 I think it should be interpreted, PTS will
16 undertake a traffic study when the school reaches
17 900. If the study shows the need for more traffic
18 calming devices, PTS will absorb the costs of
19 constructing or installing.

20 We don't necessarily have to interpret
21 that to mean they only have to do it at 900.
22 Whoever does the study, when that study is done,
23 it's done at the point in time when there's 900
24 students. But it can also do a projection,
25 because they will see an increase from 650 to 900.

1 They should be able to double that increase to
2 project out how it's going to look when it gets to
3 1150. It's double the difference, let's say.

4 So I am not interpreting this to mean that
5 they will only address the issue up to 900
6 students, but rather simply the timing of when
7 they are going to do the analysis. And they still
8 have to address with traffic calming devices or
9 whatever the projected traffic problem when it
10 gets to 1150. That is my interpretation and I
11 will be happy with it being a little more explicit
12 to point that out. Do you follow?

13 MR. HOCHMAN: Extrapolate.

14 MR. WILLIAMS: You can put in different
15 intervals.

16 MR. DUBOIS: A midpoint is actually a good
17 way to predict how the second -- it's just going
18 to be 2X of the difference from the 650 to 900.
19 It's a measurement of --

20 MAYOR STANCZYK: But it does not address
21 any increase after that. It is completely moot.
22 It is completely silent.

23 MR. DUBOIS: That is not -- what I am
24 saying is we would put language in --

25 MAYOR STANCZYK: I understand what you are

1 saying, but they have not addressed it.

2 MR. DUBOIS: That's why we need to put
3 language in.

4 MAYOR STANCZYK: Then you are changing
5 their offer to reflect that.

6 MR. DUBOIS: No. I am saying we need to
7 articulate the way that we are interpreting
8 number seven. For -- my point is we should
9 interpret this and make sure that they understand,
10 and put in the contract that we interpret it, to
11 mean that that is simply the timing of when the
12 study is done. But the study must also include
13 the traffic for up to 1150 students.

14 And maybe it says when it gets to 950,
15 there will be this much more traffic. 1,000, this
16 much more. 1100, this much more. 1150, this much
17 more. And at each of those points, they need to
18 provide these additional traffic calming devices,
19 whatever the study calls for.

20 And the study can be done at the midpoint
21 to project out. I mean, it may not be 100 percent
22 accurate, but it should be statistically relevant.
23 This is simply mathematics. They should be able
24 to figure this out, project it out.

25 I want to make sure that it's clear that

1 our interpretation is this is simply a timing
2 issue. Not that they will be forgiven. They will
3 still have the obligation to provide for traffic
4 calming for up to the 1150 maximum.

5 MS. LINDSAY: In my opinion, it's not
6 traffic calming that we need here. It's a shift
7 of the majority of the traffic from 176 to 184,
8 which is the Section Line Road and the main
9 entrance to the school. The entire scope of the
10 traffic study and the reason some of these
11 conditions are in here was to accomplish that
12 purpose.

13 This would never have been approved if
14 176 -- the problem with 176 and this increase in
15 students hadn't been mitigated by these
16 conditions. To remove these conditions creates an
17 enormous problem for these people in this
18 neighborhood. I think that some of you may not be
19 as familiar with where this came from and with
20 these conditions as some of us who have been
21 involved for a long time.

22 I think you need to be very careful about
23 what you are doing here, because this particular
24 condition 8.6, which says if either the 1370 trip
25 daily volume or 960 combined trip volume peak

1 threshold are violated, that they are going to
2 have to do something to mitigate the problem.

3 Now, we took out all of the suggested
4 mitigation, and we were allowing them to come up
5 with their own devices. Whether they need to have
6 more buses bringing students in to reduce the
7 number of cars coming into this area or more vans
8 or stagger the starting time, they must do
9 something. This application would never have been
10 approved without this. To give up on this is an
11 enormous mistake and a very, very large detriment
12 to this community.

13 I don't think that some of you who are
14 ready to just drop all of this are really
15 understanding what is there now and what you are
16 doing by not shifting the bulk of this traffic to
17 184th Street and the Section Line Road.

18 MAYOR STANCZYK: That was one of the
19 reasons I voted against the resolution.

20 MR. DUBOIS: Let me continue on. I
21 understand your concern that number seven,
22 addressing only traffic calming, is a concern to
23 you because you are equally concerned with
24 distribution of traffic to 184.

25 MS. LINDSAY: Absolutely.

1 MR. DUBOIS: In my opinion, this offer is
2 quite clear that they are very cognizant of the
3 distribution issue, as shown in number five. I
4 would give them -- they are not stupid people and
5 they have similar objectives to even out traffic
6 that everybody else in the neighborhood does. I
7 would give them the benefit of the doubt that they
8 will do the right thing, because it benefits them
9 as well as the neighborhood. I am not concerned
10 about that.

11 I think as long as we keep this in the
12 context of the 900 student midpoint is simply a
13 timing of when the study needs to be done, rather
14 than the extent of traffic calming or
15 redistribution of traffic to 184th, as we put in
16 our development agreement explicitly, is perfectly
17 adequate to address this issue.

18 MS. LINDSAY: May I just pop in on
19 number five to point out something that you may or
20 may not be aware of?

21 MR. DUBOIS: Sure.

22 MS. LINDSAY: And that is in the traffic
23 distribution per the resolution right now, all
24 faculty, staff and deliveries are on 184. The
25 only people that are to use 176 are pick-up and

1 drop-off only. At that, with just those students,
2 they have already exceeded what they should have.

3 Based on the analysis that they presented,
4 they have some numbers in that analysis that don't
5 add up. For example, they show a certain number
6 coming in. These are pick-up and drop-off only,
7 and they have a third of those coming out. That
8 is an impossible situation. If it's pick-up and
9 drop-off only, the number going in has to equal
10 the number going out. Right?

11 Now you are saying you are okay with
12 putting the delivery trucks, the Sysco trucks, and
13 all of the other delivery trucks, the garbage
14 trucks going to the school, the Sysco truck and
15 who knows what other deliveries, through the
16 neighborhood instead of on the Section Line Road.
17 This is neighborhood protection? I don't think
18 so.

19 MR. DUBOIS: Okay. Let me try to finish
20 up to answer your question where I stand on this.
21 I think what we have just heard is a precise
22 example of why we are in litigation with this
23 school. These people are not the enemy. We need
24 to start working with them. They are reasonable
25 people. They are going to agree to the same

1 things you just said.

2 We can pick apart 1,000 pages of our
3 agreements and fight on every single one, and we
4 will be here until the solar system burns out
5 before we are going to come to an agreement with
6 them if you take that attitude.

7 We need to give them the benefit of the
8 doubt that they are going to do the right thing.
9 We are going to do the right thing. We are not
10 giving them any special rights that other people
11 don't have. We are taking away their credibility
12 and showing a total lack of trust in something
13 that is clearly in their interest, as well as the
14 community's interest.

15 And I think that is not fair to basically
16 say, let's throw out the agreement and go to court
17 because we think they may trick us and not do an
18 equal distribution of traffic or do the best thing
19 or not do the proper traffic studies. We need to
20 put that stuff to bed and come to a settlement
21 agreement with these people.

22 So I am in favor of moving forward with
23 this.

24 MAYOR STANCZYK: I would like to make a
25 comment right here. I am sorry to jump in in

1 front of you, Ms. Lindsay. The only problem I
2 have with this, the purpose of this resolution,
3 the purpose of the zoning site plan, is to make a
4 clear, fair playground for everybody. Their
5 50-foot buffer right now includes the cafeteria
6 entrance for their deliveries. It's within
7 50 feet of the wall that separates a neighbor from
8 their property.

9 Legally, within this village, deliveries
10 may not be made before 7:00. I have sent
11 time-stamped photographs to our village manager at
12 a quarter after six in the morning, because it
13 took me a few minutes to get dressed when I was
14 roused from bed by the neighbor who lives there,
15 who to this day still has those deliveries being
16 made at 5:30 in the morning.

17 I trust people and I expect them to do
18 what is right, as well. The only problem is we
19 have a history here that not everything has been
20 done as one would request, respect, and whatever
21 else. And we need guidelines that are clear and
22 give expectation of behavior. And that is what I
23 believe a site plan and a resolution does. It
24 makes it very clear. Otherwise, we have nothing
25 to go forward.

1 Right now, you just said, I would
2 approve -- Councilman Fiore never looked at this
3 or commented. Councilman Schaffer said he would
4 agree. And now you have agreed. You have agreed
5 to changing things that will affect people and how
6 they live.

7 Would you expect a Sysco truck to sit
8 under your bedroom window at 5:30 every morning
9 with the engine running? We are not talking about
10 one Sysco truck. Actually, there's three. That
11 sit there almost every morning. Would you expect
12 in front of your home, when there's options, to
13 have commercial traffic on your neighborhood
14 street when there should be a commercial entrance?

15 I have been to many large commercial
16 sites, and this is a commercial site, that has
17 entrances limited to only commercial vehicles. We
18 are not doing that. We are not treating them as
19 other commercial entities are treated. When this
20 item came up on the agenda in 2010, and we voted
21 yes, I put the 900 out there. No, I did not break
22 Sunshine. I put that item out there.

23 But I voted against the item completely,
24 because at 2:30 in the morning I had an entire
25 list of many tweaks that would have gone to the

1 resolution to make it better for the residents.
2 And people were too tired to go through them and
3 gave them no time to be discussed. So I voted no
4 on the entire resolution, because I thought we
5 could do better.

6 And tonight, what we are seeing, in my
7 mind, is that we have lost sight of the people who
8 live in that community. We have lost sight of the
9 fact that we serve residents. We have said it's
10 okay to add lights that were never approved
11 before.

12 We have said it's okay to reinterpret
13 someone's traffic item, when I believe it says at
14 900 they don't have to do anything after 900.
15 That if it's not seen as a requirement to do
16 traffic calming, that they don't need to do it at
17 all after that. There's nothing in there that
18 says they need to revisit. There's nothing that
19 will say to them that they need to agree to. That
20 they will do that.

21 A traffic engineer coming in and writing a
22 traffic report that says in two years when you
23 have this many people, you may not need it today
24 but in two years you will, there is nothing that
25 says that. There's nothing that says that they

1 have to agree to what the traffic engineer says.
2 I would hope that you would reconsider or that
3 someone would reconsider the residents of this
4 village.

5 I am sorry, Ms. Lindsay. Your turn.

6 MS. LINDSAY: We have something called a
7 comprehensive master plan. In our comprehensive
8 master plan we have goals. Goal number one
9 includes providing neighborhood protection. Our
10 comprehensive master plan also allows private
11 schools and churches in our residential areas.
12 But only on a conditional basis, and those
13 conditions may be applied to any application, any
14 development order, to ensure that the quality of
15 life for those residents is maintained.

16 In my opinion -- first, let me say that I
17 would very much like to settle this case with
18 Palmer Trinity, and I am not opposed to settling,
19 and I hope that everyone here understands that
20 well. But I think it would be a travesty to let
21 this go forward.

22 First of all, all the conditions regarding
23 traffic have been stripped. All of them. Having
24 a traffic study at 900 several years from now does
25 nothing for this community at this point, and the

1 traffic is a problem right now.

2 You need to keep in mind also that 8.11 in
3 the original resolution indicates when they have
4 to open that driveway on 184th Street. You are
5 taking that out. If they don't have the money to
6 do that, they will just keep coming in on 176th
7 Street.

8 Now, vice mayor says we can trust them to
9 do the right thing. But history tells us
10 something else, and that is why it is so important
11 for us to have protections in writing. Something
12 our manager and staff can point to and say, this
13 is what we expect and this is what you must do.

14 Let me give you an example here. Let's go
15 to number five. Number five, vice mayor, again,
16 the original resolution says parent drop-off, pick
17 up-and drop-off only on 176 Street. If these
18 people were going to do the right thing, why did
19 they change this to put deliveries, staff and
20 faculty on that street now, too? I have a problem
21 with that. And I know the residents in the
22 community will as well.

23 Now, furthermore, let's talk about the
24 buffer. The buffer calls for a three-foot berm.
25 Has this council told the school they don't have

1 to put in a berm? No. They are planting the
2 buffer on both sides of the school on the south
3 property right now without a berm.

4 They are assuming, I suppose, or are they
5 doing the right thing, vice mayor, I don't know.
6 But we have not told them for certain that they
7 don't have to put that berm in, and they have gone
8 ahead. All right.

9 As far as the situation the mayor is
10 talking about with a particular resident, where
11 the buffer is defined to be 50 feet. That is
12 linear, not vertical. The buffer next to this
13 person's home is 45. I have a letter from someone
14 on staff here who says it's really 50 because you
15 have to count the vertical five-foot wall, as
16 well. Forty-five horizontal and five feet up
17 makes 50. I have a problem with that.

18 Now, I am telling you, and I can't say it
19 strongly enough, that you cannot walk away from
20 the conditions in this resolution the way some of
21 you are attempting to do. Not only is it a big
22 mistake for this situation, but you will see this
23 again and again and again in the future of this
24 village if you let this happen here.

25 Because anyone that comes forward and

1 wants a development and doesn't get exactly what
2 they want from the council will sue this village
3 and follow the same pattern of behavior here until
4 they get the council to cave and give them what
5 they want. And I think you are setting a very,
6 very dangerous snowballing effect that will affect
7 this village from here on out.

8 Another thing I have a really big problem
9 with is this lighting issue. You think the
10 lighting issue is going to stop here? It's going
11 to go to every other private entity in this
12 village who will point to this and say, they have
13 it, we want it, too. Is there going to be any
14 part of this community left that is tranquil and
15 quiet and a place where people want to live when
16 you are finished with it?

17 I don't want the lawsuits to continue.
18 You don't want the lawsuits to continue. But the
19 behavior and the path that you are on now is
20 sending a spiraling effect for this village, and I
21 cannot see our property values going anywhere but
22 down, because people aren't going to want to live
23 here when they find out that this council doesn't
24 stand up for protecting their neighborhoods and
25 their quality of life.

1 There are other things here as well.
2 Councilman Fiore, if you would take your position
3 more seriously, it would be a great thing for this
4 community and your constituents.

5 Now, there are a couple of other things
6 here that I find very disturbing, and one of them
7 is also that they want to throw out the charter
8 provisions addressing increases in numbers of
9 students. This goes on and on.

10 This lighting issue, they won't leave the
11 lights on past 8:30 at night, every night, so the
12 people in this community have to have lights in
13 the neighborhood. Even though they are focussed
14 downward, the effect will be, as Attorney Hochman
15 has pointed out, more traffic, more noise, a
16 constant disruption in the neighborhood. I'm
17 ashamed of any of you who think this is a good
18 idea.

19 MR. SCHAFFER: Councilman Lindsay, I
20 understand where you are coming from, and here is
21 the dilemma that we have, to make it somewhat
22 simplistic. Is that this is a suit over damages.
23 This is not about zoning. This is a lawsuit in
24 reference to damages that Palmer Trinity feels
25 have been inflicted upon them unfairly because of

1 previous litigation that they felt they had to get
2 involved in because of two rulings of the council.

3 One of them was not changing to EUM, which
4 as I said before, and I have done a lot of
5 homework of reading and understanding this, not
6 making that decision to allow them to go to EUM
7 and say enjoy building single-family homes, that
8 threw them in court. Then, not following her lead
9 and saying, no, just voting no to the expansion
10 altogether. Absolutely. I don't think that what
11 Palmer Trinity wants to have on that 37 acres fits
12 our village. Absolutely. Without a doubt.

13 It should have been single-family homes.
14 If they went to court on that, and the courts
15 ruled otherwise, so be it. But we put ourselves
16 in a position because decisions that our previous
17 council had made to put them into court on -- not
18 on the damages, but put them in the court based on
19 those decisions, both of which I am not happy with
20 either one of the decisions our council made.

21 We are now saddled with the
22 responsibility -- because of this damages lawsuit,
23 we are saddled with the responsibility of doing
24 what we are doing here, trying to figure out how
25 to keep the village the way we want to keep the

1 village, not hurting any of the residents, like I
2 said in the last shade session.

3 Unfortunately the residents are going to
4 get hurt in some form or fashion because we are in
5 a settlement negotiation. That means something is
6 going to get taken away from them. Both when it
7 comes to their living conditions and their
8 financial condition. It's going to happen.

9 The fact behind it is that the concern I
10 have is what happens if we go forward in a court?
11 The more that I am learning, the more that I am
12 finding out, we could get slaughtered. This is my
13 feeling. We could -- they have got a lot of
14 attorneys and they have got a lot of anger. And
15 anger will get people to do things that they
16 normally wouldn't do.

17 And I think vice mayor is bringing up some
18 of the issues of maybe we need to pull, you know,
19 you keep your friends close but your enemies even
20 closer. Are we putting ourselves out there where
21 we are going to end up in court, it's going to
22 cost us as a village dearly in legal fees. I
23 mean, if they decide that they want to drop two of
24 the charges in which the League is protecting us
25 on --

1 MAYOR STANCZYK: I am going to break in
2 one quick second. I just want to put at this
3 point on the transcript that while you have made
4 those feelings known about the legal fees and the
5 fact that we would get slaughtered, we will ask
6 Attorney Hochman and Boutsis to respond to that at
7 the close.

8 MR. SCHAFFER: Yes, I am. I am just
9 giving you my feeling, is that, you know -- and if
10 all of a sudden the League is not required to
11 represent us, we can stay in court for a long
12 time, put out a lot of expenses. It could be
13 hugely expensive.

14 And they, unfortunately, may not be acting
15 in the most professional arena. It may be it's
16 more personal than business for them, and they
17 want their pound of flesh. We have got to
18 consider that. I am looking at that and I am
19 going, are we in a situation where if we continue
20 this legal battle, that we are going to end up
21 having a further and further divide, where Palmer
22 Trinity is going to hate us to such a degree that
23 they are going to do whatever it takes to do
24 whatever damage they can to this village? Wrongly
25 so, but are they going to put us there?

1 Or do we look at this, come up to and we
2 look at what they put forth, agree to it, and then
3 ask them to sit with us and work with us, shake
4 hands, apologize, whatever we need to do, and sit
5 down and try to work this out as a member of our
6 community, that they are, although they haven't
7 shown that they are a real quality member of the
8 community. But go forth with who we are, and sit
9 down and say, now that we are out of the legal
10 battles, let's sit down and let's try to work
11 these things out.

12 Otherwise -- and yes, maybe that is
13 wishful thinking. It just might be. And maybe
14 they are going to look at us and say, we are doing
15 what we are legally obligated to do. You go pound
16 sand. I hope that is not the case. It could very
17 well be. But this is the dilemma. This is the
18 gamble that we are looking at.

19 Do we put forth and agree to what they
20 have listed here without giving up our ordinances,
21 and then go forth and try to work with this
22 organization? Or do we say -- because I assure
23 you, if this modification and what they put here,
24 or there's modifications to -- they may accept
25 some modifications. I am not sure.

1 But I have a feeling at this stage of the
2 game that they are going to follow through on what
3 they have said, and they are going to go after us
4 big time in court, and the gloves are going to
5 come off. And my fear is that it's going to cost
6 us in attorney's fees and it's going to cost us in
7 potential negative ruling against us in the
8 future, which could cost us tens of millions of
9 dollars, or whatever number you want to throw out
10 there.

11 That may not be real. I am going to ask
12 you guys for your thoughts. But so far, we have
13 been in two court proceedings. For the EUM
14 ruling, and we lost. For the ruling in reference
15 to the approval with the 900 versus 1150 and all
16 the other stuff, and we lost.

17 When these people start subpoenaing some
18 of the people out there, I don't know what some of
19 these people are going to say. I have already
20 brought up some of the issues. And they start to
21 subpoena people like Ed Feller, I don't know what
22 people are going to say and how that is going to
23 hurt us. You wanted to know.

24 And that is my fear. Can we work this out
25 like gentlemen? Can we work this out like ladies?

1 Can we work this out and come forth and be done
2 with this, and take that risk of them not coming
3 to the table and being good neighbors? Or do we
4 remain in court? At this point in time, I am more
5 interested in trying to say, all right, let's get
6 out of court and let's sit down and come in here,
7 buy each other a beer and say we need to be
8 friends so we can all move forward.

9 MAYOR STANCZYK: I have something right
10 now. One, you just said that Dr. Ed Feller has
11 made an accusation against me that is incorrect,
12 and you have named him as the party who accused me
13 of breaking Sunshine with Vice Mayor Paricer.

14 MR. SCHAFFER: Correct.

15 MAYOR STANCZYK: Number two, I would like
16 your response to the comments made about
17 attorney's fees and other issues regarding the
18 lawsuit before I take my turn.

19 MR. SCHAFFER: I gave you my opinion as to
20 what I feel would be potential attorney's fees and
21 potential problems before where we get hurt.

22 MR. HOCHMAN: Before we get there, I just
23 want to stay on where we are, which is the
24 settlement aspect of this, and we will move
25 forward.

1 Staying with the settlement idea, right
2 now the big change, in my judgment, from the
3 position where the village was to where the
4 village seems to be in terms of more members, at
5 least today, then on previous occasions,
6 permitting the installation of lighting.

7 In my judgment, if there's a change now in
8 terms of the village's approach to that issue, if
9 there is a consensus, than that change can also be
10 leveraged to negotiate other aspects of the
11 agreement, both as to money and to traffic calming
12 and other issues.

13 And so if that now is a big change, where
14 now this council would be more comfortable than
15 previous councils in allowing the lighting to be
16 installed, in my judgment that change, given
17 appropriate negotiations through Eve and me, could
18 be used to make a better deal than the one that
19 seems to be approved, lock, stock and barrel
20 tonight. In terms of money, in terms of a number
21 of other issues.

22 So even if we are, as a theoretical
23 matter, in a difficult position liability wise, as
24 you, Council member Schaffer, have suggested you
25 have a sense of that, whether I agree with it or

1 don't agree with it at this point isn't really the
2 issue. The issue for tonight is what is our
3 settlement negotiating position? And right now
4 our settle negotiating position is the council has
5 changed.

6 My suggestion is that is something, and
7 there does seem to be consensus on that, at least
8 from three of these members tonight, suggest that
9 it would not be a deal breaker to allow lighting.
10 And if that is true, I think it deserves an
11 exploration as to what that change can be then
12 communicated to Palmer Trinity, and say, we will
13 allow lighting as a possibility if you, for
14 example, reduce your number back to the original
15 number we offered up, to 550,000. And we go back
16 and say, yes, on traffic, but now "X" and "Y."

17 And another issue in my judgment would be
18 possibly the distance on the berm and the
19 separation of the 65 or 50. Because it's worthy
20 of an exploration of the negotiation rather than
21 to allow lighting and the distance and the money,
22 and all six or seven of the items they seem to be
23 pushing back on.

24 Now, if that is something that you want to
25 explore, I need you to communicate back to me that

1 yes or no, and if you are saying no, I thought we
2 were pretty clear, Mr. Hochman. We told you, we
3 really are tired of litigating. We do think that
4 our chances are weak and we do feel comfortable
5 with the way that Sean Cleary has communicated the
6 last iteration of Palmer Trinity's settlement
7 proposal. We want to stay on that track.

8 Now, having said all that, in my judgment,
9 the claims that Palmer Trinity has asserted so far
10 are what you will call defensible claims, and I
11 have communicated that to the Florida League of
12 Cities.

13 The Florida League of Cities has looked at
14 my analysis. They have made their own judgment,
15 and the amount of money that they are dedicating
16 towards the settlement is indicative of what they
17 think the value of the claims are in terms of the
18 possible exposure to damages for a covered claim.

19 Now, it's true that Palmer Trinity has
20 suffered losses on other issues that are not
21 claims for damages, issues associated that are
22 declaratory relief and site plan approval and
23 zoning approval. And quite frankly, the League of
24 Cities does not look at those issues and evaluate
25 those issues, because it's not in their business

1 to do that. So there is a disconnect between what
2 you are facing and what the League normally faces
3 in terms of litigation.

4 But in my judgment, the claims for damages
5 are novel and defensible. Not that you are
6 necessarily going to win, and not that juries
7 don't even get it wrong and appellate courts get
8 it wrong. But the way that I am proceeding with
9 the settlement is I am trying to assert a strong
10 defense, so that if you are inclined to settle, we
11 are in the best possible footing to get a
12 settlement that is acceptable to both you, your
13 community and Palmer Trinity.

14 MR. SCHAFFER: My gut feeling is if we
15 don't follow what. They say, that they are doing,
16 we are going to war. That is my gut feeling. It
17 will come back and you say, well, lighting, give
18 me a break on money. I think any of that comes
19 back, we are going to war. And that is my gut
20 feeling at this stage.

21 In reading this and going through this, I
22 am almost kind of thinking that maybe at the last
23 shade session we maybe missed that communication
24 and they gave us one more shot. I think at the
25 last shade session they were ready to go to war.

1 They were ready to go. And that is going to be to
2 the death.

3 We have got to weigh that out as to what
4 is that going to be a cost to the village as a
5 whole. That is what I am weighing out. And that
6 is the decision I am battling with.

7 MR. DUBOIS: I have a few things to say.
8 First of all, for your information, which you are
9 probably not aware of, we have a council meeting
10 that has been announced scheduled for
11 September 9th. On that council meeting is an
12 agenda item that is to vote on a motion to settle
13 the suit and the terminology, I believe.

14 MAYOR STANCZYK: To approve, reject or
15 negotiate.

16 MR. DUBOIS: Modify.

17 MAYOR STANCZYK: Modify, right. I
18 couldn't think of the other word.

19 MR. DUBOIS: I am not particularly
20 interpreting our consensus here to say that lock,
21 stock and -- because we have to listen to public
22 comment. That is part of our jobs on
23 September 9th, when we have to deliberate on
24 this settlement agreement.

25 So to say that we are buying off on

1 something now, we are -- I think, from my point of
2 view, I am giving you an indication that I have an
3 appetite, for many of the reasons that Councilman
4 Schaffer mentioned, and my concern for the benefit
5 of the village is at this stage, with what we
6 have, either your job is to give them a response
7 to the consensus right now. Obviously, not a
8 commitment.

9 That the council has indicated an interest
10 in settling this relative to the proposal that
11 they gave us. Knowing, of course, that there's
12 public hearing and knowing what is specifically on
13 the agenda for the 9th.

14 I am also very much against having you go
15 back, both of you as attorneys, because I think
16 it's absolutely ridiculous that at this point in
17 time, after how many years of this crap going back
18 and forth, that you don't have a good sense to
19 tell us right now how important the lighting issue
20 is versus the dollars are, and to just go back.

21 I would prefer you just give them the
22 message that this is the consensus. We are going
23 to have a public meeting on this, and a decision
24 on the dais, and everybody is welcome to give
25 their opinions, and we will make our decision. To

1 push this into further negotiations, to have you
2 and Eve in the middle of it, I am not comfortable
3 with that at this point.

4 Again, as Councilman Schaffer said, we
5 might be lucky that we got another shot at
6 settling with these people. It's hard to know
7 what is going through their minds. I think the
8 change with respect to lighting, you are viewing
9 this as a huge potential dollar item to adjust our
10 dollar value in item number whatever that has the
11 \$800,000 in it.

12 Last I heard when we talked about this, we
13 were talking about -- what is it -- six or seven
14 home games a year where the lights will be on
15 until 8:30, which is an extra -- if you average an
16 hour and 15 minutes beyond that for lighting times
17 seven games, let's call it, you are looking at an
18 average of maybe, what, eight hours of additional
19 lights that are on in the neighborhood from a
20 period of 6:00 to 8:30 p.m. over a period of a
21 year. That doesn't seem to be that intrusive in
22 my mind.

23 Yes, if they are going to use them every
24 day and every night, it would certainly be
25 annoying as a neighbor to have lights going on,

1 even if it's just for an hour or two after
2 sundown. But it doesn't appear as though that is
3 the case.

4 So I don't want talk to them about it,
5 because I can see this going back and forth a
6 hundred times where you define how many days a
7 year, what's that worth to you. I don't even want
8 to get into that stuff. So I am not there on the
9 lighting issue, what you are talking about.

10 I think Councilwoman Lindsay, when you
11 talk about counting 50 feet of buffer being 45
12 linear feet and five feet up, that is insane for
13 anybody to expect us to allow that to happen,
14 first of all.

15 MAYOR STANCZNY: It's there.

16 MS. LINDSAY: May I just interject?

17 MR. DUBOIS: Please let me finish.

18 MAYOR STANCZYK: I would like an
19 opportunity to speak, as well.

20 MR. DUBOIS: Yes. But I have the floor,
21 and as soon as I am done, you are welcome to talk
22 as much as you want. But while I have the floor,
23 let me go through the issues here.

24 I think we lose credibility when we talk
25 about, oh, they are going to count five feet up

1 and 45 feet across. That doesn't seem reasonable
2 to me. It doesn't seem like anybody would
3 rationally try to pull that. And maybe you think
4 they will. I don't know. But to me, we lose
5 credibility when we make arguments like this.

6 I thought we also talked about on the berm
7 issue that the whole value of the berm was to have
8 the berm put in at the edge of the property, so
9 that the fence that they built around the property
10 could be on top of the berm to give extra
11 protection.

12 I believe we discussed in one of these
13 shade sessions, the fact that because they built a
14 fence without the berm underneath it, the whole
15 point of the berm is kind of a moot point. So why
16 we are raising that as a major issue at this
17 point, again, to me we are losing credibility when
18 we bring this stuff up.

19 MAYOR STANCZYK: I think --

20 MR. DUBOIS: Let me finish. I have the
21 floor. I think your tone of voice, your red face,
22 your emotional charge on this issue, because you
23 are the most personally affected in the room
24 because you live next door to the school, you are
25 a named defendant in the lawsuit, personally, I

1 think you should probably abstain from discussion
2 and voting on it because there's a conflict here,
3 and it seems to come across in our discussion.

4 And I don't think -- with all due respect,
5 I don't think it's that easy to be objective about
6 what is in the interest of all the people in
7 Palmetto Bay. I just wanted to mention that.

8 And especially in the context of saying
9 things like the five vertical feet, I think is we
10 are really impugning their integrity by making
11 statements like that to imply that the school
12 would try to pull a move like that, which would be
13 a very underhanded move if they, in fact, tried to
14 do that.

15 MS. LINDSAY: If you don't mind, Mayor.

16 MAYOR STANCZYK: I do. I do mind.
17 Because tonight I have seen things happen that we
18 have never done before in a shade session. We
19 have had personal attacks about which we know
20 nothing about, had no part of, and brought up that
21 didn't need to be brought up. You have attacked
22 Councilwoman Lindsay, and that was an attack.

23 MR. DUBOIS: No, it was not.

24 MAYOR STANCZYK: It is a personal attack
25 because you are talking about things that you are

1 disputing as truth, and they exist. But I want to
2 go back to the -- yes, they exist.

3 MR. DUBOIS: That is --

4 MAYOR STANCZYK: That is what we will do
5 is we will bring you out and give you a tour. We
6 should be out there about 5:30 in the morning,
7 because that is when it's best seen.

8 MR. DUBOIS: The buffer zone has not been
9 built yet.

10 MAYOR STANCZNY: The buffer zone that
11 exists at 50 feet is already there.

12 MR. DUBOIS: How can it be 45 feet, then?

13 MAYOR STANCZYK: Because it is 45 feet.
14 It's 50 because the village said it is with a
15 five-foot wall. And that is how it's treated.

16 You want to dispute the fact that people
17 have had issues with their neighbors. And those
18 are true. And you are disputing the facts of what
19 the residents have dealt with over the years for
20 the purpose of facilitating a settlement.

21 I agree with you it could go back and
22 forth several times. I think there's no harm in
23 renegotiating and modifying this settlement to
24 them. I think when they bring up and add
25 something like lights that was never there before,

1 that is an open door to discuss and to modify. I
2 think we need to think about our residents, not
3 about Palmer Trinity first, because that is who we
4 serve.

5 Now, to the topic of settlement, as to my
6 position, I desire to settle probably just as much
7 or more than most people in this room, as the
8 village manager can attest that we have discussed
9 many times my desire to settle. However, my
10 desire doesn't override the village residents and
11 what their desires and needs are. That was why I
12 voted against the original resolution, because I
13 had many tweaks that I thought should be done.

14 Three out of five people voted to support
15 that resolution. So obviously, your assertion
16 that I broke Sunshine to discuss with the vice
17 mayor, is the allegation that you say was made by
18 Dr. Feller, is false.

19 MR. SCHAFFER: The former vice mayor.

20 MAYOR STANCZYK: I'm sorry. The former
21 vice mayor. The past mayor. The items that are
22 included in this settlement agreement that we see
23 tonight, I believe could be modified and tweaked.
24 I don't think anyone has an expectation of passing
25 a document on an issue that has been so

1 well-litigated and discussed and worked on for so
2 long.

3 Mr. Manager, how long did it take for
4 Palmer Trinity originally to come up with the
5 items and the conditions of the resolution? Did
6 it take a year? Did it take eight months?

7 MR. WILLIAMS: The original resolution?

8 MAYOR STANCZYK: Yes. I believe it took
9 eight months to a year for them to work through
10 the items that were originally posted on the
11 resolution. And they dedicated the time to it.
12 They agreed to all those items that were in the
13 resolution, except for the 30-year and the one
14 item that was modified on the dais that they did
15 not agree to.

16 MS. BOUTSIS: Mayor, that is not 100
17 percent accurate. There's about seven or eight
18 conditions. They only appealed two.

19 MAYOR STANCZYK: Right. So they only
20 appealed two. But they had agreed to the
21 resolutions that went forward. And by dedicating
22 that time, they thought it was important enough to
23 work with staff to do that. I think they can
24 share a little bit more time with us. Mr. Cleary
25 is new to this process. He is fairly recent. He

1 is charging forward but it doesn't mean that we
2 have to charge forward faster than he does.

3 I think that we can go back and forth and
4 come to a better solution than we have here
5 tonight. The lights have never been discussed.
6 They were never approved. They were never agreed
7 upon. The traffic issue is something that will
8 never be resolved with the statement that is here
9 tonight. It will never be resolved. It will
10 never work.

11 We cannot force someone to follow a
12 resolution or an agreement that is so unclear and
13 ambiguous as this. When we asked them to count
14 students, they created -- and we told them how
15 many students they could have. This is the
16 boldest example.

17 They came up with average daily attendance
18 as their definition. They did not come up with
19 let's count the heads. They created a definition
20 that in schools does not exist anywhere. They're
21 creative. They are their best -- their own best
22 advocate. And I understand that. They are
23 protecting their position.

24 But we have to protect our village, and we
25 have to make this something that is easy to

1 enforce. If it is ambiguous, if it is something
2 that we can't live with. The vice mayor has said
3 that, oh, maybe it's only eight games a year. But
4 we have taken away all the conditions that
5 controlled the number of games a year that would
6 be under those lights.

7 We have allowed them to use it as a rental
8 facility through the modification of the document.
9 So now they can be renting it for league play,
10 that they could then come in under the lights and
11 have unlimited games.

12 So eight games a year, that would be
13 ridiculous. Eight hours a year, that would be
14 ridiculous. No one would install lights for that
15 purpose. I can see that now with the permission
16 to use this as a rental facility, it's used as a
17 commercial facility. They could have games there
18 on every field every night until the lights go out
19 at 8:30.

20 That is not eight hours. That is better
21 than eight hours a week. And if you count the
22 hours of usage per field, it's better than eight
23 hours per day.

24 So what I say to you is work a little
25 harder on this document to make it a document that

1 when you read it, it's enforceable and workable
2 jointly. It is wrong to give someone a document
3 that is so ambiguous and you have expectations of
4 them living up to how you see it, and then try to
5 enforce it. It should be a document that when
6 they have it, they say okay, I know what I can do.
7 I know what to do next. But that is not what is
8 happening here.

9 I would like to see this settled. I would
10 like to see something else go on in this village
11 other than Palmer Trinity. But this will only
12 create future litigation. It will. Because
13 someone else will take it over.

14 MR. SCHAFFER: The question is about
15 future litigation. Do you mean someone else is
16 going to come in -- and again, each litigation is
17 unique. This is coming off of decisions -- this
18 litigation which is this damage lawsuit is coming
19 off of, you know, decisions that were made in
20 council proceedings, which in the future, I don't
21 know -- I don't know if this -- whatever comes out
22 of this is going to be applicable to decisions we
23 may make in reference to other businesses that may
24 want to have certain issues.

25 Again, I think --

1 MAYOR STANCZYK: I don't understand what
2 you are saying.

3 MR. SCHAFFER: If we agree or disagree to
4 any of these particular issues that we have here,
5 I don't know if that shows a precedence for any
6 future business or school or church that wants to
7 put in lights, per se, whether they are going to
8 come back and say --

9 MAYOR STANCZYK: Oh, certainly.

10 MR. SCHAFFER: Again, this is the civil
11 lawsuit for damages. Now, you know, if we rule
12 against the expansion of another school, and we
13 say -- or another -- and we say no to another
14 school's expansion, you know, they can take us to
15 court any time they want to take us to court. I
16 don't see this necessarily preventing or setting
17 precedences where everybody is going to run into
18 court in the future.

19 MAYOR STANCZYK: You cannot treat people
20 differently. If someone else comes along and
21 says, you know what, I asked for lights, and you
22 said no because of where I am located, it didn't
23 work for you. You said no. But they have got
24 lights. And they are in a residential area, too.
25 You gave them lights.

1 MS. LINDSAY: Lawsuit.

2 MAYOR STANCZYK: Lawsuit, and they win.
3 Precedent.

4 MR. SCHAFFER: But what I am saying is
5 that we are dealing here with damages. I am not
6 fearful of our decisions as a council and going to
7 court and having the court's overturn or not
8 overturn what we make as a decision on the
9 council. There's no damages involved in that.

10 MAYOR STANCZYK: There is when they say
11 there is.

12 MR. SCHAFFER: If they go to court and the
13 courts say, you know something, we believe that
14 there is -- you guys should allow them to have
15 lights. Okay.

16 MAYOR STANCZYK: What you just said is
17 exactly what happened with Palmer. They created
18 the damages scenario. All someone has to do is
19 say they have been damaged.

20 MR. SCHAFFER: The fact behind it is that
21 what we did, we got overruled. And yes, somebody
22 else could come back and say that we didn't follow
23 our --

24 MAYOR STANCZYK: Our own precedent.

25 MR. SCHAFFER: You know, the fact behind

1 it is they may be allowed to have lights from the
2 beginning. If another school comes in and says,
3 listen, we want to have lights, does our
4 ordinances forbid them from having lights or not
5 forbid them from having lights? Those are
6 decisions that we have to deal with. What we are
7 dealing with here is unique. It's Palmer Trinity
8 and their lawsuit.

9 MAYOR STANCZYK: No. Palmer is not
10 unique. Palmer is an entity that is suing us.
11 They are not an entity unto themselves.

12 MR. SCHAFFER: But I'm saying this whole
13 lawsuit -- it's so difficult to take this and
14 apply it to any potential future issues.

15 MAYOR STANCZYK: It colors everything in
16 the future.

17 MR. SCHAFFER: Everything we do colors
18 everything in the future. But the fact behind it
19 is that we are sitting in a position right now
20 where we are going to --

21 MAYOR STANCZYK: You are sitting in a
22 position today to say that I would like to take
23 the lights out or modify the lights. I would like
24 to modify this. I would like to modify that.
25 Let's send it back to them to discuss.

1 MR. SCHAFFER: To me, there's no
2 discussion. We send something back like that, I
3 will bet my bottom dollar that they are going to
4 say, see you in court, and they are going to come
5 after us with everything they got. I really got a
6 gut feeling.

7 Again, that is my gut feeling in dealing
8 with litigations and dealing with organizations
9 like this, that are -- I have got -- I deal with
10 clients that are businesses, and at some point in
11 time I have seen businesses hit a wall and say
12 they are done, and they are ready to go. That is
13 my gut feeling behind it all.

14 And that is what fears me. I am not even
15 looking beyond it. What fears me is the legal
16 fees and the potential damage, financially, that
17 this village could incur on this particular case.
18 With the amount of time and effort that we have
19 been involved in here -- and I understand, you
20 know, that there's going to be pain and that there
21 could be a precedent set. That is all true, but,
22 you know, all that fight could cost us the
23 village.

24 MR. DUBOIS: You are missing a bigger
25 issue on this. It's not just the litigation fees

1 that we are going -- that concern me. We should
2 all be concerned about a bigger issue, which is
3 the perception and the black cloud over this
4 village of us potentially trampling on people's
5 property rights, and the view of potential
6 businesses and people that are moving into this --
7 that want to move to this village, that see this
8 clearly based on the rulings of the courts in the
9 past, and what --

10 Even the Supreme Court is now leaning
11 extreme back to the right side of property rights
12 prevails. There have been some major cases this
13 year and last year that have actually overturned
14 the Florida Supreme Court in favor of property
15 rights. And it was clear from the previous
16 rulings that we have -- we run the risk of
17 trampling on these people's property rights, which
18 is one of the two most protected rights under the
19 U.S. Constitution.

20 And people, they don't like the litigation
21 that is associated with the village, and they
22 don't like the issue with potential people moving
23 in here that this is like a communist state here,
24 in terms of controlling property rights. I think
25 that is a big issue also that we also have to try

1 to put to bed. The best thing for this village is
2 to put this lawsuit to bed.

3 I understand and I agree that this is not
4 an ideal situation. We are talking about giving
5 up some things that we in good faith negotiated
6 successfully with the school in the past, and it
7 looks like we are abandoning them. But to Tim's
8 point, we are abandoning them because of the
9 trade-off for risk and severe damage to the
10 village.

11 I know that you are saying -- both Mayor
12 Stanczyk and Councilwoman Lindsay have said by
13 blanketly saying this is okay, we should work off
14 of this document, that we are abandoning the
15 protection of our residents here. I disagree.
16 The most -- most of the people that voted in the
17 last election, the only political issue in town
18 that they were aware of was the Palmer Trinity
19 litigation.

20 And the fact that the votes came out the
21 way they did, there's a message that the majority
22 of people in this town want this thing put to bed.
23 Clearly. I don't think any of us would dispute
24 that the majority of people in Palmetto Bay want
25 this litigation put to bed.

1 I take a little bit of offense when people
2 are saying because we are not protecting the
3 property rights of the people that live around the
4 school, that we are not doing our jobs and we are
5 not representing the people of Palmetto Bay. It's
6 a balancing act and we have two bad things that we
7 have to balance out here. And there's a lot of
8 bad on both sides that our job is to balance this
9 thing.

10 I know there's disagreement, and let's try
11 to keep off of the personal stuff because we have
12 the same issue between some members here of the
13 council that we have in the village as a whole.
14 And village versus Palmer Trinity, I think we
15 should make a major effort to try to trust the
16 others, to give them the benefit of the doubt, and
17 try start working with them instead of continually
18 throwing arrows at each other. The stuff with the
19 school, we don't seem to be making progress.

20 MAYOR STANCZYK: I am going to open it to
21 Councilwoman Lindsay in one second. But to your
22 comment about what the most important issue in
23 this last election was, was neighborhood
24 protection. That wanted 65 percent.

25 MS. LINDSAY: Sixty-eight.

1 MAYOR STANCZYK: Sixty-eight, I apologize.
2 Sixty-eight percent.

3 MR. DUBOIS: In your opinion.

4 MAYOR STANCZYK: It won 68 percent. You
5 won by 28 votes. I think 68 percent of the
6 majority is significant in today's voting, and
7 that was neighborhood protection. Ms. Lindsay.

8 MS. LINDSAY: I did want to reiterate that
9 same statistic. The most important thing to
10 people in this community, at least 68 percent of
11 them, is neighborhood protection.

12 MR. DUBOIS: That is what they voted on.
13 That is not what is most important.

14 MS. LINDSAY: Excuse me. I have the
15 floor. And you, vice mayor, are interrupting me.
16 Thank you.

17 And while you say you don't want to have
18 any conversation involving personal attacks, you
19 certainly didn't mind throwing a number of them my
20 way.

21 Now, I would like to make a couple of
22 points here. First of all, this settlement offer
23 is with the village. It is not with any other
24 parties. I am a council member. I have a right
25 to be here and to represent the people who elected

1 me, and I am going to do so.

2 Thirdly, Palmer Trinity only included me
3 in the lawsuit when it became clear that I was a
4 council member. The charges filed against me are
5 utterly false and contrived, in my opinion, to
6 silence me.

7 It's easy for you, who sits on
8 eight acres, to disregard the issues that will
9 affect this community. It is absolutely critical
10 that we protect this community in its entirety.
11 This is not an isolated situation. You have other
12 schools and you have other entities who will be
13 expanding. These same things are going to happen
14 throughout the village if you don't take a stand.

15 Now, I suggest we go back to this
16 agreement that was written by Mr. Cleary, who
17 happens to be a personal injury attorney, not a
18 zoning attorney, and let's take a look at what we
19 can do to counter this. I guarantee you that if
20 you include lights here and you go down this road,
21 there will be no turning back. I think it is a
22 big mistake to do this.

23 Just because someone says take it or leave
24 it doesn't mean you have to take it. Some of you
25 are running scared. Where is your backbone? Are

1 you going to standing up for the people in the
2 community and say, no, that is a deal breaker?
3 These people want to settle as much as you do.
4 They are tired of the litigation. It's affecting
5 their reputation. It's affecting our reputation.

6 But you need to stand up for the people in
7 this community. The people who elected you to
8 protect them. And you have got to do that by
9 mitigating the negative effects of this
10 development order. And that was done very well by
11 staff.

12 And now you want to say, well, let's trust
13 them to do the right thing. If you can trust them
14 to do the right thing, why have they added more
15 traffic to 176 Street than was agreed upon by the
16 traffic consultant? Why are lights in here now,
17 when we have told them over and over it's a deal
18 breaker?

19 Now, is it an attempt to get a little bit
20 more money? I think the people of the village, if
21 you truly want to settle, would be happier if you
22 offered a little more money and kept the traffic
23 mitigation and no lights in effect. And I think
24 you should consider that. I think you look weak
25 and I think you will be rolled over by one

1 developer after another.

2 It has nothing to do with property rights.
3 You want to talk about the property rights of the
4 developer, but where are the property rights of
5 the homeowners in this community who pay the bulk
6 of the taxes? We are not all about development.
7 In fact, I believe, Manager Williams, only eight
8 percent of the --

9 MAYOR STANCZYK: Of the portfolios are --
10 eight percent are commercial.

11 MS. LINDSAY: Are businesses. We are
12 92 percent residential. Ninety-two percent.

13 MR. SCHAFFER: I agree with you.

14 MS. LINDSAY: Let's see what we can do to
15 tweak this. And don't be scared to offer
16 another --

17 MR. SCHAFFER: I am not scared.

18 MAYOR STANCZYK: You said you were.

19 MR. SCHAFFER: I know. It's not about
20 being scared. It's about being --

21 MS. LINDSAY: You are being bullied.

22 MR. SCHAFFER: No, I am not being bullied,
23 because nobody has talked to me about it. I am
24 reading and doing my homework. It's right here.
25 What I am saying is is that -- I am telling you

1 that my gut feeling is we are going --

2 Precedents, so far I have not heard any
3 other school, church, business coming forward and
4 asking for anything that Palmer Trinity has. Now,
5 you say it's going to happen --

6 MAYOR STANCZYK: It's happened in the past
7 with Old Cutler --

8 MR. SCHAFFER: It happened in the past and
9 it went away. Is it going to happen again from
10 Old Cutler? We don't know. I don't know what the
11 future brings. I have no idea. And we can only
12 deal with the future when it becomes the present.
13 It's so hard to look that far into the future when
14 we got -- and my concern -- and again, I am
15 looking --

16 I know there's a group of residents that
17 could be affected by -- that will be affected by
18 anything that comes out of this. Without a doubt.
19 I don't care what comes out. They are going to be
20 affected, and there may be some effect to other
21 residents that live around similar types of
22 businesses.

23 But the fact behind it is, I am thinking
24 of all the residents. I am concerned about
25 protection. Okay? My concern is that are we

1 going to enter into a world where our village is
2 going to be devastated from attorney's fees and
3 potential negative rulings against us. That is
4 my -- how do you answer that to the -- you know,
5 all the other individuals who are screaming and
6 hollering?

7 You know, with the amount of people that
8 are saying, listen, fight them to the death,
9 there's the same amount of people that are saying,
10 I don't care what you do. Get us out of this
11 thing. Stop it. Put an end to this lawsuit. I
12 don't care. I don't want another dollar spent. I
13 don't want to hear about it again. Get rid of it.
14 Do whatever you have to do. Give them what they
15 want. But stop it.

16 So there's two sides of it. I am not
17 saying one side is right or wrong, but we got to
18 think of all sides. The balancing act is, which
19 one is going to do the least harm to the village?
20 My concern right now is if we don't move forward
21 on what has been put here, that we are going to go
22 to war.

23 I am not scared of war but we don't
24 control the wars. It's controlled by the courts.
25 That is who controls this thing. Not Palmer

1 Trinity. It's not us. It's the courts. And I
2 can tell you and we all have seen it, they can go
3 anywhere they want to go with this thing. And
4 every attorney will tell you, they can fight to
5 the bitter end, and then courts do something,
6 especially if there is a jury that is involved,
7 that is just off the deep end.

8 And I am just concerned that -- my
9 feeling, if at this stage of the game maybe we
10 step forth and say, okay, yes, we have these
11 conditions. Let's work with it. I am more
12 inclined to take the gamble, to go with this and
13 then sit down and say, let's be adults. We are
14 not in court. Let's be residents. Let's be
15 government. Work together.

16 And let's address concerns that we still
17 have. Concerns as to traffic. Concerns as to
18 these things. And maybe, and I am hoping, and
19 when this is all over I would be willing to go to
20 them, and maybe we all can be willing to go to
21 them, and say, let's sit down and let's discuss
22 some of the things that we do have these concerns.

23 And you know something? If it fails, it
24 fails. That is what I am kind of thinking at this
25 stage of the game. That is where I am at.

1 MAYOR STANCZYK: Councilman Schaffer?

2 MR. SCHAFFER: Yes.

3 MAYOR STANCZYK: You realize that once
4 this document is done, it goes into a development
5 order. And that is a cookbook. It is not
6 negotiable.

7 MR. SCHAFFER: Exactly. But there's
8 nothing that says that they can't go to all their
9 drop-offs and say, we are changing the drop-off.
10 No longer do we want --

11 MAYOR STANCZYK: They can. That is what
12 their plan is. That's been done according to that
13 plan. Unless they come back for a modification.

14 MR. SCHAFFER: Okay. Why wouldn't they
15 come back and say, listen, we got a better way of
16 doing that?

17 MAYOR STANCZYK: They don't.

18 MR. SCHAFFER: How do you know that?

19 MAYOR STANCZYK: Because nobody comes back
20 for a site plan modification at the drop of a hat.
21 That is opening up their entire thing again. They
22 would never do that.

23 MR. SCHAFFER: Why wouldn't they --

24 MAYOR STANCZYK: That is not good
25 business.

1 MR. SCHAFFER: I disagree with that. If
2 they know that they have got a friendly council
3 who might want to be willing --

4 MAYOR STANCZYK: It would cost them
5 thousands.

6 MR. SCHAFFER: It might be worth it to
7 have them -- again, we are making all these
8 presumptions that they may be willing to come back
9 and say listen, we want to make a modification
10 because we are going to change your drop-off and
11 delivery, because we think it's going to be a lot
12 better for the village, a lot better for us. And
13 if they know that, they come forth.

14 MR. HOCHMAN: May I make an observation?
15 It sounds like what is going to happen on the 9th
16 is an open meeting in the public where you are
17 going to invite Palmer Trinity to provide you with
18 their -- essentially, what the letter is.

19 MR. SCHAFFER: I understand that the
20 agenda on the 9th is a public hearing for a
21 settlement offer?

22 MAYOR STANCZYK: No. It's not a public
23 hearing. It is item 14A that will allow public
24 comment, if we agree to it. Because it is --

25 MS. BOUTSIS: No, no. It's been

1 advertised as a public hearing.

2 MR. SCHAFFER: It's going to be exactly
3 the same. It's not going to be a standalone
4 meeting. It's going to be incorporated into our
5 regular council meeting, and I am asking --

6 MAYOR STANCZYK: Yes.

7 MR. HOCHMAN: It sounds -- we have gotten
8 a little away from what we are supposed to be
9 doing tonight. Tonight is to gain consensus on a
10 "yes" or "no" on this specific document, the
11 September 21, 2013 settlement proposal that
12 expires tomorrow.

13 MR. WILLIAMS: August.

14 MR. HOCHMAN: I apologize. August 21.

15 It sounds like I got consensus from three
16 people saying, yes, I like the way the document
17 looks. I am willing to put up with the things I
18 don't like. From three of my council members.
19 And two of my council members really do not like
20 the terms of the proposal settlement. That is
21 what it looks like to me from here.

22 I have suggested my alternative point of
23 view, which was it looks like there's been a
24 change. Do you want me to try to negotiate
25 further? On that question, the consensus seems to

1 be not really.

2 MR. DUBOIS: September 9th is the
3 consensus for that.

4 MR. HOCHMAN: That's my next question. So
5 it sounds to me like with respect to the objective
6 that you were to assign to me and to Eve,
7 objective number one, please go and negotiate
8 further. It sounds like you really don't want Eve
9 or me to continue negotiating, that the
10 negotiation may actually occur in the public on
11 September 9th.

12 And people will make comments. Palmer
13 Trinity will make comments. You will make
14 comments. And then after that date, that is where
15 the real bulk of the progress will be made on this
16 is the form of the ultimate settlement
17 agreement/development agreement. And that seems
18 like what the procedure is going to be going
19 forward.

20 MR. DUBOIS: Specifically, though --

21 MR. HOCHMAN: Before you talk. Just so I
22 know my role, it sounds like you want my role to
23 be just wait until September 9th. Does anyone
24 disagree with that, or do you want Eve and do you
25 want me to go back to Sean or to whoever else at

1 Palmer Trinity, and say, no, we want to continue
2 negotiating and see if we can narrow this down, so
3 your job on the 9th is less to deal with?

4 MAYOR STANCZYK: Let me ask a question.
5 Because we have not -- in the period of time we
6 have worked on Palmer Trinity, we have attempted
7 negotiation and settlement a number of times.
8 However, we never really were successful in going
9 back and forth.

10 How many, in terms of having gotten two
11 conversations going on two different documents, is
12 that something that if we were to do a third, is
13 that unheard of? Is it something usually you do
14 back and forth? How many times do you usually go
15 back and forth?

16 MR. HOCHMAN: When you have as many
17 complicated issues as are involved in a lawsuit
18 like this, where you have money issues and you
19 have pinpoint development issues, traffic calming,
20 lighting, noise, time is a good thing, because
21 time allows people to kind of stake out their
22 territory and compromise, and then see the other
23 person and maybe compromise. So it's not unheard
24 of to have multiple efforts to settle cases.

25 Remember, we are not even set for trial in

1 this case. The case has been pending for a number
2 of years but we are still at the pleading stage.
3 In terms of the discovery that we have issued to
4 Palmer Trinity, my comprehensive set of
5 interrogatories have not been yet answered. They
6 have asked for additional time so we can explore
7 settlement options.

8 MAYOR STANCZYK: The reality is we have no
9 time clock. We are not up against a litigation
10 wall. We are not up against a court date. We are
11 not up against a judge yet. We are not even
12 close.

13 MR. HOCHMAN: That is true. We are not
14 close to a trial date right now.

15 MAYOR STANCZYK: So the reality is we
16 should feel no pressure to not continue to
17 negotiate.

18 MR. HOCHMAN: In my judgment, you have no
19 pressure that is forcing you to negotiate right
20 now. Nonetheless --

21 MAYOR STANCZYK: Not to stop negotiating.
22 In other words, we have no pressure. We don't
23 have a court date next week that says get it done
24 today or else. We have nothing that says that,
25 but we have everything, actually, from what you

1 have just told me, that says we should continue to
2 negotiate.

3 MR. HOCHMAN: In my judgment, you should
4 continue to negotiate, yes. However, there's also
5 political concerns out there, which I understand.
6 There are also systemic concerns, like the vice
7 mayor suggested. Everyone has their point of
8 view.

9 But as a pure litigation matter, the
10 normal factors which push towards getting a case
11 done, a trial date, a particular deposition, a
12 particular bill coming due for an expert witness,
13 for example, those types of pinpoint pressures do
14 not exist right now in this case.

15 MAYOR STANCZYK: So there is no reason why
16 we shouldn't continue to tweak this document, work
17 on it, and consider how we may get a better
18 settlement in the end?

19 MR. HOCHMAN: That is true. But then the
20 other side of that is what the vice mayor said.
21 If you have other concerns, they are just as
22 important. I am providing you with litigation
23 advice. There are other concerns that may be
24 taken into account.

25 MAYOR STANCZYK: But a month is not going

1 to change any of those perceptions that he has
2 mentioned. Nothing like that.

3 MR. HOCHMAN: The only thing to say about
4 that is that it is possible that what Palmer
5 Trinity said in their settlement doc, which is if
6 you don't accept by tomorrow, they are not going
7 to settle with you at all, that is a type of
8 pressure. If true, would prevent any type of
9 settlement and subject the village to the type of
10 concerns that Council Member Schaffer was
11 expressing.

12 MAYOR STANCZYK: Now, did they say that in
13 the last document?

14 MR. SCHAFFER: Right.

15 MR. HOCHMAN: Yes.

16 MAYOR STANCZYK: Not this one. The last
17 time. They said it the last time as well. Now,
18 how many times would a personal injury attorney,
19 who has a little bit more aggressive style in
20 negotiating, would they do that?

21 MS. BOUTSIS: I can't say.

22 MAYOR STANCZYK: Would they do it often,
23 would you think? It's not unheard of?

24 MR. HOCHMAN: The facts are we requested
25 an accommodation in terms of the time. Mr. Cleary

1 said he was not authorized to provide an
2 accommodation. If we take him at his word, which
3 either you are inclined to do or not, he indicated
4 that tomorrow is the deadline, and you have to
5 accept it as is or not.

6 MAYOR STANCZYK: He said that the last
7 time, as well.

8 MR. SCHAFFER: In reality, this comes down
9 to one person, and that is me, as we all know.
10 From the standpoint of whether we continue to
11 negotiate and take -- or we end up accepting this
12 and moving on to the 9th. I mean, that is the
13 reality of it all, right? Obviously, the
14 consensus is to move on. But what I am getting at
15 is --

16 MS. LINDSAY: There is something here that
17 I think you have overlooked. That is in the
18 second paragraph, in bold, the next to the last
19 sentence, any third-party challenges to the
20 settlement shall be deemed to terminate the offer
21 of settlement.

22 MR. SCHAFFER: Third-party challenges?
23 What is the third party? Who would be a third
24 party?

25 MS. BOUTSIS: Anybody else who may get to

1 the zoning hear, challenges the decision of this
2 council, voids the settlement.

3 MAYOR STANCZYK: And a challenge would be
4 considered what?

5 MS. BOUTSIS: It would be an appeal for
6 certiorari petition of your zoning hearing.

7 MR. SCHAFFER: If the residents --

8 MR. DUBOIS: What zoning hearing?

9 MS. BOUTSIS: Just like a charter school,
10 you first go to your settlement hearing, then you
11 go to your zoning hearing.

12 MR. SCHAFFER: Right.

13 MS. BOUTSIS: The zoning hearing can be
14 appealed.

15 MS. LINDSAY: The decision.

16 MS. BOUTSIS: Yes. If anyone appeals it
17 from the community, assuming that we are going to
18 do what we are thinking in our settlement
19 agreements with Palmer Trinity, assuming it's
20 somebody from the community, if they appeal, this
21 whole thing goes away.

22 MR. SCHAFFER: If they file in court an
23 appeal for any decision we make --

24 MR. DUBOIS: In a zoning hearing.

25 MR. SCHAFFER: In a zoning hearing.

1 MAYOR STANCZYK: And the zoning hearing,
2 once you get to the zoning hearing, changes can be
3 made.

4 MR. DUBOIS: Which one of these is subject
5 to the zoning hearing?

6 MAYOR STANCZYK: All of it.

7 MR. FIORE: It's to go to a site plan
8 modification.

9 MS. BOUTSIS: Except for the money,
10 everything. Except for the money, all the terms
11 that he has put in here would go to hearing.

12 MAYOR STANCZYK: Having said that, it is
13 to our best advantage not to wave a flag that
14 brings a challenge. Your best bet to get this
15 settled and get it settled well is to have a
16 settlement that people can buy into. And right
17 now, we don't have one that will be bought into.

18 MR. FIORE: That is your opinion.

19 MAYOR STANCZYK: That is my opinion.

20 MS. LINDSAY: I have the same opinion.

21 MR. FIORE: Well, obviously. You know why
22 I didn't say much tonight, Madam Mayor? Because I
23 cannot reason with you, based on your past
24 performance, and I think you showed it tonight
25 with that e-mail you sent, asking people to come

1 to a meeting where you knew that people comment
2 wasn't allowed. That is why I didn't say much
3 this evening.

4 We have no control if somebody appeals,
5 right, Eve? We have no control over a resident
6 appeal. You have 30 days to go to circuit court.
7 You take your chance and go. If somebody appeals,
8 they appeal. There's nothing we can do.

9 MS. LINDSAY: If we do a better job of
10 mitigating the negative impacts on the community,
11 we reduce the chances of appeal. And that is the
12 point. And I think there are two things here.

13 MAYOR STANCZYK: You are going to wave
14 their flag.

15 MR. SCHAFFER: My gut reaction is if we
16 don't go with this, okay, they are going to see
17 you in court. Period. End of story. I don't
18 want to -- we talked about how many times PI
19 attorneys -- it's all -- right now, it is all
20 nothing but assumptions. We don't know --

21 MS. BOUTSIS: The only thing I would
22 recommend -- and Councilwoman Lindsay pointed out
23 that section is outside the modification. If you
24 want to give them everything else, but strike that
25 language.

1 MR. SCHAFFER: The fact behind it is if
2 somebody comes in and appeals it, the deal is off.
3 It's going to go back into court anyway.

4 MS. BOUTSIS: No. It's a different case.
5 If you really wanted to do that, if you won't
6 accept their offer, you striking that language
7 means Palmer Trinity's case goes away, if we do
8 exactly what we say in the settlement agreement.
9 But it leaves us to the exposure of whatever the
10 litigation is in the future, from whoever, and
11 Palmer Trinity has to be a part of it.

12 MR. SCHAFFER: At this stage of the game,
13 I feel that anything based on -- again, that is
14 why I have this problem. Misinformation. Based
15 on anything that we do in the way of settlement, I
16 have a feeling we are going to have a small group
17 of people that are going to create an uproar that
18 is going to stop us or attempt to stop any
19 decision we make that is even reasonable or not
20 reasonable. I really think that is going to
21 happen anyhow.

22 MR. DUBOIS: This is the whole point of
23 what I have done by putting this on the agenda for
24 the 9th. The idea is to take this out of shade,
25 take this out of mediation, which has failed over

1 the last years, bring it into the public under
2 Sunshine, where all parties are at the table now
3 and can provide input, and we sit there, we go
4 through it, and then we make a decision at the end
5 of it to vote on what exactly we are going to
6 agree to in the settlement in terms of what they
7 proposed.

8 And that may be an adjustment to the
9 lighting. That may be an adjustment to take the
10 litigation thing out there. But unless we go into
11 that forum, we are going to spin our wheels
12 forever. And it's not in the interest of
13 attorneys that bill per hour to turn the
14 settlement over to a final adjudication body, if
15 you will, which is what I am suggesting. And it's
16 the only way we are going to get this thing done.

17 I am not saying -- and the school knows
18 full well, when they get word that this is a
19 consensus from the council, it doesn't mean we are
20 agreeing to this thing. It means that we have a
21 consensus to take this thing to a public hearing
22 for a settlement. Everybody is going to have an
23 opportunity to weigh in, and we are going to have
24 our final dots of our "I"s and crosses of our
25 "T"s.

1 And it's not that this number seven is
2 going to stand as it is, because I have already
3 put my opinion in and, hopefully, we will get
4 consensus on that on the 9th, that it has to be a
5 lot more specific and doesn't allow them just to
6 stop at 900, as you have alluded. That they have
7 to do reasonable things at reasonable points in
8 time.

9 I mean, we are not just going to say,
10 okay, this is it. That is not telling them --
11 just because we are telling them we are in
12 consensus to agree to this, they know that it's
13 scheduled for the 9th. They know everybody is
14 going to be in there providing their opinions.
15 And as the mayor pointed out, they know that it
16 reads on the agenda item that it is approval,
17 denial or modification of the agreement.

18 We can spin our wheels until 2:00 in the
19 morning, again, if we want to, because of the
20 issues. I think we are just better off moving
21 this out in the public, where all parties can
22 provide input, and just get this thing done to the
23 best of our abilities.

24 MR. HOCHMAN: That is actually my role.
25 My role is to not communicate a "yes" or "no" to

1 them by the deadline. Let it lapse and then you
2 will meet in the public on the 9th.

3 MAYOR STANCZYK: He cannot tell them "yes"
4 or "no" if you are not -- that is disingenuous.
5 That is bad faith.

6 MR. SCHAFFER: You can say we have a
7 consensus on this -- they know they have to go to
8 a public hearing.

9 MAYOR STANCZYK: No. This is not the
10 process that we followed to put it on the agenda
11 for a council meeting in this way.

12 MR. DUBOIS: It's on the agenda already.

13 MR. HOCHMAN: I understand that. But what
14 I am saying to you is you have then told an entity
15 in bad faith that you have accepted their
16 agreement. You are telling them not to do
17 anything and let it lapse.

18 MR. DUBOIS: It's not in bad faith, Mayor,
19 because they know that we are obligated to take
20 input from the community, and to take input and
21 not consider it would be disingenuous. So they
22 know we have to take the input from all the
23 parties that are going to give us the input. And
24 that will clearly -- it's like going into a zoning
25 hearing and have already made up your mind and

1 say, oh, I am not going to listen to the attorney.
2 I'm not going to listen to the applicant.

3 MS. BOUTSIS: Basically, if I understand
4 what is being said tonight, is I'll call up Sean
5 Cleary, or Mr. Hochman will call up Sean Cleary,
6 and say, we have consensus towards what you want
7 to do.

8 MR. DUBOIS: Correct.

9 MS. BOUTSIS: But we want you present on
10 the 9th. There will be discussion and maybe
11 negotiations.

12 MR. DUBOIS: Exactly.

13 MR. HOCHMAN: Therefore, as of tonight,
14 you are not accepting word for word on the
15 deadline their proposal tonight. That is what the
16 document says.

17 MR. DUBOIS: We are giving consensus that
18 we agree in principle, subject to hearing what the
19 public has to say.

20 MR. HOCHMAN: Fine. Okay.

21 MR. SCHAFFER: But the public hearing --

22 MAYOR STANCZNY: Wait. Let's --

23 MR. SCHAFFER: No. I want to finish. I
24 had a question that I was interrupted on.

25 One word meaning this way, it takes out --

1 we don't have to concern ourselves at this stage
2 of the game with the third-party challenging,
3 because when we go to a public hearing, when we go
4 to a public hearing -- and I am asking a question.
5 Let the attorneys answer the question, guys.
6 Sometimes I want to ask a question.

7 If we go to this public hearing, Palmer
8 Trinity could very easily hear what the public is
9 saying, and they can modify. They come back and
10 agree to something and say, you know something,
11 okay, we are going to make an adjustment as part
12 of the discussion at this public hearing. Could
13 they not do stuff like that? Or we make
14 suggestions? I am asking -- let the attorneys
15 answer the question, please.

16 MS. BOUTSIS: Yes.

17 MR. SCHAFFER: Can we make suggestions as
18 to you hear what the public is asking for? Is
19 there a way that that can be adjusted, and give
20 them an opportunity, be on any of these
21 conditions? Is that something that can be part of
22 that public hearing on the 9th?

23 MS. BOUTSIS: Yes.

24 MR. SCHAFFER: Thank you.

25 MS. LINDSAY: This is a confidential

1 settlement offer. Are you going to provide this
2 on the village website so that residents know what
3 the offer is? And are you also going to put up
4 the entire resolution and all the conditions that
5 exist from the 8/29/2012 hearing, so that the
6 residents have the facts? Because if you are not
7 going to do that --

8 MAYOR STANCZYK: It's already missed the
9 posting deadline to be posted for a week.

10 MS. LINDSAY: How can you have a
11 discussion on something when people don't have the
12 documents and the facts? And how can you put it
13 on an agenda as item 14A, at the end of the
14 meeting, after we have been through the budget,
15 the regular meeting, the capital improvements? I
16 think this is ludicrous.

17 MAYOR STANCZYK: It has already been
18 brought to my attention that this is ridiculous.
19 The meeting itself is ridiculous.

20 MR. FIORE: By who? Who brought that to
21 your attention?

22 MAYOR STANCZYK: One of the residents, who
23 happens to be pretty important. They are more
24 important than we are.

25 MR. SCHAFFER: Maybe we should have a

1 special public hearing like we did with Shores,
2 and make it -- and give the people the opportunity
3 to see what has been posted.

4 MAYOR STANCZYK: And do this singularly so
5 that it's the only item on the agenda.

6 MS. BOUTSIS: If you want to do that --
7 and it's the vice mayor's item. Again, it's an
8 other business item. As another business, it's
9 like will you entertain talking about this
10 settlement or anything else?

11 Having said that, if you postpone it to a
12 time certain another date, you have already given
13 your notice. I am sure we can give more notice.
14 It doesn't hurt but you are not required. You can
15 just a time certain it to a specific date in time.

16 MAYOR STANCZYK: Like the following week.

17 MR. DUBOIS: We can also move it to the
18 front of the agenda by vote, can we not?

19 MS. BOUTSIS: Yes, you can.

20 MAYOR STANCZYK: We can, but we have a
21 budget to do. That is by requirement.

22 MR. DUBOIS: I am the one that asked the
23 clerk and the manager to separate the two for
24 exactly this reason.

25 MS. BOUTSIS: The budget is the only date

1 you can't change.

2 MAYOR STANCZYK: Mr. Manager, you didn't
3 agree to separate this item into a different
4 meeting?

5 MR. SCHAFFER: No, no. Council meeting,
6 budget meeting.

7 MR. WILLIAMS: We had -- we explained in
8 conversation with the vice mayor that the budget
9 hearing had been advertised.

10 MS. BOUTSIS: There are state requirements
11 on the budget. You can't just go ahead and change
12 the date.

13 MAYOR STANCZYK: Why can't we just move
14 this to another date? If you were willing to move
15 the budget to another date, why can't we move
16 this?

17 MR. DUBOIS: I was asking to move the
18 council meeting. It's not just this item. It's
19 not fair to have advertised a 7:00 p.m. start time
20 for both the council meeting and the budget
21 meeting, when the budget meeting could potentially
22 take three hours, to have people sit around for
23 three hours and listen to council business. It
24 makes no sense at all. That was the point I was
25 bringing up.

1 MR. WILLIAMS: Not that it's perfect, but
2 it's consistent with where we are. As both
3 attorneys say, you can always set stuff to a date
4 certain. The other reason, and I know I explained
5 it to the clerk, and it may not have been
6 communicated directly, is there are administrative
7 items on the regular agenda that's been sitting
8 since July, you know, that are on mostly consent
9 that need to move forward.

10 Now, if there are other pieces of that
11 agenda that you want to reschedule, that is fine.

12 MAYOR STANCZYK: Why don't we talk about
13 moving this to a separate evening, so that we have
14 the ability to get through the budget? Because
15 that's a pretty big task. And get through the
16 rest of it, and then give proper attention to
17 this.

18 MR. SCHAFFER: What we are saying is is
19 that we have a public -- we do exactly like we did
20 with the Shores. We have a consensus on the offer
21 to move forward on this offer here to a public
22 hearing at a certain date, in which point --

23 MR. WILLIAMS: You will have to do that on
24 the 9th, because it's been advertised already.

25 MS. BOUTSIS: In other words, you are

1 going to have to make a motion to -- if you want
2 to do it, move to Friday at this time or whatever.

3 MR. WILLIAMS: I don't think your time is
4 going to be as lengthy as you think.

5 MAYOR STANCZYK: I would rather do that,
6 because I think it deserves the attention. And I
7 think that it does not require people to be, at
8 the end of the evening that could be a long
9 evening, to be tired. We have found in the past
10 that it's not a productive thing to do, to be
11 tired at the end of the day to have something
12 serious to attend to.

13 MR. SCHAFFER: Again, we are just talking
14 about moving the hearing --

15 MAYOR STANCZYK: We are not talking about
16 not doing it. We are just talking about moving
17 the date.

18 MR. SCHAFFER: Talking about moving the
19 hearing to another date, and that would have to
20 happen at the council meeting.

21 MAYOR STANCZYK: We would have to do it at
22 the council meeting.

23 MR. SCHAFFER: The fact behind it is is
24 that would be something that would be a motion, I
25 take it, and then seconding and voting and going

1 forward on it?

2 MS. BOUTSIS: Correct.

3 MR. WILLIAMS: That is if you need to. I
4 don't particularly agree with the mayor that it's
5 going to be a long night.

6 MR. SCHAFFER: I would think that this
7 might have -- a lot of people are going to want to
8 speak.

9 MR. WILLIAMS: Yes, on that item. And you
10 would want that. But I am just saying the regular
11 agenda is not --

12 MR. SCHAFFER: I am just talking about
13 this one item.

14 MAYOR STANCZYK: I think we should have
15 that flexibility. Because if -- the purpose of
16 what Mr. Dubois has said is that he wants to hear
17 from people. He also wants to be able to hear
18 from Palmer. What you have got is you have got a
19 lot of back and forth and discussion going on.

20 If you are going to put that at the end of
21 the night, that is not a good thing to do. It's
22 not fair to the people who will come. It's not
23 fair to the Palmer folks. It's not fair to
24 anybody, and it's not a job well done on anybody's
25 part to be tired at the end of the night.

1 MS. BOUTSIS: Vice mayor, just one thing.
2 When we advertised the budget, we said time
3 certain on the budget, which is 7:00. So you
4 can't put this before that.

5 MR. DUBOIS: I realize that. I have been
6 told by the manager that the budget meeting has
7 priority.

8 MS. BOUTSIS: Sorry.

9 MR. SCHAFFER: Even if we move this to the
10 beginning of the council meeting, it could be a
11 much later start when we actually get to this
12 item.

13 MAYOR STANCZYK: I already have a request
14 on the council meeting to move something up front,
15 to begin with, on the council meeting.

16 MR. SCHAFFER: This could be -- again,
17 vice mayor, what is your feeling about if a
18 motion -- I don't even know if we can ask that
19 question.

20 MR. HOCHMAN: I don't think you can. We
21 are now getting a little bit far off the issue,
22 which is do we have consensus? And Eve and I have
23 our instructions. What you want to do at the
24 September 9th hearing is not really a part of
25 this.

1 MR. SCHAFFER: Okay. That's why --
2 consensus from me.

3 MR. HOCHMAN: I understand where we are
4 right now.

5 MS. LINDSAY: I still need to know, is
6 this confidential, the settlement offer from
7 Palmer Trinity? If we are going to discuss it in
8 a public meeting, is this confidential?

9 MR. DUBOIS: That's a good point.

10 MS. LINDSAY: How can we discuss it in a
11 public meeting without providing it to the
12 residents?

13 MR. HOCHMAN: Let me say this. The last
14 sentence of this letter is, "This confidential
15 offer of settlement shall expire, and therefore be
16 withdrawn, if not accepted completely at
17 11:59:59 p.m. on September 4th." So it's going
18 to be -- it is by its own terms been withdrawn
19 tomorrow, because you can't have a public meeting
20 to accept it anyway.

21 MR. DUBOIS: Let's be practical here for a
22 second. If you go to them and tell them that it's
23 being agreed to in principle, and is scheduled for
24 a hearing on September 9th for public Sunshine
25 for approval --

1 MR. WILLIAMS: I think they know.

2 Everybody knows --

3 MAYOR STANCZYK: Are you saying --

4 MR. HOCHMAN: As a pure matter of Florida
5 law, the only way this is drafted says that the
6 only way that it can be accepted is if the village
7 council votes to approve it prior to the deadline.
8 I am not saying as a practical matter they can't
9 extend the deadline and leave the offer on the
10 table.

11 But if Council Member Schaffer is correct
12 that this, as written, every word in here is
13 written with the intent to put you in a hard
14 deadline. The hard deadline will expire and
15 there's nothing you can do about it.

16 MR. DUBOIS: I am not sure why you are --
17 the premise behind what you are saying doesn't
18 seem to make sense, unless you are trying to say
19 that because it expires at the end of tomorrow,
20 then we are legally able to publish it?

21 MR. HOCHMAN: No. I am not talking about
22 whether it's confidential or not. I am letting
23 you know that the document itself is a
24 self-limiting document, and it doesn't extend
25 beyond tomorrow. If you want to go and work off

1 of it in a couple days and say it's still on the
2 table, yes, they may say yes, we still want to
3 leave it on the table. But by its terms, it does
4 expire.

5 MR. SCHAFFER: If we go to them and say we
6 had a consensus of the council in our
7 attorney-client session to --

8 MR. WILLIAMS: Agreement in principle.

9 MR. SCHAFFER: Agreement in principle to
10 your terms as listed. We are now moving it to a
11 public hearing, an announced public hearing. That
12 is where we are at.

13 Now, if they decide that is not good
14 enough, okay. Then they go to court. We are
15 going to go to court anyhow. You give them that,
16 let's give them that option, and if they -- they
17 can come back and say, okay, then --

18 MR. DUBOIS: We will wait until the public
19 meeting.

20 MR. SCHAFFER: And fire off a letter
21 saying we accept those terms. We'll see you at
22 the next hearing.

23 MR. DUBOIS: They don't even have to. All
24 they have to say is, okay, we will wait or, no, we
25 are not going to wait. That's the two possible

1 answers you are going to get. If they say, okay,
2 we will wait for the public meeting, then we know
3 we have a verbal extension on this thing.

4 MR. HOCHMAN: Correct. My point is once I
5 talk about that, then I can ask if you can make it
6 a public document.

7 MR. DUBOIS: You can ask --

8 MAYOR STANCZYK: We can't have a public
9 hearing on it without having released it.

10 MR. DUBOIS: You can read it. It can be
11 read into the record.

12 MAYOR STANCZYK: No. We have to post it.
13 They have to know what they're getting, what
14 they're coming for.

15 MR. SCHAFFER: Why can't we post it?
16 What's the issue on not posting it?

17 MS. LINDSAY: I think the original
18 resolution and all the conditions need to be
19 posted, and I think the original offer they made
20 need to be posted, and our counter-offer.

21 MS. BOUTSIS: Legally, the only thing that
22 I am aware of is to have a public hearing.
23 Theoretically, what I have always tried to do is
24 try to get as much written as possible before you
25 get to the public hearing, so people have the

1 information so that they can be informed. But
2 that is not a legal requirement necessarily. As
3 long as you have gone through the analysis, heard
4 the points and got your public comments, you are
5 good. It may not be pretty, but you can do it.

6 MAYOR STANCZYK: So what you are saying is
7 that we are not going to be able to release the
8 settlement offer prior to the meeting?

9 MS. BOUTSIS: No. I am saying I would
10 like to see if they will agree to allow me to
11 release, and we will put it on the website.

12 MR. SCHAFFER: Who has to agree to that?

13 MS. BOUTSIS: Palmer Trinity, because they
14 made it confidential.

15 MR. DUBOIS: Eve, did you read my agenda
16 item in its entirety? Because it describes you
17 giving the brief background and an explanation of
18 exactly what the settlement offer entails.

19 MS. BOUTSIS: No. You didn't but I can.
20 You asked for, specifically, exposure if the
21 settlement is not reached and the litigation
22 avenue is pursued. Then you have asked for the
23 timeline of events that lie ahead and is approved
24 in terms of closure of legal case, administer
25 process, quasi-judicial process, the effect on

1 closure of the legal case if one or two above.

2 MR. DUBOIS: Okay. So you can agree of
3 the settlement offer as well?

4 MS. BOUTSIS: Yes. I have no problem with
5 that.

6 MAYOR STANCZYK: But that is not to
7 replace the release of settlement offer to the
8 public.

9 MS. BOUTSIS: I will be asking for Palmer
10 Trinity to allow me to release it.

11 MR. DUBOIS: If they say yes, then you put
12 it on the website?

13 MS. BOUTSIS: I will ask Mr. Williams to
14 do so. Mr. William, is that okay?

15 MR. WILLIAMS: Yes.

16 MS. LINDSAY: I still think these other
17 documents need to be there as well.

18 MS. BOUTSIS: To understand the settlement
19 offer, the other documents have to be there as
20 well, yes.

21 MAYOR STANCZYK: Now, have we made any
22 conclusion as to what we will do about item 14A on
23 that night?

24 MR. SCHAFFER: We can't do that.

25 MS. BOUTSIS: No, you can't do that.

1 MR. SCHAFFER: You can't discuss that?

2 MS. BOUTSIS: Please, you can't do that.

3 MR. DUBOIS: It would be a Sunshine
4 violation.

5 MS. BOUTSIS: Exactly. This is only about
6 settlement and strategy. You can't do that. You
7 can't discuss the item before it ever happens on
8 the 9th.

9 Thank you, everyone. I think we are at a
10 terminating point. It is now 10:00.

11 (conclusion of the meeting.)

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REPORTER'S CERTIFICATE

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

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

DATED this 23rd day of September,

Rochel Albert



ROCHEL ALBERT, CSR
Notary Public, State of Florida
at Large. My commission expires.
September 4, 2017. Bonded
through Budget Notary Services
Commission Number FF 049654



Please reply to:
Office of the Village Attorney
18001 Old Cutler Road, Suite 560
Miami, Florida 33157-6416
(305) 235-9344 (telephone)
(305) 235-9372 (fax)

VILLAGE OF PALMETTO BAY
9705 East Hibiscus Street
Palmetto Bay, Florida 33157

August 14, 2013

Via U.S. Mail and E-mail

Stanley E. Price
Bilzin Sumberg et al
1450 Brickell Avenue
Suite 2300
Miami, Florida 33131-3456

Re: Palmer Trinity Private School v. Village of Palmetto Bay, et al
11th Judicial Circuit Court Case Number 08-28977 CA 30
11th Judicial Circuit Court Case Number 10-34016 CA 20
CONFIDENTIAL SETTLEMENT PROPOSAL

Dear Stan:

Per our discussions enclosed please find the Village's Counter-Offer of settlement.

The Village's next regular council meeting is scheduled for September 9, 2013. Due to vacation schedules and other factors, I assume that the 9th will be the next available date for the Village Council to meet, although I have not confirmed same.

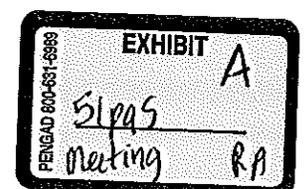
Thank you.

Very truly yours,

Eve. Boutsis,
Village Attorney

Enclosure

c: Jeffrey Hochman, Esq.
Sean Cleary, Esq.



This instrument was prepared by (record and return to):

Name: Eve A. Boutsis, Village Attorney
Address: Office of the Village Attorney
Village of Palmetto Bay
9705 East Hibiscus Street
Palmetto Bay, FL 33157

(Space reserved for Clerk)

EXECUTION COPY

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the Agreement) is made and entered into as of the ___ day of ___ 2013, by and between the Village of Palmetto Bay, a Florida municipal corporation ("Village"), and Palmer Trinity Private School, a Florida nonprofit corporation ("Owner"). The Commencement Date of this Agreement is the date of approval by the Village Council.

Introduction and Background

A. The property that is the subject of this Agreement lies in Palmetto Bay, Miami-Dade County, Florida. This Agreement, among other things, is intended to and shall constitute a development agreement among the parties pursuant to the Florida Local Government Development Agreement Act (the Act).

B. The Owner owns certain real property in the Village of Palmetto Bay, located at 7900 SW 176th Street and 8001 SW 184th Street, Palmetto Bay, Florida, and as more specifically delineated in the legal description attached as Exhibit "A" hereto

C. On May 2, 2008, the Village of Palmetto Bay denied the Owner's request to rezone 8001 SW 184th Street from AU (Agricultural) and EU-2 (Estate Single Family 5 Acre District) to EU-M (Estate Modified Single Family). The remainder of Owner's request for variances and Site Plan modification to expand from 79000 SW 176th Street to 8001 SW 184th Street, and to expand student enrollment from 600 to 1150 was not ruled upon due to the denial of the district boundary request.

D. On or about May 22, 2008, Owner filed a petition for certiorari to review the May 2, 2008 action of the Village Council under Eleventh Judicial Circuit Appellate Court Case Number 08-245AP. On that same date Owner filed an original action in the Eleventh Judicial Circuit Court requesting, amongst other things, injunctive and declaratory relief, and damages, under Eleventh Judicial Circuit Court Case Number 08-28977 CA 30 ("2008 Original Action").

E. On or about February 17, 2009, in the appellate matter 08-245 AP, the Eleventh Judicial Circuit, Appellate Panel, in a *per curiam* decision ruled in the Village's favor. On February 25, 2009, the Third District Court of Appeal issued a ruling relating

to reverse spot zoning in *Richard Road Estates, LLC v. Miami Dade County Board of County Commissioners*, 2 So.3d 1117 (Fla. 3d DCA 2009). Owner sought re-hearing based upon this decision, which request was denied by the Appellate Panel on March 18, 2009.

F. Owner then filed a second tiered petition for certiorari to the Third District Court of Appeal under Appellate Case Number 3D-09-1587. Ultimately, March 24, 2010, based in part upon *Richard Road Estates*, the Third District reversed the Eleventh Judicial Circuit, Appellate Division, and remanded the matter back to the Eleventh Judicial Circuit Appellate Panel.

G. On April 28, 2010 and May 4, 2010, the Village held the public hearing necessary to enact the district boundary change request to modify the zoning of 8001 SW 184th Street from AU and EU-2 to E-UM. Thereafter, the Village held the zoning public hearings relating to the Owner's Site Plan modification and student enrollment requests.

H. The Village Council approved the Owner's Site Plan modification and student enrollment request, was approved, with modifications. On or about June 16, 2010, Owner filed a petition for certiorari to the Eleventh Judicial Circuit, Appellate Division, under Case Number 20-1259-AP, challenging two conditions in the zoning resolution authorizing the Site Plan modification and student enrollment expansion - challenging the decision to authorize 900 students and the condition requiring Owner to comply with its 25 year expansion plan, within a 30 year window.

I. On or about July 9, 2010, Owner filed a second original action against the Village, seeking declaratory and injunctive relief based upon the May 4, 2010 resolution enacted by the Village Council under Eleventh Judicial Circuit Court Case Number 10-34016 CA 20 ("2010 Original Action"), which remains pending.

J. On or about August 18, 2010, Owner filed its first amended complaint to the first "2008 Original Action".

K. On February 11, 2011, the Appellate Panel approved the petition and struck the two provisions from the zoning resolution. On July 19, 2011, the Village struck the 30 year provision, as directed by the Appellate Panel. After hearing argument by the representative of Concerned Citizens of Old Cutler Inc., the Village struck the provision relating to 900 students, as directed by the Appellate Panel, and left the student population at 600 - and did nothing else. This action is reflected in Village Resolution 2011-53. Owner challenged Resolution 2011-53, desiring 1150 students, and as a result, renewed its motion to enforce the mandate. On December 22, 2011, the Appellate Panel, in a *per curiam* decision, ruled in favor of the Owner.

L. On or About March 28, 2011, Owner filed its request to amend its "2008 Original Action" a second time.

M. On or about May 13, 2011, Owner filed its request to amend its "2008 Original Action" a third time.

N. On or about July 19, 2010, Owner filed its first amended complaint to its "2010 Original Action."

O. On or about August 16, 2010, Owner filed its second amended complaint to its "2010 Original Action."

P. By September 16, 2011, the Owner filed its 5th Amended Complaint with the Court as to the "2008 Original Action". Every amendment incorporated allegations relating to the appellate history described herein. By the 5th Amended Complaint, Owner sought monetary damages under 42 USC 1983 and attorneys fees under 42 USC 1987, as well as several counts for tort damages, and damages relating to a public records request.

Q. On January 23, 2012, the Village filed a discretionary petition for certiorari to the Third District Court of Appeal under Case Number 3D12-190 arguing that the Village had complied with the mandate. On July 6, 2012, the Third District denied the Village's petition and remanded the matter back to the Eleventh Judicial Circuit Court, Appellate Division.

R. On August 29, 2012, the Village Council, after public hearing, approved the Site Plan modification and expansion of students to 1150, consistent with the direction of the Appellate Courts. The Village's action is reflected in Resolution 2012-64, which amended Resolution 2010-48, as previously amended by Resolution 2011-53.

S. In an effort to resolve all issues, including the litigation under the "2008 Original Action" and the "2010 Original Action", under Eleventh Judicial Circuit Court Case Numbers 08-28977 CA 30 and 10-34016 CA 20, the parties contemplate, for the consideration herein, to resolve all matters through this Agreement.

T. As further consideration for Owner to dismiss its lawsuits and for the Village to determine certain zoning related issues during a quasi-judicial public hearing, the Village and Owner have hereby contemplate certain other terms and conditions, pertaining to the Owner's property as set forth in this Agreement.

U. The Village is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, and the Palmetto Bay Charter and Code. The Village has all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions and render municipal services, including the authority to adopt, implement and enforce (together with any required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the Village and its residents and visitors.

V. Owner is a Florida not for profit educational facility organized and created pursuant to the Law of the Florida Statutes.

W. Having fully considered this Agreement at two (2) duly noticed public hearings, in compliance with Section 163.3225 of the Act; and having further determined that it is in the Village's and Owner's best interest, as well as the public's interest, to deal with the issues covered by this Agreement in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the Village, while allowing Owner to proceed, respectively, with the development of the Site Plan for 7900 SW 176th Street and 8001 SW 184th Street in accordance with existing laws and policies, subject to the terms hereof, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitations. The foregoing recitations are true and correct and are incorporated herein by this reference.

2. Authority. This Agreement is entered into pursuant to the authority and procedures provided by the Act.

3. Definitions. All capitalized terms in this Agreement shall have the definitions set forth in this Section unless such terms are defined elsewhere in the body of this Agreement.

3.1 "Act" shall mean the Florida Local Government Development Agreement Act (Section 163.3220, *et. seq.*, Florida Statutes (1997)).

3.2 "Building Permit" means a "Full Building Permit," as such term is defined in the Village's land development regulations, issued by the Village's Building Department, which allows building or structures to be erected, constructed, altered, moved, converted extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinance.

3.3 "Comprehensive Plan" shall mean the comprehensive plan, which the Village has adopted and implemented for the redevelopment and continuing development of the Village pursuant to Chapter 163 Part II, of the Florida Statutes.

3.4 "Development Approvals" shall mean all Development Permits and all approvals, consents, permits, special use exemptions or variances, as well as other official actions of the federal, state or County governments or other governmental agencies.

3.5 "Development Permits" shall mean any building permit (including, without limitation, a Full Building Permit), zoning permit, subdivision approval, zoning certification, special exceptions, variances issued or granted by the Village or any other official actions of the Village (whether by the Village Council or any Village board, department or agency) having the effect of permitting the development of the Owner's Project.

3.6 "Owner's Project" or "Site Plan" shall mean the design, development, construction, operation, maintenance, repair, renovation, and improvement by Owner of that Site Plan entitled Palmer Trinity Private School Campus Master Plan as prepared by Duany Plater-Zyberk & Co., consisting of 36 sheets, dated stamped received November 1, 2007, as revised by the plans entitled Palmer Trinity Private School Campus Master Plan as prepared by Duany Plater-Zyberk & Co., consisting of 48 sheets, dated stamped received April 19, 2010, as modified by Resolution No. 2012-64 (August 20, 2012), which amended Resolution No. 2010-048, as previously Amended by Resolution 2011-53 (July 19, 2011), and as incorporated by reference and as attached hereto as **Exhibit B**.

3.7 "Owner's Property (or the "Property")" shall mean the parcel of real property described in Exhibit "A" hereto.

4. Owner's Project shall be designed, developed, and constructed, at the sole cost and expense of Owner. Provided that Owner obtains all requested Development Approvals to do so, the Project shall be designed and proposed to be constructed substantially in accordance with the proposed Site Plan prepared by Owner's architect as identified above, but subject to and in compliance with the following conditions:

(a) The parties agree and acknowledge that certain modifications may be made to the Site Plan, which will be considered during a quasi-judicial public hearing before the Village Council.

(b) Any technical changes in the Site Plan not governed by subsections of this Agreement, and which are (i) required in order for the Owner's Project to be in compliance with any and all applicable laws, codes, rules and regulations of any governmental or regulatory agencies including, without limitation, the Florida Building Code and the Americans with Disabilities Act (ADA), or (ii) otherwise required or necessary including, without limitation, any changes in connection with ingress and egress and public works, shall be delegated to the appropriate government official of the Village for review and approval of such technical changes.

(c) Owner shall seek a Site Plan modification, at no additional cost to Owner, to modify the following conditions of Resolution No. 2012-64 (August 20, 2012), which amended Resolution No. 2010-048, as previously amended by

Resolution No. 2011-53 (July 19, 2011) (hereinafter collectively "the Resolution"):

(i) Owner shall request modification of Sections 4.12 and 5.10 of the Resolution (relating to removal of portables) to strike the 18-month removal requirement after final zoning approval. Owner desires 180 days from receipt of the first Certificate of Occupancy, exempting out the Certificate of Occupancy for the guard house, as the deadline for Owner to remove the portables. At all times the portables must be legal, permitted structures under the Florida Building Code.

(ii) Owner shall request the striking of Section 6.2 of the Resolution in its entirety. Instead, Owner shall be governed by and shall comply with the Village's special event permit procedures, consistent with Village Code requirements.

(iii) Owner shall request Section 6.3 of the Resolution be modified to reflect Owner's ability to conduct two athletic tournament, jamboree, or division-type plan (where numbers of spectators and opposing team(s) are invited to play on site) shall take place at one time on the property. Owner shall request that the last sentence of section 6.3 of the Resolution be stricken and replaced with the following language: "Any athletic tournament, etc., may take place after normal school operating hours and weekends from 10:00 a.m., in compliance with the Florida High School Athletic Association Requirements. Indoor athletic activities may proceed until 10:00 p.m."

(iv) Owner shall request modification of Sections 7.3 through 7.5 of the Resolution to provide a 65 foot buffer rather than a 75 foot buffer, which 10 foot difference on the interior of the Project can be utilized as the walking path, maintenance path, re-configured drive lanes for internal circulation to accommodate the Miami-Dade County Fire Department and Miami-Dade County Public Works modifications, and possible shifting of parking and ball fields. The Owner shall request elimination of any berm requirement, which represents an estimated \$350,000 savings to Owner. There would be no paths within the 65 foot buffer.

(v) Owner shall request modification of Sections 8.4 and Section 8.6 of the Resolution to eliminate reference to specific mitigative measures and to specifically eliminate reference to a decal program. Owner shall request Section 8.6 be removed, except for the first sentence and last two sentences. Owner's Site Plan must comply with Miami-Dade Fire Department, Miami-Dade County Public Works, and Village of Palmetto Bay Public Works review and conditions.

(vi) Owner shall request modification of Section 8.7 of the Resolution as follows: "The Applicant shall keep the entrance to SW 176th Street closed to vehicular traffic for ~~on weekends, holidays and all days when school is not in regular session~~ special events, including during athletic tournaments, jamborees, etc. Palmer Trinity shall place signs on Old Cutler Road, or as deemed effective to direct participants to the main entrance on SW 184th Street for specials events, during athletic tournaments, etc. The SW 176th Street entrance shall provide access to emergency vehicles."

(vii) Owner shall request deletion of Section 8.16 of the Resolution relating to the installation of sidewalks, which represents a cost savings to Owner of at least \$50,000.

(viii) Owner shall request the striking of Sections 11.3 and 11.4 of the Resolution. The removal of the ADA requirements as to class signage modification, which represents a cost savings to Owner. Owner shall be governed by and shall comply with the Village's Noise Code, Section 30-60.4.

(ix) Owner shall request modification of Section 11.5 of the Resolution relating to public address (P.A.) systems, to reflect, whether the equipment is temporary or permanent, Owner shall comply with the requirements of Section 11.5 of the Resolution, provided, however, the time table shall be modified to allow the use, consistent with decibel requirements of the Village noise code. Owner shall seek modification of the use period between 10:00 a.m. and 6:00 p.m., Monday through Friday, with the P.A. system's use allowable on Saturdays between 10:00 a.m. and 6:00 p.m.

(x) Owner shall request the striking of Section 13.3 of the Resolution relating to the hours of operation relating to the internal use of the structures on the Site Plan.

(xi) Owner shall request deletion of Section 14.1 of the Resolution relating to redesign of Buildings 16 and 18. Owner shall work with Village staff as to landscaping of Buildings 16 and 18.

(xii) Owner shall request the modification of Section 15.2 of the Resolution relating to the fines for violation, to be modified to be consistent with existing Code, reducing the fine from \$500.00 to \$250.00.

(xiii) All other provisions of Resolution No. 2012-64, which amended Resolution No. 2010-048, as was previously amended by Resolution No. 2011-53 shall remain as adopted.

5. Should the Village Council, after the quasi-judicial hearing as to the Site Plan modifications contemplated under Paragraph 4, above, approve the Site Plan as contemplated under Paragraph 4, Owner shall:

(a) immediately thereafter file a Notice of Voluntary Dismissal With Prejudice in the "2008 Original Action" and the "2010 Original Action" identified under Eleventh Judicial Circuit Court Case Numbers 08-28977 CA 30 and 10-34016 CA 20 as to all parties and claims, with each party to bear its own attorneys' fees and costs; and,

(b) issue a general release forever discharging the Village, including the Village's agents, elected officials, officers, employees, representatives, and insurance providers from any and all claims, demands, debts, liabilities, damages, obligations, actions or causes of action, whether known or unknown, foreseen or unforeseen, fixed or accrued or contingent, liquidated or unliquidated, matured or unmatured, direct or derivative or consequential, arising from contract, tort, statute, regulation, ordinance or otherwise, which Owner ever had or may not have against the Village, based on any facts, circumstances, acts or omissions occurring or arising from the beginning of time to the date of this Agreement, including, without limitation, any claims, demands or liabilities in connection with any possible Litigation, or claims as to any vested right, and including but not limited to any claims for negligence violation of federal law, state law or Constitutional challenges. This general release will include, but is not limited to any and all actions, claims, and demands for tort or statutory damages (whether intentional or negligent) and/or personal injury, including all matters raised in or which could have been raised in the "2008 Original Action" and the "2010 Original Action."

(c) Owner's failure to satisfy the obligations in 5 (a) and (b) shall result in a material default of this Agreement, which shall terminate this agreement and revocation of the modified Site Plan identified in paragraph 4. By way of clarification, if the "2008 Original Action" and the "2010 Original Action" are not dismissed with prejudice as to all parties and all Defendants are not generally released from liability then the parties shall return to their relative positions as they existed prior to the execution of this Agreement.

6. The Owner would not be required to pay any filing fee or advertising cost relating to the re-submission contemplated in Paragraph 4, as it relates to the Owner's project and the public hearing relating to approval of Site Plan at a quasi-judicial public hearing required as part of this Development Agreement.

7. Within 15 days of Owner's dismissal of the "2008 Original Action", dismissal of the "2010 Original Action", and issuance of the General Release Contemplated in Paragraph 5, the Village Council shall issue a \$50,000 payment to Owner at the same time. Owner shall also be entitled to a \$500,000 credit from the Village toward Art in Public Places Program (AIPP) for the entire Project, with any

balance as a credit against Village Permitting fees. The AIPP credit must be used completely as an offset, prior to any Enterprise Fund Building Permit credit.

8. Zoning and Other Approvals for Owner's Project.

8.1 Development Permits. Certain provisions of this Agreement will require that the Village and/or its boards, departments, or agencies take certain governmental actions, acting in their governmental capacity, and issue Development Permits in order to accomplish and satisfy the authorization and construction of the Owner's Project.

8.2 Applications for Development Approvals. Promptly following the Commencement Date, the Owner will initiate and diligently pursue all Development Approval applications for the Owner's Project. The Village shall process all Development Permit applications in a timely fashion and the Village shall cooperate with the Owner (at no cost to the Village) in processing all necessary Development Approvals from federal, State, and County agencies, as needed.

8.3 Laws Governing this Agreement. The Village's laws and policies governing the development of the Owner's Project at the time of the execution of this Agreement by the parties hereto shall govern the development of the Project for the duration of this Agreement. The Village may apply subsequently adopted laws and policies to the Owner's Project only as otherwise permitted or required by the Act. Except as required by Chapter 163, Florida Statutes, the Owner's Project may proceed for the life of this Development Agreement and is vested as to the rights provided herein. Additionally, the Owner may modify the Owner's Project based upon future (i.e. subsequent to the Commencement Date) beneficial changes in the Village Code.

8.4 Comprehensive Plan, Zoning and Other Approvals. As provided above, the parties recognize and agree that certain provisions of this Agreement will require the Village and/or its boards, departments, or agencies, acting in their governmental capacity, to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of State statutes and Village ordinances, in the exercise of the Village's jurisdiction under the police power. The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly, in full accordance with law and with both procedural and substantive due process to be accorded the Owner and any member of the public. Nothing contained in this Agreement shall entitle the Owner to compel the Village to take any such actions, save and except the consents, if applicable, to the filing of such applications for Development Permits or other required Development Approvals, as more fully set forth herein, and to timely process such applications.

8.5 Owner shall be solely responsible for obtaining all Development Approvals and Development Permits for the Project.

8.6 Owner shall, at its sole cost and expense, prosecute construction of the Project with diligence and continuity to completion. Completion of the Project, shall be evidenced by the issuance of a Certificate of Completion (C.C.) or Certificate of Occupancy (C.O.), as applicable.

9. Right of Termination.

(a) Notwithstanding anything to the contrary contained herein, Owner shall have the right to be released from its liability and obligations and to terminate this Agreement by providing written notice to the Village if: the Village Council, after a quasi-judicial hearing, does not agree to the modifications to the Resolution as contemplated in Paragraph 4.

(b) Notwithstanding anything to the contrary herein, Village shall have the right to be released from its liability and obligations and to terminate this Agreement by providing written notice to the Owner if Owner fails to timely comply with the provisions of Paragraph 5. Owner's failure to comply with Paragraph 5 shall result in immediate revocation of the modified Site Plan contemplated in Paragraph 4.

(c) In the even of termination of this Agreement pursuant to this Section, each party shall bear its own costs and expenses incurred in connection with this Agreement, and Owner will be entitled to proceed with the litigation identified in Paragraph 5.

10. No Permit or Waiver of Fees. This Agreement is not and shall not be construed as a Development Permit, Development Approval, or authorization to commence development of the Owner's Project, nor shall it relieve Owner of the obligation to obtain all necessary Development Approvals, Development Permits, or any other approvals and/ or permits that are required under applicable law and under and pursuant to the terms of this Agreement. Except as otherwise expressly provided herein, nothing contained in this Agreement shall be deemed to constitute a waiver of any fee, charge, or cost imposed by the Village in connection with the issuance of any Development Approval, Development Permit or any other approval and/or permit, except as contemplated in Paragraph 7.

11. Good Faith; Further Assurances; No Cost. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement; provided, that the foregoing shall in no way be deemed to inhibit, restrict or

require the exercise of the Village's police power or actions of the Village when acting in a quasi-judicial capacity. Wherever in this Agreement a provision requires cooperation, good faith or similar effort to be undertaken at no cost to a party, the concept of no cost shall not be deemed to include any cost of review (whether legal or otherwise), attendance at meetings, hearings or proceedings and comment and/or execution of documents, all such costs to be borne by the party receiving a request to so cooperate, act, in good faith or so forth.

12. Consistency with the Village's Comprehensive Plan. The Village has adopted and implemented the Comprehensive Plan. The Village hereby finds and declares that the provisions of this Agreement dealing with the Owner's Project are, or shall be, consistent with the Village's adopted Comprehensive Plan and land development regulations (subject to all applicable Development Approvals).

13. Recording of Development Agreement. Within fourteen (14) days after the parties execute this Agreement, the Village shall record this Development Agreement with the Clerk of the Circuit Court of Miami-Dade County. The Owner shall submit a copy of the recorded Agreement to the State of Florida's Land Planning Agency within fourteen (14) days after this Agreement is recorded. This Agreement shall become effective only after (i) it has been recorded in the Public Records of Miami-Dade County, and (ii) thirty (30) days have elapsed after the State of Florida Land Planning Agency's receipt of a copy of the recorded Agreement. Owner agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement. The provisions hereof shall remain in full force and affect during the term hereto, and subject to the conditions of this Agreement, shall be binding upon the undersigned and all successors in interest to the parties to this Agreement. Whenever an extension of any material deadline is permitted or provided for under the terms of this Agreement, at the request of either party, the other party shall join in a short-form recordable Memorandum of Agreement confirming such extension to be recorded in the Public Records of Miami-Dade County.

14. Duration of Development Agreement. The duration of this Agreement shall not exceed thirty (30) years from the Commencement Date; provided, however, that the duration of this Agreement may be extended by mutual agreement of the Village and Owner. During the term of this Agreement, the Village's laws and policies governing the development of land in effect as of the date hereof shall govern development of the Property. The Village may apply subsequently adopted laws and policies to the Owner's Project only if the Village has held a public hearing pursuant to Section 163.3225, Florida Statutes, and determined:

- (a) they are not in conflict with the laws and policies governing this Agreement and do not prevent development of the land uses, intensities, or densities in this Agreement; or
- (b) they are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement; or

- (c) they are specifically anticipated and provided for in this Agreement; or
- (d) the Village demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of Agreement; or
- (e) this Agreement is based on substantially inaccurate information supplied by Owner.

15. Required Development Approvals.

(a) Owner shall be solely responsible for obtaining, at its sole cost and expense, any necessary Development Approvals. Notwithstanding the preceding, the Village and Owner agree and acknowledge that the Development Approvals contemplated herein may not constitute a full listing and description of all local development approvals or permits needed to be approved for development of the Owner's Project, and that the omission of discussion of any other approval or permit (required for the development of the Project) shall not relieve Owner of its sole obligation, whether under applicable law or this Agreement, to obtain same.

16. Confirmation of Land Development Regulations. The zoning district classification of the Owner's Property Parcel E-M, Estate Modified, as defined in Village's land development regulations.

17. Omissions. The parties hereto recognize and agree that the failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction notwithstanding any such omission.

18. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the Village at: Village of Palmetto Bay
Village Hall
9705 East Hibiscus Street
Palmetto Bay, Florida 33157
Attn: Village Manager

or

If to Owner at: Palmer Trinity Private School
7900 SW 176th Street
Palmetto Bay, Florida 33157
Attn: Head Master

19. Indemnification of Owner. Owner hereby agrees to hold the Village, its officers, employees, agents, contractors, and representatives harmless from any liability/or damage or claims for damage for personal injury, including wrongful death, and claims for property damage, which may arise from the direct or indirect activities and/or operations of Owner, or these of any officer, employee, agent, contractor, sub-contractor, or other person acting on Owner's behalf, which relate to the design, development, and construction of the Owner's Project. Owner agrees to, and shall afford at its sole cost and expense, the Village and its officers, employees, agents, contractors, and representatives from any and all actions for damages caused, or alleged to have been caused, by reason of Owner's activities in connection with Owner's Project. This indemnification agreement applies to all damages and claims for damages including, without limitation, interest, costs and attorney's fees, outlined or alleged to have been suffered by reason of the activities and/or operations referenced herein. This indemnification shall not apply to the gross negligence or willful misconduct of the Village, or of its officer's employees, agents, contractors, or representatives. The aforesated indemnification, and the provisions of this Section 19, shall survive expiration of this Agreement.

20. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, excluding the financial inability of such party to perform and excluding delays resulting from appeals or rehearings commenced by the Owner (any such causes or events to be referred to herein as a "Force Majeure"), shall excuse the performance by such party for a period equal to any such period of prevention, delay or stoppage.

21. Miscellaneous

(a) Counterparts. To facilitate execution, the parties hereto agree that this Agreement may be executed in counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single Agreement.

(b) References. All references in the Agreement to the "Agreement" shall hereafter mean and refer to the Development Agreement.

(c) Governing Law and Exclusive Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami Dade County, Florida, if in State court, and the U.S.

District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, VILLAGE AND OWNER EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

(d) Waiver, Modification, etc. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Village and Owner. No waiver of any Default or default shall affect or after this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

(e) Effect of Other Transactions. No document whether executed simultaneously with this Agreement or otherwise, and whether or not consented to by Village, shall be deemed to modify this Agreement in any respect, and in the event of an inconsistency or conflict between this Agreement and any such instrument, this Agreement shall control.

(f) Invalidity of Certain Provisions. If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(g) Remedies Cumulative. Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

(h) Performance at Each Party's Sole Cost and Expense. Unless otherwise expressly provided in this Agreement, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

(i) Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Village and Owner, and, except as otherwise provided herein, their respective successors and permitted assigns.

(k) Notice of Defaults. Notwithstanding anything to the contrary set forth in this Agreement, under no circumstances shall any party to this Agreement lose any right or benefit granted under this Agreement or suffer any harm as a result of the occurrence of any Default or default of such party as to which Default or default such party has not received notice thereof from the other party.

(l) Corporate Obligations. It is expressly understood that this Agreement and obligations issued hereunder are solely corporate obligations, and, that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, elected or appointed officials (including, without limitation, the Mayor and Village Council of the Village and the Chairman and Members of the Board of Directors of Owner) or employees, as such, of Village or Owner, or of any successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed officials (including, without limitation, the Mayor and Village Council of the Village and the Chairman and Members of the Owner) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(m) Nonliability of Officials and Employees. No member, official or employee of Village shall be personally liable to Owner, or any successor in interest, in the event of any default or breach by Village or for any amount or obligation which may become due to Owner or successor under the terms of this Agreement; and, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such person, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(n) No member, official or employee of Owner shall be personally liable to Village, or any successor in interest, in the event of any default or breach by Owner or for any amount or obligation which may become due to Village or successor under the terms of this Agreement; and, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such person, under or by reason of the obligations, covenants or agreements contained in this Agreement or

implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(o) Partnership Disclaimer. Owner acknowledges, represents and confirms that it is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Agreement. The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy in common, joint tenancy, or co ownership for the development by Owner of the Owner's Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, or the other documents executed by the parties with respect to the Owner's Project, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, or co-ownership of any kind or nature whatsoever between the parties hereto. The provisions of this subsection (n) shall survive expiration of this Development Agreement.

(p) No Third Party Rights. Nothing in this Development Agreement, express or implied, shall confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

(q) No Conflict of Interest. Owner represents and warrants that, to the best of its actual knowledge, no member, official or employee of the Village has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is prohibited by law. Owner represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the Village has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Owner. Owner represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Owner acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

(r) The Owner and the Village (jointly, the "Parties") fully understand that if any fact with respect to which this Agreement is executed is found hereafter to be mistaken or different from the facts now believed by the Parties to be true, the Parties expressly accept and consent to the risk of such possible difference in fact and agree that this Agreement shall remain effective notwithstanding such mistake or difference in fact(s).

(s) This Agreement does not constitute any admission of error or wrong doing, violation of any law, order, regulation, or enactment of any king by either

of the Parties, and is entered into by the Parties solely to end a controversy between them.

(t) The Parties acknowledge that they either have, or have the right to consult with their respective attorneys prior to executing this Agreement.

(u) The prevailing party shall be entitled to an award of attorneys' fees and costs incurred in enforcing this Agreement or in defending any claim brought in violation hereof, including, without limitation, costs and fees incurred at the trial court and appellate levels.

(v) The Owner represents and warrants that it has the sole right and exclusive authority to execute this Agreement, and that Owner has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or demand relating to any matter covered by this Agreement.

(w) This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof, and there are no promises, agreements, conditions, undertakings, warranties, or representations, whether written or oral, and/or express or implied, between the parties other than as set forth herein. This Agreement cannot be amended, supplemented, or modified, except by a written instrument signed by the Parties against whom enforcement of such amendment, supplement or modification is sought.

(x) The Agreement may be executed in counterparts, and upon such execution shall be complete, and the terms, provisions, and obligations set forth shall be in full force and effect.

(y) In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

22. Entire Agreement. This Agreement, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought and subject to the requirements for the amendment of development agreements in the Act.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

EXECUTED as of the date first above written in several counters, each of which shall be deemed an original, but all constituting only one agreement.

Signed, sealed and delivered
in the presence of:

VILLAGE OF PALMETTO BAY
a Florida municipal corporation

By: _____
Name: _____
Attest: _____
Meighan Alexander, Village Clerk

Signed, sealed and delivered
in the presence of:

OWNER/PALMER TRINITY
PRIVATE SCHOOL, INC.

By: _____
Name: _____
Attest: _____
By: _____

Owner's Attorney
Approved as to Form & Language
& for Execution

Stanley E. Price

Village of Palmetto Bay - Village Attorney
Approved as to Form & Language
& for Execution

Eve A. Boutsis

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____ as Contracting Officer of Palmer Trinity Private School, Inc.. He/She is personally known to me and who did (did not) take an oath.

NOTARY PUBLIC

Typed or Printed Name of Notary
My Council expires:
Serial No., if any: _____

OFFICIAL NOTARY SEAL
STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____ as Manager of the Village of Palmetto Bay, a municipal corporation, on behalf of the Village. He/She is personally known to me or has produced as identification and who did (did not) take an oath.

NOTARY PUBLIC

Typed or Printed Name of Notary
My Council expires:
Serial No., if any: _____

OFFICIAL NOTARY SEAL

EXHIBIT "A"
Legal Description

EXHIBIT "B"
**RESOLUTION 2012-64, AMENDING RESOLUTION 2010-48, AS PREVIOUSLY
AMENDED BY RESOLUTION 2011-53**

CONFIDENTIAL

LAW OFFICES OF
SEAN M. CLEARY
PROFESSIONAL ASSOCIATION

19 WEST FLAGLER STREET
SUITE 618
MIAMI, FLORIDA 33130

TELEPHONE: 305-416-9805
FACSIMILE: 305-416-9807

August 21, 2013

Sent Via Facsimile and Email

Village of Palmetto Bay
C/o Village Counsel, Eve Boutsis and Jeffrey Hochman

Dear Ms. Boutsis and Mr. Hochman:

Stanley Price and I, as litigation legal counsel for Palmer Trinity, are authorized to make this Confidential Counter-offer of Settlement, which is not admissible and is privileged, and which is a counter-offer to the offer made by the Village on or about August 14, 2013. This Counter-offer of Settlement is not negotiable and if accepted will resolve all pending litigation between Palmer Trinity School ("PTS") and the Village of Palmetto Bay ("Village").

Please provide this to the Village Council Members as soon as possible and provide us with the Village's response. Please note that if this Offer is not approved completely, it is hereby withdrawn. If approved, the settlement shall not go into effect until the time for appealing the resolution approving the settlement has expired and no appeals or other judicial proceedings have been filed. Any third party challenges to the settlement shall be deemed to terminate the offer of settlement. Furthermore, if the Offer is not approved completely, the previous Site Plan is maintained and not affected.

This Counter-offer seeks to amend the Conditions in Resolution No. 2010-48 and any and all revisions or amendments thereto (e.g. Amendments dated 7/19/11 and 8/29/12), which are attached for your review. If any of these Conditions are not eliminated by vote, the Village must agree not to enforce any of the prior Conditions against PTS unless said Conditions shall be uniformly enforced against all properties in the Village. No Charter provisions addressing increases in the number of students are applicable unless said provisions were in effect at the time of the filing of the original application for site plan approval.

1. Only the following Sections and Conditions contained in the attached Resolution 2010-48 (Amended 07/19/2011 and 08/29/2012) remain in effect: Section 3 and Section 4A and 4B (paragraphs 1, 2, and 3), and Conditions 4.1, 4.2, 4.3, and 4.7.

All other Sections and Conditions of this Resolution are hereby voided.

Except as noted above, PTS will be treated according to the Village Code and laws and the same as any other individual or institution in the Village. If, by the elimination of any Condition, PTS is found to be in violation of a current code or law, PTS will be given a reasonable period of time to become compliant and no fines shall be assessed by the Village.

2. PTS agrees to keep the buildings in the same location pursuant to when the Site Plan was approved and abide by the deviation percentage as allowed by the Village Code (hereinafter "Code") and/or Miami-Dade County Code at the time of any such deviation.

3. In order to ensure conformity with the Code (e.g. Code Sec. 30-60.15(d) and (e)) and to assure that the buildings have the proper setbacks (as per the Code's "Buildings for Public Assemblage"), PTS will plant a 50' (Fifty foot) landscaped buffer. Only (1) one pathway may be built within the buffer and no berm will be built.

4. PTS requests that lights be allowed on all of its Athletic Fields. PTS has contacted MUSCO Green Generation Lighting to ensure that lights on the Athletic Fields are non-invasive to neighboring homes and emit no spillover outside of the field of play. MUSCO is the same lighting company that the Village of Palmetto Bay is using for its Coral Reef Tennis project. These technological advances, which are attainable with today's lighting products, along with PTS' 50' landscaped buffer, will mean that light is ONLY provided on PTS' property and does not encroach onto any neighboring property.

Additionally, the majority of lighted events will take place during the Non-Daylight Savings Time portion of the year, which traditionally runs for only approximately 4 months. During some portion of this time of year, PTS fields 7 Athletic teams that play on outdoor venues. This means that lighted events will not occur on an all year, 12 month schedule or even a full time part of the home schedule during the Non-Daylight Savings Time months as it is not reasonable to expect that all home games will be played at night.

In order to illustrate MUSCO's work and ability to do this job correctly, attached are Illumination Summaries for 2 of PTS' fields - Football and Baseball. Also, MUSCO has provided actual photos of work it has completed which clearly show how the lighting is used only on the field of play and there is no spillover outside of that area.

Lights on PTS Athletic Fields will be turned off at 8:30 p.m. every night.

See attached Lighting Samples and Illumination Summaries from MUSCO.

5. All student driver traffic must use the entrance/exit at SW 184 Street after it is open. Student drivers may not use the SW 176 Street entrance/exit after SW 184 Street is open. All other school traffic (e.g. deliveries, faculty, staff, parent drop-off, etc.) may use SW 176 Street. PTS agrees that once SW 184 Street is open a sign shall be posted at SW 176 Street clearly identifying the days and times that SW 176 Street is Open/Closed. In addition, PTS would like to ensure that SW 176 Street is being used properly by offering to reconfigure the Guard House at that entrance to the middle of PTS' internal entry/exit roads and staff it such that vehicles in

violation are not allowed in or out via SW 176 Street and are directed to SW 184 Street. This will give the residents on and around SW 176 Street more assurance that vehicles are not ignoring the signage and using that entrance/exit during off hours, causing unneeded and unwanted traffic through their neighborhoods. PTS understands that it cannot begin any reconfiguration (such as the above) without the approval of the Village and issuance of proper permits. PTS is not asking the Village to grant any approval for this idea with this settlement offer. Instead, when PTS is ready to reconfigure this area, PTS will seek the normal approval to do any such reconfiguration.

6. PTS would agree to follow Village Code Sec. 30-90.19 as it applies to the size of signage on an Entry Feature within a Residential Zoning District. This Code Section allows for the size of a sign on an Entrance Feature to be no larger than 32 square feet of sign face area. PTS would like to conform with the Village Code and post a sign that has less than 24 square feet of sign face area. A rendering of the proposed signage PTS would like to use is attached to this letter, along with the alternative post style marquee sign that PTS has been told by the Village Staff (on several occasions) that should be used. See attached Signage Samples.

7. PTS will undertake a Traffic Study when school enrollment reaches 900 students. If the Study shows a need for traffic calming devices, PTS will absorb the cost of constructing or installing those devices.

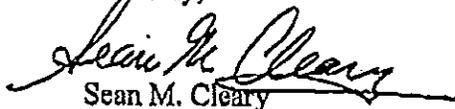
8. PTS agrees that it should be held to the Village Code with regards to noise level. PTS' Outdoor Public Address systems will be turned off at 8:30 p.m.

9. The Village shall pay PTS \$200,000 in cash (to offset some of the additional attorneys' fees since the inception of the Civil Rights litigation) and also give PTS \$600,000 in credit to be used for Village building permit fees, inspection fees, and fees of other types, including fees for Art in Public Places. PTS may use these credits as it decides to offset Village costs associated with expansion.*

*Any fees associated with the re-submission of PTS' Site Plan will be waived by the Village and not included in the \$600,000 credit.

This Confidential Offer of Settlement shall expire and therefore be withdrawn, if not accepted completely, at 11:59:59 p.m. on September 4, 2013.

Sincerely,



Sean M. Cleary

Cc: Stanley Price, Esq.

**Resolution No. 2010-48
- Amended 7/19/11 and
8/29/12**

1 **RESOLUTION NO 2010-48 (AMENDED 07/19/2011 and 08/29/2012)**

2
3 **ZONING APPLICATION VPB 07-012-B**

4
5 **A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE**
6 **VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING;**
7 **APPROVING WITH CONDITIONS THE APPLICATION OF PALMER**
8 **TRINITY PRIVATE SCHOOL, LOCATED AT 7900 SW 176TH STREET**
9 **THROUGH 8001 SW 184TH STREET; APPROVING WITH CONDITIONS**
10 **THE SPECIAL EXCEPTION REQUEST TO EXPAND THE SCHOOL TO**
11 **INCLUDE AN ADDITIONAL 32.2 ACRES, AND REQUEST TO INCREASE**
12 **ENROLLMENT BY 550 STUDENTS ~~DENIED~~ AS PROVIDED FOR**
13 **UNDER 33-151, ET SEQ.; AND PURSUANT TO SECTION 33-311 OF THE**
14 **MIAMI-DADE COUNTY CODE FOR A SITE PLAN MODIFICATION ON**
15 **PROPERTY ZONED E-M, LOCATED IN PALMETTO BAY, FLORIDA;**
16 **AND PROVIDING AN EFFECTIVE DATE.**

17
18
19 **WHEREAS, in 2006 the applicant made an application for (1) a rezoning of 8001 SW 184th**
20 **Street from AG and E-2 to E-M; (2) a special exception to expand the existing private school**
21 **located at 7900 SW 176th Street with 600 students, onto the adjacent property known as 8001 SW**
22 **184th Street with 32.2 acres, and 1400 students; (3) a site plan modification of the approved 1999**
23 **plan for 7900 SW 176th Street to include the elements under request (2); (4) a non-use variance of**
24 **height limitations on the gymnasium performing arts center and chapel to allow structures over 56**
25 **feet, where 35 feet is permitted; (5) a non-use variance to allow three stories for an administrative**
26 **building, where two stories is permitted; and (6) a non-use variance to allow parking on natural**
27 **terrain. This application is described in the Village's Department of Planning and Zoning**
28 **Recommendation from 2008, as issued by Ms. Arleen Weintraub, the then Planning & Zoning**
29 **Director, to the Village of Palmetto Bay; and,**

30
31 **WHEREAS, hearings were held on February 25, 2008, and April 14, 2008, at which time the**
32 **Applicant's rezoning request was denied, and the remainder of their requests were not ruled upon;**
33 **and,**

34
35 **WHEREAS, the district boundary change, rezoning item was ruled upon by the Third**
36 **District Court of Appeal on March 24, 2010, finding reversible error, and,**

37
38 **WHEREAS, the district boundary request was heard and ruled upon separately by the**
39 **Mayor and Village Council on April 29, 2010 and May 4, 2010. Ordinance 2010-09 was adopted,**
40 **rezoning the property known as 8001 SW 184th Street from AG and E-2 to E-M; and,**

41
42 **WHEREAS, concerning the remainder of the applicant's requests, the applicant's plans have**
43 **been modified prior to hearing and a substituted plan dated April 19, 2010 is to be reviewed by the**
44 **Village Council. Public hearing was held on May 4, 2010; and,**
45

1 WHEREAS, the modified plan provided for (1) a special exception to expand onto 8001 SW
2 184th Street with an increase in student population of 1150 (reduced from the original 1400 request);
3 and a site plan modification; and,
4

5 WHEREAS, all variance requests have been withdrawn; and,
6

7 WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial
8 hearing on the application at Christ Fellowship Church on May 4, 2010; and,
9

10 WHEREAS, the Mayor and Village Council find, based upon substantial competent
11 evidence in the record, that the application pursuant to section 33-151, et seq, and 33-311, of the
12 Miami-Dade County Code, as adopted by the Village relating to the above requests, and as amended
13 by Council Action, is consistent with the Village's Comprehensive Plan and the applicable land
14 development regulations; and,
15

16 ~~WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to~~
17 ~~grant the application, as amended (modified/conditioned) by Council Action,~~
18

19 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE
20 COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:
21

22 Section 1. A hearing on the present application was held on May 4, 2010 in accordance
23 with the Village's "Quasi-judicial hearing procedures" Ordinance, found at 2-105, of the Village's
24 Code of Ordinances. Pursuant to the hearing, the Mayor and Village Council make the following
25 findings of fact, and conclusions of law.
26

27 Section 2. Findings of fact.

28 The subject property is located at 7900 SW 176th Street and 8001 SW 184th Street, Palmetto Bay,
29 Florida.
30

31 In 1999, the Applicant sought a site plan modification for 7900 SW 176th Street. During that
32 hearing, a transcript was made. During the May 4, 2010 hearing, Applicant's Counsel asserted that
33 the 1999 transcript is part of the record for the May 4, 2010 hearing. He advised that Applicant read
34 the transcript and that there were no commitments made at a public hearing to limit the school to
35 600 students. During the May 4, 2010 hearing, the Vice Mayor read from the 1999 transcript as
36 follows:
37

38 Page 38, line 10 – 1999 hearing Transcript:
39

40 Mr. O'Donnell (then counsel for Applicant): And our 600 student body is
41 something that may or may not be achieved, but that is the maximum, depending on
42 the year and depending on who accepts it and that sort of thing.
43

44 Page 57, line 14 – 1999 hearing Transcript:
45

1 Mr. O'Donnell: I really would like to say, our contributions, if you look at the right-
2 of-way, the hundreds of thousands of dollars that we have spent on the right-of-way
3 along 176 Street on the landscaping of that road, you have to come to our campus to
4 understand that we are committed to our mission. And we are not attempting to
5 achieve any more development than the 600 students, at the maximum that we have
6 now, on this campus. That is our mission. We have spent two years developing that
7 mission. We have no intention of altering that mission.
8
9

10 In 2006, the applicant filed an application for a special exception for the expansion of a private
11 school to increase the enrollment from 600 to 1,150 students. The "original" plan from the 2008
12 hearings was based upon the 2006 application. The 2008 plan proposed 1,400 students on 55 acres
13 (from 22.5 acres). The expansion plan proposed one of two alternatives – either (1) an expansion of
14 students to include grammar school children - kindergarten through grade 5 and increase the
15 enrollment of students in grades 6 through 12; or, (2) solely an increase in middle school and high
16 school students (grades 6-12). The April 19, 2010, plan reflected removal of the daycare and
17 preschool components. In either proposal, the total number of students has been voluntarily
18 reduced by the Applicant from 1,400, which had been presented in the 2008 application, to a total of
19 1,150 students.
20

21 Additionally, the Applicant sought a site plan modification. The Applicant submitted a master plan,
22 which has been revised since its original submittal¹. The final site plan reviewed by Council was
23 dated April 19, 2010, and provided for the future use of the entire 55 acre site as a private school
24 and includes its long-range plan for the school's expansion. Accordingly, the Applicant requested a
25 modification of a previously approved site plan, via resolution C-ZAB-132-99, to reflect their vision
26 for the school.
27

28 The 2008 application contained a request for a non-use variance of parking requirements to permit
29 parking on natural terrain, where not permitted. This request was eliminated and withdrawn from
30 the modified site plan dated April 19, 2010.
31

32 The original 2008 application contained variance requests for height and number of stories to allow
33 a maximum height of 50'-7" for certain proposed new buildings to include a chapel, a performing
34 arts center, a library/media center/administration building and a gymnasium where 35 ft. is
35 permitted, as well as to allow three (3) stories where two (2) is permitted for the library/media
36 center/administration multi-purpose building. These requests were eliminated and withdrawn from
37 the April 19, 2010 plan.
38

39 The 2008 plan included a steeple up to 70 feet in height. No variance was required for the steeple, as
40 it would have been permitted as of right. The Applicant voluntarily withdrew its request for a
41 steeple/church tower.
42

¹ Applicant filed its application in 2006. The 2006 plan had been modified prior to the February and April 2008 quasi-judicial hearings ("original plan"). The final plan is dated April 19, 2010.

1 The initial hearings were held on February 25, 2008, and April 14, 2008, at which time the
2 Applicant's rezoning request was denied, and the remainder of their requests were not ruled upon.
3 The Circuit Court, upon the first tiered appeal via a petition for certiorari ruled, without opinion,
4 that the Village's actions were proper. Thereafter, the district boundary change, rezoning item was
5 ruled upon, during a second tiered appeal, by the Third District Court of Appeal on March 24, 2010,
6 finding reversible error. Based upon the foregoing ruling, the district boundary request was heard
7 and ruled upon separately by the Mayor and Village Council on April 29, 2010 and May 4, 2010.
8 Ordinance 2010-09 was adopted, rezoning the property known as 8001 SW 184th Street from AG
9 and E-2 to E-M.

10
11 The Applicant's property is comprised of a 55-acre parcel of land, that was previously zoned under
12 three (3) different zoning classifications (AG, E-2, and E-M), and is surrounded by the Estate-
13 Modified Single-Family zoning district. Prior to hearing the application for special exception and
14 site plan modification, the Applicant requested that the 32.22 acres property bearing address 8001
15 SW 184th Street be rezoned from AG and E-2 to E-M. On May 4, 2010, prior to ruling on the
16 Applicant's requests under PH-VPB 07-012-B, the Village Council rezoned 8001 SW 184th Street to
17 E-M.

18
19 The Town of Cutler Bay is located to the south. The 8001 SW 184th Street property adjoins the
20 northern parcel zoned E-M, also owned by the Applicant that bears the address 7900 SW 176th
21 Street. Except for the Applicant's private school to the north, and Bill Sadowski Park bordering the
22 northeastern portion of the Applicant's property, the surrounding neighborhood is characterized
23 predominantly by detached single-family homes. Canals are located to the west (between SW 84th
24 Avenue and SW 83rd Court) and north (between SW 173 Terrace and SW 175th Street). To the east
25 of the property is Old Cutler Road. To the south of the property is SW 184th Street (Eureka Drive).
26 The canals and roadways serve as immediate natural borders for the residential neighborhood
27 surrounding the Applicant's subject property and school. The lots immediately to the east and west
28 along the southern edge of the subject property on S.W. 184th Street are zoned E-1, Single-Family
29 and are comprised of single-family homes. To the east and along Old Cutler Road there is a church,
30 a pre-school and kindergarten, Village Library, VMU (Village Mixed-Use) District, and both E-1 and
31 E-M Zoning Districts.

32
33 Planning and Zoning staff found the scale, utilization, location of buildings, height of buildings,
34 landscaping, open space, and buffering, are acceptable. Staff recommended conditions as to certain
35 elements, including as it relates to compatibility, access, parking circulation/layout, and
36 visibility/visual layout. Signage is governed under the County Code, Section 33-100.

37
38 DERM [PERAL] had no objections, subject to conditions stated in their report. Miami-Dade Public
39 Works Department raised issues and stated their objections in their report and those objections have
40 been addressed by Applicant. The Village's Traffic Consultant, The Corradino Group, has issued
41 recommendations that are incorporated by reference by staff as conditions to approval of the
42 application. The Miami-Dade County Parks & Recreation department issued objections relating to
43 the Bill Sadowski Park and those comments are incorporated by reference. Fire Rescue's report is
44 also incorporated by reference. The Miami-Dade Police Department (Village Policing Unit) has no
45 objections.
46

1 In 2008, the site was found to have code violations and corrective action was undertaken by
2 Applicant. The sole item remaining to come into compliance is the removal of the two (2) portable
3 classrooms that were to be removed according to the year 2000 substantial compliance review. The
4 portables were not removed. In 2008-9, Applicant sought a second substantial compliance review,
5 which proposed a timetable for bringing the portables into compliance by constructing one of the
6 structures from the 1999 plan and then eliminating the portables. Thereafter, Applicant sought a
7 construction permit in 2009 to begin construction on the 1999 approved structure. However, the
8 permit was not processed due to the Village's one (1) year construction moratorium implemented in
9 order to enact the Village's Land Development Code.

10
11 The Miami-Dade County Archeological and Historical Department has requested a survey during
12 phase 1, as archeological artifacts have been discovered in the Bill Sadowski Park.

13
14 The Planning and Zoning Staff Analysis Report is incorporated by reference herein, as part of the
15 factual record for the Village Council's decision as Exhibit A to this resolution.

16
17 The Council heard testimony from Mr. Julian Perez, the Village's Planning & Zoning Director; Mr.
18 Joe Corradino, of Corradino Consulting Group, the Village's traffic consultant; Mark Alvarez, a
19 planner representing a citizens group, Concerned Citizens of Old Cutler Inc. (CCOCI); Jack Luft, a
20 planner representing applicant; Mr. Timothy Plummer, of David Plummer & Associates, Inc. a
21 Traffic Engineer/Consultant for Applicant; and, Mr. Don Washburn, of Audio Bug, Inc., an audio
22 expert for Applicant.

23
24 Prior to Council deliberation and action Counsel for Applicant advised that it accepted all conditions
25 of staff minus: 4.3, 4.4, 4.14, and 7.3. As to conditions 4.1 and 4.4 Counsel agreed to no increase in
26 student population above 1150 for 30 years but requested the right to increase structures, lot
27 coverage or intensity of uses. Applicant's counsel agreed to Phase 1 construction to include
28 improvements to SW 184th Street. Mr. Price argued that the beam requirement and contiguous use
29 of the walking and maintenance paths, found at condition 7.3 was inconsistent with the landscape
30 plans proposed and inappropriate. He also requested that condition 8.9 of staff's recommendations
31 relating to the use of the SW 176th Street entrance be modified so that the entrance could remain
32 open after proposed hours for four events per school year.

33
34 The Council held a public hearing and many residents and community members spoke both in favor
35 and in opposition to the application. The Council heard testimony relating to traffic, noise, number
36 of students, field usage and affects of that usage, environmental concerns, and other topics. The
37 Council incorporates by reference the minutes, audio tape, and transcript (if transcribed) into its
38 findings of fact.

39
40 Section 3. Conclusions of law.

41 1. The Application is in compliance with the adopted 2005 Village of Palmetto Bay
42 Comprehensive Plan and Future Land Use Map.
43

1 The standard of review for a special exception is found at 33-151, et seq., of the Miami-Dade
2 County Code. The Applicant's request for a special exception to expand onto 8001 SW 184th Street
3 and to increase the number of students from 600 to 1,150 ~~is not~~ in compliance with the applicable
4 standards. ~~However, the Applicant's request for a special exception to expand onto 8001 SW 184th~~
5 ~~Street from 7900 SW 176th Street~~

6
7 2. The standard of review for a site plan modification is found at section 33-311(A)(7),
8 of the Miami-Dade County Code. The Applicant's request for site plan modification ~~is~~ in
9 compliance with the applicable standards, as amended below.

10
11 Section 4. Order.

12
13 A. The Council, pursuant to Section 33-311(A)(7), and 33-151, et seq., of the Miami-
14 Dade County Code as applied by the Village, approves with conditions and modifications the
15 Applicant's requests for a special exception and site plan modification for school use and expansion
16 as to the plans entitled Palmer Trinity Private School Campus Master Plan as prepared by Duany
17 Plater-Zyberk & Co., consisting of 36 sheets, dated stamped received November 1, 2007, as revised
18 by the plans entitled Palmer Trinity Private School Campus Master Plan as prepared by Duany
19 Plater-Zyberk & Co., consisting of 48 sheets, dated stamped received April 19, 2010. The April 19,
20 2010 plans are incorporated by reference as Exhibit B to this resolution [formerly Exhibit 1 to the 5-
21 4-2010 hearing item PH -VPB- 07-012B].

22
23 B. The Village Council conditions/modifies the site approval/special exception as
24 follows:

25
26 1. All variance requests from the 2008 plans are specifically recognized as withdrawn.
27 This includes all height, story and natural terrain parking variances. The 2008 plan included a steeple
28 up to 70 feet in height. No variance was needed for the steeple; it would have been permitted, as of
29 right. The Applicant has voluntarily withdrawn its request for a steeple/church tower and said
30 request is considered withdrawn.

31
32 2. The special exception to expand the non-public school use onto 8001 SW 184th
33 Street is approved with conditions.

34
35 3. The request to increase the non-public school number of students to 1150 ~~is~~
36 approved denied.

37 4. Preliminary Conditions:

38
39 4.1 The Applicant shall execute a unity of title document to be recorded in the public
40 records of Miami-Dade County, which unity of title shall covenant (or provide a covenant in lieu of
41 unity of title) the property holder(s) to join the parcels together [7900 SW 176th Street and 8001 SW
42 184th Street] as one parcel, in a form approved by the Village Attorney, consistent with the

1 requirements of the Village's Land Development Code². The covenant shall be in final form for
2 recording within 45 days of final approval. No permits shall issue until the covenant/unity of title is
3 recorded.

4
5 4.2 The Applicant shall record an acceptable and approved restrictive covenant running
6 with the land for specific conditions, which covenant shall exist for 30 years, and automatically
7 renew for 10 year periods, thereafter.

8
9 4.3 Any substantial modification [pursuant to 30-30.3(c) of the Village's Code of
10 Ordinances] or abandonment of the attached site plan shall require public hearing. The term
11 "substantial modification" for the purposes of this approval shall mean a modification or substitute
12 site plan of equal or lesser intensity, including floor area ratio, lot coverage, square footage, and
13 height, and provide equal or greater setbacks, buffering, landscaping, and amenities. In no way shall
14 student enrollment be expanded due to a substantial modification review.

15
16 4.4 Reserved.

17
18 4.5 Student Enrollment Defined and Reporting. Applicant shall not exceed 1,150
19 students in enrollment. Applicant agrees to submit an executed affidavit from the Headmaster of
20 the School each year to the Village Manager, within 30 days of the first day of the applicable school
21 year, identifying the number of students enrolled for the academic school year and attesting the
22 number of students enrolled in the school. This information shall be provided to the Village,
23 annually, for as long as a school is located on the site. Applicant agrees and acknowledges that the
24 "maximum number of students" shall mean the actual number of students enrolled at the school as
25 reported to the State of Florida and the Florida Council of Independent Schools and shall not be the
26 daily average attendance, nor exclude any students that may be traveling/studying abroad. The
27 Applicant shall provide a copy of the FCIS to the Village once it becomes available. The maximum
28 number of students shall include all student transfers during the school year. Any increase in
29 students enrolled at the school after the initial annual enrollment is disclosed shall be reported to the
30 Village within five (5) business days of the event.

31
32 4.6 Should Applicant violate section 4.5 relating to the number of students and should
33 Applicant fail to cure the excess enrollment within 30 days of written notice, such an act shall
34 constitute a false statement or misrepresentation of fact that would permit the Village to revoke the
35 most recent building permit or certificate of occupancy issued by the Village.

36
37 4.7 Student expansion shall comply with the timetable provided, attached hereto as Exhibit "C"
38 [formerly Exhibit 7 to the May 4, 2010 hearing item PH-VPB-07-012B] to this resolution, but
39 modified to reflect the actual start date of this final order.

40
41 4.9 Community Relations Committee. The Applicant shall create a Community
42 Relations Committee that will be charged with the responsibility of facilitating future discussions

² Although a unity of title, or covenant in lieu of, shall be required, in order to facilitate understanding the conditions contained in this application, the addresses of 7900 SW 176th Street and 8001 SW 184th Street shall be utilized in this order.

1 with neighbors (properties within 2500 foot radius) in an effort to avoid or resolve potential disputes
2 between the Applicant, the neighbors, and the Village. The Applicant agrees to cooperate and act in
3 good faith with the Community Relations Committee. The Committee shall be a voluntary group,
4 with three (3) representatives from the Applicant, and three (3) representatives from the
5 neighborhood, as selected by the Village Council, and a representative from the Village Manager's
6 Office. The group shall meet as needed, but not less than twice a year (once every six (6) months).
7 The Village shall be provided with prior written notice of all such meetings, if possible at least two
8 weeks in advance of any such meeting(s). The actions of the group shall not be binding. Rather, the
9 group meetings are intended to be a mechanism for communication, discussion, and resolution of
10 any items.

11
12 4.10 The Applicant agrees and affirms that there will be no objection now or in the future
13 to controlled burns conducted by Miami-Dade County at Bill Sadowski Park for the park's
14 management. The Village will attempt to coordinate with Miami-Dade County to provide the
15 Applicant with prior notice of controlled burns. The Applicant further agrees not to interfere, due
16 to lighting issues, with night program schedules for Bill Sadowski Park.

17
18 4.11 The Applicant shall comply with all applicable State, County, and Village Codes and
19 Ordinances, including but not limited to the Village's Art in Public Places Ordinance.

20
21 4.12 Unpermitted and unconstructed portions of prior development approvals (1999
22 plans, 2000 and 2010 substantial compliance reviews) shall be considered withdrawn and abandoned.
23 The Applicant shall comply with condition 5.10 relating to the portables.

24
25 4.13 An official inspector of the Village, or its agents duly authorized, have the privilege,
26 at any time during normal working hours, of entering and inspecting the use of the premises to
27 determine whether or not the requirements of the building and zoning regulations and the
28 conditions contained herein are being complied with. Village Code Compliance shall conduct bi-
29 annual inspections, with Applicant, for compliance with the terms and conditions of this zoning
30 resolution.

31
32 4.14 Applicant shall comply with the Land Development Regulations for maintaining the
33 sanitary sewer concurrency levels, during construction and throughout operations.

34
35 4.15 In compliance with the requirements of Section 33-151.51, of the County Code, the
36 Applicant shall record a covenant running with the land that ensures compliance with the minimum
37 footage requirements, calculations and conditions upon which the additional square footage has
38 been permitted. ✓

39
40 5. Pre Construction - Construction - Build Out Conditions:

41
42 5.1 All components of the approved site plan shall be completed according to the
43 schedule attached hereto, which provides that the approved construction shall not be completed
44 earlier than 15 years and no later than 25 years from the date of zoning approval. The Preliminary
45 Construction Schedule for Phase 1 is enclosed as Exhibit D [formerly Exhibit 6 to the 5-4-2010
46 hearing item PH -VPB- 07-012B] to this resolution. This recommendation is consistent with the

1 newly adopted Land Development Code, Section 30-30.2(d)(16) and (k), relating to requiring a
2 construction plan and timetable.

3
4 5.2 ~~Staggering of Student Population. The increase in student population to 1150~~
5 ~~shall occur incrementally over the entire term of the project.~~

6
7 5.3 Construction Staging:

8
9 5.3.1 The Applicant shall annually submit a construction staging plan for review and
10 approval prior to commencement of construction. Phase 1 is enclosed as Exhibit D.
11 Council approved additional conditions for Phase 1, which are found below.

12
13 5.3.2 Construction staging shall take place as preapproved by the Village's Planning &
14 Zoning and Building Directors, on the property known as 8001 SW 184th Street, where
15 possible, toward the center of the property, away from the proposed 75 foot buffers.

16
17 5.3.3 Construction trailers for staging area are permitted under the Village's Code.

18
19 5.3.4 The staging area may be cleared during Phase 1 of the construction plan.

20
21 5.3.5 Construction shall comply with the noise controls provided in the Village's Code of
22 Ordinances, section 30-60.29.

23
24 5.3.6 The driveway area may also be cleared during Phase 1.

25
26 5.3.7 Access points by construction vehicles shall be identified as part of the Construction
27 Plan for Village approval. No construction vehicle shall access through the neighborhood.
28 Unless necessary for a specific item, no construction vehicles shall access through SW 176th
29 Street. All other construction vehicles must use SW 184th Street once that entrance is
30 constructed under the Phase 1 Construction Plan.

31
32 5.4 Permitting and Property Clearance. The Applicant shall not remove any trees
33 outside the 75 ft. buffer, unless a building permit and/or tree removal permit, if required, has been
34 secured for the construction of the work being requested. At no time shall the entire 8001 SW 184th
35 Street site be cleared all at once.

36
37 5.5 Construction Air Quality Management Plan. The Applicant shall provide a
38 Construction Air Quality Management Plan on the construction drawings that, at a minimum,
39 includes protecting ducts during construction and changing the filters and vacuuming ducts prior to
40 occupancy. The submitted plans must note compliance with this provision.

41
42 5.6 MOT Plan. A construction and Maintenance of Traffic (MOT) Plan shall be
43 provided to the Building and Public Works Departments for approval.

44
45 5.7 The Applicant shall comply with the Village's demolition and construction
46 fencing ordinance.

1
2 5.8 The entrance and roadway onto 8001 SW 184th Street may be constructed
3 prior to any other improvements. However, the required perimeter walls (eastern and western
4 property lines) and 75 ft. buffers, to be located at 8001 SW 184th Street, with required landscaping
5 shall be installed and/or constructed prior to the commencement of construction of any additional
6 structures or improvements. The wall shall be constructed, and then the buffer shall be installed, no
7 later than two (2) years of receiving the final zoning approval. One extension of time, not to exceed
8 six (6) months, may be granted by the Planning & Zoning Director, upon a showing of good cause.
9 "Good cause" would include timely request for permits, submitting for inspections and reviews,
10 diligent efforts to adhere to the construction schedule, and force majeure type events (weather
11 delays or civil unrest).

12
13 5.9 The Applicant shall work with the Village and County to install "Do not
14 Block Intersection" signs along SW 184th Street from SW 82nd Avenue to Old Cutler Road.

15
16 5.10 The existing portable classrooms trailers located along the western edge of
17 7900 SW 176th Street shall be eliminated as soon as replacement facilities are constructed, and within
18 18 months after final zoning approval. One extension of time, not to exceed six (6) months, may
19 be granted by the Planning & Zoning Director, upon a showing of good cause. "Good cause" would
20 include timely request for permits, submitting for inspections and reviews, diligent efforts to adhere
21 to the construction schedule, and force majeure type events (weather delays or civil unrest).

22
23 5.11 Failure to construct the replacement facilities for the portables described at section
24 5.10 within the time period provided therein shall require that the portables be removed immediately
25 upon the expiration of the 18 month period. One extension of time, not to exceed six (6) months,
26 may be granted by the Planning & Zoning Director, upon a showing of good cause. "Good cause"
27 would include timely request for permits, submitting for inspections and reviews, diligent efforts to
28 adhere to the construction schedule, and force majeure type events (weather delays or civil unrest).
29 Failure to remove the portables shall also result in the denial of future permits due to site plan
30 violations in addition to any other remedy provided below under Section 15, "Enforcement."

31
32 5.12 During Phase 1 of construction and within two (2) years of approval, the Applicant
33 shall install the recommended turning lane contained in condition 8.11(a) ["Old Cutler road/SW
34 184th Street - Add a southbound right turn lane; signal phasing adjustments"].

35
36 6. Athletic Fields and Amenities:

37
38 6.1 The Applicant shall not use the athletic fields for commercial purposes such as
39 renting, leasing, or allowing third-parties unaffiliated with the operation of the school (no third-party
40 organizations or groups) to use the recreational facilities. Applicant shall annually provide proof of
41 existing division-type play, tournaments, organized sports and uses of its facilities to the Village.
42 Prior to the beginning of each season, for each sport, the Applicant shall provide the Village with a
43 list of proposed events - tournaments and league play.

44
45 6.2 The Applicant shall submit a proposed list of school special events planned for each
46 school year to the Village Manager not later than August 15th of the applicable school year for

1 Village administrative review. Any other/additional special event shall require advanced notice for
2 review as a special event under the Village's procedures. A police officer, or equivalent, shall be
3 required to be present at all special events held at the school, if required by the Village's Code, after
4 review as a special event permit.
5

6 6.3 Solely one (1) athletic tournament, jamboree, or division-type play (where numbers
7 of spectators and opposing team(s) are invited to play on site) shall take place at one time on the
8 property (7900 SW 176th Street through 8001 SW 184th Street). To be clear, this condition relates to
9 holding one event. Not several events, different sports, at same time. Any athletic tournaments,
10 etc., may take place after normal school operating hours (after 3:00 p.m.) and weekends from 10:00
11 a.m. and 3:00 p.m.
12

13 6.4 No bleachers shall be located adjacent to the eastern and western buffers of 7900
14 SW 176th Street and 8100 SW 184th Street. Adjacent shall mean not within 20 feet of the buffers.
15

16 6.5 The Applicant shall provide fencing for the tennis center.
17

18 6.6 The Applicant shall not install lighting for outdoor uses other than the parking areas,
19 and any emergency lighting requirements of the Code. The interior of the pool may contain lights.
20 Lighting of the athletic fields is prohibited.
21

22 6.7 The pool shall be enclosed with a fence and hedge with a minimum height of six feet
23 (6 ft.) and comply with the safety barrier requirements of 33-151.11 through .22 of the Code. Any
24 interior chain link fencing shall be poly-coated vinyl and black or green in color. The pool shall not
25 be constructed during Phase 1 and is not to be constructed for at least five (5) years after final
26 zoning approval.
27

28 6.8 The Applicant shall comply with conditions 4.10 and 10.4 relating to lighting and Bill
29 Sadowski Park.
30

31 7. Landscaping: 32

33 7.1 The Applicant shall meet all the minimum requirements of Division 30-100 of the
34 Village's Code of Ordinances, Chapter 24 of the Miami-Dade County Code and specifically comply
35 with all conditions imposed by Miami-Dade County DERM (PERA).
36

37 7.2 The Applicant shall covenant that no improvements, other than as provided for in
38 recommendation 7.3, shall be permitted within the confines of the buffer area (i.e. no roads, parking,
39 storage sheds, recreational, sports, or any other use that may negatively impact the buffer).
40

41 7.3 The buffer shall be landscaped in accordance with the Applicant's revised landscape
42 plan received by the Village on April 19, 2010. In addition, the Applicant shall construct a three and
43 a half foot (3.5 ft.) berm on the interior, internal to the site, adjacent to the six foot (6 ft.) CBS wall
44 to be constructed along the eastern and western perimeter of 8001 SW 184th Street. The berm shall
45 be approved by the Planning & Zoning staff as part of the landscape plan review. The landscape
46 buffer, as indicated on Sheet 39, shall be installed along the entire eastern and western perimeter

1 throughout the 75 foot buffer for the area known as 8001 SW 184th Street. The berm shall be
2 incorporated into the buffer design, found at Sheet 39 (maintenance path shall be reduced in width
3 as provided in these conditions). The layout found at Sheet 39 shall not be limited to solely the
4 parking area adjacent to the buffer, but rather throughout the buffer fringe – creating a solid hedge
5 along the interior edge of the buffer.
6

7 7.4 The eastern and western buffers along 8001 SW 184th Street may contain a
8 meandering pedestrian path, within the innermost/interior 25 feet of the 75 foot buffer. The
9 Applicant shall limit the meandering walking path to a maximum width of six feet (6 ft.). The
10 pedestrian path shall solely be used for pedestrian/walking/ running purposes.
11

12 7.5 Where practicable, the maintenance path and the meandering walking path shall be
13 the same path, along the eastern and western buffers for 8001 SW 184th Street. Final
14 determination/approval of “where practicable” shall be made by the Village’s Planning & Zoning
15 Director. Otherwise, the maintenance path shall be limited to a maximum width of eight feet (8 ft.)
16 and should be used solely for maintenance purposes. The Maintenance portion of the “joint-path”
17 shall not be paved [the increase to eight (8) feet – a two-foot non-paved area surrounding the six
18 foot (6 ft.) pedestrian path]. All other buffers shall solely contain an unpaved, up to eight (8) foot
19 maintenance path.
20

21 7.6 The eastern and western perimeters of 8001 SW 184th Street shall contain a concrete
22 wall six feet (6 ft.) in height, finished on both sides and maintained by the Applicant. The southern
23 boundary at SW 184th Street and northern boundaries at SW 176th Street shall provide a six foot (6
24 ft.) wrought iron fence with masonry columns. The eastern and western perimeters of 7900 SW
25 176th Street already contain a six foot (6 ft.) concrete wall that shall be required to be maintained, on
26 both sides.
27

28 7.7 The Applicant shall provide and/or replace landscaping improvements along SW
29 184 Street and SW 176 Street fronting the school in compliance with the Village’s Street Tree Master
30 Plan prepared by O’Leary Richards Design Associates, Inc., and in coordination with the Village’s
31 Public Works and Planning & Zoning Departments.
32

33 7.8 The Applicant shall preserve existing trees (including native trees) during the
34 development of the project, wherever possible. If the trees must be removed, the Applicant shall be
35 required to mitigate the impact in accordance with Village and DERM [PERA] requirements. If the
36 relocated trees do not survive, the Applicant shall be required to replace the trees in compliance with
37 DERM [PERA] and Village requirements.
38

39 7.9 The Applicant shall install additional oaks and planting materials on the northwest
40 perimeter of buildings no. 16 and 18 in order to provide additional screening to the adjacent
41 neighborhood located on the western boundary of the property. The Applicant is to provide two
42 (2) native trees and a cluster of palms.
43

44 7.10 The pool area shall be landscaped as provided under section 6.7, above.
45

1 7.11 The Applicant shall prohibit parking by faculty, visitors, and students on the rights-
2 of-way bordering the school by planting and maintaining landscaping along the rights-of-way in
3 accordance with Village requirements. The Applicant shall work with the Village and County to
4 install "No Parking" signs for the right-of-way along SW 176th Street and SW 184th Street.
5

6 7.12 Applicant shall maintain the areas identified herein as "buffer" and shall be required
7 to perpetually maintain the landscaping within the buffer with the identified native species and other
8 plantings provided in the landscape plan. At no point shall structures be constructed within the
9 buffer area. The buffer shall consist of the 75 foot set aside along the east, west and southern
10 perimeters of 8001 SW 184th Street; and the 50 foot set aside along the east, west, and northern
11 perimeters of 7900 SW 176th Street.
12

13 7.13 Applicant shall provide annual update, plan, as to the maintenance for the buffer
14 areas.
15

16 7.14 Buildings 16 and 18 shall require Live Oak trees, or comparable trees, every 20 feet
17 on center for the length of the structures. Each tree shall have an overall height of 16 feet. For
18 Building 16 the trees shall be planted along the west façade and for Building 18 along the east
19 façade.
20

21 8. Traffic: 22

23 8.1 The Applicant shall be responsible for compliance with the Land Development
24 Regulations relating to traffic concurrency requirements.
25

26 8.2 The Applicant shall hire one (1) police officer, or equivalent, during regular session,
27 (per entrance) to control traffic during peak morning and afternoon school hours for each entrance
28 to the school (SW 176th Street and SW 184th Street). The school shall also utilize a police officer for
29 special events, as is required under condition 6.2.
30

31 8.3 The Applicant shall install traffic calming devices along the internal circulation
32 driveways and roadways in compliance with the Site Plan and Traffic Study prepared by David
33 Plummer & Associates, Applicant's traffic expert.
34

35 8.4 The Applicant shall control the entry points to the school by directing student,
36 teacher, and staff vehicles to enter and exit the school from SW 184 Street driveway. The entrance
37 to SW 176th Street shall solely serve as the drop-off and pick-up location for students. This process
38 will be implemented through a decal program. The different color decals will be distributed and
39 assigned to a specific driveway. The security gatehouse at each driveway will monitor for proper use
40 of the decal. Violators shall be contacted by the school master and security to ensure proper
41 enforcement.
42

43 8.5 The Applicant shall fund a series of peak hour intersection turning movement
44 counts, and 72 hour link counts to be taken by the Village along SW 176 Street and at the school
45 driveway entrance on that street. These are to occur on a random basis once each semester of
46 school operations in perpetuity at the discretion of the Village.

1
2 8.6 If either the 1370 trip daily volume or 960 combined trip volume peak thresholds are
3 violated, the Applicant will be notified in writing and be required to enact measures to bring the
4 traffic volumes into compliance. To do so, the Village will require the school to propose at least
5 three (3) mitigative measures that would be enacted should the situation arise. Some of the
6 mitigation measures that could be considered are color coded decal system (see condition 8.4);
7 limiting access to/from SW 176th Street to the east only; license plate numbers entrance assignment;
8 lottery assignment; controls/prohibitions/signing; and, closing internal roads so driveway entered
9 must be exited. If the corrective action is not implemented within three (3) weeks of the school
10 being noticed of the violation, the Village will require the entrance be closed until corrective action is
11 implemented by the school. The Village will then verify that the actions to correct the violation are
12 working through additional Village traffic counts paid for by the School.
13

14 8.7 The Applicant shall keep the entrance to SW 176th Street closed to vehicular traffic
15 on weekends, holidays and all days when school is not in regular session.
16

17 8.8 The SW 176th Street entrance shall not be used for the delivery of goods or services
18 to the school or by commercial vehicles. All buses and vans used to transport students to and from
19 the property shall use SW 184 Street as ingress and egress.
20

21 8.9 The SW 176th Street entrance shall be closed at 7:00 p.m. everyday.
22

23 8.10 The Applicant shall develop an alternative transit mode feasibility program within
24 three (3) years after receiving the zoning approval. The program should provide incentives for the
25 student to use alternative mode of transportation such as carpool, public transportation or private
26 mass transit to get to and from school.
27

28 8.11 The Applicant shall be responsible for implementing the following mitigation
29 initiatives, as delineated in the David Plummer & Associates Report (Applicant's traffic expert),
30 dated April 22, 2010:
31

- 32 (a) Old Cutler Road/ SW 184 Street – Add a southbound right turn lane; signal phasing
33 adjustments.
34 (b) SW 184 Street at the project driveway – Construct an eastbound left turn lane.
35 (c) SW 184 Street at the project driveway – Construct a westbound right turn lane.
36 (d) Provide one off-duty police officer at each driveway during morning drop-off and
37 afternoon pick-up periods to monitor/control traffic.
38

39 8.12 Applicant shall be responsible for all expenses relating to traffic control, police
40 involvement, and police participation in traffic movements (the traffic plan). The traffic plan
41 relating to the daily school use and/or for any special events at the school for the roadways shall be
42 subject to approval of Village Police Department and Village Police Officers are to be hired by and
43 paid for by Applicant to manage traffic at entrance(s) to school and off-site locations affected by
44 traffic conditions.
45

1 8.13 Applicant shall install a "No Left Turn" sign at the exit to SW 176th Street and shall
2 preclude left-hand turns onto SW 176th Street, westbound, from the Applicant's SW 176th entrance.
3 This condition shall be required, at a minimum, during peak hours.
4

5 8.14 If vehicle stacking/queuing spills-over onto SW 176th Street, the applicant shall be
6 required to provide additional on-site stacking to accommodate the spill-over. This would require a
7 modification of the circulation plan, which shall be reviewed by the appropriate Village Departments
8 for Compliance. The Applicant shall not be required to obtain Council approval to make the
9 necessary stacking related, circulation modifications to the interior of the property.
10

11 8.15 Applicant shall comply with the "safe routes to school" requirements of 1006.23,
12 Florida Statutes.
13

14 8.16 Applicant shall install public sidewalks within the Rights-of Way fronting Applicant's
15 properties - 7900 SW 176th Street and 8001 SW 184th Street, after receiving approval from the
16 appropriate governmental agencies (County and Village).
17

18 8.17 The Village shall bi-annually (every six (6) months) test to ensure that there is a
19 limitation of neighborhood cut-through traffic. The Village shall analyze the traffic data and
20 determine corrective measures to limit such cut-through traffic. Based upon the testing, the Village
21 shall implement such corrective measures needed to enforce the Village's goal (for example,
22 installing no turn signs at certain hours, etc.). This is an obligation of the Village.
23

24 8.18 As part of Phase I, per exhibit D, the Applicant shall complete the turning lanes at
25 the new SW 184th Street entrance.
26

27 9. Parking Related Conditions

28
29 9.1 Comply with condition 7.11 relating to precluding right-of-way (ROW) parking.
30 Cross-reference with section 7.3, above.
31

32 9.2 No parking of vehicles in any of the interior buffers to the property (7900 SW 176th
33 Street or 8001 SW 184th Street).
34

35 9.3 The Applicant shall install pavers in the parking lot to minimize the stormwater
36 runoff impacts, rather than asphalt the entire parking area, in compliance with Section 28-6(b)(1),
37 of the Village's Code of Ordinances.
38

39 9.4 No loud radios shall be allowed within the parking areas of the entire site.
40

41 9.5 Lighting shall be consistent with conditions 10.2 and 10.3, below.
42

43 9.6 That the Applicant shall maintain a sign prohibiting bus traffic, bus parking, student,
44 faculty or visitor parking along the swales/entrances to the Applicant's property.
45

1 9.7 Proposed installation of 48 sable palms to be planted in the northwestern corner of
2 8001 SW 184th Street shall be replaced with Live Oak Trees, or other trees acceptable to the Village,
3 as the Oaks shall reduce the "heat island effect," shall enhance the buffering of the site, and increase
4 the tree canopy for the site. The landscaping for the parking lot shall be reviewed at permitting by
5 the Planning and Zoning Department as to the number and type of trees.
6

7 9.8 A continuous hedge shall be incorporated around all parking areas and shall meet all
8 requirements of Chapter 18A, subsections (I) and (J), of the Miami-Dade County Code.
9

10 9.9 Applicant is not to create any additional, unimproved, temporary or permanent
11 parking areas on the property.
12

13 10. Lighting & Energy:
14

15 10.1 The Applicant shall not install lighting for outdoor use other than for parking and/or
16 Code required emergency lighting. The interior of the pool, below the water surface, may contain
17 lights.
18

19 10.2 Applicant shall install and maintain parking area light fixtures which project the light
20 rays directly to the parking surface, and shall include shields which restrict projection of light rays
21 outward to adjacent properties and also restrict the upward projection of light rays into the night
22 sky. Outdoor parking lot area light fixtures shall not cast more than 1/2 ft. candle at the property
23 line.
24

25 10.3 The parking lot lights and all other outdoor lighting (whether for security, roadway
26 or parking) should have a maximum overall height of 15 feet.
27

28 10.4 The Applicant shall not interfere with night programming at Bill Sadowski Park and
29 no athletic field lighting shall be permitted so as preclude adverse effects to the night programming
30 at the Park and residential community.
31

32 10.5 The Applicant shall be required to comply with the conditions of Section 28-6, of
33 the Village's Code of Ordinances relating to the "Minimum Green Standards" (relating to LED
34 lighting, pavers, energy saving fixtures and water conservation).
35

36 10.6 The Applicant shall provide roof location in those structures with flat roofs to install
37 conduit from the electrical room for future Photovoltaic System (PV) installation. A minimum of
38 300 sq. ft. or larger of roof area in a south or west direction shall be dedicated and clear of vent
39 pipes and other obstructions to allow for the installation of a future PV system. The submitted plans
40 must note compliance with this provision.
41

42 10.7 The parking lot and internal circulation lights shall be placed on a timer consistent
43 with the termination of operational hours and consistent with applicable codes.
44

45 11. Noise:
46

1 11.1 Noise emanating from athletic fields and bleachers shall not generate a direct sound
2 pressure level in excess of 65 decibels at the school's boundaries, as provided under the Village's
3 Code Section 30-60.29, as may be amended. The Village will notify the school and the Community
4 Relations Committee of any violations of the noise ordinance. The Village and Applicant will
5 immediately work together to develop corrective action(s). If the corrective action(s) is/are not
6 implemented within three (3) weeks of its adoption, the Village will require that all after-hours field
7 activities be temporarily postponed until the corrective actions are implemented by the school.
8

9 11.2 The Applicant shall install and maintain signs reading: "No radios beyond this point"
10 at the guard house or other location approved by the Village's Planning & Zoning Department. Any
11 student found by the Applicant's administration to have violated the sound restriction, after a
12 warning, would be disciplined within the Palmer Trinity Rules and Procedures.
13

14 11.3 At 7900 SW 176th Street, the Applicant shall ensure bells, pulses, buzzers, or other
15 sounds to signal class times during school operating hours on days when school is in session shall
16 not generate a direct sound pressure level in excess of 65 decibels above ambient sound measured by
17 the A-weighted scale at the school's boundaries, as provided under the Village's Code, Section 30-
18 60.29, as may be amended.
19

20 11.4 At 8100 SW 184th Street, the Applicant shall use digital signage system or other non-
21 noise devices approved and recommended by the American with Disability Act (ADA) and the
22 ADA Standards for Accessible Design, to signal change of class times and announcements.
23

24 11.5 Any temporary public address speaker system or similar amplified sound device in
25 the athletic fields shall not be operated between the hours of 5:00 p.m. and 10:00 a.m. (Monday thru
26 Friday). On Saturday, the temporary public address speaker system or similar amplified sound
27 device in the athletic fields shall not be operated between the hours of 2:00 p.m. and 10:00 a.m. The
28 temporary public address speaker system shall be used in compliance with the Village's noise
29 Ordinance 30-60.29, as amended, and shall not generate a direct sound pressure level in excess of 65
30 decibels at the school's boundaries.
31

32 11.6 Code Compliance shall bi-annually (every six months) test the noise levels of the
33 Applicant's property from various locations and report back to the Community Relations
34 Committee. The Applicant shall work with Code Compliance and the Committee to cure any
35 violations of the Village's noise ordinance.
36

37 12. Environmental:

38

39 12.1 The Applicant shall provide a space for the collection and storage of recyclables.
40 This provision provides convenient access to recycling facilities and encourages building occupants
41 to utilize the recycling programs to their fullest. Projects shall comply with the minimum solid waste
42 and recyclables storage requirements. Applicant shall depict the collection and storage area(s)
43 location on submitted plans.
44

1 12.2 The Applicant shall use interior paints and wood finishes with low volatile organic
2 compound levels that do not exceed 50 grams per liter flat, or 150 grams per liter non-flat. This shall
3 be noted on the approved plans.
4

5 12.3 The Applicant shall hire an archeological consultant to execute a Phase 1
6 Archeological Survey prior to development. This will determine whether potential archeological
7 sites exist within the property. A list of archeological consultants has been provided to the
8 Applicant. The selected archeological consultant shall work closely with Miami-Dade County,
9 Office of Historic and Archeological Resources, during this process. In the event archeological
10 resources are found, the archeological consultant and the Applicant shall contact the County's
11 Office of Historic and Archeological Resources for guidance regarding additional testing and/or
12 archeological monitoring. If unmarked human remains are located, Florida State Statutes 875.05
13 (Florida's Unmarked Human Burial Act) shall apply and all work shall cease. The State Archeologist
14 shall then be notified.
15

16 13. Operations. *(ok, 12/1/13)*

17
18 13.1 Service and delivery vehicles, including solid waste pick-up, shall be restricted to
19 Monday through Friday, between the hours of 7:00 a.m. to 7:00 p.m. [consistent with 30-60.29(e)(7),
20 of the Code]. Saturday deliveries would be allowed from 10:00 a.m. to 1:00 p.m. Service and
21 delivery vehicles shall use the SW 184th Street entrance. This requirement shall be implemented upon
22 the construction of the SW 184th Street entrance.
23

24 13.2 Service, delivery and storage areas and equipment shall be adequately screened and
25 located away from view of adjacent properties, in accordance with the proposed site plan.
26

27 13.3 That interior use of school facilities shall be restricted to the hours of operation
28 between 6:00 am and 10:00 pm, provided that the use is by the Applicant for school-related
29 purposes.
30

31 13.4 The property shall not be used for commercial leasing purposes. Commercial leasing
32 purposes shall mean any use not directly affiliated with the school operations of the Applicant. In
33 addition, it shall mean the use of the Applicant's property, buildings and facilities for economic value
34 or profit through third-parties.
35

36 13.5 Service, delivery and storage areas and equipment shall be adequately screened and
37 located away from view of adjacent properties, in accordance with the proposed site plan.
38

39 14. Structures.

40
41 14.1 The two (2) longer structures (building 16, the gymnasium and building 18, the
42 performing arts building) should be modified as follows: the wider portion of these structures are
43 approximately (260 ft x 149 ft.). The Southern portion of each building provides a "tail-like"
44 continuation/extension of approximately 110 feet. These "tail-like" extensions should be
45 setback/offset six feet (6 ft.) from the wider portions of each building. As to Building 16, the six

1 foot (6 ft.) offset should be situated towards the east boundary. As to Building 18, the six foot (6 ft.)
2 offset should be set back towards the west boundary.

3
4 14.2 In addition, along the 110 foot setback portion of Buildings 16 and 18, there should
5 be a colonnade or arcade, with first floor roof-like structure, to break-up the monolithic volume.

6
7 14.3 In compliance with section 7.14, Live Oak trees, or other equivalent type trees, with
8 an overall size of 16 feet in height, should be planted along the remaining east side of Building 18
9 and along the remaining west side of Building 16, every 20 feet on-center for the length of the
10 structures (area not covered by the first floor roof-like arcade structured area). The 16 foot trees
11 should be root pruned to encourage their ability to survive the shock of planting.

12
13 15. Enforcement.

14
15 15.1 Non compliance with the approved site plan shall result in the denial of future
16 permits and may result in a daily fine, per violation, as provided under section 15.2, below.

17
18 15.2 A violation of any of the development approvals and/or conditions of the Village
19 Council will result in a \$500.00 a day fine, per violation. The Village shall provide Applicant with a
20 reasonable period of time to cure. The Applicant is entitled to an appeal of the notice of civil
21 citation pursuant to the procedures for the Village Special Magistrate, found at section 2-205 of the
22 Village's Code.

23
24 15.3 Cross-reference with specific enforcement provisions relating to section 4.6 as to
25 student population and removal of portables under section 5.11.

26
27 15.4 Authorization for the Village of Palmetto Bay to Withhold Permits and Inspections.
28 In the event the terms herein are not being complied with, in addition to any other remedies
29 available, the Village is authorized to withhold any further permits, and refuse to make any
30 inspections or grant any approvals, until such time as the conditions contained herein are complied
31 with. The Village shall provide Applicant with a reasonable notice to cure period. The Applicant
32 may follow the procedures for the Village Special Magistrate regarding any appeal.

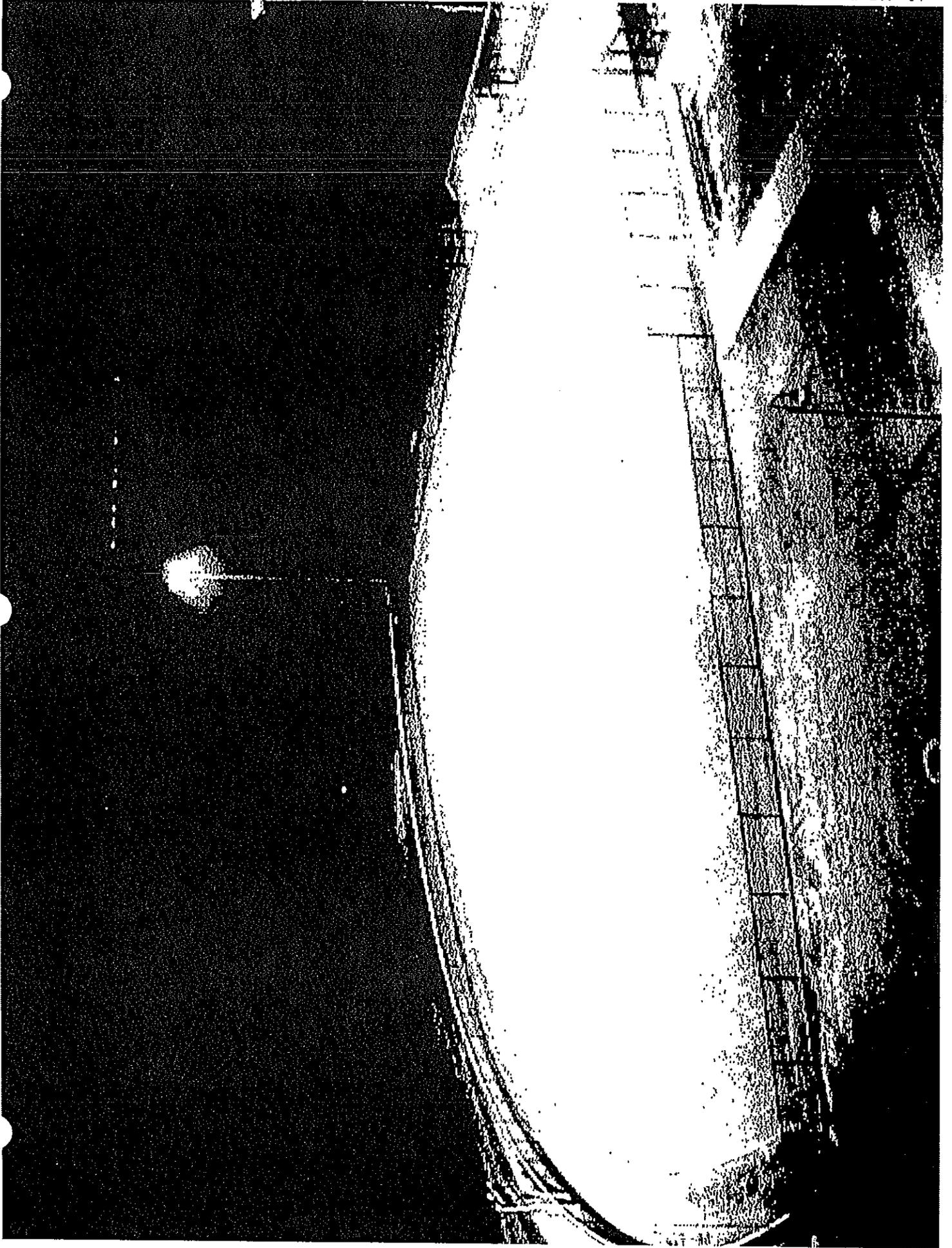
33
34 15.5 Cross-reference with section 11.6.

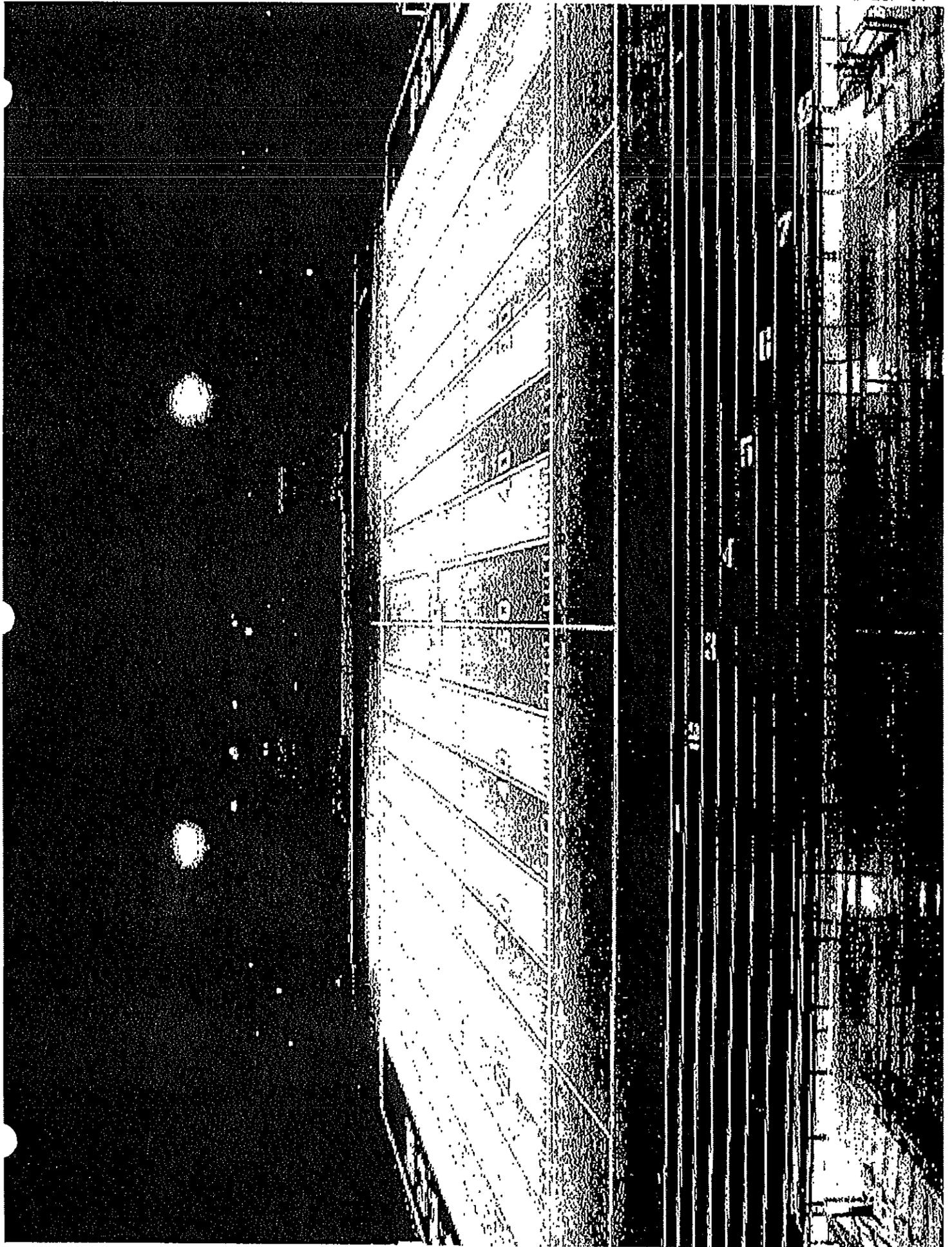
35
36 This is a final order.

37
38 Section 5. Record.

39 The record shall consist of the notice of hearing, the application, documents submitted by
40 the applicant and the applicant's representatives to the Village of Palmetto Bay Planning and Zoning
41 Department in connection with the applications, the Village's recommendation and attached cover
42 sheet and documents, the testimony of sworn witnesses and documents presented at the quasi-
43 judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by the
44 Village Clerk.
45

Lighting Samples





Illumination Summaries



MUSCO
GREEN GENERATION LIGHTING

GUARANTEED PERFORMANCE ILLUMINATION SUMMARY

Football

Palmer Trinity School
Palmetto Bay, FL

Football

- Size: 360' x 160'
- Grid Spacing = 30.0' x 30.0'
- Values given at 3.0' above grade
- Luminaire Type: Green Generation
- Rated Lamp Life: 5,000 hours
- Avg Lumens/Lamp: 134,000

HORIZONTAL ILLUMINATION

Entire Grid

No. of Target Points:	72
Average:	50.2
Maximum:	62
Minimum:	39
Avg/Min:	1.28
Max/Min:	1.57
UG (Adjacent Pts):	1.28
CV:	0.09

Average Lamp Tilt Factor: 1.000
 Number of Luminaires: 44
 Avg KW over 5,000 hours: 68.62
 Max KW: 74.8

Guaranteed Performance: The CONSTANT ILLUMINATION described above is guaranteed for the rated life of the lamp.

Field Measurements: Averages shall be +/-10% in accordance with IESNA RP-6-01 and CIBSE LG4. Individual measurements may vary from computer predictions. Electrical System Requirements: Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

Installation Requirements: Results assume +/- 3% nominal voltage at line side of the ballast and structures located within 3 feet (1m) of design locations.

By: Matt Pearson

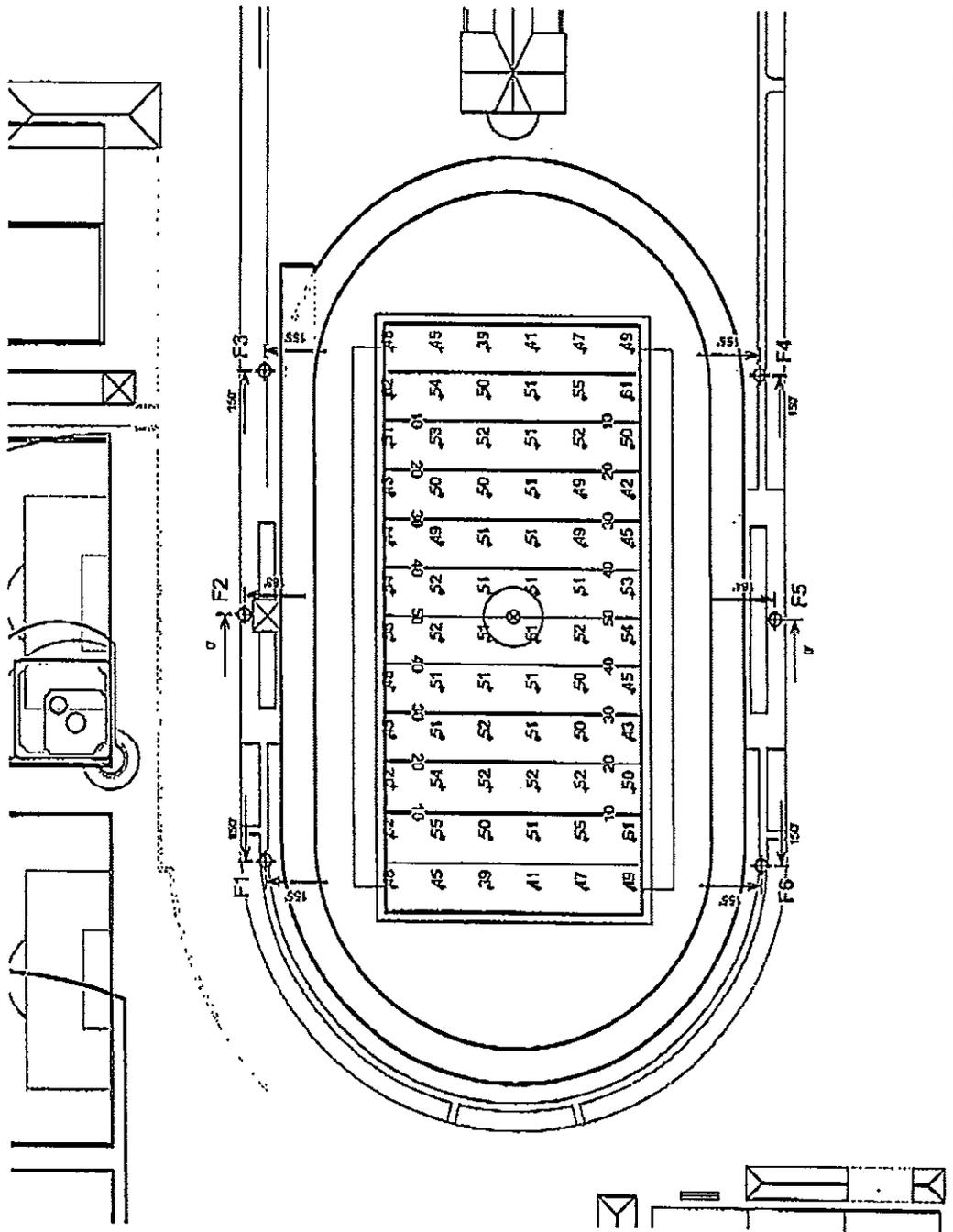
File #: 116066R1

Date: 19-Mar-10

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EQUIPMENT LIST FOR AREAS SHOWN

QTY	LOCATION	Pole		Luminaires		THIS SIDE	ORDER
		SIZE	GRASS ELEVATION	LAMP TYPE	GRID		
4	F1, F3-F4, F5	70'	-	1500W NZ	11	7	4
2	F2, F5	80'	-	1500W NZ	8	8	0
6	TOTALS				60	44	16



SCALE IN FEET 1 : 100



Pole location(s) & dimensions are relative to 0.0 reference point(s) ⊗



GUARANTEED PERFORMANCE

ILLUMINATION SUMMARY

Baseball

Palmer Trinity School
Palmello Bay, FL

Baseball

- Size: 320'x75'x20' - 90' Basepath
- Grid Spacing = 30.0' x 30.0'
- Values given at 3.0' above grade

- Luminaire Type: Green Generation
- Rated Lamp Life: 5,000 hours
- Avg Lumens/Lamp: 134,000

HORIZONTAL ILLUMINATION

No. of Target Points:	25	105
Average:	51.8	31.1
Maximum:	65	45
Minimum:	39	23
Avg/Min:	1.34	1.32
Max/Min:	1.69	1.90
UG (Adjacent Pts):	1.30	1.42
CV:	0.14	0.16
Average Lamp TM Factor:	0.999	
Number of Luminaires:	62	
Avg KW over 5,000 hours:	96.97	
Max KW:	105.4	

Guaranteed Performance: The CONSTANT ILLUMINATION described above is guaranteed for the rated life of the lamp.

Field Measurements: Averages shall be +/-10% in accordance with IESNA RP-6-01 and CIBSE LG4. Individual measurements may vary from computer predictions.

Electrical System Requirements: Refer to Amperage Draw Chart and/or the "Musco Control System Summary" for electrical sizing.

Installation Requirements: Results assume +/- 3% nominal voltage at line side of the ballast and structures located within 3 feet (1m) of design locations.

By: Matt Pearson

File #: 116066R1

Date: 19-Mar-10

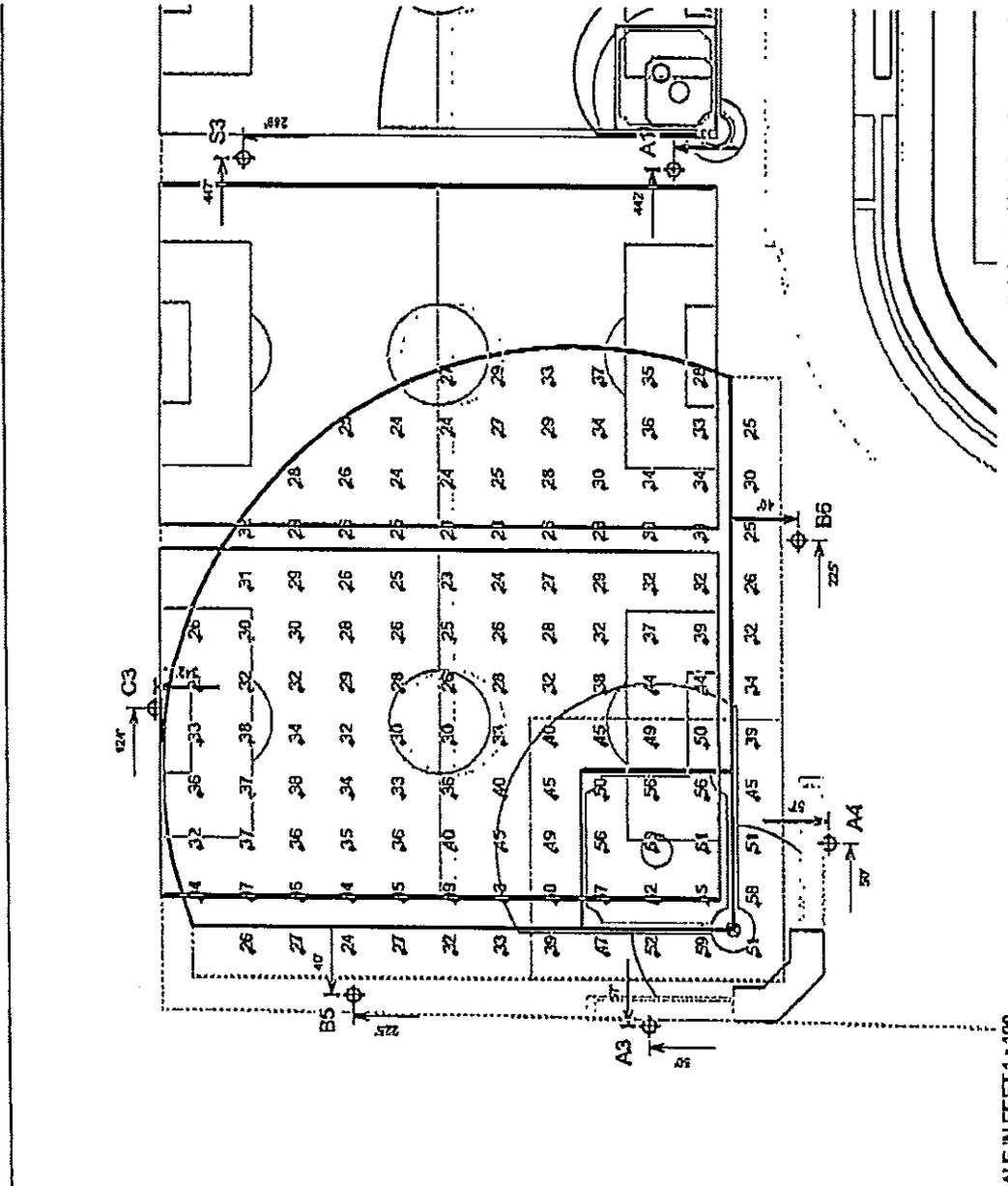
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Print Date (19Mar2010) & Time (01:52)

EQUIPMENT LIST FOR AREAS SHOWN

QTY	LOCATION	SIZE	MOUNTING HEIGHT	LUMINAIRES		THIS SIDE OF GRID	TOTAL
				QTY	TYPE		
1	A1	70"	70"	13	13	7	6
2	A3, A4	80"	80"	6	6	6	0
1	B5	80"	80"	9	9	8	0
2	B6, C3	80"	80"	12	12	12	0
1	S3	90"	90"	10	10	6	6
7	TOTALS			74	74	62	12

This structure utilizes a back-to-back mounting configuration



SCALE IN FEET 1:100



Signage Samples

ESTABLISHED 1888

ESTABLISHED

ST
M
N

Palmer Trinity School

12/11 ES CHRISTMAS

CHAPEL 930AM

1-3 SCHOOL RESUMES

MERRY CHRISTMAS

