

NOT FINAL UNTIL TIME EXPIRES  
TO FILE MOTION FOR REHEARING,  
AND IF FILED, DISPOSED OF

*OFFERED 12/22/11*  
*Norm S. Lindsey 12/22/11*  
*Joel H. Brown 12/22/2011*

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN  
AND FOR MIAMI-DADE COUNTY,  
FLORIDA

APPELLATE DIVISION  
CASE NO. 10-259 AP

LT RESO. NOS. 2010-48 and 2011-53

PALMER TRINITY PRIVATE  
SCHOOL, INC.,

Petitioner,

vs.

VILLAGE OF PALMETTO BAY,  
FLORIDA, et al.,

Respondents.

FILED FOR  
2011 DEC 22 PM 12:05  
DADE COUNTY  
CIVIL #05

Opinion filed December 22, 2011

Stanley B. Price, Esq. and Eileen Ball Mehta, Esq., Bilzin Sumberg, Price & Azelrod, LLP, for Petitioner.

Raoul G. Cantero, Esq., and Evan M. Goldenberg, Esq., White and Case LLP,<sup>1</sup> and Eve A. Boutsis, Esq., Figueredo & Boutis, P.A., for Respondent.

Tucker Gibbs, Esq. for Intervenors, Concerned Citizens of Old Cutler, Inc. and Betty Pegram.

(Before JOEL BROWN, C.J., JOSEPH FARINA AND NORMA S. LINDSEY, JJ.)

**ON MOTION TO ENFORCE MANDATE OR,  
IN THE ALTERNATIVE, FOR EXTRAORDINARY RELIEF**

(PER CURIAM) This Court returns for the fifth time to a dispute between Petitioner, Palmer Trinity Private School, Inc. ("Palmer Trinity"), and Respondent,

<sup>1</sup> On September 9, 2011, Counsel filed its Notice of Appearance of Additional Counsel.

The Village of Palmetto Bay, Florida (the “Village”). The genesis of this dispute is an application, originally submitted for approval in 2006 (the “2006 Application”), for rezoning and request for special exception and non-use variances concerning expansion and further development on Palmer Trinity’s property.

This matter is now before the Court on Palmer Trinity’s Motion to Enforce Mandate (the “Instant Motion”). The Mandate was issued March 3, 2011 (the “Mandate”), following this Court’s decision on Palmer Trinity’s Petition for Writ of Certiorari, cited as *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay*, 18 Fla. L. Weekly Supp. 342a (11<sup>th</sup> Cir. App. Feb. 11, 2011) (the “Decision”).

We have jurisdiction. *See Art. V, § 5*, Florida Constitution; *Rules 9.030(c) and 9.100*, Fla. R. App. Pro. (Fla. 2011); *Blackhawk Heating & Plumbing Co., Inc. v. Data Lease Financial Corp.*, 328 So.2d 825 (Fla. 1975); *Metropolitan Dade County v. Dusseau*, 826 So.2d 442 (Fla. 3d DCA 2002); *Milton v. Paragon Investment Corp.*, 503 So.2d 1312 (Fla. 3d DCA 1987); *City of Miami Beach v. Arthree, Inc.*, 300 So.2d 65 (Fla. 3d DCA 1973).

#### Procedural and Factual Background

Palmer Trinity has owned and operated a private school on 22.5 acres of land located within the Village (“Parcel A”) for almost five decades. In 2003, Palmer Trinity purchased an additional 32.5 acres also located within the Village (“Parcel B”). When Palmer Trinity filed the 2006 Application under the Miami-Dade County Code to rezone Parcel B, it also sought a special exception to increase the student

Palmer Trinity Private School, Inc. v. Village of Palmetto Bay, Florida, et al.,  
Appellate Division, Case No. 10-259 AP  
LT Reso. Nos. 2010-48 and 2011-53  
Order on Motion to Enforce Mandate, or in the Alternative, for Extraordinary Relief  
enrollment from 600 to 1400 and certain variances concerning further development  
on both Parcels.<sup>2</sup>

In 2008, the Village held a hearing on the 2006 Application. Consideration of the rezoning request was bifurcated from the request for special exception to increase student enrollment and for variances concerning further development. At the 2008 hearing, the Village adopted Ordinance 08-06 denying the requested rezoning. Palmer Trinity appealed this denial in a petition for certiorari review to the Circuit Court, acting in its appellate capacity, which upheld, without opinion, the Village's decision. Palmer Trinity then took an appeal to the Third District Court of Appeal which reversed the Circuit Court appellate panel, thereby overturning the Village's denial of the rezoning request. *See Palmer Trinity Private School, Inc. v. Village of Palmetto Bay*, 31 So. 3d 260 (Fla. 3d DCA 2010) ("*Palmer I*").<sup>3</sup>

After the Third District issued its decision in *Palmer I*, Palmer Trinity modified its site plans and requests for special for exceptions to, among other things, reduce the requested number of students from 1400 to 1150. On May 4, 2010, in accordance with the mandate from the Third District in *Palmer I*, the Village approved the requested rezoning by adopting Ordinance 2010-09. The Village also heard the other site plan modification and special request components of the 2006

---

<sup>2</sup> As a result of the incorporation of the Village as a municipality, the 2006 Application was transferred from the County to the Village.

<sup>3</sup> The Third District held that the circuit court appellate division's decision affirming the Village's denial of Palmer Trinity's rezoning request constituted a departure from the essential requirements of the law resulting in a miscarriage of justice "[b]ecause the Village relied on Palmer Trinity's intended use of the property in denying the rezoning request, ... ." 31 So.3d 260, 263. The District Court further stated that "[a] zoning authority's insistence on considering the owner's specific use of a parcel of land constitutes not zoning but direct governmental control of the actual use of each parcel of land which is inconsistent with constitutionally guaranteed private property rights." *Id.* (Citations omitted.).

Application (the “Modified Application”). At the conclusion of the hearing, the Village adopted Resolution 2010-48 (the “Original Resolution”), approving the Modified Application with conditions, including a reduction in the number of students from 1150 to 900, and a 30-year prohibition on Palmer Trinity’s ability to seek further development approvals.

Palmer Trinity timely filed its Petition for Writ of Certiorari (the “Original Petition”) to invoke this Court’s jurisdiction. On February 11, 2011, this Court issued its Decision quashing the provisions in the Original Resolution relating to the 30-year prohibition on future development and the 900 student cap on enrollment and remanding to the Village for proceedings in accordance with the Decision. The Mandate issued on March 3, 2011.

On April 12, 2011, Palmer Trinity filed a Motion to Enforce Mandate which this Court granted on May 5, 2011. Thereafter, on May 18, 2011, the Village filed a Motion for Clarification as to this Court’s Order dated May 5, 2011 (“Motion for Clarification”), wherein the Village stated that it understood

the Court’s Orders to direct the Village to ... hold a public hearing, the record of which shall include but not be limited to all the evidence already in the record for a final decision as to the entire application - - not just as to the two items litigated on appeal, which decision is to be made based on competent substantial evidence; and (3) hear the entire application and rule according to all evidence presented at the hearing because, the zoning conditions contained in the resolution are inter-related, with no severability provision.

*Motion for Clarification as to this Court’s Order dated May 5, 2011 at 4.*

The Village further asserted that the “Village resolution did not have a severability provision, so the entire matter is to be heard at public hearing.” *Id.* at n.

1, *citing Auerbach v. City of Miami*, 929 So.2d 693, 694 (Fla. 3d DCA 2006). On June 1, 2011, this Court issued an Order granting the Village's Motion for Clarification ("Order on Clarification") wherein it instructed that *Auerbach* did not state that, absent a severability clause in a resolution, the entire matter must be reheard.

Then on July 12, 2011, Palmer Trinity filed its Renewed, Emergency Motion to Enforce Mandate or, Alternatively, to Enjoin and Prohibit Respondent from Violating the Express Mandate of this Court, wherein it argued that the Village intended to violate this Court's orders at a public hearing scheduled for July 19, 2011. Then on July 15, 2011, the Village filed its opposition wherein it stated that Petitioner's concerns were "unfounded" and specifically quoted from a memorandum from counsel advising as follows:

4. The Village Attorney, then recommended the Village Council to take the following action:

the Village Council should rely upon the evidence and proof obtained during its original hearing of May 4, 2010, and thereby rely upon the existing record, rather than proceed forward with a new hearing and upon new proof.

Memorandum at Page 3, third paragraph (emphasis added).

*Village of Palmetto Bay's Opposition to the Emergency Motion to Enforce Mandate as Village is Acting Consistent with the Law and this Court's Rulings* at Par. 4. (Emphasis in original.). Thereafter, on July 18, 2011, this Court entered its Order Denying Petitioner's Renewed, Emergency Motion to Enforce Mandate or, Alternatively, to Enjoin and Prohibit Respondent from Violating the Express Mandate of this Court.

On July 19, 2011, the Village held a public hearing to address the Mandate and adopted Resolution 2011-53, amending and incorporating Resolution 2010-48 (the “Amended Resolution”). Thereafter, on August 26, 2011, Palmer Trinity filed the Instant Motion to Enforce Mandate or, in the Alternative, for Extraordinary Relief. On September 9, 2011, the Village filed its Motion to Consider Petitioner’s Filing as a New Petition for Writ of Certiorari or, in the Alternative, for a 60-Day Extension of Time to Respond to It. Also, on September 12, 2011, Respondents, Concerned Citizens of Old Cutler, Inc. and Betty Pegram (the “Intervenors”), filed their Motion Requesting that Petitioner’s Motion/Petition be Considered as a New Petition for Writ of Certiorari or, in the Alternative, Requesting a 60-Day Extension of Time to Respond to Petitioner’s Motion/Petition.

On September 12, 2011, Palmer Trinity filed its Response to the Motions of the Village and the Intervenors, opposing their requests and stating that it would not object to a 10-day extension of time. On September 14, 2011, this Court entered its Order denying the Motions of the Intervenors and the Village and ordering that they respond within thirty days. On October 14, 2011, the Village and Intervenors filed their Responses, and, on October 31, 2011, Palmer Trinity filed its Reply.

#### Conclusions of Law

The standard of law applicable here was set forth by the Florida Supreme Court in *Blackhawk Heating & Plumbing Co., Inc. v. Data Leasing Financial Corp.* as follows:

A trial court is without authority to alter or evade the mandate of an appellate court absent permission to do so. If the trial court fails or refuses to comply with the appellate court’s mandate, the latter may, generally

speaking, take any steps or issue any appropriate writ  
necessary to its judgment.

328 So.2d 825, 827 (Fla. 1975) (All internal citations omitted).<sup>4</sup> “Upon the issuance of a mandate from an appellate court, the lower court’s role becomes purely ministerial, and its function is limited to obeying the appellate court’s order or decree. A trial court does not have discretionary power to alter or modify the mandate of an appellate court in any way, shape or form.” *Metropolitan Dade County v. Dusseau*, 826 So.2d 442, 444 (Fla. 3d DCA 2002) (All internal citations omitted.); *Milton v. Keith*, 503 So.2d 1312 (Fla. 3d DCA 1987).

In the Instant Motion, Palmer Trinity claims that the Village violated the Mandate and this Court’s subsequent orders in capping enrollment at 600 students, the same level that existed prior to the filing of both the 2006 Application and the Modified Application. Palmer Trinity further argues the inconsistency in the Village’s actions in adopting the Amended Resolution which approves the Modified Application, thereby requiring Palmer Trinity to, among other things, expand the physical size of its school, build a perimeter wall and landscape buffer, and construct three new turn lanes, all for the purpose of accommodating 1150 students, but prohibits the addition of any new students. And, Palmer Trinity contends that “the Village’s “token” compliance on remand falls far short of compliance with the letter and spirit of this Court’s Mandate.” *Motion to Enforce Mandate or, in the Alternative, for Extraordinary Relief* at 18.

---

<sup>4</sup> For a general discussion, see *Cracking the Code: Interpreting and Enforcing the Appellate Court’s Decision and Mandate*, 32 Stetson L. Rev. 393 (Winter 2003).

On the other hand, the Village contends that it complied with the Mandate because “[t]his Court directed the Village to take only two steps: remove the 30-year prohibition for future development; and remove the 900-student cap” and that it did so. *Respondent, Village of Palmetto Bay’s Response to Petitioner’s Motion to Enforce Mandate or, in the Alternative, for Extraordinary Relief* at 11-12. The Village further asserts that “it strictly adhered to the Mandate’s plain language” by removing the 900-student cap. *Id.*

Palmer Trinity counters with the argument that the Village’s obligation on remand extends beyond “mere technical compliance” and asserts that the Village, in quashing the 900 student cap and replacing it with a 600 student cap, violated both the letter and spirit of the Mandate. *Reply to Responses to Motion to Enforce Mandate or, in the Alternative, for Extraordinary Relief* at 3-4.

The Intervenors additionally contend that Palmer Trinity did not appeal the denial of its request for 1150 students in its Original Petition for Certiorari, and has, thereby, waived its right to contest, in the Instant Motion, the 600 student cap on enrollment.

The applicable language is found in this Court’s Decision of February 11, 2011; in the Mandate entered March 3, 2011; and, in its Order on Clarification entered June 1, 2011; as set forth below, respectively:

The Decision specifically stated, in pertinent part:

The facts herein are analogous to those presented in *Jesus Fellowship [v. Miami-Dade County, Florida, 752 So.2d 708, 710. (Fla. 3d DCA 2000)]*. In that case, the Third District quashed a circuit court decision which affirmed a decision of the Miami-Dade County Commission denying a portion of a church’s

zoning application. In the zoning application at issue therein, the church sought to rezone land in a residential area to permit expansion of the church's religious facilities and to permit a private school and day care center. Although the County Staff had recommended approval of 524 students, the Commission approved the rezoning but limited the number of students to 150 as a result of a "suggestion" by the opponents' attorney after the close of the evidentiary hearing.

Here, as in *Jesus Fellowship*, the first mention of even the reduction in the number of students permitted occurred after the close of the evidentiary portion of the public hearing. And like the "suggestion" by the opponent's counsel in *Jesus Fellowship*, the 900 number here materialized in the form of a motion for which no discussion on the record had been had nor foundation had been laid. Other than the brief discussion between the Mayor and Council Person Stanczyk, wherein the 900 number was admittedly arbitrary, there is no mention of that number, nor any mathematical calculation from which it could have been derived, contained in either the record or transcript preceding the adoption of the Resolution. Neither the testimony of Mr. Alvarez, nor of any of the individuals living in the neighborhood surrounding the school, provides a competent substantial basis for the 900 student cap on enrollment. Accordingly, this Court holds that the 900 student cap is not supported by competent substantial evidence.

For the reasons set forth above, the provisions contained in Resolution 2010-48 relating to the 30 Year Prohibition on any future development or applications for development approvals and the 900 student cap on enrollment are QUASHED and this matter is REMANDED to the Village of Palmetto Bay for proceedings in accordance with this decision.

*Palmer Trinity Private School, Inc. v. Village of Palmetto Bay*, 18 Fla. L. Weekly

Supp. 342a at 6-7 (Fla. 11<sup>th</sup> Cir. App. February 11, 2011).

The Mandate specifically stated:

YOU ARE HEREBY COMMANDED  
that such further proceedings be had  
in said cause in accordance with the  
opinion of this COURT attached hereto

Palmer Trinity Private School, Inc. v. Village of Palmetto Bay, Florida, et al.,  
Appellate Division, Case No. 10-259 AP  
LT Reso. Nos. 2010-48 and 2011-53  
Order on Motion to Enforce Mandate, or in the Alternative, for Extraordinary Relief  
and incorporated as part of this order,  
and with the rules of procedure and laws  
of the STATE OF FLORIDA.

*Palmer Trinity Private School, Inc. v. Village of Palmetto Bay, Florida, Concerned  
Citizens of Old Cutler, Inc. and Betty Pegram*, Mandate, Case No. 10-259 (Fla. 11<sup>th</sup>  
Cir. App. Mar. 3, 2011).

The Order on Clarification stated, in pertinent part:

Accordingly, the Court finds that the original opinion in this matter issued February 11, 2011 is clear and unambiguous. The Village of Palmetto Bay shall forthwith commence the required proceedings to remove the two quashed conditions from the Resolution or otherwise render those conditions ineffectual and take no further action that would be inconsistent with this Court's prior Order of May 5, 2011 and this Order.

*Order on Respondent's Motion for Clarification as to this Court's Order of May  
5, 2011* at 2.

There is no dispute that the Modified Application included a request for special exception to increase student enrollment from 600 -- the level that existed prior to the 2006 Application -- to 1150. There is no dispute that the Village approved the Modified Application with a condition that capped student enrollment at 900. And, there is no dispute that this Court's Decision quashed the 900 student cap. Finally, there is no dispute that the Mandate commanded the Village to commence further proceedings in accordance with this Court's Decision. The issue now before the Court, for the fourth time, centers on what constitutes compliance with the Decision and Mandate and, for the first time, whether the Village did so in

Palmer Trinity Private School, Inc. v. Village of Palmetto Bay, Florida, et al.,  
Appellate Division, Case No. 10-259 AP  
LT Reso. Nos. 2010-48 and 2011-53  
Order on Motion to Enforce Mandate, or in the Alternative, for Extraordinary Relief  
adopting the Amended Resolution. For the reasons set forth below, this Court finds  
that it did not.

As set forth above, this Court's Decision quashed the provisions contained in the Original Resolution relating to the 900 student cap on enrollment. *Palmer Trinity Private School*, 18 Fla. L. Weekly Supp. 342a, *supra* at 7. In addition, the Order on Clarification directs the Village to "remove the two quashed conditions from the Resolution or otherwise render those conditions ineffectual and take no further action that would be inconsistent with this Court's prior Order of May 5, 2011 and this Order." *Order on Respondent's Motion for Clarification as to this Court's Order of May 5, 2011, supra*.

Black's Law Dictionary defines "cap" as "[a]n upper limit, such as a statutory limit on the recovery in a tort action or on the interest a bank can charge." *Black's Law Dictionary* at 235 (9<sup>th</sup> Edit. 2009). Similarly, in layman's terms, "cap" is defined as "an upper limit (as on expenditures): ceiling." *Merriam-Webster Dictionary* (Online Edit. 2011). Clearly, the plain meaning of the language in the Decision and in the Order on Clarification requires the Village to remove the 900 student cap, limit or ceiling on enrollment, not further reduce it. This is particularly so because the Village approved, with conditions, the Modified Application, which requested a maximum student enrollment of 1150. One of those conditions, *i.e.*, the one that capped student enrollment at 900, is the subject of the Instant Motion, and was, indisputably, quashed by this Court's Decision.

The Order on Clarification dictates that the Village "otherwise render those conditions [the 30-year prohibition on future development and the 900-student cap]

ineffectual and take no further action that would be inconsistent with this Court's prior Order of May 5, 2011, and this Order." *Order on Respondent's Motion for Clarification as to this Court's Order of May 5, 2011* at 2. Accordingly, any language in the Amended Resolution which has the effect of reducing the maximum number of students allowed below 1150 simply does not render the 900 student cap "ineffectual" and is, thus, inconsistent with the Mandate.

As set forth above, the Village specifically contends that it complied with the Mandate because "[t]his Court directed it to take only two steps: remove the 30-year prohibition for future development; and remove the 900-student cap" and that it did so. *Respondent, Village of Palmetto Bay's Response to Petitioner's Motion to Enforce Mandate or, in the Alternative, for Extraordinary Relief* at 11-12. The Village further asserts that "it strictly adhered to the Mandate's plain language" by removing the 900-student cap. *Id.* at p. 11.

Likewise, as set forth above, "the *provisions* contained in Resolution 2010-48 *relating to* the 30 Year Prohibition on any future development or applications for development approvals and *the 900 student cap on enrollment*" were quashed. *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay*, 18 Fla. L. Weekly Supp. 342a 7 (Fla. 11<sup>th</sup> Cir. App. February 11, 2011) (Emphasis supplied). Therefore, any provision in the Original Resolution relating to reducing or limiting the maximum number of students allowed to 900, and certainly, to below 900, is within the four corners of the Decision. Hence, in order to strictly adhere to the Mandate's plain language, the Village must remove or otherwise render ineffectual

all of the provisions in the Amended Resolution which have the effect of reducing the maximum number of students allowed from 1150 to 900 or to below 900.

The Intervenor additionally oppose the Instant Motion on the grounds that Palmer Trinity waived the right to now contest the 600 student cap on enrollment. Indeed, the Intervenor claim that Palmer Trinity failed to appeal the specific language in the Original Resolution denying its request to increase student enrollment to 1150. And furthermore, according to the Intervenor, Palmer Trinity “made a knowing calculation to appeal only the two conditions:” the 900-student cap and the 30-year limitation on development applications. *Respondents, Concerned Citizens of Old Cutler, Inc. and Betty Pegram’s Response to Petitioner’s Motion to Enforce Mandate or in the Alternative for Extraordinary Relief* at 7.

The Intervenor’s position is based on the premise that Palmer Trinity only appealed the second sentence contained in Section 4.B.3. of the Original Resolution and not the first sentence. Section 4.B.3 states in its entirety:

3. The request to increase the non-public school number of students to 1150 is denied. A condition to allow expansion to 900 students is granted.

*Resolution No. 2010-48, Sec. 4.B.3. (Emphasis in original).*

*Respondents, Concerned Citizens of Old Cutler, Inc. and Betty Pegram’s Response to Petitioner’s Motion to Enforce Mandate or in the Alternative for Extraordinary Relief* at 6-7, 16. The Intervenor assert that “[w]hile memorialized in one resolution, each request stands on its own merit ... .” *Id.* The Intervenor go on to argue that:

When petitioner appealed only the two conditions, it chose to accept the remaining conditions. It understood that once

it failed to appeal the remaining conditions, or chose not to appeal the entire resolution, it accepted those conditions.

*Id.* at 16.

The Intervenor's waiver argument falls short. Palmer Trinity never requested a special exception or condition to increase the number of students from 600-900, nor made a motion to do so. Rather, Palmer Trinity sought, in the Modified Application, a special exception to increase the number of students from 600 to 1150. And, in response, the Village approved the Modified Application with a condition capping student enrollment at 900, otherwise referred to throughout these proceedings by the parties and this Court as the "900 student cap." As set forth above, neither the Village, nor the Intervenors, dispute that Palmer Trinity appealed this specific condition. Finally, this Court agrees with Palmer Trinity's statement that

To argue that Palmer Trinity somehow appealed the 900-student condition independent of what it conditioned and, in doing so, made a "knowing calculation" to place itself in a far worse position, is to refute it. CCOCI [Intervenor's] Response at 7.

*Reply to Responses to Motion to Enforce Mandate or, in the Alternative, for Extraordinary Relief* at 8.

As the clear and unambiguous language of this Court's Decision states, "the 900 number here materialized in the form of a motion for which no discussion on the record had been had nor foundation had been laid." *Palmer Trinity Private School, Inc. v. Village of Palmetto Bay*, 18 Fla. L. Weekly Supp. 342a at 7. Thus, the argument that Palmer Trinity did not appeal a specific sentence contained in the Original Resolution and has now waived its objection to the reduction in student

enrollment to the level that existed prior to the filing of both the 2006 Application and the Modified Application must fail.

For the reasons set forth above; in this Court's Decision of February 11, 2011; and, this Court's Order on Clarification of June 1, 2011, all of the provisions contained in Resolution 2011-53 Amending Resolution 2010-48 and Resolution No. 2010-48 (Amended 07/19/2011) which have the effect of reducing the maximum number of students allowed from 1150 to 900, or to below 900, are not in compliance with the Mandate. Based on the foregoing, this Court declines to address any of the other arguments raised. Accordingly, Petitioner Palmer Trinity Private School Inc.'s Motion to Enforce Mandate is hereby GRANTED and this matter is REMANDED to the Village of Palmetto Bay, Florida for proceedings in accordance with this Order and the Court's Mandate of March 3, 2011.

Palmer's Trinity's request for Attorney's Fees and Costs is DENIED without prejudice. The Intervenor's Motion for Oral Argument is DENIED.

COPIES FURNISHED TO COUNTY  
OF RECORD AND TO ANY PARTY  
NOT REPRESENTED BY COUNSEL