



To: The Honorable Mayor and Village Council

Date: January 2012 Update

From: Eve A. Boutsis, Village Attorney

Re: Village Attorney Update

A. Ordinances –

1. Several members of the Council requested revisions to the code as it relates to special event banners and political signs. After several readings, and several discussions during COW meetings, the item is being brought forward as it relates to temporary political signs, as to size and duration. First reading to be held at the January council meeting.

2. Staff has received Council authorization to draft an ordinance to create the process for implementing the citizen initiative relating to increase of student population at private schools. A draft has been reviewed by Planning and Zoning and the Clerk's office. The draft is being distributed to the Miami-Dade County Elections Department, as the Elections Department shall have to coordinate with the Village on scheduling an election/ballot and the procedures for calculating the 2,000 foot radius from a private school, along with registered voters. A meeting was held with the MDC Elections Department. This item was discussed during a 2011 COW meeting. Sponsored by Council Person Joan Lindsay. Staff will bring this forward to a future COW upon drafting and subsequent review by Planning & Zoning.

3. An ordinance relating to amending the Art in Public Places Ordinance to conform to the Home Rule Powers of Miami-Dade County, relating to increasing the government project funding from 1.25 to 1.5 percent and clarifying certain details in the ordinance. Additionally, during the January 24, 2011 COW meeting, the Village Council directed clarification of the language relating to the AIPP Advisory Board bringing three recommendations to the Village Council. Staff shall begin drafting the revisions and shall bring the item to an upcoming council COW agenda. Sponsored by Council Person Howard Tendrich.

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

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

6. The Village Charter does not specifically designate a mechanism for an initiative or referendum by the community to amend the Charter. The Charter, at Article VI (A) states that the Village is to enact an ordinance to implement such a provision, in compliance with Section

6.03 of the Miami-Dade County Charter. Counsel seeks authorization to proceed on this item at an upcoming Council meeting. During the January 24, 2011 COW meeting, the Village Council directed that staff begin working on drafting this ordinance. Sponsored by Council Person Joan Lindsay. Staff is to work with CP Lindsay on drafting of this item.

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

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

9. A similar revision is proposed for the Alcoholic Beverages chapter, found at 30-130. This item was discussed during the most recent COW meeting. First Reading of the Ordinance will be held in January 2012.

10. A resident requested a modification to the Village's Land Development Code. The Miami-Dade Board of County Commissioners has amended the Ordinance Relating to Zoning Regulations of Awnings, Canopies and Tents by amending Sections 33-64, 33-65, 33-69, 33-71 and 33-77; and deleting Sections 33-72 and 33-81 of the Code of Miami-Dade County. This amendment, among other things, changed the backyard setback requirement for awnings from twenty-five feet to ten feet. No action has been taken on the request to mirror the Village's Code to the modification requested to mirror the County Code. This item will be brought to a COW for direction.

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

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

13. Modification of Division 30-30 relating to notice of public hearing, zoning items. Requested by Council Person Lindsay during June COW meeting. Also requested by Mayor Stanczyk. Will be working with CP Lindsay on same.

14. An ordinance creating the "Friends of Thalatta Advisory Board" with procedures, donation policies, and tenure. Discussed during October COW meeting. Proposed for first reading in November. [Sponsored by Mayor Shelley Stanczyk].

15. Modifications to Procurement Code - tabled for discussion purposes to be brought back to a COW meeting.

16. Ordinance repealing park rule 20-63. Second reading is scheduled for the January 2012 council meeting.

B. Contracts

1. Attention to pending county ordinances that may affect the village with a county wide application.
2. Attention to charter school statutory amendments enacted by Legislature. Attended meetings with the City of Coral Gables, Pinecrest, Miami, Miami-Dade County, and School Board relating to the legislation and application of same.
3. Attention to proposed alternate routes for FPL Transmission lines matter.
4. Attention to Portland contract conclusion.
5. Attention to City Hall contractor close out.
6. Attention to concession contract
7. Revised and updated tennis and concessions bidding/procurement proposals.
8. Drafted covenants as to lighting for parks - consistent with Village enacted resolutions.

C. Special report.

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

2. Please continue to refrain from community contact on the Palmer Trinity matter as the Village is in litigation – three law suits – the 2008 original action, the 2010 declaratory action and the 2010 petition for certiorari. Each council person should avoid discussions with the Community about this possible project to ensure compliance with the Jennings Rule and due to attorney-client privilege. Please maintain all records relating to any communications from third persons on this property – record the time, date, location, subject matter. Please advise the community to refrain from contacting you. The Village held the remand hearing on the special exception and site plan modification on June 19, 2011, at Christ Fellowship Church. The Village took action and the resolution has issued. Palmer Trinity has indicated that it will probably appeal and may seek sanctions against the Village. Please do not discuss with third parties as litigation remains pending.

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

4. Charter Schools –Parkside at Palmetto Bay. The owner of the 5 acre parcel near Palmetto Bay Park has contacted staff regarding possibly locating a new Summerset/Academica charter school and an ALF/130 units on the site. Subsequently modified to 33 units. No application has been filed. A letter of intent has issued and has been received by the Planning and Zoning Staff. As such please advise the community to refrain from contacting you on this matter as it appears that the item may be proceeding to a public hearing quasi-judicial item. A Community meeting was held on December 7th at 7:00 p.m. at Ludovici Park and Amphitheater/Dr. Feller Community Room. On January 18, 2011, the applicant submitted a formal application and review has begun by P & Z staff. Staff has commented on the proposed application and has directed revisions to the proposed application to be consistent with Code requirements. An updated plan has been submitted to staff for review. The Applicant has submitted revised plans and a staff analysis prepared. The item was heard on October 17, 2011 and Deferred to the December zoning meeting. Item was denied on December 12, 2011 due to procedural due process issues. Please do not discuss with anyone as there is a 30 day appeal period.

5. Attended monthly meetings of the Charter Revision Commission and shall work with the Clerk and committee on drafts and revisions to be placed on next Village regularly scheduled election. The Commission requested that the Village Attorney prepare a list of the topics discussed for their review so that a public input workshop may be held. Date of workshop scheduled for January 25, 2011.

Litigation report.

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

(a) Oral argument was held on the Palmer Trinity v. Palmetto Bay, certiorari action (appellate matter) on Monday, February 22, 2010 before the Third District Court of Appeals. The Appellate Court reversed and remanded the litigation. First hearing on the rezoning ordinance was held on April 29, 2010. Second reading of the ordinance was held on May 4, 2010, along with the remainder of the original application.

(b) In 2010, the Applicant filed a new petition for certiorari (an appeal) from the May 4, 2010 decision. The 11th Judicial Circuit Appellate Panel ruled in Palmer Trinity's favor on the appeal of the May 4, 2010 decision as to the site plan application. The Court in a *Per Curiam* decision, ruled and remanded by to the Village for action. On July 19, 2011, the Village held a hearing to

enforce the Appellate Panel's ruling, at which time the Village Council struck the language, as directed by the Court. Palmer Trinity, on August 26, 2011 filed its motion to enforce mandate or in alternative motion for certiorari (appeal) based upon the July 19th hearing after remand. The Firm of White & Case, Justice Raoul Cantero has been retained to assist in the appeal. The Applicant' filed a motion for enforcement, or in the alternative a petition for certiorari, in effect "appealing" the Village's action, which left the Applicant with 600 students, per its 1999 approval. In December 2011, the Court issued its ruling in favor of Palmer Trinity.

(c) In 2008, Applicant filed an original action against the Village. That action has been amended four times, has been removed to federal court, remanded back to State Court, before Judge Langer. The Village, through insurance defense counsel, filed a motion to dismiss. The parties are awaiting a decision on the motion. The parties are also awaiting a decision on Applicant's motion for sanctions.

(d) In 2010, Applicant filed a second cause of action, which was transferred to Judge Langer. Recently an order was issuing clarifying that the transfer and consolidation was purely for discover purposes. This matter remains pending.

2. Anctil v. Village of Palmetto Bay, Case no.: 11-14303 CA (02) (Fla. Cir. Ct). Plaintiff, parents of minor child, sued village on May 11, 2011. Matter transferred to League for representation. Child allegedly hurt his arm during summer day camp. Any additional information beyond representation in complaint will be provided during any necessary shade sessions.