

IN RE: SHORES AT PALMETTO BAY LLC, v  
VILLAGE OF PALMETTO BAY

CASE NO: 12-029

ORIGINAL

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9705 Hibiscus Street  
Palmetto Bay, Florida,  
Monday, 6:00 p.m.,  
December 17, 2012.

APPEARANCES:

Ron Williams, Village Manager  
Eve Boutsis, Village Attorney  
Shelley Stanczyk, Mayor  
Tim Schaffer, Council Member  
John DuBois, Vice Mayor  
Joan Lindsay, Council Member  
Patrick Fiore, Council Member

1 MS. BOUTSIS: Thank you everyone. As  
2 the Village Attorney I have requested that  
3 the Mayor and the Village Council meet in a  
4 shade session regarding the defense of this  
5 legal action entitled Shore at Palmetto Bay,  
6 LLC, versus the Village of Palmetto Bay,  
7 under appellate court case number 12-029,  
8 Florida Eleventh Judicial Circuit. It's  
9 regarding a Village zoning resolution number  
10 2011-85.

11 I am seeking advice from the Village  
12 Council regarding the litigation strategy  
13 and/or settlement.

14 It's now 6:06 p.m., on Monday, December  
15 17th, and ordinarily I go around the room  
16 and have everyone introduce themselves for  
17 the record and we'll do that in a minute.

18 At this shade session which is being  
19 held at 9705 East Hibiscus Street, first  
20 floor conference room, the certified court  
21 reporter will take down everything that  
22 everyone says. The only problem with that  
23 is, two people cannot speak at the same  
24 time, obviously, because then the court  
25 reporter cannot take down what's being said.

1           The only topic of conversation that can  
2 be held today is relating to the litigation  
3 strategy and/or settlement of the Shores  
4 case, no other matter can be discussed.  
5 These meetings are confidential until the  
6 end of the litigation, so what is said here  
7 is to remain here and that's also covered by  
8 ethical rules as well.

9           Now, I will start. Again, the  
10 transcript will be made available at the end  
11 of the litigation.

12           MS. BOUTSIS: I am Eve Boutsis, I am  
13 the Village Attorney.

14           MS. STANCZYK: Shelley Stanczyk, Mayor.

15           MR. SCHAFFER: Tim Schaffer, Council  
16 member.

17           MS. LINDSAY: Joan Lindsay,  
18 councilwoman.

19           MR. DUBOIS: John DuBois, Vice Mayor.

20           MR. FIORE: Patrick Fiore, Council  
21 member.

22           MR. WILLIAMS: Ron Williams, Village  
23 Manager.

24           MS. BOUTSIS: Thank you everyone for  
25 coming today. The reason for this shade

1 session, and we were supposed to hold it  
2 last week, was J.C. Bermudez who is one of  
3 the attorneys working for the Shores of  
4 Palmetto Bay and the property owner  
5 Mr. Rosen told me that he would like to  
6 present a settlement offer.

7 That offer had not been presented in  
8 time for our last shade session so I had  
9 canceled it. I rescheduled it for today and  
10 on Friday as you know I did receive the  
11 settlement offer, which I did forward to  
12 everyone on Friday.

13 Did everyone receive it?

14 MR. SCHAFFER: No. My e-mails are an  
15 issue. No incoming e-mails.

16 MS. BOUTSIS: I'll read it into the  
17 record. I am going to make the analysis  
18 background history real short and simple  
19 even though I know that I met with our new  
20 Vice Mayor and I met with our new council  
21 person and gone over this matter, but just  
22 to make the record clear tonight.

23 This was a zoning application that  
24 required to go to a public hearing because  
25 of the charter school portion of the

1 application. If there had been no charter  
2 school it would have just been an  
3 administrative review of the mixed-use  
4 project.

5 The applicant did not have the site  
6 specific charter and that was one of the  
7 requirements for the application. To be  
8 fair, if they had had the charter, this  
9 council would have had to approve the  
10 application.

11 And I want to make that clear, there is  
12 a traffic exemption because of enterprise  
13 zone and the criteria that was laid out, and  
14 based upon state laws they would have had to  
15 approve the application, but they didn't  
16 have a complete application, there was a  
17 technical deficiency.

18 The applicant came to one hearing,  
19 asked for a deferral so that they could get  
20 the charter and that request was granted and  
21 when they came back for the hearing about 45  
22 days later it was right before Christmas of  
23 last year, they did not have the charter.  
24 And so it was the decision of the Council at  
25 the time to deny the application based on a

1 technical deficiency.

2 What did that mean. That meant that  
3 they can come back in six months with the  
4 charter, under our rules, and the hearing  
5 would have had to have been granted and they  
6 never did that.

7 I have talked to Mr. Rosen about that,  
8 about why are we here on appeal because all  
9 you had to do was come back. You have your  
10 charter now, it would be granted, this  
11 Council would not have a choice. He has  
12 chosen not to do so. And his counsel has  
13 given us two choices. The letter is dated  
14 December 14th in their outline here.

15 Let me explain one thing before I start  
16 reading the letter. The original  
17 application that was before the Village  
18 Council had predominantly in the back  
19 portion of the five acre parcel a school.  
20 There was some mixed-use as far as the  
21 sharing of the parking and then structure in  
22 the front that had some residential and  
23 commercial units. There were 30, I think it  
24 was 33 or 34 residential units. I want to  
25 make that clear because one thing in our

1 comprehensive plan it talked about if you  
2 separate the uses you could only use that  
3 portion of the property that was containing  
4 that mixed-use of residential/commercial.

5 So what did that mean, that they were  
6 only entitled to, because they were only  
7 using two acres, for the mixed-use project  
8 then, it was about the 33 or, I don't  
9 remember the exact number, units that were  
10 allowed.

11 Now, if the property owner actually did  
12 mixed-use throughout the entire five acres,  
13 meaning not keeping the school separate, he  
14 could build up to 90 units. It's a function  
15 of how it's spread out across the parcel.

16 So the offer is as follows. There are  
17 two. "After discussion with my client we  
18 would be willing to move forward on  
19 resolving all of the issues under the  
20 following terms. Approval of the 1,400 seat  
21 charter school site. Approval of a maximum  
22 of 92 residential units and payment of  
23 330,000 in costs. We believe that this plan  
24 and proposal is consistent with the areas  
25 designated Village's master plan and as

1 approved by the DCC, Department of  
2 Community" basically the Department of  
3 Community Affairs. "And consistent with the  
4 intent of reducing density closer to  
5 residential areas while meeting state  
6 requirements in your code.

7 It's our opinion that the planner's  
8 present position of limiting the number of  
9 units to 38 is inconsistent with the  
10 designations given to the site by the state.  
11 The former Mayor Eugene Flinn who was  
12 directly involved in the process when the  
13 designation was approved, will verify that  
14 the intent and legislative history will  
15 clearly reflect that the designation given  
16 to this parcel is consistent with our  
17 interpretation of 92 residential units being  
18 permissible."

19 You may want to go ahead and call him.  
20 "It's our opinion that the above offer is  
21 reflective of what would be the best  
22 interest of the Village.

23 However, in an effort to provide you  
24 additional options for resolution, my client  
25 has authorized me to offer two other

1 alternative options for resolution as this  
2 time. They are as follows. A. Immediately  
3 approve the 1,400 charter school and  
4 accompanying site plan which include the  
5 proper parking requirements and would be  
6 consistent with your code and the Village's  
7 payment of the aforementioned cost of  
8 \$330,000. My client would be served the  
9 right to reapply for the mixed-use portion  
10 of this plan, including the 92 residential  
11 units at a later date.

12 B. Purchase the complete parcel by the  
13 Village at a cost of five-million dollars  
14 plus payment of the aforementioned cost."

15 Now, so to be clear, what he is talking  
16 about the 92 units. According to our  
17 planning department, it's really 90 units,  
18 it's 5.02 acres. And according to their  
19 math, if they use the entire site and didn't  
20 mix-use incorporating the entire site they  
21 can get 90 units. So that's not outside the  
22 realm of possibility, as long as we  
23 understand that it would have to be  
24 throughout the parcel.

25 MS. STANCZYK: They failed to provide

1 the site plan.

2 MS. BOUTSIS: There is no site plan  
3 attached.

4 MS. STANCZYK: There is no site plan  
5 that shows the use of the entire site.

6 MS. BOUTSIS: Now, if we were to do a  
7 settlement it would have to be -- again, and  
8 they want the school with that, so it would  
9 have to come to a public hearing and have to  
10 be administratively reviewed and the  
11 settlement would be commissioned upon using  
12 the entire five acres.

13 MR. DUBOIS: Why would the site plan be  
14 relevant once we have established the size  
15 of the property and zoning for it?

16 MS. BOUTSIS: The zoning says, it  
17 defines how the mixed-use is to be  
18 disbursed, so that's why you would need the  
19 site plan at the hearing, but not  
20 necessarily for a settlement.

21 MR. DUBOIS: Let me ask a few  
22 questions. You mentioned that the 34  
23 residential units which you initially said  
24 was restriction based on two acres out of  
25 the five acres, does that mean that

1 initially he or the developer arbitrarily or  
2 the intended site plan divided it into two  
3 or three acres or where does the two acre  
4 concept come from?

5 MS. BOUTSIS: The answer is yes, he  
6 did. He actually had an imaginary line  
7 across the property saying three acres, two  
8 acres, school here, mixed-use here. He then  
9 tweaked it a little bit and tried to do the  
10 parking in the middle so that he can share  
11 the parking, but yes, he did.

12 MR. WILLIAMS: Just to be clear, I  
13 think that number is 38.

14 MS. BOUTSIS: He has 38 in here. When  
15 I talked to Darby earlier it was about 34.

16 MS. LINDSAY: Back to the 38, if I may.  
17 On the two acres the code says you can have  
18 18 units per acre, which would make it 36,  
19 but I believe there were two additional  
20 units granted. If they did use certain  
21 building code standards they could have a  
22 couple of extra units.

23 MR. DUBOIS: What I am understanding  
24 based on what was just said, the two acre  
25 issue is irrelevant, it was an imaginary

1 line.

2 MS. BOUTSIS: Although it is an  
3 imaginary line, he would -- okay, the way  
4 that the code is written from the  
5 comprehensive plan, it talks about that if  
6 you have a separation of uses then that area  
7 would be excluded. He was segregating the  
8 property ---

9 MR. DUBOIS: So is it the Village's  
10 position that there must be a separation on  
11 the property?

12 MR. WILLIAM: No.

13 MS. BOUTSIS: No, what there must be is  
14 integration. You can't just have a school  
15 on three acres and two acres of mixed-use  
16 and get 92 units. If you want the 92 units  
17 for the five acres it has to be the  
18 residential components of the five acres,  
19 that's the Village's position.

20 MR. DUBOIS: That means they have to be  
21 spread out throughout the five acres or it  
22 has to be designated?

23 MS. BOUTSIS: It has to be spread out.

24 MR. DUBOIS: Which would not be  
25 possible with a charter school in there?

1 MS. BOUTSIS: I don't know why not.  
2 They are actually using the mixed-use  
3 facility for their parking for the charter  
4 school. There could be a way of doing it.

5 MR. DUBOIS: So what you are saying is,  
6 conceivably they can present a site plan  
7 that shows 90 or 92, whatever the number is,  
8 residential units, along with a charter  
9 school, be compliant with mixed-use and the  
10 council would have no choice but to approve  
11 it if it's compliant with the zoning?

12 MS. BOUTSIS: Once they go to the  
13 public hearing, yes. At the public hearing  
14 there is provisions and state law that says  
15 you can't put more onerous conditions on  
16 them.

17 MR. DUBOIS: So other than asking for  
18 \$300,000 from us as a settlement, what's the  
19 point of going to court rather than  
20 resubmitting?

21 MS. BOUTSIS: I don't have a good  
22 answer for you in that because I have asked  
23 that exact question.

24 MR. DUBOIS: To the attorney?

25 MS. BOUTSIS: To the attorney and to

1 Mr. Rosen, because Mr. Williams was present,  
2 we had a settlement conference with him and  
3 he does not want to go back to the hearing.

4 MR. DUBOIS: Isn't it true that at the  
5 second hearing he did not have the charter  
6 school certificate and therefore the council  
7 couldn't approve?

8 MS. STANCZYK: He said at the first  
9 hearing that if he didn't have it we could  
10 deny it. That was his choice.

11 MS. BOUTSIS: Ultimately he did not  
12 have the charter. There was a delay in  
13 getting the charter for the site and ---

14 MR. DUBOIS: Does he believe that the  
15 Village acted in bad faith by not giving him  
16 another week to produce that, or a month or  
17 whatever. What was the real issue?

18 MS. BOUTSIS: There was resentment, but  
19 he didn't give me the real reason for the  
20 resentment. He does not have a trust of the  
21 past Council.

22 MR. DUBOIS: Has he made an attempt to  
23 justify the \$300,000 that he is asking for?

24 MS. BOUTSIS: No.

25 MR. WILLIAMS: I believe just by

1 memory, Eve, your memory may be better than  
2 mine, I think the number was in the two-ish  
3 range before or not defined.

4 MS. BOUTSIS: About three months ago  
5 when we last talked to him he was saying  
6 about two hundred thousand dollars and all  
7 of his legal costs, not just the appeal, but  
8 all of the legal costs associated with the  
9 property. Then he said that he would get us  
10 another number. He never gave us a  
11 breakdown down of the 330,000.

12 MS. SCHAFER: Question. October and  
13 December of 2011, we approved everything?  
14 October we approved of - we approved  
15 everything contingent on him getting ---

16 MS. BOUTSIS: No, we didn't approve  
17 anything. All we did was deferred.

18 MR. SCHAFFER: We deferred.

19 MS. BOUTSIS: Based upon the  
20 applicant's request.

21 MR. SCHAFFER: And the only thing  
22 missing out of that request was the charter  
23 for this specific site.

24 MS. BOUTSIS: There were two other  
25 minor things, but they wouldn't have stopped

1 it, it was the charter.

2 MR. SCHAFFER: Because back in December  
3 with the hopes of having the Miami-Dade  
4 County Public Schools giving him this site  
5 specific charter?

6 MS. BOUTSIS: Yes.

7 MR. SCHAFFER: It wasn't there?

8 MS. BOUTSIS: Correct.

9 MR. SCHAFFER: We at that point said  
10 the application was --

11 MS. BOUTSIS: Denied, without prejudice  
12 come back in six months.

13 MR. SCHAFFER: Because it was  
14 incomplete and he would have to reapply.

15 Does he have to go through the entire  
16 application process in six months or was it  
17 just come back with the site specific?

18 MS. BOUTSIS: Because it was a denial  
19 he would have actually had to pay the fee,  
20 but the review would have been nothing  
21 really because it would have been the same  
22 site plan and the analysis was done.

23 MR. SCHAFFER: At that point he figured  
24 it was best to take this to court. And I  
25 noticed throughout, and I read it several

1 times, that he talked about equitable, and  
2 he is saying that we were not following the  
3 state statute of July 11th of 2011 when they  
4 come out with all of the rules and  
5 regulations of the charter schools.

6 MS. BOUTSIS: What he is trying to  
7 argue is preemption. The language of  
8 preemption is under state law preemption, it  
9 has to be very clear. You are preempted, no  
10 municipality and no county can do anything  
11 different from what we tell you. That  
12 language is not in the state statute. There  
13 is some restrictive language in the state  
14 law that basically says, you can't be more  
15 onerous to them, you have to allow it in  
16 churches, you have to allow it in old school  
17 buildings and auditoriums.

18 MR. DUBOIS: What is it in his argument  
19 that constitutes more onerous conditions  
20 than anybody else would have?

21 MS. BOUTSIS: None.

22 MS. STANCZYK: We offered him, just to  
23 be clear when he came to the first hearing,  
24 I offered him additional time than what he  
25 got. He specifically requested that amount

1 of time.

2 I wanted to offer him four months. Six  
3 was with the denial, so it was a little bit  
4 more than what I offered him, because I  
5 figured, give him a cushion. He had two  
6 conditions that he had to fulfill, minor but  
7 still had to do the work. He had to get the  
8 charter, and I figured four months in my  
9 mind was sufficient time as a cushion.

10 MR. DUBOIS: He is a business guy, time  
11 is money, so it was understandable that he'd  
12 want to expedite it. He obviously  
13 underestimated the time it would take to get  
14 his charter certificate.

15 MR. SCHAFFER: In the December hearing  
16 he had the appointment with Miami-Dade  
17 County Public schools and they postponed it  
18 on them and he got stuck coming here without  
19 it, which led him to the denial.

20 MS. STANCZYK: He could have asked for  
21 a postponement.

22 MR. DUBOIS: Did he ask for a  
23 postponement?

24 MS. STANCZYK: No.

25 MS. BOUTSIS: No, he didn't.

1 MS. LINDSAY: And one of the things  
2 that I want to make clear is that when he  
3 was here before us we were working with the  
4 38 residential unit number, now it's 92.

5 MR. DUBOIS: Just in the lawsuit?

6 MS. LINDSAY: Just from the time that  
7 he appeared before, those two times and the  
8 lawsuit, yes, we have gone from 38 to 92 and  
9 now the \$330,000 in costs.

10 MR. DUBOIS: My opinion is, it's a  
11 negotiating position obviously, he is  
12 putting the biggest gun that he can to our  
13 head.

14 I don't know if you want to discuss  
15 opinions here, but ---

16 MS. BOUTSIS: This is where you get to  
17 do it.

18 MS. DUBOIS: You know my position in  
19 terms of, we are not buying that thing for  
20 five million if I have anything to say about  
21 it, for any price, that's just not my thing.  
22 We are here to decrease leverage not  
23 increase leverage on the balance sheet.

24 Number two, is 300,000 is ridiculous.  
25 Unless he can justify why he is entitled to

1           it legally, I don't think that we should be  
2           entertaining that discussion.

3           If everybody is in agreement that there  
4           is nothing that we can do as a Council to  
5           deny whatever it is the staff thinks that he  
6           is entitled to, I am okay getting to  
7           whatever that is, whatever the staff  
8           recommendation is that they are entitled to  
9           legally and then deciding if we want to  
10          present that as our settlement offer.

11          MS. BOUTSIS: Just so we understand. I  
12          can go back to them and say, the attorney  
13          fees, you don't have a right to that. They  
14          have not filed what is called the 57105  
15          action which means we acted frivolous.

16          MR. DUBOIS: We are in negotiations, I  
17          wouldn't use the word entitled. I would  
18          say, the Council is not entertaining,  
19          period.

20          MS. BOUTSIS: And as far as the number  
21          of units, the only application that we have  
22          is the original one which is 38. If he  
23          wants to do the 92, he has to come back, do  
24          the review, do the application and go to the  
25          hearing.

1                   Theoretically, let's say that he can  
2                   get 92, because as I told you, as long as  
3                   it's disbursed he could theoretically get  
4                   it, but the site plan has to be shown to the  
5                   Staff to make sure that it meets the  
6                   criteria.

7                   MR. DUBOIS: He asked for 38 or 34  
8                   initially?

9                   MS. BOUTSIS: Yes.

10                  MS. LINDSAY: Yes. In the very  
11                  beginning he asked for more.

12                  MS. BOUTSIS: And it was reduced  
13                  because of the staff analysis.

14                  MS. LINDSAY: He asked for the ninety  
15                  plus originally and when they determined  
16                  that he was only putting the residential  
17                  component on the two acres they said that's  
18                  not going to work. The code says 18 units  
19                  per acre.

20                  MR. DUBOIS: Did they ever present the  
21                  position that 36 or 38 or 34 was acceptable  
22                  to them?

23                  MS. BOUTSIS: They moved forward with  
24                  it at the hearing. That was there actual  
25                  application before the Council, and on their

1 appeal and everything else they have not  
2 raised the 38.

3 MR. DUBOIS: So if we go back and said  
4 hypothetically we are okay with whatever the  
5 number is per your application, could that  
6 be a settlement without having to go through  
7 hearing again?

8 MS. STANCZYK: No, that's contract  
9 zoning. He can go to court and win, he has  
10 a hearing. He can go to court and lose, he  
11 has a hearing.

12 MS. BOUTSIS: I need to tweak that a  
13 little bit. If he wins and they say the  
14 only way that you can do this is the county,  
15 there is no hearing process, then there is  
16 no hearing he gets the plan. Effectively  
17 approved through staff.

18 If we win, it's already effectively  
19 approved by Staff but we go to the hearing.

20 MR. DUBOIS: So we can't in the  
21 settlement say, it's effectively approved by  
22 the staff?

23 MS. BOUTSIS: No, the only reason is  
24 because there is something called contract  
25 zoning and we can't agree to zone outside of

1 the public forum judicial process.

2 MR. SCHAFFER: I remember first hearing  
3 about this, I believe the first initial  
4 units was 108.

5 MS. BOUTSIS: That wasn't an  
6 application, he was presenting to the  
7 community of what he would like to see.

8 MR. SCHAFFER: I remember it was. Then  
9 obviously there has been multiple changes  
10 through zoning and everything else.

11 When he came in he came in with 38 and  
12 a charter school, that's his original  
13 application.

14 MS. BOUTSIS: That's his application  
15 that went before the Council.

16 MR. SCHAFFER: That's what the  
17 application was and we approved -- our  
18 zoning said ---

19 MS. BOUTSIS: Gave a recommendation for  
20 approval based upon certain -- to be fair,  
21 what exactly zoning did, they said, we are  
22 missing A, B and C, two little traffic parts  
23 and the charter. You can deny, you can  
24 approve with recommendation that they have a  
25 certain amount of time to get it or you can

1                   defer. That's what the recommendation of  
2                   the staff was.

3                   MR. SCHAFFER: Right.

4                   MS. BOUTSIS: But based upon the  
5                   criteria, other than the site specific  
6                   charter they had met everything.

7                   MS. SCHAFFER: So if he had the site  
8                   specific charter in October of 2011 ---

9                   MS. BOUTSIS: And if the Council had  
10                  said no, you would be appealed and you would  
11                  lose you had to approve it.

12                  MR. SCHAFFER: So it would have been  
13                  approved. He didn't have the site specific,  
14                  he comes back, nothing changed in December,  
15                  it was exactly the same except without the  
16                  site specific Miami-Dade County Charter?

17                  MS. BOUTSIS: Correct.

18                  MR. SCHAFFER: So the first time that  
19                  we see, and I am clarifying, the first time  
20                  that we've seen and heard about 92 is in  
21                  this offer?

22                  MS. BOUTSIS: No, there have been  
23                  several offers over the past.

24                  MR. STANCZYK: Offer of settlement.

25                  MS. BOUTSIS: As part of the settlement

1 negotiations the units have come up, and at  
2 some point he wanted actually 300 and that  
3 would have required a comprehensive plan  
4 change, with approved zoning change, that  
5 would have been contract zoning to the T.  
6 That's something that you could have done in  
7 a settlement but it would have been very  
8 difficult to get to because if challenged we  
9 would have had to fight against a contract  
10 zoning case.

11 MR. DUBOIS: Can we go over what our  
12 possible settlement options are, because I  
13 think what you said is we don't, as the  
14 Council in this session in the settlement  
15 agreement have the ability to give him  
16 anything, really. We cannot say to him,  
17 your initial application that you filed now  
18 that you are late with your certificate, we  
19 are granting it. We can't even do that if  
20 this were under Sunshine.

21 MS. BOUTSIS: That is correct.

22 MR. DUBOIS: Therefore, if we want a  
23 hearing, the only thing we can respond in  
24 the settlement offer is, you need to go and  
25 apply for hearing. We can't even tell them

1                   how we would vote in a zoning meeting when  
2                   it came up, so the only thing that we can do  
3                   is say, we cannot settle this, right?

4                   MS. BOUTSIS: It would be a conditional  
5                   settlement. If it is granted at the hearing  
6                   it would expedite the hearing for you, and  
7                   if it is granted the lawsuit goes away. If  
8                   it is not granted you reserve the rights in  
9                   the lawsuits.

10                  MS. DUBOIS: And that's what we need to  
11                  talk about, what can we talk about from a  
12                  settlement point of view, right?

13                  MS. BOUTSIS: Right. And it's  
14                  basically, do you want to allow him to go  
15                  back as soon as possible to get to hearing  
16                  for the original application, or does he  
17                  want to submit a substitute application,  
18                  waive the fee, let him substitute the  
19                  application and if it meets the criteria go  
20                  to a hearing.

21                  MS. SCHAFFER: Back with the 92 like he  
22                  is asking for?

23                  MS. BOUTSIS: Right.

24                  MR. SCHAFFER: He's got to meet the  
25                  zoning for the 92 which you said you can't

1 do the split down the middle with the  
2 imaginary line, it's got to be integrated, a  
3 whole type of situation has got to work.

4 We have never seen a plan like that at  
5 this stage of the game?

6 MS. BOUTSIS: No, we have not.

7 MR. SCHAFFER: And zoning has never  
8 seen that plan, we are only saying what it  
9 has to look like, we have never seen it?

10 MS. BOUTSIS: Just to be clear, the  
11 only site plan in our possession is the  
12 original one.

13 MR. SCHAFFER: From that standpoint,  
14 going back and saying, if you want your  
15 1,400, and again this is an opinion, if you  
16 want your 1,400 charter school, we have to  
17 give that to him. If he wants 92 units, as  
18 long as he designs it out the way that it  
19 meets zoning, we really can't get around  
20 that, I mean if it's designed correctly.  
21 And if you want to waive the fee, that's a  
22 choice, we can waive the fee, but the 330,  
23 no, 330,000 doesn't make any sense.

24 MS. BOUTSIS: I think that we have a  
25 consensus.

1 MR. DUBOIS: 330 off the table. The  
2 five million is off the table as well.

3 MS. BOUTSIS: Let's talk about the  
4 third option. The third option was we just  
5 approve the site plan for the charter  
6 school. And again, it comes down to a  
7 zoning issue because that's supposed to be a  
8 mixed-use site, and just authorizing the  
9 charter school would not meet the zoning  
10 definition.

11 MS. STANCZYK: In his application he is  
12 asking to come back later with an  
13 application for ---

14 MS. BOUTSIS: We don't know what.

15 MS. STANCZYK: You are giving him a  
16 foot in the door and you don't know what's  
17 coming later.

18 MR. SCHAFFER: Throw that out at me  
19 again, I didn't see the third option.

20 MS. BOUTSIS: Just approve the charter  
21 school and we'll come back at a later date  
22 with the mixed-use project.

23 MR. WILLIAMS: He just asked to reserve  
24 the right.

25 MS. BOUTSIS: The point is, you are

1                   supposed to be approving under the rules for  
2                   that zoning district a mixed-use project.

3                   MR. DUBOIS: That's simplistic anyway,  
4                   that's not something that we can promise and  
5                   make an agreement.

6                   MR. SCHAFFER: My question is, why  
7                   would he want to come back if he -- if he is  
8                   going to have come to us with the 92 anyhow,  
9                   why would he want to do the charter and the  
10                  92 later?

11                  MS. STANCZYK: Because the charter has  
12                  certain deadlines that you have to meet. It  
13                  is convoluted, what he is saying is, give me  
14                  the charter school because I can meet my  
15                  deadline and start making money and we can  
16                  talk about the rest later. And we have  
17                  rules and the law says, it is a mixed-use  
18                  zone, we can't give him just the school.

19                  MR. SCHAFFER: That's understandable.

20                  MS. BOUTSIS: Very nice synopsis. So I  
21                  hear you saying we are not entertaining the  
22                  legal fees aspect and I can recommend a  
23                  hearing as soon as possible with the  
24                  settlement understanding that if it's  
25                  approved litigation goes away, if it's not

1 approved you reserve your rights to continue  
2 litigation.

3 MS. STANCZYK: And that he fulfills all  
4 the responsibilities of the application. So  
5 far we have no site plan submitted to zoning  
6 on the 92.

7 MR. WILLIAMS: He has to make his  
8 application.

9 MS. STANCZYK: I want that included  
10 because he seems to think that he can show  
11 up without his stuff and it's okay. And we  
12 want to make sure in a nice way that it's  
13 included in the phrasing so that he  
14 understands everything has to be included.

15 It's not a settlement and removal of  
16 responsibility.

17 MR. DUBOIS: Let's be specific on  
18 what's missing that we need to have so it's  
19 not loosey-goosey.

20 MS. SCHAFFER: Does anybody know if he  
21 has a site plan yet? Do you know if he  
22 ultimately got Miami-Dade County Public  
23 Schools to give him the site for the  
24 charter?

25 MS. BOUTSIS: The charter he has.

1 MR. SCHAFFER: He got that, so that's  
2 one piece.

3 MS. BOUTSIS: I haven't seen it but it  
4 went in January, February last year.

5 MR. DUBOIS: I would also add in the  
6 letter, the settlement letter, that we don't  
7 have the authority to unilaterally grant any  
8 of his requests because they are dependant  
9 on a zoning hearing legally, so therefore we  
10 cannot grant a settlement and he must  
11 proceed with a zoning hearing if he wants to  
12 move the ball forward.

13 MS. BOUTSIS: We are talking about  
14 cooperation in trying to get the hearing  
15 quickly and giving him the option of either  
16 going forward with the original application  
17 or his modified application if he meets the  
18 92.

19 Is there a concession on waiving that  
20 fee, because it's part of the settlement?

21 MS. STANCZYK: How much?

22 MS. BOUTSIS: I think the fee is like  
23 \$1,500.

24 MS. STANCZYK: \$1,500 including all of  
25 the staff time and advertising or is that

1 just advertising?

2 MS. BOUTSIS: The \$1,500 is the fee for  
3 the application itself. It's supposed to  
4 cover the staff time.

5 MS. STANCZYK: He's got to pay for  
6 advertising.

7 MR. WILLIAMS: I don't think that it  
8 includes advertising. We can verify.

9 MS. BOUTSIS: It doesn't.

10 MR. DUBOIS: Since it's a quick review  
11 of the same thing based on what you said  
12 earlier, I don't have a problem with a  
13 reduced fee or waiving it. I think it would  
14 be a little bit of a stick in the eye to  
15 tell him, it's \$1,500 again. Not that it's  
16 a lot of money for him in this situation,  
17 but it's the principal I think.

18 MS. STANCZYK: Is \$1,500 for the new  
19 application or ---

20 MS. BOUTSIS: For the new application.  
21 I mean, if we are trying to talk settlement  
22 here, I am trying to see across the board if  
23 this would be a concession that we would be  
24 willing to do for the sake of getting to the  
25 hearing and getting rid of the litigation.

1                   MR. SCHAFFER: If he is willing to walk  
2 away from the \$330,000 claim and versus  
3 1,500, that makes all of the sense in the  
4 world to waive the 1,500 if he is going to  
5 walk away from it.

6                   MS. STANCZYK: That's marginal  
7 thinking.

8                   MR. SCHAFFER: Whatever, even if it's  
9 100, 50, 25,000, any of it is an expense  
10 that we don't want to bear, that's obvious,  
11 but giving a break of 1,500 bucks, \$1,500, I  
12 would think that would be reasonable.

13                   MR. DUBOIS: I agree. And I think the  
14 bigger issue here is, based on what he has  
15 done, this is obviously emotionally charged  
16 instead of business driven, otherwise he  
17 would have submitted his new zoning  
18 application already.

19                   So under the circumstances I don't  
20 think we want irritate him unnecessarily.

21                   MS. LINDSAY: Are we making this  
22 contingent on dropping the lawsuit?

23                   MS. BOUTSIS: What would happen is, it  
24 would be if the application is then granted,  
25 the lawsuit would be immediately dismissed.

1 MS. LINDSAY: We are putting that into  
2 the settlement? And obviously if we did  
3 approve it and he didn't drop it, he  
4 wouldn't be able to get any permits to  
5 proceed based on our new ordinance?

6 MR. DUBOIS: Is that true?

7 MS. LINDSAY: Yes.

8 MR. DUBOIS: You are saying that if he  
9 prevails in court ---

10 MS. LINDSAY: No, I said if we granted  
11 him his application and he continued with  
12 his lawsuit, during the continuation of the  
13 lawsuit he would not be able to pull any  
14 permits to begin his development.

15 MR. DUBOIS: Why?

16 MS. LINDSAY: We have an ordinance.

17 MR. DUBOIS: That has to do with  
18 litigation pending?

19 MR. SCHAFFER: No permits if there is  
20 pending litigation.

21 MS. STANCZYK: What can happen is, you  
22 can say you won, you have got the right to  
23 build something, it appeals and you sue and  
24 you lose the right, you are in trouble.  
25 You've got a problem. If you started the

1 process it can cost you money.

2 MR. DUBOIS: I am not sure that I  
3 understand that but if it's an ordinance  
4 it's an ordinance.

5 MS. BOUTSIS: I think that we have a  
6 consensus.

7 MR. FIORE: I agree with Councilman  
8 Schaffer, give them the 92, give them the  
9 charter school, waive the fee ---

10 MS. STANCZYK: We are not giving  
11 anything.

12 MS. BOUTSIS: We are giving them the  
13 opportunity.

14 MR. FIORE: I concur with the  
15 Councilman Schaffer, the school, the 92,  
16 waiving the fee, because even if he goes to  
17 litigation we have to go into court and  
18 defend, so we are talking another \$100,000.

19 MS. BOUTSIS: Hold on, just to be  
20 clear, the only thing that's pending now is  
21 oral argument.

22 MR. FIORE: Down the road. You are  
23 talking court delays and more legal fees for  
24 the tax payers.

25 MS. BOUTSIS: I have no problem with

1                   that.

2                   MS. LINDSAY: Just to be clear, we are  
3 talking about the 92 units only if they are  
4 disbursed throughout the entire parcel.

5                   MR. DUBOIS: We are not talking units,  
6 period, in this settlement, all we are  
7 asking him to do is resubmit his  
8 application.

9                   MS. STANCZYK: That's my point, we  
10 don't know what his application is.

11                  MR. SCHAFFER: He put in there 92. We  
12 can't give him the 92.

13                  MS. STANCZYK: No Tim, he gave us an  
14 option, he hasn't exercised his option when  
15 we told him we would come together. He  
16 hasn't exercised anything yet.

17                  MR. DUBOIS: We can't put a number on  
18 the settlement agreement, we can't.

19                  MS. BOUTSIS: We can say, if you want  
20 to submit an application for 92 and we'll  
21 reduce the fee and the council will decide  
22 on the dais. Once that decision is made if  
23 it's a yes, your litigation goes away, if  
24 it's a no, you continue to litigate.

25                  MR. DUBOIS: We need to be careful by

1 putting 92 in there if the Council decides  
2 the fair number is 36 or 38 or whatever.

3 MR. WILLIAMS: It has to meet the code.

4 MR. SCHAFFER: By the time it comes out  
5 to us on the dais it's going to be going to  
6 zoning. It's going to be going to zoning.  
7 That means they are going to do all of the  
8 workups to make sure that the land use plan,  
9 the mixed-use, and they are going to come  
10 with a recommendation to us saying, if it  
11 happens to be 92, 92 with a charter school,  
12 here is the layout, here's the picture,  
13 here's the satellite and our recommendation  
14 is to approve based on everything that was  
15 submitted, and if we approve he has to drop  
16 the lawsuit completely.

17 MR. DUBOIS: All I am saying is leave  
18 the numbers out because until our staff  
19 gives us a recommendation after they have  
20 seen the site plan, they can submit it as  
21 part of the application, we don't know what  
22 the number is and if we put 92 and the way  
23 they submitted their site plan is more  
24 restrictive than that based on a staff  
25 recommendation, we may find ourselves in a

1 bind. There is no reason to put the number  
2 in the settlement agreement.

3 MR. SCHAFFER: I thought somebody said  
4 here that 92 when we were talking here that  
5 92 was okay. Am I misinterpreting that?

6 MS. STANCZYK: Nobody said 92 was okay.

7 MR. SCHAFFER: I misinterpreted.

8 MS. BOUTSIS: I said that based  
9 Del Sal's analysis it's 90 and not 92.

10 MR. SCHAFFER: I got you.

11 MR. FIORE: We already have a  
12 preliminary analysis?

13 MS. STANCZYK: No because he has not  
14 submitted a site plan, it's a discussion.

15 MR. FIORE: Yes, I know. You just  
16 stated that Mr. Del Sal has looked at this  
17 and that preliminarily ---

18 MS. BOUTSIS: Preliminarily he believes  
19 it to be about 90.

20 MR. FIORE: Has stated it can go up to  
21 90?

22 MS. BOUTSIS: Correct. I think that  
23 you have given me clear direction. I will  
24 draft a letter, I will circulate it and see  
25 if anybody has any comment and then I will

1 send it out.

2 MR. SCHAFFER: When we get this draft  
3 what are we allowed to do conversation wise  
4 on discussing the draft, only with you?

5 MS. BOUTSIS: Only with me or  
6 Mr. Williams. Do not cross-communicate.

7 MS. STANCZYK: Or anyone outside.

8 MS. BOUTSIS: If it is accepted then I  
9 will draft a settlement agreement that is  
10 basically more in depth, puts this out, it's  
11 at a public meeting that we do that.

12 MR. DUBOIS: Out of curiosity. Why  
13 wouldn't we be allowed to cross-communicate  
14 on shade issues?

15 MS. BOUTSIS: The reason you are  
16 allowed to meet here with a court reporter  
17 is because we are recording it.

18 MR. SCHAFFER: For public record?

19 MS. BOUTSIS: Yes.

20 MR. WILLIAMS: Let's be clear, it's  
21 important, because once Eve puts her draft  
22 together you all won't get a chance to  
23 discuss, debate, that's why I am saying it.  
24 If she is receiving individual no, that's  
25 not what I said kind of comments ---

1 MS. BOUTSIS: If I start getting  
2 comments of no, that's not what I meant,  
3 then I would have to schedule another shade  
4 session to get it clarified.

5 MR. SCHAFFER: Let's move along with  
6 this.

7 MS. BOUTSIS: Just so we are clear, my  
8 understanding is I am going to list what we  
9 would need, whether it be the site plan and  
10 any traffic studies if it's affected by the  
11 numbers, the site specific charter. Explain  
12 to the Mr. Rosen and the appellate that we  
13 do not have the authority as a Village  
14 Council to waive the zoning requirements,  
15 but that we would expedite based on the  
16 zoning hearing. If it is an approval of  
17 whatever application is before us, the  
18 litigation goes away. If it's a denial, he  
19 continues to litigate the underlying  
20 appellate litigation. And of course we are  
21 not entertaining the concept of paying  
22 attorney's fees. We would be willing to  
23 either reduce or waive the fee associated  
24 with any modified site plan.

25 Do I have the basics?

1 MR. WILLIAMS: Let's get it clear on  
2 waiving or reducing because I don't really  
3 want to get into trying to track staff time.  
4 Are we waiving or reducing?

5 MS. STANCZYK: Waiving.

6 MR. SCHAFFER: Quick question. What is  
7 the timeframe that we can expect this from  
8 you?

9 MS. BOUTSIS: I am usually pretty good  
10 on the turnaround. I'll give you all 24 to  
11 48 hours to give me your comments.

12 MR. DUBOIS: If there is any  
13 discrepancy on what we thought we said, I  
14 presume that you are not going to have the  
15 transcript, but you will have access to the  
16 voice recording?

17 MS. BOUTSIS: I get the transcripts.

18 MR. DUBOIS: That takes a while, that's  
19 why I wanted ---

20 MS. BOUTSIS: I try not to expedite the  
21 court reporter because that's very  
22 expensive, but if it's normal process it's  
23 one-third of the price of what an expedited  
24 is. But I think I have repeated it several  
25 times we are on the same page and we will go

1 from there.

2 MR. SCHAFFER: Would you call me first  
3 since I am having e-mail difficulties.

4 MS. BOUTSIS: Absolutely.

5 MS. STANCZYK: We are sure that we will  
6 ensure in the document that he understands  
7 approval is based on completion of the  
8 application?

9 MS. BOUTSIS: Yes.

10 MR. WILLIAMS: Yes.

11 MS. BOUTSIS: Thank you everyone.

12

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15 (Whereupon, the deposition was  
16 concluded at 7:00 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA :  
 : SS.  
COUNTY OF DADE :

I, ADRIADNA GONZALEZ, Court Reporter,  
Notary Public in and for the State of Florida at  
Large, do hereby certify that I reported the SHADE  
SESSION, in the above-styled cause and that the  
foregoing pages, numbered 1 to 43 inclusive,  
constitute a true and correct transcription of my  
shorthand reporting.

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

WITNESS my hand and official seal in  
the City of Miami, County of Miami-Dade, State of  
Florida this 7th day of January 2013.



*Adriadna Gonzalez*  
\_\_\_\_\_  
Adriadna Gonzalez  
Court Reporter  
Commission # EE041583  
Expires Nov. 29, 2014