

VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
BOARD OF TRUSTEES
REGULAR MEETING
NOVEMBER 15, 2011

A Regular Meeting was held by the Board of Trustees on Tuesday, November 15, 2011 at 7:35 p.m. in the James Harmon Community Center, 44 Main Street.

PRESENT: Mayor Peter Swiderski, Trustee Bruce Jennings, Trustee Jeremiah Quinlan, Village Manager Francis A. Frobels, Village Attorney Marianne Stecich, and Village Clerk Susan Maggiotto.

ABSENT: Trustee Meg Walker, Trustee Nicola Armacost

CITIZENS: Seven (7).

Mayor Swiderski: Both Trustees are traveling.

APPOINTMENT

Mayor Swiderski: We have an appointment of Matthew Seigfried to the Village Arts Commission to fill a term expiring in 2015. We thank him for the service he will render that committee.

APPROVAL OF WARRANTS

On MOTION of Trustee Quinlan, SECONDED by Trustee Jennings with a voice vote of all in favor, the following Warrant was approved:

Multi-Fund No. 36-2011-12 \$ 163,829.65

PUBLIC COMMENTS

John Gonder, 153 James Street: I talked to you last time about the buses. They have been there three weeks. This bus, it has turned to red and now it is blue. It is three weeks, and Mr. Frobels says they are working on it. But I think the attorney did something three years ago that got those two buses out of there.

Village Attorney Stecich: Do not give me the credit.

Mr. Gonder: Well, somebody did something and I hope something is done.

Do the Board of Trustees and Mayor have a priority list on things they want to accomplish? And if they have one, can I get a copy? Mr. Mayor, several months ago, at the Farmers'

Market, I asked you why there was no metal plaque on the Lipchitz statue in front of our Municipal Building. You said I was the second one that asked that question. I was wondering if you have done anything to get a plaque. I think they called it "Heaven and Earth." Maybe you can get the artists commission, which you gave them \$500 seed for some project about a year ago. Maybe they can return the favor and get a plaque for that. I think it really deserves it.

Is Building 52, on the BP property, holding up any cleaning of the PCBs by weeks, months, or years? If so, the Board maybe wants to look at demolishing the building and asking BP for the million bucks. Put it in the Hastings-on-Hudson savings account for the Village.

Which is new with the DEC and deer permit? It is a year. We would have been netting and bolting now.

Do we need more police? Am I safe as I was in the '30s, '40s, '50s, and '60s? I know Chief Bloomer is always over answering your questions on different things. He always talks about overtime, or he wants to put a policeman here. I know you got two for the full force, but I do not think I am as safe as I was 40 years ago. With Graham School, Hastings stuff in the parks, bank robberies and assaults and everything else, maybe we need more police.

Trustee Quinlan: Building 52 is not delaying the cleanup of the waterfront.

Mayor Swiderski: A very good question on priorities. The Comprehensive Plan was to form the basis of our next set of projects. We have to come up with a method for prioritizing that list. While we tackled that earlier, we did not come up with a satisfactory one. There are too few people here in this meeting to raise it, but it is something I want to return to.

On the deer permit, on December 6 I am meeting with the DEC to talk about the permitting process. They finished their deer management plan for the next five years. This is a document that describes allowable methods of deer control and philosophy and approach. They include immuno as an option, but it has a number of restrictions. In talking to them about it, we will figure out if it is something we can manage, or not.

I cannot speak to the police question. It is legitimate. I would argue probably you are far safer. You are right, there was the robbery of the bank. But in terms of assaults and crimes that endanger your personal safety I do not think we have many of those.

Mr. Gonder: I was thinking of school crossings, kids hit, crosswalks.

Mayor Swiderski: But those are not crimes, they are accidents and that is a different question. But if you are asking about crime, the short answer is the police have the stats on that. I am willing to bet that against 40 years ago we are in better shape. Car accidents are probably up, both car-deer hits and impacts on pedestrians and bicyclists.

David Skolnik, 47 Hillside Avenue: You have been talking about replacing lighting. I suggest that you look into doing something with the lighting between Saw Mill and High Street along Farragut Parkway. That is state-controlled. There is some issue about whether the state has jurisdiction or whether the Village could, if you wanted to, do anything with that lighting. I understand the state has indicated they do not have the wherewithal to do anything with that lighting. But if we could allocate some of those initial resources it would be pretty effective, given how dark it gets there at night.

Village Manager Frobel: We can keep that in mind. The responsibility lies with the state for the maintenance of those lights. But perhaps that is food for thought as to whether we should take the initiative and replace the bulbs. It was my understanding it was more than just bulb replacement, though. I thought there were some problems with the fixtures.

Mr. Skolnik: So if it was up to them to do something you are convinced that nothing would happen.

Village Manager Frobel: Right. Repeated phone calls over the past several years have yielded nothing.

Susan Cooper, 378 Warburton Avenue: I want to thank the Board and the Mayor for the decision to hold to the two percent tax cap, in spite of the difficulties that are going to come up in terms of the budget. I was thinking of this ancient symbol: a circular snake, and the tail is in the mouth of the snake. In many cultures, it represents an endless, repetitive cycle that does not allow for any outside knowledge or information to enter into it. I was thinking about this in regard to the repetitive cycle of taxation here in Westchester and probably in New York overall. It was an apt description of what has happened over the years in good economy and bad economy, and how the demands of the public employee and the school employee pension and health care system have distorted the political process and are overwhelming the needs of the citizenry. While many people might feel very insulated from tax increases, there are many in the area who are not insulated at all. I saved this article from *The Enterprise* about a woman who, after the hurricane, is struggling to clean up her home. She is retired, has had many jobs, and does not collect a pension. She lives on \$741 in Social Security payments. I would present her as an example of someone who is definitely not insulated. So with my appreciation comes that.

Roger Schneiber, 104 Overlook Road: I want to comment on the e-mail that was sent out by the Mayor in regard to the two percent property tax cap. You did a good job telling people how it works. You talked about the mandate problem. I am a founding member of an organization called Best for New York that is addressing mandate problems. There are things going on now in our state legislature to relieve mandates. On November 28 our group will sponsor seminar about a program called Let New York Work. It is a common agenda for the common good of New York. It is an interesting organization, a collaboration of different folks throughout the state representing superintendent units, unions, the Business Council, school board associations, farm workers, the Westchester County Association, attorneys, and Unshackle New York to name a few. This is the blunt instrument and we have to deal with it. The sooner we get these mandates into place, the sooner we are going to be able to deal with it. You can find out more at bestfornewyork.org. It is a grassroots organization, and it represents many factors that came together from 15 different school districts throughout Westchester County.

One thing I do want to take exception to in your e-mail. You said you were editorializing. I do not believe that the Village e-mail is a place to have editorials unless you allow others to express their opinion as you have expressed yours. A better place would be a newspaper, a television station, your own blog, through your own e-mail list that you do not get through the Village. I think this is an improper use, and it is not the way we should be doing things. The e-mail blast should be objective information only. This is not the first time this has happened, and I am upset about this. I think the Board should come up with a policy. Maybe you are fine with it, but at least make it public as to how you would like that to be.

VILLAGE MANAGER'S REPORT

Village Manager Frobel: Nothing, Mayor, to add in addition to my weekly report you received.

BOARD DISCUSSION AND COMMENTS

1. Steep Slope Law Modification – Planning Board Recommendations

Village Attorney Stecich: There are two local laws here. There are not significant changes substantively, although the first one will make things a lot easier on residents. The way the code is written now, if anybody is doing any work on a property that contains a steep slope you have to come in for a steep slope permit, even though the work you are doing may not affect the steep slope at all. Let us say you have a big piece of property and you have a steep slope in the back corner. In the front you are doing some work, and there is no way it is going to affect that steep slope. You still have to come in for a steep slope permit.

Proposed local law number 10 attempts to remedy that. Section 1 makes more precise the definition of slope. It does not change anything. Section 2 before read any lot that contains a steep slope shall be subject to the provisions of his chapter. Instead, it would say any construction development, paving, re-grading, or stripping of vegetation that might affect or create a steep slope requires steep slope approval granted in accordance with this chapter. The other changes are made to implement that. There is one other small change in Section 5 that one of the Planning Board members wanted added. On the submissions they ask that the topography be colored to indicate different things. There are very steep slopes and just steep slopes. This law comes from the Planning Board mainly because there had been a couple of applications before the Planning Board that were really wasteful. The concern is not so much the waste of the Planning Board members' time, although there is some weight to that. But it is for the applicants, and they have to wait before they can get their building permits.

This is not to say that you have to get a permit only if the construction is on the steep slope, but if it could affect the steep slope. If you are doing a big construction project at the front property, and you have a steep slope in the back, conceivably it could affect the runoff. So that is a judgment call the Building Inspector is going to have to make whether it would affect it. I am confident that if there any possibility that it would affect the steep slope it would be sent to the Planning Board.

Proposed local law number 11 is a small change related to steep slopes. There is a limitation on the pitch of a driveway. Any new driveway cannot be greater than 15 percent, but the Planning Board can waive that, or permit it, up to 20 percent. But the way the code reads, the Planning Board in approving a site plan shall have the discretion to allow a grade as steep as, but no steeper, than 20 percent. The problem with this, and I do not know how that language ever got in there, is that the Planning Board does not have site plan approval authority over one-family houses. One-family houses do not have to come in.

The way the Building Department has been handling these cases, and there is not a lot of them but they do come up periodically, is they are sent to the Zoning Board for a variance from it. But it makes more sense for the Planning Board to decide things like grade. So the second local law would just take out the language "in approving a site plan." This change also would make things easier for property owners, because it is very possible that if you have a driveway that has that steep a grade that you have also got a steep slope application. Then the Planning Board would be able to do everything at once. You would not have to go to the Planning Board and the Zoning Board.

I think they are not controversial, and my recommendation would be to call for a public hearing on them at the next meeting.

Mayor Swiderski: Any modification in the law that reduces the burden on people who should not be affected makes sense to me.

Trustee Quinlan: We are taking out approving a site plan. So why, before, were they sending it to Zoning Board for a variance?

Village Attorney Stecich: Because this establishes a maximum grade of 15 percent. Let us say somebody was coming in for 20 percent and they have a single-family house. To get a variance from that they have to go to the Zoning Board. The Planning Board cannot give it because it says the Planning Board in approving a site plan.

Trustee Quinlan: It makes more sense. I was on the Zoning Board for 10 years, and I never had this come up.

Village Attorney Stecich: No. But interestingly, within the last couple of months, there have been two of these cases.

Trustee Jennings: The old language said you have to get a permit if you have a steep slope or you are going to create one. Adding the notion of might affect a steep slope is adding a new thing, perhaps substantive, to the regulatory regime. It is not just a matter of convenience, or process. It might be affecting the actual standard. You said that the Building Inspector would have some discretion, but is it possible to give more detail in terms of what we mean by "affect"? Drainage and water runoff is one consideration, but I do not understand what the Planning Board looks at. The words "might affect" and not "will affect" seem a little vague. Are we putting too much burden on the Building Inspector?

Village Attorney Stecich: There was a lot of discussion about that. In fact, that is the heart of the change. It was an issue that I specifically raised before the Planning Board. I said that now it is the Building Inspector who is going to make this determination, and we might not always have Deven, who is very good at this stuff. So that weighed against the Board having to review applications for building permits for something that absolutely would not have an effect on the steep slope. I would not put in "will affect" because it might not. You do not know whether something is going to affect the steep slope until the studies are done.

Trustee Jennings: So if the Building Inspector looks at the property and makes a judgment that it probably will not affect the steep slope, then no engineering studies have to be done because it would not be necessary.

Village Attorney Stecich: Let me give you an example, the most recent one. Somebody came in and it was not a huge lot, but on the back of the lot there was a steep slope. They were replacing the deck in the same spot. They needed to get a building permit, and they had to get steep slope approval even though they were just replacing exactly what was there.

Trustee Jennings: The Planning Board surely could have looked at the replacement deck and said you have got approval, just as Deven will.

Village Attorney Stecich: Which essentially they did. But you have to put in an application, and the application requirements are not insignificant. The person came in and asked if they would waive those requirements. You have got to put in a detailed site plan with the location of everything on the lot, the location of the proposed area of disturbance, a topographical survey, a statement by an engineer. It is that plus losing a month.

Trustee Jennings: Yes, but Deven will not have any of that because the whole point is that they do not have to file that stuff. So what is Deven going to have? He is just going to go out and visit the site and look at it, right? If that is enough for the Building Inspector, I do not have a problem with it. I just do not want to put him in a position to have to make a judgment without the necessary information. If the Planning Board thought they needed that information in order to make their determination, I do not understand why the Building Inspector can make it without all of that information. I am a little confused.

Village Attorney Stecich: The Planning Board did not need all that information to make their determination, but the law required it. They had no choice. You could not get steep slope approval until you submitted all that stuff. It is burdensome.

Village Manager Frobel: You will find that a Building Inspector will have the skills and the training that would require him to ask the homeowner for sufficient information to make an informed decision. I have that confidence regardless of the person.

On MOTION of Trustee Quinlan, SECONDED by Trustee Jennings the following Resolution was duly adopted upon roll call vote:

RESOLVED: that the Mayor and Board of Trustees schedule a Public Hearing for Dec. 6, 2011 at 7:30 p.m. or shortly thereafter to consider the advisability of adopting Proposed Local Laws No. 10 and 11 amending Chapters 249 and 295 of the Village Code regarding certain steep slope provisions.

ROLL CALL VOTE	AYE	NAY
Trustee Bruce Jennings	X	
Trustee Jeremiah Quinlan	X	
Trustee Meg Walker	Absent	
Trustee Nicola Armacost	Absent	
Mayor Peter Swiderski	X	

2. Electronic Communications Policy

Mayor Swiderski: The electronic policy is something we began in June, did a draft on, I took comments, and then it fell off the agenda. Since this was a relatively quiet meeting, I decided it was time to revisit it. The original policy was in reaction to an e-mail that was forwarded on the Village e-mail list. That was not properly attributed to the school, and caused some consternation. We came up with a two-page policy addressing that, but I was uncomfortable with both the format and the comprehensiveness. Susan Maggiotto found some documents from the New York State archive department that included a draft policy. It did not cover our situation, outgoing e-mails, but it covered the use of e-mails by Village staff, which is also something we have not ever formalized into the policy.

Working from that as a base, I enhanced it with the policy we came up with in June that Fran had largely written, folded it into this, and came up with something that covers both the internal e-mails we receive and send as individuals and the Village-wide e-mails we send out on our broadcast list. There are a number of issues that we need to address. If you work in the private sector you are warned about a whole category of e-mail types you should not be sending out or keeping on your e-mail server, at jeopardy of your job. There are also retention policies. I work at a brokerage firm, and any e-mail that enters the firm is automatically archived. It is part of what the Securities and Exchange Commission requires. All phone calls and e-mails are archived. So if there is ever a need for them, whether it is a lawsuit or a complaint, you can dig it out. There are suggested rules in New York State, they are not laws, on e-mails and a general understanding that they should be treated like correspondence. But there is no formal mandate to do so.

We are seeking to impose that upon ourselves as partially discipline and partially where we are in the world these days. It seems sensible to treat e-mails like we do formal documentation. If we request public comment on a law, or somebody is writing us with a legal issue, or somebody is complaining about our policy, or we are writing to the Village about policy, there are categories of topics that you want to save, as you would any other formal letter, to show evidence of public support or condemnation of a policy you are about to engage in, as well as to reflect the internal discussions you may have had on that policy.

This document covers those topics: how we save those e-mails, who is responsible, and in this case I am suggesting that Susan be responsible, what happens if an e-mail comes to us individually instead of to the Village Board of Trustees, how we categorize those e-mails that come in to us, which are personal and which are policy and which of those should be forwarded to Susan so she can save them for posterity. Then on a Village-wide basis, how we treat the Village e-mail list and how we use that. Many of the same principles apply there, too. There are all sorts of things that the Village e-mail list should not be used for. We should not endorse a political position or party; we should not send out commercial advertisements. Nothing illegal, no pornography, nothing licentious, all sorts of categories that are just expected, but formalized here.

Also policies about how that e-mail list is treated. It should be a private list. We should never sell it to anyone, we should never give it away to anyone. If a resident wants off the e-mail list they should have the right to be dropped from that e-mail list within a certain amount of hours, and I am recommending 48. If we forward e-mail from other institutions, school or the firemen or whatever, it should properly be described as being forwarded from that organization and not reflecting any endorsement or position of the town.

I am going to have this posted on the Web for public comment. It is not going to become a law, but I am looking for people to pick at it. If you can get me comments prior to the December 6 meeting I will fold them in, and we will do another round.

I am sorry that Roger is not here, but he raised a legitimate point about whether editorializing belongs in an e-mail from me in particular, but from the Board or from the Village. I get stuff from Paul Feiner, Astorino, Cuomo, and Obama. Everybody feels free to editorialize on positions. They are elected with a voice and with opinions. Just as I can do that editorializing to this microphone, an e-mail system is no different. I am not using the resources to push for a particular party. But I am, I believe, in my right, just as my inbox has evidence that all sorts of other political figures feel they are in the right, to comment on the effect of what goes on in government on our lives.

In this instance, a law was passed in New York State which has a very real impact on us. I can argue that no other piece of legislation will have a greater impact on most people in Hastings than will be passed in the next five years. Most will not be affected by the arguments over tax policy at the federal level, but everybody will be affected by that two percent resident tax cut. So I feel that to editorialize so people understand the potential impact, it is appropriate. If someone disagrees that is appropriate, as well. However, I cannot say I buy into the argument that I am compelled to provide a megaphone for the opposing view, just as I do not expect Mr. Astorino to allow me to use the county e-mail list

to argue with his point about the benefits of the zero percent county tax. It is the advantage of the bully pulpit that comes with being an elected official. If I say the wrong things long enough and irritate enough people, that bully pulpit goes away in election season. I do not know if this policy has to cover these categories because sometimes we are elected to have a voice, and that voice is something that we have got to express whether it is into a microphone or an e-mail. I cannot say I see an issue with that.

But anyway, I am looking for comment on this. Susan, it affects your life more than anyone else's in terms of workload, so please tell me if we overburdened you.

Village Clerk Maggiotto: I am the records officer for the Village so it certainly falls under my responsibilities.

Trustee Jennings: I have only just looked at this. But I see immediately a structural suggestion I would make. In section 3.3 and 3.2, the bullet points, I find it confusing to group together the considerations that have to do with the use of the Village e-mail system to a particular recipient or maybe a small number of recipients, like when I send other Board members an e-mail or I e-mail with members of the Conservation Commission, versus the use of the blast e-mail system. Maybe we will have pretty much the same standards and same bullet points, but it would be an easier document to understand if we broke those two things out into separate categories. There may be differences in what the bullet points would be under each category. The other thing that occurs to me is that there needs to be some mechanism for drawing a fairly bright line between communications as official to the Village versus our reelection campaign efforts. I did not notice the word "campaign" in here anywhere, so we might want to explicitly address that.

The nub of the problem may come down to the bullet point on inappropriate uses that says promoting political causes - not partisan or party, just political causes. And then the bullet point under 3.3, which is communicating with constituents regarding Village issues. Your comments just now were totally appropriate in terms of communicating with constituents about Village issues. But maybe we should change the wording because one person's communicating about Village issues is another person's political issues.

Mayor Swiderski: I agree entirely on electioneering. It does not belong on Village e-mail. I think that is a clear line. Because the e-mails have a subject line indicating they are from me, and they are clearly personal documents. I think I was I was explicit that this was my opinion and not the Board opinion, but we should probably say that it needs to be explicit whose opinion that is. So I agree with you.

Trustee Jennings: But it still does not reach the point of saying what is political and what is informational.

Mayor Swiderski: I do not know who said it, but everything is political. It is a good point. It is a hard distinction sometimes. If we had chosen to use the e-mail system to get people to actively lobby against the law, that would be political. But to explain the impact of the law once it is passed does not feel political, but it clearly is taking a position on a political issue. It is not a bright line. It is a tough one.

Village Attorney Stecich: Under classifying e-mail, the second bullet, permanent e-mail documents, significant policy. I think probably significant should not be in there.

Mayor Swiderski: I agree.

Village Attorney Stecich: I think it was a good idea that if you got an e-mail personally to send it to the Clerk and say save. Does that eliminate the receiver's responsibility for keeping it as a permanent thing?

Mayor Swiderski: Yes, absolutely.

Village Attorney Stecich: We should probably say that.

Mayor Swiderski: People sometimes communicate directly with us individually instead of sending an e-mail to the Board of Trustees. Those e-mails sent to individual e-mail addresses are not monitored by anyone. So if it comes in to me, and it reflects a position on an issue, a policy decision, and you want that as a part of the record, it needs to go to the boardoftrustees@hasting.gov.org.

Village Attorney Stecich: You mean if it comes to Peter Swiderski.

Mayor Swiderski: However, acknowledging that that will not always happen, that sometimes people will write to me individually, I include a section that says when it has to do with policy, decision-making, public comment on items currently before the Board, legal issues, or pertaining to legal precedence. In those cases, if I get the e-mail I am to forward it to Susan with the words save in the subject header so she knows, instead of having to read through it, just to save it in a permanent folder that we will now have set up.

Trustee Quinlan: If someone sends something to my personal e-mail about, let us say, policy, like you are a deer killer dope, or something that may be more neutral, that I think a

stop sign should be put on the corner, you are saying that I have to send that to Susan and say save. That is my personal e-mail. It is not anybody's business what they send to me.

Mayor Swiderski: I wrestle with that all the time, and the answer is a little nuanced. If it was intended of the equivalent of somebody whispering in your ear on the street, and was not intended as a public comment, then my instinct is not to treat it as a public comment. If they want you to know how they stand on legislation you are going to vote on next week, at that point it is the same thing as a public comment. That should be forwarded.

Trustee Quinlan: I disagree. What is the difference between that and someone coming up on the street and saying the same thing to me? What is the difference? It is my personal e-mail, it is my personal property. I do not want to have to send it to anybody, plus it is more work for me. I have to decide what to do with it, then I have to send it. Maybe the person who sent it does not want it disseminated. Maybe they are a friend of mine. Most of the people who will say something to me are my friend, neighbors, or acquaintances.

Mayor Swiderski: Generally I am with you. The way I have handled it often is, I will respond back and say do you intend this as a formal public comment, and if not, please do not send it to my Mayor address, send it to my personal address. If they are communicating to me as a friend I agree with you there is an expectation of privacy. I am not speaking as a lawyer here, but there is a lot of controversy around this.

Trustee Quinlan: I disagree with that. And this is not going to be a law?

Mayor Swiderski: No, it is a policy. It is a judgment on your end. If you feel the intent was a comment on policy that reflects the public weighing in, in a way that may affect your decision, or you feel it should be captured in some way for posterity, send it on.

Trustee Quinlan: Most of the time, if someone is going to send me an e-mail on my personal account they know my personal account number and usually they are a friend, an acquaintance, a relative, or a neighbor.

Mayor Swiderski: When you said personal I'm meaning trusteequinlan@hastingsgov.org. If you are talking about jerryquinlan@aol.com.

Trustee Quinlan: Anything that is sent to me through Trustee Quinlan or hastingsgov or anything like that, I assume it is saved. Not Trustee Quinlan?

Mayor Swiderski: No.

Trustee Quinlan: I do not get too many on Trustee Quinlan, but I get a lot in my personal e-mail account. Not even a lot. I get some. I cannot say I get a lot of e-mails because most people call me up and talk to me.

Mayor Swiderski: The New York State archives indicates that if it is on your personal e-mail and weighs in on policy it should be part of the archive.

Trustee Quinlan: That is their opinion. Everyone is entitled to their opinion.

Mayor Swiderski: They are not just anyone. That is what they are entrusted to come up with. But it is tough.

Trustee Quinlan: So Trustee Quinlan is not sent to the Village?

Mayor Swiderski: It comes through the Village to you, but is not saved centrally.

Trustee Quinlan: Could it be?

Mayor Swiderski: Sure.

Trustee Quinlan: So why do we not have them do it, instead of me forwarding it and saying save. If you are going to send something to Trustee Quinlan, I would assume that it is going to be something to do with business. If it is personal, I do not know you should be sending it there anyway.

Mayor Swiderski: I can talk to Raf about that. I would have to think about that, as well.

Village Attorney Stecich: That makes a lot of sense.

Village Clerk Maggiotto: But does somebody not have to decide whether that message ought to be saved, or not?

Mayor Swiderski: That is the thing. Susan opens every Board of Trustees' e-mail, and she is going to move those that are permanent into a separate category. The others will live for six years, then get deleted. We are not going to save all Trustee Quinlan's e-mails for all of eternity for all sorts of good reasons.

Village Attorney Stecich: Could they not be sent to Susan? Why can they not go to you? There are probably not that many, are there?

Mayor Swiderski: I get hundreds a day to the Mayor, maybe 250. If I were to point that at Susan and ask her to filter, then that would be burdensome.

Village Clerk Maggiotto: Do you read every one of them?

Mayor Swiderski: I read every one that is not junk, and 90 percent of it is junk.

Village Clerk Maggiotto: So it is not necessary for me to read them all, as well.

Mayor Swiderski: I agree.

Trustee Quinlan: You do not have to read them. Can you not save them without reading them?

Village Clerk Maggiotto: But then you are saving many things you do not have to save.

Trustee Quinlan: Anything that comes to the Village, to me, if I do not think it is spam, which I get to decide, I put in a folder saying Village. But it is transferred into a Village folder. I do have to admit though, not to stir the pot, a lot of times, like on the deer issue, I must have got 5,000 e-mails from all over the world telling me what a terrible person I was.

Mayor Swiderski: That is spam.

Trustee Quinlan: Not all of them, if they were reasonable.

Mayor Swiderski: But a form letter is.

Trustee Quinlan: I got plenty of reasonable efforts from my friends saying do something about the deer, we cannot stand it anymore. But they were reasonable. I saved those. But the ones that came from Switzerland and did not make any sense, or were inflammatory or whatever, I thought they were spam. But that is my own personal decision, right? Is that in here?

Mayor Swiderski: It says spam can be deleted.

Trustee Quinlan: So if it comes to Trustee Quinlan I have to send it to Susan and say save?

Mayor Swiderski: Yes, and it has something that you think touches those issues, whether it is policy, decision-making.

Trustee Quinlan: Can I save it?

Mayor Swiderski: You can, but it will go away should you ever decide to leave this esteemed office and they shut your e-mail address down.

Trustee Quinlan: I save it in a Village folder. It is easier for me to do that. For me to forward it to Susan, where do I put save?

Mayor Swiderski: In the subject line.

Trustee Quinlan: I will just save it on my own. How long do I have to save that? For six years?

Mayor Swiderski: Well, you do not. Susan does. Anything that goes to the Board of Trustees she has to save.

Trustee Quinlan: Anything you send to the Board of Trustees she saves automatically. But I am talking about sending to Trustee Quinlan. That is my discretion.

Mayor Swiderski: And that is the policy. Except for the ones that are policy-related.

Trustee Quinlan: Yes, but that is my discretion to decide whether it is policy or not.

Mayor Swiderski: Yes.

Trustee Jennings: Did you suggest earlier in the conversation with Jerry that we should consider automatically archiving all of the Trustee Quinlan, Trustee Jennings, all of the individuated e-mails as opposed to the Board?

Mayor Swiderski: Yes, we considered it. I do not know what the traffic is compared to the Board of Trustees traffic, but I get a couple of hundred at least every day.

Trustee Jennings: I have another concern. I get an e-mail from a constituent on the Village system, I am using the public resource, but it is an e-mail about individuals and is not the kind of thing that either I would feel comfortable or the person who sent it would feel comfortable if it were in an archival thing where the individual being referred to could perhaps see it, or Susan could see it, or anybody could see it. If we had such an automatic saving policy, people would be hesitant to communicate with us as individuals in this way, and we would all have to set up a private e-mail address for that type of constituent communication. This is not frequent, but it does happen. I think it would be difficult for our

constituents to have to pay attention to a separate e-mail. If they send something to me at hastings.gov they think it is just like sending it to me at AOL. But if it is not, they need to know that.

Mayor Swiderski: That is part of the thinking behind walking back from the idea of Raf saving everything. Just differentiating what should be saved for good would take Susan significant time. People send e-mails to us that are absolutely, they consider, privileged conversations. Technically they are not, but they certainly feel that way and they believe it to be true. It would seem to be a betrayal to serve those e-mails up to some sort of centralized facility. That would feel like a betrayal of confidence.

Trustee Jennings: They would have that reaction, and it might very well have a chilling effect on communication. I am not sure that would be good for the Village because perhaps people do need to say things that they do not want everybody to be able to look at.

Mayor Swiderski: I have had those sort of conversations, as well, where people have raised issues that they absolutely do not want public. I would argue those are probably private conversations and should be treated as such. However, you are right. That is the final and best argument against a centralized storage of those e-mails. It should just be Board of Trustees.

Trustee Quinlan: When things go to Trustee Quinlan, is that not captured somewhere in somebody's hard drive forever? Does it not come through some Hastings computer?

Mayor Swiderski: It sits locally, but it does not persist. It is cleaned out periodically. It is nothing that is stored permanently.

Trustee Quinlan: But it does not stay in any computer hard drive?

Mayor Swiderski: If you are saving it locally it will.

Trustee Quinlan: I do not know what that means. Again, I am very ignorant about this. It does say Trustee Quinlan, someone sends it to me. It goes through hastingsgov.org. I assume that that goes through some Village computer, yes?

Mayor Swiderski: Yes, it persists on the mail server.

Trustee Quinlan: And that computer, does it not go into the hard drive? Will that not be saved? Why do I read crime novels where people are throwing their hard drives away into the Pacific Ocean to try to avoid whatever they are trying to hide? Is that just fiction?

Mayor Swiderski: No, it is not fiction. It is entirely relevant here, and a very good point. It does persist on the Village e-mail server, and we should probably say it should be explicitly deleted on a 90-day basis or something.

Trustee Quinlan: Why would you want to delete it if it is there? Because we are trying to save everything anyway.

Mayor Swiderski: Because of the concerns raised by Trustee Jennings regarding privacy and long-term access to stuff that people may consider privileged information.

Trustee Quinlan: Let us talk about that for a second. It is not privileged information. There are very few things that are privileged information.

Mayor Swiderski: Not legally privileged, but in a way that people expect privacy.

Trustee Quinlan: That is another story. That is why this becomes something we can talk about for hours. If someone tells something to me on the street, and someone sends an e-mail that gives me the same exact things they would whisper in my ear on the street or just talk to me personally in the park where no one else can hear, how is that different just because it is sent in an e-mail? It is not privileged. There are very few privileges.

Mayor Swiderski: It is the same expectation of privacy, but because it is in a physical form that can be captured and read by other people it is obviously not tangibly the same level of privacy.

Trustee Quinlan: But we are talking about retention here.

Mayor Swiderski: This should probably include a clause saying that anything centrally saved by individual e-mail address should also be purged on an ongoing basis.

Trustee Quinlan: But does that violate the Freedom of Information Act?

Mayor Swiderski: Freedom of Information, part of what the state came up when they developed these policies was to try to make sure that the stuff that matters from a FOIL perspective are preserved. That is why they have this category of permanent e-mails, both in case of lawsuits, where you have got to do a dump of documents, and FOILs.

Trustee Quinlan: I am trying to figure it out because I want to do the right thing. So I get an e-mail, either hastingsgov, through the Board of Trustees or Trustee Quinlan e-mail, and I think it is important and I put it in my Village folder. Am I complying?

Mayor Swiderski: No, because that folder is not permanent. It may be permanent as long as you are with the Village, but it is not the folder that Susan will maintain that is permanent.

Trustee Quinlan: The Board of Trustees is permanent.

Mayor Swiderski: Yes.

Trustee Quinlan: I will have to see what is sent to Trustee Quinlan. I do not get too many, not hundreds. I do not get five probably. And then it is up to me to decide whether I have to send it to Susan or delete it, or put it in the Village folder.

Village Attorney Stecich: If you would put it in the Village folder, then it should go to Susan. If you think it is significant.

Trustee Quinlan: I put it in the Village folder only because I may want to refer back to it sometime in the future. That is why I put it in the Village folder. I put it in there because if a question ever comes up I can refresh my recollection.

Mayor Swiderski: Clearly, I have got to do some thinking about the queues for individuals. Which persists on the e-mail server, individually to address Trustee Jennings' concern, and to clarify how that should be treated. It needs its own mini-retention policy that if you do not save it, it will disappear after 90 days.

Trustee Quinlan: How about texts? Are we going to be saving them next?

Mayor Swiderski: We do not have a policy for text and Tweets and all that. And we probably should.

Mr. Skolnik: It is complicated. To some degree you are confusing a couple of different issues and trying to accommodate a number of different things at once. You are concerned about constituents feeling comfortable and communicating with you. But these same constituents, in the world, sooner or later are being made aware of this privacy issue. The older among us feel a sense of entitlement toward that sense of privacy. Younger ones do not even know what it is. As it gets specific, if you could imagine that you had three e-mails. One of them was Board of Trustees that you all got. The second level was each one of you with your official e-mail. And the third was each one of you had your personal e-mail.

Mayor Swiderski: Which we all do.

Mr. Skolnik: Right. You do not all have it posted on the Web site, though. If you were going to try to educate the people that communicate with you, if they want to communicate with you in a way that is personal, then they have your personal e-mails. Once this population is educated, there has to be the expectation that these are not as private as the ones that you do personally. There is a certain amount of educating that has to be part of your constituency, without being a freezing aspect.

Mayor Swiderski: It is tough, which is one reason that Susan was unable to find a policy in place in any village. Some of these issues are really thorny. But we feel that they should be addressed. We have been FOILED a number of times, and it would be nice to be able to say we do this consistently instead of ad hoc.

Trustee Quinlan: So are we the first village that we know of doing this?

Mayor Swiderski: The state archives person did not indicate she knew of a village that had passed one.

Village Attorney Stecich: Mayor, I think others are working on them.

Village Clerk Maggiotto: They have policies that cover part of these things. But the thorniest issues that you are talking about are the ones that people do not have policies about.

Trustee Quinlan: So we are all supposed to agree on this, and make this policy?

Mayor Swiderski: No. We walk stumbling into the future, trying to set new paths here and get it as right as we can.

Village Technology Director Zaratian: I feel like I have to say something. Since we have been maintaining e-mails since the early 2000s, technology changes at a rapid rate. It is very difficult to archive everything. But what we have been doing, since the FOIL situation had come up, is that we blind carbon copy every e-mail that comes to individual Board members and the Board of Trustees into what is called the backup account. If you open that up it is opening up a virtual outlook. You type in a search for any topic you want, all the e-mails will pop up, filtering it through all the spam. We have been doing that now for at least a year, but we have not had a FOIL request so it has not come to light.

Mayor Swiderski: I would argue that should go away.

Village Technology Director Zaratzian: The whole e-mail server is going away. We are in negotiations with the county to use an exchange server. This is going to limit the amount of storage on the Web access. You are only going to have 100 megabytes to hold. We are still going to have to have a way of saving all these e-mails in a file off-site. We are going to have to keep the same thing going, technically. Policy-wise, you can whatever you want. But technically is different.

Mayor Swiderski: Right. And from a policy perspective, I would argue what may have seemed sensible given the FOILs, now that we have an idea of what we want to keep, it is superseded by that. If we agree on this policy, the shadowbox gets nuked. It may include stuff people do not want in there. I know it does.

Village Technology Director Zaratzian: That is fine. But there are going to be changes even after that.

Mayor Swiderski: In the change on the server, will you be able to save stuff locally to your local hard drive?

Village Technology Director Zaratzian: We are going to create PST files, and people are going to have to drag the things they want to save into the PST files, which are going to be kept on our servers. PST is a Microsoft form that holds all your Outlook data. I am not sure exactly what PST stands for.

Trustee Quinlan: Who is going to have to drag it into those files?

Village Technology Director Zaratzian: Each member of the staff who has a computer is going to have to drag the things they want to keep.

Trustee Quinlan: The Trustees, too?

Village Technology Director Zaratzian: The Trustees will not because they do not have the ability to do that because it is a Web-based system only.

Trustee Quinlan: So right now, you are saying you save everything.

Village Technology Director Zaratzian: We save everything that comes in.

Trustee Quinlan: Does that just make it easier? If you get a FOIL request I just say talk to Raf and he will answer your questions.

Mayor Swiderski: No, it does not. It does not address the issues of privacy raised by Trustee Jennings and myself, and it also does not establish which of those records are worth saving forever and which are not. The law specifies that the permanent are permanent, and everything else is six years. So suddenly, we have got everything permanent. I do not know if that is right at all.

Village Technology Director Zaratzian: It does not have to be permanent. Somebody just has to go through the Outlook file and start deleting things if you want.

Mayor Swiderski: I know. But once again, between all the Trustees and the Board of Trustees' e-mail it is a fire hose. If everything is getting copied, somebody has to go through thousands of e-mails to differentiate which are worth keeping permanently and which not. And that is a burden. On an ongoing basis, I would argue that is neither fair nor respects expectations of privacy.

Village Technology Director Zaratzian: You can look at that way. Or you can look at it that most elected officials' information is somewhat public if it is going to be FOILable.

Mayor Swiderski: But what is FOILable re the things defined in that policy? It is not everything. It is not every missive on every subject. There are categories that are not FOILable because they are considered not relevant to policy.

Village Attorney Stecich: It is not FOILable if it is communications between trustees, that is interagency, or communications between the parks department and the trustees. That is interagency. A lot of that stuff would not be FOILable.

Mayor Swiderski: So the dumping ground now for all these e-mails, from a FOIL perspective, is not essentially useless, but it is a huge job.

Village Attorney Stecich: And then how do you search them? It is one thing if you say we want anything related to deer. OK, the word deer will probably be in the e-mails. But if it is something where the search is not so easy, you cannot search a particular word, we want everything on some zoning issue or something. A particular word might not come up. You are going to have to read them all. It is too many to be able to do it. It is not going to work.

Trustee Jennings: Perhaps a safeguard, and I say this with Raf in the room. I do not mean any disrespect, but we should address in our policy the question of who has access to the information that is being archived and saved. I am not too worried about the example that I gave just in terms of saving it if I have some assurance that it is not going to be searched

through and dug up by someone without good reason. I am not suggesting that Raf would do this in any way, shape, or form. But I do think it would be a good idea for us to say that there is a certain procedure that would have to be followed by any IT person working for the Village who had access to this server before a search, before any kind of a process, would be authorized. And certainly, if we are going to have this in a county server I want to know that county officials do not have access to this without due process. We probably do not have that now written down, as such, but we have not thought about it or we have not needed it because we have a very trustworthy, excellent employee. But nevertheless.

Mayor Swiderski: But nevertheless, when you hand data over you bring up a very good point. Data security is very important. There are any number of e-mails I know that I have received where people would be very unhappy if they turned up in a FOIL or a casual search.

Trustee Quinlan: The only good thing about saving everything, I have to agree with Raf, you cannot go wrong. If someone FOILs you or it becomes a lawsuit and everybody wants everything, it is going to be up to the judge what is relevant and what is not relevant. This way, you are just saying here it is, good luck. You do not have to worry about being caught questioning your discretion about what was permanent, what was deleted, what was saved. Everything is saved, here it is, and you dump it on them. Let them go through it. Marianne, I do not want some day somebody saying you did not save this, you are in violation of some FOIL request or some lawsuit. If everything is saved you do not have to worry about it.

Village Attorney Stecich: Except that you cannot on a FOIL request just give them every e-mail. You just cannot do it.

Village Technology Director Zaratzian: Well, you can. You just give them the file.

Village Attorney Stecich: But you do not want to because then they are getting things you do not want them to see.

Trustee Quinlan: But what if I have gotten an e-mail that I do not want anybody to see?

Mayor Swiderski: I have gotten complaints about personnel, complaints about neighbors, admissions about personal faults and failings in relation to some issue. I have gotten all sorts of things that I would not want revealed. It would not be fair to those individuals. It is the quandary of this responsibility, finding that balance that does not make you look like you are hiding anything and yet does not put at risk privacy and intent of why people reach out to us. I never said this was straightforward. I did not think it was quite so complicated, but we stumble toward the truth.

Village Technology Director Zaratzian: You should also realize that all of you who use Yahoo!, Google, AOL or whatever, they could very well give all their records to whoever asks, as well. There is no privacy. If they are court-ordered to do it, they will.

Mayor Swiderski: Absolutely, but they cannot be FOILED. I think enough on that topic. We have got some more noodling to do. I am not done with this. We need to pass something because this has underscored some of the issues that we are at risk here on.

3. Update on the Waterfront

Trustee Quinlan: I spoke to Bill Ports after their meeting on Tuesday between the various divisions and DEC that are dealing with this. He told me that the PRAP, the Preliminary Remedial Action Plan, which is the first step before Village input and the consent decree, he hopes and thinks and prays that it will be issued by the end of month. We agreed that the public comment period should be extended beyond the Christmas holidays to give everyone a chance to weigh in. Usually they have 30 days, so let us just say he is right and the PRAP is issued on November 30. It would be unfair to have the public comment period end December 30. They are inclined to do extend it and I think the Board is inclined to do that.

4. Other

Mayor Swiderski: On November 26 we have Small Business Saturday, a national event sponsored by American Express and with many local businesses that are not part of chains signing on, asking you to shop there locally. If you use your American Express card and spend more than \$25 American Express will credit you with \$25.

December 2 we have a Friday Night Live, the Festival of Lights. Liz Liebeskind is involved in this one and it will be a Liz special with various light shows and events around town in a number of locations and bound to be beautiful, including the lighting of the holiday tree. This weekend there is a sale of locally-produced crafts in this room, with local craftsmen and artists selling here. Nice gifts. Support those who live and work among us.

ADJOURNMENT

On MOTION of Trustee Quinlan, SECONDED by Trustee Jennings with a voice vote of all in favor, Mayor Swiderski adjourned the Regular Meeting at 9:10 p.m.