

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK  
BOARD OF TRUSTEES  
REGULAR MEETING  
SEPTEMBER 4, 2012**

A Regular Meeting was held by the Board of Trustees on Tuesday, September 4, 2012 at 7:45 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

**PRESENT:** Mayor Peter Swiderski, Trustee Bruce Jennings, Trustee Marjorie Apel, Trustee Meg Walker, Trustee Nicola Armacost, Village Manager Francis A. Frobels, Village Attorney Marianne Stecich, and Village Clerk Susan Maggiotto

**CITIZENS:** Five (5).

**Mayor Swiderski:** A sidebar comment on appointments. While we have selected the members for the committee to implement the comprehensive plan, we have not reached out to all of them yet to inform that they have been selected. We will be doing so, and asking them to schedule a meeting. We will announce the names at the next meeting.

**APPROVAL OF MINUTES**

On MOTION of Trustee Armacost, SECONDED by Trustee Walker with a voice vote of all in favor, the Minutes of the Regular Meeting & Executive Session of August 14, 2012 were approved as presented.

**APPROVAL OF WARRANTS**

On MOTION of Trustee Armacost, SECONDED by Trustee Walker with a voice vote of all in favor, the following Warrants were approved:

Multi-Fund No. 14-2012-13 \$107,672.87  
Multi-Fund No. 16-2012-13 \$ 44,983.07  
Multi-Fund No. 17-2012-13 \$ 8,889.58

**PUBLIC COMMENTS**

**Tim Downey, 520 Farragut Parkway:** There seems to be some discomfort with what is happening with the Little League. Since the Village contributes funds and has some interaction with that organization, I thought it worth coming and speaking to the Board about it. There seems to be a feeling among the parents who have daughters who play softball that there is a degree of inequity that has arisen with usage of the Uniontown field, which is a community field. We received notice over the weekend, or at least I saw it on the e-mail, where the girls' softball league, for the second autumn in a row, would not be allowed to use

that field for home games. They are going to be shuttled to Zinsser, where they can sit in the heat or play in the little pond water. They are less than terrific conditions there.

There will be those who will argue that it is a truer softball field because there is a dirt infield, whereas a Little League field has a grass infield. I have two daughters who played through the Hastings programs, and we have played many a park location with a grass infield. It seems to me there is a little overreach by an individual, or perhaps a number of individuals, but one name keeps showing up on the e-mails who seems to develop an ownership of this Village parcel. He has made substantial contributions, matching funds over the last several years, for upgrades. It seems that is getting upgraded, upgraded, upgraded. I hear we are going to be sodding again at Uniontown. I was just there and it did not look like there were problems with the sod, and we have suffered through a hot, dry summer. Where we try to get some improvements through the modified team and the school board for the Zinsser field, we did not get much of any help this spring. So could you say a word about where things are going there, and how the girls can feel like they are getting an equitable opportunity?

**Village Manager Frobel:** Like many parents, I found out just today that girls softball will not be allowed to use the Uniontown field. I spoke to Mrs. Blicher. I'm meeting with Gene Calamari tomorrow, in fact. I wrote to Gene telling him that I am concerned about it, and that neither Kendra nor myself were aware of the fact that girls' softball would be prohibited from using the field. I indicated to Gene, I am not sure where the authority lies to close a field off to another group. Certainly, it does not lie unilaterally with the League president. So I am meeting with him tomorrow. The girls softball wanted to come to tonight's meeting and state their case to the Board of Trustees. I asked them to please hold off to allow me the opportunity to meet with Gene and to find out a little more about it. I was unaware of the fact that last spring girls' softball also, as you alluded to, got some pushback and were told not to use Uniontown. At that time, they backed off. This time they are very disappointed. They had a practice scheduled for Saturday. They would like to avail themselves of the amenities of Uniontown. As you mentioned, it is a very nice facility. There may be some questions on the suitability. As you know, a big difference between hardball and girls' softball. I want to find out a little better from Gene. But I share the surprise that they have been prohibited from using the field for the season.

**Mr. Downey:** Yes, that is an awfully strong word, "prohibited," from an individual resident.

**Village Manager Frobel:** I do not know how else to place it. Certainly that authority does not rest with me to program a group, nor with Kendra. I indicated that to Gene, so we need to talk about it.

**Trustee Armacost:** When you have the conversation with Gene you should talk to him about the efforts that he has been pursuing to get the proper setup at Zinsser. He has been very frustrated and has been in conversation with the head of the girls' league to improve the conditions at Zinsser, and has been thwarted. I do not know if he was thwarted on the Village side, or whether he was thwarted on the school board's side. But this is a very complicated situation, where it is important to get from him all of the factors that are at play in this situation. I know he considers the girls' league to be a very important constituency and very important for the Little League. It is half of the Little League, and so they need to be accommodated in the appropriate way with the appropriate kind of playing field. So I think it is important that you get that full information from him when you have that conversation.

**Village Manager Frobel:** And I do intend to. The only concern I am aware at Zinsser was, there was a strong effort to bring an irrigation system to the facility. That is on hold until I am able to make a better informed decision about the advisability of bringing water to that field. But let me have the conversation with Gene tomorrow, find out about the status, and report back to the Board of Trustees.

**Mr. Downey:** Two years back I offered my services, my business and my equipment to Gene to come there and do work. I did not hear anything for 18 months. And then this spring there was a quick hurry: could you come with your machine and dig? No, I am not your day laborer. I mean, I would be happy to do the work. But I would bring my expertise. I saw things done at the field there that were not a good use of money. People do not like to have me in the room because I will bring comments, where they want to complete their dream. I watch the money. We are putting little yellow trim on the fence way up top, replacing the green that was there. That is money that could be used for some seed or something at Zinsser. So I appreciate you looking into this.

Trustee Walker, you were not here at the meeting in which I addressed the quarry. The Mayor gave me plenty of floor time, and there was response. You being at the fore of the Quarry Park measure, I am wondering how you do the math where I believe I can bring between a \$15,000 and \$30,000 savings to the Village, and there will be a net savings over time. There has been barrier after barrier. People just want that park, where the park is going to be a net cost to the Village. I would just like to hear how you feel about the two percent cap limiting the Village expenditures and how we can expand our costs, our maintenance for our parks. Maybe you can reframe the question, but I find difficulty with the two percent cap, with other needs in the Village, that we are going to forge ahead and insist upon this park.

If I was to hear the spirits of the people who we want to "honor," when we want to put these plaques up for people working in these quarries, and they worked hard, those people back then had their challenges. I am sure they would have liked to have worked less, and had parks, but they had to work to survive. If we heard their voices, I think they would look upon us and say we are a bunch of spoiled people. It is one thing to have a balance in life, where we work hard but then we have our parks. But it seems like we want to have parks in excess, and we want to honor all those people who did all this work instead of thinking maybe two, three generations down the road when people are going to look back upon us, and say we did the right thing. We were in a fiscal crunch, and we rolled up our sleeves and we made the sacrifice of a park. We did something that brought in an extra \$15,000, \$30,000 a year instead of pushing ahead with something that is going to cost us more.

**Trustee Walker:** I appreciate your question and your concern. It comes down to several factors. One is that I do not think it is an appropriate place for a composting facility or a DPW facility. It is adjacent to the Old Croton Aqueduct, which is a state park on the National Register of Historic Places. We have also found it is almost impossible these days to drive a truck over it. We know we did in the past because it was used for yard waste, and before that it was a Village dump. But now the state has real concerns about trucks going over the Aqueduct structure. I do not know if the state would allow us to use the Aqueduct as an entrance to a composting facility. You are right that we need to have a composting facility somewhere in this village and that it could bring us revenues as opposed to costing us money to send it out to Yonkers or to the county facility. But I do not think that is the appropriate place.

In terms of monies toward that park, the Board has agreed that we are not going to take taxpayer money to pay for improvements to the quarry. We are only going to do it with grant monies. We applied this year for grant monies, we applied last year. We did not receive the money. We have received money in the past. In fact, one of the grants we are applying for is simply to match the money that we have so that we can use it toward design of a park. It is a long-term effort. I do not think we are going to get this money anytime soon, and I do not see us paying taxpayer money on it. I do not think this board would even consider that. It is about money from other sources. The Quarry Committee is interested in raising private funds toward it that could perhaps match state monies or monies from other foundations or grant sources. So I do not think it is going to cost us money in the future. The park is probably not in the offing anytime in the next two or three years. Not that we will not design it. If we get the grant from the state we can complete the design. We also applied for money to complete the Quarry Trail. A two-fold effort with this grant: complete the Quarry Trail and design the park. It will take a while to raise the money. It is not going to be easy.

Also, the connection from Quarry Park and the Aqueduct down to the waterfront is going to prove to be important in the future. Right now, it stops at Warburton Avenue; we would like to complete it all the way down to Southside . Some day, that is going to be a great pedestrian connection between the Aqueduct and the waterfront. Not that having a DPW there would preclude the use of the trail. But the idea of having a park there at the top of that trail, people can come to the waterfront up to the Aqueduct, and have a small park there. I think that is the appropriate use. I do think it would be great to find some location for a composting facility so we do not have to haul away our yard waste, and I would be happy to work with you to figure out where that could be.

**Mr. Downey:** We can both look at a map and they are never getting any more land. You have said in the past the Village would do in-kind service. When I hear in-kind service, that is code for me for using the backhoe, using some DPW men. I am adamantly against that.

**Trustee Walker:** They are limited, though. The in-kind services amount to a couple of days of using the backhoe to dig our test pits; it is important to find out whether the soil is contaminated and what other kind of refuse is still there. I think that is a legitimate use, to find out how contaminated that site is. In-kind services in the future, we are not talking about much in terms of the next phase in this project, design and construction of the Quarry Trail. In-kind services were mostly going to be volunteers, maybe staff time from Fran, volunteers from the committee in working with the landscape architects, my time. It is not DPW time, at this point at any rate.

**John Gonder, 153 James:** I was surprised to see in the crosswalks the \$800 signs that I understood from the safety committee the Village Board would never approve. But you are missing one thing. If you go through Warburton Avenue by Villard, the southern crosswalk needs painting. At Spring Street or the southern one needs painting. Most of the ones by the school and Broadway and Farragut look all right, but the ones in the village, Warburton, need to be painted.

I know you disagree with me but you need more cops. Whether it is armed robberies, break-ins, bank robberies, stuff in the school and Graham School, traffic violations, we do not have enough police. Cars go too fast, they do not use the stop signs, they are on cell phones. One of these days, when somebody gets seriously hurt, maybe then you will do it. And that is too late. You have to get more police.

**Village Manager Frobel:** We realize there are several crosswalks we have yet to brighten up. We did focus our efforts around the schools. In the past, we have relied on the Town of Greenburgh to do some of those outlying areas. Instead, Mike is going to do himself.

**Trustee Walker:** I want to correct something I said to Mr. Downey. I remember that at the eleventh hour we decided not to go after monies to complete Quarry Trail because we did not have the matching funds available. We did have the matching funds for the design, so that is what we went after with the grant proposal. We changed it at the last minute.

## **VILLAGE MANAGER'S REPORT**

**Village Manager Frobel:** We heard from the office of the state comptroller regarding the New York State and Local Retirement System, a bright spot in an otherwise dim topic. But Hastings did budget a sufficient amount to cover our pension obligations which will be due on December 15. In fact, we are a little bit to the good. We ended up budgeting about \$27,243 higher than we need to, to cover our obligations for those two plans.

## **BOARD DISCUSSION AND COMMENTS**

### **1. Request to Use Public Property - Southgate Avenue & Nepperhan Drive**

**Mayor Swiderski:** We are revisiting a request to from a resident at Southside Avenue and Nepperhan Drive to pave public property to use it for parking. This is a location that is currently dirt and weed on which cars park. A couple of Board members wanted to visit the location. We revisit this topic for commentary.

After I visited the property, I realized it is not an issue of the particular configuration of the property, or whether blacktopping it is good for drainage or not, and generally blacktopping is not good for drainage, but rather, the precedent it sets. A couple of realities. Hastings has a lot of on-street parking, a lot of garages built for Model Ts and smaller cars and, certainly, poorly-configured to handle families that have more than two cars. The struggle for parking in Hastings is a fact of life. The question is, do we want to set the precedent for paving land for use largely by one family, and open ourselves to potentially many more requests for such use of property. For example, between my house and my neighbors, we have a paper road that has a strip of dirt that has, I would like to think, more attractive weeds, since I planted them. But theoretically, our neighbor could say I would love to park my car here. You allowed it over on Southside, could we do so here? The fact that I might object is no different than the case here. We have a resident who is objecting. I can imagine setting a precedent that opens up dozens of cases where a private use is asked for a nominally public piece of property. Either we do it systematically to address a perceived parking issue, or we do not pursue that precedent and say it seems to be working now in its informal way, and let it be. I am going to tell you my prejudice is not to set this precedent. I am uncomfortable with where this heads. The Callas family is an old family in this village. I do not like to slight residents who have long history and who are volunteers and members of the

community. But if you blind yourself to who, and simply say is this the road we want to go down, it makes me uncomfortable. If there is a vote, and it may come to that, would be voting against it.

**Trustee Armacost:** Are you saying you do not want them to park where they have already been parking?

**Mayor Swiderski:** No, they can continue to park. It is the paving. The paving semi-formalizes a perceived ownership of a piece of public land, and sets a precedent. I can see it getting out of hand.

**Trustee Armacost:** So your objection to where you live is, if your neighbor wants to pave it, not that your neighbor wants to park there.

**Mayor Swiderski:** Yes. Paving formalizes a situation.

**Trustee Armacost:** But no one parks on that spot at the moment.

**Mayor Swiderski:** When there is a party on the block, people will.

**Trustee Armacost:** But not habitually. So it is very different than the situation where people have been parking.

**Mayor Swiderski:** Yes, it is. But houses turn over. A new family may come in that has one car, and decide they do not have that need for that piece of property. But there it is paved, and an implied use. It establishes that piece of property forevermore as some sort of parking.

**Trustee Armacost:** So should we ask the Callas family whether the non-paving is an issue? Does it affect them particularly if it is not paved?

**Mayor Swiderski:** We can, though I was hoping to get the input from the Board first.

**Trustee Walker:** I visited it today. Before I saw it I was leaning toward saying absolutely no paving because I did not want to set a precedent, similar to your view. After seeing it, I saw that it is eroded. It was raining. It was muddy, it was eroded, it is a mess right now. If they continue to park there, it is going to continue to erode. It is probably worse than it was several months ago, and continuing to park there is going to lead to more drainage problems. Maybe the solution is to create an attractive entrance to a park. I do not know if it is well-used. It used to be well-used, that little trail, and could we make a more attractive entrance

to it rather than a muddy, eroded area by either planting some grass there or putting some gravel down, something to keep it from eroding further. Parking there or no parking, I am stepping back from that. Anybody could park there. Somebody who wants to use the park could park there, somebody who wants to walk their dog could park there. It is a lovely trail for walking a dog. So you could bring your dog over, park there. I am not saying it should be used by anybody in particular, but it would be attractive to have something to prevent it from further erosion. Not paving. Whether it is the Village or somebody who has, in fact, created the problem could seed it and take the problem away. Because now, it is a problem. But I do not believe it should be paved.

**Trustee Apel:** This little issue brings up lots of big issues. We have these paper streets. If they are there, and nobody is using them and they are not useful for us, either we should sell them to the neighbors or they should be there for the use of the people in the Village. We have people that have a need. I am sure they could park in the street and block everybody else. They said they would like to move off the street. So it brings up an issue of looking at the other paper streets. Did we not once have a survey of all the paper streets? We had done something years ago. There were walkways and paper streets. So we do not even know what we have, stuff that we could be selling or getting rid of or deciding what we are going to do with. Now we are going into another issue altogether. I am of both minds. These people have a need, they live in our community, it is right across the street. If they could access someplace so they are not in the middle of everything that would be wonderful, and would we not be doing something for a resident of our village.

Deciding that it is public land, and the precedent that it is going to set, would mean we are saying you can park on there, wink, wink. Why do we not do the compromise type of thing, and make it a "park entrance," and if they want to park on it they can park on it. We can compromise and say you cannot put cement, you can put gravel. They would be happy, we would be happy. We would not have given it away. At the same time, we could start looking into all the other paper streets that we have and decide what we want to do with some of them. Maybe people are living next door to paper streets, they do not realize it and they could buy it. We tried to sell the walkways one time. Nobody wanted the walkways. I like your park entrance-gravel-go park there idea.

**Valerie Callas, Southgate Avenue:** We put gravel and it washed away because the road is so eroded.

**Trustee Walker:** In order to put gravel there, it would have a little retaining wall probably to keep it from rushing down the hill. Tim probably has a solution.

**Mr. Downey:** Turf pavers.



**Trustee Walker:** It is half grass-half paving. It is pervious.

**Mr. Downey:** It will support the weight of a car, it will give you a permeable surface. It will give you a nice clean surface for wintertime cleaning

**Trustee Jennings:** The thing that matters most to me is that we not use public funds or designate public property for the exclusive private use of an individual or a family. On the other hand, if there is a better public benefit to be had out of a little piece of Village property, and if the circumstances are such that it is not unreasonable for one family to offer to pay for the improvement and, in fact, they will probably be the only users of it, although *de jure* it is open to everybody to park there, that approach does not trouble me in terms of setting a precedent. I do think we would be well-advised to take a look at all of the places around the Village where we might get a public benefit like parking from something that is now unused.

There is a difference between setting a precedent and opening up chaos. If we did a sensible thing in this particular location, and then we did the sensible thing in other locations, I do not think that would be such a bad pattern. We would have to look at it on a case-by-case basis. The thing that matters to me most is that the Village does not have to pay for this, and that if we permit it to be done at private expense and it remains Village property, it must remain, at least in theory, open to everyone for parking. We cannot really as good public policy say in return for spending the money it takes to pave this we will give you exclusive use for it. That kind of deal I would not support. I also think, in light of what Tim was saying, it makes sense for us to come to an agreement that this be done in an environment-friendly way.

**Ms. Callas:** I never told anybody they cannot park there. I am saying anybody can use it.

**Trustee Jennings:** Would you be willing to spend a little extra money to do this with this kind of material rather than slapping macadam down?

**Ms. Callas:** We will see how much more it is.

**Trustee Jennings:** I do think the Village government has a legitimate interest in the environmental consequences of allowing people to park there. I think it is a benefit to create new parking spaces off the street for land that is eroding and not being used in a good way. So I do not have an objection to that. But I do not think we can be completely environmentally blind when we decide how best to make it parkable.

**Trustee Armacost:** It is interesting the way the conversation has panned out. My gut tells me it is hard to park in the Village and people need to park. The comments about ways to create a solution that benefits the Village as a whole, keeps the property as public property,

creates a gateway to the park. I think that is a lovely way of thinking about it. So there are times when a particular family is using that vehicle. But during the day, when the parks are going to be used, probably the vehicles will not be there. It could end up being a win-win..

In terms of the precedent, arguably it could be a good precedent that you have a family that is willing to contribute, she has not said she is yet, an environmentally sustainable way of making Village parking available to people who want to park there. Obviously, they are the ones who will use it the most. It is an interesting variation on a public-private partnership for us as cash-strapped people, assuming our lawyer tells us we are allowed to do that.

We need to do a couple of things next. We need to work out how badly eroded it is from an engineering point of view, what it would cost to have the kind of paving. I know the kind of paving that Mr. Downey has talked about. It both looks attractive and makes sense in that area. I know the flooding that happens in that area. It is not inexpensive, so it is possible that the generosity of the family will withdraw when they realize the cost. The Village may need to decide how much it cares about this issue. If we are able to find a solution that works where there is not a mud pool there, and where the Village does not cede property that it owns, that would be the ideal scenario.

**Village Attorney Stecich:** Legally, what the Board is talking about is fine. If the Board thought that paving it would benefit the Village, paving it with the grass paver, you could allow it, but under the condition that anybody could park there. It is important, though, to enter into an agreement. It would have to be built to your standards. You would have to see plans ahead of time, approve it. You would need to hammer out who would be responsible for maintenance. I do not know how much maintenance there is for this.

**Trustee Walker:** It does have to be mowed.

**Village Attorney Stecich:** So there are some issues that would have to be worked out. The first thing is for Ms. Callas to get some idea of the cost and whether they are willing to do that before we hammer out any of those details.

**Trustee Armacost:** Pricing was developed for this for the Little League at Uniontown. I remember it being expensive. Shannon Rooney developed that costing for us, so I am sure she would be able to give costs. I do not know whether there are more competitive prices.

**Ms. Callas:** I got two estimates. The first estimate was out of the question. Then I got a second estimate, and I took it. I am not going to talk numbers. This was for blacktop. Way under the first estimate. That is why I said go right ahead. I have the money aside. I pulled it right out of the bank. He was going to come and do it, and then I had to put it on hold. So

I still have it in my drawer, waiting for him to do this. I am waiting on the decision. So if somebody can help me, I do not know how much more it is going to be. I have most of it. I just need help. I am not going to pay for it all. But I do need the spot. We need to make this a spot for anybody, but for us we are always parked on the street and we do not want to keep them on the street. There are people coming over, they are parking all over the street.

**Trustee Walker:** There is another method, which is structural turf which looks like grass, but it has a structural bearing capacity underneath it. Tim is shaking his head. But I have seen that used a lot in Germany and in the Netherlands for parking lots.

**Mayor Swiderski:** And probably costs a fortune.

**Trustee Walker:** It is grass, but it is planted on a base that holds up better to traffic. It is used for stadium parking, and supplemental parking to parking lots. It is used frequently in this country, too.

**Mayor Swiderski:** I am comfortable with the consensus that seems to be forming here around something that is environmental, though I do worry about the precedent, and I wonder about what we will unleash here.

**Trustee Apel:** If they call it a park entrance, and it would be nice. There could be a sign that says it is a park, and people might take a walk down that path.

**Mayor Swiderski:** I thought about the one case we are all familiar with that is remotely similar to this, the paving of the paper road for access to the house, which we did permit, on a paper road that had some of these characteristics.

**Village Manager Frobel:** The end of Ridge Street.

**Mayor Swiderski:** Right. That was a specific case, and this would be another specific case. I am afraid we are going to land up with something that is unaffordable, but I can live with the compromise.

**Village Manager Frobel:** Marianne, under this scenario, say we had the agreement with the family and it is not exclusive for their use, would they still be thinking of naming the Village as a co-insurer? Does the family have that burden? The reason I bring it up is because I thought the Mayor was going to talk about this Ridge Street, as well, with Samantha Curtis; that porch that is on her property. I have been in close conversations with her insurance agent: impossible to get that kind of coverage. They are having a hard time getting coverage.

**Village Attorney Stecich:** That is a different situation because that is a piece of her house on Village property, whereas this would continue to be Village property. You are just extending the street some, then it is open to any use. If you are doing something different it is always a good idea to check with your insurance company, but I can 99.9 percent predict that the insurance company is going to say yes, it would be covered. Whether they want to also have coverage because their cars are there, I do not know. That is their own decision. But you would just check with the insurer. My guess is it would be like the streets. It would be an extension of the street. I understand what you are saying about the Curtis thing, but that is a very different situation because it is her house in Village property.

**Village Manager Frobel:** I was just referring to your comments at the last meeting, where there would be some requirement, you envision, for insurance coverage on the Callas family to the Village if we allowed them to use those spots exclusively.

**Trustee Armacost:** I do not think we have ever discussed that.

**Village Attorney Stecich:** I do not think that was in the works. That raises a lot more issues than the insurance issue. You cannot do it. You can only do it for what would be the market value of the land. Otherwise, it is not only what Bruce had mentioned a couple of times, against public policy. It is also against the state constitution.

**Barry Lindner, 13 Marianna Drive:** I have to agree with the original position of the Mayor. When you are discussing a private citizen paying to pave or improve a parking spot, and then not thinking that it is their parking spot, that goes against what has happened. For instance, if there was a pothole in front of my house on the street, I would call the town to fix it. I would not start trying to fix it myself. But here, we have a private citizen putting gravel on a parking spot trying to improve it themselves because it is their parking spot. There is an ownership issue here that they are going to believe that it is theirs. If I decide to park there, let us say for three or four days in a row, I bet they are going to get very upset at me. I imagine there will be notes on my car saying you do not live on this street, you should not be parking there. Let us say I am walking in the park late and parked there at 5 p.m. and stay till 8 or 9 in the summer. There are going to be a lot of problems there in terms of taking private citizens' money to improve public land, and I think that is going to be a real problem.

This does set a precedent. We have a lot of land on Mt. Hope where people are parking right now on the right of way. That should become a walking trail, and all those cars should be kicked off at some point, hopefully, in the next 10 years and we reclaim that land from non-environmentally-friendly cars and give it grass. Any time anyone starts mixing the terms "environment" and "cars," that is just crazy. Increasing the number of cars in the Village is

not increasing the environmental friendliness of the Village, it is only hurting things. In addition, people, instead of parking on the street they should be parking two cars in a single-width driveway and working things out rather than filling their garage with junk. This is not to any particular person, but the entire street. I am sure some garages are filled with junk. This is feeding how people want the ultimate in convenience in general. People should not be using the public land, streets and edges, for their personal parking spots.

**Ms. Callas:** I never made it seem as my spot. It has been going on for 40 years. I married into the family. It has just gotten worse. We always used the spot, nobody said anything. I just need it easier for me to use it, or anybody to use it, before they bottom out their car, which happened to my old car. That is why I had to get rid of it. That is the only reason why I want to pave it. Anybody can use it, I am not going to say anything. Sometimes I do come home and I see one of them taken. They want to park there and get their car messed up or they want to park in the spot, I let them. I park in the street. Then when they leave I park it right back because I do not want to be on the street. I want the street to be cleared from cars because of what if there is an emergency, a fire, an ambulance, somebody gets sick. How are they going to get through? There are too many cars on the street. That is why I want it paved. And like I said, anybody can use it. I have no issue.

**Mayor Swiderski:** Has anyone changed their mind or had second thoughts? Marianne, in terms of the proper steps, the agreement that they would have to propose sounds like it is a legal document. Are there templates? I do not want to incur costs on your end in creating that. Or is it something they will have to hire a lawyer for?

**Trustee Armacost:** We have a step before that, which is to work out the cost. We are proposing something which the family may not even want to accept.

**Village Attorney Stecich:** And the expense may be more than 30 square feet of grass pavers. Some grading may have to be done, there may be some kind of retaining wall needed. They need to get an engineering plan to show it would work. It would have to be acceptable to the Village. That is the next step. There would be some costs. We have, in the past, required the applicant to pay for legal fees for drafting it. They could draft it. Is there a template? They probably have something. Things like that do not take me very long to do.

**Trustee Armacost:** But the applicant needs to know the full extent of the costs, both the engineering costs and any other costs including fees if the applicant is expected to pay those fees. I do not think the applicant can agree to something, and then be given \$4,000 extra lawyer fees.

**Village Attorney Stecich:** On the Ridge Street one they had to pay the attorneys fees for drafting that.

**Mayor Swiderski:** Again, to be explicit, my next statement belies why I remain uncomfortable with this. If this were private property, and they were seeking to do this to their own private property, would it require a building permit?

**Village Attorney Stecich:** Yes.

**Mayor Swiderski:** So we are talking about a code event. Whatever the code requires in terms of documentation that will satisfy our Building Inspector has to be prepared here.

**Village Attorney Stecich:** Yes, but it would be the same thing that would need to be submitted to you to make sure that it is acceptable to you. They would have to detail plans of what they are doing. I would think you would want to see that, and that would be the same thing that they would be submitting to the Building Department. I am not sure. This is kind of odd. I am not sure whether site plan review is required. It is a little odd because it is a parking space, which is generally required.

**Mayor Swiderski:** That is why it belies my discomfort, this whole topic.

**Village Attorney Stecich:** But it may not be. Usually, if it is connected with a single-family house, you do not have to. But I would have to look at the code to see exactly how it fits in. It is one submission, an engineering plan that shows exactly what they are going to do. Whether they need a building permit or whether they need site plan approval, definitely they need approval from you. And they will need a building permit.

**Mayor Swiderski:** Are we talking about something they can draft themselves or is this something they, unfortunately, have to pay an engineer to create? Is this an engineering event, an architect event, or is it something they can describe adequately on paper?

**Village Attorney Stecich:** I do not think they could do it themselves.

**Village Manager Frobel:** I would think a contractor could help them, though.

**Village Attorney Stecich:** A contractor, it might not be an engineer. Deven would know. It is essentially what would satisfy him. But it is Village property, so you want to make sure that it is done right.

**Trustee Armacost:** Normally, you would be asking for a building permit to do something on your own property. Do we have other situations where somebody is asking for a building permit to do something on Village property? It is an odd scenario. It seems like the Village should be giving itself a permit.

**Village Attorney Stecich:** We can figure the procedure out later. That is not important. I would want to look at what we did in Ridge Street; it is very similar to Ridge Street. But the first step is to get an idea, before we spend a lot of time, of how much it is going to cost and whether the Callases are willing to pay it. If they are, we can figure procedurally how to handle it.

**Trustee Jennings:** We need to get the right kind of studies done because it is Village property and we need to know that it is going to be done right. This is completely independent of the material that is going to be used. We are talking about drainage, primarily. Your plan to get an asphalt contractor to do the job without doing these studies, and getting this permit or approval, that would not fly. So what we are saying now is, even if you end up putting asphalt down, this is stuff that has to be done before that. We are not going down this pathway just because of the drainage or the permeable surface thing. Any surface that is ultimately chosen, this is a procedurally thing that is important legally, and it has to be done. Just wanted to clarify that.

**Mayor Swiderski:** I completely agree it is independent of material chosen, but I am trying to nail down the process, if it is a drawing that could be prepared by a contractor at no expense to you, as long as it is acceptable to Deven and will give us enough to make a decision.

**Village Attorney Stecich:** It would have to be somebody who regularly deals with Grasscrete. Tim used a generic term for it. I think Grasscrete may be the proper name. I will tell you what happened at the end of Ridge Street. The Planning Board approved Grasscrete, and it turned out it was gravel. So what do you mean, how is it gravel and not Grasscrete? The Grasscrete could not grow because it was too dark. That is why I am saying it has to be somebody who is knowledgeable about and deals with Grasscrete, and can tell you how much it will cost, what prep work there is, and what is the likelihood of it holding up, and the cost, not necessarily the dollars and cents cost, but maintenance.

**Trustee Apel:** Who is going to do the maintenance?

**Mr. Gonder:** If it erodes away, it must be a slope. And then it would have to go to the Planning Board, would it not?

**Village Attorney Stecich:** A steep slope is defined as including 1,000 square feet. My guess is this does not include 1,000 square feet. And from looking at it, it may not meet that.

**Mr. Lindner:** The Mayor also brought up another interesting point: if this was their land. Let us say it was their front lawn. Would we let them pave it over? I do not think the Village lets people pave over front lawns for driveways. When people want to have, let us say, a psychology practice they always have to go through having enough parking. We do not let them start paving over their front lawns to create that parking. And if we do, that is a bad thing to do, to allow paving over our permeable surfaces.

**Village Attorney Stecich:** There is no paving a lot in a front yard except for a driveway.

**Trustee Walker:** That is what he is saying, if it were a driveway.

**Village Attorney Stecich:** If it were a driveway, yes. But is it a driveway or is it a parking area? There is a distinction. But this is different. The way you described it, Meg, this is the way I am envisioning it, and why it seems it would be in the Village's interest if it were a usable entrance into that park.

**Trustee Walker:** Not it is not even usable. We are looking at reality here. In the best of all possible worlds we would say no. But they are parking there, and it is just dirt and it is eroding away and causing a problem with all this dirt running down the street. It is the reality of the situation.

**Mr. Lindner:** Let us say we wanted to put a parking spot there and do it right. My instinct is the family will not want to pay for the way that you guys want to do it. You mentioned there were two quotes. One was really expensive, one was something that would do if we want to do it right, maybe with a retaining wall, maybe something of a permeable surface. We are talking \$10,000 or more for a parking spot. I cannot imagine it coming up less.

**Trustee Armacost:** I think we should get a quote, and not decide for the family before.

**Mr. Lindner:** To get a quote, and then you are saying it sounds like you have to think about how much water is going to be in there, what kind of drainage, what kind of surfaces. A general contractor who does some paving does not necessarily have the experience in just drawing something up. Just like you are saying, you have to have someone who would come through and do something like this.

**Trustee Armacost:** But if the family chooses not to do it because the quote is too much, then we will continue with the current situation. The Village probably will not chip in to



cover that. To me, we have f had enough of the convention here. And we need more data before we can have a further conversation, which is not satisfying to anyone probably but is the reality of the situation.

**Mayor Swiderski:** Agreed.

## **2. Selection of Consultant for Review of Waterfront Remediation**

**Mayor Swiderski:** Dick Brownell, an engineer with ARCADIS, which was formerly known as Malcolm Pirnie, has been our advisor on the waterfront issue for years.

**Village Manager Frobel:** Since 2009.

**Mayor Swiderski:** Yes, and he predates that, as well, as part of Malcolm Pirnie. We have come to know and trust him, and he gives balanced, sensible advice. Unfortunately, his firm is running the remediation on the Exxon property and wanting to bid on the remediation on the BP property. The conflict of interest klaxon goes off, he recuses himself, and we asked for a recommendation and then had it confirmed by others of a replacement engineering firm. It needed to be roughly in the same price range, the same quality, and a willingness to do this per diem per hourly work. We got a recommendation, we had it vetted by Mark Chertok, who knows the firm and likes it as well as others. They are well-known.

**Village Manager Frobel:** Jerry Quinlan and I met and we compared the Louis Berger agreement with the fees currently being charged by ARCADIS for Mr. Brownell's services. We think they are very comparable for the same level of professional for the staff member that would service the account. I called Mark Chertok, our environmental counsel. Susan found the resolution that was adopted in 2009 affirming the appointment of Malcolm Pirnie in that capacity. It makes reference to the fact that the invoicing goes first through Mark Chertok's office. I sent Mark the Berger proposal. He he would take it with him while he was away this weekend but I have not yet heard back from him. Initially he said he was well aware of their work, and he did not indicate any problems. But I do not know for certain his position on it.

The urgency is, we need someone who can look out for our interests at the table with Riverkeeper and the DEC and these companies. The fees are paid through the monitoring trust so it is not a direct out of pocket expense for the Village, but it is your privilege to pick the firm that you are comfortable with.

**Mayor Swiderski:** Back when the settlement around the waterfront was completed and negotiated, ARCO set aside money into this trust fund specifically for our use in hiring consulting services. To be clear who the players are and where this money comes from, BP/ARCO funded an account, and our invoices for services provided by engineers that we choose to provide us with advice on this project are paid out of this account. That account is monitored by our environmental counsel, who is acting in a fiduciary capacity here, and also advises independently of that on legal issues around the waterfront. So the money is ours, but it is not taxpayer money, per se. It is out of BP. We care about the fees because while those monies are likely to be renewed, if we need them, out of BP/ARCO we do not assume that. So we tend to husband those fees fairly carefully, and did not want a new engineering firm that was triple the cost depleting that reserve too quickly.

Jerry Quinlan, who served on the Board, continues to act in a capacity representing the Board's interest on waterfront issues, pursuing and following up on issues like this, a sixth Trustee, effectively, on waterfront issues.

**Jeremiah Quinlan, 39 Hillside Avenue:** I want to add one thing Fran did not mention. I have had numerous conversations with Mr. Goldstein, who is the principal partner of Louis Berger. He has let me know that the project manager will be Leonard Werner, who I have worked with. He used to work for Malcolm Pirnie and ARCADIS. I know his work; he knows the project. He was working on it for years before he moved over to Louis Berger, and he would be who I would be working with if you choose this firm as consultants. I am comfortable with him, and I would hope that you would approve them either at this meeting or some further meeting, if you need to talk to Mr. Chertok. I am confident that he will say they are OK, too.

**Trustee Walker:** This is a very well-known firm, and they have worked on major remediation projects in the region, some of the worst contaminated sites: Passaic River and upriver in the Hudson River. I am wondering why are they not submitting a proposal to BP to be their engineering consultant for the project. They have the right experience. But you have spoken to them, and they said they are interested in this role which would preclude them from submitting a proposal to BP.

**Village Manager Frobel:** This all happened because we had that relationship with Malcolm Pirnie and they were acquired by ARCADIS. ARCADIS, for a number of years, had represented Exxon Mobil and Chevron. I see that as happening at a much higher level. A decision was made as to why they are looking to bid for additional work.

**Trustee Armacost:** The information that Jerry gave us makes me feel as if it is not an entirely new company that is coming on. Even though, of course, they are very well-known

globally and in this area for remediation work, to know that the lead engineer is very familiar with our own site and has worked in the company that would have otherwise been useful, pertinent information. Makes me feel comfortable with that choice.

**Trustee Apel:** The engineer is also from Malcolm Pirnie. It is a very small world. Engineers all know each other in the field, and so they all, at one point, worked for each other or worked with each other. Their credentials look excellent. If they are willing to do this, that is wonderful.

**Trustee Jennings:** I agree. Jerry's experience working with this personnel is reassuring and important. One of the most important criteria here is not only their expertise, experience and cost structure, but also their independence. They are working for us. We set this up in an agreement with ARCO because we felt we needed to have our own independent experts looking out for the best interests of the Village. We were not entirely comfortable hitching our wagon to ARCO. We were not entirely comfortable hitching our wagon to the state of New York either. We wanted to have a independent voice. The role of Malcolm Pirnie thus far has been good. But going forward, this new representative of the Village and its interests is going to continue to be a very important actor in the remediation itself, I assume, to be a watchdog to make sure that it is done properly now that the state has laid out the way it should be done. We still have to keep our eye on the ball, and make sure it is done in accordance with the standards. So this remains a very important job. Am I right about that?

**Mayor Swiderski:** Entirely. What Dick Brownell allowed us to do was to play a role at the table confidently, when Jerry and I would go up to Albany or meet at other sites with both the DEC and BP, backstopped by our independent advisor who was able to tell us whether what we were looking at made sense, or was right, or was within reason.

The next phase here will be the engineering design, where BP is going to design how they are going to enact what the statement has told them they have to clean up. Engineering design is what it sounds like; it is a technical process, which Jerry and I know the proverbial bupkus about. So for us to be able to participate as a village, with a seat at the table in the discussions that will go back and forth with BP and DEC, we continue to need that advice. It makes us more effective, it gives us the confidence that we understand the issues, and it is not something I would even consider doing without expert advice. So yes, quite important.

I would like to propose then that if Mark Chertok does not come back with a red flag that we as a board, permit Fran to, with Marianne's oversight, sign whatever agreement is necessary to formalize this relationship and we move on.

**Trustee Walker:** May I just ask why an RFP is not required in this case?

**Mayor Swiderski:** When you get this sort of professional advice on an ongoing basis where there is not a total dollar amount do you need to follow an RFP process?

**Village Attorney Stecich:** No. I think what you have in mind is the competitive bidding statute. For professional services like this it is not required.

**Village Manager Frobel:** Our next meeting is within two weeks. We could have a resolution. Meanwhile, Marianne and I will work on the details with the company.

**Village Attorney Stecich:** Yes, I think you should vote on it.

**Mayor Swiderski:** Then let us just do the resolution next week. It is not like this is pressing. We can wait two weeks because it is going to take two weeks to draft documents.

**Village Attorney Stecich:** And we can hear from Mark.

### **3. Request to ARCO-BP to Ascertain Funds Needed for Building 52**

**Mayor Swiderski:** We I would like to push forward the discussion on Building 52. We are heading into an engineering design, and yet there is this 100,000 square foot building that takes up a significant part of the waterfront whose fate is undetermined and which we have danced around to some degree. We need to take the next logical step.

To date, we got a commitment out of BP to set aside \$1.5 million for the preservation of this building. A little less than a third of that was spent on an engineering survey, in great detail, of the superstructure of the building about what is above soil, outlining its various issues, defects, strengths, whatever. So we have an idea of the state of the building, or at least an engineer has presented the document that has that idea.

To me, the next step is to figure out if we are, indeed, intent on keeping Building 52 for future use. It needs to be mothballed in a way that will make it available to the community in eight years' time, when the property is finally remediated, for some use. And if that is not done, its exposure to the elements and possible decay could leave it in a situation where it will not be usable. Here we come at the end of a remediation, and the building is unsafe and needs to come down. That is not acceptable because that building sits on top of a pocket of contamination. If the building remains intact, that particular pocket does not have to be remediated because the building acts as a cover. But it has to come down in eight years' time, we essentially land up having to force a restart of remediation in that pocket. That makes no sense. If BP is going to do the engineering design and initial a cleanup we should

know if this building is going to survive or not so they can design around that. Because either we clean up the site in total without that building there, or we are committed to keeping that building and it is mothballed in a way that allows a future use.

I have spoken to Doug Alligood, who has a preservationist interest in the building. He has suggested that we think in terms of mothballing the building not with brand-new skylights and windows and everything else, but minimally to keep it in good enough shape to be used as something not only like a parking facility. So structurally sound, safe; that construction can happen on the site without the building falling on them or slabs of it coming off. But not overkilled so we land up with a \$20 million expense for something that could be adequately mothballed for a lot less than that. He suggests a reasonable level of mothballing. What I am suggesting is that I put out a formal request to BP to take the first step, which is to get an estimate for what it would cost to mothball 52 to that level that Doug has suggested: minimal level, keeps the building structurally safe and sound, and prevents further decay and leaves it with a potential use in eight years' time. Let us see what that number is. If the number is under a million dollars, then this board can have that discussion. If the number is substantially more than a million dollars, and BP does not step up to the plate to cover that, we have an entirely different discussion: do we want to do it and pay that amount.

But either discussion is predicated upon understanding what that cost is. Doug would assist in reviewing the RFI document prepared by BP. I have also requested, and BP has agreed, that we participate in the process. If there is a bidders' conference or a bidders' meeting, our representative is present when bids are received. I have asked that at least two firms be invited, we are there for the bid opening and the review of the documents so that this is a transparent process, and it satisfies us that BP has made a good faith effort to collect reasonable bids and that those are presented.

Now, BP has countered, indicating that they have a preferred list of construction firms they deal with. It is not like we can put this out to the whole world because they have pre-cleared a set of firms they have worked with in the past, and it would have to be limited to firms from that list. I need to remind the Board, and myself, periodically that this is their building and their money and their remediation responsibility. The fact that they have requirements around approved vendors is typical corporate policy, and I accept that. But they, in turn, have accepted my request that we be present throughout the process so it feels transparent.

**Trustee Armacost:** Can we be given that their approved vendors list?

**Mayor Swiderski:** I will certainly ask. So what I would like to do is prepare that request, circulate it with the Board. Once you are comfortable with the request, send it on to BP.

**Trustee Walker:** Who prepares the specifications for the mothballing?

**Mayor Swiderski:** Doug would set the standard, and they would prepare. This is not a full RFP. It is more of an RFI, where we are looking for indications of interest and a general sense of how much something of this scale would cost. In the end, it would likely be a document referencing what portions of the engineering study that was done would be implemented. So if the engineering study said repoint all the bricks and change the skylights and do this and that, it would be that these segments are minimally needed, these portions of that engineering study would be minimally needed, we do not need the full magilla to restore the building.

**Trustee Walker:** But who is selecting those?

**Mayor Swiderski:** I would ask that Doug participate in that, yes.

**Trustee Walker:** Because why would you ever ask the contractor to do it. And we do not want to ask BP to hire an engineer to do that.

**Mayor Swiderski:** This is the sort of document that not only Doug would weigh in on, but I want our own engineer to weigh in on if it makes sense. Doug is one perspective, and I would want our own advisor.

**Trustee Walker:** But what engineer?

**Mayor Swiderski:** The one that we will hire.

**Trustee Walker:** Right. But that engineer is not a building structural engineer.

**Mayor Swiderski:** No, I would hope his firm has access.

**Trustee Walker:** An environmental engineer.

**Trustee Armacost:** That particular engineer has so many skill sets within its vast corporate self.

**Trustee Walker:** True. No, that sounds like a good strategy. Doug or other architects who deal with historic preservation might know whether historic-correct preservation tax credits could be used toward mothballing. We know that this building is eligible for the National Register of Historic Places. If it was actually on the list, it would be eligible for historic tax credits.

**Mayor Swiderski:** Change the dynamic. It could make one million be worth 2 or 3 million.

**Trustee Walker:** Well, it would reduce the cost to BP. But I do not know the answer to that question whether it could go toward something. It usually is used toward restoration.

**Mayor Swiderski:** Doug's group, at one point, had people with the background. So the hope would be that could be answered.

**Trustee Walker:** There may be ways that BP can y write this off, sell the tax credits and find that it does not cost them anything.

**Mayor Swiderski:** The infrastructure committee that is tasked with trying to figure out where roads will run and where the park will go has been asked to do a with-and-without version of that plan with 52. A couple of them have expressed dismay that there is quite a big difference between the two. It entirely reconfigures the bridge; it punches through a building that is not there, or it has to maintain the current street flow. Doug indicates both are possible, but is radical.

**Trustee Walker:** Yes, but it helps us understand the opportunities it creates if the building is gone.

**Mayor Swiderski:** Yes, without a doubt. So they are looking at it either way. It does not much matter. And this will move this discussion along. If 52 needs to go, it needs to be an engineering design so they can factor in how long it stays and whether they keep it for part of the remediation and then tear it down, or does it go down immediately, or whatever. And if we want to keep it, we have that discussion.

**Trustee Walker:** If they tear it down there would be additional cost to remediate the site. Could there be a tradeoff there?

**Mayor Swiderski:** There could be. But there is a remediation cost anyway because the first 1 ½ inches of the concrete floor has to go because it is PCB-impregnated.

**Trustee Walker:** Right. But that might be different.

**Mayor Swiderski:** It may be a whole lot less, without a doubt. I do not know the cost-benefits, but this is at least the first step. I will draft that e-mail request, I will pass it by the Board and forward it on to BP, and have it posted on the Web site once you approve.

#### **4. Proposed Local Law Authorizing Use of Best Value Procurement Standard**

**Village Manager Frobel:** Marianne brought to my attention an amendment to state law that increases the discretionary authority of municipalities in awarding contracts beyond \$20,000 in value for either service or work, excluding public works projects, entering into the equation a term they use, "best value." I have always taken the position that we can qualify a bidder based on references, price of course, whether it is on balance. But this formalizes this ability to insert this term best value into your processes.

Marianne did a lot of work in preparing the memorandum, going into a lot more detail than I can offer verbally. It offers some flexibility and is something I did not want to lose track of, and I wanted the Board to be aware of this, as some additional discretionary authority that Hastings may wish to consider.

**Village Attorney Stecich:** To be more precise, it was the general municipal law that requires you take the lowest responsible bidder. That is what has been changed. Now, a municipality can use the best value instead of necessarily the lowest responsible. Best value would allow you to take some other things into consideration.

There was a bid we had recently where you thought it might make more sense to have somebody locally. But you cannot use it as a local preference or anything like that. Let us say you had a bid for emergency services, a tree company that needed to come down in emergencies. You could say, in your bid specs, that the firm has to be within a 10-minute drive of Hastings. But you do not always think of everything when you are doing the bid specs. You do not usually think of every detail. So let us say you do not say that, and the bids come in and your lowest bid comes from somebody up in Mahopac and there is another bid that is a little more and they are in Dobbs Ferry, it might make sense. You could look at the whole thing and say it works out for us better to have a firm that is nearer by. This allows you to do it. But this amendment was not automatic. The village has to adopt the local law to say we authorize the use of this best value standard. That does not mean that you cannot still take the lowest bidder, but you do have the flexibility to use this best value standard. It is up to you whether you want to do it or not. It kind of sneaked by.

**Village Manager Frobel:** No, we had no knowledge of it.

**Village Attorney Stecich:** I just happened to read some article that referred to it and followed up on it. It seems like it is probably a pretty good idea.



**Trustee Armacost:** Would we not have to also adopt some kind of guidelines to help us? Best value can also sound arbitrary. We would have to develop something which would encourage us to remain fair.

**Village Manager Frobel:** Certain performance standards you would have to incorporate into your specifications. As Marianne mentioned, one criteria might be proximity to the client.

**Trustee Armacost:** Into the specifications, or into a set of guidelines?

**Village Attorney Stecich:** I think a set of guidelines. You could do it that way, Fran. I am not sure you need to with this best value standard. The downside of it, to the extent there is a downside, is there is no law to help us out on would this meet the best value standard, like the lowest responsible bidder. There is a lot of law on that; how do you decide whether the person is a responsible bidder. There is no law here, it has not been done. New York City, and I do not know whether it is all cities, has operated under this standard for awhile. It is only recently that it was allowed for villages and, I think, towns. There are not any comptroller's opinions on it yet. So you would be making your way through it. Ideally, you would have some standards. But it would be kind of hard to develop them.

**Trustee Armacost:** In advance.

**Village Attorney Stecich:** Yes. It is defined, not in the general municipal law but in another law, as the basis for awarding contracts for services to the offer which optimizes quality, cost and efficiency among responsive and responsible offers. It is supposed to be objective, if you can, quantifiable. But you have to be careful not to use it as a cover to pick the person you want.

**Trustee Armacost:** Exactly. That was what I was concerned about.

**Village Attorney Stecich:** Right. You cannot act arbitrarily. You could try to develop standards. But my guess is that it would be a little hard, and they are probably going to develop as you go along and implement the standard.

**Trustee Apel:** Does this open us up to lawsuits from those that were rejected?

**Village Attorney Stecich:** It could. Whether they are going to bother to do it or not, there is always a possibility. But it is not different. Let us say you are still using the lowest responsible bidder. You have done your due diligence, and the lowest bidder a lot of people

said bad things about. So you want to reject them as not a responsible bidder. You take the next one up. That is going to subject you to a lawsuit.

**Mayor Swiderski:** But that is already available to us.

**Village Attorney Stecich:** They frequently sue.

**Trustee Apel:** Would that not be the same as best value? In other words, if you reject someone because you heard of their reputation and they were terrible, and then you go to the next one, that is your better value because they are going to do a better job.

**Village Attorney Stecich:** Yes, but there might be other reasons you think somebody else is a better value. Like I said, location could be one of them. Forget about the tree thing. We just had a bid in Irvington for a water tower, where the lowest bidder was a firm in North Carolina. There is concern. Although it worked out, and they ended up taking them because they had done a lot of them. That was a one-shot deal: you come in and you put in the water tank. But there might be another kind of a contract where you need more interfacing.

**Trustee Armacost:** A service component.

**Village Attorney Stecich:** Exactly. You might need somebody to come back and forth more often.

**Trustee Apel:** I am concerned about protecting the Village and the individual Trustees that would be making this decision and accepting these contracts. If you do best value we would like to think the most positive of everybody, that they are going to do it for all the right reasons. But without the guidelines, I would feel vulnerable for lawsuits and I would feel uncomfortable with it. I think best value is too vague. I could accept it if there was a list of things you have to look at before you accept best value, but I would not feel comfortable with it.

**Trustee Jennings:** I agree. I understand the point, although there is something more than just the phrase "best value." You mentioned it, did you not, Marianne? Quality, efficiency, and so forth. I doubt very much that we will be able to come up with guidelines or criteria that are much more concrete and specific than the notions of quality and efficiency and so forth. We will have to flesh out what those things mean on a case-by-case, contract-by-contract basis. We need to look at the downside of being forced in a straight jacket fashion to accept the lowest bidder, which is not always good for the Village, for villages, and that is probably one of the reasons this change was made, against the fact that we might get litigation that we would not have gotten if we had this automatic, numerical decision-making

rule. But I think it is a risk worth taking. Having more local control over the way we spend our money and the services we buy is, generally speaking, a good thing. We are capable of handling that discretion and defending ourselves, if necessary, if we do called on it.

**Mayor Swiderski:** If we pass this that does not obligate us to use something other than best price on a given contract?

**Village Attorney Stecich:** No. It says you can use it.

**Mayor Swiderski:** Right. So on our annual asphalt bid, where it is pretty straightforward, price per ton and milling price, we can go with our old way of going for the best price.

**Village Attorney Stecich:** Yes, best price. You can, but that would be the best value.

**Trustee Armacost:** I am not understanding what we would do differently. For example, if we can reject the lowest price because the person has a bad reputation and lives in North Carolina, or just has a bad reputation *or* lives in North Carolina.

**Village Attorney Stecich:** No, you cannot. You can reject it if you could show they are not a responsible bidder. This is not because you just hear a couple of bad things about them. I had one lawsuit where I recommended that a village reject the lowest bidder because the facts were so bad. Most villages will not do it because it can be a big deal rejecting somebody. The person, not only do they lose the bid, they are afraid their reputation is getting sullied. So they will sue because they want to redeem themselves. I did win the suit.

**Trustee Armacost:** But that helps us to say that this is very useful, then.

**Mayor Swiderski:** Right.

**Village Attorney Stecich:** Yes.

**Trustee Armacost:** The way you were describing it before made it sound like it was pretty much the same thing. But this makes it sound quite different.

**Village Attorney Stecich:** No, you can reject a bidder if you find out really bad things about them. It has got to be pretty bad before you reject as an irresponsible bidder.

**Trustee Walker:** Yes, it says in the law that such basis shall reflect, wherever possible, objective and quantifiable analysis. So it is not just up to our discretion. It is up to our discretion if we see that there is clear, quantifiable reasons that this low bid is not going to

give us the value that we are looking for. Having worked in construction trades before, I frequently have seen that lower bidders are cutting corners in order to get the job. You have to scrutinize the bids very carefully to see where they are cutting the corners. If you did not scrutinize them, you could easily say, they are so much lower than the other guys, we have to go with them. Now, we are given the opportunity that we do not have to do that. I think that is tremendous, could be a benefit. We do not have to choose to do it, but we can do it. I think that is important.

**Mayor Swiderski:** Does that announcement have to be made at the start of the process?

**Village Manager Frobel:** I suspect in the preamble to specs you might mention that part of this evaluation will include best value standards, but we would have to try to enumerate some of that. We will also mention small businesses as a bias in trying to attract them to bid.

**Trustee Walker:** So minority- and women-owned businesses. It says that.

**Village Attorney Stecich:** But I have a problem with that. I was asked that question. If you say you could give a preference to minority- or women-owned, can you give a preference to local? And I said no, it is only because the preference for minority- and women-owned is sanctioned someplace else in the state law. So it is pretty much limited to them, or some other group that the state law says you are allowed to give a preference for. Maybe there is some for veterans or something, I do not know.

**Village Manager Frobel:** We wanted to introduce it and get feedback. If you are inclined, then we can consider it at a future Board meeting.

**Trustee Armacost:** Do you think, on the basis of the last year in terms of contracts that you have made, would this have made you decide differently?

**Village Manager Frobel:** No. I do not think it would because of the reasons I mentioned in my introduction. I have always turned to the most responsible bidder. If you have an unbalanced bid, or if reputation reveals that the contractor has had a failure to perform, there have been difficulties, or a number of change orders, some experience that you are hearing when you check their references that would give you pause and not recommend to the Board of Trustees to go with a low bidder. And then turn to your lawyers, and hope they can defend your action, based on a rational approach.

**Trustee Armacost:** Why are we adopting it if it is not really going to change the way you would have acted anyway?

**Village Manager Frobel:** I am bringing it to your attention because Marianne did work on this, researched it. I felt you deserved the opportunity to at least be aware that this was an added, strategic point that you could adopt and have available to you. I did not want someone to tell you Irvington did it or Ardsley did it, why did Hastings not know about it. Rather than just send you the memo, I wanted the opportunity to hear this dialogue.

**Trustee Armacost:** But I am just trying to understand. I mean, yes, it is wonderful that someone did this research. But practically speaking, is it useful to you?

**Village Manager Frobel:** I think it gives you an added dimension. If you had a bias towards, again, the standard small business, with the footnote Marianne had offered, it at least gives you that added wording that you are going to look at best value. And that way, bidders will see that, too, and maybe pay closer attention to it.

**Mayor Swiderski:** I am going to also ask if there are ways, for example, for this to enable us to impose an environmental requirement, where we are allowed to bias toward a more expensive bid because they do not use toxic fertilizers or pesticides, that there be a component added to a bid that is not just financially driven, but rewards a vendor for quality.

**Trustee Walker:** That should probably be part of your RFP. That is what you want to put in your specs.

**Village Attorney Stecich:** Let us say you forgot to put it in your specs. Then this gives you the flexibility if, in fact, you thought it would make for a better quality.

**Trustee Apel:** Again, my concerns are that there is a certain amount of leeway, which is wonderful. But I do not want that leeway to be misinterpreted: again, the Village has opened itself up to something that is arbitrary. We are going to have to prove that it is quantifiable. And what if somebody does not, and says this one is better for whatever reason you pick without having something you just brought up,, whether the contractor you wanted is closer, and they are someplace else and they are doing fine. Someone could say you arbitrarily said we are not going to do the job well enough because we are up on Rockland instead of being in Westchester. I do not think I want that flexibility.

**Village Attorney Stecich:** But sometimes it is relevant. It may not be relevant to some things, but it may be relevant to others: if you need somebody to be able to get to the Village quickly on an emergency basis.

**Trustee Apel:** That is what I am saying. I think this is a terminology which gives you license to be subjective and not objective, and who is going to interpret. That is where you

end up in the courts. They will say you picked this one over that one. It says wherever possible. Well, it was not possible.

**Trustee Walker:** I can think of a couple of instances in the past that predate Fran, where the Village had to take a low bidder, and it ended up costing a lot more because of the inexperience of the contractor, because of the poor quality. They did not understand the construction method, and it ended up in lawsuits and additional costs to the Village and the work had to be redone.

**Village Attorney Stecich:** One other thing I should clarify is that this does not apply to public works contracts. Purchase and service contracts. I did say that in the memo, but just to clarify. So some of what you are talking about are public works contracts. Purchase contracts of over \$20,000 or service contracts of over \$20,000.

**Trustee Walker:** Purchase and service, but public works would include any kind of construction?

**Village Attorney Stecich:** I am not sure if it covers all construction. A public works contract covered by Article 8 of the labor law, and I am not sure what that is.

**Mayor Swiderski:** In terms of bringing the evening to an eventual close, there is a general interest in the flexibility. But what would the next step be?

**Village Attorney Stecich:** I drafted a local law. If you wanted to do it, then you would call for a public hearing on the local law.

**Trustee Jennings:** Let us do that.

**Trustee Walker:** I think we should go forward with it.

**Mayor Swiderski:** Yes, I am comfortable with flexibility. I totally hear where Marge is coming from. I do not know how often this would be used, and I suspect when it would be used Fran or whoever follows him would be nervous enough to pre-clear that criteria with the Board.

**Village Manager Frobel:** So let me prepare a resolution looking to set a public hearing at the next meeting.

## 5. Update on the Waterfront

**Village Manager Frobel:** ARCADIS is making some terrific progress at the Chevron site. They have located the utilities, they have begun to grub the site and grading, some tree removal. They have identified the abandoned sanitary sewer line; that has been plugged. A great deal of work is going on. As you know, they are on the Zoning Board agenda for action at the September 13 meeting for view preservation. That is for placement of the poles to bring permanent power into the site, to the wells, and to bring power to their construction building that will be on-site for a number of years. This week, we will see some real activity. They are going to begin drill the wells. So the well installation will begin this week, and they should be completing the well development work, as well. Hoping to pour some of the equipment pads, concrete pads, for the permanent fixtures. They will be at least temporary for the cleanup, as permanent as that will take a number of years. We are also receiving the air monitor reports. We put them on the Web site. They are coming back negative.

**Mayor Swiderski:** And thanks to Raf for the daily work that requires. Because he has got to format, and then post those reports daily.

## 6. Update on the Downtown

**Trustee Walker:** We are proceeding on a few paths. Some are moving ahead, some need to get started. I think we discussed how we wanted to look at three kind of immediate strategies. One is to conduct a market study of the downtown, to do an inventory of the businesses, to do some surveying of both merchants and landlords, and local residents. I am starting to collect a committee of people who are eager to get involved. We will see how it goes, but we might want to open it up to the public and see if there are other volunteers out there. We are defining the work. I think it helps to have a small group define what the work is going to be, and then we will find out what additional volunteer opportunities there will be. I think they will be considerable. That is the business development end of it.

Then we wanted to look at our local ordinances that are affecting property owners and businesses in the downtown, and see if any of them are holding up local businesses in an unreasonable way. I need to make an appointment with Deven and talk about that. That one has not really started up yet.

The third one that I would really like to move ahead with, not being sure exactly how the Board feels about it, I think we should do something as a village about the tree pits. Different property owners are doing different things with them; some that are mulched, and some have gravel, and some are planted and some are just bare dirt. But it would be very attractive if we had a particular design that is simple, straightforward and inexpensive to deal

with that could be consistent through the Village. I would like to propose that we get a few designs and look at them. Maybe we take them to the ARB. Maybe when we meet with the landlords we talk to them about it. But come up with something that meets with everybody's approval and get some costs, and then figure out how to raise money for it. Just do something to improve the aesthetics of the downtown so at least it was taking a step forward. Many people, including the Chamber and property owners and merchants, have complained about the appearance of the tree pits.

We do not have a September Friday Night Live planned for a variety of reasons, but we are planning one for October 5. It is going to be our Discover the Rivertowns Weekend, which is going to be promoted for all three of the Rivertowns, with a number of activities going on including Aquafest and activities in Dobbs Ferry and Irvington. We would like to have Friday Night Live be a part of that larger weekend effort, and try to attract visitors from out of town to Hastings. It will be interesting to see how it works out. We want to close Warburton that evening and have a music and food event, which is in the process of being planned. I would love any input, ideas, thoughts.

**Trustee Armacost:** I think the tree pit idea is lovely. I lived on a street, and still have a flat on a street, on 76th Street. There was a block, and they all planted. Everyone was involved, including the small children and the adults. They planted tree pits, and they were planted with similar flowers. It t looked gorgeous. It was an historic block, and it made such a difference. People would comment, from other places who had come to visit, how lovely it was. Those kinds of small touches can make a huge difference to the perception of change happening.

**Trustee Walker:** Right. And whatever it is, it has to be maintained, as well. We have to figure out who will maintain it.

**Trustee Armacost:** Right. The Beautification Committee is an unbelievable group of women.

**Mayor Swiderski:** That is a major commitment.

**Trustee Walker:** It is a big commitment. Taking care of them is a lot. I have not counted them up. Somebody told me what the number was, and it is surprising how many there are. But planting is definitely one of the options on the table. So we will have to come up with a procedure, a process, for how to go about looking at this. But we will collect ideas, we will talk to the Chamber. I hope to have a public meeting once we have some input from our business development group to focus on specific issues. I am not planning any date right now for that.



**Mayor Swiderski:** Sue Smith and the Affordable Housing Committee will have before us by next meeting modifications to the affordable housing set-aside that will address any conflicts with the Westchester standard, and also keep us in the forefront of that. I am excited; they have been working on it for a year, trying to come up with something that a diverse affordable housing group could live with.

**Village Attorney Stecich:** I have been working with them on drafting the law. There are two versions. One version says "alternative" on the title. This is not the one preferred by the Affordable Housing Committee. The one that does not say "alternative" is the preferred one. The change is on page four. The difference is whether the Village can ever use its preference system in awarding the affordable units. The county says absolutely not, preferences cannot be part of your law. There are at least a couple of people on the Affordable Housing Committee who feel like it should be able to be used in a narrow set of circumstances. The Affordable Housing Committee, because there was such a strong difference among the committee, thought that is a decision the Board of Trustees should make. So I drafted two local laws. When you look at the one that says "alternative," and you look at the italics, you will see what the difference is.

**Trustee Armacost:** So some of the Affordable Housing Committee were in favor of the alternatives, but not the majority?

**Village Attorney Stecich:** The majority are in favor of the main law, but the alternative is the minority opinion.

**Trustee Armacost:** Just a reminder to everyone about the Take Me to the River music festival this Saturday. Hopefully, there will be wonderful sunshine all day. But should the rain gods choose to behave badly, the rain date is the next day, Sunday. The lineup is looking quite fantastic. And thanks to the Village for its support in various ways.

### **EXECUTIVE SESSION**

On MOTION of Trustee Armacost, SECONDED by Trustee Walker with a voice vote of all in favor, the Board scheduled an Executive Session immediately following the Regular Meeting to discuss personnel.

### **ADJOURNMENT**

On MOTION of Trustee Walker, SECONDED by Trustee Apel with a voice vote of all in favor, Mayor Swiderski adjourned the Regular Meeting at 9:45 p.m.