

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK**  
**BOARD OF TRUSTEES**  
**REGULAR MEETING**  
**JULY 9, 2013**

A Regular Meeting was held by the Board of Trustees on Tuesday, July 9, 2013 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. Frobel, Village Attorney Marianne Stecich, and Village Clerk Susan Maggiotto

**CITIZENS:** Twelve (12).

**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. 7-2013-14 \$ 59,001.17

**PUBLIC COMMENTS**

**John Gonder, 153 James Street:** I am very disappointed that you start the meeting 15 minutes late. I guess none of you were Scouts. Be prepared, but that is enough about that.

Crosswalks. This is the third meeting. None of you care about safety. We had two children hit in a crosswalk, one right outside and one up by Mt. Hope and Farragut Avenue. You tell me, Mr. Frobel, we have bad weather. Let me tell you I played golf 64 times this year without rain. And that is Monday through Friday, not weekends. You could not get those things fixed? Whose responsibility is it? I would think once it is brought to the Board you would take action within a few days. It has been three meetings.

Tim Downey asked for something on a little gas blower with the decibels way lower. He put on two shows out here. You care about the people in the commercial district, but you do not care about these people are outside the commercial district that work around our village. This would be a big tool for them. I think you should reconsider.

**Tim Downey, 520 Farragut Parkway:** Last week, I brought to the attention of the Board that the contractor who takes care of the parks and greenspaces was using a killing agent to shortcut his responsibility. He is creating a condition along the curbsways where, over time, erosion will occur. curbs. We also do not know the effects of this agent on the tree. It was

responded to me that it was a solution of vinegar and water. Regardless of the solution the terms of the contract do not allow for spraying of herbicide. I went over this with Ray Gomes before he left, trying to fine tune the terms of the contract. I spoke to the DEC last Wednesday and made them aware of the situation and they said absolutely, you are correct. They have to have posting. I am wondering what the position of the Village is regarding a situation that has gone unnoticed until I brought it to the attention of the contractor, who has been cheating on his contract terms and doing damage to the Village.

**Village Manager Frobel:** I thought I had explained to you last week that we had contacted the contractor. He had removed the grass that had been damaged, and it is the solution you described. It was vinegar and water. He has discontinued the practice. You left the last meeting before we were able to announce that a certified letter had been sent to the firm ordering them not to use it again.

**Mr. Downey:** We will keep an eye out there, because he was using it last week, and I can tell you it was not vinegar and water. You would have regrowth and vegetation within 10 days to two weeks. When you have suppressed vegetation and bare soil in six to eight weeks time that tells me it is Roundup or some other similar herbicide. So you were snookered in what was being used. I hope, going forward, we will have better attention to detail so that we do not get this occurring again.

**Dave Skolnik, 47 Hillside Avenue:** Last meeting there were some comments prior to my getting up that made me uncomfortable. Given that counsel was not at that meeting, I was not sure whether they went beyond what would be considered appropriate for this setting. While I might agree on some of the issues and concerns, nevertheless I feel if there are issues in the Village it cannot possibly be the responsibility of just one person, unless it is the mayor, so if you are going to address these in the future there should be some way of controlling that, unless that is allowed as part of free speech.

The question of the three minutes brought itself up last meeting. I realize, after looking at some of the policies, that to some degree you create it as you go. There are some things in the way you run these meetings that are commendable in the sense that it allows a certain latitude that is not necessarily in the strict reading of the policies. But the danger in that it also allows arbitrariness. Last meeting there was a certain amount of that. The three minute rule is not in our policies. It is in the Board of Ed policies. But if there is a discretion on the policy that allows you to call upon that, then it would be good if that was made clear so that it did not seem that was being used to restrain otherwise appropriate conversation.

All the issues that people were addressing last week with regard to the relationship of the Board of Trustees with the issues with the Board of Ed and Reynolds, further discussion I f

needs to be had about that. It can only be continued here as opposed to the Board of Ed because, after tomorrow, there are no more Board of Ed meetings. Mr. Frobel mentioned the Village hiring an engineer to do an independent study of the drainage. It seemed somewhat ironic that while the Board of apparently is going to pay for that study, it is all of us, the same people, that are paying for that.

### **36:13 SUBMITTAL OF GRANT APPLICATION TO NEW YORK STATE CONSOLIDATED FUNDING FOR QUARRY PARK AND TRAIL**

**Trustee Walker:** I would like to ask Chris Lomolino to make a presentation. She is the chair of the Quarry Park Committee, and I will also answer any questions or add additional information, as necessary.

**Christine Lomolino, 24 Aqueduct Lane:** The Quarry Park Committee is asking that you approve the submission of the New York State Consolidated Funding Application, due by August 12, a grant application for the annual New York State grant cycle for 2013. The state intends to award over \$760 million to advance civic projects throughout the state, and we hope to receive some of this funding to support the Village's efforts to close the unsightly landfill in the quarry and restore it as parkland. Recent progress on the project include the submission by the Village of the final landfill closure report to the New York State Department of Environmental Conservation in April, and the completion of the preliminary design phase of the park by the renowned landscape design firm of Matthews Nielsen, which has worked with the Village's environmental engineers, Malcolm Pirnie, to design the landfill closure and the landscaping, both to happen in tandem as a cost-saving measure.

The sister projects of Quarry Park and Quarry Trail have previously been awarded grants by the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of State and also Scenic Hudson. These grants have been used to pay for environmental testing, for the creation of the DEC closure report, the construction of the first phase of the Quarry Trail, and the preliminary design work for Quarry Park. The proposal to New York State for this year's grant application is as follows. Project budget, Quarry Trail final completion, \$123,500; final design of Quarry Park, including permits, construction documents and government approvals, \$65,000; total project budget for the two, \$188,500. And since the grant requires a 50 percent match, the grant request under the CFA, the Consolidated Funding Application, would be \$94,250. As for the matching funds, the Village would match this amount with the Department of State grant that was already awarded to the Village, and we would of that \$85,000 grant \$32,500. There would remain \$61,750 needed for match. Of this amount, some \$30,000 would come, hopefully, from the developer on Warburton, who is offering to build the stair to the trail in lieu of the park fee that would otherwise be required.

**Trustee Armacost:** There is \$30,000 remaining that the Village would need to provide. Is that correct, or did I misunderstand the math?

**Ms. Lomolino:** Approximately.

**Trustee Armacost:** So is there a plan to raise that money, or is there not a plan?

**Ms. Lomolino:** It would either come from the Village, or there is another fund which is available particularly for the Quarry Trail, which brings people from the Aqueduct down to the Hastings waterfront. In Hastings we have the only place where you can walk from the Old Croton Aqueduct down to the river. That would suit the criteria for the environmental trust fund, if the Village so decided. The Board is familiar with the process for accessing the environmental trust fund, which was set up at the time of the ARCO settlement.

**Mayor Swiderski:** It is a million and a half dollars.

**Trustee Armacost:** But I thought we had already tried to do that and it was turned down.

**Trustee Walker:** It turned down for a grant for Quarry Park itself. I do not know if it was turned down for Quarry Trail.

**Ms. Lomolino:** This was several years ago. Two of the three parties to the lawsuit have to agree. The Village, as a courtesy, also approached Riverkeeper. There was a new Riverkeeper who had just taken office at that moment. It was rejected, and I believe there was some effort to ask them to reconsider. But so many years have passed now, a reasonable reading of the criteria for accessing the fund would include this project. The funds have been there for 10 years and have only been accessed once before by the Village.

**Trustee Armacost:** Is the idea to go back to the people who blocked it earlier to see whether we can get some movement to release the funds for this purpose?

**Ms. Lomolino:** That would be one way of filling that gap, yes.

**Trustee Walker:** The Village could simply put it in next year's budget. We put \$25,000 this year toward renovation of Riverview Park, so it is not unheard of for us to start putting money toward park improvements. The state parks department is going to look more kindly on a grant proposal from us if we are willing to put some money toward it and we are not just looking to do it all with grants from the outside. Having something coming from the Village itself shows a commitment on our part. If I were they I would be looking for that. We do

not have to do that, and we can also go to the environmental trust fund. But we are throwing that open as a question tonight.

**Trustee Armacost:** We do not have to say where we are going to get the money from. All we have to do is commit that we are going to put money in. From their perspective, we have put \$60,000 in. They do not need to know what our plan is to raise the money. I would rather the money does not come from the operating budget. It would be fantastic if \$60,000 could come from the trust fund. It does not have to be only \$30,000.

**Trustee Walker:** You are right, we do not have to spell out where it is coming from. But last year, in our grant proposal, we were just asking for matching funds for design completion and the Village was not offering any of the match. So we thought this would sweeten the deal by both making a Village financial commitment, as well as getting something built. This grant proposal is more than just design. I feel strongly that we should finish the Quarry Trail, and that is going to make it a lot easier to raise fund for the construction of Quarry Park, when the time comes. It will be important in providing access to the waterfront in the future.

**Trustee Jennings:** Previously we have discussed an in-kind services approach to matching funds for future grants. Has that idea gone by the boards, or is it still in play?

**Trustee Walker:** No, I think that idea can still work. But you cannot use in-kind services when you need cash in hand. That is the difference. When we get into the construction project, then we can create a budget that includes in-kind services, includes volunteer services because those will be going directly toward construction. They are worth something. Let us say the DPW does work, and they have done work, to dig the testing holes and so on. That kind of in-kind service can be used as a match. But unfortunately, it cannot when you looking for paying a designer. You are looking for real money for construction. I meant to ask Fran about this, there might be some of this \$123,500 for the Quarry Trail final completion that our Village parks employees or DPW could do. We need to talk about that because that might offset some of the cost, and that would go toward the match.

**Trustee Jennings:** During the budgetary process we discussed the need to have a plan for the outside funding that requires matching monies for various needs of the Village and put aside or make provision for the necessary matching funds. I am not criticizing this particular resolution, but I am concerned about doing this in an ad hoc fashion and putting \$30,000 in here or taking out of the discretionary fund with, during the course of the year, an adjustment to our operating budget. I would be more comfortable with a plan that would resemble our capital investment plan and our borrowing plan. We should take a systematic look at this whole grant-seeking thing. We cannot afford to do everything we need to do out of our own

resources. We have to have outside revenue. We should pursue grants aggressively, but we should do it in a planned fashion.

**Trustee Walker:** I agree. There are probably some transportation monies that we would love to go after in the future. There are probably some other park improvements we would like to do. We know these grants are coming around now every year. We should be able to plan ahead for them.

**Trustee Armacost:** I do think we should be planning it so late. Ever since I have been a Trustee, the quarry has been an issue. It is not a new issue. Some of it is do you want to use certain money in one way or another way, and another is a tactical question. In this case half the battle is winning the grant. We do not know if we are going to win the grant. We are having this theoretical discussion, and we have done this many times, and we do not win the grant. If we win the grant, how long do we have to decide where we are going to come up with our money? We do not have to decide it now. We can go for the grant. Part of me says let us cross that bridge once we have won the grant. Maybe we will be able to match it with DPW money, maybe the Warburton bridge will come through, maybe the Saw Mill will come through, which is an additional large amount of money which has to be used for park-related things or recreation right-related things. Part of me says please can we win a grant apart from ones that Lieutenant Dosin has written. The only ones that I hear we have won in some time are the ones that he has written. Is there a time frame in which the Village has to come up with the money?

**Ms. Lomolino:** I am not sure if there is a time frame, but I do know you cannot win a grant without applying for a grant. This is an old landfill that a less-enlightened Board established many years ago in a residential area. It needs to be closed, in any event, and there may be other grant money available through the DEC. There have been interest-free loans for closing landfills, there have been grants for closing landfills, which has to be investigated because periodically they change and we have to find out what is available right now. But yes, there is time available.

**Trustee Walker:** It is a reimbursement grant, so you have to put the money out before you can, get it back.

**Trustee Armacost:** Not such a fantastic grant.

**Trustee Walker:** That is the way all state grants work: not all grants, but the state grants. It is at that point where if we end up putting some DPW or park staff in, then we put that in as in-kind service. And when we go for the reimbursement, it reduces our match requirement.

**Trustee Armacost:** So we know we can put in \$32,000 up front. We have that money in hand.

**Trustee Walker:** Yes, we have an \$85,000 grant from the Department of State toward park design. But we can only use of it what we can match 50-50. The total design and construction document, and construction administration cost, is \$104,000. But we decided to take the construction administration piece out now because we are not going after construction funds. We are not doing the construction now. But we probably have to check how many years they will let us keep picking away at this DOS grant. Theoretically, we should be able to continue to use it. So the DOS money of \$85,000 can keep going toward more phases of the design process.

**Trustee Armacost:** But to be very clear, do we have \$32,500 in cash?

**Trustee Walker:** Not in cash, no. Again, it is a promise. We do not get anything in cash from the state.

**Trustee Armacost:** But why is that in the matching grant category as if we had it in cash?

**Mayor Swiderski:** Because you can use it for match. It is a grant we won and it can be applied, oddly, as the match to these monies.

**Trustee Armacost:** So it is a match to be used as a match.

**Mayor Swiderski:** Consider it a letter of credit that we can draw on. Philosophically, we want to finish the Quarry Trail. It is in keeping with the general statement both in the Comprehensive Plan and elsewhere for increasing productivity and ways of people walking. And we have this opportunity, with the proposal and with the builder that, combined with this, suddenly makes this a potentially interesting and useful project, because we will not only be able to get from the Aqueduct down to the waterfront, but also from Warburton down. It does not make sense to any of this piecemeal. It should all be done as one. So to me, it speaks to the wisdom of just do it.

**Trustee Walker:** So we are looking at the design of the park and the completion of the trail as one project. there are many advantages in terms of the matching funds and in potentially using some in-kind services and so on. It is advantageous to us to look at it as one project, and I hope they agree.

**Trustee Apel:** What can we do to make this happen?

**Mayor Swiderski:** We vote on the resolution, and it is then submitted.

**Jim Metzger, 427 Warburton Avenue:** This is something we called for in the Comprehensive Plan, and it goes to what we talked about at our previous meetings discussing the Comp Plan. Issues may rise to your purview that are out of order with what we have given, but we should not forget that it is still part of the Comp Plan. I am in favor of applying for this grant for several reasons. If you think the Comp Plan Committee worked long and hard, Chris Lomolino has been at this probably three years longer than I have. It is a project that I think is incredibly beneficial to the Village. And nothing begets success like a previous success. Was it Hurricane Irene when they were talking about shovel-ready projects? If we have a path down to the waterfront from the Aqueduct it will make it that much easier to get funds to do the Quarry Park. This is the kind of thing that will snowball through the Village and would benefit a whole host of options here: getting people to walk, having better access to the downtown, bringing people up from the city for tourism, to get up to the Aqueduct. It is important to do, and I am glad that you are in favor of it.

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

**RESOLVED:** That the Mayor and Board of Trustees authorize and direct Francis A. Frobels, Village Manager, to file an application for funds from the New York State Office of Parks, Recreation and Historic Preservation in accordance with the provisions of Title 9 of the Environmental Protection Act of 1993, in an amount not to exceed \$95,000 and upon approval of said request to enter into and execute a project agreement with the State for such financial assistance to the Village of Hastings-on-Hudson for Quarry Park Final Design & Quarry Trail Phase 2 Construction and, if appropriate, a conservation easement/preservation covenant to the deed of the assisted property.

<b>ROLL CALL VOTE</b>	<b>AYE</b>	<b>NAY</b>
Trustee Bruce Jennings	X	
Trustee Marjorie Apel	X	
Trustee Meg Walker	X	
Trustee Nicola Armacost	X	
Mayor Peter Swiderski	X	



**Trustee Armacost:** We need to make sure that the process of trying to access this money from the trust fund is also initiated at the same time.

**Mayor Swiderski:** I would wait to win the grant. Until we win the grant, it would be jumping the gun to formally request, get approval, and then to come back and say sorry.

**Village Manager Frobel:** What we are suggesting is wait until you get the grant. To access that money is not that lengthy a process. It is communication with Riverkeeper, this board and with BP/ARCO. It can move fairly quickly.

**Mayor Swiderski:** Let us win the grant. And if we do not win the grant, and we decide we want to make that request anyway to cover the full cost out of that settlement money, we can. But the grant is the first piece, the first hurdle we need to get past.

## **VILLAGE MANAGER'S REPORT**

**Village Manager Frobel:** Hastings, like many Westchester County communities, pay a Metropolitan Commuter Transportation Tax. It is a payroll tax enacted in 200. Schools are exempt, but most employers pay into it. The appellate division of the supreme court has ruled that the tax is constitutional and that we must continue to pay. Hastings has paid about \$83,000 into that fund. I understand some communities on Long Island are going to continue to challenge, but, for now, it is the law and they will continue to collect it.

## **BOARD DISCUSSION AND COMMENTS**

### **1. Proposed Green Building Code**

**Mayor Swiderski:** Then on to the actual purpose of this meeting, which is the proposed green building code. We have been handed a revised version that improves on what would be the original. Marianne, would you like to go through it?

**Village Attorney Stecich:** Starting at the beginning, my one question in 160-1 is on the second paragraph, where it says it is also intended to provide guidance and ideas for consideration in all other projects, including those undertaken by the Hastings-on-Hudson school district. I am not sure that is necessary in an intent provision. If you want to keep it in I think you should also say projects undertaken by the Village. In no event would the school district be subject to this, and the Village is not either. If you are going to have that paragraph, and that is your choice, I definitely would add the Village.

**Sharon Kivowitz Siegel, Hastings Conservation Commission:** The Village not being subject to this is new to us and new to Deven. We had many conversations about whether construction projects done by the Village on behalf of the Village would be subject to this, and we were under the impression that it very much was.

**Village Attorney Stecich:** Generally, villages are not subject to their own...

**Ms. Kivowitz Siegel:** Then I would say that that is a big gap in this code. We were led to believe otherwise in drafting it, and I would venture to guess that the Conservation Commission would want to then amend the code to include the Village. We understand the Village has no control over the school district. One of the reasons we put that sentence in about the school district was based on a comment by the Planning Board, and concerns that why does this not apply to the school district. We felt that this document is not only a document that people need to comply with, but it is also something to educate people and enlighten them on these issues. We are hoping the school board will take this document and say we're part of this village and let's at least comply with it in spirit.

**Village Attorney Stecich:** What this says is, this code applies to all projects requiring a building permit from the Village, and the Village does not require building permits from the Village.

**Trustee Armacost:** But the wording is also intended to provide guidance, which is a little different: and ideas for consideration. Guidance is not obligatory.

**Village Attorney Stecich:** There are two separate issues there. But Sharon was saying that they thought the Village should have to comply with this.

**Ms. Kivowitz Siegel:** Absolutely. We had many conversations about it. I wish Deven were here tonight.

**Village Attorney Stecich:** Well, I am telling you.

**Ms. Kivowitz Siegel:** I believe you. So we have to then rewrite this to say that it covers not only what requires a building permit from the Village, but also any Village projects.

**Village Attorney Stecich:** You could say it applies to all projects undertaken by the Village and all projects requiring a building permit from the Village, if that is what you want.

**Trustee Jennings:** We can certainly amend it now. But we received some comments from Planning Board members about this. We have a sustainability action plan. The first

principle is that sustainability begins at home, we start with the government. I see this as a two-step process if we want to incorporate an amendment now. But we are doing two things. First we are making some requirements for all parties who require building permits. And then as a second step, we can embrace and we can discuss the idea that however the law might be right now we, as a matter of policy in the Village of Hastings, want to have the government of Hastings be included under this same kind of requirements. If we build any new buildings that are government buildings this should apply to them.

I do not think this should hang us up tonight. It is really moot, in a way. What we should be talking about tonight is whether or not these are requirements that we want to place on those parties that require building permits. The question on the role of the Village could be handled as a second-step question. The impression the Conservation Commission drafting committee had when we were writing it, and what the Village counsel is telling us now, does not matter. If it was a misunderstanding, it is fixable. But it should not hang us up.

**Mayor Swiderski:** No. But it sounds like there is a proposal on the table that is just two or three words that will bring the Village under the code.

**Trustee Apel:** Put us in compliance with everything else.

**Village Attorney Stecich:** If, in fact, that is what the Board wants. Raising these issues is not anything I hope anybody considers is hanging anybody up. We have got to work through this. So go to the next section, where it says Applicability A. This green building code applies to all projects undertaken by the Village and all projects requiring a building permit from the Village. If that is what the Board wants, that is an easy change to make. I am sure, Sharon, it sounds like that is what you want, right?

**Ms. Kivowitz Siegel:** Yes.

**Village Attorney Stecich:** Does the Board want that change made?

**Mayor Swiderski:** I have got no issue with that.

**Trustee Armacost:** I think it is great.

**Trustee Jennings:** I support that.

**Trustee Walker:** I support it.

**Trustee Apel:** Fine, yes.

**Doug Alligood, 157 Rosedale Avenue:** I am a member of the committee, and do not want to belabor this, but when the town builds a building like the Community Center, no permit is required to build that building?

**Village Manager Frobel:** No, it has permits for the subs. The subs take out permits.

**Village Attorney Stecich:** But there is no building permit required by the builder. That is just the way the law is: a village is not subject to its own code, just like the state is not subject to state law.

**Mr. Alligood:** So, yes, then that is a great sentence to add. We were told otherwise.

**Village Attorney Stecich:** But are you comfortable with saying that? Given the recent discussion over other issues, do you want to put this in about school district?

**Mayor Swiderski:** Say to provide guidance and ideas for consideration in all other projects. To me, that in and of itself says it all, but if the Board would like to include the second half of that sentence.

**Trustee Armacost:** I think it is useful to include it. The only other group I can think of are some of the other institutions that are in the Village, and there are a few other institutions, the Graham School, Andrus.

**Mayor Swiderski:** Both Andrus Children's Home and the Graham School are school districts, right?

**Village Attorney Stecich:** I would take out Hastings-on-Hudson, and put "school districts."

**Trustee Armacost:** Why do you not just say school districts in Hastings-on-Hudson? Because it is not school districts in the world.

**Village Clerk Maggiotto:** But the Children's Home has property in Hastings and they are not a school district in Hastings. Part of their property is in Hastings, but the district may not be.

**Trustee Apel:** So why do we not just say school districts.

**Village Attorney Stecich:** Period.

**Village Attorney Stecich:** Then my next comment was in the next paragraph: except is shall not apply to work areas that involve repair. Two questions. First of all, I am not sure what that means, work areas that involve repair. If you mean that it does not apply to merely repairs, then that is a little clearer than to work areas that involve repair.

**Trustee Armacost:** Work area is defined.

**Village Attorney Stecich:** I know work area is defined, but read it. Read the definition, and read that. I do not understand it. In addition to which, I have concern about the word "repair" could be almost a too broad exception. You say it does not apply to repairs, and I think the intention was little repairs. But the way repair is defined, it is the restoration, good or sound condition of a building, including restoration of the building. So if a big part of a building fell down.

**Mayor Swiderski:** The home up in Circle Drive during Sandy that was seriously damaged by a tree. The entire house essentially has to be rebuilt. What does that mean? It is now a repair?

**Village Attorney Stecich:** Well, it is a restoration of damaged materials. If I were the architect or an engineer representing them, I would say it fits in the definition of repair and it is not covered by this.

**Trustee Apel:** So that needs more clarification. And work area refers to anything that is being worked on.

**Village Attorney Stecich:** Yes. I am not sure, I think the work areas that involve repair confuses it. I think you meant just to repair, and I maybe would take that language out. But then the other issue is it could be an over-broad exception.

**Ms. Kivowitz Siegel:** But the definition of repairs is modified at the end, where it says for the purpose of maintaining such components in good or sound condition with respect to existing loads or performance requirements. So in your example, the house that gets damaged, needing replacement or a complete overhaul, would not fit into the definition of repair. But that might be something that the Board wants to exempt. That will be up to you.

**Trustee Apel:** The problem would come in is if we are having a discussion and a designer-developer may fight it and say it's not clear, we have to be more specific.

**Village Attorney Stecich:** Well, maybe. But just because I raise the issue does not necessarily mean that.

**Trustee Armacost:** Are you saying that there is not such a clear difference between rebuilding and repair?

**Village Attorney Stecich:** I think the definition of repair, in certain circumstances. Christina is shaking her head. Since Christina is in the field I think she sees the same issue I do. That it could be a bigger deal than just a small repair.

**Mayor Swiderski:** So I am a cynical landlord who decides I do not want to live up to the green building code so I light a fire, damage the structure, and then use that to rehab the building and say it is a repair. It is not a necessarily crazy scenario.

**Village Attorney Stecich:** You could say something like if it affects more than 20 percent of the building it is not a repair.

**Christina Griffin, architect:** Yes, I think we have to limit it, think of some language to make sure it is really for small repairs. We do not want this to be a nuisance.

**Trustee Walker:** But could it be, under alteration, the alteration definition applies to work areas greater than 1,000 square feet or greater than 50 percent of the aggregate area of the existing structure or unit, right? Then the requirement to comply with this code kicks in because of that size. Can repair be smaller than that? It is under 1,000 square feet.

**Trustee Apel:** It would have to significantly less than 1,000.

**Trustee Walker:** Not necessarily. Well, under 1,000 square feet is not going to do it.

**Ms. Griffin:** But that could be half a house, though. It still could be a pretty big area.

**Trustee Apel:** It could be the whole floor of a house.

**Trustee Walker:** Well, 50 percent of the aggregate area of the existing structure or unit. You do not have to comply with this code if you fall under that size, right? If you build an addition you do. Addition is separate. That is the question because there is no maximum or minimum size of an addition.

**Trustee Apel:** Talk about small, it might say 10 percent. What are we talking about? We are talking about a repair.

**Mr. Metzger:** In the definition of repair, repair shall mean the restoration to good or sound condition of any part of an existing building for the purpose of its maintenance. It should be

a semicolon there. Repair is referring to maintenance on a building, not replacing pieces, not tearing it down to the ground and rebuilding it, not rebuilding it after a fire. It is maintaining an existing condition in building so it can continue to serve its function. As an example, you have an old house with a beam in the basement that is now bending and starting to crack. That is a maintenance issue. You are not restructuring the house, although you are providing a new piece of structure to replace what was there. It is a maintenance issue, it is not a rebuilding issue. So if you would put a semicolon after existing building for the purpose of its maintenance, semicolon, including the patching, restoration or replacement of damage.

**Village Attorney Stecich:** Why would you want to put a semicolon? A semicolon is not going to change it.

**Mr. Metzger:** Because that ends the thought on what a repair is, and then it goes on to describe what would constitute a repair.

**Village Attorney Stecich:** Well, including restoration of damaged materials.

**Mr. Metzger:** It is for maintenance; not for rebuilding, not for adding on, not for tearing down and replacing. It is strictly a maintenance issue.

**Village Attorney Stecich:** Patching, restoration or replacement. That is where it gets confusing.

**Mr. Metzger:** As an example, there was an arbor that came down during the storm and the people just rebuilt it because it was there, it came down, they are rebuilding it. They are told they need a building permit.

**Village Attorney Stecich:** Christina, I would like your opinion, and Doug because you do this stuff, too. What happens if you just put a period after maintenance: the restoration of good or sound condition of any part of an existing building for the purpose of its maintenance.

**Mr. Alligood:** I do not know that it matters. The last time I did a building permit application there is a check box on that application for whether the project is an addition, a repair, the different categories. If you check that box for repair you still are required to get a building permit, and then you would not be required to follow these guidelines for a green building code because you have checked the box for repair. At the same time, once you meet with Deven he might disagree. It is his judgment, whoever the Building Inspector is, the plan examiner is. That is their judgment to say this is not a repair. I do not buy it. Moving you over to addition or renovation or some other category, and then this kicks in.

**Village Attorney Stecich:** No, the problem is, the way this is defined if this sentence just ended at repair, for the purpose of its maintenance, period, I would not have the same problem. But it says including restoration or replacement of damaged materials. Then it would cover the situation that Peter gave.

**Mr. Alligood:** But the problem I have is most of these definitions are not created by this group or this committee. We took them from the building code, either the local building code or the state building code. And we are just including them here for reference or for convenience so that everybody can use the same definition state-wide.

**Village Attorney Stecich:** But, Doug, unfortunately it is much broader than that. Because there is an exception for repairs, and you do not want the exception to swallow up the whole.

**Mr. Alligood:** I understand, but that exception was intentionally written to take care of the case that Jim was describing, where you have a beam that needs to be repaired. It is replaced, but you are not kicked into this requirement. I do not know how we could change the definition of something that exists in state code.

**Ben Kirshbaum, 150 Overlook Road:** Let us say, in Sandy, a tree falls and cleaves the house in half. Are you saying that that house is now under the regime of the new building code, even though the owner did not mean to rebuild their house and the owner has not purposely done anything? And also the insurance companies. Given that is a new building code with new requirements and it is probably more expensive to rebuild, is insurance necessarily going to cover all that new expense? Or is that something where the owner now is out of pocket to have to spend the money to rebuild under the new code?

**Mayor Swiderski:** That would be the implication.

**Trustee Jennings:** That is a separate and a much larger question that we should come back to. But here, we are wrestling with the idea that we do not want to require these new building standards for an incident that was caused by a hurricane or something else; it was not an intentional rebuilding or renovation. That was the line we were trying to draw; I am not sure exactly what our ethical rationale was. But we were trying to draw that line. So the question before us is how do we wordsmith that distinction between those who are rebuilding their house and renovating their house versus those that are just restoring their house to the status quo.

**Trustee Armacost:** But we do have a provision, exemptions and appeal. There is a category called hardship. It means some verifiable level of difficulty or adversity arising



from factors identified earlier above. I am assuming that is discretionary. So would not the decision-maker have the ability to invoke that section, saying this is the case of Sandy and it is not a case of rebuilding. It is a case of patching, even if it seems like quite a large patch? Maybe that is too arbitrary, but that seemed to me to be the intention of this section.

**Trustee Apel:** That is only provided they put back exactly what was there before. If they redesign the place, then who is watching what is going on? If they do not have to get a permit and they do not have to follow any of this, and they are exempt from this and that?

**Mr. Alligood:** You are absolutely correct, and you are absolutely correct. This section here is meant to cover these exemptions, and we came up with this to respond to, let us say, Sandy knocks a tree onto your house or something like that, lightning hits. You put the roof back where it was exactly the way it was, then you are required to get a building permit but you are not required to follow the green code. If you decide to add a cupola or a dormer, then the plan examiner has to catch that. It is not a repair job anymore. You might check that box, you might claim this, but you will have to go back and revise your plans and then comply with this code because you changed it from what it was.

**Trustee Walker:** And then if you can argue that it is a hardship, or it should not apply to something as minor, or a result of natural disaster, then it is up to the Building Inspector to decide, right?

**Mr. Alligood:** Right.

**Trustee Armacost:** Given that, I do not think it really matters how repair reads. It is probably better that it reads the way it is in the state law, and that there is a match between that terminology. It is my personal view, given that we have this provision.

**Village Attorney Stecich:** But the problem is the opposite problem. The problem is not over-coverage. The intention would be that they should be subject to this, but they are not because they could have come in and argued this is just a repair.

**Ms. Kivowitz Siegel:** But it would be up to Deven to make that determination. And it would be up to Deven to say we do not agree that this is a repair; we believe that this an alteration or an addition or whatever you want to term it. And if you do not agree, appeal. Then it is up to the Board of Trustees to make the determination of whether or not it is.

**Trustee Apel:** Is there something that I am missing here? Is the underlying basis for all of this that because you have to follow the green code it is going to cost you more money than if you do not? Because if it is not going to cost you any more money, then why do we not

require everybody to do it? It is a hardship if they have to spend more money. So if the underlying thing is money here, over time all these green things are going to become less and less expensive to do. If we want people to do it, it should be required whether it is half a house that falls down or something that needs to be maintained.

**Village Attorney Stecich:** Your intent here was to exempt minor repairs, so you say it does not apply to minor repairs, and then we try to come up with a definition for minor repairs which we do not have to do tonight. It may be cast in terms of the percentage of the house. I will do whatever you want, but I do not think it is a good idea to define repair that broadly and say leave it to the Building Inspector to decide that it is not a repair. That is not how you write statutes.

**Mr. Alligood:** I would like to respond to Marge's question. It depends on the house, it depends on the project, it depends on the type of damage. If it just simply insulation, you might choose to follow the code; again, the intent. In other words, the roof gets caved in by the tree, that scenario. Then you decide to replace your shingles with a new-fangled type of shingle that has insulation built in or something that is a better quality. You might end up complying with the code without spending any extra money. Other damage might cost you a lot of money, depending on the age of your house, whether it was built in 1990 or whether it was built in 1890. There is a big difference.

**Trustee Apel:** But, again, it seems the reason we have hardships has to do with money.

**Trustee Armacost:** There is also the time. The whole process takes a lot of time. Probably the fundamental amount is money. If you can bypass the process that is quite a few more months of the year that you have back in your life.

**Trustee Apel:** I am not disagreeing with that. I am just saying that when we have exemptions.

**Trustee Armacost:** Yes, but it is covered here.

**Mr. Alligood:** If I am going to replace my roof I might replace just the portion that was damaged as opposed to the entire thing. That is the type of thing that we are talking about. It costs you a lot more money to say now you have replaced this portion, it does not make any sense to make this small area comply with this code.

**Trustee Apel:** I see. So you might say I might as well do the whole thing. And that is why it would cost you more money.

**Trustee Walker:** If you are replacing your entire roof and that maybe is a renovation or alteration instead of a repair, does the code only apply then to the work that you are doing on the roof? Nothing else kicks in.

**Mr. Alligood:** Yes, in that scenario it would apply only to the work that you are doing on your roof, because anything that is on your drawings is what the permit is for.

**Trustee Walker:** It is just not going to kick in other things like the natural resources survey.

**Mr. Alligood:** No.

**Mayor Swiderski:** So where are we on the language here? I am inclined to leave it.

**Trustee Armacost:** Me, too.

**Mayor Swiderski:** It seems to cover the need. But are there strong sentiments otherwise?

**Trustee Walker:** Should we include minor?

**Trustee Apel:** I think you would have to define minor.

**Trustee Apel:** I would like to see a percentage, a better definition of that. We can deal with the state, but we could say, however, in Hastings.

**Village Attorney Stecich:** But if you say minor repairs and you define the term, then by using that term you are not kicking into this. I am uncomfortable, because it was not only me that read that section that way. Christina agreed that this exception could swallow the whole.

**Ms. Griffin:** You always find people who are going to find ways around codes. That is just the way it is. But on storm damage projects insurance companies usually do have a certain amount of money for upgrading to code, and they look at even local codes to see if we have to comply with that. If there is major damage you may have to replace the whole section of the roof or the building.

**Village Attorney Stecich:** But the way it is written now, Christina, it would not necessarily apply to that. So it would be irrelevant.

**Ms. Griffin:** Yes, you could possibly because it has been damaged you have to repair the whole house and reconstruct it. Maybe someone might say it falls in this category so the code does not apply.

**Village Attorney Stecich:** I do not understand what the objection would be to saying except for minor repairs, and then define minor repairs.

**Ms. Kivowitz Siegel:** I do not think there is an objection to saying minor repairs. It is defining what a minor repair is.

**Village Attorney Stecich:** Yes, and I am not suggesting we do that tonight.

**Ms. Kivowitz Siegel:** And I think you just go down a slippery slope. In the end, it is going to be Deven's judgment and an appellate process. So I am not sure that saying minor repairs fixes the problem.

**Ms. Griffin:** We need to put some more thought into this. We tried to make these definitions come right out of the state code; we were not inventing them ourselves.

**Mayor Swiderski:** Marianne, if you come back to us with language that addresses your concern, let us leave that one so we can move on.

**Village Attorney Stecich:** I just did. If everybody agrees I will put it that way, and we will come up with a definition.

**Trustee Walker:** I think that is fine.

**Trustee Armacost:** Just so I understand, are we going to have minor repairs and repairs defined? Or we are just going to have minor repairs defined?

**Village Attorney Stecich:** Minor repairs. This is the only section that it is relevant. I do not think repair kicks in otherwise.

**Trustee Walker:** If, as Doug suggested, somebody checks repair on the building permit, then what?

**Trustee Apel:** Well, we will have to put minor repairs. We will have to change the form.

**Village Attorney Stecich:** A statute stands on its own, and whatever forms the Building Department comes up with they come up with. They have to match the law. But I would not worry about that.

**Mr. Alligood:** When I started my career 30 years ago in New York City, I was working sometimes for unscrupulous developers who were renovating buildings. They found a loophole that they could just repair a small portion of the building until they had completely rebuilt the entire building. They would simply have to check off the box for minor repairs, and now do it 500 times or a thousand times. This is the same thing, the same game. If you find an unscrupulous person they will find a way to get through or under or around.

**Village Attorney Stecich:** I am not discussing an unscrupulous person. I am talking about the person whose house a tree came down on.

**Trustee Armacost:** But that is covered already, by the hardship provision.

**Mayor Swiderski:** And that will not be just a minor repair.

**Village Attorney Stecich:** No. Niki, somebody like that, the way this is written right now would say it is a repair. And that person is not being unscrupulous. It fits within the definition of repair.

**Trustee Armacost:** And that is exactly what we want. We want that person not to be in that situation.

**Village Attorney Stecich:** So it has nothing to do with the hardship exception. But it may not be a tree fallen.

**Trustee Armacost:** It has exactly got to do with the hardship exception.

**Village Attorney Stecich:** It guts a part of their building. They want to redo it, they want to get around it.

**Trustee Apel:** That is not a repair then.

**Trustee Armacost:** You are back to unscrupulous

**Trustee Jennings:** I do remember that it was not the minor or major, the extent of the repair, that was the criterion. It was the etiology of the damage that required the repair.

**Village Attorney Stecich:** I am sorry, what is "etiology"?

**Trustee Jennings:** The origin. If it was something outside of the control and intention of the property owner we did not want to require the green code in the restoration of the status

quo, whether it was replacing one shingle or the entire roof. So it is not really an issue of minor versus major. It is an issue of what caused this. And if you set a fire fraudulently and on purpose, hopefully we will catch you and prosecute you for that. So we do have this question of if we are going to revise this in the definition, should the definition be the definition of minor versus major, or should it be a definition of certain things that are caused in one way and not covered, and intentional. It becomes complicated to define.

**Village Attorney Stecich:** That is another way to do it, Bruce. But right now, the definition of repair does not have anything that narrows it to unintentional acts. That is another way to do it, to define repair.

**Ms. Kivowitz Siegel:** But it may not even be an unintentional act. You may have to repair something that just grows old. If a tree falls on your house and you replace the roof, and you repaint the interior and fix the ceiling, that is a repair. If at the time the tree falls on your house you decide you want to reconfigure the entire inside of our house anyway, and this is the perfect opportunity to do that huge alteration that we were planning, that is going to be where Deven is going to have to draw that line and say is it a repair. I do not have as much difficulty with the definition of repair. It is quite specific and clear. But that is where Deven is going to have to use his judgment.

**Village Attorney Stecich:** It is clear but it is overbroad. I believe it is clear, as well. But the other way to deal with it is, the thing that throws you off is this restoration or replacement of damaged materials. That is what strikes me as something that could be huge. If you just change the definition of repair to the restoration to good or sound condition of any part of an existing building for the purpose of its maintenance, period, that does it, too.

**Trustee Armacost:** To Bruce's point, the issue of intentionality is addressed in the definition of work area: that portion or portions of buildings consisting of all reconfigured spaces *excluding* portions of the building where incidental work entailed by the intended work must be performed *and* portions of the building where work not initially intended by the owner is specifically required by this code.

**Village Attorney Stecich:** It does not go to that intent at all. That intent means where they are intending to do the work, and then maybe something happens in another part of the building and it gets dragged in. It is not the intent of how the damage was done.

**Trustee Armacost:** It sounds as if it is about whether the work was intended by the person, or whether the person had to do it because of some other reason.

**Trustee Apel:** If Marianne would, for the next meeting, at least look at that part and think again about how it might be rewritten or redefined and we could have a further discussion on it. I do not think we are going to get anywhere with that tonight.

**Mayor Swiderski:** We could all come up with scenarios. So onwards, paragraph three.

**Village Attorney Stecich:** In B-1, where it says: New building construction: the part two provisions, and it really should be the part two requirements, of this chapter shall apply to all construction, movement, replacement, removal and demolition of every new nonresidential building. If it is a movement, replacement, removal and demolition, then it is not new construction, is it?

**Mayor Swiderski:** Right. The removal and demolition was my circled comment.

**Mr. Alligood:** I should probably check the definitions. We may not have included it. This happened to me earlier this year, not in Hastings but somewhere else, where I was required to get a new building permit, and I should have known this for a demolition because that is the way that jurisdiction handled it. We should check to make sure that removal and demolition is considered new building, because we do not have a category for demolition.

**Village Attorney Stecich:** Well, you have existing buildings. If it is movement, placement, removal or demolition, then it is an existing building. That was language I do not want to remove on my own, without telling you. But it does not belong there.

**Trustee Walker:** Why would this apply to a demolition anyway?

**Mr. Alligood:** The site work and removal of debris is part of a sustainable strategy.

**Village Attorney Stecich:** And you do need a building permit for removal and demolition.

**Trustee Walker:** I know that, but how would a green code apply? Let us say there is a garage on your property and you need to take it down, so you apply for a demolition permit. What you are saying is that the site work you have to do, once you take your garage down, has to comply with this code.

**Mr. Alligood:** Yes, the site work and the recycling or disposal of material.

**Ms. Kivowitz Siegel:** Again, I think that issue is one we need Deven for.

**Village Attorney Stecich:** Then maybe there is no point doing this if Deven is not here. Just explain to me why movement or replacement would be new building construction.

**Ms. Kivowitz Siegel:** What Doug just said.

**Village Attorney Stecich:** No, you are not saying it is not exempt. I just think it should be under "existing buildings" if you are moving or replacing something.

**Ms. Kivowitz Siegel:** I guess it depends on what kinds of permit the Village requires for those. If it is a new building permit, even though it is a demolition, then it needs to be there. I do not think we care which one it is.

**Village Attorney Stecich:** There are just building permits. All we have are building permits. There are not building permits for new buildings and building permits for additions; there are building permits.

**Trustee Walker:** A demolition permit, no?

**Village Attorney Stecich:** And then maybe a demolition permit. I do not think it is a substantive change to this. But if I were rewriting this to what I thought made sense I would put it under "existing buildings." All it is saying is that these requirements apply to these things. So it is not changing anything. It is just saying since it is not new building construction it belongs in the next section for existing buildings.

**Ms. Kivowitz Siegel:** I do not think we have a problem with it, as long as it is covered somewhere.

**Mayor Swiderski:** Right.

**Village Attorney Stecich:** No, I am not suggesting you do not cover it. You put it under "existing building."

**Mayor Swiderski:** So let us move it, assuming that Deven does not provide a good reason why it belongs there.

**Village Attorney Stecich:** OK. Then also in that same paragraph at the end, where it says it also applies to structures and appurtenances connected or attached to such buildings or structures. But the next section applies to additions. Why would not something connected or attached to a building be an addition? What is the distinction between the two



**Trustee Walker:** Is it not like an ancillary structure? So that would be new, as well?

**Ms. Kivowitz Siegel:** I will have to ask the architect.

**Trustee Apel:** Maybe an addition is something that is going to happen in the future, but this has to deal with things that are already there?

**Trustee Walker:** Because it is part of a new building.

**Village Attorney Stecich:** No, because this says additions to existing buildings.

**Trustee Apel:** Yes, but that is also under this thing about demolition of all those other parts and the structures that are connected to it.

**Village Attorney Stecich:** So maybe that should get moved, too, is what you are saying.

**Ms. Kivowitz Siegel:** Oh, so the whole thing would get moved. That makes sense.

**Mayor Swiderski:** And verification with Deven there is not a reason to have it there.

**Village Attorney Stecich:** 1-B, the exception for agricultural buildings. Is that necessary? Is it warranted? I do not think it is necessary. In addition to which, you would not want it. I do not know that barns are allowed, but there has been somebody with a very big property who applied for a variance for a barn. In fact, it came back. You would want that covered. So I do not think that should be in there.

**Ms. Kivowitz Siegel:** But it does cover poultry houses, and there are a lot of people with chicken coops in their backyards.

**Village Attorney Stecich:** But if you look at the requirements, most of the stuff would not apply to the chicken coop. So let me give you something that would apply. Let us say they are painting the chicken coop. Should that be low-VOC paint, if you have to have low-VOC paint in your kitchen?

**Mr. Alligood:** There are two different levels of low-VOC paint. If you are applying for a permit to paint a chicken coop or any building that does not meet the thresholds for this code, you would still have to meet the state code for low-VOC. This code only kicks into a higher level of low-VOC.

**Village Attorney Stecich:** Then I could think of another example. Do you want chicken coops? It also says sheds. You could have a decent-sized shed. It does not matter to me. But you should decide whether you want to excuse agricultural buildings. My guess is that this came from some state code and, generally in the state there is this kind of preference for agricultural buildings.

**Ms. Kivowitz Siegel:** I am perfectly fine removing it.

**Village Attorney Stecich:** There are so few agricultural buildings anyway. It is an odd exception they have in here. We do not exempt agricultural buildings from other requirements in the code.

**Ms. Griffin:** I am trying to see if we have some description about this in the Village code. I think Deven had a lot of input on this section, and there was a logic to it. I do not think we invented it. It was somehow in parallel with the local code. So that is why I think it is in there, but I cannot find it right now.

**Village Attorney Stecich:** So let me ask him, and unless he gives a good reason I think everybody agrees you do not want the exception in there?

**Trustee Apel:** There are 19 pages. Are we going to continue?

**Village Attorney Stecich:** I do not know how else to do it. I spent a lot of time going through this. I was told not to make the changes myself. I do not know how else to do it.

**Mayor Swiderski:** Onwards, with alacrity.

**Village Attorney Stecich:** The next page: two existing buildings. This says these requirements shall apply to all alterations, additions and relocations of nonresidential buildings, multi-family dwellings or residential developments already existing as of the effective date of this code. But what about something that is built after enactment of the code? You want it to apply to that, too. This code is enacted in 2013, somebody buildings something in 2015 and then subsequently they want to add to it.

**Ms. Kivowitz Siegel:** Of course we want it to apply.

**Village Attorney Stecich:** So just take out "already existing?"

**Ms. Kivowitz Siegel:** I think what we meant by that was to make it clear that the building existed at the time of code.

**Village Attorney Stecich:** So, to existing buildings, and take out "as of the effective date of this code." That is what messes it up.

**Ms. Kivowitz Siegel:** Fine.

**Village Attorney Stecich:** Now this sentence: Projects that involve more than one classification of work, such as alterations or additions, must comply with the requirements of each classification. Is that sentence necessary since additions and alterations have the same requirements?

**Ms. Kivowitz Siegel:** I do not think it is necessary anymore.

**Village Attorney Stecich:** So I will strike that sentence.

**Trustee Walker:** A question about that. Number three, it says an addition to a building or structure shall comply with part two requirements of this chapter, but the existing building or structure shall not be required to comply. So you only have to make the addition comply. If you are adding, say, a bay window to your dining room, that bay window has to comply but nothing else in your house has to comply.

**Ms. Kivowitz Siegel:** That is right.

**Village Attorney Stecich:** I have a question on the same one. You have that an addition has to comply, you do not have the alteration. Should it not be an addition or alteration to a building or structure should comply?

**Ms. Kivowitz Siegel:** I think that is right. Sorry. This went through a lot of iterations.

**Village Attorney Stecich:** The part three requirements, I have that same thing about the movement or whatever, and the same thing about alteration. So we will make the changes in the next section, too. I will just put "ditto." You agree, Sharon?

**Ms. Kivowitz Siegel:** Yes. But I will add that Christina and Deb should jump in at any time because they really are our experts.

**Trustee Jennings:** This seems an important thing in practice. In the first sentence of section three we are adding "addition or alteration." And then down in the last sentence, "addition" stands alone, so we add "alteration" there also, right?

**Village Attorney Stecich:** Yes, I have that.

**Trustee Jennings:** So my question then is, what does the word "impact" mean here? We are saying you can do an addition or alteration, you do not have to retrofit the whole structure. But the last sentence seems to say that if it impacts the existing structure you do have to retrofit. So what does "impact" mean? That is a big-deal difference.

**Ms. Kivowitz Siegel:** I would think an example of that would be if you are doing an addition and you are replacing your entire heating system, and that heating system heats both the addition and the older part of the house, then it would be impacting.

**Trustee Jennings:** The word "impact" does not convey that to me. If you are doing something in the new addition which involves replacing an entire system that affects the whole structure, not just the addition, then that whole system is treated as a new system and it has to comply. But with "impacts" we are talking about big words here.

**Village Attorney Stecich:** I will give you an example of what you are talking about. An alteration, you change the roof. Changing the roof could impact the whole building. But you do not mean to say that you have to make the building compliant in all these other ways by putting in heating zones and other stuff. Is that what you are getting at?

**Trustee Jennings:** We definitely wanted to limit the amount of retrofitting that would be entailed by any new requirements of new construction. That was our problem, because if we open the door to retrofitting this is going to be a radical departure from past practice.

**Mr. Alligood:** This is another potential gray area. I am not sure of another word than "impact" you could use. An example would be an enlargement of this room. That is one of the most common kind of additions, where you take your small family room and bump it out and make it much larger: this is the existing portion of the house, that is the new portion of the house. So this code applies to this entire room in the old house and the new house. That is impact. There might be an electrical panel that is installed, a new air conditioning system, new baseboard, radiators, something like that, convectors. But it is the work that is shown on the permitted plans is the impacted area. You might change that word to "work area," or try to use other terms that are already defined elsewhere.

**Trustee Jennings:** Or add a thing to the definition saying impacted area is defined as that which is shown in however you just put it.

**Mr. Alligood:** The permitting.

**Village Attorney Stecich:** So you are telling me to make a change? OK.

**Mayor Swiderski:** Well, that is adding a definition.

**Trustee Walker:** Or including the term "work area"?

**Village Attorney Stecich:** I looked at the definition of work area, and it is hard to figure where that would work. It does not work.

**Trustee Walker:** All reconfigured spaces.

**Ms. Kivowitz Siegel:** I think we need a definition for impacted areas. Change the wording to "where an addition or alteration impacts the existing building or structure, the impacted areas of the existing building or structure shall comply with this green building code" and then impacted areas as Doug defined it. Does that clarify it?

**Trustee Jennings:** It would for me, rather than the verb "impacts," the impacted portion. Are you now saying impacted area? That is a term that I think we can define, and we should.

**Ms. Griffin:** It is a common problem that building inspectors have. Quite often we are doing an alteration, and the building inspector will say what about this area over here? Deven Sharma could be very helpful with this matter. There could already be some kind of language in the state code. I know we are trying to get through a lot tonight, but I am not sure if we are going to find the right words for this.

**Trustee Jennings:** As a procedure, as we go through here we can make a checkmark of those passages, phrases or words where Marianne and Deven need to consult with each other and consult with you and we can straighten this out. We cannot resolve it without Deven.

**Mayor Swiderski:** Or at least without a better definition, whether that involves Deven or not.

**Trustee Armacost:** If we have a second session, can we require Deven to be present?

**Mayor Swiderski:** We would have to make sure it works with his schedule, yes. We cannot subpoena him.

**Trustee Armacost:** But I think it would be quite helpful.

**Village Manager Frobel:** He is on vacation.

**Village Attorney Stecich:** The definition section: 160-3, definitions, "alterations," the fourth line down, "such as garages, sheds, reconfiguration or extension of any system, or the installation of any additional equipment where the work area exceeds the lesser of 1,000 feet or 50 percent." I am not sure what installation of additional equipment refers to.

**Ms. Kivowitz Siegel:** Again, I did not write these definitions. But I would imagine that that means air conditioning unit, heating system. Am I correct?

**Mr. Alligood:** Both Christina and I are looking at the building codes, the various definitions online, as this meeting is going on. I am not certain. Again, I do not want to blame it all on Deven, but neither of us are comfortable with several of these definitions in here. They are different than the state code. I was already up here saying these should be the same as the state. We should not be redefining words that have meaning, and you have hit on another one that is different.

**Village Attorney Stecich:** Is that "alteration"?

**Mr. Alligood:** Yes. I have no ability to explain or post-rationalize this definition. It has a slightly different definition in the state code, and the Hastings code does not have a definition. So I cannot speak to where this came from. I hate to put it off to another meeting, but I do not think we have another choice. Deven has to be here.

**Ms. Griffin:** There were two members of the committee that were more focused on the definitions and a code-related description of the code, and they are not here. But the idea was that we are not trying to reinvent these definitions. I wish we could go back to them and find out why we have these confusing definitions.

**Village Attorney Stecich:** But the other thing is, besides a state building code, which is probably the one you should follow, there are definitions of this in our own code. Like "alteration" is defined in the zoning code. So it is important that it be defined if it is going to be different. Then you are dealing with three definitions: our zoning code one, the state code one, and then what is in here.

**Mr. Alligood:** We had this discussion that we were going to follow the Hastings code definitions, when zoning or building code. What you are pointing to, I agree with you. This does not match the zoning code definition or the Hastings code definition. So we do not know where this came from and why it is here.

**Village Attorney Stecich:** Could this be the definition from the state building code?

**Mr. Alligood:** No, it is not the Hastings code, it is not the New York State building code. This is not a definition that I am familiar with or have seen anywhere before. I do not know where this came from. It should be modified to match one of those, or otherwise we should be able to give you a better explanation for why we have come up with our own definition.

**Mayor Swiderski:** So that throws it back into your laps, the proposed definition here and elsewhere in the definition section?

**Trustee Armacost:** But, Doug, at one point you were recommending that we follow the definitions of the state code, and then you just said that we should follow the Hastings code. We should decide.

**Mr. Alligood:** The order that you would go in is, when Hastings has a definition it would override the New York State code definition. Where Hastings does not have its own definition, then you follow the New York State definition.

**Trustee Armacost:** So can we just put that rule into place for all of these?

**Mr. Alligood:** Yes.

**Village Attorney Stecich:** I am confused. Are you saying you are going to come back to a definition, or I should import the Hastings zoning code definition?

**Mr. Alligood:** We are recommending to important Hastings definition for these terms where there is a Hastings definition. Where there is not one, follow the New York State definition. Where we have an issue with that, we will come back to you when we get our entire group together and say these are specific examples where we want to modify the definition or amend it in some way.

**Mayor Swiderski:** And I think this might be one of them because of that definition of square footage and percent. That may be specific to this code. This is one of those examples where we need a recommendation or explanation from you.

**Mr. Alligood:** I would like to table this definition.

**Village Attorney Stecich:** I am lost.

**Mayor Swiderski:** They are going to come back.

**Trustee Apel:** I did have one question on gray water. Does it deal with kitchen sinks, or is that definitely out? Gray water is never in kitchen sinks?

**Mr. Alligood:** Gray water would not include kitchen or anything that had biodegradable.

**Village Attorney Stecich:** On baseline building definition, in the last line abbreviations, are people going to know what that is?

**Mr. Alligood:** These are reference standards that are cited in building codes, whether Hastings or otherwise. They are commonly used.

**Village Attorney Stecich:** That is fine with me. The definition of "invasive plants," where it says "alien species." Alien to what? Alien to Westchester, alien to the northeast, alien to the U.S.?

**Ms. Kivowitz Siegel:** It is not native. Our plant specialists are also not here. I am sorry. Maybe we could just say "non-native."

**Village Attorney Stecich:** Non-native is better than alien. I am assuming it means non-native plus this other stuff. It is non-native species, the introduction of which does, or is likely to, cause economic or ecological harm or harm to human health.

**Trustee Jennings:** Why do we not just say "species?"

**Trustee Apel:** Any species which is likely to cause economic harm?

**Trustee Armacost:** Even if they are native, but nasty, we do not want them. Is that what you are saying?

**Mayor Swiderski:** Poison ivy. There is a list of invasive plants that has been distributed. I do not know.

**Trustee Apel:** I do not think we have to get over that.

**Mayor Swiderski:** I think non-native.

**Village Attorney Stecich:** Then a similar thing with native plants: plants that are indigenous to the locality. We might want to specify the locality, whether we mean U.S., northeast U.S., New York.



**Ms. Kivowitz Siegel:** Does it not go by sections or zones?

**Trustee Walker:** No, it is not a zone because a zone can go clear across the country.

**Ms. Kivowitz Siegel:** OK, so we will help you clarify that.

**Mr. Kirshbaum:** When you reference stuff like ASHRAE, green forest, Green Seal, how do you avoid the non-delegation doctrine, where you, as an elected official, cannot delegate your responsibility to non-elected officials?

**Village Attorney Stecich:** Because they have looked at those standards and adopted those standards rather than rewrite their own. It is not delegating to somebody else. That would not be unusual that you do things in reference to some objective. You would be right if these standards were not in place, and somebody said whatever standards. I do not see an issue with it. I frequently see these kinds of requirements in building codes. I know what you are saying, I just do not think this is an instance of it.

**Mr. Metzger:** These standards are nationally-recognized. They are organizations that set performance standards for every aspect of building construction, and every code I am familiar with will refer to those standards. You are not deferring, you are recognizing national standards. Otherwise, we would have nothing to base our decisions on.

**Village Attorney Stecich:** The definition of new construction, that has that business about movement enlargement. I do not know what that is. OK, I will look at it when I look at the other thing. This is NYSECCC, and then you have Uniform Fire and Building and Energy Conservation Construction Code. Is that not the abbreviation for just the energy code?

**Mr. Alligood:** You are right. That is just the energy code.

**Village Attorney Stecich:** So it should be the New York State Uniform Fire and Building, right?

**Mr. Alligood:** Yes.

**Trustee Walker:** Open grid paving system. Would gravel constitute an open grid paving system? I would assume so. But it says open grid.

**Village Attorney Stecich:** Open grid paving system, you usually think of Grasscrete or something.

**Trustee Walker:** And yet gravel would be just as permeable.

**Village Attorney Stecich:** Well, this is defining open grid. That is OK. Further on, there is another section where you may want to say gravel *or*. We could deal with that later.

**Ms. Griffin:** This is not about gravel. It is because a lot of people may not know what that means, and that is why we defined it.

**Village Attorney Stecich:** The problem, what Meg is seeing, is that it is later on. we could deal with that issue later on because we have that question. The definition is OK.

The definition of residential development. Multiple single-family dwellings consisting of more than three units, not more than three stories in height. I do not think that is necessary, the not more than three stories in height. What do you care how high it is? In fact, things are not supposed to be more than three stories in height. But let us say somebody got a variance to build a four-story building. They would be exempt from coverage of this code because they are not a residential development. So my suggestion is take out the phrase "not more than three stories in height." Everybody agree?

**Mayor Swiderski:** Agreed.

**Village Attorney Stecich:** Sensible heat. Could somebody explain that definition?

**Mr. Alligood:** The term "sensible" here is a technical term meaning that you can sense it, as opposed to other types of heat, like latent or hidden heat. This is just a temperature change. Your thermometer rises or lowers. This was the definition from the New York State energy code.

**Village Attorney Stecich:** "Heat exchange by a system that has as its sole effect a change in temperature." When you explain it, then the definition makes sense.

**Trustee Apel:** But anybody trying to understand the definition without your explanation, maybe your explanation should be in parentheses what this means.

**Mr. Alligood:** It could, but this one I can speak to because I am the one who provided this. We had this discussion about this topic, where it might not be a common use of the word *sensible*, but it is the mechanical code's definition of the term. If you are in that code book you already know what this means. You are familiar with using the word that way.

**Trustee Apel:** But for those who are not using the code.

**Mr. Alligood:** You would never, ever be in that code book.

**Village Attorney Stecich:** The definition of steep slope roof. It should just be roofing with slopes greater than 3 in 12. That is what makes it steep slope. First of all, why watershedding? I do not understand why watershedding would be in there. Then also, "typically composed of many overlapping units." Well, it is still a roof. I know it just says typical. What you are getting at is a roof with a slope greater than 3 in 12. I would just make that the definition. That other stuff is extraneous.

**Trustee Walker:** Would a metal roof also qualify as a steep slope roof? Like a standing seam metal roof? So then you do not necessarily need to have the overlapping units.

**Village Attorney Stecich:** Yes, what you are getting at is what is a steep slope.

**Mr. Metzger:** Marianne is right. In typical parlance, steep slope is 3 in 12 or a greater pitch, and the low slope roof is anything less than 3 in 12.

**Village Attorney Stecich:** I would just change the definition to a roof with slopes greater than 3 in 12. Take out the rest of that.

Work area. "That portion or portions of a building consisting of all reconfigured spaces, excluding portions of the building where incidental work" There could work be being done, but the space is not reconfigured. So you are gutting a whole part of the building, but you are not changing the walls. Then it is not being reconfigured. I think you intend that to be a work area. Am I right?

**Ms. Kivowitz Siegel:** You are right. Christina is correct, that these definitions came from one of three people, two of which are not here and one of which, sadly, passed away during this process. So we will have to check it.

**Village Attorney Stecich:** So are you going to get to us on the definition? OK.

**Ms. Kivowitz Siegel:** Can I clarify which definitions we are getting back to you on? I believe it is "alteration," "native plants," "locality," "repair," and "work area."

**Village Attorney Stecich:** Correct. I only have one comment on page six, and it is an overall comment to the exemptions. It is granting a lot of discretion to the Building Inspector, and the Board should make sure they are comfortable. I am not saying one way or the other, but are you comfortable with it, also because there is no provision for review.

There is a provision for review of his decision if he denies the exemption. Then that can be appealed. That is just the Board, whether they are comfortable with that.

**Trustee Walker:** We could set up the same system we did with view preservation.

**Village Attorney Stecich:** You could, although who are the other two people? That was a little easier because you had boards that already look at that. But it would not be a bad idea.

**Trustee Jennings:** The technical group did discuss at great length the difficulty that this is the solution to, the way this exemption thing finally took shape. The difficulty is the great challenge of writing specific regulatory standards and provisions that will cover a great multiplicity of contingent factors, different kinds of buildings, different kinds of sites. Even in a little village like Hastings there is a great diversity of circumstance. We felt that the only feasible thing was to fall back on official human judgment and the professionalism of the Building Inspector, whoever that might be, rather than try to cover all the contingencies in rules and definitions and provisions. It is true that there is a fallibility in relying on human judgment in the sort of gray areas and difficult cases. You do not eliminate that fallibility by having an additional committee or group exercise their judgment; you simply have more people exercising judgment.

My feeling is that coming down on a mechanism wherein the Building Inspector makes a determination and the applicant agrees with that determination is a sufficient safeguard for justice and equity. If the applicant disagrees with the determination there is an appeals mechanism, and it comes to us, the elected officials. But I take the point that we are giving the Building Inspector a lot of discretion with these provisions in this section. I do not see the danger of it, though, if the applicant has recourse against a mistaken or arbitrary or otherwise improper determination by a single Village official.

**Mayor Swiderski:** The only danger is the thousand-dollar check under the table.

**Trustee Jennings:** In a village this size it is hard to keep that secret for very long, and we will deal with it if we have that kind of Building Inspector ever in the future.

**Trustee Armacost:** You can require a record of all of the applications made and all of the ones granted, all of the ones denied, the dates. If there are a lot of exemptions, and suddenly Deven is driving around in a Rolls Royce, we will be able to come to our own conclusion. But I agree with Bruce.

**Trustee Walker:** And the Building Inspector has to make a lot of decisions based on his own discretion anyway. That is just the way it works.

**Mayor Swiderski:** Without a doubt. I am just pointing out why four eyes works.

**Village Attorney Stecich:** It is a fair point, which is why I raised it. What Niki is suggesting I do not think it has to be in the statute. But if you are going to enact this, you should enact procedures that are going to require that.

**Mayor Swiderski:** Totally agree.

**Trustee Armacost:** Yes, that can take the form of a guideline. these are the expected guidelines associated with it, and it is just a reporting mechanism. It is a check and balance.

**Village Attorney Stecich:** But you are going to have to follow up on that because it is not part of the law.

**Trustee Apel:** It is very clear that when you have an appeal you have to get a written notice and a decision in 30 days. But there is no time limit by which the Building Inspector has to answer. I understand you might need a certain amount of time because you have to read a certain amount of material. But we talked about trying to make it in such a way that people are not sitting around waiting two months and three months, or whatever. What a reasonable time in which I am going to either be told I am exempt or not, the first time around.

**Village Attorney Stecich:** Except the only thing is, we do not have that in other provisions of the code. I do not think we have a deadline for when you have to grant the building permit from when it is applied for, or when you have to grant a C of O. Am I right, Christina?

**Ms. Griffin:** It is a policy.

**Mr. Metzger:** The Zoning Planning Boards have 60 days in which to render a decision.

**Mayor Swiderski:** But this is the Building Inspector.

**Mr. Metzger:** I do not think the Building Inspector has a timeframe. It has been my experience that the Building Inspector has been very good at turning information around. But if he gets swamped with work, that may not be someone else's idea of getting information turned around.

**Village Attorney Stecich:** I am not saying that should be an idea, but we do not have it in other provisions in the code.

**Trustee Apel:** Whether it is in another provision or not is not my concern. We are dealing with this one. What is a reasonable time in which a person should get an answer? If we try and make this more appealing to people, and this person needs to move on with whatever they have to do, and they have to wait, and they are waiting and waiting, is there a normal time?

**Trustee Armacost:** That kind of idea could also go in guidelines. It does not need to be in the code. It may be there are a few other things that should be in a corollary document.

**Trustee Apel:** I understand that he is going to have to get papers, and other stuff and information, and it is going to take him a little longer. But what is reasonable? How long should a person wait to have to get an answer? Because they are going to get an answer on their appeal, and they are told that they have 30 days. In 30 days they have to tell them.

**Village Attorney Stecich:** No, you do not have to tell them within 30 days. They have to appeal within 30 days.

**Trustee Apel:** Oh, so there is no date there.

**Village Attorney Stecich:** No time limit.

**Trustee Apel:** I have been corrected, thank you. But in any event, if we are trying to move these processes along I think a person is entitled. It cannot be dragged on and on.

**Village Attorney Stecich:** If you saw that there was an issue you could always put a time frame in. But these things usually move along pretty well.

**Trustee Armacost:** Could I just ask one question about 165, "conflicts with other laws"? Is there a scenario that you can think of where there might be a more stringent law than this? It says, "Should any conflict or ambiguities exist between this green building code and other applicable village requirements, the more stringent, as determined by the Building Inspector, should apply." I am imagining this is the most stringent, but is there a scenario?

**Village Attorney Stecich:** The Village does not have a light code, and people have talked about it now and then. Let us say you enact a light code and it is stricter than this, you want the strictest. That is standard language, but it is a good idea to have it there.

On page seven, section 168-8(B)(1). Maybe you could explain what this "greenfield sites" means. "The greenfield site disturbances may not exceed the following parameters." I

understand some parts of the document cannot be made easy for people to understand; some of this stuff is very specific, when you get to the energy and stuff. I have a feeling that this is a section that e should not be that difficult for the public to understand. I have a hard time with it. Maybe it is just me.

**Trustee Armacost:** But it is defined, greenfield sites. So which is the part that is hard to understand about it?

**Village Attorney Stecich:** Greenfield site disturbances may not exceed the following: 30 feet beyond.

**Trustee Walker:** If you are building in a meadow on this undeveloped property, and you want to put in a big lawn around your new development, for example, that lawn would be limited to 30 feet beyond the building perimeter and parking garages. That is the way I read it: for lawn, gardens, other kinds.

**Mayor Swiderski:** That would not necessarily be the way I read it, either.

**Trustee Walker:** I read it that a disturbance would be tearing up the existing meadow grasses and putting in some other kind of planting.

**Trustee Apel:** And it goes as far as 30 feet, and that is it.

**Trustee Walker:** Of course, we are required to do it mostly in native plants. But that is the way I read it, or other kinds of disturbances besides lawn.

**Ms. Kivowitz Siegel:** There are very few greenfields in this village. Greenfields only apply to places that have never been developed.

**Village Attorney Stecich:** Give an example. I really cannot picture this.

**Ms. Griffin:** It is more a large site because 33 beyond the building, beyond the house. Our setbacks usually are not any greater than 30 feet to a house in a residential zone. So this really more applies to a big site, and it is supposed to reduce the amount of development of a greenfield disturbance.

**Trustee Walker:** Disturbance does not mean development.

**Ms. Griffin:** Not necessarily, right.

**Trustee Apel:** Because a development, a building, could be very large and then you get another 30 feet and that is it. The building could be humongous.

**Mayor Swiderski:** So let us use the 9-A site.

**Trustee Walker:** That is mostly covered with parking.

**Mayor Swiderski:** Not mostly.

**Village Attorney Stecich:** But that is a good example. That happens to be one lot, but it could easily be two. Let us say it were two lots. The part of it that has the parking lot on it, the pavement, and then the other part. So the part with the paving it not greenfield, but the other part is. So what does this mean?

**Ms. Griffin:** There are a lot of ideas in this code that come right out of LEED manuals. You can get LEED points for reducing the amount of disturbance of a greenfield. We decided to choose on the lower end of what you can get points for if you were doing a LEED project. We thought it was a good idea to limit the development or disturbance of any greenfield sites where you might have it. I think we might have a few in Hastings.

**Trustee Armacost:** Can you name any greenfield sites, by your definition? It would be a large site that is not a park?

**Mayor Swiderski:** There is a ton of them.

**Ms. Griffin:** There are quite a few, yes.

**Village Attorney Stecich:** Remember, the Village is subject to it. Let us say you were going to put a tennis court on space.

**Trustee Walker:** So Hillside Woods is a greenfield site.

**Village Attorney Stecich:** You could develop in a park, yes.

**Mr. Metzger:** Hillside Woods has an area that could be developed that would be considered a greenfield.

**Village Attorney Stecich:** So what you are saying is, let us say there is a greenfield site or just a totally undeveloped lot that somebody had. That makes it a greenfield site; it has never been developed. And somebody is building a house. Let us say the lot is 100 by 100, and



the house is 30 by 50. So what you are saying it that on the sides you get 30 feet and the rest has to stay undeveloped.

**Ms. Griffin:** And that is a good amount of property for a backyard. I know there are some areas in Hastings where people have oversized lots and they may subdivide one day.

**Trustee Walker:** But from a gardener's point of view this might be a hardship if somebody wants to have a big vegetable garden, for example. A lot of people are doing that. They want it to be more than 30 feet wide.

**Ms. Griffin:** The numbers is something we can debate. But the concept is a good one because it is just good that we have these ideas in our green code since they are important in LEED. But you can debate it.

**Mayor Swiderski:** But back to 9-A, which is one of the genesis drivers here. So three structures go up on the property and some parking areas, but two acres which are set aside for parkland are beyond that 30-foot limit. So does that mean they remain the scrubby grass that is there now, or does it mean we cannot do anything with it? By this definition, that scrubby land remains scrubby land because it is beyond the 30-foot border.

**Trustee Walker:** Then you get into the fine points about whether that is in a natural state, because it is probably not a greenfield. At one point it probably had trees.

**Mayor Swiderski:** The northern end of Andrus Home, that is 30 acres in Hastings, 25 acres in Hastings. They put some corporate campuses there, but would like to landscape the rest of the land. Landscape is not permitted beyond 30 feet. For example, trees to shield the headquarters from the street if it is beyond 30 feet from the building. Practically speaking it prohibits any sort of landscaping of the territory, even if it is a good thing.

**Trustee Walker:** Whether it is a good thing or an aesthetic improvement that they want to make, or whether it is a vegetable garden that they want to put, you are prohibited.

**Trustee Apel:** Maybe we would have to define the size of the land.

**Village Attorney Stecich:** No, it is a basic question. And numbers are not going to help you out. You are going to have the same problem if it is 40 feet.

**Mayor Swiderski:** How much control do you exert over the entire property, and, in doing so, do you damage a positive improvement to that property?

**Ms. Griffin:** I have an idea. Sometimes, in our committee, we have had these debates about whether to restrict or not, and sometimes we think it could be difficult for some people. We have put it in the incentive category. So you get points.

**Mayor Swiderski:** I would prefer that because those two acres on the 9-A property we have talked about making them a community garden, and that would be off-limits in this.

**Trustee Walker:** Or even if you wanted to put a recreational use there.

**Village Attorney Stecich:** I am going to move it to the options. But do you have to think about it, or would you know off the top of your head, how many points it is worth?

**Mayor Swiderski:** Come back with a recommendation, but review it more deeply than that.

**Village Attorney Stecich:** When I do the next draft I will put "blank points," and you can decide. What about "A minimum of 50 percent of the previous..."

**Mayor Swiderski:** I think the whole section should go, too. This applies across both of these areas. They both need to go into the optional, for the same reason.

**Trustee Jennings:** Yes, that makes sense.

**Trustee Walker:** I would agree, yes. Under stormwater control, when the land that is being disturbed is greater than 10,000 square feet, which is roughly a quarter of an acre, which is, in fact, the size of many lots in Hastings: are the requirements less stringent or more stringent?

**Ms. Kivowitz Siegel:** I think they are similar.

**Trustee Walker:** It is just they fall under the regulations that we already have in place.

**Village Attorney Stecich:** Under our stormwater law. The reason we put this in was to be able to get to the smaller.

**Trustee Walker:** Right, because these are covered but everything smaller is not.

**Mayor Swiderski:** And you do not mean literally the runoff that may be caused by construction. You mean all additional runoff caused by the new constructing, right? You are not referring to the construction process itself.

**Ms. Kivowitz Siegel:** Yes, you are right.

**Mayor Swiderski:** OK, so it is all additional runoff caused by the new construction.

**Trustee Armacost:** So "additional" gets added in.

**Mayor Swiderski:** And "new construction" gets added in.

**Village Attorney Stecich:** What did you say is out? There are just two new words in, "additional" and "new."

**Mr. Metzger:** It should be new construction or additions, being that we are defining those as two separate terms.

**Mayor Swiderski:** Right, on new construction or additions.

**Village Attorney Stecich:** The other thing with the over 10,000 square feet you have got to do that stormwater pollution plan.

**Trustee Walker:** But this new construction, also in additions, also includes patios and driveways and things like that, correct?

**Village Attorney Stecich:** Yes.

**Ms. Kivowitz Siegel:** The definition of additions includes deck, patio, porch, driveway, pool or other accessories.

**Trustee Apel:** "Shade from structures covered by solar panels that produce energy." Can you tell me what this means? You wanted them to provide some shade from structures covered by solar panels that produce energy. Do you mean you want them to provide a barrier so you cannot see it? "Shade from structures covered by solar panels." What is that? What is underneath the panel?

**Trustee Jennings:** Create shade to help reduce the heat island.

**Trustee Walker:** And this could be a roof over parking.

**Ms. Griffin:** I do remember Bill Bobenhausen really wanted to get that in the code, because it is such an obvious way to cut down on the heat island impact of parking area by having shading. And then using that canopy for solar panels.

**Village Attorney Stecich:** It says "at least 50 percent of the hardscape shall be this open grid paving system. What about gravel? Does gravel not work the same as an open grid paving system?"

**Ms. Griffin:** No, it does not.

**Trustee Walker:** Not for heat island? It is pervious, but it reflects.

**Mr. Alligood:** It depends on the color, which is included in item three.

**Village Attorney Stecich:** Invasive plants. "All existing invasive plants shall be removed from areas that are to be planted." So that is newly planted.

**Trustee Walker:** That could be planted for the first time, or replanted, or just cleanup.

**Village Attorney Stecich:** So people can just leave all the invasive plants there.

**Ms. Kivowitz Siegel:** We changed this in response to a number of comments. The committee felt it was important to keep some concept of removal of invasive plants in this code because it is such a big issue everywhere. But we recognized that we could not ask people to remove every invasive plant from a piece of property unless they were doing something with the area: they were planting the area, they were building on the area or whatever. If they are landscaping a part of the property, then they have to remove the invasive plants that are there. If they are leaving it wild, then we are not going to make them remove all the invasive plants. That is what that means. If it is not drafted clearly, then we can work on that. But that is what we intended.

**Trustee Jennings:** And it tied to what we just did when we moved that 30-foot rule into the options. You can now landscape your entire site if you do not care to get points from that option. But insofar as you have to do that, then you have to remove the non-natives.

**Ms. Kivowitz Siegel:** Well, the invasives.

**Mayor Swiderski:** And put in a proper percent of native.

**Village Attorney Stecich:** I do not understand why it covers something different than G. G says "any new plants installed shall be non-invasive." So if you are planting an area, you are removing this stuff, you are removing everything and you are planting.

**Mayor Swiderski:** It is mutually exclusive.

**Village Attorney Stecich:** So whatever you are putting in has to be non-invasive. I find it confusing. Is it not just enough to say any new plants installed shall be non-invasive? Does that not cover the same thing?

**Ms. Kivowitz Siegel:** No. Because one has to do with removing invasive plants, and one has to do with what you are planting. I could not tell you the name of an invasive plant, but they have taken over my front yard. Someone might like that vine and want to plant it. We do not want to allow that.

**Village Attorney Stecich:** No, I think that should be there. But what I do not understand is why F needs to be there.

**Mayor Swiderski:** Because you choose to leave a stand of bamboo around what you landscape, and bamboo may be considered invasive.

**Trustee Apel:** First clean, then you can plant.

**Village Attorney Stecich:** Oh, so you mean from a general area only. I would look at that again.

**Ms. Kivowitz Siegel:** We debated this a lot, and I think the committee is going to stand by this language. If you folks want to change it, so be it. But I cannot imagine we could look at this again and come up with anything different.

**Village Attorney Stecich:** Does everybody find this clear?

**Trustee Apel:** If you are going to plant, first you have to clean out all the bad stuff. Then you can put in stuff, and it better not be invasive. That is it.

**Ms. Kivowitz Siegel:** I think that is exactly it. So one has to do with what you put in, and one has to do with what you need to take out.

**Village Attorney Stecich:** All right. The next one in G, "Any new plants installed shall be non-invasive and shall include a minimum of 75 percent native plants by area." What does "by area" mean?

**Ms. Kivowitz Siegel:** By square footage of what you are planting. If you are planting a 100 square foot lot, 75 percent of that has to be planted with native plants.

**Trustee Walker:** I have a question about that. We have a lot of steep slopes in Hastings, and it is sometimes difficult to find a ground cover that is native that the deer are not going to eat that will hold a slope in. That is why we all have pachysandra, which is not a native plant but the deer do not eat it. Maybe there is something native that could replace it.

**Village Attorney Stecich:** And it is non-native, but is very friendly. It was first introduced at the Untermeyer estate, brought there from Japan. It happens to be a wonderful ground cover. The only ground cover I have left is pachysandra. The deer do not like it.

**Mayor Swiderski:** I have to also go back to the obvious one, which is grass.

**Trustee Walker:** Well, there you go. Although you could argue that there are native species of grass that you could use.

**Mayor Swiderski:** People are going to want to have lawns for their kids, and to fight that is pointless.

**Ms. Kivowitz Siegel:** There are native lawns.

**Mr. Metzger:** Can I ask a question about a previous section? On the heat island non-roof section, it is a newer replacement, site landscaping, including driveway, sidewalks. If I were to replace the sidewalk in front of my house I do not think I would be able to do any of these options on that sidewalk. If I plant trees it is going to get in the way of power lines. I cannot do impervious surface; it is a fully paved sidewalk. I am not about to put solar panels up on my sidewalk. So it becomes an issue.

**Mr. Alligood:** This section, I believe we wrote that not referring to residential, first of all. It might happen later, and we will check that. But the second part is that this is intended to refer to sidewalks, and maybe that is the wrong term, but walkways within your property line. Your sidewalk is generally outside your property line.

**Mr. Metzger:** So it is not necessarily a public sidewalk, it is walkways within your property.

**Mr. Alligood:** Yes. So if there is a different term for that, then we should use that term rather than sidewalks. It only should refer to paved walkways within your property line.

**Trustee Walker:** But you have the same problem, though.

**Village Attorney Stecich:** You mean sidewalks, but not public sidewalks?

**Mr. Alligood:** I am not really sure. If the sidewalk is within your property line.

**Village Attorney Stecich:** No. On the new proposal on the 9-A thing they are installing a sidewalk the length of the project. You would want that to have to meet this requirement.

**Mr. Metzger:** That is what I am saying. I think we need to have a better definition of what a sidewalk is.

**Village Attorney Stecich:** But what sidewalk are you talking about?

**Mr. Metzger:** I am talking about in front of my house.

**Village Attorney Stecich:** I would say sidewalks, but not public sidewalks. Not sidewalks in the public right of way.

**Mr. Metzger:** Right. There should be an exemption for that sidewalk that is in front of your house as opposed to within a property.

**Trustee Walker:** So if it is concrete, you want to replace it with concrete.

**Mr. Metzger:** Right. It may be that the SRI would be less than the 0.29. I am not sure exactly what color reflectance that is. It may be that I would be able to satisfy it by using a very light color concrete.

**Village Attorney Stecich:** This is something we should bear in mind. Remember, this is applying to the Village. If you are going to do sidewalks, I do not know. What are hardscape materials with an SRI of at least 0.29, Christina?

**Mr. Alligood:** Most concrete that is used for a sidewalk will comply with that.

**Village Attorney Stecich:** So it should not be a big issue. Maybe it is something you would want the Village to do.

**Ms. Griffin:** The first item is the easiest one to comply with.

**Village Attorney Stecich:** Yes, but Jim was just saying that maybe he cannot put in shade trees for some reason. And sometimes you cannot, next to the sidewalk.

**Ms. Griffin:** I do not know why anyone would assume that. This is covering whatever you are getting the permit for, so I am not sure.

**Ms. Kivowitz Siegel:** Do you need to get a permit to fix the sidewalk that is in the right of way in front of your house? I guess that could be, yes.

**Village Attorney Stecich:** We just changed this thing for any projects done by the Village. We added that in addition to getting permits. So this would apply to the Village. Maybe the SRI of at least 0.29 is a good thing, that you would want sidewalks to be that color.

**Ms. Kivowitz Siegel:** I would think that would be a good idea for the Village to do, whenever it is changing out its sidewalks.

**Trustee Walker:** That would help prevent the asphalt. No asphalt sidewalks.

**Mr. Alligood:** Asphalt, but it might also rule out brick.

**Mayor Swiderski:** Also slate sidewalks.

**Trustee Walker:** No bluestone sidewalks.

**Trustee Walker:** And no brick. Yes, what if we want brick sidewalks?

**Mr. Alligood:** Then you would have to put a shade tree over 50 percent of it, or whatever the number is here.

**Ms. Kivowitz Siegel:** The point is to start to think about the environment. We may have to give up brick sidewalks to have less of a heat island effect. Aesthetics come into it, but we have to make those choices, and we are making the choice that we are giving up brick.

**Village Attorney Stecich:** You know how you made an exception on roofs, when you said if you want to match the roof, this does not apply if you are matching the roof? You may want a similar thing here. Let us say you have a bluestone patio and you are replacing part of it. Does it mean that half of what you are replacing has to be something else besides the bluestone? It does not make sense. And then I think it would also apply to the sidewalk.

**Trustee Jennings:** This may be a good example of the fact that the hardship provision is not just about money, not just about cost. It is about compatibility, it is about aesthetics, it is about historical preservation. If you have half of a patio you do not want to put the other half in a totally different material. That would be a very good reason to ask for an exemption.



**Mayor Swiderski:** Or we reset the paving stones on the flat view, which are dark slate.

**Village Attorney Stecich:** Then you are going to have to add some factors to what you grant exemptions for because it would not fit under hardship.

**Mr. Alligood:** It still fits with item A, where you would have to put shade cover over.

**Village Attorney Stecich:** But with the bluestone patio, you are replacing part of it, but you want to keep your bluestone patio. Maybe you cannot plant a tree or you do not want to plant a tree because it is going to be too close to the house. Why, to just replace the patio, should you also have to put up trees?

**Ms. Kivowitz Siegel:** We are trying to decrease the heat island effect. I understand the competing interests that the Board has to protect people's rights to do what they want to do on their property, and I know that is going to be the backlash that you are going to get for some of these provisions.

**Mayor Swiderski:** We can always pitch it to the back, into the optional section.

**Trustee Armacost:** Well, we do not want to pitch too much to the back.

**Mayor Swiderski:** No, but this is one that is likely to cause consternation.

**Ms. Kivowitz Siegel:** But you do not have to pitch the whole thing to the back. If you are going to pitch some of it to the back, pitch replacement. But if you are building a brand-new one.

**Mayor Swiderski:** I agree.

**Village Attorney Stecich:** Look at page 11, under the roofing materials, B, the sentence at the end, the same idea. This section does not apply to additions and alterations if new roofing materials are to be matched in roof type or color to existing roof barriers. You could have a similar provision that this does not apply if you are matching materials. I think that covers a lot. I think the exemption provision, the way it is written, does not work for that.

**Trustee Jennings:** No, I think you are right. That is another way to do it. Instead of roofing we could say hardscape.

**Mr. Kirshbaum:** I also had a question about the plants and grass. So much of what we have is not native to New York. To regulate or try to regulate what you can plant in your lawn is going to be almost impossible. Cherry trees come from Japan, cayenne peppers are not native to China. I know the provision is to make things more environmentally friendly, but this is a provision that is required to get a permit. It is coercive because you have to do it. Or else people will plant a native grass, and then kill it and plant whatever they want afterwards, which does not solve it.

**Trustee Walker:** And is the Building Inspector going to follow to make sure is native grass and not Kentucky bluegrass, or is it a native dogwood or is it an Asian Kousa dogwood.

**Trustee Jennings:** We can handle this the way we handle so many other things. Somebody will make a complaint. We do not go around looking for a violation, right?

**Mayor Swiderski:** Yes, but they have got to get a building permit.

**Ms. Kivowitz Siegel:** Much to my chagrin, there is no enforcement mechanism in this code. So the only enforcement you have is you do not get your C of O if you do not comply. Once the C of O is given, nobody is going to say anything. You can pull up everything you planted and plant something else if you want. Unfortunately, that is the way the code is written, if that gives people any comfort.

**Mayor Swiderski:** It does not give comfort. As somebody who got squeezed out of the city and came here, everybody has a stereotype of the backyard swingset and lawn. If this leaves us, from day one, people cannot set up a play area for their kids because the native grasses are totally wimpy, and we have now created a requirement that is not in keeping with what people are looking for, we are just setting ourselves up for ridicule and failure, in that order.

**Ms. Kivowitz Siegel:** We can always push that to points, too. I am not speaking for people on our committee who feel very strongly about this. So they may want to weigh in personally with you about it. But I think we could push this, give points for it. But I would hold firm on the invasive plants.

**Trustee Jennings:** The drafters of this made certain judgments and they have certain priorities. But now it falls to us, and we have to weigh the rationale of the draft against other considerations of feasibility and acceptability and practicality and tweak this.

**Mayor Swiderski:** So in the interest of moving on, leave F in and move G out?

**Village Attorney Stecich:** I will only make a suggestion. For F, invasive plants: "All existing invasive plants shall be removed." And then add to that: "Any new plants installed shall be non-invasive. That is how you deal with invasive plants. Then you move G, without the invasive business, to options and you get points for it.

**Mayor Swiderski:** OK.

**Trustee Walker:** Very good.

**Trustee Armacost:** So we are now using the word "invasive." We changed it earlier on. We changed it to non-native.

**Village Attorney Stecich:** That was another context.

**Trustee Armacost:** That was where we were using the word "alien."

**Village Attorney Stecich:** But invasive is just fine.

**Trustee Armacost:** But that was how invasive was defined.

**Trustee Walker:** It is non-native, plus having very virulent.

**Village Attorney Stecich:** You are right. We took out alien and put non-native; non-native, plus it is dangerous to the ecology.

**Trustee Walker:** It is dangerous to the ecology because it takes over from other plants.

**Trustee Armacost:** But the problem is that non-native, it can be non-native and not invasive.

**Trustee Walker:** Right, grass, pachysandra.

**Trustee Armacost:** So the issue is now muddied between invasiveness and non-nativeness.

**Mayor Swiderski:** It is two different things. They are not asking you to remove non-native. They are asking to remove invasive.

**Trustee Armacost:** But the definition of native invasive plants now is non-native species.

**Trustee Apel:** Where do you see this definition?

**Trustee Armacost:** We just changed it.

**Village Attorney Stecich:** It is non-native *plus*.

**Trustee Walker:** Harmful to the ecology, harmful to the environment, harmful to humans.

**Village Attorney Stecich:** It is not just non-native. Do you happen to know whether poison ivy is native?

**Trustee Walker:** It is native.

**Village Attorney Stecich:** Does that make sense? Because poison ivy is native, but you would want to remove it because it is dangerous.

**Ms. Kivowitz Siegel:** I think we should go back to what somebody suggested before and just keep it species introduction.

**Trustee Armacost:** I agree. That was Bruce.

**Ms. Kivowitz Siegel:** Again, I am not the expert in our group on this.

**Village Attorney Stecich:** Take out non-native and alien so it just says species.

**Trustee Armacost:** Because then we are agnostic on whether the non-native is invasive. It is not by definition invasive.

**Trustee Jennings:** That is fixed.

**Trustee Walker:** So that would allow you to take out poison ivy.

**Trustee Apel:** Poison oak, poison ivy, poison anything must be removed.

**Village Attorney Stecich:** On the same page, this is under light trespass, paragraph one, LZ-2. Where does that term come from? I do not see it in the definitions, I do not see it anywhere else. What is LZ? We should write it in.

**Ms. Griffin:** Light zone.

**Village Attorney Stecich:** On page nine, 160-9(A)3, I assume you mean "ratio" instead of "ration."

**Ms. Griffin:** Yes. We do have a clarification, or something we would like to add.

**[Female Voice]:** In consultation with Doug and Christina, there are some implied concepts around insulation. So adding either cellulose or foam or something that would make the addition more energy efficient, we are going to bring that out so the next draft will just have probably a definition that conforms to the state and either making it a requirement or an option.

**Trustee Apel:** Where is it going?

**Ms. Griffin:** Under "energy."

**Ms. Griffin:** I think we decided that it probably would be a good idea to add an item under energy.

**Village Attorney Stecich:** So it will be a new paragraph D, a new subsection D?

**Ms. Griffin**

**Trustee Walker:** I remember discussing that the last time around, and somebody said that is covered in the current New York State energy codes that you do have to increase the insulation by quite a bit in the new code.

**Ms. Griffin:** Exactly. But one thing we were just discussing, because it has come up quite often now especially with so many people doing energy audits, they are finding out that they could reduce the energy loss in the home by air sealing and weatherization, a more airtight enclosure. That is not covered in state code. So we would like to put something in here about that, even the type of insulation. If you were doing continuous insulation, it is more effective. You get a more effective thermal envelope than if you just put R-19 batt insulation between the studs. That is not covered by the code. And these make a significant difference to the energy use in a home.

**Trustee Walker:** Are you talking about it as a requirement or as an option?

**Ms. Griffin:** It just came up tonight. Before tonight we thought the code was covering it, and then I think it is something that is not covered by the code.

**Trustee Walker:** So you will make a recommendation about where it will go.

**Village Attorney Stecich:** Page 10, section 160-11, materials and indoor environmental quality, under paints and stuff. Both of them you have "addition," you mean "edition", I think, to a particular year. It is referenced to standards of a particular year. Now, they may change so you may want to say as amended or something like that. Or do you want to be locked into those? I do not know what your intention is.

**Trustee Apel:** 1993 and after, or anything thereafter?

**Village Attorney Stecich:** I do not know. They may not want to change it. They may like the 1992. There are other sections in here where it does say as amended, and then the amendments. I do not know if that is what they want. And this is your issue.

**Trustee Armacost:** So is that an edit? A-1, that is changed?

**Village Attorney Stecich:** Yes, that I will change to "edition." I am sure that is what they meant.

**Trustee Walker:** Or as amended?

**Village Attorney Stecich:** But the question is whether they want "as amended." Whether you mean you just want the 1993 one. That is pretty old. I do not know if it has been changed since then.

**Ms. Griffin:** This came out of the LEED manual, but we can check it and see if there is a more current one.

**Village Attorney Stecich:** Well, it is not so much that, whether there is a more current. It is do you want to say "as amended," because otherwise you are stuck with this one, even if it is changed.

**Ms. Kivowitz Siegel:** I think we do.

**Ms. Griffin:** I think so.

**Mr. Alligood:** It is a valid point. There a much newer versions of that. We will want to check what the new version is and make sure that is what we really want.

**Village Attorney Stecich:** Also add the "as amended" if that is what you want.

Then also on that, in four it says, "No material shall contain added urea formaldehyde." Is there naturally urea formaldehyde in that? There is. So add it as beyond what is in there, OK. But under roofing materials, it says: "This section does not apply to additions and alterations if new roofing materials are to be matched in roof type or color to existing roof areas." This would mean that if you are replacing the whole roof in the same color, the way this reads now, you do not have to use it.

**Mayor Swiderski:** Well, no. That is not an addition or alteration.

**Trustee Armacost:** That is a replacement.

**Ms. Kivowitz Siegel:** I do not read it like that, Marianne. I see this as if you are adding a room to your house, you have to put a roof on it and you need to match it to the existing roof. I do not see where you are reading replacement of an entire roof in this.

**Trustee Apel:** You could say this does not apply to replacement.

**Trustee Armacost:** It says "to existing roof areas," which implies that there is some roof there, that it has not gone. It is not previous roof area.

**Mayor Swiderski:** Right.

**Mr. Metzger:** A 0.29 reflectance for new roofing means we are going to be seeing a lot of white and light-gray roofs on any new structures in the Village. They are available, but there are very few asphalt tiles that satisfy that. It is mostly metal roofing that can comply with that with a series of different colors. It is going to affect the way buildings look as we build new houses because we are only going to be looking at lighter roof tiles in new construction.

**Trustee Walker:** So if you wanted to use the kind they call "architectural roofing materials" that resemble slate gray or wood color or like shingle color...

**Mr. Metzger:** Those slate-gray, dark-brown, those will not satisfy this requirement. The best way to cool your house is to use a light-color roof. It is even much more effective than doing all of the ventilation strategies that they have come up with. So there are a lot of good reasons to do it. We are going to have to start getting used to seeing lighter-color roofs.

**Ms. Griffin:** There are lots of "cool roofs" that have come out. And they are not white, and there are lots of warm colors, and they are not necessarily very light.

**Trustee Walker:** And they meet that requirement. Could you put on a terra cotta type of roof if you wanted to do a Mediterranean style? Even if it is not real terra cotta tile, you know how people have fake terra cotta tile. That would not meet it. That is too dark.

**Mr. Alligood:** In answer to terra cotta, and I can look this up, what we were doing in the committee meetings was looking up products. We used Home Depot as the lowest common denominator. If you can find the product at Home Depot then it means it is readily available and is becoming mainstream. There are products that are designated as meeting these requirements for low-slope or for steep slope roofs in a large range of colors and options and materials. They have imitation slate, which may not be wonderful. But if you are putting slate on a building it is probably to match existing slate, which would be outside of this requirement. I cannot tell you if they have terra cotta exactly, but a lot of materials are available.

**Mayor Swiderski:** And what happens if you put solar panels or solar water heating in it, which are dark?

**Mr. Alligood:** That is not a roofing material. It switches underneath that, and it is energy-producing so it is not adding to the heat island effect in that regard. I do not know how to answer that one.

**Village Attorney Stecich:** I would say it is not roofing material, right?

**Mayor Swiderski:** But there are tiles that are solar cells.

**Trustee Walker:** They are becoming roofing materials.

**Mr. Alligood:** We should look into that because I do not know how to answer that one. It is not a roofing material, but does it add to the heat island effect.

**Mayor Swiderski:** The point is to raise the temperature of the water within the water heating unit.

**Mr. Alligood:** You are also raising the temperature, theoretically, on the site. But it is a matter of absorption, how much these sensors reduce and basically dissipate the heat. Do they dissipate within because they are taking it away? I know somebody who can answer that for me because that is what they do. In terms of the availability of materials, I was asked to make sure I reference that they are not any more expensive than the high-SRI materials.



**Mr. Kirshbaum:** My question on C is, how can the Village even regulate it? Is it within the legal rights of the Village? Everything else in this code is what goes into the house: the materials, the labor, the construction. But now you are dealing with taking stuff away from the house. Most of this stuff is not going to be disposed of in Hastings; it is going to be disposed of outside the boundaries of Hastings, since Hastings does not have a dump or an incinerator. You can come up with all sorts of absurd situations, where all of a sudden you cannot meet this standard. For example, your contractor who is supposed to dispose of it never gets back to you. So now, he cannot get back to you, you do not have any proof it was disposed of in this way. Now you cannot get a permit because there is no way to prove there is no waste and there is no way to prove it was even disposed in the proper way. Or let us say you never get a CO and then you sell the house. And now the new owner has to get a CO. Well, how do they get the CO? Because there is no waste. Do they have to come up with a plan, and say that 100 percent was repurposed because it is in the house? I see where people want to be conscientious and recycle, but to predicate a permit on it seems out of the bounds of everything else we are talking about, which is stuff that is going to be permanently in the house.

**Trustee Apel:** When you hire the contractor they are going to come to you and say this is how I dispose of it. And they come with a certification that that is how they dispose of this stuff, and that is about the best you are going to be able to prove.

**Trustee Armacost:** This seems like an ex post facto clause. You have already got the permit. So you are not going to have the waste until you have got the permit and you have started the building, right? Or am I misunderstanding how that works?

**Mr. Kirshbaum:** You will have the permit, but you will not get the CO.

**Village Attorney Stecich:** No, you might have had a demolition permit. You get a building permit to replace your garage. You need that before you tear up the garage so waste may arise after you have gotten the building permit.

**Trustee Jennings:** So you are required to meet this provision if your project requires a building permit. But this provision would prevent you from getting a C of O, at the end of the day, and that is where the teeth of it comes in.

**Village Attorney Stecich:** Right, which is true with all of it.

**Trustee Walker:** But what he is saying is you do not have an opportunity to rectify it. It is already a done deal.

**Trustee Jennings:** If your contractor skips out on you and does not provide the documentation that is required, surely that will again fall under the hardship provision. I do not think the Building Inspector will deny you a C of O because you were not able to produce documentation which it is impossible for you to produce.

**Mr. Kirschbaum:** Right. But you are writing this into the law. You can say that you have the hardship provision, and I am not a lawyer so I do not know, but how can the Village regulate what is not occurring within the boundaries of the Village? That is the first thing. And secondly, my sister-in-law had a situation where the contractor just went out of business and never finished the project. So all the waste that they were taking away there is no reporting.

**Trustee Armacost:** Or you have the alternate situation, which is where the contractor is happy to write letters irrespective of what happened with the waste. He knows what he has to do is be quite good at writing letters.

**Mr. Kirshbaum:** And also, the burden is not on the inspector to make sure it is right. The burden is on the renovator to prove that it happened that way. One of the issues is how do you enforce it. The enforcement is that you have to provide documentation that shows it happened. Also, how does the inspector say I looked at your house and I would estimate the weight to be a ton, and you say here it is half a ton. I cannot give you a CO for that. And you need a CO. That would be a very bad thing, to not get your certificate of occupancy.

**Ms. Griffin:** It is becoming very common to be able to hire a waste carting company that is going to give you a document like this because of the market to meet LEED standards, do LEED certification. We had a project where we had 97 percent of the waste diverted from landfill, and we did not hire the waste carting company until we knew they were able to give us a document. I am finding that most of them do that now, and 25 percent is a low standard. It comes into play when you have to get a dumpster. It is driving a market, because when you become aware of this, then you do not hire a company that does not have this document to give you. It is not like something the contractor has to give you later on, that he has to write a letter. It is becoming part of standard business with waste carting companies.

**Trustee Walker:** Christina, is that also true of some of these other items like the wood framing or the other things that require a letter or proof submitted to the Building Inspector? For contractors is that becoming a kind of standard thing? It is one thing to write a letter. But how can you prove that you used the economic wood construction framing, for example?

**Ms. Griffin:** One thing we have been debating is what kind of documentation do we need. I do not think we should require so much documentation. When an inspector is unsure that

you met the conditions of the state code, he can always audit you and ask you for the documentation. So I am not sure. I think a lot of the ideas come out of the LEED guidelines, which require a lot of the documentation. But I know with waste carting, the only way to get that information is that you need that kind of document. I would be surprised if a waste carting company did not provide that information.

**Trustee Walker:** So you can get these documents pretty easily: install a solar hot water heater to provide minimum 40 percent of year-round hot water; calculations submitted to Building Inspector. So that is not a big deal to get that from your contractor?

**Ms. Griffin:** Quite often when you do any kind of renewable system, photovoltaics or solar thermal or geothermal, almost all companies provide that information. It is part of their marketing when they provide a proposal for the project.

**Village Attorney Stecich:** So what do we want to do with the construction waste management? You want to leave it in there, or not?

**Mayor Swiderski:** I got the same certificate when I had construction debris removed from my property. I was thinking of applying to LEED at the time, and 40 percent, I think, was diverted.

**Trustee Walker:** I think it is fine.

**Mayor Swiderski:** Yes, and it is a significant percent. Is it a quarter of what goes into landfills is construction debris?

**Village Attorney Stecich:** So 160-12(A), on the rainwater harvesting. You said the storage system must be sized to hold all of the water from a one inch rainfall event for 50 percent or more of the total roof area. I wonder why it was only roof area. Might there not be water runoff from things other than roofs? Like from decks or paved areas could there be runoff?

**Trustee Apel:** There is no way to harvest that.

**Mr. Metzger:** Typically you only collect water from a roof in a drainage system. Deck, usually the water just falls through the deck to the ground below unless you have a deck that has a roof surface underneath it. So an elevated deck could perform the services of an awning for a space below. I do not know if you would want to add that to this.

**Village Attorney Stecich:** It is mainly roof area.

**Mr. Metzger:** Typically, you take it right off the downspout from the roof.

**Village Attorney Stecich:** OK, erase it.

B, under gray water harvesting: "Water collected from one of the following: clothes washer, showers, some combination of faucets." What does that mean, some combination of faucets? Also I thought you said kitchen faucets were not, so I do not think this is right.

**Mr. Alligood:** Faucets are not really a source. We should fix that. It cannot be a faucet. It has to be a drain of some sort.

**Village Attorney Stecich:** The next page, E, all these options are the actions you take, right? Rainwater harvesting, gray water harvesting, construction waste management, whole building energy simulation. Is that not the proof of the action? Do you mean the simulation?

**Mr. Alligood:** You are right. Doing a building energy model is proof of the simulation. But also, it allows you to explore different options before you build it.

**Village Attorney Stecich:** So you need a different word than "simulation," do you not?

**Mr. Alligood:** No, that is the industry standard term. Building energy model is what you say when you are talking. But energy simulation is what is in the code in the reference standards.

**Trustee Jennings:** The underlying rationale is that you get points for doing this simulation because somebody who does the simulation is then going to be led to do a more energy efficient building.

**Village Attorney Stecich:** So you get the points for the simulation rather than doing the energy efficient work.

**Mayor Swiderski:** The simulation proves the energy efficient work exceeded certain standards.

**Mr. Metzger:** This is after you build.

**Mr. Alligood:** No, this is prior to submitting your plans. With your Building Department plans you will submit your energy simulation. How this building on paper will perform in real life.

**Village Attorney Stecich:** To show this is what is going to happen. My other question about that, this is for new buildings and renovations with less than 50 percent fenestration. Why not buildings more than 50 percent fenestration?

**Mr. Alligood:** Great question. This led us to hours and hours of discussion. I will try to not take hours to make sense of it. All this effort about energy performance, like insulation, thermal performance, you cannot apply that to an all-glass building. The way the energy codes read now, they pretty much stop at 50 percent. Beyond that, you have to do an energy simulation. There are not prescriptive insulation values beyond 50 percent fenestration. So we do not want to give you a credit.

**Village Attorney Stecich:** All right, under L, high-efficiency heating equipment. For replacement heating equipment, additions and alterations we get points for doing this. Why not if it is new construction?

**Ms. Kivowitz Siegel:** I think that new construction is mandatory. It is under 160-9(A)2.

**Mr. Alligood:** You are absolutely right.

**Trustee Armacost:** So your intention is to make insulation mandatory, as well. It is to add a D under 160-9, right?

**Ms. Kivowitz Siegel:** I think we need to talk about it and see. Points or mandatory, see how it fits in.

**Village Attorney Stecich:** Then on S, local materials, that the only one of these that you did not say you had to provide proof to the Building Inspector. Everything else says you have to have a report to the Building Inspector substantiating compliance. I assume you wanted it there, too.

**Mayor Swiderski:** Yes.

**Trustee Walker:** I have a question about the interior daylighting, O. When it says "to qualify for interior zone daylighting a minimum of 30 percent of interior zones must be equipped with dimming controls capable of reducing light output and corresponding electrical power by a minimum of 60 percent when useful daylight is available." Where is the daylight coming from? Is it other than windows on the perimeter? Skylights or other sources?

**Mr. Alligood:** It could be courtyards, it could be skylights. But also, 15 feet suggests that you are not putting offices against your exterior wall. The offices are inboard, and the open spaces are on the exterior. That is what the implication here is.

**Trustee Walker:** So the daylight is penetrating deeper into the building because you are not blocking, potentially.

**Mr. Alligood:** Correct.

**Trustee Armacost:** How would anyone know about the offices? There is no way.

**Mr. Alligood:** Interpreted that from reading this sentence? Because we do not want to dictate exactly how to lay out your space. We are saying that if you can achieve this you might put meeting rooms or something along the exterior that is oriented a different direction and achieve this. So there are probably lots of ways, flexibility.

**Trustee Walker:** Many energy efficient buildings have motion detectors and the lights go off when nobody is in a room. But we are not requiring that here?

**Mr. Alligood:** It is already required.

**Trustee Walker:** It is required in the current code.

**Mr. Alligood:** Yes.

**Village Attorney Stecich:** A tiny change on V, at the very end of part two. Is there any problem with saying "sustainability measures not listed may receive up to a maximum that may be proposed to." That is just confusing. Do you have any problem with taking out "be proposed to?"

**Ms. Kivowitz Siegel:** I think we meant to say proposed to the buildings.

**Village Attorney Stecich:** But it says "subject to the approval."

I will not repeat any of the comments that were in part two here, obviously whatever we covered there. But there are a couple additional ones. On the national resources survey, I know you say unless specifically waived by the Building Inspector you have to provide more. Are you envisioning that generally it will be waived? I understand requiring it for the other kinds of projects. But for houses I think it was a concern that it could be burdensome.

**Ms. Griffin:** There are many examples of other towns, like Irvington, where they have a list of items they want to see on site plan for just a single-family residential project, and all these items are required.

**Village Attorney Stecich:** But it is different here because we do not have site plan review of single-family houses and never have. Either way, it is burdensome, and the Board should make sure they are OK with it.

**Trustee Apel:** This is for single-family homes?

**Village Attorney Stecich:** Yes. So pretty much everything that we are talking about now would apply to single-family, two-family, and I think also three-family under this.

**Ms. Griffin:** I feel that is something that has been a policy for many years, single-family homes are off-limits. But that is exceptional about Hastings compared to other towns in Westchester. Putting a new house on a piece of property you should be looking at these issues.

**Village Attorney Stecich:** The new house, yes. But this is anything you need a building permit for.

**Trustee Apel:** So if it is not a new house, and you want to re-landscape your property, you have to get a permit for that? Is that what you are saying?

**Mayor Swiderski:** No. No matter what you do, you are going to have to do a natural resource survey.

**Mr. Alligood:** If you are doing an addition.

**Village Attorney Stecich:** Unless specifically waived by the Building Inspector.

**Mr. Alligood:** Right, it would be waived in the case of an interior. So if you are redoing a kitchen, you do not have to do it.

**Village Attorney Stecich:** Yes, if there is anything outside. Essentially anything with any outside work.

**Ms. Kivowitz Siegel:** Only if it requires a building permit. What you are doing requires a building permit, and you are including any new landscaping, painting, impact on stormwater.

**Trustee Apel:** OK, it is not for the person who owns a house and is just doing landscaping.

**Ms. Kivowitz Siegel:** Not if you are just doing landscaping, you do not need a building permit.

**Village Attorney Stecich:** So leave it?

**Trustee Jennings:** I have never been entirely comfortable with the word "survey" because that sounds like an inventory: how many of this and how many of that. But be that as it may, a large part of the intent was to try to encourage, indeed require, people to go through an exercise that will have them think about their lot, their site, their property. Think about the thing as a holistic endeavor, and think about the orientation of the new building they are going to build; think about how it is going to interact with the existing flora and fauna and ecosystem of their property.

It is a new way of thinking about our property. The feeling was that we should be moving in the direction of thinking about our property as a whole system rather than just thinking about it as a piece of ground where we are going to build a building, and the hell with how it fits on the site or anything else. A mundane example, if you are interested in solar the orientation of your building in relationship to your trees and the rocks is important. The intent of this provision is not to be burdensome but to give people a new normal in how they think about their site and the relationship between their built environment and the surrounding ecological environment.

**Trustee Walker:** But you are hiring an architect to do a little addition onto your house. The architect does not have experience doing this kind of natural resources survey. You have to go out and hire somebody else, a special surveyor who specializes, or a landscape architect, who can figure out what trees you have and how much wetland area you have.

**Village Attorney Stecich:** Whether there are steep slopes.

**Mr. Alligood:** A lot of this would already be required by the Building Department as part of what you would have to submit with your survey. That is why we are asking, in addition to that, that you identify the slope of the land, the topography. Rather than just saying trees with a big bubble, identifying the size and types of the trees and the locations. We see a little more specificity from your surveyor, and then your architect or landscaper would then have to quantify it.

**Trustee Walker:** If you are just using an old survey it would not have that information.



**Village Attorney Stecich:** Yes, most people just put in the old survey they got when they bought the house which does not have anything on it except the house and the lot lines.

**Trustee Walker:** Which means you have to hire someone.

**Mr. Alligood:** It is not necessarily a whole new expert level.

**Trustee Walker:** I guess my point is that it becomes burdensome financially.

**Ms. Kivowitz Siegel:** I do not think we had an intention of people going out and hiring all kinds of contractors to measure slopes and stuff. It was more of a general picture. Like you have shade trees here, you have got ornamental things here.

**Trustee Walker:** John Doe homeowner is not going to draw that.

**Ms. Kivowitz Siegel:** But your architect can draw that.

**Trustee Walker:** Architects often do not have that experience to figure out topography and trees.

**Trustee Jennings:** They will be begin to get it. Somebody has got to start the learning curve.

**Mr. Alligood:** But surveyors do topography.

**Trustee Walker:** Right, but you could already have a survey. You have to go out and hire a surveyor.

**Mr. Alligood:** No. If you are doing an addition you have to get a new survey as part of your building permit process.

**Village Attorney Stecich:** The other part of what Meg is saying that strikes me is that I can think of a lot of projects, small additions to a house, where all that stuff may be irrelevant to what they are doing.

**Trustee Jennings:** Then it will be waived.

**Village Attorney Stecich:** Yes, it could be waived. But you remember my original question: are you envisioning this being waived in a lot of circumstances? Most of the applications that I see it should be waived. Do you want a requirement that is waived more

than it is required? I do not know. I wonder maybe it should be in the reverse, where the Building Inspector determines it is warranted.

**Trustee Walker:** Can you interpret the clause at the beginning where it defines alteration. that this applies to the work area that you are altering, but it does not apply to the rest of the property? Can that then limit the times when this has to be complied with? Let us say you are adding a bay window onto your kitchen. Do you have to do a natural resource inventory on your entire site? No, because the work area is only the bay window. So when does the natural resource survey come in?

**Ms. Kivowitz Siegel:** You are not including any landscaping, paving or impact on stormwater.

**Village Attorney Stecich:** Or where there is an increase in the footprint of the structure. A bay window does not. But there are, so frequently, tiny additions that people are putting on because they want a little roofed area.

**Ms. Kivowitz Siegel:** They put in a mud room or something.

**Mr. Metzger:** But even with those tiny additions, you are required to have a survey to show the existing footprint and then what you are extending.

**Village Attorney Stecich:** Jim, those surveys are nothing.

**Mr. Metzger:** I understand. But the survey that we are talking about, you are asking the survey to mark significant trees. And on a small piece of property there is unlikely to be a large number of significant trees. There may be one or two. Rock outcroppings are generally easy to indicate. I do only small projects, and most of these kinds of things are very onerous to my clients. Because when you are only going to spend \$40,000 on a kitchen renovation, but you are spending \$20,000 to do lead paint removal, it becomes a very difficult sell as an architect. What I looked at for the natural resources piece, I usually end up having that put on a survey anyway, because if I am designing an addition I need to know where the trees are so I am not going to be impacting the root structure when I am moving a building out four feet.

**Village Attorney Stecich:** Yes, but most people do not get a new survey. Probably what you are doing is when a site plan is required. In Hastings site plan review is not required for 95 percent or maybe more of the work that is done here. You are right, when you are doing a site plan. But people do not have to put in site plan. And when they put in a survey, it is the survey that they got about 40 years ago. You are not doing a new survey.

**Mr. Metzger:** We should investigate this a little further. But for a lot of the additions that I do I am getting a full site survey anyway so I am not doing something on a project that is going to impact my client because I did not do the prep work. I am the first one to say there are certain things maybe we should dial back a little and there should be exceptions allowed. But we should investigate this carefully as opposed to this evening.

I do have a question, though, about how this gets applied under the additional requirements. It is section 3.5, part three, additional requirements. Marianne, I know you have revised this. I went off the download from the Web site. It says, "The additional requirements set forth in 3.1 through 3.4 above, for all new construction and additions and alterations in excess of the lesser of 1,000 square feet or 50 percent of the aggregate area of the individual unit." What constitutes an individual unit? That is a term I have never seen before. If someone could explain to me what that is referring to, I would appreciate it.

**Village Attorney Stecich:** When we get to that page.

So what does the Board want to do with the natural resources survey? Maybe the best way to do it is take out, at the beginning, "unless specifically waived by the Building Inspector," and put a sentence at the end that the Building Inspector shall not require this where, and then it can refer to limited things. I do not know how you would define it.

**Ms. Kivowitz Siegel:** If you do that, then you run into a problem of not including all the instances that are possible.

**Village Attorney Stecich:** Yes, I know.

**Mayor Swiderski:** This may be something that we land up dialing back.

**Ms. Kivowitz Siegel:** I would request, then, if you dial it back you only dial it back for additions or renovations, and leave it in place for new construction.

**Trustee Walker:** I would agree.

**Village Attorney Stecich:** So what do you think?

**Mayor Swiderski:** Leave it in?

**Village Attorney Stecich:** Just leave it the way it is now. OK. On page 16, section 160-15(B), under energy use controls, whole building switch. "A master whole building switch must be installed to applicable circuits and outlets which can shift circuits to economy mode

when the structure is not occupied." What about in two- and three-family buildings? Should there be a separate switch per unit? In apartment buildings you have separate switches per unit. I do not see how, in two-family or three-family buildings you can have a whole-building switch.

**Mr. Alligood:** That is right.

**Ms. Kivowitz Siegel:** Yes, an oversight.

**Village Attorney Stecich:** So switch per unit, OK. That is the last comment I have. There are a lot of repeats, and Jim just had one. At the bottom of 17, top of 18, the part three additional requires: "For all new construction, additions and alterations in excess of the lesser of 1,000 square feet or 50 percent of the aggregate area of the individual unit at least five points must be attained." I do not understand the question.

**Mr. Metzger:** I do not know what the term "individual unit" is applying to.

**Village Attorney Stecich:** Would be a house, or in a two-family house each of the units. And this also covers three-family, each of the units in the three-family.

**Mr. Metzger:** So I have a two-family house. If I am doing an addition on the back of the house, and it is two stories because the addition would be for the tenant and for the homeowner.

**Village Attorney Stecich:** Let us take the easy one. You have a two-family. One part of it you are leaving alone, and the other one you are making the change. It is 1,000 square feet and you are adding a 600 square foot addition, then this would apply. If you are adding a 400 square foot addition it does not. I think.

**Mr. Metzger:** So if it is under the 50 percent of the floor area it does not apply.

**Village Attorney Stecich:** Correct, unless it is 1,000 feet.

**Trustee Walker:** I was wondering if you could apply that for the natural resource inventory.

**Village Attorney Stecich:** You know why you cannot: because you might be doing a patio and you want it. Or a driveway, how could it affect the trees or whatever. So it is probably important.

**Trustee Walker:** True. And it easy to do when the patio is larger than 1,000 square feet.

**Mayor Swiderski:** In terms of next steps, you have gotten a fair amount of guidance to make changes as a result of a lot of your questions, and there is some input you still need, and some you need from Deven, right?

**Village Attorney Stecich:** Sharon, what I suggest is that I redraft this according to what we did tonight. Where you guys were to make the changes, leave fill-in-the-blanks for you to do that, or highlight, to be supplied by the Green Committee. Does that make sense?

**Trustee Jennings:** One of the major things that was thrown back into your court was the definition section.

**Ms. Kivowitz Siegel:** But we will have to wait for Deven. Do you know, Fran, when Deven is back?

**Village Manager Frobel:** I think he is out all next week, as well.

**Ms. Kivowitz Siegel:** That starts to run into other vacation times. We will do the best we can, but I think it would be a mistake to do that without Deven. Marianne will draft it, we will fill in. And then what?

**Mayor Swiderski:** If we can get this by next meeting in August we will address it then. Otherwise, it goes until September. We do one final review, and then schedule a public hearing. There are enough questions that we will need to go through it.

**Ms. Kivowitz Siegel:** It will be difficult in August to get a critical mass of people who might be available to answer questions. I would hope the next review would be at a time when enough people could be here.

**Mayor Swiderski:** I do not know how many questions are left.

**Village Attorney Stecich:** The questions were resolved. It is just a question of getting things defined.

**Trustee Jennings:** That is probably right. In our August 6 meeting we will read the revised version, the new definitions and all that. If there are significant questions we can communicate with you after the meeting and clarify. But if there are not, you do not necessarily have to be here to answer the questions. Then can move on to the public hearing. There will be questions then, presumably, from the public. It would be great if you guys could be here for that hearing. But that is the way I see I see the process going.

## **2. Other**

**Mayor Swiderski:** There are no other Board discussion and comments.

**Trustee Armacost:** I do not know how many people had a chance to see the Moving Wall, but I would like to thank and commend Lisa O'Reilly for all the work that she put into bringing it to Hastings.

**Mayor Swiderski:** It was great.

**Trustee Armacost:** It was a very moving monument. You and I were at the opening.

**Mayor Swiderski:** I took people twice back there.

**Trustee Armacost:** Exactly. The Scouts slept overnight there and guarded the wall at night, which was quite lovely. It was quite a special thing. Lisa really deserves special commendation for making it happen.

**Mayor Swiderski:** We have our first meeting with Dobbs Ferry tomorrow on the implementation of the grant study consolidation of DPW. Fran and I sit down with Dobbs, and it begins. It looks like the Festival of Lights is on, right?

**Village Manager Frobel:** Still waiting for some final documentation, but we are very close.

**Trustee Walker:** This is the Hastings weekend. There are other things going on, too. We are trying to get enough on our chalkboard wall by the train station, and some other announcements on our Web site. Stay tuned because there are activities at the pool for teenagers and seniors in addition to the laser show.

## **EXECUTIVE SESSION**

On MOTION of Trustee Walker, SECONDED by Trustee Jennings 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 Jennings with a voice vote of all in favor, Mayor Swiderski adjourned the Regular Meeting at 11:25 p.m.