

VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
BOARD OF TRUSTEES
REGULAR MEETING
MARCH 1, 2016

A Regular Meeting was held by the Board of Trustees on Tuesday, March 1, 2016 at 7:33 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

PRESENT: Mayor Peter Swiderski, Trustee Meg Walker, Trustee Nicola Armacost, Trustee Daniel Lemons, Village Manager Francis A. Frobels, Village Attorney Linda Whitehead, Special Counsel Mark Chertok, and Village Clerk Susan Maggiotto.

ABSENT: Trustee Marjorie Apel

CITIZENS: Thirty (30).

Mayor Swiderski: Attorney Chertok is the Village's environmental counsel. Trustee Apel is under the weather, at home and in bed.

APPOINTMENTS

Mayor Swiderski: We are announcing appointment of the members of the Transportation Working Group: Richard Bass, Dr. Jeanette Sawyer-Cohen, Matthew Hobby, Amy Lambert, James Nolan, Dan Sbrega and Samantha Wilt

APPROVAL OF MINUTES

On MOTION of Trustee Lemons, SECONDED by Trustee Armacost with a voice vote of all in favor, the Minutes of the Special Meeting of Feb. 10, 2016 and the Public Hearing and Regular Meeting of Feb. 16, 2016 were approved as presented.

APPROVAL OF WARRANTS

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

Multi-Fund No. 60-2015-16	\$156,182.79
Multi-Fund No. 61-2015-16	\$393,783.95
Multi-Fund No. 62-2015-15	\$ 5,798.63

Mayor Swiderski: We have on the agenda for Board discussion Riverview Park. We do intend to weigh in on uses for the park tonight. If you have already spoken it is not necessary

to speak again. Also, Building 52 is a strictly Board discussion, so if want to speak to that, speak during public comments.

John Gonder, 153 James Street: About the park, strange dogs and strange toddlers do not get along. Strange children from age five to teenagers with strange dogs do not get along. And strange teenagers and strange dogs do not get along. So any park that has swings, see-saws, sandboxes and something for children, do not mix the dogs with them. Even adults, strange adults, and strange dogs do not get together because I have had that problem because people do not recognize the Village ordinance about leash laws and I have got chased quite a few times in Pulvers Woods. So please separate them, and also when you do it I can see you making a point of paying for the park. But anybody that wants to use a dog park should be definitely insured, and quite a high insurance, for any dog things. You should have a triple gate, not a double gate.

I got a letter a long time ago and it about this. Trustee Armacost must have had something to do with this, with the size of this deer flag. The buildings must be saving a lot of money, then I see it is 23/4 by 3 inches. If you got it much bigger it might blow away, but it hard to see this. I think it could be a little bigger.

Trustee Armacost: Trustee Lemons is more responsible for those flags than me. But I will take responsibility.

Mayor Swiderski: That is the survey flag that is put on the lawns of people who signed permission documents for the darting team to dart on their property if a deer is located there.

Mr. Gonder: Back on April 16, 2009 I got this Mid-Hudson New York. It was "Buck Van Deer Hit 14 Vassar Road, Poughkeepsie, New York: and a code number for where they are, and they sent me a card: "To my seven deer cousins, care of Mr. Gonder" at my address. I want to read it again. "Hi, my dear deers. It's been a long time since I last saw you all. I understand Hastings-on-Hudson has many open spaces and parkland and homes with edible flowers, vegetable gardens, trees and plants. The food up here in Poughkeepsie is dwindling. I and all your cousins will be coming down to Hastings to live. We understand the village elders, or whatever they're called, opened their village to all and any hungry deer. They apparently love deer and will protect us. See you soon, your cousin, love, Big Buck Van Deer." Same thing, we still have a lot of deer, and I see that people are here trying to get them inoculated. I have been working with you Mr. Mayor, for the last few years on this and I hope it is successful.

You have a tough meeting tonight. You have had a lot of hearings in regard to Building 52 and the consent decree. I hope you make the right decision.

Jim Metzger, 427 Warburton Avenue: I realize there is a five minute limit, but we are talking about three very large issues. I do not know if I am going to be able to say what I need to say on these three topics in five minutes, I hope you will bear with me.

On the dog park, I wish we would stop calling it the "dog park." It was a de facto dog park for many years when the neighborhood had not small families, not small children, and it was locals using it, typically. Then people from outside the Village, dog walkers, started using it and ran off a lot of the locals because the dogs were out of control. The Village should start looking at parks as either neighborhood parks or village parks, depending upon the size and the part of the community they serve. I don't believe dogs parks belong in what I consider to be a neighborhood park.

In the last three to five years we have had numerous young families move to the Warburton Avenue neighborhood and these small children deserve a place where they can go play. We did a beautiful playground at Reynolds Field, which has run into some issues, it is going to get finished. But we deserve to have something locally where our kids can play. I am a dog lover and a dog owner. I used to frequent that park until I realized that my dogs were in danger because of the out of control dogs. There are issues involving accessibility, cost, all of these things. I believe the Riverview park should be a neighborhood child-friendly, pedestrian-friendly, people-friendly park, and I believe we need to find an alternative location for a dog park.

Mayor Swiderski: I am going to hold you to five minutes, so keep that in mind.

Mr. Metzger: OK. Consent decree, very quickly. For those of you at home who do not know what a 65-foot building looks like, we used to have one on the waterfront.

Mayor Swiderski: We are not likely to get to the consent decree tonight. We are just going to be covering the demolition permit because we are being realistic about time and the vote will not likely happen next week.

Mr. Metzger: In that case, we will put the consent decree aside. Here is my feeling about Building 52. What we do not know is what is under the building, what is in the building. The data is still being collected. It is inconclusive. We now know there is a group of citizens. We had a meeting the other night. We are investigating all avenues on remediation. We should stop calling this a remediation, by the way. It is really an abatement, and they are two very separate things. I would hope that the legal powers that are reviewing these documents understand those differences. Building 52, if it comes down, there are two

possible scenarios that could be very detrimental to the Village. If we find levels of contamination that BP fears is there based upon some local testing by some of the outflow from the drains, that may end up being a site that says contaminated as the northwest corner. The DEC is going to say the building is down, you cannot build there. We lose a huge chunk of what is potentially buildable area that will no longer be buildable. The other issue is that once we start abating the site and removing material we are going to start disturbing the piles, the pile caps and the land. We may find that after we take Building 52 down that we have so disturbed what has been standing for 90 years and, by the admission of the engineer who reviewed that building, is in great shape, perfect for remediation, perfect for abatement, that the land will not support any new buildings.

Too many unanswered questions to issue a demolition permit. And that demolition should not have been tied into the consent decree. That becomes a land use issue, it becomes a zoning issue. With all deference to Mr. Chertok, who stated there is no zoning in the consent decree, this consent decree of 2015 is all about zoning. It is very dangerous for this village to make decisions in haste on what may be irreparable harm to our ability to develop that waterfront. Thank you for taking the additional time to review the consent decree, review the demolition permit, and realize anything can be cleaned up. I am stating that from fact. All it takes is money. We need to find the right people that can come in and help us do this.

Danielle Goodman, 445 Warburton Avenue: I am very grateful for the time you have to spend on such complicated issues. You all have full-time jobs and this is another full-time job, and you have families and other commitments. I appreciate very much your work. Despite sometimes my cranky tones, I do not mean it really.

I wanted to talk about the Shoreline Committee. I have to leave before public comments a month ago when you were talking about setting this up. I was dismayed at the preference for finding citizens with expertise. Ordinary citizens who are engaged in intelligent and common sense, and you have a lot of those, are important too. I would pit them against any "expert." There is a room full of committed people here. They live here, they use the amenities, they know what they want, they know what they do not want. You mentioned setting up an RFP. If the public is closed out of that process I will tell you that kayaks, water sports, et cetera are all nice, but our other waterfront amenities do not have things like viewing platforms for the elderly and the disabled. Taxpayers deserve amenities, too, and an ordinary person sitting on your committee would probably speak to that. If you have not put some of those ordinary people on I ask that you do so. TV coverage should be done for that committee, the public is eager for waterfront information and would love to see it.

Demolition permit, please do not issue the permit. The time is not right. The permit does not sufficiently address measures to prevent public health exposure to the toxins in the

building. The data should be released to the public before the permit is issued. I went again today through 200 pages, and I did find one chart, fuzzy, 2014. It has some information on there, but it is from 2014. There is inadequate documentation to address the public health issues: \$2.8 million, projected cost, is insufficient if all the health protections needed are not included. Timing is an issue. Even if you issue this permit now, if the work extends to four, five or six months you are into the recreation season at the waterfront. I would ask that you take all those points into consideration, get more documentation, and release it to the public.

Dan Hsu, 81 Summit Drive: We live in Hastings since 1987, in the same house since 1991. Only recently I start to look at this demolition. I look at the demolition permit and technically, it is not sufficient to justify. A typical demolition permit, you need to talk about means and method. This is very important, especially in the building of this scale and talking about the abatement required. The contractor, or whoever is proposing the demolition, needs to be very specific about how they want to go about doing it. You look at the application, the attachment is a very thick stack of paper, but only two areas talk about demolition. Basically, it says the contractor, whatever demolition contractor, will have to do abatement. Basically it is just pass it on to the next guy, without specifying where all these toxic materials are. We have been questioning, and especially I was impressed by the Mayor talking about the brickwork. It is contaminated by PCB, and I was very surprised. I looked for it. Only one page talks about it.

This project has been going on for a long, long time. Yes, there is a lot of information and I am pretty sure I do not have all the information. Sorry, I am an architect and I have been in construction in the last 20, 30 years. I look at this project as someone submits a plan to me to review. I say this is not good enough because too much is at stake. We cannot just pass it on to the next guy. That is not responsible. If we believe there is a lot of toxic material you need to deal with it. We cannot just knock it down, just ship it outside. Where, Ohio? That is not responsible. Secondly, this building is a steel frame building. There is nothing in the demolition that talks about how they are going to take the steel down. To take steel down you need to burn it. This is a lot of burning, and it needs to be considered how to do it. You cannot just knock down the brick from the outside. One sentence talks about they want to take the brick from the outside. That is not responsible. Based on technical grounds, I think it should be rejected. Thank you.

Mark Sameth, 48 Fenwick: This is not a contractor or subcontractor who ends up giving us cracked concrete on a bridge. This is not a contractor who takes down trees in Reynolds Field that we did not expect were going to be taken down. This is of a different magnitude, and I know you all appreciate that. This is a huge decision. We want to make the right decision. You want to sleep at night and we want to sleep at night that the right decision was made. You have asked us for some questions. I just reiterate that the issue is not Building

52 with partial remediation and encapsulation versus taking Building 52 down with full remediation. Either way, it is a partial remediation and encapsulation. That is what we are looking at. So we are in the gray area. You know that and we know that. The questions are fourfold. The question of remediation, the question of encapsulation, the question of how have other communities managed to save buildings like Building 52, and the question of the effective of climate change on all of this. Remediation: without disturbing the pilings, is a greater level of remediation possible? We are hearing that if ARCO committed more money to the task a more complete remediation would be possible. Is that not what we want, if it is possible? Encapsulation: is it safer to leave Building 52 standing than to take it down? We are hearing that may indeed be the case. Indeed, should we be looking to encapsulate the entire contaminated area under concrete? Regarding Building 52, how have other communities remediated and saved their historic buildings? And if contamination levels are not consistent throughout Building 52, and I do not believe we know that yet, we should engage an independent engineer for advice on that matter. Can at least a portion of Building 52 be saved? Regarding climate change, how do we provide for soon-to-be-adopted code requirements as respects site development levels? And what do New York State Fish & Wildlife Service and the Army Corps of Engineers have to say about building on this site? We do not have all the answers we need tonight to those questions. Taking the time, however much time it takes, to make sure we make the right decisions, including to be sure the community is not exposed to toxins. Decisions about which there will be no do-overs is not analysis paralysis. It is showing requisite respect for our obligations as stewards of the environment noted as custodians of Hastings and Hudson River history.

Steven Siebert, 113 Hamilton Avenue: Thanking you for your service, you are all competent and honorable people. I have been on the other side of this issue in calling for changes in governance, but I know how hard you work. I have a little experience myself recently in terms of taking a stand on something. It becomes difficult to take a stand on something. People have objections to me taking a stand just as they object to you taking a stand. So I very much appreciate your competence.

One of the issues that has been raised in terms of Niki recusing herself from this decision I do not think that makes any sense. What Niki was doing for 12 Miles North was doing something in service to the Village. She got no personal gain from that. If we talk about BP's influence in the Village, that also extends to supporting Friday Night Live and other things. They are a presence in our village and I do not think what they have done in terms of 12 Miles North taking money for that should force Niki to stand down from this.

On other issues, three things. I have talked about MASS MoCA before. Various people have said to me you have to have your facts straight about MASS MoCA. Maybe it was just the land, not the building. I did a little research and called Trident Environmental Group,

which did the remediation on MASS MoCA, talked to William Nineve who is one of the senior people in health and safety. He said he was personally involved in the MASS MoCA remediation project and that there were nine buildings that were remediated from toxic substances such as PCB, mercury and a wide range of other toxins. He also said that in his judgment in his 28 years' of experience, even without seeing the data he is confident that a site can be remediated. Their experience is that they have been able to remediate the things if there is a public will to save.

It turns out also that he loves Hastings. His uncle and aunt live in town, and he has a cousin who is a lawyer who also lives in the area. He is coming here in April for his son's baseball tournament. He would be happy to speak to us. He is willing to receive the contamination data we have and give us his professional judgment. Maybe he will decide that he is wrong and that it cannot, in fact, be remediated. But he expressed a great deal of confidence, given their experience at MASS MoCA, for example, where nine buildings were contaminated and not the land, that he would be happy to talk with us further about that. It is imperative that we take instances like that. Also, again, I need to provide the evidence. People have asked me about DEC statements, rather than just verbal claims made to me and others that the DEC's engineers say it can be remediated. We can go back to the tapes, and probably talk to you, Susan, on how we can go back to the tapes from those two meetings where Bill Ports said that. And getting some written confirmation that that is the case. The people who care about safety think the building can be remediated. It would be a terrible tragedy if we rush to judgment without listening to the people who have experience doing this.

In reading the 2003 consent decree, it says very clearly that BP needs to study the feasibility of saving three buildings. They did not study the feasibility of saving Building 51 before it came down. The question is whether they have really done that for Building 52. If they tore down Building 51 without complying with the consent decree, it seems to me they are in violation of a decree that they signed which they are legally obligated to adhere to. Which brings me to my last point. There are rumors, and even sort of more than rumors, that BP is holding an iron hammer over our heads in terms of us not signing this consent decree. It seems to me that according to the state Environmental Quality Review Act, this not only permits a challenge on that ground, it requires it. In fact, it says that if an agency makes an improper decision or allows a project that is subject to SEQRA to start, and fails to undertake a proper review, citizens or groups of citizens who can demonstrate they may be harmed by this failure may take legal action against the agency under Article 78 of the New York State Civil Practice Law and Rules. Project approvals can be rescinded by a court, and so forth. We need to talk to our environmental lawyer and maybe another lawyer, but should clearly pursue the rights we have under SEQRA. We need that in order to save our village from irreparable harm.

Ann Erb-Leoncovallo, 33 Fraser Place: I would like to agree with Steve that Niki should not have to recuse herself from the vote. She is an honorable Trustee.

With regard to Building 52, and to the public meeting and to this meeting today, I would like to thank you, Mayor Swiderski, for your leadership, for enabling all of this to happen, for opening a crack in this debate. I hope that we together as a community can continue to open this wider with the input of experts, as some of our neighbors have suggested. Experts who have done successful remediation of toxic PCBs, who have redeveloped their communities with input of the community, and had committees to do so. And that we will be able to come to a decision together to do what is best for our community.

I wish that everybody on this panel would have been at that public meeting because it was so filled with goodwill, with vision, with expertise in law, architecture, community engagement and so forth that it really opened up the possibilities. The room was filled, as Mayor Swiderski can tell you, to standing room only capacities. It was just a wonderful civic outpouring of goodwill to work together to do what is best for our community in terms of the waterfront. What I plea is that we continue to keep this process open, we do not rush to judgment. I do not know how long you have postponed this vote, but I have heard it is two weeks. I hope it can be longer until we get more voices involved in this. This is complex and it would be great to have more people weigh in who have expertise.

Dave Skolnik, 47 Hillside Avenue: The LED lights: I am not going to say anything about them other than I have committed to myself that given how much I continue to dislike them I was going to at least mention them each time. Beyond that, though, I am still appreciating that some work is being done on correcting some of the more gross aspects.

Mr. Gonder mentioned deer, and I want to encourage you to follow up on what the discussion has been in some circles and recognize that other than the encouragement to participate, we are halfway through this project. I do not know there has been any real presentation of where we are, whether there is at this point any assessment that this project looks like it might work. And if it does seem to work what the ongoing process would be, or if it looks like it is not going to work what our options are. I know what effort it took just to get even this far. It would be a shame if it took another 10 years to make any other inroads. Either the problem is going away or it is not going away. It would be good if you reached out to that part of the community that seems to be want to trash the effort to at least be a little more transparent about it. It would also be good if you addressed the issue that came up the past weekend more openly just so it is clear that the violation was an aberration.

That leads to this issue of transparency, which I was not going to bring up but people did mention. It has been an issue that I have been challenging the Board on for quite some time.

But it was not the transparency that was referenced. I do not think the personal issue that was brought up is necessarily appropriately addressed here. I understand there is a process that is being followed to determine whether, in fact, there is something that needs to be addressed. That is not my concern. What bothers me is that that issue might tend to obscure what has been my ongoing issue with regard to transparency and process. That is something I hope you will continue to look at carefully with regard to the other voices that have expressed concerns about this as it operates in our village. I do not think it is simplistic on either side. I was a little disheartened at some of the things Trustee Armacost said at the debate with regard to a sense of where transparency is appropriate or not necessary. It is something you need to hear and need to think creatively, given the size of our village. I recognize the concerns that you, Mr. Mayor, have expressed with regard to the difficulty in getting our various boards and committees staffed and your reluctance to put greater burdens on people. There is another side to it, and given the size of this village what you are capable of I think there is a way of resolving it so the public feels more included and the committees are still able to function.

Mayor Swiderski: Before we move on, in the issue you raised regarding this weekend it is not something we would typically broadcast out because it is not particularly startling. This weekend, as part of the deer darting effort, we have elaborate and stringent protocols in place on where and when deer can be darted. Hence the little yellow flag held up by Mr. Gonder. The teams will not dart a deer on property that does not have a flag on it. That flag indicates a person has given permission. We can dart on the street, we can dart in the public parks, or on property that has given permission. That darting typically happens within about 20 feet, sometimes as much as 30, of the deer once safety considerations have been taken into account. The deer is hit with an anesthetic, which brings it down. Then the ear is tagged, temperature is taken, blood is taken. Then the immunocontraception is injected. We can control where the deer is darted. We cannot control where the deer will come down. This weekend a deer was darted once. The anesthetic was insufficient to bring the deer down. It was darted a second time and bolted and came down a few moments later in someone's lawn. Because the deer had gotten two doses of anesthetic it appeared to be in distress. The Humane Society darting team, which is running this effort, immediately went to the deer to administer oxygen which they have on hand for these sort of things. They did this without the usual protocol step of ringing the doorbell and making sure the homeowner was OK with that because that deer may come down on a property that does not have a flag. In fact, most properties do not have flags on their lawns so that is, more often than not, a likely outcome.

In this particular case, they went immediately to the deer to administer the oxygen, then went to the door. The woman who had previously denied permission explicitly for darting on her property was incensed that her property had been invaded. She complained to the police and has spoken about pressing charges. I do not know if he has or has not. The team offered to

remove the deer from the property. She declined, so they performed what they had to do and then left. The deer got up and wandered off. This is not what I would call terribly noteworthy material. It is not something I will put an e-mail blast out to the Village. It did happen, we are not hiding it. I have just gone into every single detail worth mentioning about this event. We continue to encourage people to provide us with permission so we can continue in this interesting experiment.

Regarding the experiment, we are in our third year. This is the year where we may expect to finally see results. Last year we darted 20 deer, and those deer should not fawn this summer. So this is the summer where we should start to see measurably fewer fawns in town. Is that enough to give an indication as to the success of the program? No, that is going to require the full duration of the five-year program. We are running counts, using cameras, and every year those counts are going to improve in their accuracy. At the end of five years we will know where this program is. We can give an interim report at the end of this year. We will have something more interesting to say. We have provided full reports to the Village at the end of the previous two years. Those reports are detailed descriptions of what happened and are posted on the Village website. The reports were sent out to the community and are available online.

In terms of transparency, this is an ongoing search for perfection. We can always do better. I will say emphatically and without question nobody in the Rivertowns comes close to us. Our various meetings that are taped are available online and searchable. I do not think anyone else has something like that. We are quite diligent on putting out agendas for most of our meetings ahead of time. If anyone cares to subscribe to the e-mail blast from the other communities you will have a good comparison of outreach and provision of information out to the public. However, transparency is like a curve in calculus, which I failed. It never quite gets to the axis, we can always do better, and I have no question about that.

Trustee Lemons: Just one additional comment on the deer. You did produce a thorough report at the end of last year, which is where we are right now. People may not be aware of that.

Mayor Swiderski: It was shipped out, but I do not want to overextend notifying people. I try to keep the number of reports out to the community to enough so people do not get tired of hearing from me.

**16:16 FARMERS' MARKET – APPROVAL OF USE OF MUNICIPAL BUILDING
PARKING LOT**

Mayor Swiderski: This differs from previous resolutions where we have put the Farmers' Market on for two requests; one for summer, one for fall. We are breaking with that tradition since we think we have accumulated enough of a sense of how the markets play out to make decisions now for a whole year, and this covers a full year. We have a question. There are options on the dates in December, then beyond that April 1, 15 and May 6 and 20, 2017. On the dates in December, who is covering this item? Is that Barb or is that you?

Nina Hogan, President, Farmers' Market Board: Our fearless leader, Sue Smith, has retired after a long and fabulous tenure. Last year we had a little hoopla over our December dates, so in an attempt to make everything smooth I had a discussion with Barb. We put it over to the Village to choose the two dates in December. Barb discussed it with shopowners and they requested they wanted the Saturday before Christmas, the 24th, and the two weeks before that, giving us the 3rd and 17th. Hopefully everybody is happy with that. From then on, it is the first and third Saturdays of the month through the winter.

Mayor Swiderski: We had a question, speaking of hoopla, last year around closing it an hour earlier on the last Saturday before Christmas. This year, Barb, you did a round of the merchants, hoping to get feedback on whether that was necessary for the 17th.

Downtown Advocate Prisant: One distinction from this year to last year is that if we approve the 3rd and 17th there is still one shopping Saturday before Christmas, which is a distinction that seemed to have an effect on the answers received. For the majority, the gist was that they are OK with not ending an hour early. Most people were neutral on that topic and there is still another shopping Saturday before the holidays so I think it works out nicely this year.

Mayor Swiderski: Thank you for polling the merchants. So the request is the 3rd and 17th, regular hours, 9 to 1. Any Board question or comment?

Trustee Armacost: Just to say this process was fantastic that you were able to speak to one another and come up with such an amicable arrangement. It sounds very fair to me.

Ms. Hogan: Yes, and I think we continue and will always have a discourse between us. Hopefully, anyone will approach any of us with any questions or issues so we can keep moving forward smoothly.

Trustee Lemons: So these dates and times are pretty comparable to the previous year?

Ms. Hogan: Yes.

Downtown Advocate Prisament: Just to add to that, this was just a discussion of this one question but we do hope to get together. I would love to have a meeting. The market has made various offers about participation from the merchants I would like to encourage people to take advantage of this coming year. Who knows what other issues will come up in the dialogues so we can work more closely together. But thank you for the opportunity to ask ahead of time.

Mayor Swiderski: Dan asks a question and I hope I do not open the box of Pandora. Is it really comparable? Are there not dates in January, February and March that are not here?

Ms. Hogan: I had submitted them; they should be there.

Mayor Swiderski: OK, so these are just the parking lot, not the Community Center. Separate resolution?

Village Clerk Maggiotto: No, you do not approve the dates for the Community Center. That is between the Farmers' Market and the Center.

Trustee Armacost: It is a rental agreement.

Ms. Hogan: News to me. Thank you.

Mayor Swiderski: Good. And we will want to remain thoughtful about what happens to Food Town, whether they are as eager to share their lot as A&P was during those time frames. You may want to poke at them later on in the summer.

Ms. Hogan: We were lucky to have this winter to figure some things out. But we certainly be mindful of that.

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

RESOLVED: that the Mayor and Board of Trustees approve the use of the Municipal Building parking lot for the 2016 Farmers' Market on Saturdays from June 4, 2016 through Nov. 19, 2016 and on the following dates: December 3 and 17, 2016, and April 1 and 15 and May 6 and 20, 2017.

ROLL CALL VOTE

AYE

NAY

Trustee Marjorie Apel	Absent
Trustee Meg Walker	X
Trustee Nicola Armacost	X
Trustee Daniel Lemons	X
Mayor Peter Swiderski	X

VILLAGE MANAGER'S REPORT

Village Manager Frobel: Hastings last fall joined with 20 other communities with Sustainable Westchester and the bids are in; six bids were submitted.

Village Attorney Whitehead: Community Choice Aggregation is something the Board spoke about last fall and adopted a resolution. Sustainable Westchester has put together a group. They have had to separate it into the Con Ed service territory, which is southern Westchester, and the NYSEG territory which is a few communities in northern Westchester. Eighteen municipalities in the Con Ed service area have agreed to participate in this Community Choice Aggregation program. They put it out to bid to various utility suppliers and electric suppliers. This time they only did electric; they will be doing gas. A compliant bid had to be less than the average price charged by Con Edison over the last 12 months. They are pleased to announce that they have gotten compliant bids. In fact, they have gotten compliant bids for both regular electric and also renewable. We were not sure if the renewable bid was going to come in below the 12-month Con Ed average but it has.

The contracts are in the process of being signed. We are not, at this point, allowed to disclose who the successful bidder is because everything is still being finalized, but I was authorized to update everybody. They have gotten a compliant bid and are moving forward. It will commence in May. It is either a 24 or a 30 month lock-in on that price. Much more information will be coming over the course of the next two months both from this board and at these meetings as well as mailings going out. If you are currently getting your electric supply from Con Edison, not from an ESCO, you will be notified. You will have an opportunity to opt out of the Community Choice Aggregation program, which means you would stay with Con Ed for your supplier. If you do not opt out you will be switched to the new supplier at the lower price. Con Ed will still be responsible for delivery, so the delivery portion of your bill will not change and the entire bill will still come from Con Ed. It will still be a single bill, but with a different supplier. A lot of work was put into this by Sustainable and by a lot of people over the course of the last year, so they were happy to be able to announce that they did get compliant bids.

Village Attorney Whitehead: I am not at liberty to share that information publicly at this time. Hopefully, by your next meeting we should be able to provide all that information.

Trustee Armacost: Fantastic. We got into this through skin of our teeth. We were very last-minute, but the fact that we are in will result in substantial savings for people on their electricity bill. Dan and I, in particular ...

Trustee Lemons: You in particular, I would say.

Trustee Armacost: ... are very happy about it.

Trustee Lemons: Did you say when the opt-out period is likely to be?

Village Attorney Whitehead: The notices will go out probably within the next month or so. The opt-out period will be sometime in April, probably.

Village Manager Frobel: Because the hope is to implement it by May. Also, in your packet I previewed for you what the estimated savings will be.

Trustee Armacost: Yes. I was wondering whether she was going to say it publicly.

Village Attorney Whitehead: They have given strict instruction that I am not allowed to, and you were both on that e-mail.

Mayor Swiderski: That will work. However, it is money saved every month, locked in for the next couple of years. I find it exceptionally exciting that you can choose a renewable option which will save you money every month over the current bill you pay and lock you in for that lower amount for a couple of years. That is terrific.

Village Attorney Whitehead: Sustainable Westchester was very excited that they got a renewable bid that was below the Con Ed bid. They were not sure if the renewable bid was going to be below, and it was not required to be.

Trustee Lemons: Just to be clear what that means, that is energy that is generated by renewable sources: wind, water, whatever.

Trustee Armacost: Solar.

Village Attorney Whitehead: It is a big step. This has been done in other parts of the country, it has not been done before in New York. The Public Service Commission permitted Sustainable Westchester to set up this program as a pilot program in New York State. So this is a big deal.

Village Manager Frobel: I would just mention, Mayor, I have not heard back from Westchester County in response to the decision to eliminate the Uniontown bus that travels through the community. We have asked for some statistics on ridership and I have not received that yet.

BOARD DISCUSSION AND COMMENTS

1. Proposed Local Law A of 2016 to add No Parking Opposite Driveway at 35 Floral Drive

Mayor Swiderski: We do not have this as a resolution because we wanted to discuss the wisdom of placing this on the docket and voting on it. At our last meeting we had the parties before us, and it seemed there was a chance for a peaceful resolution between the parties. Moreover, I think there was concern on the Board about voting on something that could set a precedent.

Trustee Lemons: A number of the people who spoke, including the direct participants in this, added some important things. One is the possibility of a resolution that is neighbor-to-neighbor. The other is the serious concern about precedent-setting. When I look around the Village, and this was pointed out last week, I see many similar kinds of similar situations. It makes you pause whether you want to start going down that road. I could envision many such requests arising from all manner of reasons. But nonetheless, there would be plenty of places where that would be an issue. I am reluctant to go there.

Trustee Walker: I agree. I have a situation on my street that is very similar. If someone were to park across the street I would not be able to pull out of my garage. We have constraints all over the Village like this. I do not think this is a case where the Village Board needs to weigh in. Using our ability to create no-parking zones whenever anyone asks for it is too much of an extension of power. This is one of these situations which is much better settled among the neighbors themselves, if possible. I would be very pleased if they can come to an amicable solution and we do not have to weigh in. I would prefer not to set that precedent.

Trustee Armacost: Have they come to an amicable solution?

Mayor Swiderski: I do not know if it matters. I do not know if I want to get into that up here. To some degree it should not affect how we decide. Because if they do not, does that mean in every case where neighbors do not come to an amicable solution do we have to adjudicate that and choose?

Trustee Walker: Yes, I would agree.

Trustee Armacost: But what is the backup plan for the people involved? If they cannot come to an amicable solution, how is it resolved for them?

Trustee Lemons: What was stated at the last meeting is, in fact, that it had been resolved.

Trustee Armacost: So there is not an issue anymore then. There is no need. Has it been withdrawn?

Mayor Swiderski: I do not know if it has been withdrawn, but it is before us and we should make a decision whether we are going to have it as a resolution in future meetings or not, and I am going to move that we not. Is there a second on that motion?

Trustee Lemons: Yes, I will second that.

Trustee Walker: What are we voting on?

Village Attorney Whitehead: Not moving ahead.

Trustee Walker: On this particular issue. I thought you meant broadly.

Mayor Swiderski: No, on this issue. Does that require a roll call?

Village Attorney Whitehead: You are not taking a formal vote.

Trustee Walker: This is just a weighing in of our opinions. This is not a resolution.

Village Manager Frobel: It will not appear on your agenda in the future. It is not on the table.

Mayor Swiderski: All right, do we have at least three votes for that?

Trustee Walker: Yes.

Trustee Armacost: I have to say I am bit confused.

Mayor Swiderski: I am asking to table this permanently..

Trustee Armacost: OK, I guess. I was not at the last meeting. I read it, but I could not tell whether things were resolved or not.

Trustee Marjorie Apel	Absent
Trustee Meg Walker	X
Trustee Nicola Armacost	X
Trustee Daniel Lemons	X
Mayor Peter Swiderski	X

2. Riverview Park

Mayor Swiderski: We have before us a determination on use in this Riverview Park. We have received several dozen emails. Generally it has broken quite thoroughly in terms of favoring human use, though not universally. We had people before us where that also was reflected. There was also a contingent of youth interested in skateboards. This is not something that typically comes before us. It typically lands up in front of Parks and Rec and the superintendent. However, because there was an incident in that park and because, theoretically, there are issues of liability here, we have taken on ourselves to come to a determination so the community can move forward and so something with that park.

Trustee Armacost: I was not at the meeting last time and I had wanted to be at that meeting because I have followed this issue very closely. I ended up finding that the discussion went back many, many years. This is something that is long overdue in being decided, and has been kicked around a number of times. I read all the minutes. I was very touched to see the range of people who came to speak. After reading all the input from the different people, speaking to people individually, having meetings with people, and reading individual e-mails, my view is that Riverview Park should be designated as a people park to which dogs may be invited on leashes. There are a number of reasons for this related to safety issues that have been spoken to eloquently by a number of people, management of a park which is not just simply a people park. The topography does not lend itself to a dog park.

When I speak to people who live closest to that area, every single person feels that the proper use for this park is as a people park, partly because of the change in the nature of the occupants. There are a lot more children. There are also more elderly people who want to be able to sit and enjoy the view. So my view is that we should decide very quickly, because I would like to have people in this area able to use this park soon, decide on next steps to turn

it into the most lovely people park we can have in that area. A group of interested citizens have come up with a number of ideas we can move with, and I would like us to engage with them at the soonest point possible to develop plans so we can start using that park this summer, which means investing money from the current budget, and then probably taking some money from the next budget so we can properly do service to the park and have it in the state we want it to be in. That is my opinion, having weighed all of the different inputs that have come to me.

Trustee Lemons: We have had a lot of input on this question. And I agree with you, my perception is that the preponderance of it has been in favor of it being a park for people. Whether those responses have been strongly in favor of that, or more favoring at least some aspect of it being a dog park, one thing that has come through is the need for a comprehensive look at all of our parks and how we address the needs, including for a dog park. We heard the young folks last meeting talking about wanting some place for a skate park. That is important, and my sense is that is going to happen; that we are going to have that more comprehensive view of the parks.

Given that, we could ask why would we take an action now on just one part of what will be a larger park plan. But I agree with Niki, the folks in that neighborhood have been remarkably tolerant of a potentially great resource not being developed and available to them the way it should be. We need to do it. I would like us to take action on it now. I agree and did not know, either, the history of how long this has gone on. We need to enable the specific planning process to proceed to turn this into a park that works for the people, primarily of that neighborhood but not exclusively. But we need to be sure that this broader planning process happens. There are a lot of dog owners. And even the people that expressed their preference that this be a park for people often are dog owners, so it is not like that is an exclusionary thing. We just have to find the right spot for that, if we can, because that is also a need in the Village.

Trustee Walker: My history in Riverview Park goes back pretty far, to about 1998 when I became the Village planner. We then had a park that had a basketball court on top and a playground that was not in good condition on the lower level. The community was upset about both. We had a number of meetings, and the park evolved into a skate park and was a skate park for a number of years. In the early 2000s it was really popular among youth, we had people monitoring it and it was a successful skate park for a few years. Then it went out of fashion, and then it was an abandoned skate park for awhile. It became a dog park by default, not by decision of this board or the Parks Department.

The next phase was we tried to create a half dog park-half people park and relegate the dogs to the lower portion of the park. We had a plan for that, but it was, unfortunately, in the

middle of our fiscal difficulties and we did not have the money to create it properly, to fence it and create a management entity and do the things we needed to do to make it work. I am giving that background because I go way back with this park.

For the reasons you all have cited: the neighborhood has changed, the demographics have changed, there are more children in the neighborhood, there are more families – these are compelling reason to make it into a people park and not a half dog park. Because we are going to be undertaking a comprehensive planning process for parks we can, then, determine perhaps where the best dog park would be. If we do have children coming to this park, and we have a playground or we just have families coming, I do not think it is appropriate then to have a dog park there as well. It is too close to the street, as we have seen from the incidents of dogs escaping and being hit by cars.

There are a number of compelling reasons to decide that it should be a people park so I am in agreement with you two. We have received a lot of e-mail and letters weighing in on the side of a people park. That said, I do think we are not done yet. We may be done, but I think the community, along with the Parks Department, needs to work on determining what kinds of uses should happen there. I would like to propose that it definitely needs to be cleaned up, it definitely needs to be landscaped and made comfortable, but I do not know that we need to go into a lot of construction right off the bat. They could try out different uses there. Simply having picnics and putting picnic tables there, or simple benches to enjoy the view, or simple equipment that could be used by kids, and trying it out in a number of ways first before we commit a lot of money to building stuff there. That is my proposal, evolving it as opposed to making a final decision of how it is going to be designed.

We have seen some great designs and some of it is valid to move forward with. But I would not want to commit a lot of money to build infrastructure at this point. Even a people park can be used in a lot of different ways, and we need to understand how people want to use it.

Mayor Swiderski: I will weigh in and say I concur. There are a number of dog owners in town who are going to miss that park. Dog owners gathering and socializing is something we should somehow endorse, as well. But dogs are not people, they do not always behave. And the protocols around handling that need to be firmer than we have had in the past. I do not know we necessarily need playground monitors for the dogs, but certainly explicit rules and ensuring that dog walkers with a dozen dogs showing up do not dominant. When we finally find a location, that will go a long way to address the concerns about what we have had in the past with professional walkers showing up with a dozen dogs and the chaos that then ensues. I endorse the idea of people only.

The next step is the community reaching out to Ms. Garrison to begin the process of discussing the public process to determine the uses. I do not think that is a Village Board of Trustees' issue anymore; it moves now to its regular venue, which could happen immediately. Ms. Garrison has the privilege of not a whole lot of staff and a whole lot of responsibility. We look forward to the community lending its planning and input on this, as well as also organizational help to help here, which is important.

Trustee Armacost: We need to make sure this process happens smoothly, effectively and quickly, and that it does not languish around for months and years and decades of indecision. I will offer myself as a point person to help move that process forward, both for Ms. Garrison and for the team which is based down there so we do not end up just tweaking things here and there. We need to make a proper investment in this park.

Village Manager Frobel: Kendra has attended all our meetings so she has been able to hear these comments first-hand. We have gone ahead already and had a property survey done of the park. We have also had a topographical survey done, so now at least we know what we are beginning with. I will have contained, in the operating budget, as we have in the past, some additional money to move this along quicker to give our citizens' group an opportunity to begin some hard design and look at some perhaps low-cost immediate improvements to the park as we begin to see how it evolves over time. Kendra has her direction, and will be turning to neighbors and interested persons to help us in this task. Thank you, Mayor, and thank the Board.

3. Consent Decree - Building 52

Mayor Swiderski: We are going to focus on Building 52 tonight. Realistically, given the conversations we need to have on both these topics, tonight is 52. The next meeting is the consent decree. And if we need time beyond that we will take that time. We are going to start first with an understanding of what a building permit is and legally what it means, and then cover health and safety, financial issues, and whatever else the Board wants to talk about.

Trustee Walker: Meaning the demolition.

Village Attorney Whitehead: It is a form of a building permit.

Mayor Swiderski: It is a specific form of a building permit that is specific to the waterfront, which is why we weigh in on it. Typically, the Board does not weigh in on building permits. Linda, if you want to start?

Trustee Armacost: Before Linda starts, if I could say that I mentioned in the debate last week that I sought an opinion from our attorney on my ability to participate in this process. She gave me a clean bill, but I chose to bring the topic to the Ethics Board. The Ethics Board is in process, so I am going to be in listening mode today, until we have a determination from them one way or another.

Mayor Swiderski: That is very conservative and I applaud you.

Village Attorney Whitehead: They will be meeting next week, so before the next meeting we should have their opinion.

Mayor Swiderski: All right, so tell us about this building permit.

Village Attorney Whitehead: As you said, typically demolition permits, building permits are a ministerial matter handled by the Building Department and the Building Inspector. This is a unique situation, where the Board of Trustees gets involved because of a provision in your code specific to the waterfront, which states that *"no building permit, and a demolition permit is a type of building permit, or certificate of occupancy for any building, structure or use in a GI or MW district,"* which are what is existing on the waterfront today, *"shall be granted without the approval of the Board of Trustees after a public hearing, which approval shall be subject to those conditions deemed by the Board of Trustees necessary to preserve, protect and improve the scenic value and recreational use of the Hudson River waterfront in the Village."*

So it is an unusual circumstance in that what is typically a ministerial matter if they provide X, Y, and Z, the Building Inspector would issue the permit. Instead, it has to come to you for a public hearing. Clearly, the intent of this is so above and beyond what the Building Department can do you can impose conditions that you think are important and necessary relating to preserving, protecting and improving the scenic value and recreational use of the waterfront. That is the specific language that is contained in the code. That is why we are here.

One of the things this Board needs to do is think about do you have enough information, have they provided enough information, what kinds of conditions would be required to make you comfortable. It is possible they have not provided enough information yet. You can also impose conditions that require that before they can start any work you get some of that additional information. There are a number of things like that. One thing is, if the building permit is denied, ARCO, as is the process whenever somebody submits a permit application of any kind, could bring an Article 70 proceeding, which is a lawsuit brought in New York Supreme Court in Westchester County seeking to overturn your decision. That would

obviously put some significant expense on the Village to defend that. And you do not know, obviously, with any litigation what your likelihood of success may be. Not that you should not do something because you are afraid of litigation, but it is something to consider.

The way this code is written you would have to find a way to deny it that could be supported by how the code reads, which may be difficult. If you deny the permit I know there has been a lot of talk about what could be done with the building if it is saved. One problem, if you deny the permit, there is no provision in the law for you to force them to take steps to mothball or preserve the building. You deny the building permit, they could just leave it and it could decline further and reach a point where it really has to come down. That is a risk. Mark and I have talked about and looked at this issue, and we do not see where there is any provision in the law that would allow you to impose on them if you deny the permit a requirement that they take steps to preserve the building.

So just trying to lay out the law and give you a foundation for your decision-making.

Mayor Swiderski: What is the Section 78?

Village Attorney Whitehead: Article 78 is an appeal of an administrative decision that is brought in Supreme Court. They would have to show that you were arbitrary and capricious, there was no legal basis for your decision, it was not based on law. That can stretch out and be a rather lengthy and expensive process, and ARCO has the resources, likely, to make it a lengthy and expensive process.

Special Counsel Chertok: I would also add there was a question or a comment about the state Environmental Quality Review Act earlier. That act requires that before any administrative agency makes a discretionary decision, with some exceptions that do not apply here, it must consider the impacts on the environment and whether they would be significant. If they might be significant, then you have to prepare an Environmental Impact Statement. If the Board determines they will not be significant that terminates the SEQRA process. Just so it is clear, those impacts are evaluated as part of the Board's review.

Village Attorney Whitehead: Right, and thank you, Mark, because I was going to mention that. They did, as part of their application and as required, submit an Environmental Assessment Form. This board, as part of its decision, will have to go through the items in part two of the Environmental Assessment Form, based on the information you have gotten. This is where you might not have enough information and may have to say to them you have got to give us this or that in order to help us make our SEQRA determination and determine whether there are potential significant adverse environmental impacts.

Interestingly, a demolition permit typically is not subject to a SEQRA review because when it is done by the Building Inspector it is a ministerial act and ministerial acts are not subject to review under SEQRA. But in this case, they have submitted an EAF and this Board of Trustees is going to undertake a SEQRA review prior to making any decision.

Mayor Swiderski: Any questions on the law? All right, since ultimately I am the person who brought this before the Board, and there is no point in pussyfooting around on the discussion, I am going to kick it off.

I have got a number of concerns here, and they start with the permit itself in terms of the fact that this is private property. A rejection of the permit would likely result in action against the Village. There is a deep irony that I wrestle with, where the Village lands up arguing in court to prevent an oil company from removing toxins from the Village. It is an ironic place to be, and if I understand my attorneys not one that we are likely to win. Now, let us run with what happens whether we win or not. By denying the permit, we undo the consent decree. So whether we win or not in court, we do lose the benefits of the consent decree; we are back to step one, in fact, even before step one, as our environmental attorney will describe in a moment. That the first impact.

This is game theory back in graduate school for me. I am stepping through how this unfolds. Regardless of what happens here, if we deny the permit we are out the consent decree and those are real losses. Then if we lose anyway in court, the building comes down and we have lost the consent decree. So we did nothing, and the building comes down anyway. If we win, BP has the option of letting the building degrade until it comes down anyway. At that point, we are counting on a white knight or some combination of circumstances to rescue us; somebody coming in, saying they would be willing to take responsibility for the building and the liability underneath it, expense of the renovation and everything else. I do not know. I have to squint hard to believe that is a likely possibility.

As I walk down the decision tree of figuring out how this unfolds for the Village, I see the loss of the benefits of the consent decree, I see a likely loss in court. If we win in court, I see a chance that no white knight appears and the chance of the outcome I fought for seven years ago is vanishingly slim. Ultimately, that is a rough start to the rest of the discussion for me because I have to game that out and figure out what this all adds up to. I have hit a wall here on the legal issues. And if you take those off the table and count on a white knight we then head into what I would argue is *the* issue, which is health and safety. There are a number of open questions there that have been raised and I would like answered, but I do not intend to monopolize the mic. I would like to step through this in talking about the legal repercussions first, and seeing if anyone else on the Board has a comment on that before we head into health and safety.

I have real concerns. I do not quail from a fight. I do not like being bullied, and over the plastic bag ban I never thought we would be sued. But when we were, I did not back down in large part because I was pretty certain we had a decent chance of winning that suit. While I do not like being bullied, I am not an idiot and I will not tilt against a windmill if I think I am going to hit steel. My problem here is that I fear that whether that is bullying or not it is a private property owner who is going to look to press their rights. I have to assess, based on input from legal staff, what our odds are there. Not zero, not terrific.

So that is where I am. Have I said anything that jeopardized me? Does anyone have a comment on anything I said, or questions or clarifications?

Trustee Walker: I have a clarification question. You stated we would not be able to force BP to mothball the building or maintain it during the remediation. In other words, if we just want to postpone the demolition until we have ...

Village Attorney Whitehead: A chance to get a white knight?

Trustee Walker: Give it sufficient time for a white knight to come forward. During that time period we have no way to compel them to maintain the building. As we know, there are issues. I do not think they are structural, but masonry issues, water leakage, a roof covering that needs to be replaced. So there are a lot of issues with the building that, if let go, will deteriorate quickly. But we do not have any way, any legal recourse, to say you have got to take care of your building.

Village Attorney Whitehead: There are some things that can be required under the property maintenance, New York State property maintenance code, but that would be very difficult here because this is not a building that is in use or a building that becomes a danger to anybody as long as they have a secure site. They have had survey. The bottom line is that if you go to them and say you have violations of the property maintenance code they could turn around and say, OK, let us demolish the building, which is sometimes the remedy for violations of the property maintenance code.

Trustee Walker: So even if we wanted to delay demolition, say with the hopes that we would come up with an alternate use or whatever, we have that issue.

Village Attorney Whitehead: Right. We would need cooperation from them to mothball the building, and I am not sure how much cooperation there would be.

Trustee Walker: Right. And they did give us a price. We can get into that later. That is not a legal issue, that is a cost issue.

Trustee Lemons: From a legal point of view, and aside from how the negotiating parties in this feel, is there a time limit on deciding about the demolition permit?

Village Attorney Whitehead: As long as this Board is continuing to have these discussions, and you are not seeming to obviously delay it and acting in board faith, I do not think they would have an argument. You are doing your job.

Trustee Lemons: So that, in itself, does not put us in legal ...

Village Attorney Whitehead: Not at this point. You are certainly within a reasonable time, and if under SEQRA you feel you need additional information you have the right under SEQRA to say we do not have enough information here to make our determination, you need to give us additional information. So you are certainly within your rights on the time frame.

Trustee Lemons: I am trying to make sure I have got a full grasp of where we are legally. I realize there is some uncertainty because we do not know how things would play out if they ended up going to court, if we ended up being sued. But it seems like your take on it is, and Linda I think you are agreeing with that, we probably are on somewhat shaky ground if we deny the permit, that we may well be effectively challenged on that.

Village Attorney Whitehead: I would say that.

Special Counsel Chertok: I should add something about the consent decree because Peter mentioned it would be unwound if the permit is denied. The consent decree, which of course is not signed, provides that if the demolition permit is denied then ARCO has a right to renegotiate the consent decree. We have to go back 15 years. The consent decree came out of a litigation that was brought initially by Riverkeeper and joined by the Village against ARCO because nothing had been done vis-à-vis a cleanup of the site. The DEC, at that juncture in time, had not put any pressure on ARCO. The result of that was a consent decree that provided for an extensive cleanup, which was then used by DEC to adopt their Record of Decision which had essentially a mirror image of the cleanup that the parties had negotiated That's in the 2003 consent decree. If there is no further consent decree, then you have a litigation. However, at this point 15 years later, because the DEC has adopted a Record of Decision and because ARCO is proceeding and is consistent to date with that Record of Decision, we would be hard pressed to discern why there is a basis to continue the lawsuit, because the remedy initially sought in the lawsuit, which is to have the site proceed along a remedial course, has been achieved. Ultimately, the prior 2003 consent decree has certain

terms that are still enforceable, but it also provided for a mandatory bulkhead along the shoreline, which is no longer consistent with the contemplated remedial program or at least one that ARCO can select, the option of the sloped shoreline, which is favored by the agency and Fish & Wildlife Service and similar agencies.

So you would lose, in essence, other than what is in that consent decree now that would remain applicable, and ARCO could go to court and ask that the prior consent decree be dissipated because it no longer has any relationship to what the agency has required. They would not be fully successful in that, but that is another avenue in that you could lose some of the benefits you have from the prior consent decree. And obviously you would not get the benefits of the current negotiated consent decree, such as Quarry Park and other elements, because there would not be any such decree.

Mayor Swiderski: Any other issues?

Village Attorney Whitehead: We are just trying to give you the outline for a basis. I cannot say you would not win the Article 78 proceeding, but you never know and it is not an easy one.

Special Counsel Chertok: The federal court proceeding is different because the Village won, which is why there was a prior consent decree with a fair relief and a trust fund and the payment of attorneys fees by ARCO for both Riverkeeper and the Village, over \$400,000, which was money back a dozen years ago. But the question now, it is much later and there is an ongoing remedial process. What would the court order at this point in time that is not being done? We have litigated those cases, and the other side prevailed. So I will say no more than that.

Mayor Swiderski: I will start that there is this fundamental issue around denying a permit which is likely to trigger a series of actions that leave us where we do not want to be anywhere and, in the process, lose the consent decree and incur legal costs and also lost time. One of the statements made earlier, several statements made, said the consent decree and the consent order are not linked. Absolutely true. They are factually linked, but in terms of timing they are not. However, the disposition of Building 52 has an absolutely material impact on how the remediation will proceed. As long as its status is in the courts, held up in a suit, it is difficult to proceed apace with remediation that you need to plan around whether that building is there or not: where you stage, where you choose to dewater, the mud you pull out of the riverbed, et cetera.

While the two are decoupled legally, they both have an impact of the timing of the remediation. If we were to say let us wait a year to see if we can find a white knight, that

will have an impact on the cleanup. Because it will affect the engineering design, ultimately, and it will delay things. In a huge way? No, unless of course it was to drag out in the courts for years. But it will affect things. I want to move on to health and safety which, to me, in the end is the core issue here. I want to state that the building is contaminated. It is contaminated directly underneath it and adjacent to it. The core samples that have been taken are available online on the Village website, and out of the literally dozens, scores, of core samples taken within the building and immediately around it I think four came up with nothing and the rest were all positive. Most of them were more than positive, they were of a sufficiently high reading that would require remediation if the building was not there.

In one sample, done in the basement of the building, the results were 1,700 times the legal limit; 17,000 parts per million. Now, this was not a core sample. It was measuring the fluid out of a sump that remained from the beforetimes. But it is right up against the building and it is not an isolated item. There are dozens of samples pulled adjacent to the building and within the building that are contaminated beyond the limit the state has set to remediate if this was empty soil. The samples under the surface of the building and under the walls of the building cannot be easily remediated with the building there. An engineer worth his salt will tell you everything is possible with enough money and time, and we could build the Pyramids here on the waterfront if you had both. There is no question, and the state threw out to me the loose number of tens of millions, you could theoretically remediate under the building. But practically speaking it is not easily done.

The state has offered that the building can remain as a cap rather than remediate under the building as a choice to the community or, more accurately, as a choice to BP, it is not our building. See, I made that mistake again. So if BP chose they could leave that building there and remediate around it as close as they could get. And, in fact, when I first became Mayor that was the tack they were going to take. I took a subset of the presentation that the Committee on the Historic Waterfront had created up to the DEC, to my first meeting with BP and the DEC, and flogged it this is what we want. They were not averse at the time. At the time, I think they figured it would be cheaper to leave the building in. I cannot speak for their thought process, but I can say that three or four years later it changed and they were explicit about that publicly.

I have hypothesized and others have said that the blowout of the well in the Gulf triggered a reassessment of risks all over the BP franchise. But that is just hypothesizing. Regardless, I was told that the risk teams took a look at the site and determined they wanted the liability of that pollution from under that building gone. They were not interested in a preservation option, at that point, and have not wavered once from that. I went back to them a number of times to explore whether there were options that would allow that to happen, and they have been pretty consistent. And by "pretty" I mean very. I do not know what the calculus is in

the risk department, but I kind of get it. They call it a "long-term liability," I call it health and safety. I think one is a legal term and one is how you view it if you are a person like me. Not that I have anything against lawyers. But I think leaving a two-acre site capping pollution, while the rest of the site is cleaned down to 12 feet, seems a dereliction of our duty up here to think about the Village long-term.

From my perspective, and I have not heard anything yet that has substantially wavered me from this position, health and safety trumps building preservation. If they are not willing to preserve the building it is going to be a weird moment again that I land up in court arguing that they are wrong and they should leave that poison under the building and I am arguing to keep it. It would be a weird place for the Village to be. A weird place for me as a Trustee up here, and I am using the word for what it means, where I value what this means to our children down the road. And I worry about that.

Now, there are questions I have. One resident raised that there is a difference between types of PCBs and some are less virulent than others, and I want to understand if that is true and what that means here. I am going to guess that there is a very nice diversity of PCBs on the site. I have been told that by the DEC, whose engineers were literally excited by the diversity because there are varieties here that do not exist elsewhere. But who knows? Maybe right under the building is just one type and it is the most benign type. I would like to understand that. It is a worthwhile question to raise. I would like to understand MASS MoCA better. My understanding is that the buildings faced nothing like this, neither this level nor effort to remediate. And they did not have an owner who wanted to save them. This is private property. So it is a tough place to be.

Trustee Lemons: Can I start to dig in? The place where I feel most focused, and there are a lot of issues, is on the health and safety issues. When I think about eventually voting on this, maybe from my rocking chair 25 years from now looking back and saying, how do you feel about that, there are consequences and there are consequences. But one I would definitely not feel good about is a vote that left residents now and residents in the future in jeopardy. That would not be one you could feel good about. I am not saying that is an easy determination to make, I am just saying that is where I am coming from on this.

The other issues are very important, preservation, and the vision, all these things are important issues. But that is preeminent for sure. I think we need to be sure we get that right. Where I would like to start is making a comment about what you said about PCBs. There is a fairly recent international body that published a long monograph doing a reassessment of about 80 research studies worldwide on PCBs and their potential links to cancer and other diseases. You are right, and stop me because I am a biologist so you can stop me at any time here. There are, as you said, a lot of different kinds of PCBs. The main

difference is the degree of chlorination of the compounds. They hit different spots in the cellular physiology. Some of them have gene effects, other have interfering with hormonal signaling and cell signaling. So there are a variety of effects, but just in going through the document, and there is a nice summary if you want to read it and do not want to wade through the whole thing, there is a nice two-page summary document as well.

But the bottom line, the consensus, is that the wide range of PCBs none of them are our friends. I do not think we can be lackadaisical about any of them. As we well know, we always find out much farther down the road what we really are dealing with. We have been on this road with PCBs for a good long time now. There is a lot that has been learned, not that a lot more will not be, but I do not think the variety of PCBs are going to provide us with any comfort whatsoever. I do not know what is in the building, I have not seen that specific data breaking that down. But I do not think we are going to find comfort when we get that breakdown.

I am looking at page 26, the building demolition application. That is, I think, probably the latest detailed data I have seen of a sampling in the building. That is from May of 2014. That includes samples that are core samples in the floor. It includes what are called ceiling wipes and those values are expressed in the amount of PCB that is found in a fixed area. There are samples of caulk and a whole variety. There are at least eight different, I think, kinds of samples that are reported here. What I see is a map in which there is a lot of difference. There is a 20-fold difference, for instance, in ceiling wipes in the concentrations of the PCBs. It is clearly an incomplete map. It does not by any means give an entire picture of the building. The values vary a lot. If you look at these different kinds of places where the sampling is in the floor or in the caulking or in the paint or whatever, all parts of the building are affected. But I do not think we have a complete picture.

My first question, and it would be very good to know, what more recent data is showing. I would like to see that. That is an assessment we need in terms of the argument of taking the building down or the possibly abatement of the building. That relies, partly, on a sense of how extensive is this. This map already looks to me quite extensive and it looks formidable, but I still would like to know if we have more data. Maybe we can get that answer tonight, if there is more data, if there is more and we can get access to it and see what it is. To me, that is just important to have as clear a picture as possible.

Mayor Swiderski: There is. It was shared earlier today, forwarded to me by Attorney Chertok. We have not had a chance to put it on the website.

Trustee Armacost: Did you send it to us?

Mayor Swiderski: I just got it a couple of hours ago and have not had a chance.

Trustee Lemons: One of the kinds of sampling that seems more complete than inside the building is the perimeter of the building. There are lots and lots of samples that are around, particularly along the western edge, northwestern edge, and also the southern part. And there are lots and lots of positive samples, as you mentioned. It is clear that doing anything with the building, with the PCBs near the building, is certainly going to comprise the foundation of the building. I cannot imagine you could do anything there, and if you are going to save the building it is going to involve a lot of significant shoring to keep it from collapsing because it is right up next to the building. As has been well-described in some of the public meetings we have had, the pile structure that is under there and the possible fragility of that when you start to dig, probe around in there, the foundation is obviously resting on some of the ground that would have to be disturbed. So that is a concern.

I would like to see that data. Then beyond having a more complete, clear picture of what the sampling is looking like in the building, one of the questions that has been raised a lot in the public meetings is the potential risks of trying to do a remediation or abatement versus demolition and how that looks different. That may be a moot question or not, but that has been a question that has been raised a lot. It would be good to have as clear as possible explanation, or description, of what either of those processes would look like. Maybe I am laying a lot of questions on here that are fairly deep, but in the end all of that goes to the question of the risk to the public during either one of those processes. That is a very big concern. We have heard quite a few references to the dust rising from the demolition of the other buildings and concerns about that. We all want to be sure whichever path we are going down there that the safeguards are completely adequate to protect people on the train platform waiting to go into the city or people who are living close enough where stuff that gets aerosolized might be able to be exposed to that.

I do not think that has been clear. The demolition application certainly goes over where the safeguards come from, but I do not think it explains very well what that really means. We all need that. All the residents who are concerned would want to know how is that going to happen. Is it going to be possible that suddenly there is a dust cloud rising up and, oops, we did not meant to expose all those people on the platform. We want a lot of security, whether it is demolition or abatement, that that kind of thing will not happen. It may be that the language that is in that demolition permit is sufficient, because it is obviously a DEC-regulated process and has to meet their standards. That is good, but it is one of those things where, for us, we need more detail. I will stop there for now. I have more things.

Mayor Swiderski: We have two people in the audience. One is our environmental engineer who has been a consultant throughout this process, and Chris Greco, who is a project

manager for BP. I echo your sentiment. The more we hear about how polluted the building is the more the remediation becomes something that has to be controlled. You said earlier that those are conditions we can put in any demolition permit approval.

Village Attorney Whitehead: Even before granting the permit you can say we need more information, especially under SEQRA. We need more information on the process and on the procedure. You can also put in conditions such as their referring to having to develop a community air monitoring plan, which will have to be approved by the Department of Health and DEC. You can say you want to be able to review it and approve it as well. You can put certain items in it that you want to make sure are included. Another issue we have not talked about is truck traffic. There are a lot of things you may want to restrict, but I certainly think you would have the right to restrict. There are two pieces to it. There are conditions you are going to want to impose, and there is more information you may need before reaching your decision.

Mayor Swiderski: If you could approach the mic and speak to the sort of controls you have seen used elsewhere and what you think on this topic.

Len Warner, Louis Berger Group: I am the Village's environmental consultant for the project, with support from staff back at the office also behind me. Some of the topics that would want to be looked at in a demolition permit process would be what kind of dust control measures are going to be implemented to prevent migration of any contamination off-site during a demolition process; the community air monitoring plan; air monitoring for contaminants such as lead, PCBs, asbestos during the process. And also if the dust monitoring involves use of water mists or sprays, there has to be measures for collection of the wastewater and treatment of the wastewater so there is not migration or contamination from that route.

Just off the top of my head I can think of a number of things, but what we would want to do is come up with a list of items for the Village to consider and to request from ARCO. I also contacted the DEC's project manager to coordinate with them on what they were anticipating. They will be looking for a demolition work plan. They mentioned a community air monitoring plan, which I would coordinate with the Department of Health on. There is consensus also with the state regulators that there would need to be planning and controls in place to protect against exposure to the residents from contamination from that demolition process if that goes forward.

Trustee Walker: Could you walk us through the demolition plan? Before they can demolish anything they have to basically abate or decontaminate the building. I would think

they have to remove the paint that is contaminated, they have to take up the part of the slab that is contaminated, and they have to deal with all that before they can even start demolition.

Mr. Warner: I think asbestos abatement is something that you did not mention in that list.

Trustee Walker: They did some of that, apparently.

Mr. Warner: I have not reviewed that information. Dan, you asked about a decision of processes. You almost described a mini feasibility study for the technologies and processes required for either demolition or abatement and preservation, which is something that could probably be requested of ARCO to put together. A list of what would have to be done for both avenues. Again, I would think we would not want to prescribe means and methods since they have got the design lead right now, but to request they lay out the sequence of work, what are you going to abate, and what do you think you can address as a waste stream for the demolition. I am not sure it would be appropriate to expect, for example, a full paint abatement before demolition. There may be certain things that could be controlled in terms of doing dust control and then handling the debris appropriately. But if you are going to have a contaminated slab and brick with PCBs in that, I looked briefly at the core samples. Some of that material, I think, is over 500 ppm so it is a TSCA waste and that process has to be addressed for the disposal.

Mayor Swiderski: Could you say that in English?

Mr. Warner: PCBs have their own set of waste disposal regulations separate from other hazardous wastes, a Toxic Substance Control Act. They have their own set of thresholds. Two of the biggest ones are 50 and 500 ppm for those regs.

Mayor Swiderski: To restate that in English, if there is concrete or brick that exceeds that number they have got to remove it.

Mr. Warner: It has to be disposed as a PCB waste.

Trustee Walker: Another question I have about dust. PCBs, I think of them as a viscous substance, not necessarily friable like asbestos. When you demolish a building that may have PCBs in the brick or the concrete, would dust have PCBs in it? Can it be airborne, or is it more likely other substances like asbestos could be airborne. But is there a danger from PCB-laden dust?

Mr. Warner: I would not discount it. If you have got PCBs that are saturated to some degree into the brick they prefer it to be particle-associated. I know in the water column the

PCBs do not like to be in the water. They want to be attached to a sediment particle. They call them hydrophobic. I would imagine if you have contaminated building materials and you are breaking or grinding, demolishing those, then you have dust and it is going to have PCBs in that dust also.

Special Counsel Chertok: In respect to that, in their proposal they talk about monitoring dust and they may be able to monitor PCBs on a 24-hour basis because PCBs are absorbed on the surface of dust particles, which is what he was saying. For example, if the DEC might not require that, the Village certainly could. You could also ask that this be electronic so it is available in real time. To the extent that could be done you could put it on a website, for example. That is not uncommon in this day and age. There are a number of things you could add on for conditions that the DEC may not require but the Village can. As long as those are reasonable conditions.

Trustee Lemons: I am sure that is something I would push for because I just think we are not going to be relaxed about this process if we are not confident on a constant basis that we know what is going on there. I know we feel protected by the DEC and EPA to some extent, but we also have to be aware that the standards they maintain are not necessarily related to health. The example I would like to give is the Atlanta Olympics. When the Atlanta Olympics happened, they shut down all the traffic in downtown Atlanta. Of course, we know there was a bombing that happened there, too, but that is not what I am referring to. They shut down all the traffic, and there was a precipitous drop in emergency room visits to the hospital with not only respiratory issues but also cardiac issues and so on. When the Olympics were over and the traffic started up again the incidents went right back up to where it had been. That is an interesting finding. But what is even more interesting is that before, during and after, the air quality standards never exceeded the EPA limits. So in other words, the EPA limits did not have to do with the health consequences for sure; they were just limits that got set there. That is where I want us to be mindful about dust coming off of that, anything that is coming off of that site, and needing to set our own limits.

Special Counsel Chertok: Let me suggest, for example, the DEC and the community action monitoring plan has to be approved by the state DOH. Let us take an example. You can require them to monitor for dust, and dust has what is called the national ambient air quality standard that cannot be exceeded for short-term exceedances. However, that doesn't mean there cannot be a cloud of dust from a sudden wind. You can have conditions that go beyond that monitoring and can say you have to have your contractor commit that if dust persists or you exceed an action level for 15 minutes, then you have to either take action to avoid that exceedances or shut down until you solve the problem.

For example, they propose to monitor at the property boundary. It may be that the Village wants to have monitoring a little closer in in certain instances. You may want to control the timing of construction, given Metro-North rush hours, so you do not have issues there. There is a whole series of conditions that are fair to discuss, that are reasonably related to the demolition, which is the standard for imposing conditions. Your Building Inspector and Fran have proposed a number, Linda and I have compiled our own list. But you are not limited. I understand what you saying. DOH will have their imprimatur on the plan, or the state Department of Health. It is not just the DEC. There is a health-based agency involved, but there is a standard plan and they have their standard requirements, which are generally OK. But there is no reason you cannot go beyond those requirements to get a higher degree of assurance for public health and safety.

Trustee Walker: We jumped into the demolition procedures before I had a chance to talk about going back to preservation issues. I have been appreciative of the work the Historic Preservation Committee for Building 52 has done over the years. I went to a number of their meetings several years ago when they were really active. I could not go last week because I was working out of town in Oklahoma. I would have liked to have been there.

I, like Peter, was hoping we would be able to preserve that building. I even put together a slide show of adaptive reuse of industrial buildings around the country that I presented to the committee and the public back in 2007 or so. I have worked myself on adaptive reuse of industrial buildings and I love MASS MoCA. I really do have a tremendous appreciation for industrial buildings and how they can be reused. That said, that is almost like an emotional issue with me and I have to set my emotions aside and look at this through my head and not my heart. All these questions that we have already raised make it very difficult for me to see a way to preserve the building.

Even if we were to preserve the building, we were to find a white knight who did find a use for it, and we could preserve it for 50 years, for 100 years, eventually it may come down. Eventually an owner may want to bring it down and, at that point I would expect we would have a very vibrant waterfront. We would have restaurants and maybe a hotel, and we would have offices and we might have a school down there, we might have sports facilities and people doing all kinds of things, maybe even living there, I do not know, hazard to say. At that point, if you were to bring the building down and have to go through a remedial process it would be a horrendous thing because you would have all these folks working and using the waterfront. It would become even more of a difficult situation to bring a building down and decontaminate it. One would assume it would have been decontaminated in the interior, but to remove the PCBs from underneath. You would have to go through this whole process of ramping up for a remediation, all the protections we are talking about, all the things you

would need to do in terms of the equipment and hauling everything out with people on the waterfront.

That is where my mind has gone; if my dream could come true and we could reuse the building, we cannot guarantee that it will be safe 25, 30, 50 years from now. Safe to utilize and safe to remove in that situation. It will be a much more risky situation than it is now. That is what I have been thinking about. I do think the building is structurally sound, I believe Silman's report. I think one could decontaminate it in the interior and that you probably could reuse this building. And a lot of the folks who have spoken up, I believe you. I think it is feasible. The question is, all the questions that were mentioned earlier about the Article 78 proceeding, of course, I have to take that into account. But even if we were able to preserve it, what I am concerned with is the eventual remediation. BP will be responsible for cleaning up that site at some point, most likely. How do we deal with that? We will be gone.

Mayor Swiderski: BP may be gone.

Trustee Walker: And BP may be gone. That is interesting.

Mayor Swiderski: It is not crazy, 20 years out.

Trustee Walker: It is not impossible, crazy to think, that BP might be gone. Then who is going to be responsible for cleaning up that site? We have the opportunity now to get it as clean as we possibly can within the confines of science and money. Anyway, that is my voyage through this whole process and the decision I have come to.

Mayor Swiderski: Right, and you are touching on something that leads to the second or third issue, if you think of it as legal, health and safety, and then financial. The financial issues here are not small, they have never been adequately addressed, and they are a real concern as well. This is a substantial part of the waterfront and this is not a \$5 million renovation. It is, in all likelihood, tens of millions of dollars to bring it up to something other than a parking lot. It begs a question of who would fund that, with liability lying under the building. I do not know enough about commercial finance to comment. I can imagine that would be exciting to a bank to take care of a building, renovate a building that is sitting on a pool of PCBs.

Trustee Lemons: That is one I will put money on, Peter, having been involved in that process, very recently, a commercial property that had issues with hydrocarbon spills and dealing with financing on that and the hurdles and hoops you jump through to make sure it is fully remediated. That deal worked because that could finally be shown. But there is no way

that a bank would go near a deal like that if they thought there is a hint of any of that kind of liability there. There is just absolutely no way they are going to do it. The financing we are talking about for that building as far as I can see is strictly private money because it is not going to come from a lender. There is just no way.

Special Counsel Chertok: I can elaborate a little bit on that. Banks and financial institutions have to do what is called a phase one, they demand it. And a phase one that looks at existing conditions without doing additional sampling initially, the goal is to identify whether there are what is called "recognized environmental concerns," or REC for short. There is no doubt that the presence of high levels of PCBs under and around that structure would be considered a REC and, as a general matter, the banks would be highly reluctant to finance a project because it has an outstanding recognized environmental concern.

Trustee Lemons: And let me take a bit further from that because this is, again, building on my own experience within the last year.

Mayor Swiderski: And could you mention people are not necessarily aware that you are not just a CUNY professor.

Trustee Lemons: This is the realistic commercial real estate hat I also wear. We recently acquired a property that had to go through this. We, of course, did a phase one because financing was involved. But what was interesting is that the initial phase one came up basically OK. Looks like it is OK, there was a problem, it seems like it was remediated because we got a paper from the DEC that says it is OK. But guess what? That was not good enough. We had to go back into all the sampling data and what was behind that decision and back that up. So a letter from the DEC itself was not even good enough, which opened my eyes because I thought the DEC signs off, we are good. But that is not the case.

There is another important aspect of this, too, and I have also run into that with other properties. We are talking about financing for Building 52. But somebody who wants to put something a few hundred feet from Building 52, they have to do a phase one. Of course their phase one is going to turn out that Building 52 is there and, by the way, it is still contaminated. Well guess what? They are not get financing either. This will happen because of adjacent properties, because that is part of the phase one process, that you identify sites that are within five miles of you. But if you identify a site that is within a few hundred feet of you that is going to be a huge financing complication. From a financing point of view, if the building is left there contaminated or covering contamination in my view it is going to cloud the whole site in terms of financing.

Mayor Swiderski: I do not know that.

Trustee Lemons: It is one of those things you would not think. I am not on that site, why is that a problem? But it is adjacent, it is going to come up.

Special Counsel Chertok: When you do a phase one you look at all sites. In the suburbs, for example, certainly generally you start like a half-mile, then determine groundwater issue, upgrading the side gradient or down gradient. Then the next step is, if it is here you are going to have soil contamination that is in the immediate proximity of a building. So you are dealing with safety issue and health issues. Banks are reluctant to take risks is the best way to put it.

Mayor Swiderski: That was the third component here, which links to the first two, and concerns me. I was not even aware of what a REC was. Or I assumed, apparently correctly, that banks would be reluctant. But let us go into an ultimate fantasy scenario which, to me, is less than one percent likelihood: that BP decides not to fight and, in fact, to try to remediate under the building. But even that issue, let us pretend, this will never happen. The sheer financial impact of that structure on the site is unclear because zoning for the site is unclear.

My concern here I have stated and will state very clearly. I am not going to have anything to do with the zoning. That is a process that will be done independently and with consulting help. But it may limit the envelope on the site of what can be built there in terms of square footage, height and types. And, in fact, I am willing to bet on that because we are Hastings and we want our views and we want limitations on heights and we do not want too great a massing. My concern, on top of everything else, which long ago was fatal to me, is that in the end this is a white elephant. That in the end, it is a great idea in the context of a larger site with traffic access and a larger population. But not a huge dominant building on a waterfront with a single bridge, a likely limited development envelope, having to support that structure.

I can imagine scenarios where that could happen, where something magical could be done there and it would pay for itself. I could also imagine that the \$50 or \$60 million tag that could cost would be unacceptable to a developer, given that they have constraints on the whole site. And this would land up being the reason. The whole site is going to have issues as it is, let us face it. There are going to be issues on driving piles and building so the site is already going to be problematic. Throwing the honking big problem of all time, a two acre building, on top of that, assuming everything else happened and it is not going to, seems like a stretch. It is not an unconsidered opinion.

I did approach Jonathan Rose at one point, who is a premier developer of reuse of buildings. Effectively, that was his opinion as well. This was the last gasp effort, where I was trying to keep the building. I went to him to talk about how that might work. It was a very short interchange. I am not going to pretend this was a deep study. But he said, in so many words, I am happy to meet with you, but if you want to talk about Building 52 I am not interested, it needs to come down. It just does not fit that site. And this is Jonathan Rose, who was our fantasy developer for the site at one point because of what he has done elsewhere and what he could bring to that site. And that was a flippant comment, and maybe on deep consideration he would reverse himself, but it stuck with me.

Trustee Walker: I took him on a tour of both Building 51 and 52. So he has seen in the interior of those buildings. He thought Building 51 could be reused. He thought it had a lot of potential, and Building 52 he thought was a big white elephant. He could not imagine how he, as a developer, could reuse it even at that point.

Mayor Swiderski: Right. So, again, lightning strikes can happen where something amazing comes in, but I do not deal in the currency of lightning strikes up here. In the final analysis, I have got to step through the decision tree and say Section 78, win or lose likely the building comes down. Health and safety, real consideration 20 years out. And then finally white elephant. I hear what people are saying and I love the vision. I want to believe that is Hastings. But my two feet are on the ground, and I have to vote up here from the ground and from a decision tree that only ends in one place. For me, over and over again no matter which path I take I keep coming up with the same answer, with maybe a one in a thousand path, or maybe not one in a thousand but vanishingly remote, that yields the vision people have. And at the probable loss, guaranteed loss, of a consent decree, possibly years, and everything else. I just do not get there.

Trustee Lemons: If I can back this up to where we were on the health and safety issues, a lot of us need to have a sense that we get the comparison or the difference between the process of taking a building down, and the safety concerns and the strategies used to protect the public, and a potential process to clean the building. We know that would have involved leaving contamination underneath, but clean the building. How would those differ? And this does bleed into the financial aspect of things because my hunch is that there is a price tag for doing that kind of cleaning, which is significant. Already the estimates are, of course, that is \$5 or \$6 million more to try to remediate. But that estimate is probably out of date given what has been learned since. But how those processes would differ, because there have been statements made that these processes would be exactly the same. I doubt that is the case, but it would be good to hear that. Maybe that is something that ARCO can speak to.

Mayor Swiderski: Restate that as a question?

Trustee Lemons: How would the process of taking the building down, and whatever safety dismantling procedures would be needed, how would that differ from the process of simply fully abating the building and leaving it standing?

Mayor Swiderski: Are you talking about descriptive text, are you talking about risks to the community, are you talking about cost? All three?

Trustee Lemons: All of those things because they are all important elements. It would be good to have that comparison because that is a statement that has been made a number of times, that these are the same processes, and therefore we can equate them and then move on to some other aspects of the discussion. But I do not know if that is true or how different those really are.

Mr. Warner: To go again to what Dan is talking about, I had said before that maybe some sort of a focused or abbreviated feasibility study from ARCO that would include criteria like implementability, cost, short-term effectiveness, long-term effectiveness, community acceptance, reduction in toxicity, the mobility, volume of contamination would probably hit on most of it. Short-term effectiveness includes things like what kind of short-term risks do you have from a process. Do you have a short-term increase in a risk of exposure during construction? Just to try to put some substance behind those things. What would be considered in looking at them?

Mayor Swiderski: That was a little on the consulting side. Could you say that one more time, what you are suggesting?

Mr. Warner: The question was how could we get an assessment of the processes and the attendant costs, risks, implementability.. And those are the criteria that are examined in a focused feasibility study document. So you have criteria like implementability, how reasonable is it to undertake a certain process or cleanup. Cost estimates for each of the things that are considered. Short-term effectiveness, which would include short-term risks from a process. Whether there is a risk of exposure during construction.

Trustee Walker: Or during demolition, you mean?

Mr. Warner: Yes. Community acceptance, long-term effectiveness, reduction in volume, toxicity, mobility of contamination. One thing I have been thinking about, we keep talking about what happens if we leave contamination in place under the slab. It has been a hypothetical component of whether Building 52 remains in place. One question I have that I do not have the answer to, we have some data, some soil borings, underneath the slab. I

think there were 19 borings through the slab, and five of those had levels of PCBs in the underlying soils that would be considered actionable from a remediation standpoint. But we have a scarcity of data at the north end of the building. So we do not know exactly what is under the slab in terms of soil concentrations. We know that the handled product, PCBs, so they are working with the raw material in that building to apply the insulating jacket to the electrical cable. You had process drains and trenches from the northwest corner. We know we have mobile PCBs in the subsurface. It is mobile enough that you can recover some of it by pumping, mobile enough that it has gotten out into the riprap and the sediments of the Hudson. Some of that may have come from other mechanisms of transport.

Just as a scenario, with groundwater two feet below the surface at some cases, with probably tidal movement of groundwater, if you did have a possible source area somewhere underneath Building 52 slab you might not be able to leave it because it would migrate. I do not know we have the answers for this right now from the standpoint of synoptic groundwater monitoring for the tidal effects. We obviously do not have the data of all the soils below the building slab, but it is something that would bear consideration of what could you leave. And, Meg, you were talking about what happens in 20, 50 years. You would have to have enough investigation to close the loop on this to know you were not going to have something creeping out from underneath the slab again. In the long run, if there was some scenario in which the building could be retained it would not be so much a question of leaving contamination underneath the slab. The DEC has talked about we could have the concrete slab remain in place as a cap, a barrier, to contact. But there might be other conditions under which you still have to do something if there is a risk of migration or a potential presence of what we would consider a source area. I throw that out for consideration.

Trustee Walker: Why did they not do core samples in the northern part of the building?

Mr. Warner: As I understand it, the main concern was safety.

Mayor Swiderski: They can answer.

Village Attorney Whitehead: Let ARCO answer.

Trustee Walker: I know that recently they have discovered that is an unsafe condition. But why not previously?

Chris Greco, Atlantic Richfield: My understanding at the time is that we were not aware. We focused what we knew at the time in the south portion. We had some mass maybe that showed trenches in that area so that is what we went and looked at. There is evidence of

trenches in the north area as well as some outfalls, and it was between that time we made the determination that it was no longer safe to do that kind of activity in the building.

Mayor Swiderski: Why is that?

Mr. Greco: There is concrete that falls from the roof, bricks that may fall down.

Mayor Swiderski: But that does not happen that concrete has fallen from the roof.

Mr. Greco: I believe so, yes.

Trustee Walker: There are these trenches where the PCBs were sprayed down into drains, and then the drains were heading westward. This is the way I understand it. This is why there are these trenches. They would wash the PCBs down these drains and then they would run out. Is that right?

Mr. Greco: Correct. Obviously, we were not there when that happened.

Trustee Walker: But that is what we are surmising.

Mr. Greco: Correct.

Trustee Walker: There were just as many of these trenches at the northern end as at the southern end, it is just that they did not get around to testing them. I always wondered because it is the northwest corner that is the most contaminated part of the entire site. One would think that the northern part of the building would be more contaminated than the southern part, for similar reasons. But it could be that one does not have anything to do with the other. I was raising that as a question.

Mr. Greco: I do not know specifically in terms of the count of trenches across the building. But there were other operations in the northwest corner, as well. I think that was a drying area where they would take the coils and let it dry out there. So there may be a disconnect between what was found in the building in the north versus what occurred in the northwest.

Mr. Warner: If I can share with Chris, I think what you are asking, Meg, is what we call the "conceptual site model," which is what are transport pathways for contamination to move around the site. So you have a combination of process activities in that building where they applied the PCB-laden product to the cable and then had spillage, which maybe they washed the floor into drains which led to outfalls. Then you had the completed product, the coated cable, taken out and put on the dock area or whatever you want to call it to dry and you had

dripping occurring along the pathway they transported it, where it sat. Then stormwater moving contaminated soils around from that area or moving stuff off of pavement. Is there a document with the conceptual site model that goes into those processes? You would have to look at all of that collectively to get a picture in your head of why do I have a certain contamination condition in the northwest corner, why do I have this slightly different or similar condition happening in the immediate vicinity of Building 52 and under the foundation. But you can make your best hypothesis if you just tick off all those items and try to put together a model of it of how things got to where we find them.

Trustee Walker: And as you said, there may be movement because of a high water table and the tidal movements.

Trustee Lemons: Because of the tidal aspect, you would expect movement in all directions right? It is not like a normal situation where you are predominantly going to have drainage going in one way because you have got slope or whatever. Am I right about that? How does hydrology work there?

Mayor Swiderski: I do not know if that is so. There has never been a hypothesis that is moving eastward.

Trustee Lemons: But in general, what is the hydrology like in these tidal water tables? Somebody must know that.

Mr. Warner: The tidal flow of groundwater will go west and maybe other directions just depending on if there is stuff in the subsurface that acts an obstacle. But I would imagine you could have some limited up gradient migration maybe not just through groundwater motion, but just advection, dispersion through the saturated soils.

Mr. Greco: I am sure the investigation report submitted to the DEC probably has extensive discussions of the hydrology. I do not have that information.

Trustee Walker: I have a question going back to what you were saying about almost doing a feasibility study of alternatives. Can we ask BP/ARCO to then present several demolition alternatives? As you said, there is short-term and long-term.

Mr. Warner: Those are impacts.

Trustee Walker: There are impacts related to different means of demolishing the building.

Mr. Warner: Let us call those criteria.

Mayor Swiderski: I do not want to head down a road of studies, where we should simply ensure that the remediation carried out is the most careful possible. I do not care about the low versus high impact. I do not want to lose several months to a study.

Mr. Warner: No, but you may want to have something just looked at in terms of, say, one technology is to use a water mist to control dust. Maybe there is something else, like a foam applied to the structure before it is knocked down. That is off the top of my head, but there may be a few different processes that is not a lengthy study.

Mayor Swiderski: A description of processes.

Mr. Warner: What could be done reasonably during demolition to control.

Trustee Walker: I agree, we want to choose the highest and best means of doing it. At the same time, we do not want it to go on for years.

Mayor Swiderski: Right.

Trustee Lemons: This is maybe related to this. The Haley & Aldrich study that was done in April, 2014 lays out five scenarios. That is, certainly, examining different ways to treat the building, including demolition. That is two years ago and we have more data, I assume. From your point of view, what is different or additional information beyond the date of that report?

Mr. Greco: I think the most notable difference between the data we have now and what formed the assumption of that report were options. We looked at preserving the building and doing the decontamination. One of the underlying assumptions was that 50 percent of the paint would have to be sandblasted, 50 percent of the ceiling coating. The data that Peter now has shows that 80 or 90 percent of that would have to be sandblasted down. So obviously there is an increased cost. As well as, I think, the steel columns and the steel beams all have a coating that had PCBs on it. I think there has been a shift in terms of we know more about the extent of the contamination so some of those underlying assumptions were probably low for that report versus what we know now.

Trustee Lemons: That was my impression. The data I will be interested to see, but that I informally have heard about, is that it seemed to always be showing more contamination. Is that a fair characterization?

Mr. Greco: Yes, that is fair. And just to be clear, based on that data we collected in December and January of this year we have been out over the past couple weeks collecting some additional data to further define certain areas. We will certainly provide that you when it becomes available.

Trustee Walker: It sounds like, from what we have heard, that the coating itself like paint or coatings on the steel had PCBs in it. Not just residual PCBs from the work that was done there, but the coating itself contained PCBs. Is that correct?

Mr. Greco: Yes, that is what it looks like, that it was common back in that era to add PCBs to paint for industrial purposes.

Trustee Walker: For industrial applications. To increase the fire retardancy of the paint?

Male Voice: More heat resistance.

Trustee Walker: More heat resistant, hmm. But they have been doing more tests on the coatings. So it is not just a guess.

Trustee Lemons: One of the questions I have been trying to get at is going back to that Haley & Aldrich study and looking at those five different options, and a clearer picture now from this point of view of whether this is an academic exercise or not. It is important because the point has been raised so much whether there is a distinct difference in, let us say, what you would do to sandblast all that stuff off the steel and off the brick. Clean it all up so you could say, OK, we are down below one part per million, we are content we have met DEC standards, this building can stand. Or we are going to take it down? What is the difference in the process? This is going back to your mini feasibility study. But is like what is the difference in the process, what is the difference in the cost. That is something I want to see.

Trustee Armacost: Me too.

Mr. Greco: We can look at that and try to get you something that meets your question.

Mayor Swiderski: We have talked about the three major sets of issues here. Are there other points anyone would like to make?

Trustee Walker: One thing I would like to have a better understanding of is the remediation of PCBs which are fairly elevated, at elevated levels, that are right next to the building. It may be a moot point at this point, but as we understood it they must be removed. And if they

were to be removed that would require a substantial amount of digging around the building and shoring up the foundation of the building. Or shoring up the walls of the building. It is the walls.

Male Voice: That is not true.

Female Voice: No, that is not true.

Trustee Walker: Maybe we can ask.

Mayor Swiderski: Are you able to comment on that? We are going to ask, then we will verify via our engineering talent. We are not taking comments from the public. If you could take it as an action item to verify what we have heard from ARCO that would be helpful.

Mr. Metzger: [Off-mic] verify what you heard from the Building Alliance as well. ARCO has a process here, and they are going forward with that process. You need to advocate for the Village, not just for ARCO.

Mayor Swiderski: I am not advocating for ARCO. I am going to try to find out from our engineer what a more independent source would say.

Mr. Greco: If the building were to remain there is contamination immediately adjacent to the building. Excavations range from two feet down to, I think, an area where we are going down to 10 or 12 feet immediately adjacent to the building. In order to do that we would have to install shoring around the building to stabilize that building. You cannot get that shoring immediately adjacent to the building so there is going to be some gap in between where we have that shoring and where we can dig, and then the building structure. There will be an additional pocket beyond what is left underneath the building slab that we cannot get to in between the shoring and then the building. I am not a geotechnical engineer, I do not know why that gap is. I think it is going to vary based on how deep you are going go. The deeper you go in probably a little further you are going to have to be around. But it is not inches, it is probably more in the feet range.

Trustee Walker: So even if the building is supported on piles, and it has a steel structure which is supporting the roof, the walls are supported independently. Are they supported on piles or are they supported on some kind of foundation wall?

Mr. Greco: There is probably some type of foundation footing, but I do not have those details.

Village Attorney Whitehead: That is an answer we can get.

Mayor Swiderski: Right, that is an answer we can get. I am going to ask our engineer to not just verify the answer, but also the shoring description.

Mr. Warner: Can we ask ARCO for what we have in terms of structural drawings? Do we have drawings available for the foundation details?

Mr. Greco: I think everything we have is in that 2014 report, and I will see if there is anything else.

Mr. Warner: I have one other question that is related issue to this. Has anyone advanced some comments about what happens to a scenario where Building 52 remains on-site with regard to the plans to increase the grade of the site in general? When we started out the process there was initially, in the original consent decree, plans for a five foot thick cap. Then the DEC, in the consent order, reduced to a two foot cap. But that has been mitigated and modified by the climate change concerns. Even in the Infrastructure Committee report there is a pretty significant recommendation for additional fill. The consent decree negotiations looked at different options for site elevation mostly based on the revised FEMA flood maps that came out in December 2014 or so. So there were some provisions in the consent decree to bring up the site grade from the existing about seven feet, and then also provisions to try to request that the remedial design would not preclude placement of additional fill to the degree possible.

Mayor Swiderski: Up to 14.

Mr. Warner: When we were asked to take a look at Building 52 in spring or late winter of 2013 I brought our chief building historian, Steve Bedford, an architect, and Steve Good, a structural engineer. At the time our scope was to comment on the ARCO mothballing stabilization cost estimate, which we confirmed the cost. If I remember correctly, two things. One was the comments from the structural engineer that the building was sound but it was at a tipping point where the cost of mothballing it and stabilizing was, he felt, going to be in the same range that ARCO has estimated. So he concurred with the cost estimate.

The building historian, Steve Bedford, the architect looked at the building and just as an anecdote he turned to me and groaned and said what happens to this building when you bury it with soil to the bottoms of the windows, aesthetically and from a standpoint of use. He was crestfallen. I reiterate that in terms of this discussion of how do you accommodate it with, potentially, a severely changed topography around it, the grades for flood protection.

Trustee Walker: And we are talking about bringing it up to 11 feet.

Mayor Swiderski: I think it is three feet above.

Trustee Walker: Which is four feet above what is around the building now. And we are trying not to preclude the option of a future additional three feet.

Mayor Swiderski: So it would be seven feet total.

Trustee Walker: I always wondered if you could put a moat around the building.

Mayor Swiderski: Well, one proposal was a retaining wall around the building.

Trustee Walker: A retaining wall with a moat, right?

Mayor Swiderski: Peculiar, but it would work.

Trustee Walker: You would have to do something structural if you are going to put seven feet of earth against that building. You cannot assume the masonry is going to withstand it.

Mayor Swiderski: You would have to raise the floor in the building.

Trustee Walker: It is like building a retaining wall.

Mr. Warner: That comment is addressed generically in the Silman report when they were looking at the five feet. There was a comment about what would have to be done to strengthen the building for that load against the exterior walls.

Trustee Lemons: There is a map of the piling layout in the demolition permit application. Maybe you cannot answer this but it would be a good question to have answered, if you are digging in around those pilings, because they are providing the support for the building and you can see it is a dense array of piles on a very regular grid, so you are digging in around those piles because you have to get out this contaminated soil. How do they get compromised? Is that at all predictable, or is that unknown that you just wait and see what happens?

Mr. Greco: It is outside of my area of expertise, but there are papers in the literature on reuse of existing timber pile footings and how to expose them and test them. I was reading a case study of a building in New Orleans that was demolished. It had timber piles installed in the 1930s and they exposed the pile caps, put strain gauges on them, applied hammer tests

where they applied force to them to check and see what were their bearing properties at present. Can they be reused and which ones were broken or reliable, compromised to some degree or another.

Mayor Swiderski: What did they find?

Mr. Greco: Some were reliable, some were broken. The literature suggests you can do an assessment.

Special Counsel Chertok: They are doing that now at the former GM facility site in Sleepy Hollow. There is a large slab there that would be removed. They are testing the piles that support that slab to see whether they would support a later development. Geotech engineers can do that.

Trustee Lemons: The FDR Drive is on piles. I know that because I know a microbiologist who was brought in to consult on that. They are getting concerned because some of those piles are up in the water. They were fine as long as the water was rightly polluted. But now better microbial life is kicking up and it is starting to deteriorate those piles. That is a concern. Any time you oxygenate or expose you are going to kick up that kind of activity. I do not know how all that would play out and get it filled back up time. You can still preserve them, but the whole pile situation sounds dicey to me.

Special Counsel Chertok: Let ask a question for the ARCO representative. You said that in order to excavate the high levels of PCBs adjacent to the slab, particularly in the northwest corner if I recall, the slab, we have 17,000 parts per million? That you would have to use support.

Mr. Greco: I think that is the southwest corner.

Special Counsel Chertok: OK, southwest corner that you would have to use supports. Those supports are for the excavation, I gather. Are they for the building and/or the excavation, or just the excavation?

Mr. Greco: I think when you get close to the building, especially if you are working in and around footings or main support beams, you would have to consider stabilizing the building so you do not compromise the building. You cannot dig right next to a pile that is supporting the building and not expect it to potentially compromise the integrity.

Trustee Walker: And one other thing. I think it is in the Haley-Aldrich study, where we asked them to look at the possibility of retaining the façade or a portion of the façade.

ARCO does not want to do that. But for a lot of reasons it does not seem like it is unfeasible. You could still remediate the area under the slab, but you would have to shore up the part of the façade that you want to keep. Anyway, it is a bit of money too.

Mayor Swiderski: I have no further questions right now. We have a host that need to be addressed. It is clear to me this goes beyond next meeting and beyond that before we are done with the answers here.

Trustee Lemons: One other question, just a general one to throw out. This is for our environmental consultant. What are the questions or issues that you might be concerned about that we have not raised yet?

Village Attorney Whitehead: What we would like to do is have a meeting with our environmental attorney and the consultant and come up with a list that we can provide for the Board rather than having him try to do this on the spot. We would like to put some thought into it. As Mark said before, he and I both had some things we thought you might want more information on. Fran had given you a list before and the Building Inspector. So we need to put those all together. I think it is two lists. It is information you want before you are ready to make a decision, and then it is the type of conditions you may put on the demolition.

Mayor Swiderski: All right, we are not scheduling any resolution any time soon. It is not on the docket for next meeting. At the next meeting on Mar. 15 we will be answering some of these questions if they are available by then, and starting in on the consent decree.

Special Counsel Chertok: I will not be here. That is the one meeting I cannot make. I can have someone here. That is not a problem.

Mayor Swiderski: Let us see where we go. If there are questions we need to table we will do so.

4. Other

Trustee Lemons: You may have noticed that the *Times* announced that Governor Cuomo has asked the FDRC to reconsider again the AIM pipeline. I do not know if it is back on the table, but New York State anyway now is going to push to get it back on the table. Our resolution, I am not saying it had any major effect, but we were not wasting our time.

The Solarize Hastings-Dobbs campaign has passed 61 contracts. We have still a number of more that are in the works. I am happy to say that three of the Board of Trustees have now signed a contract.

Trustee Armacost: We have, and Marge. So what is wrong with the two of you?

Trustee Walker: I am sorry to say that I had it completely checked out and I cannot. The configuration of the roof does not make it cost-effective.

Mayor Swiderski: How many are in Hastings?

Trustee Lemons: I do not have that breakdown, but the way it has been rolling it has been about three-quarters to 80 percent in Hastings. So 40-plus probably. We started out the campaign with this three-tiered pricing so that if we got past 30 everybody that had signed a contract would get the lower pricing. This is only thanks to Niki's pushing and bargaining that we got to tier four, another increment that was not planned in the drop of the price. It is entirely her work in raising the issue and pointing out some things. It has been very successful. We called around on Friday and over the weekend to about 50 people in Hastings that have had presentations and maybe contracts presented but are still sitting on the fence. So we just need more time delivering. The decision has been made to extend the final deadline another couple of weeks so all those folks that are in the middle of that process can work their way through it and get to a contract.

Trustee Armacost: And benefit from tier four.

Mayor Swiderski: So we could theoretically have 45-plus in Hastings. And we had how many before?

Trustee Lemons: We started out going from the Building Department's list of approved solar installations and were at 20. So we are going to be up at 60-plus and might be up at 70. That is more than tripling. That is pretty great.

Trustee Armacost: Since we have a member of our Senior Citizens Advisory Council here with us, Cynthia Alligood, I wanted to show everyone the new brochure the team produced. It is filled with fantastic, useful information for seniors and for the rest of us. I am not quite in the category of senior yet but I found quite a lot of it interesting and useful. The team did a great job, and it is available at the Rec Center and in various other places for people who you think might find it useful. So thanks again to you, Cynthia, and to Paula and the rest of the team.

Trustee Walker: I am going to ask for one brief executive session to review the candidates for the Shoreline Advisory Committee.

EXECUTIVE SESSION

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

ADJOURNMENT

On MOTION of Trustee Walker, SECONDED by Trustee Armacost with a voice vote of all in favor, Mayor Swiderski adjourned the Regular Meeting at 10:37 p.m.