

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK**  
**BOARD OF TRUSTEES**  
**REGULAR MEETING**  
**MARCH 15, 2016**

A Regular Meeting was held by the Board of Trustees on Tuesday, March 15, 2016 at 7:35 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

**PRESENT:** Mayor Peter Swiderski, Trustee Marjorie Apel, Trustee Meg Walker, Trustee Nicola Armacost, Trustee Daniel Lemons, Village Manager Francis A. Frobels, Village Attorney Linda Whitehead, and Village Clerk Susan Maggiotto

**CITIZENS:** Forty (40).

**APPOINTMENTS**

**Mayor Swiderski:** Announcement of appointments for the Shoreline Advisory Committee: Ned Baldwin, Anthony DeVito, John Maggiotto, Jim Metzger, Shannon Rooney, Carolyn Summers, Ed Weinstein and Merrill Wheaton. This group is going to be working with a consultant that we will be hiring to help design the shoreline for the waterfront, which is a necessary part of the engineering design that BP is undertaking right now ahead of the remediation that will commence starting late this year.

**COMMUNITY CHOICE AGGREGATION/WESTCHESTER SMART POWER PROGRAM CHOICE OF DEFAULT OPTION**

**Mayor Swiderski:** The Village joined a process several months ago that involved 17 or 18 communities where 90,000 homes aggregated their electricity demand and put it up for bid. A number of electric service companies, ESCOs, bid for the right to provide us with electricity. One took the winning bid on both "brown energy," which is the regular energy we get if we subscribe to Con Ed, and renewable energy which is non-nuclear like hydro, wind and other renewable forms of energy. Both those bids were lower than the default rate Village residents currently get from Con Edison. If you are with Con Edison and you have never chosen an ESCO you are paying a rate based on a complex formula they worked out with the state which is not profitable to Con Edison. Con Edison does not make money on that; they make money on the delivery of the energy to your house. You always have the option to find somebody who will give you a cheaper rate on the electricity to your house. This program allows these 17 communities to choose a different default supplier. We will be choosing one of those two programs tonight. The default supplier is Con Edison; the winner of the bid is Con Edison Solutions. Con Edison has set up a subsidiary specifically to participate in this market of electric service company providers. They were one of several bidders and they happen to have come in with the best bid. They are providing us with a price for green and for brown that is cheaper than what you currently pay from Con Ed.

We have with us somebody from Sustainable Westchester who will answer questions from the Board. Then the Board will choose between the green price and the brown price. You can confirm the prices.

**Glenn Weinberg, Sustainable Westchester:** The difference between the green product and the basic default product is 0.3 cents per kilowatt hour. What that translate to for the average Hastings resident is roughly \$15 a year, or between \$1 and \$2 a month more for the green option. You would have saved last year, and it is modest, \$36 if you have the basic default option and \$21 if you had had the green option.

**Mayor Swiderski:** It is not going to make anyone rich. However, there are 90,000 households participating and when you multiply by the money saved it is \$3 million-plus put back in people's pockets that otherwise would have gone to Con Ed, which is substantial. Every dollar saved is a dollar saved. This is where I am going to start evangelizing because I have an opinion here. If we go for the renewable option not only do we as a community save money, and everybody will save some money, we will have the privilege of, as a community, using renewable energy exclusively on a default option to provide our power, which to me is hugely appealing. You can see which direction I am pushing for in a choice between brown and green. However, if anyone resents that default for the community they will, in the course of the next month, have the right to select the cheaper brown, stay with Con Ed at the default rate, though I do not know why you would do that, or go with another ESCO at a different rate. While we will choose a default, you have a full range across all the options, individually, to choose beyond what the default Village option is set. Did I get that right?

**Mr. Weinberg:** You got it all beautifully right. I will add a couple things. One is that both options are fixed rates for two years, which is something Con Ed cannot offer. And it also gives us a great opportunity that if prices go back up the way they have typically been we are going to end up saving a lot more. The second piece, and Linda can attest to this, our supply contract is one that we wrote ourselves from start to finish with very little input or modification from the suppliers. That is completely unheard in the energy industry. We are dictating the terms of how we are buying the power, with consumer protections in mind first and foremost. That is probably the most powerful aspect of the program.

**Village Attorney Whitehead:** There was a group of about seven or eight municipal attorneys who were very heavily involved in finalizing the form of contract and negotiating any changes they asked for.

**Mayor Swiderski:** Now is a chance for the Board to ask questions. Then we will open it up to the public.

**Trustee Armacost:** My first questions relates to what happens after two years.

**Mr. Weinberg:** In our contract we have a mutual option to go for another eight months. It could be as much as 32 months. After that we will renegotiate another contract well in advance of the expiration of the term of the first contract. It may end up we negotiate directly with our current supplier, Con Ed Solutions, and determine that it is working really well, they are a good partner and can offer us a continued good rate. We will sign another two-year contract, or we could go back out to bid and do the RFP process again and get the most competitive, best bid the second time around.

**Trustee Lemons:** Can you explain the renewable option not in terms of price, but the source of generation? And what is this company that Con Ed has put together to provide that?

**Mr. Weinberg:** Wind, solar and hydro are the sources we have identified as acceptable renewable sources. No nuclear. The renewable product will be in the form of renewable energy credits, a national product, that is certified by a firm which specializes in certifying those credits, meaning that they are accounting for every kilowatt hour to make sure they are not being double-counted; in other words, they are not being sold to one person and then sold to another person and both customers claiming they bought that kilowatt hour of wind power or whatever it is. They certify every kilowatt hour and give us reports, an environmental disclosure label essentially, which we will be posting on our website and making sure customers know exactly where their power is coming from.

**Trustee Lemons:** What do you expect the connection to be between doing the renewable option and getting new renewable generation to be coming out of that?

**Mr. Weinberg:** The way we structure the program there is a high correlation because we are moving to develop local renewable generation that then gets baked into that renewable product. The supplier has agreed up front that any renewable generation we develop and install here locally they will replace whatever they are buying on the national renewable market with that local product. That local development can drive the renewable price down over time. It is a fixed price, which means it will not exceed 7.681 cents per kilowatt hour. But it could, even in the first term, the first 24 months, dip below that price if we are able to develop cheap local renewables like shared community solar.

**Trustee Lemons:** So you think that work as an incentive for developing local sources?

**Mr. Weinberg:** In the sense that it is an incentive to close old dirty fossil fuel plants. Then the replacement is likely to be some natural gas, too, but also new renewables: new solar arrays and new wind farms, here in New York if we are talking about locally.

**Trustee Walker:** Have we talked about gas to follow at some point?

**Mayor Swiderski:** Likely to follow, yes.

**Trustee Walker:** Meaning in the next two years or after?

**Mr. Weinberg:** No, meaning potentially by the end of 2016. We are concentrating on the electric phase first, then once we get that off the ground I will be back in a couple months saying now it is time for gas.

**Trustee Walker:** But that means you have to go out to bid again?

**Mr. Weinberg:** Right.

**Trustee Apel:** I want to know, after we pass whatever we have decided we are passing, if your organization would be willing to come to the community and work with people in the community that need assistance. Let us say they do not understand what we are trying to explain to them or they do want to change or do not understand what they are supposed to do. Would you be willing to help them understand what they need to do on the computer so they can pick whatever they want? Is there some educational program along with this, and that you can come back to the community a couple of different times to work with people?

**Mr. Weinberg:** Absolutely. I am glad you asked that. Westchester is hiring at least two full-time outreach coordinators that will divvy up the municipalities in the program and be responsible for just those sorts of things: customer education, going out into the community, teaching people how to use the web, whatever it may be. We will also have some short-term part-timers at the launch to handle the increased volume of all these questions and activity on the phones and the website. In addition, we are partnering with a group called Bedford 2020. It is a non-profit which has traditionally focused on the Town of Bedford, but they are partnering with us and expanding their purview. That is their specialty, this kind of community outreach. They are charged with the task of developing a true grassroots network of sustainability leaders and other engaged citizens in every community to make sure people know what is going on and how to do what they want to do.

**Trustee Apel:** When would this start and when is that window of opportunity for people to make shifts? We have to be prepared if we are going to educate people before that.

**Mr. Weinberg:** To be clear, that window will never close. There is a one-month window before the program even starts that if you opt out your name will never move from Con Ed's

system, essentially for those residents that are concerned about data privacy. You can opt out at any time, even after the program has launched. You can opt between products after the program has launched. That initial window is for protection if you want your customer information kept safe. It will always be safe. Everybody will get a letter in the mail in the first week of April that will tell them how they can opt out, all the different ways; mail, phone, Web. The electrons will start flowing, so to speak, May 1. It starts whenever your meter is read. So if your meter is read May 17 it will start May 17, but it will start in the calendar month of May. You will see the change in your supply reflected in your June bill. You will still get the same bill from Con Ed, but now under "supply" it will say Con Edison Solutions instead of Con Ed.

**Trustee Walker:** Marge, that was a good idea. Maybe we can ask one of your outreach coordinators to come to a Senior Council meeting or work with the Senior Advocate to come to one of the senior meetings or senior lunches. That is one option in terms of outreach, and we can probably come up with others as well.

**Trustee Apel:** Yes, an outreach to them and a general one. There might be people who are not seniors that are confused and some seniors who understand it fully. Since you say that is going to start in April we would like someone in April.

**Trustee Armacost:** It would be useful to have somebody before the letters start going out so there is a pre-letter seminar people can attend.

**Trustee Apel:** That is now, Niki.

**Trustee Armacost:** It is in the next two weeks. We are mid-March.

**Trustee Apel:** Any outreach so people have an opportunity and they can select different times to meet individually with someone, just like you have for people who have trouble with their taxes and need individual help. People might need individual help with this, too, and I think we should offer it to the community.

**Mr. Weinberg:** Certainly we are open to coming to any meeting or event you invite us to.

**John Gonder, 153 James Street:** Maybe he could answer this question. The price was \$15 a year on clean energy.

**Mayor Swiderski:** Twenty-one dollars.

**Mr. Gonder:** And \$28 for brown energy.

**Mayor Swiderski:** Twenty-one and 36.

**Mr. Gonder:** Who makes the decision? Us, I thought, and we could say we wanted green or brown. But the way I just heard you talk, the Board will make that decision. Is that right?

**Mayor Swiderski:** The Board sets the default for the community. Then if you do not like that default, you can switch to anything you want.

**Mr. Gonder:** I understand now. Could this gentleman tell us a little t about Con Ed Solutions?

**Mr. Weinberg:** Con Ed Solutions is the deregulated subsidiary of Con Ed. Con Ed is a regulated utility. They have very strict rules about how they can buy and sell power, and what they have to do. The business model of Con Ed Solutions is y the same as any other private supplier. For instance, in the NYSEG territory the supplier for our program will be Constellation, which is a big energy company and player in the deregulated energy markets and supplies residential, commercial and industrial customers. Con Ed Solutions does the same. They can offer a variable price like Con Ed does. With Con Ed, your rate changes every month. They can offer a fixed rate, as they are to us, which Con Ed cannot do. They can offer innovative products like a 100 percent green product, which Con Ed cannot do. So Con Ed is strictly restricted and in long-term supply contracts which restricts their price. And that price is just purely, as the Mayor mentioned, passed directly onto you. The deregulated energy suppliers can do clever buying and purchasing in the markets which allows them to get edges on the utility in terms of price. So we are able to secure about a nine percent reduction in price over what we paid last year and set it at a fixed rate. We set our fixed bar at nine percent below the average of what we paid last year, and maybe the utility prices will go up and we will get much more than a nine percent savings in the end.

**Trustee Apel:** How does this affect people who have solar panels on their houses?

**Mr. Weinberg:** It does not affect anything with the solar. It means they will save a little less because they are buying less from the utility as it is now. They still get all the credits. If you have solar you get what is called "net metering credits," meaning the utility pays you the retail rate. They count up how much you have produced and reimburse you the retail rate of the energy. You will still get all of that from the utility, it will still work the exact same way. What is left over, the energy you still needed to draw from the grid, you will be charged for and be charged our rate instead of Con Ed's rate.

**Michael Ambrozek, 16 Sheldon Place:** I am very much in favor of using green energy as the default. When I went out to the Sustainable Westchester site and saw the prices, that was certainly going to be my selection. I use gas for heating, so my biggest energy cost is gas. I know gas will be part of it, but can you tell us a time frame and a similar solution we will have for gas from this Sustainable Westchester site?

**Mr. Weinberg:** The time frame on the gas RFP going out is probably late quarter three or quarter four, 2016 realistically, because we have our hands full with launching the electric program. There are options to green gas. I know that sounds silly, but in other words we can write our contract and our RFP the same way we wrote our electric RFP. We may say we want no fracked gas and want what is called "green gas," which means they buy carbon offsets for what is purchased. Which is not as good as no gas at all, but is a "renewable option" to the standard gas. That may mean that if we demand that, the price we pay will likely be more than what we are paying Con Ed currently. We could do a similar program structure, which means we try to get the best price we can and then may have a no-fracked green gas option which comes at the premium. And it is likely to be a much larger premium than the electric premium, unfortunately, but I cannot say that for sure.

**Pat Black, Hastings:** If one of the options includes windmills, how are the sites decided upon? I do not want to walk out my door and bump into a windmill.

**Mr. Weinberg:** Luckily for you, there is not too much wind here in Westchester. The wind we will be buying, we will be buying a lot likely, will likely come from upstate, western and eastern Massachusetts, Illinois and maybe even, if necessary, Oklahoma and Texas which have a lot of wind. Those are the big wind sources. We do have some in upstate New York, not too much down here, and that is not likely to change. Simply because we have chosen this option does not mean we are going to be building wind farms in Westchester. That is unlikely. It is much more likely we will develop solar on rooftops.

**Jim Metzger, 427 Warburton Avenue:** In the past that when we have a particularly hot summer and everybody is using a lot of energy Con Ed claims we have to raise our rates because we cannot keep up with the demand. On summers where we do not use a lot of energy they say we have to raise our rates because nobody is buying our product. Do we have a guarantee that these rates are going to stay reasonably within some limit and not be subject to wild fluctuation? I have gone with alternative energy suppliers and after the first few months it did now work out well for me. This was using an individual as opposed to hundreds of thousands of people. I want to know what guarantees we have if rates do go above Con Ed they will switch us wholesale over back to the less expensive rate.

**Mayor Swiderski:** I will preempt the answer by saying a fixed rate is a fixed rate. That rate is guaranteed for two years, and up to two years and eight months.

**Mr. Weinberg:** That is right. The answer to both those questions is that we are getting a fixed rate. The supplier, Con Ed Solutions, is contractually obligated to serve everybody in our aggregation group at that fixed price every month, even if it means they are losing money. In our RFP and in our contract we specified that we are looking for firm, full, fixed supply, which means they have to supply it at an all-in fixed rate no matter what; no matter if our consumption goes up one month, down the other month. A lot of people opt out, a lot of people opt in. It does not matter. They have to serve us the same fixed rate for everybody that is included in our municipalities that are enrolled in the program.

**Ellen Hendrickx, 63 Clarewood Drive:** I saw another presentation on aggregation by Sustainable Westchester and I believe there was something to the effect that other ESCOs, while seemingly good deals, do fluctuate as opposed to this which is the fixed rate. Did I remember that correctly?

**Mr. Weinberg:** You are referring to the same thing the previous gentleman did, which is that often ESCOs will offer you what is called a "teaser rate." They give you a really low rate when they knock on your door, and in the contract, which you do not read, in three or six months it goes up 20 percent above the utility. Then they make it hell for you to get out of it. They charge you a big termination fee.

**Merrill Wheaton, Hastings:** Is there any transition or startup costs as we move through to our choice? Then I have an obscure question. Here we have 17 villages that are signing up for this, but how many villages or groups potentially would push the demand where the providers would have to start to move through supply and demand toward green energy? We are helping by signing up, but where does the oomph come in terms of the number of villages or groups? The startup costs, and then how much of an effect are we making on the national effort to try to go green?

**Mr. Weinberg:** The answer to the first question is that there is no startup cost for the consumers or the Village. A mailing is going to go out and there are going to be costs associated with that. The supplier is paying those. The costs of those things like marketing and materials like that are socialized by all of us. That is baked into the price we have already gotten. There are no upfront costs outside of the rate we are paying.

The second question is very complex. I would love to say if half of Westchester County goes green we are going to turn the whole energy market on its head. That is not likely to happen in the short term, but it is a very gradual process starting with the fact that we are pulling

more demand from existing renewable generation. As we pull more demand from existing renewable generation, that sends price signals through the market to develop new renewable generation. Some of that new renewable generation will be developed here locally and we are going to get a great price for it because we have an aggregation of 90,000 customers, and if we include NYSEG 115,000 customers, which could contract directly with new renewable generation such as a two megawatt solar array on the train station parking lot or what it may be, and negotiate really low supply rates for that renewable power, which sends price signals to the market to send the price lower, both of which will incentivize the new development of renewable generation in the long term.

**Trustee Walker:** Is any of that actually happening, locally-generated power within Westchester? That people are considering putting a solar array on their parking lot?

**Mr. Weinberg:** We are considering it. It has not happened in Westchester yet, what we call "community solar." I know in Putnam, and Schenectady I think, are moving forward. New York State put forth what is called "shared renewables rules" in July, so it is a brand-new program. But there are now groups that are forming and negotiating with developers to get this stuff built. You will see it in 2016.

**Mr. Ambrozek:** Thank you for letting me give you another thought. Not only will we be able to save electricity by using Sustainable Westchester, but we can also each individually reduce our electricity costs by going to energy efficient lighting, appliances, LED lights, which will save significant energy. By reducing our energy consumption we help to increase the proportion of energy that is consumed green. Also, the green energy we will be getting will be non-nuclear green energy. That is very important if you want to get rid of Indian Point. Every individual who uses green energy is voting to get rid of Indian Point, which many of us are concerned as a safety hazard in our community.

## **BOARD DISCUSSION AND COMMENTS**

### **1. Petition of Artis Senior Living for Zoning Amendments and Next Steps**

**Mayor Swiderski:** The Mayor has a prerogative of messing with the agenda. Tonight we have a full house, and I am going to execute a mercy rule here by moving this petition up. The Board discussion is essentially a lecture to us by the Village Attorney of next steps.

**Village Attorney Whitehead:** A lecture?

**Trustee Walker:** An explanation.

**Village Attorney Whitehead:** I am going to summarize procedure. In bigger communities it is very common to get things like this; this village does not very often get a request for a zoning amendment in conjunction with a particular project, which is what this is.

When the Board is presented with a petition like this, there are a couple of things that have to happen. Under the State Environmental Quality Review Act the action is considered not just the zoning amendment itself, but the whole project. SEQRA has to be undergone, taking into account the entire action. This Board has to make a decision whether it wants to be the lead agency for that review with input, obviously, from your Planning Board and consultants and others or if you want to let the Planning Board do it. It is not uncommon for it to go either way. If that was something the Board wanted to do, then your first step in the process would be to circulate a notice of intent to be lead agency. That would go to the other involved agencies, which include your Planning Board and some other agencies, like Westchester because it is on a county road, the county department of public works, and any other agency that has to grant a permit or approval. This would include both your Planning Board and your Zoning Board and other agencies.

That would be the first step in starting the SEQRA review process. At some point, you will also have to refer, not just under SEQRA but under your process for a zoning amendment, the proposed amendment to the Planning Board and Zoning Board for comment. It is premature to do that right now. You need a little more information. A petition sets forth what they are proposing with the proposed text, a fairly straightforward site layout plan, and an Environmental Assessment Form. We need some additional information, additional plans, sea elevations, and a little more information under SEQRA before you can get into the meat of reviewing this, because you are not reviewing only the zoning text, you are reviewing the whole project.

**Mayor Swiderski:** What do you mean by "reviewing the whole project?"

**Village Attorney Whitehead:** The environmental impacts of the whole project under SEQRA. What I would recommend, and there are a couple of ways to do this, the first thing for tonight is for the Board to decide if you want to declare your intent to be lead agency. Then I can work with Fran and the Building Inspector and get back in touch with the applicant, and go over with them some additional information that we think this Board needs to get into the review process. Once we have that, you can get a little more into the meat of it before you refer it to the Planning Board so there is more for the Planning Board to see, discuss and review.

During the whole course of the project there will be a lot of back and forth between the boards. If you choose to be the lead agency under SEQRA your next step would be to make

a determination of significance, where you determine either to do a positive declaration and determine that there are potential adverse significant environmental impacts and you are going to require an Environmental Impact Statement, or you make a neg dec where you determine that there are no significant adverse environmental impacts that have not been fully mitigated as part of the design of the plan. You really need more information before you can make that kind of a determination. And you might need consultants. You might want to bring in a consulting engineer, and the Planning Board has an engineer they work with regularly on those types of reviews. You might want to bring in a planner and get some advice like that. There will be additional information. You are entitled under SEQRA that you do not have to make that determination until you feel you have gotten enough information. You do not have to make the determination until you have enough information from the applicant. You can request additional information in order to do that. No decisions can be made in terms of actions on approving zoning text amendment, approving a site plan or anything else until SEQRA is completed by the lead agency. That does become the first piece to really focus on, the SEQRA piece. We will, in terms of consultants, require the applicant to provide an escrow to get the consultants the Village utilizes under SEQRA and under your code. They are paid for by the applicant. The Building Inspector usually establishes those who will work with him, and contact the applicant with respect to setting up the escrows as well. Once you complete SEQRA, and if you approve the zoning text amendment, then it goes back to the Planning Board to finish the site plan review. There is view preservation, there is a special permit. Then they can proceed with all of that.

**Trustee Armacost:** What are the advantages and disadvantages to us deciding to be the lead agency? Or what is the typical arrangement in other municipalities where you work?

**Village Attorney Whitehead:** There is really no typical. It is very project-specific. In some larger towns or cities where the Planning Board deals with large projects and EISs and things like that all the time, sometimes there is an advantage because they do it more. But this being such a small village, the Planning Board has dealt with it a little. They dealt with it on Ginsburg, but it is not like it has been done a lot. The zoning text amendment, you are the only ones who can approve that. That is the heart of this whole thing. SEQRA says the agency that has, I forget the exact wording, the most significant approvals, if you will, this goes nowhere without the zoning text amendment. That is your decision and your decision alone.

**Trustee Armacost:** Are you saying it is more efficient if we do it?

**Village Attorney Whitehead:** I think it probably would be in this case. But it is completely up to you if this Board does not want to take that on.

**Mayor Swiderski:** What is the question being answered by the SEQRA process? Is it the zoning change or the development?

**Village Attorney Whitehead:** It is everything. The zoning change itself has impacts. As part of looking at the zoning change you would want to look at what other properties could this zoning amendment affect. Are there other properties that in the Village, once we adopt this zoning amendment, could now move forward with a similar type of project. It is the impacts of both.

**Mayor Swiderski:** So the petitioner request, or the issue here, is not a spot zone change to that property, but a Village-wide addition of the special permit use for R-10, R-20.

**Village Attorney Whitehead:** Right. Which, of course, falls into an interesting conversation the Board had six months or a year ago about the fact that you need to update. Once we got through the large tracts and the cluster, the next thing this Board was going to work on was updating your senior uses, if you will, from a very outdated ordinance, as are most today. The zoning text amendment fits into that plan that this Board had. But you need to look at the text they are proposing and the context of that.

**Trustee Apel:** We are being pushed by a particular project. We cannot spot zone, so we are being forced now to look at that particular zone in the entirety of the Village and decide on a concept for the whole Village of that particular zone.

**Village Attorney Whitehead:** I do not want to refer to things as spot zoning because spot zoning is not that simple.

**Trustee Apel:** No, I understand. As opposed to asking for a variance or something.

**Village Attorney Whitehead:** Right. Spot zoning is not that simple. The way they proposed it, which is the right way to do it, is that it would impact the R-10 and R-20 districts. You have to determine if you think that is appropriate. That is part of what you are going to look at. They have put in, I think, a two acre minimum lot size for this type of facility in those zones so that would limit the properties it could apply to or that could apply to this type of use within those zones. We would probably ask for one of the pieces of additional information you want, to ask the petitioner can you give us a summary of what other properties this could be placed on.

**Trustee Apel:** One of the problems with this is that if we are going to start looking at the Village ...

**Mayor Swiderski:** I am not sure we are ready to get to the substance without more information.

**Trustee Apel:** No, I am not saying that. I am just talking generally. In terms of this, if we are going to be looking at a particular project, or certain zones, what I would foresee, and I am making a recommendation that we look at the entire Village. You just said the problem was if we do not look at the zones and then start piecemealing it out, then we are in trouble again and we want to look at the whole Village again in terms of the zones. This would be not pushing it, but driving it. Then it is a different way of looking at what we want to do in Hastings. It is to say, OK, this project has come up, it is presented in a concept or an idea, maybe it is time, as you say, to take a look at all the zones and take a look at the whole Village. See how this is going to affect the entire Village.

**Village Attorney Whitehead:** In terms of the senior uses, or what we had talked about before?

**Trustee Apel:** In terms of senior uses, but you are beginning to, again, look at things that were said. How do we want our village to look in the end and how is this going to affect it? If you just look at senior projects, or even projects, and you are not looking at the whole Village and saying how do we want Hastings to look at the end of all this, maybe it is time to consider looking at the zones we have and what are in them. It becomes a bigger project than we anticipated.

**Village Attorney Whitehead:** But that is almost looking at your whole zoning code. You have to start with your Comp Plan, and then look at your entire zoning code.

**Mayor Swiderski:** This is a specific petition.

**Trustee Apel:** No, I understand that.

**Village Attorney Whitehead:** You have to react to a petition that is in front of you and whether you want to proceed with this petition. There is nothing that stops this Board at any time from, on its own, beginning to look at some other zoning code changes.

**Trustee Apel:** Part of that decision is, we will still want to look at it in the vision of the entire Village and what it is we want. We have to get the overall picture besides the specifics. They are coming in with specifics, and it is now generating questions and thoughts. We say how is this going to affect the entire Village and what do we want to do. As you said, we might have to do two things at the same time. One is address this, and also address looking at the bigger picture, the plan for the whole Village, what we want.

**Village Attorney Whitehead:** They have proposed a definition of assisted living. You might say we want to change that a little because we are looking at it not only in the context of this project, but we are looking at what definition of assisted living might we want for the Village in general.

**Trustee Walker:** And the same goes for the physical description criteria they are presenting. They are presenting something that works for the site, and we may not want in other parts of the Village something that meets this description. That is another factor.

**Village Attorney Whitehead:** That is part of what you would look at in looking at where else this would permit this type of facility.

**Trustee Walker:** Right, but in terms of height and setback and, of course, two acre minimum.

**Mayor Swiderski:** What I hear is that there is an element of site plan review here that is part of the SEQRA process. Then once it is done, it is handed off to the Planning Board for site plan review.

**Village Attorney Whitehead:** Correct.

**Mayor Swiderski:** To me, that sounds like the Planning Board should be the lead because they become the continual agency that looks at this site plan in both phases. Not that I am not eager to do that.

**Village Attorney Whitehead:** Let me clarify that. You are going to be looking at the site plan, and if you were the lead agency under SEQRA you would be looking at the site plan in terms of the potential environmental impacts, not the details of where a driveway goes.

**Mayor Swiderski:** Understood, but it is still examination of the site plan. I question us doing that and then elements of that being repeated again by the Planning Board.

**Village Attorney Whitehead:** It is going to work one way or the other. If the Planning Board is the lead agency, you are certainly going to want input on looking at the language of the zoning amendment and the impacts of it. Both boards are going to look at both things no matter what.

**Trustee Walker:** As you said, we would ask the Planning Board for comments and we could specifically ask for these kinds of site plan-related criteria.

**Village Attorney Whitehead:** You could have a joint meeting with the Planning Board to talk about some of the site plan environmental impact type things.

**Trustee Lemons:** I think what you are saying is, even if it would go to them as the lead agency we are not going to avoid a lot of the same work anyway.

**Village Attorney Whitehead:** You are still responsible for the zoning text amendment. You have still got to be comfortable with that.

**Mayor Swiderski:** That is fixed, but I will defer to the collective wisdom of the Board here. I wonder if SEQRA does not belong with the Planning Board here.

**Village Attorney Whitehead:** If you want to think about it and get their feel on it, they have a very long agenda but I can bring it up at the Planning Board meeting Thursday night. There are two Planning Board members here tonight and others who may watch this, so I am happy to somewhere in their very long agenda Thursday night do that.

**Mayor Swiderski:** But what is the sentiment of the Board? If the Board is strongly in favor of being lead agency I will defer. I just question whether we should.

**Trustee Walker:** I am trying to remember what happened with the Andrus Home.

**Village Attorney Whitehead:** That was the last one, I think.

**Trustee Walker:** The MUPDD was.

**Mayor Swiderski:** And we were the lead agency on that. That was also a fully-crafted zone from scratch, and it felt appropriate there.

**Trustee Armacost:** I heard Attorney Whitehead say she thought it was more efficient if we were the lead agency. But if she has changed her mind.

**Village Attorney Whitehead:** These things get cumbersome and there is a lot of back and forth no matter who is the lead agency.

**Trustee Armacost:** Then it does not really matter.

**Village Attorney Whitehead:** The nature of the SEQRA process is that it does not work well. It can be cumbersome in these types of situations.

**Mayor Swiderski:** We have Paul Gallay, who is president of Riverkeeper, here with us tonight for a consent decree, which he will be glad to know we will get to around midnight.

**Trustee Armacost:** I am indifferent in that case. If it does not make a difference either way, then it really does not matter.

**Trustee Lemons:** I think take it up with the Planning Board and see what they think.

**Village Attorney Whitehead:** It is your last chance.

**Trustee Apel:** You are asking me.

**Mayor Swiderski:** Your last meeting.

**Trustee Apel:** My last meeting. Thank you, everyone, for showing up for my last meeting. That is very nice of you.

**Trustee Lemons:** That is why they are here, Marge.

**Trustee Apel:** I think it can work either way. It depends upon how much control you want to have over the process, number one. And number two, how much time we want to give, because I do know that the next year, in terms of all the other things that are going to come up, the Board is going to be inundated.

**Mayor Swiderski:** Frankly that is a concern.

**Trustee Apel:** I think hearing from the Planning Board would be a good idea, but I do understand the amount of work it is going to take and how much time we want to be able to give, all the time we can.

**Trustee Walker:** We have an excellent Planning Board. I think we want to have an opportunity to weigh in, even on some of the site plan considerations probably, and there should be a lot of back and forth. But I would not be against them being lead agency.

**Mayor Swiderski:** Well, it sounds like we have no opinion at the end.

**Joel Sachs, Attorney for Riverpointe Homeowners Association:** Mayor, could I raise a procedural point if I could? There are a lot of people here tonight from Riverpointe and not from Riverpointe who do want to speak to the Artis petition. I have known Linda for a long time. What she indicated to you is a legal path that the Village could take. However, there is

a second path the Village could take which is completely opposite of what is being proposed by your Village Attorney. That is to take no action on this petition, do not start the SEQRA process, do not refer it to the Planning Board tonight and in fact maybe not refer it at all, and never start the SEQRA process. We have a number of people here who have indicated they would like to speak before the Board makes any determination to accept this petition. Is this the appropriate time for them to speak?

**Village Attorney Whitehead:** You can take comment. As the Mayor said before, we have a very long agenda. It is correct that this Board has the discretion when a zoning amendment is put before you to say we are not going to consider it at all. I do not know this Board would want to do that, but that is an option.

**Mr. Sachs:** So at least, Mr. Mayor, I would like you to hear from the residents before you make any determinations on this petition.

**Mayor Swiderski:** Absolutely, right.

**Village Attorney Whitehead:** I have to say yes, you could make that determination, but I am not sure that legally you could make that determination tonight. I still think you do not have enough information to make much of a determination.

**Trustee Walker:** If we were to do that would we be opening ourselves up to Article 78?

**Village Attorney Whitehead:** You have that discretion.

**Trustee Walker:** We have the discretion to do that.

**Village Attorney Whitehead:** Yes.

**Mayor Swiderski:** There is a public comment period scheduled down the road. We could take that now.

**Scott Fugel, 4 Riverpointe Road:** My remarks refer to this Artis zoning petition for amendments. The Village referred Artis to us at Riverpointe, as we occupy the property to the west of this site, to obtain our feedback to their plans. We had two meetings with Artis which we felt showed they were unprepared, lacking accuracy, and leaving more questions about the project than providing answers. While we appreciate the opportunity to have met with Artis, we believe the Village Board should have opened up this proposal earlier for discussion among the entire Hastings community.

The facility impacts more than just the residents of Riverpointe. The changes being requested both in zoning and to the physical landscape and beauty of this very special section of Hastings are irreversible. We have voiced this to Artis and to the Village Trustees and the Mayor, and outlined our opposition to this project and to the reasoned points we believe it should not go forward. Instead of giving it pause and opening this up to more scrutiny and community input, we learned on Friday that a petition from Artis for zoning changes was received and immediately added to tonight's agenda. I do not understand the rush to put this petition through so quickly, and I do not believe this needs to be passed to the Planning Board.

This is not merely a procedural step. It is the next step in the process. I would like for the Board of Trustees to evaluate this further, with input from the community at large, and I believe that will lead you to rejecting this petition instead of letting it proceed to the next step. The Village Board should remain true to the statement posted on the Village website in June of 2015 concerning the southern gateway to the Village, which is the precise location of this proposed Artis facility. Your statement reads, quote, "The Board of Trustees has begun to consider a potential change to zoning that will have an impact on some of our larger property owners and will help preserve the Village's character. The Comprehensive Plan indicated that the gateways to our community, especially those to our south and east, have a particular character that helps to define our community. You pass through a belt of green that surrounds the Village whether to the south or west, and it helps to create the sense that you are entering a bucolic hamlet nestled in the open space. Much of this space is owned by either large, mostly non-profit, landowners or the state or county, and much of it is zoned for half-acre residential use. Were one of these properties be sold to a developer, the Village would be at risk of seeing this part of this bucolic character changed. We have begun to examine ways to address this, but also want to put in protections expeditiously so we do not remain at risk." Based on this statement by the Village Trustees and Board, we ask why are we even considering this for property zone changes.

**Doug Sondheim, 14 Riverpointe Road:** I want to speak a little less prepared, a little more from the heart, about this space, this property. The reason we came to Hastings, my wife and I, was because we fell in love with the view at this property. When we walked on the Aqueduct down from Yonkers to Dobbs it is one of the most beautiful places on the Aqueduct. And the vista there speaks to what Scott just referred to as the character of the area. The character of the entire Aqueduct, as you all know, is beautiful. The character of this specific spot on the Aqueduct is exquisite. So much when we hear about building on the water is talk about with regards to view: will I be able to see the river, will I be able to see the Palisades. What is not talked about, which is much more important, is the character of the area, a naturally occurring area, an area where if you walk down the Aqueduct and you see other homes in naturally occurring residentially zoning areas are beautiful.

This area is residentially zoned. We are realists. It is going to be sold, it is going to be developed. Keep it residential. Do not let a 40,000 square foot institutional facility get placed in a residentially zoned area. If you go throughout Hastings, and I have not looked at Dobbs and Irvington in detail but throughout Hastings, and walk along the Aqueduct there is nowhere on the Aqueduct that an institutionally-sized facility like this exists. When I hear things like the view will not be impacted, it drives me insane. If you take and cut back, the cut-fill operation that would have to occur here is amazing. It has to be. To make it economically feasible it has to be within 10 to 15 feet of the Aqueduct. If you look at the site plans that is where it cut to. What are they going to put there? They are going to plant some plants. There is a 40-foot wall drop that is going to have to be put there. That is a massive liability. What do you have to put on that? A fence. So you are either looking through a fence at the river and the Palisades or you are looking through bushes next to the fence and you are not seeing anything. The view will be impacted, the character will be impacted. Places for people to live, seniors, other people, they can be created creatively in lots of different places. But when you destroy nature you cannot get it back. That is why I came to Hastings, that is why everyone here came to Hastings, and that is why you should vote no and turn this down before sending it any further.

**John Carey, 5 Riverpointe Road:** I would like to point out some of the flaws in the document you are considering. There is a great deal of deception and you have to do a lot of detective work to find out what is really there. Before you think about passing it on, you should clarify some things. On entering bucolic Hastings you face, on your right, a facility that is the length of a football field. Behind it would be a massive wall 15 feet wide, 40 feet high, 450 feet around. And this is going to be 10 feet from the Aqueduct. Then five feet from the Aqueduct is going to be a 15-foot fence. Some other things that are very deceptive about it, in the petition you received it said it is going to be two stories. Look a little bit deeper in the exhibits and it says it is going to be 40 feet. Well, 40 feet and two stories, that is not the math I know. And it would clearly be visible from the Aqueduct. Another thing that is just out and out falsehood, in answer to the question is this facility within five miles of officially designated and publicly accessed federal, state or local aesthetic or scenic views? They said no. They are not within five miles of something like the Aqueduct? That is what they said on this official document. After that, things like odors and lighting. I think you should at least consider this and consider the views of the community before you push it out for review by these other agencies.

**Patricia Katronis, 7 Riverpointe Road:** When we found out this was going to be on the agenda tonight we very quickly went to change.org to get a petition out there to see what the rest of Hastings and the rivertowns felt about this project. I would like to read the petition to you and to the room right now. Just over the weekend we have over 200 signatures, I think

220, walking in here tonight. There are a lot of really passionate comments I will read at the end, as well.

"Dear Rivertowns Friends and Neighbors,

A proposal has been made to build a large memory care residential institution in Hastings-on-Hudson bordering the Old Croton Aqueduct. The property is directly across the street from the Riverview at 1 Warburton Avenue on the southern border of Hastings. The proposal would result in a large portion of land, rock and woodlands being either blasted or chipped away within feet of the Old Croton Trailway. Many mature trees and wildlife habitat will disappear, and a large fence would be erected along the trail. The vista from the Old Croton Aqueduct is currently one of the most beautiful and unspoiled along the lower Aqueduct between Yonkers and Irvington. Many of you enjoy this gorgeous part of the old trail on your morning run, weekend bike rides, and family strolls. That area would be changed forever if this project were allowed to proceed. This property is zoned residential and it should stay that way. Please sign this petition to show Artis senior living and our local government that we are opposed to an institution being built in a residential zone and so near the Old Croton Trailway. Time is of the essence. Let's us stop this before it gets any further."

Some of the comments that people offered up: "Please preserve the vista from the Old Croton Aqueduct. This is one of the things that makes Hastings special."

"Such a project would jeopardize the preservation of the nature in a quaint section of Westchester and deprive Hastings from beautiful vistas and the character that makes it such a unique place to live."

"Many of us enjoy this gorgeous part of the Old Croton Trail on our morning runs, weekend bike rides and family strolls. The beauty of the greenspace for the animals and humans who live in and near the Aqueduct is vital and should be preserved by the Village."

"Our river views, wildlife habitat, and all the unspoiled areas along the Hudson River should be preserved and protected. They are our most important resource and make this area a natural treasure."

There is more and more if you read through it. Again, over 220 people in just two days, and the comments keep coming in. Everyone in this town is very passionate about this.

**Lesley Walter, Friends of Old Croton Aqueduct:** I live in Dobbs Ferry. I would like to add to what this lady just said. This viewpoint is the last big viewpoint remaining on the Hudson and Palisades in the entire 26 miles of the Westchester Aqueduct. The Ginsburg River Tides development that is happening in Yonkers is obstructing the second-to-the-last big viewpoint, so this is the last. The development site is at the base of the cliff. So anybody walking on the Aqueduct is looking over the roof to look onto the river. We agree with what Riverpointe has said, and we would ask that we be allowed to either talk to the developer, go on a site visit with the developer if this proceeds. We ask to be included in whatever agreements go forth.

**Mavis Cain, President, Friends of the Old Croton Aqueduct:** I will endorse some of the comments made already, but I want to point out a comment that Andrea Stewart Cousins made to us this week. We had a big event with Parks and Trails New York. The entire area came down to the Keeper's House in Dobbs Ferry and rejoiced in a grant that I had applied for that we got. But quite apart from that, I thought about Andrea Stewart Cousins' comment on the value of the Aqueduct to the entire community. This is what brings visitors from all over. They come to the Aqueduct, and now with the Keeper's House open as a visitors' center we got our C of O last week. We are thrilled about that, but it does mean that we will be having more and more events. For instance, I got a call this morning from the Social Studies Teachers Association of Westchester, Rockland and Putnam Counties. They are coming to the Keeper's House to have a big event in May.

Andrea Stewart Cousins was pointing out that the people who come to learn about our history want to walk a beautiful, bucolic trail. I have been fighting development in Dobbs Ferry, and you have probably heard me on Dobbs Ferry TV as well as reading letters to *The Enterprise*. Keeping the nature of the Aqueduct trail is a economic advantage to all of us; to Irvington, Dobbs Ferry, to Hastings, to Yonkers, and we all should do all we can to preserve the views, make it a total experience. Not just coming to the Keeper's House to see our wonderful displays, but to walk on the trail in both directions and rejoice in the views. You certainly have the best view of the Palisades. I know a number of community members here have been very active in fighting the LG plant because of the Palisades. You have a treasure here. You have a view of the Palisades that we envy in Dobbs Ferry, that Irvington envies. So protect it, value it, do the most you can to let everyone enjoy it.

**Danielle Goodman, 445 Warburton Avenue:** I am a member of the Warburton neighborhood association. I do believe in aging in place, meaning not in institutions. From a policy standpoint, we should be working on helping people to age at home. I know that is not always possible, given people's physical and mental infirmities. However, there are other models of residences, and that is what we should be exploring. I also question why this is not spot zoning. Is it good policy to change your whole zoning code for one project? If we

need to update the code, per Marge, we should do that. But I do not think we should change our code for one project. Our neighbors at Riverpointe speak very eloquently to the view corridor and I support them. But I will bring one more thing to your attention. Yonkers has done a very good job of blocking traffic through its northern boundaries from the Saw Mill to Warburton so where is that traffic going to go? When you talk about hiring experts, I did not hear a traffic consultant. The change of shift at this institution will be from 7 to 9 in the morning, when your schoolchildren are walking on Warburton Avenue and Washington, a very busy intersection already. Do not turf this to the Planning Board because you are cutting off the public input you need as a board. You need to be the lead agency. We need transparency on building heights, traffic and view corridor, and only you can be the lead. Not a body of people who are expert, I agree, but are not elected. You should take the lead, not delegate it.

**Mr. Sachs:** I had sent two letters to the Board, one on June 24 and another on November 6. I brought additional copies along tonight for the Board, setting forth the reasons why we believe that this is the wrong project in the wrong location. I recall that there was a meeting of the Board of Trustees in November and you had indicated at that time that no application had come in from Artis. We thought this proposal was dead, that Artis of their own volition should realize this is not the right project. Yet here we are a few days before the election and too late before the candidates could even debate the merits of it, the applicant sneaks in at the last minute a rezoning petition. In the rezoning petition, I was shocked to hear that they already own the property. We represent many, many developers. No developer ever buys property outright when they need a zone change, they need a special permit, they need site plan approval. There is something going on here that doesn't pass the smell test. There is something drastically wrong that the developer is intending to proceed ...

**Mayor Swiderski:** Are you implying something?

**Mr. Sachs:** I am replying that the developer is seeming to push ahead very, very quickly. We also did a FOIA request. There have been e-mails, and excuse me, Mr. Mayor, between yourself, the planning director of the Village, the Village Manager, the applicant on a first-name basis back and forth. We didn't know any of these e-mails and conversations and meetings have taken place. This is unheard of with a major development proposal. We are asking you tonight that you should kill this zoning petition, do not start the SEQRA process, do not refer it to the Planning Board. We have reached out to Riverkeeper, which is one of the reasons why Mr. Gallay is here tonight. We are reaching out to Scenic Hudson.

**Village Attorney Whitehead:** That is not why he is here.

**Mr. Sachs:** He is here for two reasons.

**Trustee Armacost:** He does not think so.

**Village Attorney Whitehead:** He is shaking his head.

**Mr. Sachs:** All right. We reached out to Riverkeeper, we reached out to Scenic Hudson, we are reaching out to Friends of the Old Croton Aqueduct, we are reaching out to Office of Parks, Recreation and Historic Preservation. We do not want this Village to start down a slippery slope tonight which is going to split the Village, is going to lead to years of controversy, is going to lead to litigation, and is going to cause a lot of unhappiness within the Village. All we want you to do tonight is just say, and as Linda said you have the right to say, we are not accepting this zoning petition. This is a legislative decision and you have the right tonight to say to Artis no, we are not going ahead and accepting your proposal and not putting your application in this pipeline.

**Mr. Metzger:** I am reminded of a similar situation in the Village a number of years ago when Ginsburg Development bought a property on 9-A and went through about 10 years of trying to get it rezoned. Ultimately, and I will not go through the details because it was too ugly a night for me to recount, the Village rezoned that property and created a MUPDD zoning: Mixed Use Planned Development zone which, on paper, sounded great. Martin Ginsburg assured us in this chamber that he can sell mixed-use, live-work units. Great idea, we are going to do that. Until he went out and found out nobody wanted to buy that. Here we are with a project on 9-A that has virtually no commercial in it, which is what we wanted all along. We have a real problem in this Village with a lack of commercial. What we do not want to do is start tearing up existing zones to try and shoehorn commercial in. I am all in favor of a large commercial project in this Village. On paper, when you look at this as a simple project, great idea, it is not going to bother anybody. Except the reality is, it is going to bother everybody who walks the Aqueduct and everybody that drives in and out of this village. While I respect the work that Artis does, they need to find another location for this project. It is not appropriate for where they are proposing it, and I do not want to see the Village get into another situation that we got into with Ginsburg where ultimately Ginsburg got what he wanted and we got nothing of what we wanted.

**Ms. Wheaton:** What would the Board need to do exactly what this gentleman said, to say no. What are the types of things, what are the specific things that you would need at this juncture, to flat out say no to them?

**Andy Ettinger, 10 Maple Avenue:** How about just the fact that you fly a flag out there that says "tree city?" Is that not enough to kill the project?

**Ms. Wheaton:** What I asked is, specifically, from each of you, whenever you are in these situations where you are about to move forward or not, to know what you would need to say no. To kill the project at this juncture, perhaps losing face with Artis or whatever is required. What support, what items, what outlines might you need to make you comfortable to say no?

**Mr. Sachs:** You do not need any support, you do not need any rationale, you do not need any reason. A rezoning petition calls for a legislative determination by your Board. As Linda indicated previously, if you want to vote this petition down tonight and not accept it you have the absolute right to without stating any reasons whatsoever. The developer has absolutely no recourse at all. Again, we think you should do what is in the best interests of the overall Village and just not accept the zoning petition and not start the process.

**Mayor Swiderski:** Advice of counsel seems timely so give us a couple minutes.

[BOARD BREAKS FOR ADVICE OF COUNSEL, THEN RETURNS]

**Mayor Swiderski:** The Board agrees that it does not have enough information to make a decision one way or another on which agency covers SEQRA, and we will be going back to the applicant for additional information and will resume this discussion at a subsequent meeting.

**Trustee Walker:** But thank you for your comments. They were heartfelt and were heard.

### **APPROVAL OF MINUTES**

On MOTION of Trustee Armacost, SECONDED by Trustee Walker with a voice vote of all in favor, the Minutes of the Regular Meeting of March 1, 2016 were approved as presented.

### **APPROVAL OF WARRANTS**

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

Multi-Fund No. 64-2015-16 \$ 10,511.19

Multi-Fund No. 65-2015-16 \$265,106.27

### **PUBLIC COMMENTS**

**Mr. Gonder:** I wanted to ask the Board in regard to bus 6-U. My neighbor, who is 100-plus years old could not come because she is ill and her daughter could not come because she is

taking care of her, lives right across the street from me. She has a lot of aides and these aides use 6-U. It goes through Uniontown. If they do not get that bus they have to walk from Broadway, Tompkins Avenue, James. Down the other side of James it is 9/10 of a mile. Most of these aides are elderly so they would hope the Board could do something. I even looked at the signs on the buses and 6-U is gone. I use that bus occasionally when I bring my car down for service. I would hope you could do something for the people in Uniontown that use that bus.

New York State tax rebate. I read a lot in the paper that checks went out a long time ago. Are we not going to get one?

I gave you a resolution about two meetings ago in regard to writing to Cuomo. I asked maybe if Ms. Whitehead could doctor it up and I heard nothing. The Village Mayor and Board would like to change the New York State constitution to state that any state elected official of New York State will lose all pension money if convicted of a felony. Eighty-four percent of the voters in New York say it should be law. I hate paying taxes and I hate paying pensions to someone is a crook or a sex addict or commits a felony. I do not know why you do not write those resolutions. You write resolutions for Indian Point, you write one for the gas line and everything else. I got two minutes yet?

**Mayor Swiderski:** You are not obligated to use all the minutes.

**Mr. Gonder:** I know that. I am glad to see Con Edison Solutions. Now I do not have to spend money and get out of that thing.

Building 52, I hope you make some decision quickly. I am afraid that what is going to happen is delay and all the things you are going through. You are falling right into BP's hands. Because oil has gone up a little, but it is still a long way from where they want it.

The last thing I would like to say is the vets. I got one minute. Budget time, we are supposed to, this month, get something from Greenburgh with respect to our taxes. I am afraid that guys like me in the Second World War and the Korean veterans and Vietnam war veterans are going to have a lot of problems because their homes are old, but they measure them by size. That is what I think they are going to go by and we are going to get hit pretty hard. I hope you give the vets something, not on needs, but a certain percent off.

**Mayor Swiderski:** You had an answer you wanted to provide on the refund check?

**Trustee Armacost:** Yes, I am in the same boat as you and so is Susan. We did a little research. A newspaper article just came out saying they have delayed sending some of the

checks out. We are holding our breath. There is a chance we will get our checks. If not, there is a number we can call, and I will call on your behalf in addition to my own behalf.

**Mr. Ettinger:** I want to weigh in on the crossing guard for Washington. My daughter walks that street, and there is some kind of junior racketeer stuff going on there that I noticed. It is pretty much a no-brainer. Also about Building 52, you made a very eloquent statement about how toxic it is, which is the perfect argument for abatement. Demolition, unless you put a dome over that area or evacuate the town, it is going to be a health hazard. There is no way to avoid it.

**Tim Downey, 520 Farragut Parkway:** You have heard me speak about the elections and how I like to keep the tone civil and non-confrontational. Last year in the election cycle at my home in came the robocall to my house, and Peter's voice, urging people to get out and vote because the opposition was looking like they were putting on a strong front that year. I find it somewhat offensive that someone can access into my home, whether it be by the phone or by an e-mail, without my permission. In the old days, candidates used to go to your house and knock on the door or meet you in a public open space. You had the right to speak or not speak, or turn them away at the door if you did not want to speak. Here, now, you are intruding and coming into our house. I find it like the robocalls you get from Google and all those other entities that want to impose themselves and take down that barrier of privacy that we all cherish. Come around this election cycle, I am at my home saying when it is going to start. Sure enough, on Sunday Peter sent out an e-mail using a nongovernmental e-mail address and did a very nice, benign statement that was very fair and open. Following that, on Monday there was an e-mail sent by Trustee Walker. I will read a part of it. She discusses the presidential election and the apparent debacle it is in right now. Then she goes on to say, "But there is a chance to elect people who are serious, thoughtful and intelligent and truly have our best interests at heart." In the next sentence she says, "I mean your Hastings Democrats. They are concerned about our quality of life and our bank accounts, and they will make a difference every day in the community."

Sort of like what the Mayor did moments ago, when he leaned forward speaking to the attorney, are you implying something? I am asking are you implying something when you make a statement that it is only the Democrats that can do this sort of thing. In high school, when I registered to vote I chose Republican. But in the late '80s as I matured I realized that the whole party system is contentious and pits people against one another instead of working in a unified direction. When I go to the polling booth I always vote for the person I have researched or feel is the most qualified and never worry about party affiliation. We have these people in the Village who are chest-thumping Democrats who talk about inclusion and diversity. Yet to have a statement like that that is exclusive. Further, when those e-mails came in, as I mentioned with Peter's, they came in on private e-mails. I am wondering, since

I am not a registered Democrat, how did I get on a list that seems to be appealing to Democrats. We are not in the same social circles, I do not think it would come as a result of my perhaps sending e-mails to you folks on occasion. So I am wondering if you have, at your disposal because you are in sitting positions, access to lists that candidates running against you may not. While you do not use a government e-mail address, I think it is unjust that you would have access to resources that others may not, thereby making it an unbalanced playing field when it comes time for elections.

The next item I want to talk about is Riverview Park. Numerous people came to the mic here and spoke in favor of a skateboard park. I watched it on the archive, and I thought to myself within the first, second, or at least by the third, person speaking in support of a skateboard park why did someone on the Board not, in a tasteful and respectful manner, say could we just stop here. We have already gone through that so why would you allow people to drag it on further. We have heard that many times people come into the Village and participate, and they do not hear any feedback. I could see this being another one of those cases where individuals comes to the mic, petition for it, never hear anything back, and then they walk away thinking my elected officials do not listen to us, when you could have said we have tried this before, it was not a good experiment. We are even more shorthanded now in the Parks Department so this is not a good choice for this land. People could have gone further to say they have it in Rockland County. We are a different size than that community that was represented in Rockland County, but if you want to research it go right ahead, present it to us in that proposal format. They do the legwork. You do not have time to address these things when they're not fair and they are not in line with what Hastings wants to do. .

**Elisa Zazzera, 111 Pinecrest Parkway:** I am here as a resident of Hastings, but also a member of the Friends of the Old Croton Aqueduct board. I am astonished, I am a bit dumbfounded, I am sad, I am a little angry, and I am a little ashamed regarding the split rail fence that was put up at Old Croton Aqueduct and the Zinsser ball fields. I only learned about it through a torrent of e-mails that went around after it was put up on the 11<sup>th</sup>. These emotions are around the fact that no one from the Village contacted the Old Croton Aqueduct state park manager, nor anyone of a number of Hastings residents who are on the board of the Old Croton Aqueduct. While I understand the superintendent of parks has communicated that it was your impression through whatever records you looked at that this was all on Village property. In fact the northern 15 feet of the fence is on state parks property. You need to contact the state parks department and speak to them. Even if it is all on Village property, it is on the property line of a national historic landmark, the Old Croton Aqueduct. It is mind-blowing to think that this village of professionals would not think to reach out to the neighbor, "Hi, national historic landmark. I am going to dig a hole right here. I have no idea what is going to happen," but you just dig 12 holes and put in fence posts without even one communication to the state. I am astonished at major oversight. It was a spectacular

bad-form maneuver on this village's part. What makes it even more astonishing is that this is not the first time it has happened in my tenure here, which is a scant 10 years. Some time ago, at the Quarry Trail, the Village took it upon themselves, again without any communication to the state park or the Friends group, to remove some brush above the Quarry Trail and then replace it with chain link fence. Lots of conversations ensued, requests from the state park ensued. We came to an agreement, seemingly agreed to by the Board as well as the state park, and that remedy still has not been completed. And that is some five or six years later.

Beyond the encroachment of the state park, this was a surprise to a lot of people, as you may have heard over the last few days. We hear there are recreation commission meetings. In the last 16 agendas I looked through Zinsser or Zinsser Park was in there. No indication of a fence at Zinsser Park? As we well know, the Village is not doing a 100 percent job on keeping notes for all our boards and commissions. There was nowhere in the public record that I could find that this was discussed at all. There are Friends of Zinsser Park, there was a lot of activity over different issues with them: the Village reached out to nobody there about this fence. So it is astonishing that there is no further reach-out from the Village and you just expect everyone to come and be aware. Easy as an e-mail, you have lists, people have communicated. Please reach out to the state parks on this incident to remedy it. And any time you are within eyeshot of the Old Croton Aqueduct I hope, I implore you, to please do a good neighbor to this fantastic gem we have here.

**Brian Street, 19 Fraser Place:** Also as a friend of Zinsser Park, the fence is interesting. This is the place where my kids sledded, where I jog every morning, an open vista. Even though it is as open as a fence can be, it is still a fence, and it is blocking. Its design is to do something. I am troubled by the idea of what that must be. My question is why that? We have talked about a fence along the playground, between the playground and the parking lot, to keep kids from running in front of cars. That makes sense. I do not understand the concept behind this, and that is the part that is troubling for me. If the fence is encroaching on state land there should be some remediation of that. I would look for this remediation to be a removal of said fence and repositioning it somewhere where it would do some good.

**Ms. Cain:** We have been troubled by the fence. We have asked why, and someone said to me it is to keep the dogs from disturbing the baseball players. That does not make any sense. No dog is going to be blocked by that fence. I was walking on the trail on Wednesday, and on Thursday it was up and complete. Then I heard the most astonishing thing. The fence will be removed with the snowfall so the children can still slide. My children grew up sliding there. I slide there. I ski by it every time there is a snowfall. How could you possibly predict a snowfall that might come Saturday morning, get the fence removed in time that the children can have a wonderful Saturday sliding? The scene is like a Bruegel

painting. Has anybody looked at a Bruegel painting recently, with thoughts of people and things happening and hills? This is the most exquisite scene next to that marvelous view of the Palisades. We have two treasures and you are thinking of spoiling them. We are astonished. To walk by it on a snowy day, when I am on my skis, I stop and just chat with the mothers and the kids: can I borrow a sled and go down myself? How could you possibly remove it in time for a snowfall? Please explain to us?

**Village Manager Frobel:** We would remove it before the start of winter. Perhaps in November it would be taken down. I am going to ask the Mayor if he would allow us a few minutes to explain to the community the logic that went into the fence.

**Mayor Swiderski:** Now is a good time.

**Village Manager Frobel:** We went into this with the best of intentions. I have asked Kendra Garrison, our director of Parks and Recreation, to be here this evening. Part of the reason was safety, and it was something that was discussed with the Parks Commission. The intent is to prevent pedestrians from traveling down the hillside onto what is now a hardball field and then softball. There is an element of safety that Kendra wanted to enhance, to be certain of. I will let her discuss further the logic that went into the location of the fence.

**Superintendent Garrison:** It was to protect people from coming down into the park while games are going on. There are softball games, baseball games. We never intended to stop sledding or anything like that.

**Village Manager Frobel:** It is also part of some additional fencing. Fencing will go in between the playground and the parking lot. The Little League will be installing a chain link fence to protect the baseball players as they warm up for ball games.

**Mayor Swiderski:** But down on the field.

**Superintendent Garrison:** That is on Zinsser One along the first base side where the bleachers are.

**Village Manager Frobel:** As far as encroaching, I did not know the exact location of where the fence was going to be erected. But if we are in the wrong area we will either get permission or forgiveness, or we will cause it to be removed. We do maintain that area, so Kendra's staff assumed it was owned by the Village because we had always taken care of it.

**Trustee Walker:** Could there not be a temporary fence on the field to keep people from running down onto the field, without having to put a split rail fence up by the Aqueduct?

**Village Manager Frobel:** The trouble is that is the men's softball. You are really talking like a home run fence. I think they just run it out, do they not? They just hit the ball as far as they can and run. It would be more expensive, Meg, to put a fence along there.

**Trustee Walker:** I mean just a temporary barrier, like a snow fence type of barrier, during baseball season and not have to construct anything permanent.

**Superintendent Garrison:** We can certainly look at it.

**Village Manager Frobel:** It is a problem. I have had first-hand experience that people do wander down to that outfield, the game stops and you ask people to move.

**Trustee Walker:** Right, except that the park has a lot of other uses besides softball. I have sledded many times on that hill, not to mention running down. Kids play on it. It is unfortunate to block it. And people do want to come down from the Aqueduct onto the field.

**Trustee Armacost:** I am hearing that we can improve our communication about some of these initiatives on the Village side. Everyone is filled with good intentions. The Parks Commission is meeting and discussing fences, and the Zinsser team thinks they are discussing a different fence than the fence they discussing, and there is this sort of tragic lack of communication. We can all do better, particularly on the Village side, in communicating to the relevant constituencies early on so we can make decisions that do not catch people unawares, but also have the benefit of the view of people who are living and working in that area. I think there are a couple of people from the Friends of Zinsser group who have come on a periodic basis to Parks and Rec meetings. I was going to suggest that maybe a core group of people can be given this, and perhaps Brian, since you were speaking on behalf of that group, you can give a group of names to Kendra. That, perhaps, will help to enhance communication and make sure these kinds of things do not happen.

**Mayor Swiderski:** I am probably going to regret opening my mouth on this topic. Chinese proverb: good news takes its time to circle the globe, while bad news crosses the block. In the Internet age the entire Village has had a conversation over the weekend and wound itself up over a topic before people with good intentions have even a chance to respond. I am going to broadly generalize that away from this particular topic and say it applies to a number of topics that Parks and Rec has to deal with, where my heart goes out to Kendra because she has got three people working with her, and four playgrounds she is either going to be renovating or in the process of renovating. Each one of these host communities have wound themselves up, and as a community we have not really successfully tackled how to deal with this as a village and as a community. It is a much larger question and issue than we

are going to tackle tonight, but you are right. It is communications, and even if there were a reasonable weekly or biweekly e-mail that Kendra put out with work ahead, in those two weeks we could have had a dozen conflagrations on the Internet, each one of them petitions and hysterics – wrong word, wrong word, wrong word, but everybody knows where I am going with this.

We are in a moment in this nation and in this community where our ability to execute on policy is way outraced by public expectation and public conversation and the internal dynamics that a Facebook page can drive that leaves us on this side of the table, and in her job, in a horrible position. I know what drove Kendra was good intention, and I am not going to criticize for the good intention. I know people are upset and want to have that conversation on the intranet. I just do not know how to square that circle here. It is something that is driving all of us a little crazy. All of us a little crazy so we have to figure this out as a community because it is making us all collectively unhappy as we stir ourselves crazy at a speed that we cannot react to.

I have solved it for myself personally. I do not read 10706. Nasty piece of work, drives me into a depression, convinced the community is less happy than I know it is. But a lot of people cannot help themselves, and do so. It is addicting, it is a train wreck, and we stir ourselves up. I am going to stop talking now, but there is a big issue here we have got to sort out, and communication is at the core of it. We have got to find a cycle time where we talk to all of you at a reasoned pace that is not driven by the last blog. And you expect that reasoned pace and accept it as sufficient to drive policy. Because every other road leads to madness. We are doing to ourselves nationally and we are doing it to ourselves locally. I have been thinking about this for the last few months. And I think a lot of people are, I think a lot of people are. It is our disease.

**Village Manager Frobel:** I would just add, Mayor, thank you for your comments. It is very difficult for the staff to anticipate what could generate that kind of reaction. We do try in our staff meetings and in my daily conversations with all the department heads, but we will continue to work to anticipate what could be an issue that would generate that kind of input. Kendra followed the protocol in discussing it with the Commission, working with the staff, and listening to the leagues. Perhaps the missing element, although I thought it was part of the discussion with the Zinsser Friends in terms of the parking lot playground apparatus which I was aware of, is that we can certainly try to do better in that regard.

**Trustee Lemons:** This is another side to what you are talking about. Obviously, we on the Board hear a lot of focused interest in particular issues because they affect a particular local group. That is as it should be. I was very impressed when this came up with the Zinsser group and the issue with the trees. I was very impressed with the way that group organized

itself and engaged in a constructive process. It was helpful, it took some time to do, but in the end we got to a good conclusion and it was a good process. I want to compliment that group for the way they engaged, and also say that process worked.

**Mayor Swiderski:** And the intranet as an organizing tool is a terrific thing but, ultimately, it has to descend out of the ether, which moves at light speed, and into the policymaking world we live in which moves on every two-week cycles and at a deliberate speed that drives everybody, including ourselves, crazy. But that is where we are. When a group like that, or on the Reynolds Field playground, organizes and then descends and executes, that is the intranet at its best. That is the intranet functioning as the organizing tool that yields great things. But that is not what I am talking about here.

**Mr. Downey:** Perhaps a simple sign like I suggested Dobbs Ferry does with the zoning. You have a generic sign, leave a blank line at the bottom, and with a big marker you can write in "fence project." It does not have to have all the detail, but at least before the shovel goes in the ground you can address this before the fire comes up behind you.

**Mayor Swiderski:** We are going to have to come up with something, I am not arguing. We are not going to solve this tonight.

**Mr. Downey:** OK, but I just want this idea I have got. I told you a year ago how you could prevent a lot of these fires.

**Ms. Cain:** I just ask the courtesy that you work with Steven Oakes.

**Village Manager Frobel:** We do, and I worked with him before.

**Ms. Cane:** Yes, but he was not alerted to this.

**Village Manager Frobel:** And I will explain why.

**Mayor Swiderski:** I am not criticizing what you said. I am just saying generally we are suffering this intersection of ...

**Ms. Cain:** It is just a matter of good neighbors. I would not put a fence up and not alert my neighbor.

**Mayor Swiderski:** We want that, obviously. There is no intention here of malice or evil.

**Ms. Cain:** I think we know you too well for that.

**Mayor Swiderski:** You know that and you know me. But I also beseech people for the assumption of goodwill.

**Ms. Cain:** I was thinking that, but I just ask for some communication.

**Mayor Swiderski:** That is where I come from that I always assume goodwill until I stop assuming that, and that is in a handful of cases. But usually I assume goodwill, and I ask that of us because none of us here are or on the Village staff operate with anything other than that. When something goes wrong, the first assumption should not be to reach for a negative. And I am not saying you did. I am speaking quite more broadly. This definitely was not in your case, a broad menu of conspiracy theories which, in some cases, are elaborate to the point of confusion. But rather like what were they thinking? Why do I not send them an e-mail? I am amazed how few I get. There are ways to carry a conversation and elicit information before the assumption that mal-intent is made. That scale things down a tad.

**Ms. Cain:** Yes, exactly, just a bit. We all want to work together, so communication. Thank you very much.

**Mayor Swiderski:** Exactly. With that, back to public Board comments. I would like to begin to focus on the public comments that might be around the consent decree because when we start discussing the consent decree it is going to be a Board discussion so we would like to have your now so we can incorporate that into our discussions.

**Village Clerk Maggiotto:** Mayor, would you like the numbers from the election?

**Mayor Swiderski:** I would be pleased to see the numbers from the elections. That is a decent turnout: 1,299 people voted in total; 1,267 on the machines and 32 in person. Ms. Armacost, at 963 and Mr. Stugis at 997 have taken Trustee seats. At this point in time I would say God help them both. Mr. Jackowe, at 361, was not successful. And Judge DiSalvo, at 1,117 votes, is Justice once again. His challenger, Joe Scarglato, had 149. Thank you and congratulations.

For those who care, Rubio dropped out. Trump and Hillary both took Florida, Hillary took North Carolina, and Hillary and Kasich took Ohio.

**Mr. Metzger:** Congratulations to the candidates. I hope I will have a chance to speak on behalf of Marge at the next meeting at her last official go-round. That being said, consent decree. In 2008, September, Joe Sontchi from BP said we are about ready to start the cleanup. We, Hastings, are not the cause of a delay. If anybody tells you different, tell them

I said we are not. There are samples still waiting to be sent to the DEC before they can even start looking at any potential remediation. This is a problem: BP cannot keep driving this train. They are doing a bad job of it. The reference to the 2003 consent decree, many different locations in the 2015 consent decree. Yet on page two they say 2015 supersedes and replaces. I believe legally you cannot supersede and replace something and then refer to it as a document that has some legal standing. I think lawyers would drive a truck through that. Bad idea and it negates the entire contract as far as I am concerned.

Zoning. I know we have the attorney from Riverkeeper here. I want to know why Riverkeeper is involved in home rule zoning. There is no reason for it, we should not allow it, we traditionally do not. I do not know where the 65 feet came from. I do not care if it was thought it was going to protect us. We need to rezone the waterfront, and that needs to happen ASAP. There are developers knocking at the door. The \$1.4 million environmental trust: this is a great thing except it is a trust. At two percent, it is going to generate maybe \$30,000 a year. No?

**Mayor Swiderski:** No, it is not interest-only.

**Mr. Metzger:** So let us say we get to use it. There are still problems here. Whoever is administering that trust, the bank or whoever the agent is, they get to charge fees. So we do not get all that money, whoever is administering it does. We have to use that money to maintain somewhere between six and 14 acres of open space down there. I am pretty sure that is not going to go very far. It is a ridiculous amount of money. Riverkeeper also has the opportunity to ask for projects involving this money. So not all that money may go to us; Riverkeeper may have a hand in that pot as well.

And \$1.3 million Quarry Park money. Not all that money can go to Quarry Park. If we want to do any other projects on the waterfront that has to get disbursed among all these other projects. That is the Village trust as opposed to the environmental trust. A \$1.3 million water tower. That is matching funds; if we do not spend \$1.3 million they do not either. BP also has the ability to say we do not like the project you have come up with. Then we have to fight them. They have too much power in this. This is a piece between us and them. Here is a big problem: buildable area. We do not know what is under Building 52, we may never know until the building comes down or does not come down. What we may find is that after Building 52 comes down and they disturb all this property through the remediation, through the abatement, those piles are incapable of sustaining anything else. We may build virtually nothing on the waterfront and have to be prepared for that.

They say the backfill is going to be 11 feet above the local mean sea level, except that is not what it says in this document. They are going to backfill up to the existing level and then put

two feet on top of that. So which is it? There are inconsistencies, and that two feet gets distributed. If we want something higher, something else is going to be lower. Yes it is, Mr. Mayor. Check it out. It is bad, it is bad policy. They also say they are going to compact this fill so it will "substantially be non-yielding." I want to know how you compact fill over fill. That is why you put piles in and why you put pile caps and slabs down. You cannot compact this fill to support anything except the smallest of buildings. It is a problem without proper structure underneath, and we do not know if the DEC will allow anybody to drive piles through into the polluted land that is going to be left there.

Lastly, there is no remedy for nonperformance from BP except for us to go to a judge and complain. There are not monetary penalties, no time frame penalties. All we get to do is say you are not working fast enough. This is a problem. If they are going to clean this up we do not know how long this is going to take. They say we have \$300,000 to monitor. If this project takes 15 years, and it is already gone for 20-something, we got no money here. This money is a spit in the face to us. We need to renegotiate this contract.

**Mayor Swiderski:** Jim, may I ask if those are in electronic form that you supply those to me at your convenience.

**Mr. Metzger:** This is something called hand lettering in pencil. I can scan it and send it to you.

**Mayor Swiderski:** That is fine, I appreciate it. There were a couple points I was not writing fast enough the catch your drift.

**Ms. Goodman:** Because I probably be at the next meeting, I wanted to say some words of honor for Marge. Marge, you have embodied the model of what a good trustee is. You have always had an open door, an open ear and, most important, an open mind. You have always stuck to the courage of your convictions. I can remember many times you were the lone voice on the Board for many of us. You have been a great trustee, a good mother, a fantastic wife, and we will miss your wisdom. Thanks for your service.

Jim spoke to what is in the consent decree. I am going to talk about what is missing from the consent decree. In 2003, you had findings of fact and you eliminated those. On page four of the 2003 consent decree, paragraph 1.7, it laid out a list of planning exercises we engaged in like the RPA plan, et cetera. It says, "AR, Riverkeeper and the Village recognize that the preliminary redevelopment plan is conceptual in nature and may be changed significantly to accommodate site remediation, development needs, or other future developments." I would respectfully and humbly ask that you put that paragraph back in, because a lot has happened since 2003, like a draft LWRP and a waterfront implementation strategy document which

used to be on the Village website under the waterfront documents but disappeared and went elsewhere. I ask you reinstate that so the public can read it.

**Mayor Swiderski:** The name of it again?

**Ms. Goodman:** It is the waterfront implementation strategy document, March 1, 2004. I am sure Trustee Armacost particularly should read this because it is full of red ink about how to develop the waterfront and what the Village is expected to attract: the 250 units of housing that the consultants we hired advised we should do. They said that \$45 million were needed for the public improvements to attract the housing developer. But there was going to be a shortfall of \$24 million, approximately. They expected a \$10 million bond from the Village, but there was still going to be a \$14 million gap. That assumed the developer was going to kick in \$21 million. If you go to the next page, page 14, they said there was a \$17.75 million gap. I do not understand that math.

The long and short of it is, I do not think you want anybody relying that this is a document we think pertains to today's situation. This document unfortunately also called for the formation of a waterfront development corporation, or an IDA. That structure would require \$140,000 from the Village yearly to fund its staff. That organization would also have all sorts of taxing authority, eminent domain authority, et cetera. Hopefully, if you go to the current consent decree at page 18, there is a paragraph that deals with the Village and ARCO talking about transferring some of its assets and responsibility to a designee approved by the Village. My question, Mr. Mayor, is what are you talking about? Is it an LDC? Who is the designee? Because if this is a Trojan horse for a local waterfront development corporation I think we should know who the designee is. I think it is bad policy, it has not worked in Sleepy Hollow, and you should eliminate that language.

Building height, land use. We spoke eloquently at the beginning of the meeting about solar. What if we wanted a field of solar panels on the waterfront? On page 18 you talk about having a non-industrial use. Does that rule out a solar field? Hastings Electric Corporation. We could make a lot of money perhaps. A park and solar field. Some people favor that. I also think the whole business of 65 feet does not belong in there. No feet belong in there, and I do not understand why in 2003 the Village ceded zoning powers to Riverkeeper and ARCO. I do not think Riverkeeper should be in the business, or ARCO, of controlling our zoning. We say no zoning language, and rezone the waterfront now.

**Kathleen Sullivan, 17 Wilson Place:** This is a letter I sent to the Mayor and Trustees on February 28. "Dear Mayor and Trustees, please find some comments in article 4, site remedy in the 2015 consent decree. My assumption is that this is the goal of that article. After the DEC is satisfied their cleanup requirements are met, the Village wishes AR," or

ARCO I will use, "to elect the site grade to heights at which floodplain development can occur. The 2015 consent decree discusses two elevations. For one, elevation 14, ARCO either constructs or leaves behind financial resources for the Village to have constructed, the other elevation. Elevation 14 is not constructed as part of the consent decree, but certain activities need to plan for its future construction by developers. This is a sloped shoreline."

I started preparing my comment by focusing on how the proposed elevations in the consent decree were determined, using my experience planning floodplain restoration post Sandy for the National Park Service at the Statue of Liberty and Ellis Island. I have not been involved in the floodplain project using fill. As I researched using fill, I discovered that using fill to elevate grades is not permitted in some of the proposed flood zones on the site, and this was confirmed in phone calls with FEMA and the DEC. For you, I attached reference information.

I have several concerns. One, the consent decree appears to use the current flood map as the basis for its elevations and approach to floodplain development. FEMA has proposed revised flood zones for the New York-New Jersey area. The timing of those is such that New York City has appealed when Westchester County expects approval after FEMA addresses that appeal. The site is in four flood zones: 3, VE, coastal AE, and AE are coastal special hazard flood areas. Those areas have strict elevation and construction requirements. In the New York City area since Sandy, floodplain development has been guided by the preliminary FEMA maps. New York City's building department requires that they are being used in new and rebuilt buildings, and FEMA counsels to use the higher standard.

My second concern is that the standards and regulations for floodplain development, especially development in high risk flood areas, are evolving as regulators understand the risks to structures. For example, the construction requirements for high risk flood zones are becoming stricter because of building code revisions that reflect those concerns. For this site, that means construction in the coastal AE zone needs to follow the same requirements of the VE zone.

Three, use of fill on VE and coastal AE zones. Fill to support buildings is not permitted, and two feet maximum of non-structural fill is permitted. I provided maps to you showing these areas. My last point is that design elevations are too low. They do not meet FEMA requirements nor provide for climate change. This site is complicated, and I am not a floodplain expert. I would like to know what flood zone analysis was used to support the requirements of the consent decree. Importantly, based on the preliminary maps for most of the site the use of fill to support structures is prohibited, and non-structural is regulated. A number of questions remain about the process and goals going forward. The consent decree seems to fall short of current standards for floodplain development.

**Vasileios Bakopoulos, 351 Warburton Avenue:** I am sitting in the back, quietly observing. The first part of this meeting was more emotional. Stories, personal stories, from a lot of people in Hastings. Some of them almost sounded too emotional and desperate, asking you to stop something that is coming. The second part of this meeting sounds more logical, and there are a lot of experts here asking questions and presenting new arguments about the consent decree. What I am seeing here is two things. I am hearing a lot of people saying we do not want the character of this place to change, we do not want nature to be destroyed, we do not want the views to be blocked. The second piece is we want you to protect us from this. We want you to not delegate to other people, we want you to get ahead of the issues and not wait until someone brings a petition and asks for rezoning. Speaking about petitions, I am going to bring one more. We try to keep it constructive, but it is another petition with about another 200 people from Hastings that are asking these two things. The first one is to remove all the zoning language from the decree. The second one is to begin the procedure for public rezoning and planning for the waterfront. .

**Mr. Gonder:** There are a lot of things in the consent order that I do not like, but I know how negotiations go on. Three different teams, not two but three, and each one has their side, what they want. I learned from the school board that you always have to give something to get something. With three, it must be a lot more difficult. I am sure the Board gave directions to their attorney, and I am sure Riverkeeper gave instructions from their board to their attorney. BP had an attorney that had their instructions. Nobody ever wins in negotiations. I learned that a long time ago. What happens is we have everyone giving instructions. You say we cannot give this up, we cannot give that up. But your attorney says we could have lost this, we gained this. Riverkeeper wanted this and BP wanted this. Everybody was not happy, but we got something we all agreed upon. Now people want to throw it out the window. This means we are going to go for another two years or three years. Most of us my age will never see this place cleaned up or anything on it because we are too old, because of these negotiations and whatnot. In general we are not happy with it, but I wish you go and vote for it.

**Steven Siebert, 113 Hamilton Avenue:** I confess to not having a lot of well-formed opinions about this. I share a lot of the sentiments that were raised earlier. I am concerned about their being zoning regulations in here because if nothing else it sets a sense that developers can seize upon and say this will shape places elsewhere on the waterfront. I am increasingly concerned. Even when we first had a meeting about development on the waterfront people were talking about a 100-year floodplain. I said we should be talking about a 500-year floodplain. It very well may be that we cannot build anything on the waterfront, and we should consider that possibility before we make this kind of decision, if it has any impact.

It is important that we not rush into this. I know we need to keep moving ahead on the process, but the consent order between BP and the DEC will continue remediation of the waterfront apace without there being an immediate decision on this consent decree. I am not asking that we take another year or two to do it, but we should take more than a couple weeks because too much is at stake here, and by delaying this and considering all these issues we are not delaying remediation on the waterfront.

In terms of the specifics in the deal, there are a lot of things I am concerned about. But one thing that has not been mentioned is a question. My understanding is that BP is giving \$300,000 to cover testing and oversight. But the DEC says, at least in my conversations with them, that BP is perpetually liable for water quality and non-aqueous phase liquids on the site. It seems to me that if they are perpetually liable for that why should we be accepting a cap on legitimate expenses. If 50 years from now something comes up there, and I am not saying anything will, we should not be paying for that because BP has perpetual liability on that and none of that expense should come to the Village.

**Mairead Daly-Diep, 385 Warburton Avenue:** I want to speak to the safety on Warburton Avenue. As all of the Trustees and Mayor Swiderski is aware from my e-mails if not for other reasons, there was a crash on Warburton Avenue on Friday night which was pretty horrific. Luckily everybody walked away or was rolled away. There was one person injured and as far as I am aware when she got to the hospital she was stable, but it was a very lucky situation. It could have involved a couple of fatalities. I reached out to the state after this happened because in the past when I have brought up issues with safety and traffic issues on Warburton Avenue I have been told it is a state road, you have to speak to the state. I wanted to share with everybody the response I got to my very well thought out letter that I spent a long time crafting and which explained I was aware that it was a state road and fell under their jurisdiction. This letter was written to Commissioner Pisco . I explained that yes it is also a state issue and we do have to work with making people realize they cannot flout the law on Warburton Avenue, which many people feel like they can. I thought I made it obvious that what I was asking for was cooperation from the state.

**Mayor Swiderski:** County.

**Ms. Daley-Diep:** I am sorry, from the county. I beg your pardon. I think I said "state" several times. Scratch "state," and it is "county."

My response was "Good morning. Thank you for your note. Although Warburton Avenue is a county road, speed limit and traffic rule enforcement are the responsibility of the local police department. Thank you." At this point the county does not seem to want to help us at

all. Several members of the Board, including Mayor Swiderski, told me they will be willing to work with me and everybody else on this after the election. I am looking forward to that, but I wanted to put it on the record and let everybody know that this is a severe problem. It is not just one incident that happened on Friday night. There are constantly speeders up and down the road south of the bridge on Warburton Avenue. There are cars passing stopped school buses with the stop signs out. It is not once in a blue moon, it is happening constantly. People are running the red light at Warburton and Washington constantly. It has gotten out of control. A lot of these drivers feel like it is their right, they can do whatever they want on that stretch of road. We have to do something to change that mentality.

We need to get the county on board with this because there has to be some traffic calming put in there. It cannot be just down to our police department. They cannot have someone on that stretch of road 24 hours a day, it is not practical. I hope everyone will support us moving forward with this. It is an area that has been ignored for some time and I have seen the situation on the road get worse and worse. I not only live on Warburton Avenue, I work on Warburton Avenue. I work for Family-to-Family, which now has this wonderful space on Warburton Avenue across from Antoinette's with big storefront windows. Several times a day there are near misses right in front of us. The other day, I thought a car was going to come right through the window. It is really getting out of control.

**Mayor Swiderski:** An aside. Elections are clarifying events. At the end of an election there is a winner, there is a loser, but there are also issues raised. During the course of an election, typically in the last two months, I am sensitive to the appearance of putting a thumb on the scale during the election by choosing a side on an issue that may have passion at the moment and maybe in the political discussion. I am sensitive not to appear like we are pandering to help a trustee up here or candidates we favor because we act, in those two months, in a way that looks like it is responsive to election demands.

This is a hot issue, a passionate issue, and it is also one we began working on several months ago with the designation of the Transportation Working Group, which is focused on safety. It is going to assume a greater and greater focus for us. Now that we are past election day we can be more clear on our intent on pursuing that without it looking like we are trying to tilt the field in the last months of a campaign. So we hear you. That was a consistent theme in the door-to-door. That, and issues like crossing guards, are now into the hopper for discussion in a serious way. Not that it was not serious before, but in a way that can feel free of politics. \

**Trustee Lemons:** There is one thing that was not responded to in the public comment that needs to be addressed. That is the question about the use of public e-mail lists. I think that has to have a response now.

**Mayor Swiderski:** Sure. I have an e-mail list with about 1,200 names on it. I have been sitting here 13 years. Over the years I have collected e-mails and added to that list from a number of sources. When I first ran for mayor I bought lists. You can go out there, from list brokers put in 10706, pay a nickel an e-mail, and buy lists that are segmented for your community. If anyone cc'd me on a general interest e-mail going around in election season I, without embarrassment, harvested names from that list and would put them into my database with a notation about what the issue was that people were interested in. When I send out an e-mail from that list it has an "unsubscribe" button in it and people are dropped permanently from that list should they click on it.

I understand it is an intrusion. It is an intrusion that stops upon a first request. And it is a way people reach out in this day and age. I will continue to use that list. I have not had a chance to add much to it over the last few years because I am busy up here, but it was and is a powerful tool, it is an advantage in a campaign that I spent years building this thing. I do not know if that is a sufficient answer. But I should add there is a Village e-mail list, it is 2,800 names long, it is maintained by a service up in Massachusetts. We do not have access to it. When I send out one of my Village e-mails to the community I log onto an interface where I click a button and it goes out to that full list. I do not know who is in that list. There is no demographics collected on that list, it is just raw e-mails. My e-mail list is attached to people's names so as I collected them I put them against people's names, what they are interested in, et cetera. But it is through personal efforts over the years.

I will also say that on occasion in elections I have shared that list with fellow Democrats. Nothing in that is illegal, immoral, unethical. It is common practice now in how you run a campaign. I have never felt I strayed into anything wrong in doing that, always with the request that people include a line that if you do not want to be on that list to please be dropped from it. That is full disclosure. I do not know if that satisfies.

**Trustee Lemons:** The key thing is to be clear that there is no commingling of the public list, there is no access to it, and that that would be a huge breach if that were to happen.

**Mayor Swiderski:** Yes, it is a much larger list maintained by the Village. If you see something from me it is not from "Mayor at." It is from either a political e-mail that had a Hastings forward in it or my own name, depending on how it is being sent out.

**Trustee Walker:** My list is considerably smaller than Peter's, and it is people I have had personal contact with and certainly is not comingled with e-mails I get on my Trustee account. These are people I have gotten personal e-mails from, for the most part. I do not use it very much, and I used it last night.

**Mayor Swiderski:** I used it, I think, twice this season.

**Trustee Armacost:** My list is a personal list, and it might not be quite as long as yours but it is pretty big and it is also from people in the Village. The other thing you should mention is that the Village list is a list that people voluntarily subscribe to and they can unsubscribe from it.

**Mayor Swiderski:** Before resolutions, I am going to turn to Paul Gallay. As president and spokesperson for Riverkeeper as well as intimately familiar with our consent decree and a signer on it, Paul is here tonight at my request. The other cosigner, BP, was not able to be here tonight. They are watching the videotape and know we will be approaching them with the issues and seeing if tweaks to the language are appropriate in some cases. You heard some things tonight, and if you want to say anything or respond or explain, it seems only fair.

**Mr. Gallay:** Riverkeeper has been involved in this case since 1969. We brought a federal lawsuit in 1994, we were a party to the earlier consent order that was mentioned. This has the highest level of PCB contamination of any site. It is one of the two most important PCB cleanups on the Hudson River, along with the GE cleanup in the upper Hudson. I do not want to oversimplify what is a complicated matter. There are two different operating units. Our concern has always principally been the operating unit on the river. This issue of Building 52, this issue of the height of any structure that is put in that footprint, are issues that Riverkeeper only has a stake in. We are one of three parties to this agreement. The previous agreement had the limitation on height in it. It is something that all the parties own, I am not trying to disown it, but this is not something that we alone sought.

The concerns within the Village are principally from the upland; our concerns are principally from the water. There are a lot of properties on the Hudson you see when you are a mariner, So the question of building height is something we have a stake on. Not a unique stake and not a stake to the exclusion of what the Village has had to say or what the site owner has had to say. I know there are people who want there to be a lower height restriction, whether by eliminating the 11 foot portion of the agreement or by lowering 65 foot. There are people who want there to be a higher restriction, and there are people who want there to be no restriction at all. I would suggest that the term that is in this order and was in the previous order provides some flexibility as to what the Village does, while certainly imposing a height restriction of 65 plus 11, you should say.

The idea of Building 52 coming down versus not coming down, it seems to us there is a very significant level of contamination under that building that, based on my consultant's advice and based on my own experience with the DEC and with other cleanups, would not be

feasible to properly protect the surrounding areas from if you left the building up. There is a lot of value to an effective cleanup if you remove the building, considering the high levels of contamination under the building. I know that will make us popular with some, unpopular with others, but our goal is a full and prompt cleanup. I imagine there is somebody who is at least snickering inwardly because of the idea of a prompt cleanup at this stage. We feel there is enough commonality between this agreement and the one that was previously in place, enough negotiation between the three parties, enough give and take, enough continuity with previous agreements, enough buy-in from the state to make this a good deal to move forward with. That having been said, I realize, again, we are one party. We have the stake we have, the Village has the stake it has, the community has a stake it has, and the site owner has its own interest. But this is not just *a* PCB contamination site, this is *the* PCB contamination site, and we are looking for a turning of the corner with this agreement.

**Mayor Swiderski:** Thank you. Maybe I should save it for the discussion during the consent decree, but I want to understand whether a height limit is zoning, or not.

**Village Attorney Whitehead:** In this state, it is not zoning. I will explain that later.

### **17:16 HOME RULE REQUEST – HOTEL/MOTEL OCCUPANCY TAX**

**Mayor Swiderski:** This is the vampire that comes to light every year.

**Village Manager Frobel:** It is, Mayor, and last year they came as close as they have ever come. It passed the general assembly, only to be vetoed by the governor. This time the group feels fortunate. They think there has been some modification, some lessening of the governor's position on it. They are confident there may be some change to it that will allow for suburban communities in Westchester. Although Hastings will not benefit directly from this, this is in the category of supporting our neighbors in their effort to have this home rule law established.

**Mayor Swiderski:** So every year, because the bill number changes we have got to go through a new resolution with a new bill number. This is otherwise identical.

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

**RESOLVED** that the Board of Trustees of the Village of Hastings-on-Hudson hereby approves a Home Rule Request for Assembly Bill No. A209-A and Senate Bill No. S6892 entitled “AN ACT to amend the tax law, in relation to authorizing the town of Greenburgh to

adopt a local law to impose a hotel/motel occupancy tax for hotels not located in a village; authorizing specified villages in the Towns of Greenburgh and Mount Pleasant to adopt a local law to impose a hotel/motel occupancy tax in such villages; and providing for the repeal of such provisions upon expiration thereof”; and be it further

**RESOLVED:** that the Village Board of Trustees of the Village of Hastings-on-Hudson hereby authorizes the Village Clerk to certify a Home Rule Request form and forward the required copies to the New York State Assembly and Senate.

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

**Mayor Swiderski:** This is an act of love for our communities around us, since I do not see a hotel here anytime soon.

**18:16 COMMUNITY CHOICE AGGREGATION/WESTCHESTER SMART POWER PROGRAM CHOICE OF DEFAULT OPTION**

**Mayor Swiderski:** We had question and answers earlier on. I telegraphed my feeling. This is Hastings, and it would certainly seem wrong to go brown. But far more importantly than it just being Hastings, there is the moral argument about the preeminent crisis of our time, without a question. This is a move we should all be collectively making in this direction toward renewable sources. On top of everything else it still saves people money so I for one would cast a vote in favor of this.

**Trustee Armacost:** I absolutely agree. We have been the leading edge on a number of sustainability initiatives, including the LED lighting initiative, the plastic bag ban, the Green Building Code, solarize, of course. This fits in with those other initiatives, and I fully support the green proposal.

**Trustee Lemons:** I was happy to hear, when I asked about how this might be more than a symbolic move, that this could engender the development of renewable generation in New

York State, which would be terrific. We contribute to that, that is a good thing to be doing. I agree with all the other things that were said. It is important, and it would be totally inconsistent of us to not go this route. But I am also happy there is a real consequence to this and it could be very helpful.

**Trustee Apel:** I am delighted that this has come to us and that we are able to do it. You know how I feel about renewable energy. I am going to be putting panels up on my house. It is what Hastings is all about, and how we feel and where we are going, and I support it.

**Trustee Walker:** I will echo all my colleagues. I want to support it as well, and am comforted in knowing that if anybody wants to opt out they can. That is enough of a relief valve if there is anybody who does not like this. We are making a statement, and it is an important statement to make.

**Trustee Armacost:** And we are saving money.

**Trustee Walker:** And we are saving money all at the same time.

**Mayor Swiderski:** Sadly, Mamaroneck had its village meetings Monday night so we are not the first village to do this. Apparently New Rochelle will be the first city to go, and there was a town up-county that is doing it. There is a group of us going this way, and it is exciting and terrific.

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

**RESOLVED:** that the Mayor and Board of Trustees choose the “green” renewable option as the default supply rate for residential and small business utility accounts in the Village under the Community Choice Aggregation/Westchester Smart Power Program.

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

**Mayor Swiderski:** Is that not as of May we are going to be 100 percent renewable?

**Trustee Armacost:** We almost missed this. The Board acted in a way that allowed for public input, but also enabled us to, under a very short period of time, include ourselves in this scenario.

**Mayor Swiderski:** We almost missed this because the e-mail traffic on this was like any of the junk e-mails you get from ESCOs trying to get you to buy into them. It was so complicated we just ignored it because we figured it could not possibly work for us. Then Niki came screaming in at the last minute saying, wait a minute, what is going on here? Then Dan piled on and we bought in last minute. Here we are, so thank you. Dan, while we are on the topic of sustainability you want to give the numbers on solarize?

**Trustee Lemons:** Yes, three of us up here are going to be 95 percent, and I do not know what your percentages are, generating our own power. We will not be using much of this renewable power that we are going to buy, but the campaign ends on the 21<sup>st</sup>, and we are at 65 contracts. Forty-two of them are in Hastings.

**Trustee Armacost:** Forty-three.

**Trustee Lemons:** So we have tripled the number of solar installations in Hastings in just a couple of months. That is just the residential side. On the commercial side, and those tend to be much bigger installations, we have some interesting possibilities in the works which will give us some significant local generation of solar power. The numbers are impressive.

**Trustee Armacost:** We are apparently a very unusual community. Sunrise Solar has not seen this kind of response in any of the previous campaigns so they are thrilled.

**Mayor Swiderski:** That should not be a surprise. We have gone from around 20 installations to at least 63, probably closer to 65 when all done, in a two-month period. That is terrific, so thank you.

**Trustee Armacost:** You can still get involved. Is everyone clear that we have reduced the pricing down to a tier four level?

**Mayor Swiderski:** As cheap as possible, with the offer.

## **VILLAGE MANAGER'S REPORT**

**Village Manager Frobel:** The Trustees received my budget last week. If left unchanged it would require a tax rate increase of less than one percent. We were able to do that because of the growth in our assessed values and the fact that several of the non-property tax revenues have grown over the last several years. The tax levy will increase, but it is compliant with the state law. We are able to meet that standard because of our carry-forward and the growth in our assessed values. Because of that we have a tax rate increase that would go up 0.37 percent. For the average property owner, taxpayer, he would see less than a \$20 per year tax increase.

We are pleased with what we put together. We have a series of work sessions ahead and a public hearing on April 6 on the budget. Tomorrow morning we will put the entire budget out on our homepage and mail it out to people through an e-mail. The staff has done a good job. It is a budget that is going to give the Trustees some room to work. Already we are looking closer at revenues, we are looking at some expenses that have changed even over the last several days since this budget was printed. We are proud and optimistic that the budget will be one that will serve the community well over the next 12 months.

**Trustee Armacost:** Frank, is it possible for you to send us in spread sheet form again?

**Village Manager Frobel:** Sure. What I like to do is give you the full budget with the narrative first so you have an opportunity to read it. A lot of work goes into that narrative. Part of this budget is a program budget, and we would like people to focus on the level of services and standards we meet rather than strictly what we spent last year or the year before. I realize that becomes the guideposts, but we need to focus on our programs. But we will get you that in a spread sheet.

A second item. I neglected to mention in the last meeting when you approved the Farmers' Market use of our Village Hall parking lot that they do pay a fee of \$200 per event. That is unchanged. It comes faithfully, every month it is paid.

## **BOARD DISCUSSION AND COMMENTS (Continued)**

### **2. Downtown Advocate Report**

**Mayor Swiderski:** The Downtown Advocate report I waived because I did not think there would be time for it. Barbara has asked me to mention three upcoming events: a Friday Night Live on April 8 from 6 to 9 p.m., with a follow-on late night at the Roadhouse that involves whiskey and poetry; a community cleanup on April 30 and May 1, also including a

downtown component with beautification; and the return of the beloved Spring Thing May 15, Sunday 12 to 5. There will be more on all these activities and e-mails up ahead.

### **3. Proposal for Welcome/Banner Sign at Five Corners**

**Village Manager Frobel:** Susan has taken the lead on this. We provided you some mockups as to what this sign would look like. This would be a permanent sign at the Five Corners that would be very nicely done that would allow the placement of banners. Ever since we lost the ability to put banners across Five Corners we have struggled with makeshift banners in front of the old A&P. This would be a more permanent structure, it would be a lot neater, and, a little more orderly.

**Village Clerk Maggiotto:** I wondered if there was a thought that we should go ahead with it. The next step would be to do some mockups of colors and styles if you like the idea.

**Trustee Armacost:** What you have chosen is lovely. It would be fantastic to be able to pick up the welcome plaques as you come into the Village along Farragut and across Ravensdale so there is a feeling of connection between the different signs. The other thing to make clear to people is that it will be put on Village property.

**Village Clerk Maggiotto:** I will do a little more work on it if everyone is in agreement.

**Mayor Swiderski:** I think it looks great.

**Trustee Walker:** I think it is terrific, and I was pleased to hear it was Village property. I like the idea of using the same blue perhaps, but then maybe you can get a few configurations and we could look at the shape of it.

**Trustee Lemons:** I hate to be a dissenting voice here on style, but I am not a big fan of the baroque sign style. But I get what you are saying about consistency. It would be interesting to look at some other kinds of harmonious styles.

**Trustee Walker:** It does not have to be wood either. They can do a metal sign.

**Trustee Lemons:** Doing this could make that corner feel like there is some order to it and serve that purpose we want much better. But it will have to be managed, so how will that be managed in terms of who gets to put their sign up, how long can it be up there?

**Mayor Swiderski:** We need a policy.

**Trustee Apel:** But we always manage banners through the Manager's office. People would apply.

**Mayor Swiderski:** All right, so that sounds like an endorsement of the idea.

**Trustee Walker:** I do not want to delay this, but we could bring in the designers who did the directional signs. I worked with them.

**Village Manager Frobel:** That is who did this for us.

**Trustee Walker:** No, we are working the Sign Extreme, but previously we worked with these graphic designers who specialize in signage all over the country, Donald Meeker from Larchmont. He did the designs and Sign Extreme produced them.

#### **4. Consent Decree**

**Mayor Swiderski:** In terms of timing, it is 10:45 and we do not have a deadline. We are going to talk and get our questions answered until we are done. I am not going to drag this out a minute longer than it needs to be dragged out. On the other hand, I am in no huge rush. If it takes a month more for us to go through questions and answers that is all right. This is a process that deserves to get the answers we are seeking. I will ask the Board to bear through probably about 45 minutes tonight because that is about all we can reasonably handle, then continue this discussion. One thought is we can do it at the start of the March budget discussion, or we can just push it to the next Board meeting in April.

**Trustee Armacost:** What about the fact that we will have a new Trustee? Should he not have an opportunity to be part of the discussion?

**Mayor Swiderski:** Sure, he picks it up and we continue talking about the consent decree. He has got minutes, he goes through, he educates himself. If he comes with questions at the next Board meeting they are added to the hopper and get answered. We are not going to restart this discussion on his behalf, but we will continue with him at the table.

**Trustee Armacost:** Can we at least make sure we get Marge's points of view because she has been with us throughout this whole period.

**Mayor Swiderski:** No, absolutely. I am not suggesting cutting off Marge. I am just taking the time pressure off so nobody's eyeballs are bleeding at midnight, but we have a sense we can continue on. So let us start, and Marge why do you not start?

**Trustee Armacost:** May I make one other suggestion, which is that if anyone has any questions for our friends from Riverkeeper that we ask those early so if he feels like slipping away.

**Mr. Gally:** No, I am not going to leave on you. This has been going around since 1969.

**Trustee Apel:** I did go through this line by line. Since this has come out there has been a lot of discussion. People have talked to me, they are talking with other people. I wanted to address the concerns I have that these people have mentioned to me. Then I would like to go over it with you in an orderly fashion. Some are questions we may not be able to answer tonight, but there are concerns on the definitions and stuff like that. We can decide to not have an in-depth discussion on all these things and opt to discuss them at a later date.

Starting at the beginning of the consent decree, there is no stipulated findings of fact and a lot of whereases. What was brought up was that it would be important to stipulate at the beginning that there were a lot of other plans and that they were all conceptual in nature, but that we need to not be held by them and not to rely upon necessarily the specifics of the previous studies, but instead to allow for the recent ones. There were newer ones t and we should be considering those. That was one issue that was brought up by people that we should be adding.

Another thing that was brought up generally is that there a lot of concerns about PCBs, we have had a lot of discussions. But it might be helpful to have an educational series or discussions with the public, because we have a lot of new people in town, as to what we are talking about. What are these PCBs, what are the remediations, what are the newer things? If you have just moved into town recently, in the last five years, I do not know why you would miss the waterfront and the discussion but you will have missed the education that you needed, the background on that. One thing which is not here, which is an aside and I do not want to get overly into it, is general information on the lost revenue we have not seen from waterfront over the years because the buildings were taken down. Also, a calculation if Building 52 does come down, then will there be a certiorari proceeding, will the taxes be lowered, and how long is that going to affect the taxes. That is something to keep in the back of our minds.

Now I would like to go over page by page. Again, discussions that were brought up under 3(1)(f): where did the 11 feet come from that they were discussing about the developable level, the portion of the site? Where did that come from, what is the authority for it, and are we going to have to change this? FEMA will be making changes. Who is going to pay for those future changes if we agree to a particular base here, then FEMA comes in and says no, it has to be something else, and the developer says I only have to do 11 feet, then who is

going to pay for those additional feet? We already know that FEMA is going to be coming in with higher regulations, so it is something we need to start thinking about.

**Mayor Swiderski:** To clarify, 11 feet is the height to which fill is added on the developable portion. But it does not imply that that is where development can begin and does not imply anything other than that is what we are asking BP to put down and they are saying they are consenting to. We asked for more. In the end, through negotiations, they agreed that they would engineer the site so it could handle up to 14 feet, but they would only lay down 11 feet. Now, if a developer comes in and wants to put in 17 feet it is their job to engineer it to handle that and lay down that extra fill. It is not the Village's right, or BP's. And the 11-foot height was driven by both the FEMA maps we were using at the time and discussions back and forth with BP and Riverkeeper trying to come up with a height that they would live with; that they would be willing to pay for the fill up to that point.

**Trustee Apel:** So they are willing to pay for the fill.

**Mayor Swiderski:** To 11 feet.

**Trustee Apel:** Starting from ...

**Mayor Swiderski:** Wherever it is. Wherever the base is at this point in time. So if the base is 7 feet they add 4 feet, if it is already at 11 feet they are obligated to put another two feet cap on that. But it has got to be 11 feet.

**Village Attorney Whitehead:** Elevation-wise.

**Mayor Swiderski:** Elevation-wise up to 11 feet. The smooth table, 11 feet high.

**Trustee Apel:** So everything is going to be even across the property.

**Mayor Swiderski:** Conceptually. There is some flexibility baked in to the consent decree that should we want some contouring down the road there is flexibility to do that. But 11 feet is the objective here.

**Trustee Walker:** Can I add a side note, since BP is listening in on this? Kathleen Sullivan's points are really important. I would love at the next meeting if they could respond to those comments.

**Mayor Swiderski:** I think they are entirely salient. They are actually the most important. I should not say that, that is mean. But they are really important points.

**Trustee Lemons:** Before you go on, maybe I have the wrong conception here but I do not think I do. This has come up already in some other comments from the public. The fill is one thing, but buildings are not going to be resting on that fill. There is no way. When they talk about supporting up to 14 feet of fill that is what it is; it is not supporting that and some structure on there. Their piles are going to have to go way down to support any substantial building on that site. It is completely independent of the fill question. There is no way they are going to build on that fill. That is not going to hold a building.

**Mayor Swiderski:** Other than a light structure.

**Trustee Lemons:** A structure which was described even within the 100-foot zone. It could be a boat house or that kind of thing.

**Trustee Armacost:** Or solar panels.

**Trustee Apel:** Now I am going to page six, 4.1A, line seven, discussing here the site remedy: "The parties agree that the manner and method of achieving the environmental remediation including, but not limited to, the engineering, design and implementation of excavation, bulkhead and/or sloped shoreline, water treatment system, hydraulic controls or support, restraining cover or control systems shall, unless otherwise provided herein, be left to ARCO's discretion." That is a little vague in terms of what does that mean.

**Mayor Swiderski:** Read the rest of the sentence: "... further provided that the Village and Riverkeeper shall be afforded a reasonable opportunity to review and comment on the draft remedial designs."

**Village Attorney Whitehead:** And it has to meet the requirements of the ROD.

**Mayor Swiderski:** It is giving them some flexibility, but with our input, review and comment.

**Trustee Apel:** So am I misreading this?

**Mayor Swiderski:** It is a long sentence, but our interests are preserved later on in that sentence.

**Trustee Apel:** "We were able to review and comment on it." So if we disagree with it, because it says it is left to their discretion they can decide. In other words, they are going to say whatever it is in reference to any of these things, but they have to come back to us for our approval?

**Mayor Swiderski:** Right. And remember the dynamic here. This is an interaction between BP and the DEC, but we are an interested involved party. In fact, all that Trustee Walker is going to be working on for the next year is that sentence because of the shoreline design element of that sentence. They have stated intent to cooperate, and the DEC ultimately will enforce that cooperation because it is their money paying for that shoreline grant that Meg is going to be using. We do have an opportunity for input here that the DEC will effectively enforce. We are a stakeholder here. While it does give them flexibility and power to design what is their cleanup after all, we do maintain a voice here.

**Trustee Walker:** But nowhere in the document does it say they will take the Village's consultants or Village's recommendations into account before creating their remedial plan and site plan design. They do not say it, but you have discussed it with them. They understand that is what we are going to do. Just one other thing. It is going to determine our reaction to their design.

**Mayor Swiderski:** Right. But their engineering design process has begun so there is some time constraint. If you want to participate in the engineering design and opt for that input it needs to happen before it is 100 percent done.

**Trustee Apel:** Because it says "... shall be afforded a reasonable opportunity to review and comment on the draft." But I hope it is reasonable; I guess it is reasonable. Sometimes these terms and forms are very vague. It goes down further with them saying, "They may consider cost-effective of remedial activities." Yes, I think they may. But what we want from them is to make sure they do not throw it out totally because it is not cost-effective to them. We want the remedial activities regardless. It may not be cost-effective, but it may be what is needed to remediate any of these activities. I am sorry if it is not cost-effective for them. I am a little concerned about that. They can consider it, but they still have to do it.

**Trustee Walker:** There may be a variety of ways of doing it, though. They may select one that is more cost-effective than another.

**Trustee Apel:** Right, but they still have to do the activity. They may not consider it and say we are not going to do it.

**Trustee Lemons:** The concern is that there is not a way to slip the DEC's requirements. I do not think there is room to do that.

**Mayor Swiderski:** But the decree will never trump the order. That is a standing document. We can huff and puff all we want here, but ultimately it is the DEC.

**Trustee Apel:** They just have to do it, they have no choice. That is it.

**Mayor Swiderski:** Frankly, I do not even know why they bother saying that because it was used as a criteria in the order on how they chose the overall approach. It was a cost-benefit analysis.

**Trustee Apel:** Unless it just should be eliminated, just take it out.

Building 52 I had already mentioned earlier. That was on my concern with the demolition. That is just a side thought we have to be aware of, what happens down there. People do not realize, I am in the real estate business, that when you have totally vacant land you can say it is totally vacant and it gets a totally different taxing than you would even if you have one building on it. So we have to be very much aware what the cost is going to be.

**Village Attorney Whitehead:** It will not necessarily even have to be a tax cert. When a demolition permit is issued assessments are automatically adjusted because the improvements are no longer there. We figured out that on the other lots they did leave some value on the improvements that remain, the foundations or something. I thought it would go just to the land value and it did not. But it goes down, it does not have to be a tax cert. I do not know that they are valued that highly right now.

**Trustee Apel:** But you do realize there is going to be a loss.

**Village Attorney Whitehead:** There will be a loss in taxes, just as there was with the other buildings.

**Trustee Apel:** Part of my question with that is, if they dig in there and dig up the piles and do all sorts of things, whatever they are going to do down there, there does not seem to be a need to repair what they destroy. If they dig down and take out the piles and do all sorts of things and it prevents further building, and we are left with a piece of property that is not buildable, what is the recourse that they have now made it worse?

**Village Attorney Whitehead:** They hurt the value of their own property. Their intention is to some day be able to sell at least portions of this to a developer. So they would be hurting themselves if they left it in an unbuildable state.

**Trustee Apel:** No, I agree. And in reality, they could leave it fallow forever. They could dig it up and just leave it like that. But there is no discussion in here at if they do anything like that. I wanted to bring that up that it is not in there.

Continuing on, page seven under floating walkway and shoreline renovation: "Riparian vegetated buffer and additional grass area," who maintains them and replants if they do not grow? And is this under the OU-1 ROD, which one?

**Trustee Armacost:** Is that not 7.3 on page 17?

**Trustee Apel:** No, that is finances and insurance. That is not the land.

**Mayor Swiderski:** It does not speak to the grass. It does not speak to the vegetation.

**Trustee Armacost:** This says "bulkhead and cover maintenance."

**Mayor Swiderski:** We should confirm the definition of cover because I do not know if that includes vegetation or plants.

**Trustee Armacost:** The vegetation is in the paragraph above, which is 7.2: "Village responsibility for open space maintenance."

**Village Attorney Whitehead:** But this is the sloped shoreline.

**Trustee Armacost:** It says "sloped shoreline": "Nothing herein shall be construed as imposing on the Village any responsibility for maintenance of the bulkhead or cap, including the sloped shoreline required to be installed by the company in accordance with section 4.6, 4.8, 4.9 and 7.3."

**Village Attorney Whitehead:** And 7.3 says that they have to maintain the bulkheads, the sloped shoreline, armoring and erosion control.

**Trustee Armacost:** That is why I raised that. If it is not comprehensive enough then we should look at that language. But that is where I assume that was coming from.

"Disposal of excavated soil and fill," on page seven, 4.5 says "AR shall use all responsible efforts to maximize the use of barges and rail to transport material excavated from the site, to bring equipment and materials to the site." I am concerned about "use all reasonable efforts." We should know in advance if there has been any restrictions against barges and rails other than that. I think we should be requiring them to use barges and rails. They should be required to use them, and then if they have a problem come back to us. But not say they "use all reasonable efforts" because if on a particular day they do not have enough to barge out and they decide we will just stick it on a truck, that should be their first thing.

**Trustee Armacost:** The rail issue came up the last time, and did the MTA not have an issue with that?

**Mayor Swiderski:** It is impractical. They would need a spur to get to the site, and there is not time to build a spur.

**Trustee Armacost:** That is my understanding from the last time. But barges was something Riverkeeper had an opinion the last time, at least for the material that was toxic-ish..

**Trustee Apel:** If we have information about what they can or cannot do, then we know about it. But to say they should use all reasonable efforts is a little vague.

**Trustee Armacost:** The way I understood your point was, it looks as if, when you read this, that the stuff is going to go out on barges and rail. But if it turns out you cannot do rail because of the MTA, and you cannot do barges because of Riverkeeper, then it is going out in trucks. We need to be very clear.

**Mayor Swiderski:** Does Riverkeeper have an opinion here?

**Mr. Gallay:** We are not going to stop whatever is the safest feasible means of disposing of the material.

**Mayor Swiderski:** This is written this way because the engineering around the use of barges has not been designed. They do not want to say 100 percent it will happen because something theoretically could make it difficult to be possible. But in terms of cost-effectiveness, in terms of the limitations we would place on truck traffic, the truck traffic to remove that much fill from the waterfront would be incredible. The amount for Building 52 is bad enough, but you would be talking thousands of truckloads and that is not something that would occur without the Village's participation. And we would fight that tooth and nail.

**Trustee Apel:** Why do we not just say they are required to use barges?

**Mayor Swiderski:** Because there is a conceivable scenario where they cannot because some engineering constraint prevents them from being able to do so. They are just covering themselves with language.

**Trustee Apel:** Then that is the way it should be said.

**Trustee Armacost:** Yes, I agree with Marge.

**Trustee Apel:** That they have to use barges and rail unless they come back with whatever legal thing that they cannot. Let them prove it to us, OK?

**Mayor Swiderski:** All right.

**Trustee Apel:** On page 11, D(i), there is a lot of description here about, again, the fill and all that other information. It would be very helpful if there were a diagram. You read this and glaze over; a pictorial here would be helpful.

Then I went on to page 12, "remedial monitoring," 4.10. While we are getting \$300,000, what happens if the process drags on, anything collapses, there are any particular problems? The money runs out due to complications, will the amount be adjusted upwards to compensate for the delay? In other words, this is supposed to be money to pay for a monitor.

**Trustee Lemons:** That needs to be clarified, again based on a comment that was made earlier this evening about what that money is for. It is a badly labeled section because as I understand it, that is not the monitoring that is going to be going on 24 hours a day until it is done. That is going to be BP's responsibility.

**Village Attorney Whitehead:** Under DEC oversight.

**Trustee Lemons:** Yes, under DEC oversight. This is money for the Village to have an independent person or persons to monitor that.

**Mayor Swiderski:** Right, and it is broader than that. We had a similar clause previously, and the money was used for engineering studies. A small chunk went for a planning consultant at one point. But it was ours to monitor and observe to make sure it was being done correctly. Let me see if there is some contract clause we can work in if it goes beyond some period of time. That may be tricky. We had a pool of money previously that was exhausted, and BP did refill because we needed further engineering work done. You cannot count on that, but let me see what the reaction to this is if we put in a time limit here; that it exceeds three years we get more.

**Trustee Apel:** On page 13 it talked about the Village Attorney fees. Having been married to a lawyer, I am wondering if \$40,000 is enough. I presume it was negotiated in pre-history and they are happy with that.

**Mayor Swiderski:** This was a number that Attorney Chertok, the Village and BP agreed on. I think it is largely sufficient. If it is not that amount it is not appreciably more.

**Trustee Apel:** OK, because otherwise we are responsible for this.

On page 14, to clarify, I think you mentioned this, under 6.1 and 6.2, the Hudson River Environmental Trust Fund, are we entitled to use the principal and the interest?

**Mayor Swiderski:** Sure.

**Trustee Apel:** Just one more thing I want to clarify. It talks about, in 6.2, there is going to be some sort of trust agent. I would like to know what trust agents get paid. I think we should be knowledgeable because you do not want surprises later.

**Mayor Swiderski:** I can get that for you. I will tell you it is nominal. It is the bank. The fees are on a bank account, and you pay for it through depressed interest. So instead of getting half of a percent or whatever ridiculously low amount they pay you, you get less than that amount. But it will not diminish the pot of money substantially. We have money in another pot that was used, for example, for Kinnally Cove. The fees there are nominal.

**Village Manager Frobel:** Susan, is it once a year

**Village Clerk Maggiotto:** Yes.

**Mayor Swiderski:** But it is nominal, right?

**Village Clerk Maggiotto:** Yes, \$3,000.

**Trustee Apel:** On page 16, this is where it brings up the 65 feet above the finished elevation of the developable portion of the site. Obviously, concerns by the Village to want to remove this from the consent decree.

**Mayor Swiderski:** Let me ask the question I was going to ask. Is a cap of this sort considered zoning and, more importantly, does it imply a commitment that buildings have to be that high?

**Village Attorney Whitehead:** No, this is setting a maximum. It requires a deed restriction be filed. Deed restrictions are a different level, and enforceable differently, than zoning. The Village could not permit something higher than 65 feet, and it does not say anywhere here that the Village shall adopt that into its zoning ordinance. In your zoning you can absolutely put a lower height.

**Mayor Swiderski:** And could we be challenged on that height?

**Village Attorney Whitehead:** I do not believe so.

**Trustee Lemons:** On the basis of this, this would not provide a lever for a developer.

**Trustee Apel:** I do not know. I think if I am a developer I am going to sue anyway. I am going to take you to court.

**Village Attorney Whitehead:** The thing is, if you have your zoning in place before a developer buys the property they are buying it with knowledge of the zoning. They have to.

**Trustee Apel:** That supposes that we are going to get the zoning in before then.

**Village Attorney Whitehead:** Well, there is not going to be a developer for five to ten years.

**Trustee Lemons:** Except for the southern part of the site, which is not part of it.

**Village Attorney Whitehead:** That is what would prompt you to do the zoning.

**Mayor Swiderski:** Clearly, we have to kick that zoning.

**Trustee Apel:** So why have it in the consent decree at all? Why not just take it out and let us do our zoning so we are not concerned about the 65 feet? By the way, it is 65 feet above the finished elevation of this developable. That is before they add the fill and soil, pumping it up a little higher, whatever that is, if I am a developer and I am watching all this now and I know BP is going to do it and I am interested in this land, I may come to BP and say I want to buy it now. Then what are we going to do?

**Trustee Armacost:** Then you will be liable if you buy it now. If I were you, Meg and Marge, I would avoid buying it now.

**Village Attorney Whitehead:** Nobody is going to buy it now.

**Mayor Swiderski:** I will be bringing back this topic to the signatories to the decree. It is a tough one because when we originally passed that limit in the first decree it was designed to constrain because back in the late '80s there was a proposal for eight- and ten-story buildings. The idea here was to limit it to the height of the buildings on-site. The Riverkeeper, and secondarily the Village, wanted that constraint, BP did not. But now we have a situation

where there are people asking for it to either be lowered, which BP does not want, or eliminated, which BP would love but neither Riverkeeper, and to some degree I, are reluctant to get rid of the constraint. There is a historical basis for it. It is a tough negotiation because whether you want to lower it or eliminate it there are three signatories to this deal and at least one of them, and in some cases two of them, feel strongly on each possible d

**Trustee Apel:** The 65 feet when it was originally done was because that building was there. That was before we are adding 11 feet or 14 feet.

**Village Attorney Whitehead:** You are not adding 11 or 14, you are going up to elevation 11 or 14. You are not at zero now.

**Mayor Swiderski:** I do not remember what the 65 feet were from, though, in the first consent decree. I do not know if it was at sea level or original grade.

**Village Attorney Whitehead:** From the original grade.

**Mayor Swiderski:** It is three or four, maybe five feet lower, not a whole lot more. It is not 11 feet.

**Trustee Apel:** We are trying to protect the Village. We want to let the zoning process go through and the design. If in any way this is going to inhibit anything, and you cannot always foresee that, then you have to say is it worth having this in this decree or not. I am a developer, I still come in, I am going to go back, and if I say, Well, it is at 65 feet, and why can I not have it up to the 65 feet. You never know at what point who is going to argue what. We do not want to have our hands tied. If this going to tie our hands, and not prevent us from doing our own zoning but certainly can be up for a huge discussion ...

**Mayor Swiderski:** But what are you asking for? Are you asking for five feet less, or are you asking for no height restriction whatsoever?

**Trustee Apel:** It needs to be removed, then we need to zone right away to protect ourselves.

**Trustee Armacost:** I agree with you, I am just trying to imagine a quick process.

**Trustee Apel:** I take that back. The important thing is that the decision will come through the normal process of zoning. I do not want in the future to have any problems with this. Take control, this is our property, and Riverkeeper knows we do not want to build anything up there that is going to encroach or do anything to the river. Most people want it lower. And if I remember from a million years ago, everyone said we only want a park there.

**Mayor Swiderski:** It might land up that way.

**Trustee Apel:** We might end up with that for other reasons. I am very concerned.

**Mayor Swiderski:** There are a couple things here I am going to, clearly, be taking back.

**Village Attorney Whitehead:** One option there would be to add language that says acknowledging that the Village could set a lower height.

**Trustee Armacost:** Yes, I think that would do it.

**Trustee Lemons:** I would definitely favor that, making it very explicit. If 65 feet remains in there it should be, as much as possible, pegged to whatever that 65 feet was when it was determined. Because it is definitely crept at least three, four, maybe five feet. That is significant.

**Village Attorney Whitehead:** Which was the height of the original building.

**Trustee Walker:** The tallest building.

**Trustee Apel:** Further down on this page, under 7.1(f), all of a sudden they introduce the term "the Company." That is not defined anywhere, we do not know who that is, I do not like the change. If it is supposed to be AR it should say AR. If they are going to use the term the Company it has got to go in the front of the decree and has to say who it is.

**Trustee Armacost:** Does anyone know who the Company is?

**Mayor Swiderski:** It is AR, but it should be spelled out.

**Trustee Apel:** Page 18, 7.3. It starts at the bottom of 17, but it does not say very much there. When you get to the letter "A," "bulkhead and cover maintenance," line three it says "provide for adequate funding," but it not defined; no amount or range or amount. I do not know what that means, "adequate funding." Is there a range, is there an amount? I do not know what else we could put in there. What constitutes adequate? It is going to cover all these things after it, is that what it is? Then it says "... the choice of which shall be at the Company's discretion," the secret company whoever that is. That needs more definition. Not just "consistent with the sound and accepted fiscal practices," we might want a little more definition there of what that means. Sound and accepted fiscal practices of whom? Who is setting those, who is the source they are looking at, who is the specialist there?

Under B, it says, "written notice is sent to the Village and Riverkeeper," but we have no say. Just that we are given a notice, just their discretion.

**Mayor Swiderski:** But read the last sentence in A.

**Trustee Apel:** "The existence of any such financial assurance mechanism shall not relieve the Company of its independent obligations under this section to maintain," all these things.

**Mayor Swiderski:** How they choose to ensure that almost does not matter because in the end they are on the hook.

**Village Attorney Whitehead:** Right. If it is not enough they are still responsible.

**Mayor Swiderski:** Right. It does not matter whether it is an insurance policy out of a bubblegum machine or \$100 million put in a bank, either way it does not matter. They are still on the hook.

**Trustee Apel:** They are still on the hook, OK.

Pages 18 and 19, this is the concept. "Continued cooperation with respect to remediation in future sites," so forth and so forth. Again, I think this was brought up earlier. It said under 7.4, "In connection with any transfer of some or all of the assets and responsibilities set forth above, the Company and the Village may evaluate reaching an agreement with mutually acceptable remedial management contractors and the insurance company." Again, where does this management contractor coming from? Who is appointing them? Are we going to hire people to manage this? Are we going to set up an LDC or an IDA, with all the problems that we know come with it? This is put in here as if we are doing this. So the question is, "with a mutually acceptable remedial management contractor and insurance company." From past histories, and we have seen things happen in other areas, we are not so sure we want an IDA or an LDC. There need to be more of an understanding of this remedial management contractor. If we had this remedial management contractor, who is paying this contractor? What is this person's job? The LDC and the IDA are independent agencies. They have a life of their own and, unfortunately, we do not want to end up with what happened on the waterfront of Sleepy Hollow, we do not want to lose control. Some shenanigans

**Trustee Armacost:** I do not think a local development corporation is what is being contemplated here.

**Trustee Apel:** That is the problem. It just says a remedial management contractor. We have to look at future expenses because we do not know who is paying for this. We have to start saying when this happens who is going to manage all this, who is going to pay for this, and what type of entity do we want to form. These are things to consider. Do we want to hire somebody to do this, are we going to have our own department, who is going to manage this, who is going to supervise this?

**Village Attorney Whitehead:** None of this going to happen without Village approval.

**Trustee Lemons:** Right. It says, if you look at the very last thing, everything that is under there is subject to Village approval.

**Trustee Apel:** No, I understand that.

**Village Attorney Whitehead:** This is not going to happen unless the Village comes up with some idea that this board decides is great and, yes, we want them. It is just giving flexibility to the Village. It does not obligate the Village.

**Trustee Armacost:** I think the point Marge is making is, what is this entity and what is it going to do.

**Village Attorney Whitehead:** It is flexibility.

**Mayor Swiderski:** It can be anything.

**Trustee Armacost:** That is a bit peculiar.

**Trustee Walker:** Part of it is it may only be someone who is going to monitor the deed restrictions. It may not have anything to do with development. There may be a developer who takes over the site, but there may be a third party who ensures the deed restrictions are enforced.

**Trustee Apel:** Maybe we need a definition of a remedial management contractor. What is it?

**Mayor Swiderski:** It is the entity that cleans up the waterfront.

**Trustee Apel:** So we are agreeing that we are going to work out with all of them this mutually acceptable contractor.

**Village Attorney Whitehead:** But we are not obligated to.

**Trustee Apel:** We are not obligated, but we do not know what a remedial management contractor is. Is there a terminology somewhere? Did I miss it?

**Mayor Swiderski:** I will get a definition for it. I think it is the company hired to do the remediation. What it is saying is that there is flexibility here for ARCO to transfer to the Village or an entity.

**Trustee Armacost:** To subcontract, is that what you are saying?

**Mayor Swiderski:** Right, to subcontract this stuff through that entity. It allows the full flexibility for different approaches.

**Village Attorney Whitehead:** Right, but it is all Village's option. The Village does not have to agree.

**Trustee Walker:** I read it differently.

**Mayor Swiderski:** We will get some definitions in there.

**Trustee Apel:** Definitions so we know what that is all about. That is good, thank you.

On page 21, article 10, "the force majeure," and I am sure this is very typical, that BP cannot be held responsible for anything outside of their control. We have to be aware of all these things here. Maybe knowing it in advance is helpful because I think it refers back to "refusable to any federal, state or local government authority to grant a permit or license necessary," I guess, to do anything. My concern at the very beginning here was that we are going through this, doing all these things, and having all these agreements with an understanding that they are going to get them. But so far, the Fish & Wildlife Service and the Army Corps of Engineers have not issued any permits yet. We are presuming they are going to get them. So we have to be very careful that we are not falling into the trap of they are agreeing, we are agreeing, it is going to work and then it falls apart. Is there any way we can get BP to work with the Fish & Wildlife Service and the Army Corps of Engineers? They have tests or paperwork or whatever they had to give to them. Is there anything that is lacking so we know in advance?

**Village Attorney Whitehead:** Do they have a detailed enough plan for the Army Corps of Engineers?

**Mayor Swiderski:** I do not know. I can find out. I do not know when the Army Corps renders an opinion. Whatever engineering plan BP comes up with has to be approved by the DEC. Fish & Wildlife Service is part of the DEC and will be part of that approval.

**Village Attorney Whitehead:** Fish & Wildlife Service is actually part of the Army Corps. It is federal.

**Mayor Swiderski:** This is state.

**Village Attorney Whitehead:** OK, they both get involved. The Army Corps cannot issue a permit without U.S. Fish & Wildlife.

**Mayor Swiderski:** Oh, you think this is U.S. Fish & Wildlife.

**Village Attorney Whitehead:** Where is the reference?

**Trustee Apel:** I do not think I had a reference here.

**Mayor Swiderski:** I thought it was the DEC's Fish & Wildlife on the river. I hear what you are saying. Let me find out.

**Trustee Apel:** To move things ahead they need to give them whatever information they need. We need to light a fire under BP a little. If there is stuff these two agencies need, then would they please get it to them now so we are not sitting around and they turn around and say it is out of our control, we did not do it.

**Mayor Swiderski:** Let me find out. It is a fair question. I know we have spoken about the Army Corps a number of times because they have their own requirements, including remediation of shoreline and things like you take an acre you have got to give an acre. There is a whole swapping that has to occur.

**Trustee Lemons:** The other thing, which Meg can speak to, is the Hudson River restoration project, which is all up and down the Hudson. It is run by the DEC, but it has all or most of the organizations. There are private organizations involved with the river and, as I understand it, the Army Corps has been brought into that process too. Is that not right, Meg?

**Trustee Walker:** I think they were represented at some of the meetings we went to, but I do think they have to go through their own process. They have their own permitting process.

**Trustee Lemons:** I am not saying they do not have that, but I am saying that large effort at Hudson River Restoration, which I think we want to be a part of, they have made a big effort to have the Corps involved in that. So as the planning process proceeds, I would think that is going to increase the chances that is going to get permitted.

**Trustee Apel:** Again, we need to be aware of what permits they are going for and what they need. If they need anything from us we would be very glad to give them whatever information, but to make sure it is moving forward in a timely manner because everything keeps delaying everything. While they are rushing us to do what we are doing, they cannot go anywhere because they have not finished what they are supposed to be doing.

**Trustee Lemons:** The permit does not become an excuse for another holdup.

**Trustee Apel:** Right. I want to thank you all for allowing me to go through this process with you.

**Trustee Lemons:** Good job, Marge.

**Trustee Walker:** Well done, Marge.

**Trustee Apel:** Thank you. And I want to thank the public and those interested parties that have brought up lots of concerns about this. And hopefully, soon we will get answers to these. Are we going to continue this discussion on the 29th?

**Mayor Swiderski:** I think we should have it in our regular Board meeting. I hesitate to crimp the budget meeting with this discussion.

**Village Manager Frobel:** So April 5.

**Mayor Swiderski:** Yes, have it on the agenda there, and it continues. The rest of the Board can ask their questions.

**Village Attorney Whitehead:** Following up on the discussion on the demolition permit, at the last meeting the Village's consultants and Fran and the Building Inspector talked about needing some additional information from ARCO on the demolition permit. Len Warner has put together a letter. He and the Building Inspector finalized it. We can forward that, then it will be sent to ARCO requesting they provide the additional information you need in order to make a SEQRA determination and issue the demo permit. It is mostly about more detailed plans.

**Mr. Metzger:** Regarding the 11 foot height, this is a topic of discussion involving many things. On page 11, section VI, the second paragraph, first sentence: "In addition to the placement of acceptable fill to return the site to grade, as set forth in section 4.9(a)(i)." If you go back one page, to page 10, all it says is, "AR shall place acceptable fill in excavated areas to return such excavated areas to either their original grade or, in areas that will become part of the sloped shoreline, the design grade for that shoreline." The acceptable fill is just coming back to the original grade, then they say they are putting two feet on top of that. We do not know how that relates to this 11 foot mark they keep talking about. Right now, they are only talking about going two feet above what is there right now.

**Mayor Swiderski:** Keep on going: (b)(i), "Clean soil shall be placed in a volume sufficient to raise the elevation to a minimum of plus-11 feet.

**Mr. Metzger:** This is when you have gone to section B, right?

**Mayor Swiderski:** Right.

**Mr. Metzger:** OK, which one determines what they are going to do?

**Village Attorney Whitehead:** Both.

**Mr. Metzger:** They are going to decide to go on part A. They are just going back to original grade. There is nothing here that compels them. They are giving you two different directives here.

**Village Attorney Whitehead:** No, it is cumulative. Nowhere does it say "or."

**Mayor Swiderski:** Yes, it is cumulative.

**Mr. Metzger:** I would question that. I believe it is very misleading.

**Village Attorney Whitehead:** It is a timing issue. The first part they have to do immediately upon completion of the excavation. They have to bring it to the original plus-2. The second is that prior to, or concurrent with, site redevelopment they have to bring it up.

**Mr. Metzger:** That creates an additional problem there then. If we have clean fill starting two feet above grade, then they are going to go to that 11-foot mark, that clean fill is going to be unsuitable for anything including the small structures that we are talking about. You will not be able to build anything on that. Building code says you have to build on undisturbed soil or you have to go down to undisturbed soil. So if we end up with six or eight feet of

clean fill to get to this 11-foot mark you are going to build virtually nothing on the waterfront. We should get that clarified before we go much further.

**Mayor Swiderski:** Say that once again, slowly.

**Mr. Metzger:** I will. Building code says when you put up any structure, and I am talking a deck or anything, the foundation of that has to sit on undisturbed soil. If you dig a hole and then put the soil back in the hole it has to be compacted to withstand 3,000 or 4,000 PSI, what the spec is. This clean fill is basically trucks dumping dirt up to a certain level. You cannot build anything on that until you get down. Either you put piles through it, and the question is, is the DEC going to have an issue with us trying to drive piles into the polluted soil that is below the area they have excavated, because those piles are going to have to go down dozens, if not hundreds, of feet.

**Mayor Swiderski:** Dozens.

**Trustee Walker:** Piles will have to happen. But your point about the small structures that might not require piles, we were hoping to do some lighter-weight sheds or something.

**Mayor Swiderski:** They are going to be closer to the water.

**Trustee Walker:** Those lightweight structures would require it be compacted. Can they come back later and compact?

**Mr. Metzger:** No, you would have to compact it. You do a certain amount of fill and you compact it, then more fill and compact it, unless they are going to compact this to withstand something, and I forget what the exact number is. Kathy may remember. Soil has to withstand a certain amount of PSI in order to support any structure. That is why we go to the Building Department when you want to put an arbor up. We may have a situation where to do the simplest structure we may have to drive piles to support that structure. It is something for us to think about. I am not saying it kills the deal, but we have to be aware of that.

**Mayor Swiderski:** We have to be aware of that, and the structures we spoke about in terms of lightweight structures are going to be, typically, within the 100-foot slope. They are going to be fairly close to the water's edge.

**Village Attorney Whitehead:** There is less fill there.

**Mr. Metzger:** I just want us to be aware of what all of these things mean.

**Mayor Swiderski:** I hear you.

**Trustee Apel:** Should the acceptable fill then be compacted?

**Mr. Metzger:** They talk about compacting it, but I do not know that you can compact fill on top of fill. That is why everything is supported on piles now.

**Village Attorney Whitehead:** This issue applies to the smaller buildings we were thinking of for the areas where we were not thinking of using piles. The main parts of any development on this site everybody acknowledges will have to be piles.

**Mr. Metzger:** I would agree.

**Trustee Armacost:** Just on the issue of the piles coming in, and Dan and I were discussing this earlier, if the piles are longer than the depths of remediation ...

**Mayor Swiderski:** By definition they will be.

**Trustee Armacost:** ... how have we effectively remediated them, if the piles are going down into unremediated territory, so to speak?

**Mayor Swiderski:** There are restrictions and they become something they have to monitor and control.

**Trustee Armacost:** But that is going to affect the weight or height of anything above it.

**Mayor Swiderski:** No, you go below the 12-foot limit, you drive the piles into potentially unremediated soil. But that becomes a site you have to control in terms of monitoring.

**Village Attorney Whitehead:** When you are doing the work, as part of that work.

**Trustee Lemons:** If it is less than one part per million below a certain level, then the piles can go through. If they start to go in and they find it is greater than one part per million they have to remediate that whole area to get it down to one part per million.

**Trustee Armacost:** Exactly, they have to go deeper.

**Trustee Lemons:** They have to go deeper until they have got that out, then it is one part per million.

**Mayor Swiderski:** I do not know that.

**Trustee Armacost:** But we need to know.

**Village Attorney Whitehead:** There is going to be a cover.

**Mayor Swiderski:** Right, because below 12 feet you are in territory where it is difficult to remediate but you can drive piles.

**Trustee Walker:** Does the ROD address this?

**Trustee Lemons:** I think it does address it. I remember reading it.

**Village Attorney Whitehead:** Mark will probably know, and he was unable to be here tonight. But that could be a question for Mark.

**Mr. Metzger:** The more you remediate the deeper the piles would have to be because you keep disturbing more of the soil.

**Trustee Lemons:** And you are in the water table.

**Mr. Metzger:** Which is obviously another issue. Thank you for that.

**Trustee Walker:** I want to bring up two quick questions so maybe somebody can address them next time. They will come up when the Shoreline Committee starts to meet, which is next Wednesday. The two questions are, when the Shoreline Committee looks at the mitigation plan project there has to be some kind of mitigation for the fill that is going to be put into the river at the northwest corner. Could that be a project that the Shoreline Committee looks into, makes a recommendation about? I do not know, maybe it is some kind of vegetation habitat.

**Mayor Swiderski:** Your question again?

**Trustee Walker:** There is a mitigation plan that is required by the fact that they are putting this fill into the river. I do not have the language in front of me, but there is a certain way this mitigation plan is going to be determined. Can the Village weigh in on that through the Shoreline Committee? It is a mitigation project, like creating habitat or creating a wetland. It is a question. I have a lot of little things, but I am going to mention these two because these are going to come up when you start talking about these things next week, I think.

The second one is the bulkhead alignment. If you look at the plan of the bulkhead alignment it is this oddly-shaped bullnose sticking out into the river. I am wondering if for some reason we wanted to have a flatter area to have a floating dock straight across, is there a potential of reconfiguring that alignment. What is determining that exact alignment? Because this is going to be the place where we have that opportunity.

**Mayor Swiderski:** Given the urgency of your meeting, if you could put those into an e-mail I will forward them to Chertok to get them answered. I do not know if the exact boundaries of the bullnose are determined. But if you are asking is there flexibility there, put that in.

## **5. VFW Plaza Tree Removal**

**Village Manager Frobel:** I presented to the Trustees at the last meeting copies of the photograph taken by the VFW Post. They are looking to remove that evergreen tree just above the plaza. It would improve the vista to the park and the VFW Post building. There has been talk in the past and sketches, you recall, a number of years ago, a gazebo, making some improvements to the property there that would make it more user-friendly for outdoor events. I think it makes good sense. The Parks Commission recommends it comes down, the VFW post would like it down. I am looking for permission to move forward.

**Mayor Swiderski:** Whose property is it on?

**Village Attorney Whitehead:** Ours.

**Trustee Armacost:** I wanted to raise a conversation I had with Fran earlier which was, is there a way to save this tree and perhaps replant it somewhere else. Fran was saying he thinks the tree would not survive the activity.

**Trustee Apel:** I spoke to Tim. It is not the type of tree. I asked him if you could take pieces of it and then regenerate it and make other trees. He said no, that is not the way you make other trees. It is too big, apparently.

**Mayor Swiderski:** Is there intent to build a gazebo there or do something there?

**Village Manager Frobel:** Short-term I have not seen any plans.

**Trustee Walker:** One of the things we have talked about with the Downtown Advocate is to experiment with building a temporary stage there. Use it at Spring Thing, maybe put a movie screen there and do some movies there this summer with people sitting up on the hill. Try out some different things before we decide on building it. You can see I am always

about experimentation. See how it works, see what you can use it for, and then maybe eventually we do build a gazebo there that serves a variety of purposes.

**Mayor Swiderski:** The tree was a gift to the Village from a local religious leader, and I would like to ask that local religious leader first. While it was a gift, he should at least weigh in, because it was an especially touching gift, given its intent, and I want to make sure he is fine with that.

**Trustee Walker:** Did you mention, Fran, that it is so tall that the Parks Department has difficulty putting the lights on it? You cannot get up to with the cherry picker.

**Mayor Swiderski:** And it has gotten stringy.

**Village Manager Frobel:** Yes, it has. It is very lightweight.

**Mayor Swiderski:** I understand. I am pained by cutting down a tree that is reasonably healthy, but if there are offsetting reasons to do so and the VFW wants it.

**Trustee Walker:** It obscures the monuments.

**Village Manager Frobel:** It really blocks the view. And the before and after are very effective as to what it would look like when we open it up. So will you contact this gentleman?

**Mayor Swiderski:** Probably tomorrow.

## 6. Other

**Trustee Armacost:** I wanted to report back on a meeting the Friends of Riverview Park had with the Parks and Rec Commission about the proposed improvements to the park. The team did an excellent job of, first of all, coming up with a very attractive design as a straw man design to show Parks and Rec the intention of the people who were part of that core group. They also incorporated ideas they had heard in a series of meetings since that time. The Parks and Rec group were amenable to supporting them in moving those efforts forward.

One of the issues that came up is the budget. The plan that had been developed, the estimated cost using a lot of input from local people, would be about \$75,000. If it went through a formal process with a series of more expensive people that were not volunteering their time, it would be more than double that amount. One of things I wanted to do, because of all our feelings that this park has been neglected for a long time, was make a commitment

out of this current year budget to move that design forward. There is about \$10,000, according to Kendra, that she still has slated unused for Riverview Park, which mean an appropriation of an additional \$65,000. What we would all like to do is have a meeting with the Parks and Rec board, assuming there is funding available we can pull from somewhere else. They would like to have a meeting to show the straw man design that is being developed to the community so everyone can comment and make suggestions and raise questions in this next period.

**Mayor Swiderski:** Fran, in terms of budget efficiency, while there is \$10,000 there, is the balance best covered by bonding, or is there sufficient monies between this year and next to cover it?

**Village Manager Frobel:** Probably not in this year's operating budget. You would have to look to do a little this year and then a little next year. I included money in the budget I gave you last week, about \$25,000, just to keep this project moving. You are probably looking to go to fund balance, which is where you will have to go for your sidewalks anyway in Hillside if you want to do that this year. That is about a \$70,000 project as well.

**Trustee Walker:** I feel strongly we should not build out the whole thing right away. When one approaches parks like this that you try out a few things. You get it into a condition that it is usable, at least, but you do not build platforms and view frames and put in expensive benches. You start with some simple things. Not that we should not try to put furniture there, build some simple platforms. You can do things out of railroad ties that are inexpensive that can work very well. But we do not need to jump to a \$75,000 cost. If we could divide it up into two pieces and try out part of this summer, then maybe we go to building some more permanent things the following year. I like the design and I like the fact that people want to contribute to it, and it is tremendous they want to volunteer and put their time into it. That is all great, but the way I have been approaching parks now for 20 years is to do the lighter, quicker, cheaper first before you move to doing heavy infrastructure.

**Trustee Armacost:** You and I have had this conversation a number of times, and we simply disagree on this. My view is that there has been a lot of tinkering in this park and a lot of putting in benches and pots and various things. The end result is that the park has been neglected for, literally, years and years. We have also had this discussion many times. I have a time chart the group showed me of the years of indecision and puttering around. They are willing to commit their time and their energy, they are willing to fund-raise additional funding just as the Friends of Reynolds did. When we have community groups that are willing to do more than their share, we should honor that and should finally help this group have what it needs.

I feel particularly strongly because this is a part of the Village that does not get as much attention as other parts of the Village. I respect your point of view, Meg, and I know you are a planner and I am not a planner. But if this group needs us to be behind them and show we support what they are trying to do in that area, which will be an amazing place for everyone in the Village.

**Mayor Swiderski:** What is the timeline of the funding need?

**Trustee Armacost:** Their goal is to have the park operational this summer.

**Mayor Swiderski:** Does that require the full expenditure by the summer, or does it require something now and then something later? Do you know what the timeline is?

**Trustee Armacost:** That is the point of this upcoming meeting. The goal is to have an opening in June. I do not know when all the expenditures have to happen, but at least the implementation will have to happen in this time period.

**Trustee Walker:** We will not be putting our budget into place until almost May 1, and it does not start until June 1.

**Trustee Armacost:** But we have a reserve fund for exactly these kinds of things. And we also have a contingency fund of \$250,000 this year.

**Village Manager Frobel:** It is like \$140,000.

**Trustee Lemons:** Meg, you are making your argument based on the idea that you end up with a better long-term result if you allow for process and refining. Niki's point is not opposed to that possibly being the case, but more that this has gone on so long, even if the result is not optimal it might be better to do the design process and proceed and get something. They are kind of two different concerns here.

**Trustee Walker:** It is a different approach, yes.

**Trustee Armacost:** I spent a lot of time looking at the design, and it's amazing. For the amount of money that is being suggested it is phenomenal. People will be blown away by the end result, and it will preserve the natural beauty. It contemplates using all sorts of natural woodland and natural wildflowers, as well as having areas where people can sit and peacefully contemplate the river. I have been impressed by the multi-generational thoughts that went into it, that it would be attractive to people of all generations. It is a very thoughtful plan, and we should not be blocking these people anymore.

**Trustee Lemons:** If there is a community consensus around a plan.

**Mayor Swiderski:** But we have to determine by airing it out in public at some point.

**Trustee Lemons:** But we do not know that. If there is, I am going to side with you. But if there is not, then I think your approach is going to be the right approach.

**Trustee Walker:** I sound like a broken record, but it is important to understand the various uses that could happen there and what various people in the community would like to do there, whether it is performances or just sitting and having a passive view, or it is about kids playing there. That the design may take all those things into account and it may be just fine.

**Trustee Armacost:** We have had so many meetings on uses for that park. We even had *New York Times* articles about our views on the uses of the park.

**Trustee Walker:** The point was making the decision that it was going to be for people, then it was going to the next step which was to discuss the various uses. Then it was going to go to design. I feel like they have jumped right into design without thinking about uses.

**Trustee Armacost:** They have created a straw man design, as I said.

**Trustee Walker:** Did they change it from the last time we saw it?

**Trustee Armacost:** Yes, and they incorporated ideas that came up. What they would like to have is a meeting to allow people in the community to view that design and make comments.

**Trustee Walker:** OK, I am sorry. I did not realize it had been changed.

**Mayor Swiderski:** That is an important component.

**Trustee Armacost:** And that is exactly what I am trying. The Parks and Rec Commission wants to know that we are ready to stand by our word that we will finance this, assuming there is support for the design.

**Mayor Swiderski:** Assuming there is support for the design, and ideally if it could be phased over the budget cycle so we are not dipping exclusively into fund reserves and some of it in the next budget year, that would be my preferred approach. But I am willing to commit to stand up for that as long as there is a public process that involves public input.

**Village Manager Frobel:** Some of the improvements are very generic, Meg. They are bringing in topsoil, fencing.

**Trustee Walker:** No, all those are important. I do not question those. It is a question of building stuff that next year you might say we put this in the wrong place because now we would like to have a stage here, that sort of thing. It is important that they listen to all the various uses that could happen there. If they have taken those into account in this design, then I say it is ready to go back to the public to see if people's thoughts were included.

**Trustee Armacost:** Let us take it to the public, then. I would also like us all to agree that we are going to try and help this park be open by June.

**Trustee Walker:** We want to.

**Mayor Swiderski:** We agree, but I do not want to jam it through without that public input.

**Trustee Armacost:** So specifically having said again we are going to go through, but once we get it please can we not let this dawdle forever and ever?

**Mayor Swiderski:** Nope.

**Trustee Armacost:** Thank you, excellent.

### **ADJOURNMENT**

On MOTION of Trustee Armacost, SECONDED by Trustee Lemons with a voice vote of all in favor, Mayor Swiderski adjourned the Regular Meeting at 12:08 a.m.