

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
BOARD OF TRUSTEES
SPECIAL MEETING
AUGUST 21, 2001**

A Special Meeting was held by the Board of Trustees on Tuesday, August 21, 2001 at 8:10 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

PRESENT: Mayor Wm. Lee Kinnally, Jr., Trustee Michael Holdstein, Trustee David Walrath, Trustee Marjorie Apel, Special Counsel Mark Chertok, and Village Clerk Susan Maggiotto.

CITIZENS: Twenty-four (24)

BOARD DISCUSSION

Application for Zoning Amendment - Andrus Retirement Community

Mayor Kinnally: The purpose of this meeting is to elicit Board discussion on the application for a zoning amendment of Andrus Retirement Community.

While it is a Special Meeting, it is more akin to a work session because the Board of Trustees will not be taking any action tonight. It will be an opportunity for us, for the first time as a board, to discuss the elements in the application submitted by Andrus for the zoning amendment.

I am in receipt of 26 pages of petitions that will be made part of the record.

I would like to review the procedural background of how the application came before us, and to review a bit of the findings of the Planning Board. The review is not meant as an endorsement of them, but rather to try to highlight some of the areas the Planning Board focused on and to give background, not only for the people here but also those who may be watching on TV in future days.

The original application was submitted to the Board of Trustees in September, 1999. The application was for a floating zone that would be comprised of a CCRC. The Board of Trustees designated the Planning Board as the lead agency for SEQRA review, and the Planning Board then undertook the procedural steps necessary to get the matter before them and get the necessary information so that they could review the various facets of the application. They retained Frederick P. Clark Associates as planning consultants, Allee King Rosen & Fleming as traffic consultants, and Sive, Paget & Riesel in the person of Mark Chertok as special environmental counsel to the Planning Board. Mark and his firm also serve as special environmental counsel to the Board of Trustees. In the course of the Planning Board's review, they retained PricewaterhouseCoopers to conduct an independent analysis of the submissions of

Andrus to see whether it was financially feasible to reduce meaningfully the size of the proposed CCRC.

The Planning Board issued its findings on May 2, 2001, and voted to recommend approval of the application subject to a difference of opinion among the Planning Board members as to the propriety of certain height/density elements. The Planning Board indicated that it thought that the CCRC was appropriate for the site and was in conformance with the various planning studies and elements that had to be considered. There was a difference of opinion as to height and there was much discussion as to setback requirements and floor area ratio. One of the options was the FAR was not to exceed 0.45. The second option was the FAR was not to exceed 0.40; however, it could be increased by the Planning Board up to an additional 10% in consideration of certain factors, including the degree to which the buildings were set back in excess of 100 foot setback, the height of the buildings in relation to surrounding finish grade, and other factors, such as landscaping and architectural design elements that had the effect of reducing perceived building mass. Another option was that the FAR was not to exceed 0.375; however, it could be increased by the Planning Board up to an additional 15% in consideration of the same discretionary factors. A minority of the members of the Planning Board would, in addition to the previous measures, also decrease the maximum building height from 65 feet and five stories to 54 feet and four stories. They would further provide, however, that the height of the individual buildings could be increased by the Planning Board up to 65 feet or five stories in consideration of the same discretionary factors that would apply to the third option the FAR not to exceed 0.40. They could take into consideration setbacks and the height of the buildings in relation to the finish grade.

A majority of the Planning Board members believe that modifying the proposed zoning amendments to include the first and second of the above options would render the density and building height aspects of the proposed amendments consistent with the Village comprehensive plan.

With respect to diversity and the elderly, the Planning Board found that the proposed zoning amendments and consequential permissible CCRC would be consistent with the Village planning goal of increasing housing for the elderly. By allowing a development that would increase the population of seniors in the community the proposed amendments could also contribute to the goal of maintaining and enhancing Hastings' diversity of population. They also felt that it may help to achieve the latter goal through increasing the Village's stock of affordable housing.

On the issue of affordable housing, the Planning Board found that the offer to make the one-time payment of \$350,000 was a good start, but not sufficient to meet the Village and county affordable housing policies. Strict application of the 10% goal contained in the Village policy to the 201 proposed independent living units would amount to the provision of 20 units of

affordable housing. The Planning Board did not believe that a strict application of that affordable housing policy was necessarily appropriate in the context of the CCRC. However, given the 10% goal, it was not realistic to assume that the \$350,000 payment would be sufficient to meet either the Village or the county's objectives. The Planning Board found that a much more substantial payment would be necessary for the applicant's proposal to be found consistent with the Village and the county's affordable housing policies.

On the issue of the PILOT, the Planning Board found that the up-front payment was insufficient, that the 2% compounded annual increase of the annual payments to the Village and the school district was inadequate, and recommended that those percentage increases be tied either to the consumer price index or to annual increases in real property taxes in the Village and the school.

Finally, the Planning Board found, with respect to the PILOT, that a provision should be included specifying that in the event that a portion of the facility was converted to multi-family housing but remained tax-exempt, the annual payment should be accordingly increased.

As far as community infrastructure, traffic, circulation, and parking, they found that the proposed zoning amendments would be consistent with the Village's land use policy; that traffic flow, pedestrian circulation, and parking be carefully considered in the review of plans involving the growth in the community. They also reviewed site disturbance and other environmental impacts with respect to surface water, geology, soils, topography and slopes, vegetation and wildlife, cultural and archeological resources, air quality, and noise. The Planning Board found that the CCRC allowable under the proposed zoning amendments would adequately mitigate potential storm water impacts resulting from the increased coverage of the site in comparison to existing conditions. In connection with geology, soils, topography, and slope there would be temporary construction-related impacts associated with earth and rock removal that could be mitigated through appropriate erosion and sedimentation control methods, monitoring and adherence to local and state blasting regulations. They found that the proposed structures and landscaping should help to act as erosion control measures once the site is developed and stabilized. They found that the removal of some vegetation is an unavoidable impact of the proposed development, and the proposed landscaping plan and other mitigation measures would promote appropriate replacement consistent with Village planning policies. No significant species or habitats would be displaced by the proposed development. With respect to cultural and archeological resources, no impacts were anticipated. They felt that with the implementation of the indicated control measures during construction no significant air quality impacts in future dust emissions would be expected. While there would be short-term construction related noise impacts from the proposed development and construction, any type of development would require rock removal and have attendant noise. The applicant would be required to adhere to all Village policies with respect to noise and blasting. As a result, it was anticipated that there would not be significant impacts on adjacent uses.

More significantly, the Board considered a number of alternatives in the DEIS and the FEIS in response to various comments that were made during the course of submissions in Public Hearings. Under the No Action Alternative, there would be no amendments to the Zoning Code, and the current conditions at the site would be unchanged.

They also looked at the establishment of a new zoning district for CCRC's, the use of existing special use permit provisions, the use of existing variance provisions, alternative use of the site for not-for-profit institutional uses, for single-family residential development, for multi-family residential development, and for partial single-family residential development, and the development of a smaller CCRC.

Their findings and recommendations were as follows. They did not believe that any of the assessed alternatives would achieve the fundamental objectives of the applicant. With respect to the CCRC alternative assessed in the FEIS, the Planning Board understands that this alternative is not fiscally practical based upon the PricewaterhouseCoopers report and the assumptions thereunder. As I indicated earlier, the Board retained PricewaterhouseCoopers, and their conclusion was that a 25% reduction in the scope of the project would render the project financially unable to sustain itself.

With respect to the remaining assessed alternatives, the Planning Board found that they would not achieve the benefits associated with the CCRC, nor would they comport with the sound planning principles adopted by the Village to any greater extent than would the proposed zoning amendments. In particular, the Greenway setback and the dedication of the northern meadow that is part and parcel of the application here and of what the applicant had agreed to do, would not occur if there were single-family development or any other development on the site.

So the Planning Board members were in agreement with all of the findings that I have reviewed except as to building height and density limitations.

Following the findings and recommendations of the Planning Board, the Village Board referred the matter to the Zoning Board of Appeals for their review of the proposed zoning amendment. The Zoning Board of Appeals had previously reviewed the initial application and had recommended against the adoption. Because the application had changed in scope, the Village Board referred it back to the Zoning Board of Appeals, and they reported back to us on a 4-to-1 vote against recommendation of the application.

We had indicated during the Public Hearings that it was inappropriate for the Village Board to discuss the application at that point. Tonight is our first opportunity to go through the elements of the application. It will be an open discussion. The first item that we should discuss is whether or not a CCRC is an appropriate use of the site. Let me clarify and say that the

particulars of the application— height, density, FAR, traffic, etc.— is not part of what we would be discussing. It is whether or not it is appropriate for a use of the site as a CCRC. The site now is used as a nursing home, and I am going to ask the Village Board, in order of seniority, to discuss it. While I normally add my two cents at the end, I am going to begin.

I feel that a CCRC is an appropriate use of the site. What is interesting about this application is, although it identifies the current use of the site as a licensed nursing home facility, in the last 45 year the site has been more of a CCRC than anything else. There were any number of levels of care and types of residents in the structure. This site has been in operation as a facility under the aegis of Andrus since the 1950's and, in my observation of going up there for any number of years, you had different components: people in independent living units who were in, for today's standards, rather small rooms without any cooking facilities, etc. Everyone took their meals in a common dining room. There was a component of independent living, a component of assisted care, and a component of nursing home care. People went from one to another over time. Some people came out of the nursing home, went back into assisted living.

From my standpoint, the proposed use of the site is certainly consistent with what has been occurring on the site for the last 40 to 50 years. It also reflects other components in our Zoning Code. There is a provision in our Zoning Code allowing for homes for the aged. The use of the site at the present time, the use of the site under the CCRC and the use of the site for housing for the aged is consistent with not only what we have in our planning principles, but in our Zoning Code and the use of the site over the last 40 to 50 years. I do not think that the proposed use is, in substance, very different from what we have had. I do not see that the impact on the community or the adjacent area on the use of the site per se would be adverse, would be materially different from what we are experiencing now, or would be inconsistent with what we operate in the Village under certain planning principles in the Zoning Code. We have looked at open space. That open space, that whole tract of land, is one of the largest tracts of land in the Village, and has been identified in the Zoning Code as having certain uses. I do not think it is a stretch to say that a CCRC is a continuum from the operation at the present time. So I feel that the use of the site as a CCRC is appropriate in the Village.

Trustee Holdstein: With all due respect to the Mayor and to the Planning Board, who I think do a marvelous job on many issues in the Village, I disagree. As a member of this Board when we adopted the Community Vision Plan, I hold that document as one of many important planning principles. In my comments to counsel, and in reviewing the findings of the Planning Board, I found a lot of things that I very much disagreed with in this proposal as it relates to what I perceive as the Village's goals and planning.

As I read the document and understand the plans, I do not think a CCRC is good for that site or good for Hastings. I believe it promotes a separate, enclosed residential enclave, which is a

direct quote from what we are to discourage, based on our Community Vision Plan. It says on page 2 of the Findings: "...CCRC concept, which incorporates a range of living arrangements with a wide variety of medical, recreational, and other services and amenities..." to me screams out an enclave. Nursing homes, like the existing Andrus, like Cabrini on our north, I see as very different, very important, very vital, and I would support them very much. This CCRC concept is something that for a small community like ours would be a strain in many areas. I have very strong concerns about the concept of a CCRC versus nursing home facilities for that site, or any site in Hastings.

Trustee Walrath: I do accept it as an appropriate use of the site, but the intensity of use is far beyond the Village's needs. The percentage of applicants for the site who came from the Village appears to be in the order of about 10%, which means we are creating this—which may be appropriate on the site—at a level of scale that is not serving just the needs of the Village; it is serving a wider market. Whether we want to attract a wider group from other areas to the Village for this particular purpose I question. I think we address that when we get to diversity.

Trustee Apel: I am very uncomfortable with that as being an appropriate use for the site. I have looked this over and, in theory, it sounds great to have a continuing care facility for people. But I believe this is a phrase that has been used by predecessors, and that in a way it is un-Hastingslike. In order to move into such a facility you have to be considerably wealthy. It does not allow for people who have financial needs. It is not going to take people that have Medicaid except for those few people that are there now. Anyone new coming in cannot be on Medicaid.

I am also concerned about something else. If a person goes there and they sell their house, and then they use their money up, in the end they are only allowed to live there for another year. So here is a person who has invested all their money, and for some reason or other has run out of money. What are they going to do then? They do not have a house to sell. They do not have any other finances. Now they are going to be out. That troubles me. I do not feel comfortable having an institution which is going to do that to people.

Besides those issues, like Michael I believe it presents an enclave-type of place, which I am uncomfortable with. The size is way out of proportion, I believe, for this community. I know we are going to be discussing some of these things later in detail, but I am very concerned that such a development not fitting in with the rest of the area would look like an elephant. Although they talk about being able to screen these things with plants, I often wonder, how can you hide an elephant? These are some of the concerns that I have, along with others, as we may discuss them. But I really feel this is not an appropriate use for the property.

Mayor Kinnally: Let us look at the operation at the present time. Andrus is there. Its form and its connection with the community have not changed over the last 40 to 50 years. It is physically

part of the Village, yet there is a separate entrance to the facility. Do the members of the Board consider it to be an enclave now?

Trustee Holdstein: No.

Trustee Apel: I never thought of that before. No, I do not think so.

Mayor Kinnally: Apparently, you do not share my feelings about the fact that it is a CCRC before its time, and that there were certain levels of care. It was not the traditional nursing home facility. People who retired who were there in the late 50's, 60's, 70's and 80's, went from the independent living units into the various other stages that were offered at that time. There were entry requirements at that time. I do not see how it has appreciably changed, and how the proposed use makes it an enclave.

Trustee Holdstein: I appreciate and understand what you are saying. I think there is a very large difference to what is being proposed. As I understand what the proposal represents, the infrastructure and housing, population base, and amenities that are being proposed as a CCRC versus this site which has existed marvelously within our community for 40 or 50 years, I see as a very big difference. I have a laundry list of things to talk about later. I am trying to focus on whether a CCRC is the right thing for this Village; I did not want to digress into the many things that I think will impact the Village negatively without the necessary positive. I disagree with a lot of the public in terms of the PILOT negotiation as far as the revenues the Village would have to spend to service this, if it existed, versus the revenues gained. As far as the Village Board's money, \$179,000, incrementing up, if you had, as we discussed, the site zoned with houses we have come out ahead as a Village.

Mayor Kinnally: But what about the enclave?

Trustee Holdstein: What I am saying is there are a lot of other issues that I think negatively affect it. That does not happen to be one of them. But this site, with the population base that they are appealing to, which is by and large a well-off, active population base, makes it very different than what exists there today. If this were a proposal for an expansion of the current nursing facility I probably would have no problem supporting that. If it were one more building to add, more beds for nursing care, as Andrus has existed in our community for many years, I do not think that I, or many in the community, would. This is an enclave for well-to-do, 200 to upwards of 275, 62 to 70 or 72 year old very active people. Yes, there are the people that are scholarshipped in. But at the outset this is an enclave restricted to a certain population base in a community that I think is stretched very thin.

We do not have control over what happens outside our immediate borders that could also impact. If something happens in North Yonkers similarly, and people are availing themselves of our

community, we have no control over that. It is a very real possibility. We see around the county issues of neighboring communities worrying about what is being built on their borders. But I am very concerned for the health of the community at large, and I found paragraph after paragraph where the Planning Board was fighting our planning documents in many regards. Things like 460,000 square feet. Things like densities. And things that the Planning Board themselves recognized in several planning documents, and then seemingly just bypassed them. I was very troubled by that. So I do see it as different than the current, and taking on a different face.

Special Counsel Chertok: If I could just try to get a clarification because I am a little puzzled. There is a mixture of two issues. One is the notion that there is going to be an impact on the Village because of the size and the type of population. The other is that it is an enclave because it is a development consisting of seniors only with a series of facilities that they would use on the site. What I am trying to discern is, is it the size of the proposal that would be allowed by the zoning amendments, or is it the relationship to the site? What if there was a CCRC that was only 75 total units on a different site in the Village? Would the concept be then acceptable? Or would it be unacceptable if it were 75 or 50 or 25? I am not sure I can discern that from your remarks.

Trustee Holdstein: As I understand a CCRC, predicated in the documents I have read, it is an enclave-type housing for a restrictive group of citizens who could take an apartment anywhere and be part of an intertwined community. I have a problem with that. A nursing facility that is geared towards people whose medical and health needs require a certain level of attention is very different than housing for persons who at least initially are healthy, and could afford to rent or buy an apartment throughout Hastings. So whether it is 75 or 250, it is still developing an enclave mentality.

Trustee Apel: I agree. If you look at some other communities, there are people who moved to senior communities on purpose. They are paying regular taxes and it is a regular community, but they have restrictions. This would be the same thing. This is a restrictive community of which you have to be a certain age and have a certain amount of money and whatever else. For all intents and purposes, it is regular housing for healthy people. But it is restrictive in a lot of ways, and I am very concerned about it. I do not feel comfortable with that at all.

Trustee Walrath: I would say this is an enclave; it was an enclave before. I am not sure we have a definition. They are going to tend to do things there that they did before. There have been some attempts to bring the community in, in ways they were not before. I do not see an easy call on it being a different thing from what it was before, except in the point that Marge raised about nursing homes in the old system. The old system does not seem to be working so well anymore. I think it took people, accepted their assets, and provided a sort of insurance to the very end. I guess this continuing retirement community will do that, but it may be setting a higher standard than the ones did before. It seems to me there is no guarantee, if your assets get

depleted, if you live too long you may just outlive the total assets you have, including the value of your initial investment to be able to continue. But that may be not Hastings problem. It is a problem with the care of the aging in the entire country.

Not everybody wants to live in this type. Some people like to have their future well-ordered. Other people would just as soon take their chances and deal with it when it comes along. I sort of belong to the latter category, but I think people who want to have their lives planned out and know what is up...and five years from now, I may be different, too. I do not think that the age of the people coming in is going to average 62. It is going to be well above that. It is planned very much, on their part, so that the skilled nursing care unit will stay fairly full all the way through the life of the project.

Mayor Kinnally: I do not want to put the applicant on the spot, but if you can clarify what happens if, and when, a resident runs out of resources. Would they be on the curb?

Betsy Biddle, Executive Director, Andrus Senior Home: People are financially qualified to be admitted to the facility. If they have some misfortune there is a pool of reserve money in the community, and before they go to that, they would have their 90% refundable fee that they would use. If that was then used up because they lasted 20 years beyond that money, then there is a reserve of money in the community that would take care of them. They would not be put on the street.

Mayor Kinnally: Would they be eligible for Medicaid?

Ms. Biddle: No. The community would take care of them. That is part of the Department of Insurance's regulations.

Trustee Walrath: Does that mean, actuarially, there is an insurance aspect to this?

Ms. Biddle: Yes, there absolutely is.

Trustee Walrath: If the refundable portion of the entrance fee is used up...

Ms. Biddle: Then there is a reserve from the community, because the Department of Insurance insures that.

Trustee Apel: Does that mean that person is allowed to stay in the facility?

Ms. Biddle: Absolutely. They stay.

Trustee Apel: Would you put them someplace else? What is the guarantee?

Ms. Biddle: There is nowhere else to put them. They stay in their apartment until they need a different level of care. It is the same monthly fee whether they are in independent, assisted living or nursing home. It would not matter to us.

Trustee Apel: And this residual amount of money, how many people could it handle and for how long?

Ms. Biddle: It is a large pool. I do not know exactly. I will get you the figures.

Trustee Apel: That is important to know.

Trustee Holdstein: You are saying, then, that if they live to be 110 but they ran out of their assets at 93, they are there for life, if they choose?

Ms. Biddle: Yes.

Trustee Holdstein: If they have to move from their independent living unit to a different level of care, and before moving to that different level of care they have, in fact, run out of their assets, is it a possibility that they would be moved within the Beth Abraham system to a different facility?

Ms. Biddle: No. That is what the CCRC is. It takes care of people from the beginning until the end, as long as they choose to stay there.

Trustee Holdstein: In addition to the applicant being able to afford the price, do you go through a process of analyzing their other assets?

Ms. Biddle: We ask for their income tax returns and backup information for that so that we have a true financial picture. A committee evaluates the assets of the person.

Trustee Holdstein: So somebody selling a house in Hastings for \$600,000, buying a unit for \$550,000, leaving them a net of \$50,000, and having a small amount of additional assets, would that color the decision whether this person could be sold a unit?

Ms. Biddle: We use one and a half to two times the amount of the purchase price as our base figure.

Trustee Holdstein: As total assets.

Ms. Biddle: Correct.

Trustee Holdstein: So if they are buying something for \$500,000, they need to have assets of a million dollars to buy, in between selling their home and anything else that they may have in terms of stocks, bonds, and so forth.

Ms. Biddle: Yes.

Trustee Walrath: Could that imply, then, that the remaining portion is put into an annuity, perhaps with some allowance for inflation to cover the anticipated monthly charges?

Ms. Biddle: Correct. It is up to the individual how they want to take care of their money. We just want to have a good picture of what their financial assets are.

Trustee Walrath: But you expect them to pay the monthly payments on a monthly basis, so they have to make an arrangement that does that.

Ms. Biddle: Correct.

Trustee Holdstein: Suppose I put the rest of my money in trust funds for my children and suddenly I say I am out of money so I get to be here on scholarship. How does that work?

Ms. Biddle: There is a disclosure statement as well as a residency agreement that the resident would sign which goes into that. That is designed, again, by the Department of Insurance and the Continuing Care Retirement Council.

Trustee Holdstein: So there are some obligations on both sides, financially.

Ms. Biddle: Absolutely.

Mayor Kinnally: Thank you, Betsy. Anything else on the appropriateness of a CCRC on this site?

Trustee Holdstein: If Andrus and Beth Abraham wanted to change the building as it exists today, there are limited uses. You are talking about units that do not have kitchens, and are small units, and so forth. In terms of the appropriateness within this village, I think part of the dialogue has to be: what if this entire thing goes through as is, and it fails for any number of reasons in 15 years? We now have a structure that is very different than the structure we have now, which we have now deemed is or is not appropriate for Hastings. You are looking at facilities that could suddenly be more easily converted to different kinds of housing, if we are left with an empty shell because they have moved out and the project failed. It raises a question for the future in determining if a CCRC is an appropriate site, because if we encourage Andrus to continue a facility more similar to what we have known, if that fails there are less

options with the existing building that would demand a more dramatic change than if this site as proposed failed in 15 years. That still goes to the question of a CCRC being appropriate in the Village.

Trustee Apel: My concern is the opposite. They build all this stuff, and it fails, then we have all those buildings. And now we have an apartment complex that we may never have wanted.

Trustee Holdstein: That is my point.

Trustee Apel: That is a problem, if it fails. I have a note that the U.S. Department of Health and Human Services, the Office of Disabilities, under the Aging and Long-Term Care Policy, found that compared to similar facilities that combined housing and personal health care, the risk of bankruptcy was shown to be somewhat higher in CCRC's. It is a risk.

Mayor Kinnally: You have the same problem today of any building that goes in. You always run the risk that the developer, or the tenants, are going to go belly-up. The same question can be asked about the Food Emporium. What happens if the Food Emporium goes out of business? What are we going to do with that empty store? Allowing any construction on the site does not guarantee the future use of the site for another use.

Trustee Holdstein: I understand that.

Trustee Apel: Yes.

Mayor Kinnally: If Andrus says it cannot operate it anymore or the state says it is not going to continue to license the operation of a nursing facility in that building, we have the same question looming. What do you do with that building? It is a problem that is not unique to a CCRC. It is a problem to any developer that wants to come in and do something new.

Trustee Holdstein: My difference is that a CCRC with independent living units is more automatically set up as apartments, ready to be converted to something different that a board 15 years from now may or may not think is a good thing for Hastings versus, I think, the facility today.

Mayor Kinnally: I would like to take a crack at it, because you are not going to find any buildings built the way that that one is, and with those views. Any apartment developer would love to take hold of that site. You have a facility; we are talking about what use you are going to put it to. The Board of Trustees sitting here in 15 years has got to decide whether or not a multi-family residence zone is appropriate. Right now it is not.

I do not think any Board would be forced to rezone simply because there are buildings there. If it is not financially viable and they cannot find a use for it, then the wrecking ball comes in. The site has been torn down in the past; it was a casino any number of years ago. If we do not use it as a nursing home, or whatever, then let us look at some of the alternatives. But some of the alternatives are single-family homes. I do not know what is appropriate or not appropriate under that kind of application. But the alternatives that were considered by the Planning Board and alternatives that any of us can come up for the use of that site are not terribly reassuring.

I am not going to say it is an enclave. But it is apart from the rest of the Village simply because of the type of site it is. There is not another site that is, essentially, a peninsula; that has the type of frontage it has; and the type of isolation, to the benefit of the neighbors at this point. The traffic impacts are small now because there is only one main entrance. If there was another use, a developer may very well say that for fire, safety, insurance, and salability purposes, we have to cut three or four more driveways and have traffic spilling out on both sides. We are digressing, but there are a lot of unknowns. There are a lot of dangers of doing, or not doing, here. I am not persuaded that the possibility of failure should say we should not do anything on a site. Traditional real estate development has a high rate of failure, especially where you have an economic climate like we are going into now.

To whether or not a CCRC is an appropriate use: assuming it is financially viable, it is going to make a ton of money and we are not going to put anybody out on the street, should we have that type of facility in the Village? My sense in counting noses here is the answer is a tie, and the tie goes against the applicant.

Special Counsel Chertok: At this juncture.

Mayor Kinnally: At this juncture. So why do we not move on to some of the other elements. is everybody finished? I do not mean to cut anybody off.

Trustee Apel: I would have responded to what you said. My concern is that we are dealing with what we are asked to look at. When you build something and you put it up, it is hard to get it down. No developer is going to come in and smash it down and put other things there. Especially because they are going to gouge all these holes in the rock. Once they have built it, they have built it. I think we do have to consider what will happen if it fails. I do not think we want an apartment complex there at all. I would be very concerned if that is what we ended up with. It would be very expensive to convert, or whatever else the problems are, to do that. Rather than stick a shovel in the ground and put that brick and mortar up, I would rather not do it because that is a real problem. If we think about that it is a nonconforming use today, and it was today and Andrus came to us and wanted to build a tall building and all this stuff, I do not think they would be allowed to do that. We are good neighbors—I have nothing against

Andrus—but I do not want to compound a problem, or, not a problem; I do not want to compound that at this time.

Mayor Kinnally: I am going to move on now to the height and density issues. There was a difference of opinion among the members of the Planning Board on this.

Trustee Holdstein: There is an overwhelming sense in the community, and I share that sense, that the height, the density, the size of this project is overwhelming. Should something go forward, it has to be reduced. I realize the applicant has said before the Planning Board that it is not economically feasible but referring to some of the Planning Board documentation and counterbalancing with documents that we have here in the community, from the planning principles of 1988 it says: "Future development should reflect and preserve the present scale and character of the Village." I do not think that 460,000 square feet is in keeping with present scale in our small village.

On page 23 of the report that discusses the dwelling units, it notes that 12 units per acre is an increase from the current 10.6, which far exceeds the density dwelling units per acre in both the R-20 and R-10. We have lived with that comfortably, the current 10.6. I see no reason, or benefit to the community, to increase this number further. There are issues of density and height that run counter to all the principles having to do with the large tracts and the character of the Village.

On page 2, the third paragraph, the Planning Board states that the size is inconsistent with our planning principles, which I agree with. They go on to state that it far exceeds what would otherwise be permitted on the site. And yet, they proceed to bless it. I think that the size and density of the project runs counter to all of the documents that we have got, and I was really quite puzzled, again, with all due respect to the Planning Board, all members of whom I hold in high esteem.

Mayor Kinnally: The Planning Board did what the Planning Board was supposed to do. People may not agree with them, but I do not want the focus of the Board of Trustees to be whether they think the Planning Board did the right thing or came up with a wrong conclusion. I cannot think of a board in this community that has put in the amount of time, and expertise, and agony, and I talked to them all through this process not about substance, but about their timing and what they were looking at, and they agonized over this.

The Planning Board articulated their reasons in their findings, which is exactly what they were supposed to do under the law. Reasonable people can disagree, and I think that will happen here. But I do not think that the Planning Board should be the focus of anybody's frustrations or comments, although the findings are, at least, a reference point.

Trustee Holdstein: I agree with you with you: the work and effort that they do is superlative. The problem is that our comments, as we started this process, were based on their findings; we were to respond to their findings. It is certainly not to criticize their efforts. It is to respectfully disagree in points. I do not know how we can avoid it, on occasion, because that is our reference point.

Trustee Walrath: I too have great respect for the Planning Board. I have pointed out, when I have heard criticisms by people who disagree with portions of their findings, that they were conducting a SEQRA review and we are not. The Trustees have a different role.

As far as the height and density, what they did had a logic to it. They came up with various FAR limits based on the maximum building height and building coverage ratio in the R-20 zoning if we develop residentially. That is 2-1/2 floor and 15% coverage, and that 2.5 times 0.15 is 0.375, which is the FAR they came up with. There were expressions of concern about the mass of the proposed buildings. But the FAR ratio was something they did not reach unanimity on. And the FAR ratio, by itself, does not really address bulk, because you can have lower buildings and more of them. They had was a specific project to review. They looked at it, and we saw disagreement as to desirable maximum height. My feeling is that the buildings, because of their height and their grouping, provide, when visible, a very large mass. This is a major concern with a fair proportion of the public in the Village. It would be a very great concern of mine in making our final decision. I am hoping we can find a way to reduce the bulk, and the sense of bulk, that the massing provides.

Trustee Apel: I think it is too high and too dense. I know that the Planning Board looked at it, and they spent a lot of time discussing it, and they had decided to reduce the height. But they said they gave them a 15% leeway, which brought it right back up again. It is not in sync with the outlying community. It is much too large and too dense. When they talk about the density, the density for this area, with a nonconforming use, is about 11 people per acre. The proposed changes would make it about 15; however, the average number of occupants of the proposed thing is about 1.3 people per unit, and that would really make it 19 persons per acre, which is a much larger amount than before. There is some information about Westchester County's patterns that defines Hastings as a medium-density suburban area. It is recommended that the gross density for this classification is 2-7 units per acre. Already, the nonconforming use that Andrus has is way above that, and then it would be considerably more beyond that. It would be overwhelming for the community and the neighborhood that it is in.

Mayor Kinnally: The height and density issues are troublesome here. But I find equally troublesome the fact that all of us are operating in somewhat of a straitjacket imposed by the state. My understanding is the application had to be pre-approved by the state Department of Health. The entire financial model was in place when the application was made here by Andrus for the zoning amendment. When that happens, it really ties everyone's hands. I am going to use a phrase that I think David just used: "the desirable maximum height." What that is, I do

not know. I think everyone agrees that there is a certain height and bulk that this has exceeded. And it is out of scale. Forget about FAR's, forget about everything: it may be out of scale.

The frustration that I have is that I do not know what we can do about it. How do we come to a desirable maximum height? I am not sure that some of the options that were in the findings as far as giving a discretionary bonus are something that we want to do. That puts considerable pressure on the site review process and the applicant to try to shoehorn something in or to see if you have hit the mark so you will get bonuses, or whatever. A significant number have said we should vote this up or down and not try to consider what is desirable, because we are not in the process of helping out any applicant in trying to make an application palatable to a community or to a board. There is some merit to that.

But there are very few things that come before village boards that are up or down. Everyone tries to see if common ground can be reached. We have any number of applications that come before us from private developers where there is give and take; developers reach for the moon, and will take what the sense of the community allows.

My sense of this application is that that is not the drill, because the state is setting the ground rules—the qualification of the applicants, the age restrictions, the financial restrictions, the size, the number—to guarantee that there is a viable financial model to sustain not only the development of the site, but also the continued operation. There is one more burden, what we have euphemistically called scholarship patients. That is the result of the philanthropy of the Andrus and Benedict families. It is something that is not a component of any application that would be coming in to develop raw land. We have an existing facility with existing burdens that have to be looked at, not only now but in the future, and figured into the model.

I think it is high. I have had discussions with the applicant about this. I do not know what the optimal height is. Anything there in addition to what we have now is going to be an added burden. It is going to be different, and different is scary. But different does not mean that it cannot fit in to what we would like to have. Part of what we are wrestling with here as far as FAR and bulk and density is due not only to what the state has done, but to what we are requesting here: the 100 foot setback, the meadow to remain open space. Like any other cluster development, when you take something that is spread out that may not be too high and put it into a more confined area, you may have to make up for the loss of the spread out by allowing it to be elevated.

The height and the density is too high. I would like to find some common ground, if it is possible. One of the partners is the state, and I do not know how you get around the administrative requirements and the financing requirements that have to be met.

Trustee Holdstein: On page 31 the findings state that the proposed height of the buildings has the most significant potential of contravening the Village's goal of keeping the size of physical

structures to a Village scale in order to maintain the Village's existing character. I agree with that statement. It reiterates what is sounds like all of us have said: there is a problem with height. As far as the state's involvement, where does the state get involved in the economic model?

Mayor Kinnally: The state has to approve the model. My understanding is that the state has to look at the entire package and see what the various financial elements are, such that you will have enough money to retire the bonds that are being floated and have enough money to operate, given all of the contingencies.

Trustee Holdstein: So they have got to sign off on that. Which raises the issue that some in the community have raised about where certain monies may or may not be placed.

Mayor Kinnally: I do not think there is a question about where monies have to be placed. My understanding is that the state must sign off on the financial picture before any approval is given. In addition to the financial model, they have to approve the number of independent living units, assistant care facility, and skilled nursing. All three of those components go into the financial model.

Trustee Holdstein: The argument put forth during the Planning Board's process was the applicant saying we can't shrink it any more because that model does not hold up to get the state's approval from a financial standpoint.

Mayor Kinnally: They would have to go back to the state and do a whole new application.

Peter Bergman, Cadwalader, Wickersham & Taft: I represent the applicant. There are three agencies that looked at the finances: the Department of Insurance, the New York State Department of Health, and a body that is semi-independent, which is the Life Care Council. All three had to approve both the capital and operating expenditures and revenues of the project.

Trustee Holdstein: In the process that you went through with the Planning Board, where you were asked if you could reduce it, did the process allow you to go back and see if the state would approve something smaller?

Mr. Bergman: Reductions in the project were presented to the state. What you ended up with, and what the Trustees have before you, is what is viewed by both Andrus and the state as the only final product that makes sense financially, supports the bonds, plus supports all of the requirements of Article 46 of the Public Health Law.

Trustee Holdstein: So there was dialogue on your client's behalf with the state to look at lesser size and see if that was viable. That dialogue was had between your client and the state?

Mr. Bergman: No, the state does not express a preference as to the number of units.

Trustee Holdstein: I do not mean their preference, but whether you presented to them any other shrunken models to see if they would have blessed any shrunken proposals.

Mr. Bergman: We did not present any models that were lesser than what you have before you now because there was nothing less than what we have now that, based on the independent actuarial study that was done by PricewaterhouseCoopers at the request of the Planning Board as well as other analyses, were done that would end up with a financially viable project.

Mayor Kinnally: Are the age limitations of the applicants self-imposed, or does that come from the state?

Mr. Bergman: I believe that it is partly required by the state, but I could not give you a precise answer on that.

Ms. Biddle: It is required by the state. It is in Article 46 that the applicant be 62 or older to be part of the life-care community.

Trustee Walrath: Are you at liberty to set it higher than 62?

Ms. Biddle: The average age of the current people, which are 115 who have given us 10%, is 76.

Trustee Walrath: But can you make a higher minimum age than 62?

Ms. Biddle: I do not know the answer to that.

John Kirkpatrick, Kirkpatrick & Silverberg: Sixty-two is acceptable under specific exemptions to the general concept that we are not allowed to discriminate against people on the basis of age. Provided we start at 62, we can. We cannot go higher than that.

Special Counsel Chertok: The Federal Fair Housing Act governs this, and there are two different provisions. One is 62 or older, where you have to have a certain percentage of persons who are 62 or older. Or you can lower the age to 55, with a somewhat different percentage. But those are the options, and it is governed by the Fair Housing Act which, of course, adds an exception to what would otherwise be age discrimination.

Mr. Kirkpatrick: We also have the New York State Executive Law, but the simple answer is we cannot go higher.

Mayor Kinnally: Why do we not move on to the affordable housing component.

Trustee Walrath: Any increase in affordable housing may stress the financial viability. There have been comments from members of the public about the assumptions that went into the original project, and it is not our function to suggest a different set of assumptions. Whatever assumptions you put in, the affordable housing is going to make it more difficult, if it is an additional cost the project has to bear, to approve it. I do not think you can both reduce the scale of the project and increase the affordable housing. I would prefer to reduce the scale.

Trustee Apel: I am strongly in favor of having affordable housing, and the \$350,000 that was offered in lieu of the affordable housing would not be able to build 10% even if it was on another piece of property. There is a reason why we have an affordable housing recommendation: we have needs in our community; we have people that are going to build, and when they have a certain size then they should abide by that proposal that the Village has set forth. What has been offered is inadequate, and I do not think it would do anything for us. They should either provide the affordable housing or provide the finances to provide the housing, which is 10% of whatever they build.

Trustee Holdstein: If you look at the different tiers we are trying to address with our affordable housing, there are certain segments of our population that we are trying to address in reaching our goal of 30. First and foremost is volunteer fire. There is a difficulty in trying to merge a CCRC and housing on that site which would not work within the state laws. David raises a good point: if we come to a point where are looking to reduce the size of the project, reduction of the size becomes a greater priority, as much as I am a huge advocate of the affordable housing that gets negotiated later along with the PILOT. The bigger issue first is site. If they cut the project in half and we still maintain the \$350,000 and other monies with regard to PILOT's, we would have to look at it at that time. Perhaps let us put this on the back burner. As the project stands now, \$350,000 is probably inadequate. But the important subject becomes the size of the project, and these kinds of issues would follow after that. Putting affordable housing on that site does not make a lot of sense, and the applicant indicated they cannot do it legally. You are not going to have people under 62, so automatically it is a problem. So the monies for off-site is a more logical approach. How much that is, we have got to figure out later in the process.

Mayor Kinnally: I credit the explanation that has been given as to why you cannot incorporate affordable housing onto this site. The state was not going to allow this financial model to incorporate in it the affordable housing component. There were regulatory restrictions against that because of the healthcare component. You had to offer it to everybody, and you could not carve out the affordable housing. There are probably better sites in the Village, and if this project goes forward I anticipate there would be discussions between the community and the applicant on alternatives that would address this issue. Nobody is against the concept of affordable housing. The question is, what is the appropriate measure of the affordable housing and what form is it going to take.

Trustee Apel: The amount is predicated on whatever happens in the end. Based upon what they have presented already, the amount was not enough based on the 10% ruling, even if it is built someplace else. If they build something smaller, the percentage goes down and the money changes. I do not think that the offering of \$350,000 to build it someplace else represents 10% of whatever they are building now. They should do it in that percentage. If we want 10%, then the money should represent what they could actually build. Giving you a token amount of money which could build one place does not represent 10% of what they are to build. I strongly feel that they should be required to do that.

Mayor Kinnally: Right. But there is some irony here. We have to await the size of the ultimate development to determine what the contribution from affordable housing would be, and the 10% is a policy. It is not a requirement, but it is a policy. You also have to take into consideration the fact that we are saying that this should not be a development for the wealthy. Yet if it is not going to be a development for the wealthy, the ability to generate certain amounts of money may adversely affect the ability to come up with something for affordable housing. You cannot have it both ways and this is something all of us have to wrestle with, that it is a policy, it is something that we are striving for. Given the fact that we want to scale it back not only in size, but some people are saying in quality because we do not want to have it as luxury housing, then you have to find a source of funding that is going to be able to offset affordable housing or any of the other amenities. In concept we can talk about it now. But the dollars and cents are something that are going to have to await the scale.

Trustee Apel: I agree, but if Andrus understands what our policy is I am sure they creatively and financially can figure a way.

Mayor Kinnally: I think so, too. I also think that they understand that, and if we are coming down to the various components like the PILOT and affordable housing, that the dialogue will continue and we will get something constructive out of it.

Trustee Holdstein: To your point that it is not a requirement but a policy, they create numbers, and where they suddenly reduce the overall cost of every unit \$250,000 and it suddenly makes it much more affordable for many more Hastings seniors, we may say that that would preclude the need for any of it. It is like the PILOT, something that would have to be negotiated, at least based on where we go with the project in total.

Trustee Walrath: Apropos of what Michael just said, I believe that their least expensive units do meet the upper income test. Somebody who is within that upper income that has an indicated percentage of the median county income could afford at least their alcove units.

Mayor Kinnally: Whether they could afford the down payment or the entrance fee is something else.

The next issue is diversity .

Trustee Apel: This proposal does not lead to extensive diversity at all. It is one particular age group with a certain economic level. I do not necessarily think of that as diverse. It certainly would add increased housing for the elderly, but I do not think that in and of itself makes it diverse. It is a particular population on that particular piece of property.

Trustee Walrath: How do we define diversity? We are going to increase, by the project, specific types of housing for the elderly far beyond any demand for such housing among the seniors in Hastings. We are going to restore the population that the original Andrus facility had. They will be somewhat more wealthy, looking at the spread of prices for the continuing care. I cannot tell if that is increasing diversity or not. If it is bringing seniors into the community beyond the percentage that we have now, it is an important consideration. A portion of our current population very much wants to live in Andrus on Hudson. They have spoken at our meetings. I do not know that we are adding diversity in one way or another. Not knowing it, I find it very hard to make an issue for or against the project out of diversity.

Trustee Holdstein: By its very nature, it is tough to argue that a CCRC is diverse. It is not. It is for a particular group of people. Sixty-two and, in this case, the model dictates a certain financial ability. Other models in other communities built by other developers may be different. They may be affordable to a broader economic range. But, by and large, this proposal does not. I do not know that it can really be an issue. If we were a community that had an exceptionally small senior population, then you could argue that by putting this in you are increasing your numbers, but we do not have an unfairly small senior base. We have a marvelously diverse population, including a very healthy group of seniors. A project like this is not diverse. I do not see where it is a big issue plus or minus. It is what it is.

Mayor Kinnally: I come at it a little differently. If anything, it maintains a diversity. Not all the residents there are going to be original Hastings residents. But it maintains a certain diversity because there is a senior population presently there. And there is also a component of people in the community who are approaching senior citizen status who have single-family residences and they do not want to stay in those homes for any number of reasons, but they would like to continue to be part of our community. This allows that segment of the community to remain active in this community. It would also attract similar people. Is that as diverse as the rest of the population? Probably not. But the state has clipped our wings on this. The state has said someone 55 who wants to go into a CCRC cannot go into this one. It is 62 and up. I cannot say that there is an inducement to increase diversity because of the nature of the very restrictions that the state has imposed upon us.

Trustee Walrath: We would be more diverse in that 90% of the population would be from elsewhere. That may be diversity. I think the more important thing is the 10% who stay here and not be severed from their roots in the community.

Mayor Kinnally: Yes, and I also would be interested in knowing what the percentage of native Hastings people have been residents up there over the last 10 or 20 years. I can tell you from campaigning there, and talking to a number of the people, that a lot of them do not hail from Hastings. They hail from other areas around there, and become Hastings residents by virtue of staying in the facility. I do not know if that is going to change anything

The next item is the financial viability of the project.

Trustee Holdstein: We have already touched on it. My concern was just how much exploration has been done. We know that, based on communications between the applicant and the Planning Board, it was presented as the only economically viable concept, with its height and density. This board has indicated this evening that we share a concern about that height and density. The applicant says it cannot be lower or any less dense and be economically viable. So we are at a logjam right there. It is our role to try to find compromises. But we are not happy with the height and density and the applicant has indicated that they cannot reduce it.

Mayor Kinnally: Let me throw something else in here: whether there is a drain on the community's resources by the operation of the CCRC.

Trustee Holdstein: I spoke to that earlier. There was a lot of public comment about the PILOT versus the expenses to this community. I have made my feelings known pretty clearly this evening about the project. But having said all that, I have to defend, from this Board's perspective, the funding. I am convinced that the amount of money we initially negotiated for the Village, in the amount of \$179,000, and then increments, more than offsets the cost from the Village standpoint. The amount of calls that may be required by our ambulance or fire department, the amount of trips up there to pick up garbage: the Village, in its PILOT, comes out ahead on that. The dynamics would certainly change if this applicant did not move forward, and it turned into 35 \$600,000 homes and we were making more trips there with trucks for DPW and other services, and the school kids. That is a whole different dynamic. But as it is we come out ahead. I do not think that is an issue that needs to carry the day. But I do not see that it is a net negative for the Village. It is a net positive but, again, that does not mean that we summarily bless the project.

Trustee Apel: In trying to understand financial viability, I need more information. I would like to have the appraisal figures used in calculating the land value. If I understand finances correctly, the net surplus has to equal the contributed capital, and part of the contributed capital of this project is the land. I would also like to know why money was transferred to the Helen Benedict Foundation in 1998, instead of leaving that money in there. And why does the Andrus Home feel that they have to repay the loan in such a very short period of time, because that definitely affects how much money they can give to the Village.

Mayor Kinnally: Is there anyone who can address any of that at the present time?

Speaker: We will get back on that.

Trustee Apel: This is a supposedly a non-profit organization which may be making a lot of money. The concern is, what effect does that have on their status as a charitable organization if they are making a large profit. In looking at the finances, I am sure you are trying to figure out how you can put your money in such a way that it does not look like you are making a lot of money so that you can stay a non-profit organization. I need more information in order to understand the finances.

Trustee Walrath: What we have just gotten into is something that is not our business at this point. What we have is a project to vote up or down. But if we are then to talk about a smaller project, we will want to look at the assumptions that went into the financial studies. I am going to try to get my head around the figures that are available now. We all need to understand the financing if we are to talk about any smaller project.

Mayor Kinnally: My understanding is that if a smaller project was to be contemplated it would have to approved by the state before they came here. Is that correct?

Speaker: [affirmative]

Mayor Kinnally: Some of the Trustees have raised concerns about how we have approached this as far as the application and the zoning amendment, so I will open it up for those who want to raise those questions.

Trustee Apel: I was trying to get a handle on why this was not spot zoning.

Special Counsel Chertok: There are a couple of reasons. The theory under spot zoning is that you are taking, generally, a fairly small piece of property and you are rezoning it solely and exclusively for the benefit of the property owner. The proposal here, first of all, is not a rezoning. It is amendments to the text that apply throughout the R-20 zone. The amendments are written so that you can take an existing senior use and convert that to a CCRC. So those zoning amendments, while today only applicable to the Andrus facility, if adopted, might well be applicable in the future to other entities. It would not apply only to this entity, and would not necessarily apply only to this site.

Second, this is one of a handful of very large parcels in the Village, and you generally do not have spot zoning when you are talking about a large parcel, particularly in a small village.

Third, this parcel has been treated separately in historic Village planning documents. It has been carved out, indicated, and discussed, which would suggest historically it has been looked at as that kind of a parcel that would be looked at in terms of planning in the Village separately, which, again, is the antithesis of spot zoning. Even if you said the zoning amendments will

apply only to this site for the next X number of years, it still would be consistent with the general planning taking place in the Village over the years.

Trustee Holdstein: Point one, you are saying this would apply to any R-20 zone.

Special Counsel Chertok: That is correct. The amendment is to text of the R-20 zone.

Trustee Holdstein: So if there was another R-20 zone that was sitting vacant, and another applicant wanted to put a CCRC on it, if we adopted this would that allow him a freer path to doing the same thing?

Special Counsel Chertok: No. The zoning amendments provide that only if there is an existing facility, or a senior use, so to speak, then that senior use could be converted after a Special Permit is issued by the Planning Board to a CCRC. So it only applies, again, in an R-20 zone, which applies in many of the other zones, of course, in the Village. But that use could only be given by Special Permit if there is an existing senior use.

Trustee Holdstein: For which there are no others.

Special Counsel Chertok: Today there are none. But that does not mean there could not be; since your zoning allows homes for the aged, nursing homes, you could have a small facility three or four years from now that would want to convert to a CCRC, and then this provision would come into play if it could meet the other requirements of the proposed zoning amendments.

Trustee Holdstein: If that were to come into play that way, would that new applicant have to go through the same process that this has gone through?

Special Counsel Chertok: No. The new applicant would only have to get a Special Permit from the Planning Board if it met the qualifications to apply for that Special Permit. It would go to the Planning Board and say that the zoning text already allows me a Special Permitted use. Just like today, an applicant can come to the Andrus site, if it was sold tomorrow, and apply for a home for the aged and it could go right to the Planning Board if it met the requirements for a home for the aged, as it exists today, or for a museum, for example, because that is allowed on that site in an R-20 district under the zoning. All this does is say, basically, if there are senior uses that want to convert, and meet the requirements, then they can seek to have a conversion from the existing senior use to a CCRC. It does not say in any area that is zoned R-20 anyone can seek to put up a CCRC. That was the applicant's initial so-called floating zone proposal. That was changed after the Draft Environmental Impact Statement.

Mayor Kinnally: So the pre-condition would be the existence of a senior care facility.

Special Counsel Chertok: A senior use, and certain size and requirements, and access to state highways and things like that.

Mayor Kinnally: Can you elaborate what those requirements are? The access?

Special Counsel Chertok: I would have to double-check, since it has been a while since I read those exact provisions. I think it is 25 acres in size. It is a certain frontage along a state highway, for example, and adequate infrastructure. So you need to satisfy those criteria before you could qualify for a Special Permit.

Trustee Apel: Do we have any property that does that?

Special Counsel Chertok: There is no other property that meets the criteria with respect to a senior use today, but other properties could arguably meet the other criteria. And, of course, properties could be aggregated in the future that today do not meet it, so you do not know. But all the amendments would do would be to say, if there is a senior use on one of those parcels that meet this, then you could seek to get a Special Permit from the Planning Board. It does not guarantee that the Planning Board would approve the Special Permit, which, I think, is one of the reasons that the Planning Board in their deliberations were setting a cap on a proposed development within a zoning district. But that does not mean automatically that any such proposal would be approved. That was evidenced, for example, by ShopRite, which met zoning, yet was disapproved for other reasons.

Mayor Kinnally: It would also go through any SEQRA Review, right?

Special Counsel Chertok: It would, obviously, go through a SEQRA review and a site plan Review as well.

Trustee Walrath: So we are not spot zoning because a zoning amendment is not a change in zoning. A change in zoning, according to the case law we have, means I take this property and I give it a new zoning.

Special Counsel Chertok: The traditional spot zoning is where you take a parcel zoned R-20 and zone it multi-family. It is a small parcel, it is taken in isolation, and everything around it remains as it was before, and you wonder why they did it other than to help that particular applicant. It is very different here, where you have historic senior uses, for example, that are very close. Arguably, the rough equivalent of a CCRC and/or nursing home depends on one's perspective and how you look at it. It is licensed as a nursing home now.

Trustee Apel: Do you think that, even though it supposedly goes to other properties, it still could be construed as spot zoning because we are really doing it for the Andrus Home?

Special Counsel Chertok: Most zoning changes come up in the context of a particular applicant. So in that context, if that was the standard you would always have spot zoning. I think the issue is, is it a rezoning of a small parcel solely for the benefit of Andrus. I think the issue of whether or not a CCRC is an appropriate use is really the appropriate threshold question, because if you say it is only appropriate to use on this site—you would not have another CCRC in any other site anywhere in town—then you may say it may raise an issue. But if the issue, as has been discussed tonight, is not just CCRC's on this site but is a CCRC an appropriate use for a municipality the size of Hastings, then I think you are well beyond that issue of spot zoning.

Mayor Kinnally: The next issue is site disturbance and screening.

Trustee Walrath: I had one concern. At times, there has been a reliance as far as the view from the west from down the hill on the trees that exist there. The tree replacements should take into account that most of the trees that we have there now lose their leaves in their winter. It might be well if some evergreens were included in that area, which would give a year-round screening to whatever is built. Also, the Village is working on tree replacement guidelines. If we get to that point, those certainly should be referenced in the choice of plantings.

Mayor Kinnally: What about site disturbance and blasting. I know a number of the neighbors are concerned about the extent of the rock blasting that would be necessary during the excavation phase, because this area is built on rock. Any comments as an engineer?

Trustee Walrath: I know that the blasting people frequently tell you that everything will be fine, and it usually is. But sometimes it is not. It is not predictable. I have not examined the places where there is a need for rock removal. There are non-blasting methods that can be used. They are more expensive, but if there is a concern there ought to be ways of mitigating it.

Trustee Apel: My concern is for screening. I do not know much about site disturbance other than they are going to be drilling a lot of rocks, and I do not know if it matters whether it is this particular project or another. But I know there were concerns from people on Pinecrest that, when there had been previous excavations from building that was going on in one of the areas, their house was severely damaged. But that is something that would happen with anything that was decided to be developed up there. We would need to think about that, depending on where any of those buildings are placed.

When we looked at the model and the slides of the project, the discussion was that they wanted to have various types of plantings so it would not be boring. But even within that, a closer look has to be taken to make sure that if anything is put up that it really does block the views of those people that do not wish to see those buildings. When the leaves come down you do see it. If anyone takes a walk up on Warren or Hudson in the winter, it is a totally different look than in the summer. A lot of trees are going to be removed in some areas, and if some replantings were

going to be made they would have to follow the guidelines. Some areas did not look like they would be covered, but it is hard to tell on a little slide with the make-believe trees and bushes.

Trustee Holdstein: There is going to be blasting. Some neighbors spoke at the Public Hearing about damage in the past. I would like to think that at this point this would not happen, whether it is this applicant or anybody else. As far as the screening, if the project moves forward the applicant is certainly going to be open to looking at that, improving it, and adding some plantings. I do not see it as a major issue if we are down that road and we need to discuss it, not unlike the dialogue we had at Riverpointe. It is not a huge stumbling block .

Mayor Kinnally: The greatest impact in the community is going to be on the easterly side. Although there will be buildings there that are not there at the present time, the buildings on the easterly side are going to be more prominent than anything else on the site except for the existing building. There is no way you are going to screen the existing building. But this is one of the least troublesome areas where the Board has concerns. Obviously, it is in the interest both of the applicant and the community to have as much softening and shielding as possible. There is current vegetation there that would do some of the job. You are never going to cover everything. I know people are not going to be happy, but a lot of the people who live on the easterly side, you can see their houses, too. It is the nature of putting up a structure. I do not think, necessarily, you want to shut everything off, because then you are going to get an enclave. But you do not want the first thing you see to be structures. You want it to be as softened as possible. Improvements can be made and have been made. As a result of our meeting on the site there have been modifications suggested, and I have not gotten the sense that the applicant is resistant to coming up with not only a different plan but also a mix of vegetation that would afford as much variety, seasonal shows, and also privacy that would help everybody.

Trustee Walrath: On the subject of the blasting, I would suggest that we look into it at the Village level and see if we can give guidelines to provide neighbors a little bit better protection. It was troubling, the letter from somebody on Pinecrest Parkway. It had a great impact on their house. We should have a way that permits people to document it and get remediation from bad effects. We also should see if we in our blasting regulations can minimize that type of impact.

Special Counsel Chertok: The EIS has a blasting plan which requires photographs to be taken first, and a very detailed monitoring, which probably did not occur in the plan. It incorporates the Village's requirements, but goes beyond that.

Mayor Kinnally: This would be benchmarking?

Special Counsel Chertok: Yes.

Trustee Holdstein: That incident happened a long time ago. I like to think that the quality of blasting has far improved from when that resident had that problem.

Mayor Kinnally: The next issue is traffic.

Trustee Holdstein: The traffic issue is an interesting one because we have the luxury of a study as part of the documents that say the impact is minimal. I have not done my own study. I do not have any empirical data to support what I am going to say. But I think that there is going to be an impact on traffic. We have had this discussion about bus schedules, and having trams and things, to try to minimize some of the traffic. With all due respect to some that have proposed that, I think in this community you have a hard time convincing people not to take their own cars at their own time to get wherever they want to go. I do not think that people are suddenly going to go with a bus schedule. Our population is not that accepting of that concept, as nice as it sounds and as positive an impact it would have on congestion and air quality. The population base that we are talking about for this community is going to be bringing their cars and using their cars to a great deal, and this will have an impact.

The opening age is 62. Ms. Biddle has said that the average age now is 76. My mother is 77, and just drove six hours to upstate Michigan. She is very active at that age. I have heard from many others in the community about their parents and so forth. The idea that these people are suddenly not going to be going out and not going to be using cars and not increasing traffic, these are people that are moving into very nice apartment living with cars. And if there are two people in there, they might even have two cars.

I cannot say that data in the documents is wrong. This is purely my gut. I do not buy into it that the traffic is going to be minimal. I drive past that site going down Broadway towards Yonkers. I have been at that interchange that many people talked about—the idea of inching forward for a site view and seeing cars and making sure. Do I think it is going to be accidents every other day? No, but I think that to discount it completely is, in my opinion, not accurate. There are going to be more cars; there is going to be more traffic.

It is certainly an issue that this Board has dealt with: cars, traffic, speed, parking. These are issues that are already stretching a small community and worrying people. To not believe that adding that many more cars is not going to have an impact is turning a blind eye. Again, I have no data, it is purely gut, but I hear more comments about parking, cars, speed in this community than probably anything else up until the Andrus project.

Trustee Apel: I agree with Michael. We need to look at two other issues in relation to the traffic and cars. If these people decide to take the train, they are going to want to come into town and park. We already have problems parking in the Village and parking to take the train. So that is going to add another pressure. The other side of it is, I would hope that people would have visitors. It is not just the fact that they have cars and they are going out. People are going

to visit them. You have to look at the whole picture. It may be that traffic would not be a problem. But I tend to think like Michael does. I would be concerned with the effect it is going to have on the community. People want to go shopping in town, where are people going to park? I do not think they are all going to take that shuttle bus into town.

Special Counsel Chertok: Maybe it would be helpful to clarify the traffic study that was done. The applicant's consultants prepared a study which was based upon actual experience at other CCRC's in this general area, the ones that are available. Those studies included traffic counts at those facilities which, of course, focus on the peak hours when you have traffic congestion, and obviously count visitors as well as employees and persons going in and out. Presumably, seniors 62 or older are not much more active, or less active, in suburban Connecticut areas than they would be in Hastings. The Planning Board's consultant, Frederick P. Clark, reviewed those studies and also has done studies of its own. But the focal point on the studies is on the peak hours to make sure that when you have the largest amount of traffic on the roads— morning and early evening, usually—that you are not going to have any significant impact. It does not mean there is not going to be some additional traffic. But what it means is that it shouldn't change what is called the level of service at the intersections in question. They are based on actual studies at other CCRC's where there tends to be lesser use of cars, and the use tends to be in the off-peak hours, where it presents less of a problem for the street network.

Trustee Apel: We know that they rate traffic at different levels. Do we know what the letter rating is for our particular area that we have?

Special Counsel Chertok: Yes. Actually, the traffic ratings are fairly good in that area, and they would not be altered.

Trustee Apel: A, B, C, D?

Special Counsel Chertok: I think they were B's, primarily, and they would not be degraded by the traffic that would be projected to rise from the CCRC.

Trustee Apel: Did they take into consideration that there is only one exit there?

Special Counsel Chertok: They also did actual traffic counts in the area to get baseline traffic. Then you take that baseline traffic and you add onto it the traffic projected from the CCRC and, generally, growth in the area.

Trustee Holdstein: If I have heard you correctly, Mark, you said that the traffic study in large part was based on looking at other CCRC's of comparable size in other locations.

Special Counsel Chertok: They were based upon CCRC's generally comparable in other locations, because there is not one in Hastings to base it upon, right?

Trustee Holdstein: That piece of information, to my mind, makes the traffic issue even worse for the following couple of reasons. Number one, comparing a CCRC in another community without looking at our community—the size of our streets, the width of our streets, where the traffic has to funnel through, whether it is Five Corners or down Washington—and just taking a generic 200 to 250 CCRC...if they looked at one in, let us say, Tarrytown or Elmsford or Yonkers, which are larger communities that could better absorb traffic, with wider roads, then the study is even more flawed than I realize.

Special Counsel Chertok: Perhaps I did not explain it correctly. The study that was done in terms of other CCRC's was to determine the amount of traffic that would typically be generated by a CCRC. First you determine the existing baseline, which is the conditions in Hastings, in the area, based on the roads, the geometry, the traffic speeds, and actual traffic counts, so you have the very detailed information about the Village. Then, in order to determine how much traffic one would expect from a CCRC you look at other CCRC's, and counts are done at those CCRC's, to see the number of vehicles that go in and out during the different hours of the day. Then you impose that on the Hastings baseline. So it is done based upon experience at other CCRC's on top of the conditions in Hastings. Not just today's conditions, but the conditions that are expected to be present when this would have been opened for operation, let us say 2002. If there is any growth anticipated in the roads that was added in as well.

Trustee Holdstein: As I said in my opening comments, nursing care facilities as have existed up there for a long time I would be fully supportive of. This comes back to one of my concerns, and I think it is germane now. That is the fact that when operations like Andrus/Beth Abraham are looking for facilities, it is easier to put them in towns that are larger all the way around, in space, size of roads, diversity of shopping areas to allow for this influx of cars. It is not to say, let us shove this away. It is to say that in two square miles it is pretty tight and pretty compacted. These kinds of things, with this size, just belong in a larger community that can better absorb both traffic and a lot of the other issues.

Mayor Kinnally: I think there are better arguments than the traffic argument. It is a pretty weak argument, and I will tell you why. First of all, the numbers are not there to support it. Secondly, I sit here and I was somewhat amused. We are talking about worrying whether or not these elderly people are going to be able to get in their cars and go downtown and shop and go to the train station and have visitors. Sounds like a pretty diverse group of people, and it sounds like we are not talking about an enclave. So, once again, we are using arguments on both sides.

I do not see the substance there on the traffic. Are there concerns? Yes. But I do not think the concerns translate into empirical data that you can say we are going to have traffic problems as a result of the operation of the CCRC. I would say, on a relative basis, that we had more traffic in that area years ago when the Tompkins Avenue Bridge was open and you could get to the

other side. Is there going to be an increase? Probably. But I do not see, from the data that was generated and the discussions that were had not only by the applicant's people but by our people, that there is going to be a significant degradation of traffic and an increase that would adversely affect the area. The same discussion was had when Hastings Landing was proposed: that it would cause a problem in the area because you were having one more curb cut onto South Broadway, and it was going to generate a steady stream of traffic that would require people who wanted to go north to traverse the entire island to go around and go north. I do not see that the numbers are there to support an argument that the data shows that there is going to be a substantial degradation in the present level of service or that it poses a health or safety risk to the people in the area. There may be more traffic, but I do not see that it is going to be a substantial decrease in the level of service that we experience now.

Trustee Holdstein: I use the term traffic to define car population in Hastings. I am not going to say specifically that there is going to be a lineup on Broadway trying to turn in, and that there is going to be huge 30 and 40 car lineups. I am encompassing the amount of cars flowing through the Village. Do we not deal with, right now, a concern in this Village that there are traffic/car issues that come before us repeatedly that we still have not resolved?

Mayor Kinnally: No question about it, but it is a combination of both numbers of cars and how the operators operate those cars.

Trustee Holdstein: Absolutely. I am simply looking at this thing globally, and saying you are now introducing X number of new cars into a community that already has problems with cars, traffic, how people drive, the speed that they drive at. I am not saying just a line of traffic waiting at a stop sign. I am encompassing all of it when I say that it is another big chunk of cars introduced into an area that we still have some major concerns today. I am not suggesting that this, or any of the other things we have discussed tonight, carry the day any more than one. I am not suddenly putting so much weight on this. It is just one more element.

The last thing I want to say: we do not have tonight a working definition that we have all agreed on for enclave. I do not feel I am contradicting by suggesting that this group of people and this CCRC is an enclave. To me, an enclave is about an enclosed community, restricted by law and by state policy at 62 and older, a certain population and so forth. I do not think that the idea that I still see this as an enclave community is compromised by the fact that people from there are going to be moving about the Village and around the county.

Trustee Apel: I was going to say the same thing.

Trustee Walrath: Looking at the one place where the peaks would really hurt, there seems to be concern from some members of the public about some of these people showing up regularly at the railroad station during commuter rush hour. In the major development in front of the

Planning Board, the developer has talked about a shuttle bus. I would hope that if there is any significant number of people from Andrus who want to commute on a regular basis, or even on an occasional basis, they would not be putting further demands on the parking downtown. Perhaps a shuttle bus meeting specific trains would be part of the program there.

Mayor Kinnally: My understanding is that a shuttle component is part of the operation.

Trustee Walrath: If there is concern that we may need mitigation at the intersection of Tompkins and Broadway we ought to factor that in to our calculations. If we have any doubts, we ought to make sure that we have some mitigation, as a signal at that intersection is a complicated issue.

Special Counsel Chertok: You generally would put in a provision saying that if the traffic warranted you have the developer, or the applicant, do a traffic study, called the warrant study. Then you give it to state, and if it met the state requirements they would put a light in.

Mayor Kinnally: Only if it gets those numbers.

Special Counsel Chertok: Yes, you need to get a certain number.

Mayor Kinnally: Let me just touch on the PILOT. I think there is consensus on the Board that we will go back to the drawing boards on that if it is necessary. To the extent that it would entail a negotiating strategy, it is not something that I want to share with the back-benchers in this room. The consideration of these elements has been discussed at great length by the Planning Board, by the Village in their public comments, and in the written comments. The message has not been lost on this board.

That brings us to the end of the items that we were going to discuss this evening. I open it up for general discussion, if any, by the Board. Certainly, the applicant is going to come back with additional information that they have promised us. If the Board needs anything else, you can funnel requests through me and I will go back to the applicant. This will be on the agenda for discussion on the September 11.

Trustee Walrath: One item that we did not have on tonight's agenda that I would like to see for next time is, there is a fair amount of consideration of alternatives to this project. We do need to look at those; it is an important part of our deliberations.

Mayor Kinnally: The first alternative was no action, and that was that there would be no amendments to the Zoning Code and the existing nursing care facility would remain. The benefits are that it would increase housing for the elderly to meet increasing demand in Westchester County, including the Village. But, apropos of what we were talking about earlier,

this population is going to be county-wide, or regional-wide. From personal experience I will tell you that nursing home facilities are in relatively short supply, and good ones are in relatively short supply. If anyone has gone through the difficult process of placing family or friends in skilled nursing facilities, it is a trying experience. They talk about potentially increasing diversity in the Hastings population and preservation of the meadow through a conservation easement.

These are the benefits that would not be realized: the buffer zone, the increased landscaping, the development fee, and the PILOT payments. From a practical standpoint, aside from that, I do not see that the continued use of this site is a viable alternative in today's market. When discussing these alternatives we have to focus on what we are going to do with the approximately 100 Hastings residents that are going to be, possibly, displaced. I do not care where they came from but they live here now. It is a difficult item that we have to talk about. I will not speak for the applicant, but I do not see Andrus remaining as an operation in 2002 the way it was operating in 1972. The alternative zoning provision is a new zoning district for CCRC's.

Trustee Holdstein: Did you just offer up your opinion that you do not believe that a nursing home could work on that site?

Mayor Kinnally: The current operation. The way it is currently operating cannot continue.

Trustee Holdstein: You are defining that as the way that they have shrunk the population to get to a point now where they need to put forth this proposal?

Mayor Kinnally: No. I am talking about utilizing the existing site in the existing envelope that they have, the configuration of the units in today's market. They are not competitive. That is one of the problems. I am not so sure that with the size of the units and the age of the structure that they can continue the way they are.

Trustee Apel: I have a deep concern about that, because based on their finances, they took \$30 million out of there. So there was money there. Now they have taken it out

Mayor Kinnally: No, I am not talking about the existing money. Maybe I am all wrong. I do not want to speculate.

Speaker: You are all wrong.

Mayor Kinnally: Okay, I am all wrong. And not the first time. But they cannot use the facility, I do not believe, the way it is right now, looking at the way that competitive operations exist at the present time. The no-build alternative does not advance a number of the issues that

we discussed earlier: the conservation easement, preservation of the meadow, the setback, the PILOT, the additional fees. The no-build probably invites some other change of use.

Speaker: Does your assessment of the current liability come from a study, or from a nursing home management person?

Mayor Kinnally: I am not a nursing home management person. I am trying to assess some of the alternatives and look at what the possible future of that site may be. Is it based on anything other than just observations, a dollop of common sense? I think if the operation were perking along and was competitive, then they would probably do what they have been best doing for the last 45 to 50 years. But the market and the financing has changed. It is just an observation.

Trustee Apel: I think if we do not have all the information on this, and it was not based on a particular study, and we are talking about our opinions here, then people are going to have a lot of questions on that. So if are really going to look into these alternatives, I think we need to get more information.

Mayor Kinnally: The alternatives are discussed and for some of them you do not have to get any more information. If you just look at existing allowable uses, you could put a library or a museum there; a philanthropic or eleemosynary institution; a hospital; a convalescent home; a home for the aged; a nursing home.

Trustee Apel: And single-family homes are also on this list.

Mayor Kinnally: How does the Board feel about single-family homes on that site?

Trustee Holdstein: The community that came out at two Public Hearings did not want to talk about if we turn them down cold as of right what could go there. What as of right can go there is approximately 30 homes. It is a pretty large zone. There could be \$600,000 or \$700,000 homes and the impact, as you alluded earlier: more cut-throughs for driveways, and kids in the school, and a different taxing structure than the proposed PILOT. Whether that is what we want or do not want I am not prepared tonight to talk about. You just ran off a bunch of things that could go there, including a nursing home. To Marge's point, Beth Abraham/Andrus has made a decision. They looked to the future and made a decision, which is now in front of us. It is not part of our charge to question whether a nursing home or a convalescent care is a better choice and whether that is a viable option.

While we have made no decisions tonight, we have had some good, open dialogue and one thing certainly is clear. All four of us were uniform in saying that the height and the density was unacceptable. If you take that fact, and the fact that the applicant is saying we cannot change it, that is where we have to start.

Mayor Kinnally: It does not matter whether or not it is palatable to the Board as far as height and density, because two members of the Board have said that a CCRC is an inappropriate use for the site. You never get to it. So getting involved in everything else is really beside the point. If the Board is of the opinion that a CCRC is an inappropriate use for the site, then we do not reach the other elements. There is no reason for the applicant to go through the process anymore if the Board is not going to be receptive to a CCRC.

Trustee Walrath: Is that not exactly why we want to see the other side of that decision, if that is the decision we reach, which is that something else is going to happen at the site. That is why I wanted to consider the alternatives. Maybe we cannot give them adequate attention tonight, but I certainly would like to think about if-not, what-then.

Mayor Kinnally: I would be happy to put it on for a discussion on another night.

Trustee Walrath: I think people have sat here patiently for three hours, and unless we stay until the wee hours of the morning very few people are going to get a chance to say anything. It would give more chance for the public, too.

Trustee Holdstein: We raise an interesting point, and I think it is a part of this open dialogue with the community and the applicant. If it is a 2-2 vote on the CCRC all this becomes a moot point, but the applicant is still the landowner, and they are the next party that has to decide what they are going to do with that site. I still think that is a part of the equation as far as us deliberating if not this, then what.

Trustee Apel: We know already if we vote it down and we do nothing then the uses that are already zoned for, that is what it is zoned for. It is zoned for libraries, museums, philanthropic eleemosynary institutions, hospitals, convalescent homes, home for the aged and nursing homes, as well as single-family residential developments.

Trustee Walrath: The Planning Board's analysis of the impacts of those things: we need to, before making that vote, decide whether we want to see those impacts.

Mayor Kinnally: We can take a look at it on September 6.

Special Counsel Chertok: It will be hard to have discussion with me that evening because I am going to be on a plane to Europe for a conference, unless you want to accompany me.

Bill Berner, 191 South Broadway: Andrus has said that the proposed development is the smallest possible, given the finances. However, it seems that the focus has always been based on the quantity of units. I have never heard any discussion, and I have raised it a few times over the last couple of years, in reducing the size of the units, which would then have an effect on the

overall scale in terms of height and footprint if not density. Not only would reducing the size of the units make it possible to reduce the height and scale of the facility, it would also reduce construction costs. As a result, that could potentially make it possible for the development to become affordable for a wide spectrum of people, which seems to be a goal that is also being looked at. I do not see why that has not been addressed by the developer.

Regarding the earlier proposal for a floating zone: when the proposal for a floating zone was withdrawn it was widely understood throughout the community and presented as such that one of the benefits of the new proposals to the zoning amendment was that all other property in the Village was now going to be protected. There would be no other eligible property for a similar development. I am under the impression that that was stated clearly. We have understood tonight from Mr. Chertok that, while it would be difficult to assemble a parcel and develop another similar facility, it would be entirely possible. That is of very grave concern to me, and I would be willing to bet that that is going to be a very grave concern to a lot of other people in the community.

Vanessa Merton, 111 Pinecrest Drive: I want to talk about the big picture question because I think it is the most important part of your decision making. I think Michael is onto something when he focuses on the size and density issue. You do not have to reach the issue of whether a CCRC is or is not an appropriate use if, in fact, an element of the zoning amendment as proposed is permitting this height and this density and this bulk. You are supposed to be deciding, when you decide on a zoning amendment, what is best for the Village of Hastings. Not what is appropriate. Not what is permissible. This is not an application for a variance, or anything like that. This is your exercising your legislative judgment: what is the best we can do for this community with this property and in the context of our thinking about all our planning for the whole community; the possibility of other developments at that corner of Broadway and Tompkins; and so forth. It makes sense to focus on do we want a development of this size and density, and if you do not, Michael's approach has some merit. It also has some merit as an avoidance of litigation strategy. You would rather be in court defending a decision to preserve the scale and scope of our neighborhoods and of our community in terms of height and density than be in court defending the notion that a CCRC is not an appropriate use. I think that counsel would advise you that it would be far wiser and more prudent for the Board to make a decision on Michael's basis than on the other.

Mary Jane Shimsky, 35 Ashley Road: In terms of putting together a ruling on this which would stand up in the event of a possible legal challenge by the developer it always makes sense to have more than one ground for your decision that looks sustainable legally. Since there is no U.S. Supreme Court decision that says the Hastings Board can do whatever it wants on the Andrus property, the best insurance policy if you want to make sure your decision is going to stick in court is to go through and analyze it, and come up with several cogent reasons for your decision on the property.

SPECIAL MEETING

On MOTION of Trustee Holdstein, SECONDED by Trustee Apel with a voice vote of all in favor, the Board scheduled a Special Meeting to consider the Andrus Application for Thursday, September 6 at 8:00 p.m. in the Municipal Building.

ADJOURNMENT

On MOTION of Trustee Holdstein, SECONDED by Trustee Apel with a voice vote of all in favor, Mayor Kinnally adjourned the Regular Meeting at 11:15 p.m.