

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK**  
**BOARD OF TRUSTEES**  
**SPECIAL MEETING**  
**SEPTEMBER 6, 2001**

A Special Meeting was held by the Board of Trustees on Thursday, September 6, 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, Village Manager Neil P. Hess, and Village Clerk Susan Maggiotto.

**CITIZENS:** Forty (40)

**Mayor Kinnally:** This meeting is a continuation of our Special Meeting of August 21, where the Board of Trustees discussed the application for the zoning amendment filed by the Andrus Retirement Community. We left off at our last meeting saying that we wanted to review the various alternatives that were discussed in the Planning Board's findings.

For the record we are in receipt of a memorandum from Betsy Biddle of Andrus on Hudson dated August 31, 2001, outlining her comments to certain of the questions that were raised at the last meeting about what happens with an applicant who might run out of funds while in residency at the Retirement Community under the proposed plan. The contents appear to address the actuarial experience and how the proposal would address the situation where an applicant, or a resident, ran out of funds while in residency at the CCRC.

Before we get into the issue of alternatives, anything else any of the Trustees want to raise?

**Trustee Apel:** Could they handle 20 people that needed scholarships? They did not say how many they could actually handle.

**Trustee Walrath:** I have some information that I will get from Andrus this evening on specific questions I had. The one-and-a-half times, as I understand it, in both the entrance fee and in the monthly fee, is calculated before you pay the entrance fee or the monthly fee. You need a 50% margin on top, is what I understand.

**Mayor Kinnally:** We will start with the alternatives that were identified. The first one was no-action; there would be no amendments to the Zoning Code, and the existing 247 bed nursing home would remain, and operate under the current license, as they have it. I will open it up to the Trustees for their reaction to the no-action plan.

**Trustee Walrath:** Except for the fact that it is indicated in the EIS and in the Planning Board findings that it is sort of running into the ground, we have been very happy with it when it was a full-going institution. It, apparently, is not able to continue, and needs to have an incorporation into a CCRC in view of the applicant to render what skilled nursing capacity they would have

viable in the future economically. They say, I think in all ways, it would be quite acceptable to the Village if it would work. There are many things in the findings that imply it will not work, and they will be forced to take other measures. I think we could pass over it rather quickly, and go on to other things that might happen other than just the building continuing in its present use.

**Trustee Holdstein:** It is kind of the funny part of the findings because, obviously, they have shrunk the use of the facility. If there were no-action and still existing as a 247 bed, as it was and as we know Andrus, and they came to this Village requesting to slightly expand the current operation we would be dealing with a very different mindset. In their action in reducing the number of residents and moving forward with the proposed CCRC, they have taken this one off the table, because there could have been alternatives, i.e. slightly expanding the current facility, that may have been more acceptable to myself and some others in the community. So there is a lot to discuss on the no-action. They put themselves in a position of where I do not know where they would go from here if they do not get the CCRC.

**Mayor Kinnally:** I think this assumes going back to 247 beds, and not the reduced operation that they have now.

**Trustee Holdstein:** Right. Obviously the decision was based on economic realities that they felt that Andrus as we know it could not move forward. I guess one question I would throw out is whether it could go forward from a 247 to a 300 bed facility, as we have known Andrus, and one or two smaller buildings added to it. That, to me, would have been an alternative. But it does not appear that that is something they want to pursue.

**Trustee Apel:** I think it is a moot point. They came here to change their facility and, as Michael said, they made a calculated decision not to have any more people there. So it is hard to say, if they decided to turn that around and start again it would be what it was before.

**Mayor Kinnally:** Is that something that we would like to see? That is the issue before us. How realistic, how practical, how desirable are any of the alternatives that were identified in the DEIS and FEIS in response to comments made during the whole process?

**Trustee Apel:** Many people would be very happy if they had decided to remain the way they are, renovate the buildings, possibly add a building if they needed it. I think it would be very viable, but they have decided they cannot do it.

**Mayor Kinnally:** Well, is it viable or is it acceptable?

**Trustee Apel:** I think it would be acceptable. Whether it is financially viable, that is their decision.

**Trustee Holdstein:** I would state categorically for the record that were Andrus to refill the facility as it has existed in this community for 40 years, and came to a Board that I was a part of, and proposed one or two other smaller buildings and increased the total capacity, again, a ballpark number, from 247 to (let us say) 300 and continue to exist as a facility as it has for 40 years in this community, I would have absolutely no problem with that. I think it would be marvelous. I had a lengthy conversation with Henny Cole earlier this week, discussing the marketplace today in terms of our population base, the types of facilities for types of people as we age and age more gracefully than maybe we have done 50 years ago, and it seems to me that there are going to be needs for CCRC's and for facilities like Andrus all the time. The economics and the viability is something that is up to them to determine. But I do not, for one minute, believe that the kind of facility that Andrus has been is something that suddenly is no longer needed in our society. I think there is a facility requirement like that for a certain part of our population. If they said they are going to take it back to where it was, but would like to expand it slightly, because by adding to 300 or 310 it can be economically viable and continue to serve an important role for that part of the population in this community, I would applaud it.

**Trustee Walrath:** The basic thing here is the financial position of the people who want to use the facility. There may be a demand for it, but the demand may be from people who might be able to have no more resources than Medicaid, in which case, what I have heard is that Medicaid is not enough to keep a facility going if that is the only resource it has.

**Trustee Holdstein:** The people that have been living in that facility in the last five years: have they been strictly living there on Medicaid?

**Trustee Walrath:** They were not at the beginning. I understand that the large majority, if not all, are on Medicaid. But they were not originally.

**Mayor Kinnally:** Henny, do you have that information?

**Henriette Cole:** You are correct: there is a process where we are converting individual residents to Medicaid through the Medicaid application process, which is an individual process and the regular approval that any community member would go in. So as residents qualify, the facility is now able to accept Medicaid as payment, which they never were in the past. As far as exact numbers, I am unable to do that.

**Trustee Holdstein:** So you are saying it has evolved into a mix of people who can only pay through Medicaid, and others that can pay through their own means.

**Ms. Cole:** That is correct.

**Trustee Walrath:** There was a continuation to market a skilled nursing facility. The others were just mentioned: converting residential to R-20 development. But the EIS said, in the findings, the Planning Board would, in the opinion of the applicant, require destroying the existing building to take advantage of the existing R-20 building as of right. It also talked about multi-family in the existing building, and single elsewhere. At this point, we never come back to that. When we get to the place where this is discussed, below, which is in 3-D.

**Mayor Kinnally:** 3-B, -C, and -D.

**Trustee Walrath:** It is 3-D, specifically, where you have partial single family. There it becomes keeping the existing building as a nursing home, combined. This 1-C is never really evaluated, I guess because it they have stuck with what the existing zoning allowed.

**Trustee Holdstein:** I do not see where you are referring to 1-C.

**Mayor Kinnally:** Pages 54 and 55 deal with this. Page 54 deals with no-action, and then 55...

**Trustee Walrath:** I put the -A, -B, and -C on it. I am sorry, it does not exist. But in the middle of page 55: "...it would be an increased potential for the applicant to ultimately determine to take action to make the site available for alternative development..." and they say "single-family development could occur; however it would require the existing facility be demolished. As discussed further below, the applicant has asserted the cost associated with demolition of the existing main building and associated structures make this option infeasible. In the alternative, a proposal could seek a zoning change or a variance permit use of the existing building for multi-family housing and/or develop other portions of the site for single-family residential use. These alternatives are discussed below." But I am saying, specifically, that last thing is not discussed below. What is discussed is a combination of single family plus maintenance of the existing building as a skilled nursing facility.

**Mayor Kinnally:** Let us discuss that right now. David, do you want to take the first shot at that?

**Trustee Walrath:** I would prefer we just go through the things in order, and get down to that when we get to it, as a variation of 3-D.

**Mayor Kinnally:** . I know a couple of members of the Planning Board are here. I do not want to put them on the spot, or have them defend whatever they did. If they can clarify, or shed some light on, what we are trying to plow through, the opportunity is yours.

Let us go to 2: the use of alternative zoning provision.

**Trustee Holdstein:** We did not get your comments on no-action.

**Mayor Kinnally:** I gave my comments at length last time, and I will repeat them if you want me to. The no-action, in my mind, is not a viable alternative in today's market. I was asked if I had studied this rigorously. No, I have not, but when you are talking about a sizable portion of an existing resident base taking Medicaid, I do not see how it is going to generate the revenues necessary to keep it operating as it was operating or to expand it as it needs to be expanded to be competitive with new facilities that are coming on line. I think, for instance, Kendall will be coming on line north of us, and St. John's, that is just to the south of us. It can continue to operate as it has operated, simply because the building and the license are there. But the economic climate has changed, and probably for the capital improvements necessary to keep it operational and competitive, the money is just not there.

**Trustee Holdstein:** If I was someone who was looking to move into Andrus 20 years ago, the Medicaid part of this was not a factor. Did I need to show a certain nest egg to be accepted into Andrus 20 years ago? If that was the case, why could not the same model apply today in a slightly expanded Andrus as we have always known it, recognizing that in some cases there will be some Medicaid-supported residents, but also some that can fully support themselves, and whatever the fees would be to move in there.

**Ms. Cole:** Do you mean to move in if it were a nursing home today?

**Trustee Holdstein:** In other words, if Andrus were to go back to what we have known it to be for 40 years in this community as a nursing home.

**Ms. Cole:** Nursing homes have to comply with certain regulations related to admission, which are very different than they would be to a CCRC or any other level of care that is not a nursing home. In the case of the Andrus, years back, if you had assets there was a process by which you made those assets known, and were processed by paying the cost of your care. There was a provision, and the mission, of the family that if someone lived there beyond their assets (and it was not a necessarily measurable marking point) they then scholarshiped their residents. That was the mission that, today, translates into the current scholarship residents. In those years Medicaid did not approve Andrus as a nursing home. Even Medicare was not a sponsor of the nursing home. Because the residents in that nursing home were not ill compared to others. It was more of a convalescent, infirmary-type facility. As regulations changed—that those residents who, in fact, were scholarships, may be eligible for Medicaid—individual application within the last four years was made on the basis of the fact that it is a licensed nursing home.

So the review of the assets is according to nursing home regulations if they have to do with entrance into a nursing home, not similar to the kind of asset review that you would do for a retirement community.

**Trustee Holdstein:** Let us stay with this idea that we reject the CCRC and you come back to us and say you will continue Andrus the way we have known it to be a nursing facility, and therefore you have to accept new residents, and those new residents will go through an application process and will be asked to show what financial assets they have to afford to live there. If they show those assets and meet whatever those criteria are, 15 years from now those assets may have been depleted and Medicaid may kick in and they become what you call a "scholarship." But you still have the opportunity to bring people in who can afford to live there non-Medicaid to help your economic model to make it re-viable again as an Andrus nursing home.

**Ms. Cole:** Through many years of difficulties in operating the facility, as the Mayor referred to, because it was not in compliance structurally with the Health Department, operating it as a nursing home became a costly investment. In addition, the business of nursing home residents today is extremely different and, over the past 10 years, has become very different in the profile of the resident in a nursing home today. Under 2% of nursing home residents have any private funds to pay for their care. In the facilities that Beth Abraham operates, as well as if you look at the current residents at Andrus now, the ratio remains about the same: 80-85% Medicaid, Medicare, and managed care, with people able to pay privately and not insured under a managed care plan under 2%. What you are referring to is some kind of a subsidy balance. It does not exist in the industry today in any facility.

The type of patient in a nursing home today you would have seen in a hospital five or 10 years ago. They require high-tech care; to qualify for Medicaid in a nursing home you have to qualify medically for Medicaid to be willing to pay your bill. You cannot just be older and frail. They do not pay for that kind of care. You have to meet medical criteria, similarly to if you were a Medicare recipient. So though I understand your thinking, the facility six or seven years ago realized that there was an issue in supporting itself as a nursing home. Additionally, less than four or five blocks away a new nursing home is opening that is 160 brand-new beds, that has a lot of appeal for the nursing home resident type, adjacent to a hospital, that Andrus could never compete with. Throughout the state of New York, all nursing homes have serious census issues which are frequently in the news. That is today. The fact that it was affecting Andrus, by nature of the type of facility it was six or seven years ago, might have made it more unique in that situation at this time. But, clearly, we are in the same boat as other nursing homes today.

**Trustee Holdstein:** So you are saying that the demographics have changed so dramatically that those people that would look to the Andrus facility and the kind of nursing care it could provide,

and have the economic ability to pay their way into a facility like Andrus as we have known it, has gotten so small as to make that model economically not viable?

**Ms. Cole:** I believe so. And, remember, the building is out of compliance with many Department of Health regulations.

**Trustee Holdstein:** Then you have to invest X amount of money to at least bring the building up to some standard that would be competitive.

**Mayor Kinnally:** One other thing that may have changed also: when Michael was talking about this applicant of 10 years ago, there was the underlying fund from the Andrus family that was there to replenish that which was not available through private funds, and today that is not there. So you are talking about a revenue stream that is either from the individual applicants, or through the government or some managed care.

**Ms. Cole:** That is correct. The subsidy that exists for those residents who we still refer to as scholarship residents, who have not been approved by Medicaid or may not have the proper documentation where Medicaid will approve them, are being scholarshiped by the family in fulfillment of that commitment.

**Trustee Walrath:** You referred to there being 2% that can presently pay, on average, for nursing homes. Would the clients of the proposed development be within that 2%, or would they include people beyond that?

**Ms. Cole:** The nursing home piece is financially supported in a continuing care retirement community through the life-care piece, so that would, in fact, pay the nursing home piece.

**Trustee Walrath:** I understood that in the original Andrus, there were people who were quite healthy. They perhaps did not have as large an apartment as would be available in the proposed development, and they did not all require skilled nursing care. There was a mix of independent living, assisted living and skilled nursing.

**Mayor Kinnally:** My understanding was that years ago, when you wanted to go into Andrus you had to be ambulatory.

**Trustee Walrath:** Yes, no one went directly into the nursing home.

**Mayor Kinnally:** No, it was not really a nursing home.

**Ms. Cole:** It was always licensed as a nursing home.

**Mayor Kinnally:** It wasn't marketed as a nursing home. It was a retirement community.

**Ms. Cole:** Retirement community, that is correct.

**Mayor Kinnally:** But licensed as a nursing home because there were no CCRC's at this point. You were either a hospital or a nursing home.

**Trustee Apel:** Henny, you are talking about the market as it is now. But at what point, with the increased population of seniors, would this turn around? Do you foresee it turning around at some point, because there will be so many seniors that need this type of facility?

**Ms. Cole:** I would imagine that the demographics will drive a need. I am speaking from my own experience of operating several nursing homes today, and the experience throughout the metropolitan New York area, which is both Westchester and the city and boroughs. They are experiencing census issues in most of the facilities. You will find very few that are not. It will be a continued dip that will then, again, change because there are going to be lots of older people needing care. What will be different is the profile of the resident in the nursing home, different than 10 years ago. Because people are older, what you will find in most nursing homes, certainly in the thousand beds that I oversee: very sick people.

**Dr. Sandra Selikson:** My understanding is that once you start accepting Medicaid/Medicare you are not allowed to take somebody because they have more money. There are rules and regulations. You cannot say, this person has \$500,000 and this person has \$5,000, so we are going to take this person for that. You are not allowed to do it. It is against the law. Nursing homes do it, but it is on the Q-T.

I also have a little bit of discrepancy with the 2% being private-pay. It is around 30-40% is my experience, in what I have done.

**Mayor Kinnally:** Getting back to your question to me, Michael. If the nursing home were perking along very well, and did not need an infusion of cash, Andrus would not be here today. I do not see it remaining viable as it is. Even if you remain as-is, they need an infusion of money to do the capital improvements necessary to put them in compliance. But more importantly than that, they have got to have a facility that is attractive. They are selling a service, and if people have better alternatives they will go to better and newer alternatives. It is just the way the market runs.

**Trustee Apel:** The only thing that concerns me about this is they are the ones that took the \$30 million out, and we do not know what would have happened if they left it in.



**Mayor Kinnally:** It is a legitimate point.

**Trustee Apel:** So they put themselves in this position, and the \$30 million, had it stayed there, could have been used for funding or whatever else. We will never know that scenario. So if they pull the cash they put themselves in that position themselves.

**Mayor Kinnally:** The findings we are looking at are on page 55. The first one was the establishment of a new zoning district—a new floating zone. That was the original proposal, and it was replaced by the current amendments because of serious concerns that people had that it rendered susceptible too many open pieces of property and other parcels that could be assembled in the community. And that we might open ourselves up to too many of these proposals in the community. I think the feeling of everybody was, ultimately, that what we were looking at in the current zoning amendment protected us today and in the future. I am not saying the concept, but the language was cobbled together following a number of Public Hearings, many comments made by residents and the professionals. It addressed, I think, what everybody universally saw as a real problem, not a potential problem.

**Trustee Walrath:** I would be glad to skip all of the using of alternative zoning provisions because I think we are past that point. About the only thing in that section is, if we are looking at continuing a nursing home or a convalescent home we can see things that apply to it. But under the other provisions of the Zoning Code that you operate under there are not real alternatives at this point for this site. It is all either the no-action and the alternative uses of this site that I was concerned with last time when I asked that we look at the alternatives.

**Mayor Kinnally:** You mean B, "The Use of Existing Special Use Permit Provisions", you think, is similarly futile?

**Trustee Walrath:** Yes.

**Mayor Kinnally:** The first one is a not-for-profit institutional use. This is something that is of right, that is part of the zoning process and the review processes that we have been through in the Village in the last 10, 15 years, open space review and everything else. The not-for-profit institutional uses permitted in R-20 districts under our Zoning Code include libraries and museums, philanthropic and eleemosynary institutions, hospitals and convalescent homes, homes for the aged, and nursing homes. The last of these includes, of course, the existing use that we have been talking about. Michael, do you want to start talking about not-for-profit institutional use and whether or not it is arguably something that we are looking for, and if it is an acceptable alternative?

**Trustee Holdstein:** I am torn by the discussion this evening because we have a site that, as of right, allows an applicant who wants to build a library or museum to do so. Whether I feel it is a good idea or a bad idea on that site, that is what it is zoned for.

**Mayor Kinnally:** But that is the purpose of this meeting, to find out whether any of these alternatives are something that we would like to see on the site, assuming for a moment that the current operation would not continue.

**Trustee Holdstein:** I understand what the purpose was tonight. If an applicant comes before us, and a use already exists in the zone as of right, then whether I like it or not is irrelevant. If they want to sell the property to somebody who wants to build a library they have a right to do that. I do not know that I have a right to say, I do not like it so therefore you cannot have it. From the very beginning we know there are certain things as of right that are alternatives. I am not sure that this Board's right is to say that we want to start messing with that zone. We have an applicant before us for a change of use, and that seems to be the more important priority tonight. Deciding in a vacuum whether a museum or a library would look nice on that site, I am not sure we can do. A Hudson River museum on that site would be lovely. How viable is that?

**Mayor Kinnally:** How acceptable would that be? Let us say it is viable

**Trustee Holdstein:** Conceptually, a museum would be lovely. I do not know where this gets us with this application. We know that there are alternatives on that site as of right, just as there are alternatives that could be proposed that are not as of right that would go through the same kind process to see if we want to grant a Special Permit for it. The whole concept of going through these, I am not sure where it takes us.

**Trustee Walrath:** We may spend more time discussing the process than the content. We are going to produce findings and we should generate something that will go into the findings. I agree with you 100%: it is the applicant's property and we do not have any application from them for an alternative. We need to talk about single-family, which is something that may happen to that site if it does not continue in its present shape and it does not become a CCRC as proposed, and is something we ought to comment on and be part of our decision.

**Trustee Holdstein:** If you are looking to put in the record the opinions of this Board, and looking at this 3-A, libraries, museums, convalescent homes, the only one, to me I would have an objection to would be a hospital. But I do not know, after putting it in the record, is this something that we want to change the zone to eliminate any of these components?

**Trustee Walrath:** We should take advantage of the Planning Board having a record of its findings, and say is there any way in which we differ. In 3-A I do not differ with what the

Planning Board findings were. They said philanthropic, eleemosynary; if anybody was proposing that, it would be fine. And they found reasons why the others were probably not very realistic.

**Mayor Kinnally:** Looking at what is as of right ( I am going to play Devil's advocate here), if you are going to talk about a convalescent home, home for the aged, or a nursing home, by their very nature they are enclaves. They are different from the rest of the community, so they would be enclaves. Yes, we only have one application before us, but we are not dealing with a vacuum. The SEQRA process says you have to examine alternatives. We did it with the waterfront, when we went through it in the late eighties. If I look at the not-for-profit institutional use, number one on my negative list is that it is not going to generate any income to the Village or the school district. And I do not know, because there is no application, what kind of impact that would have on the Village environmentally as far as the set-aside, the meadow, the 100-foot buffer, which is a guideline, the trailways.

Yes, there are elements here that we do not know anything about. But just as a matter of whether or not something is acceptable to us individually; that is what we have to do. We are sitting here individually and, as I said in the past, that is what we are paid the big bucks for. But you do not just look at bricks and mortar. You have to look at whether various elements that are in an application or in alternatives are going to be beneficial to the community or detrimental. The lack of funds probably is detrimental. Certainly, it is not beneficial to us. It is no knock on Andrus the way it is operating now. It is a not-for-profit and it does not contribute anything to the operations of either the Village or the school district. So anything under a not-for-profit does not directly help us in that regard. Even though it is as of right I would not want to have a hospital in that area because of the noise and the traffic 24 hours a day that it would generate.

**Trustee Walrath:** Almost all of those positive, beneficial, and adverse impacts that we could think of here are already in the Planning Board's findings. I am prepared to concur with them as far as 3-A, and move on.

**Trustee Apel:** I agree with Michael in one respect. This discussion could be an intellectual thing that we are going to go through. But I think it is a red herring in terms of what we are really here for in terms of the decision we are going to make. We are here to decide on the application of the CCRC that is coming in, and whether we want that or not. But if we are going to go over, individually, what we want then we might as well say why do we not have a moratorium and decide what we want in the zone? But we are not here to discuss whether we like what is in the zone or not.

**Trustee Holdstein:** We could, assuming (and I do not mean to be presumptive) we do not go forward with this application, declare a moratorium to clean up some of the things in there.

**Mayor Kinnally:** We cannot talk about a moratorium tonight because that is not the purpose of this meeting.

**Trustee Holdstein:** I am just saying, the idea of talking about these other entities, and deciding whether certain things that we agree should not be in here: even the Planning Board indicates that some of these alternatives do not make economic sense. To David's point, agreeing with what is here in terms of what is truly viable.

**Trustee Apel:** I am not sure what the backup information is on this, even though it is a summary. When they talk about significantly increased traffic concomitant noise due to the office nature of the use, I am not sure.

**Trustee Walrath:** But if we do not have to be discussing it all anyway, why ponder it?

**Trustee Apel:** Then why are we discussing this?

**Mayor Kinnally:** I am trying to move on.

**Trustee Apel:** I am wasting my time.

**Mayor Kinnally:** With all due respect, I do not think any of this is a waste of time. Because the Planning Board reviewed various alternatives. We do not have counsel here tonight, but I believe part of the SEQRA process is reviewing alternatives. We have to come up with some findings. If it is the sense of this Board that they do not want to deal with any alternatives, fine. But I sat here and listened to a lot of discussion by people in the community about alternatives.

**Trustee Apel:** I thought we were here to review them, because some people wanted to know exactly what they are. Whether we give our opinion whether we like them or not.

**Trustee Walrath:** If we stop talking about process, and reviewing it, we will do that.

**Mayor Kinnally:** If nobody else wants to talk about the not-for-profits, let us move on to single family. I have had a number of discussions with residents about this. A lot of people think that it is not a great impact on the community and that it generates a substantial amount of money for the Village and the school. There is, on the other side, an expense part of the ledger. And that is that these single family homes are going to require infrastructure; they are going to require education for the kids that are there; they are going to involve some traffic problems. If you start talking about having multiple ways of getting in and out of that property, you are talking about a substantial impact on traffic because of the need to cut into both Broadways, north and southbound. There would be as much, if not more, disruption of the site because there would be

demolition of the existing building and removal of the infrastructure on the site to accommodate the existing building. You would lose the open space. The meadow would be in play. I cannot foresee any developer saying that they are going to give up a significant swath of land, which is probably the most buildable piece of land, because it is flat.

So there is a siren song for having single family homes on that site. But it is a dangerous one because the impact on the community is a substantial one. The impact goes beyond the immediate neighborhood, and it would have resonance not only at our train station but also in our school system. I am not so sure that the revenues (and I have not looked at it—I have not talked to the school board about this) would offset the expenses. It is a substantial impact on our census in the schools.

**Trustee Holdstein:** I was discussing the same thing with someone in terms of multi-cuts into Broadway. This person felt that having a road within the site looping around and maintaining a single access as we know it at the southern end of the current, could handle that traffic without having to cut into the northbound side. Was there anything in the findings that said it could exist with the single access that exists today, with loop-around roads internal to get to that single access?

**Planning Boardmember David Hutson, 19 Flower:** The assumption was not a single access but that when the 33 homes were laid out by the applicant the existing two entrances and exits would be maintained. The service entrance would still be there as well as the entrance to the south. In order to make the development more attractive, the developer may want to have additional curb cuts. But in our deliberation we did not look at additional curb cuts because the applicant's presentation did not include that.

**Trustee Holdstein:** Was there an understanding that, regardless of what that potential developer may want, from a safety standpoint those 33 homes could be serviced by just those two roads?

**Mr. Hutson:** Clearly they could. That is one of the reasons why you could only get 33 homes. Because a lot of the space was used up for that interior roadway.

**Trustee Holdstein:** Was there any consultation with our fire department to determine whether that was adequate from their standpoint?

**Mr. Hutson:** Not that I remember, no. The fire department was asked to look at the proposal, but not in terms of each of the alternatives. Your discussion as to whether the alternative section is a way of discussing other uses or whether it is way of really looking at the comparative impacts for making a better judgment on the application is one that we have all the time and is inherent in the SEQRA process. As has been pointed out, it is a requirement of SEQRA that you

look at these alternatives and that you use them in your deliberation. That is why they are in our findings. The extent to which the Trustees are obliged to follow that course, I am not sure what your role in SEQRA in this is. But in our case we were required to not only consider or to try and talk the applicant into some other use, or to think what it might be toward future planning, but also to look at the relative impacts. If you take something as simple as whether or not these 33 homes should be built, and you take the broader concept of community character, would you think, where does that tie in? Everybody assumes that community character is naturally enhanced by having more single family homes, or at least it is not interfered with. Other people have the point of view that to have a different, more interesting, variety of structures is more Village-like than having everything the same. So you get into these considerations of impacts in a very broad sense when you look at the alternatives in relationship to the proposal.

**Trustee Apel:** The developer could say, I am going to build six homes and that is it. So we do not know what they are going to build. In reading what is written here, it said "...this alternative would involve developing essentially all of the site." Does it have to be that way? Who said it has to be 33 homes? They could do it as of right, but they could decide not to.

**Planning Board Chair Rhoda Barr, 29 Harvard Lane:** The Planning Board cannot say yes or no, what we like or we do not like. We have to go through this process. One of the things is what could legally be built under the present zoning. Since this is half-acre zoning, this is what half-acres are subtracted from steep slopes and so forth. That was why the assumption that they would be using the flatter land. We did not pay a lot of attention to the museum or the library because there was not a viable proposal. We do not know of anybody who wants to do it. But with what is going on in Westchester (a so-called "big mansion" process going on) it was reasonable to consider what would happen if they say we are going to sell it; it is half-acre zoning; what could go there?

**Trustee Apel** It says: "...the development of the site as single-family residences would also result in the loss of the applicant's tax-exempt status." I do not know why they would do that. Would they not just take the money and use it some way? Why would they lose their tax-exempt status?

**Trustee Walrath:** The applicant cannot be a developer of private homes.

**Trustee Apel:** So they, themselves, would be out of the business.

**Planning Boardmember Barr:** As a non-profit institution, they would have to be building these homes for a non-profit purpose. They could not just go into the development business.

**Trustee Apel:** So if this really happened, they probably would have sold the land.

**Mayor Kinnally:** This assumes a sale to a developer.

**Trustee Apel:** Right. The adverse impact, they said: "...no increase in housing for the elderly." I do not know if that is necessarily true. It is not specifically said that this is for people of a certain age, but they could certainly come in and buy the house. So anybody could live there. So that is an assumption.

**Trustee Walrath:** An opinion. The existing plantings, the vegetation, the trees, to what extent, if it went single family, would that survive to the extent that we are expecting it to survive under the proposed Andrus on Hudson? There has been an issue of how visible the buildings would be in the proposal. How visible do you think the single family houses would be?

**Mr. Hutson:** We did not study that question. We can look at our other experiences and project what would happen. You would see a lot of homes from the road, if that is what you are asking.

**Trustee Holdstein:** Were this to be sold by Andrus for private development, this developer of 33 homes would have an affordable housing component that he would have to add into this piece of property. While some have had issue with Andrus' proposal to give the Village money for affordable housing—some have said it is not the money we need, it is the land, it is the building for the houses—this alternative would give us some affordable housing.

**Mayor Kinnally:** But possibly add to the density of the site.

**Trustee Holdstein:** The zoning does not change.

**Trustee Apel:** It can only be 33 houses.

**Trustee Holdstein:** Right. I guess, as of right, he can then do a multi-family house. So it would add to the density of the zone.

**Mr. Hutson:** At the time we did the findings there was not any requirement for 10%, so that is why it was not included as a benefit.

**Mayor Kinnally:** The applicant has treated this alternative as a worst case scenario, which would be employed only in the event the proposed project failed. But let us talk taking down the existing building and putting up a multi-family residential development.

**Trustee Walrath:** Taking down the existing building would not necessarily be part of multi-family. The only place that was introduced was for single family.

**Mayor Kinnally:** I stand corrected.

**Trustee Walrath:** The multi-family is certainly not something we would be at all overjoyed to see built. I would be very glad to move on to D. It is not really an alternative. It is a worst-case that happens if it is built.

**Mayor Kinnally:** Yes, it is what happens when the plan craters.

**Trustee Apel:** Then we would be left with all those buildings. Some might say we could rip them all down and build something else, but I do not think it would happen. It would end up being private apartment buildings which I do not think the community wants on that property.

**Mayor Kinnally:** The failure of the site, as built-out, poses significant problems. You would get apartments. The same scenario could occur without the build-out by retrofitting the existing building if they could not operate it as a nursing home. So the wrinkle exists whether you build or not build.

**Trustee Holdstein:** The guy who wants to retrofit the current building cannot do that as of right, can he?

**Mayor Kinnally:** No, but it is an alternative.

**Trustee Holdstein:** As far as point C, I would vehemently oppose any kind of apartment building scenario.

**Mayor Kinnally:** D is a partial single family residential development, and that is retention of the nursing home with single family residential development surrounding the site. I would assume that would include the meadow, and the drive coming up, and the periphery.

**Trustee Walrath:** I suppose somebody could subdivide it, but they would have a great deal of trouble. They are already beyond the density that would be allowed under either of our nursing home clauses 295.67-B-3 or -B-4. I think the existing facility sneaks in, but reducing the land that it sits on, it would no longer meet the building coverage criteria. The most likely thing is the thing I said at the beginning under the no-action alternative: somebody might make a proposal that the Village would be willing to listen for some single family development, and taking the existing building and letting it be multi-family. We would have control over that, because it would require a zoning change to do anything to the existing building other than to continue using it as a nursing home.



**Mr. Hutson:** In our current zoning where it gets complex is that if the facility were to qualify as a nursing home that provides adequate medical care, then our requirements differ. In other words, we do not have the density requirement anymore.

**Trustee Walrath:** But we do have the 20 acres. You could not take any of it away and develop it for single family houses and still have 20 acres.

**Mr. Hutson:** We have 20 acres. We also have the issue of, if you reduce it to about the 10 acres that you would need under the one requirement, the one and a half setback against this tower. Our law is rather vague as to what it requires on the question of what are medical services beyond what they have now. Somebody could challenge one or two of the points in the zoning and potentially do this. This is why we looked at it. But it is not easy, as we say in our findings.

**Trustee Walrath:** You are saying that is a positive from our point of view, knowing it is not so as of right as one might think. We have an observation in the Planning Board's findings also that we would have no way to mandate cluster use of the site, which would be the best thing if we were to have development. The existing building, the possibility of rezoning, might be the best residential use we could ever make of the site. Not that I am saying that I think that that is the best thing to do with the site. But if we had to have residential, I am against tearing down the buildings; we are quite used to it and it is a beautiful building inside. Tearing it down would be just a terribly sad thing under any circumstances.

**Mayor Kinnally:** If you are going to do anything there, then clustering of any buildings, whether they be residential or anything else, would be preferable than having a sprawl. Especially if you are going to be on the periphery, or if you are going to deal with the meadow.

**Trustee Walrath:** One of the few things that might permit us to not have a great change in the character of the area.

**Trustee Holdstein:** Looking at D proposes some intriguing options. We heard earlier that Andrus as we have known it for so many years is not an economically viable model. Yet the idea of Andrus retaining that building, having a nursing facility in that building, and to offset the expense, developing some of the property for some residential gives them a hedge against the economic strain of running Andrus. I think D opens up avenues of conversation about trying to satisfy an existing use that has been a welcome part of our community for so long, and not looking to push it away. It gives them an opportunity to offset their expenses by using the land in some other creative way with some residential housing, making it that mixed kind of thing.

**Trustee Apel:** It is an interesting proposition.

**Trustee Walrath:** Michael has kept the D as it is written, and I was suggesting something different. I think we have two things that fit our findings. I was going back to the multi-family, and I was going back to the no-action alternative. The last paragraph, where it suggested multi-family in the existing, and single family elsewhere, would require a zoning change to let the multi-family into the existing. I think David Hutson gave us reason to believe we would need a zoning change to permit any shrinkage of the available surroundings to the nursing home. In both cases, somebody would have to apply for it and come back to the Trustees. But it is two alternatives and I am glad they are both there.

**Mayor Kinnally:** The last alternative was the development of a smaller CCRC, and this was the subject of a lot of discussion. The Planning Board retained PricewaterhouseCoopers to look at whether a 25% reduction in the planned capacity of the site allowed the proposal to be viable. The report from PricewaterhouseCoopers was that it was not a viable alternative. They had to use a certain given set of facts and the same financials that were submitted to the state.

**Trustee Walrath:** Those financials are the financials that started out withdrawing \$31 million of the assets and putting them in another foundation, and loaning them back.

**Mayor Kinnally:** Some of them back, with the repayment in an accelerated period.

**Trustee Walrath:** That is what the financial model was based on.

**Mayor Kinnally:** I do not know if the Board has any reaction to this alternative and to the PricewaterhouseCoopers report, but I will throw it open for discussion.

**Trustee Holdstein:** Before the Planning Board there had been some shrinkage to this final proposal. Yet there seems to still be this "This is as small as we can go to be economically viable." The feeling I got out of this report, and out of this Board last time we met, was that there are still major concerns about height and density, which creates, to me, a point where we are really stuck. I go back to the reasons that I spoke about at the outset of the last meeting, which was my feeling that a CCRC's impact to the entire community I had major reservations about, looking at this sudden influx of 200-plus very active adults that could go as high as 250 or 260. Going back to that D point, reverting the building to the nursing facility, which has less impact than a CCRC, and mixing in some residential on the site, would have less of an impact on our community.

**Trustee Apel:** The development of a smaller CCRC: the analysis is based on their financials and it says it cannot be done unless they decide to redo the whole thing and change everything. I do not think they are about to do that. So it is beyond our discussion, I think.

**Trustee Walrath:** I agree with what Marge just said. It is unfortunate that we did not get to talk about the basic issues in this before they spent the time that they did to get this approved by the state. I believe that with the financing arranged somewhat differently it could have been a smaller project. That was never the project that was in front of us, and I think at this point it is probably impossible for them to get approvals for anything else from the state, since everything they have done has been based on this project. It is too late to look at this. I believe it could have been financed differently and it could have been smaller. But we will have to make our decision on what is proposed here.

**Mayor Kinnally:** There is a great deal of frustration on everyone's part— not only people in the community, but the applicant and our part—that the proposal cannot be changed because of the way that the state mandates the application to proceed. They have to get certain approvals of the state, and those approvals are pretty much set.

**Trustee Walrath:** They may have to be had before they can even approach us. It is a real Catch-22.

**Mayor Kinnally:** It sure is. Developers usually ask for the moon and know that they are only going to get a small part of it. So they inflate it, and they come away, and everybody feels good that they hammered out a good deal. Maybe the developer gets what it was looking for in the very beginning. Here, the ability to maneuver is circumscribed by what the state requires: that they almost get pre-approval of this before they can go to the local authorities to make application for what has to be done. They have to prove to the state that their financial model works, so we have no input in that. That is my observation of this process. Part of that comes through in our discussion about affordable housing. People were unanimous in saying that we would like to have a component of affordable housing on the site. The state has said that is not something we can approve; our hands are tied. So, yes, we can spend a lot of time discussing it here, and airing various thoughts on it, but it is academic because the state says you cannot do that. Maybe, in the end, that is not what the state says, but I have not seen anything to the contrary. I use that to illustrate some of the frustration and the rigidity that everyone is operating under here, because there is not a lot of latitude. They have to fit a financial model the state says is necessary to make sure that this project does not fail, and the Village comes in well after that application process. It is undertaken, and the approvals have been obtained.

We have reviewed all the alternatives the Planning Board has identified. Are there any alternatives that the Planning Board has not identified that you think are appropriate for our consideration?

**Trustee Walrath:** I have none beyond the one I said is only hinted at in the beginning and never really shows up as an alternative, and that is to use the existing building for multi-family and clusters, whatever else goes on the site.

**Trustee Holdstein:** I suppose, in my tradition, I could propose ball fields

**Village Manager Hess:** The alternatives that were identified in the SEQRA process that the Planning Board addressed in their findings is the real question. Not new alternatives, because they have not been reviewed through the SEQRA process. So you really cannot identify ball fields or new alternatives. The real question is, of the Planning Board findings and their comments, are you in agreement with their commentary on the alternatives or are there areas in which you are in disagreement. I think when you addressed each of those you made various comments, and there was one modification that could be considered and that was the combination of the multi-residential and the partial single-family residential development, although in the findings it did not indicate how many units. I believe we would have to go back to the EIS to see what those numbers were.

**Trustee Holdstein:** David's suggestion to D was to make it a multi-family building plus residential.

**Trustee Walrath:** One would assume, in the multi-family alternative, there is an idea of how many apartments could be made out of the existing building.

**Village Manager Hess:** Right, those numbers are here. But in the partial single-family residential development in the findings statement the numbers are not there. So I am going to have to go back to the EIS. Mark will have to address that somehow in the Board's findings.

**Trustee Apel:** In terms of that particular use, if you look at 3-A, the allowed uses, let us say you left the building there, you could turn it into a museum or a rehabilitation center for people like the Burke Institute—a small one. You could do things with that facility and still have single family housing.

**Village Manager Hess:** Whether it is part of the same facility, the logical next step is subdivision for that portion of the other for single family. There are some things that can be done, and I think that has to be itemized by counsel to the Board.

**Trustee Holdstein:** With regard to our findings report: does Trustee Walrath's suggestion become part of the findings and is it required that there is some consensus on our part?

**Mayor Kinnally:** No. You can do the same as the Planning Board did; it is identified as a finding but maybe certain Trustees disagree.

**Trustee Walrath:** I think we have to vote to approve a final version. That is the only thing that we have to agree on.

**Trustee Holdstein:** Comments can be attached to his proposal that not all were in favor of that.

**Mayor Kinnally:** We covered a lot of ground tonight. We started this process by asking the Trustees to submit to counsel certain of their comments for guidance of counsel in starting the findings process. I would ask everyone to revisit what they submitted to counsel and get that to counsel by the beginning of next week.

**Village Manager Hess:** In addition to the minutes of the meeting of the 21<sup>st</sup> and tonight's meeting we will have a copy of this tape made so they can get started.

**Trustee Holdstein:** What are you looking for us to revisit?

**Mayor Kinnally:** To revisit changes, or comments, that we had to the findings, and to submit to counsel any additions or elaborations or modifications.

**Mayor Kinnally:** Mark Chertok is not here this evening. He is on his way to Europe. The next time we probably will deal with this will be the 25<sup>th</sup>. How we deal with it, I do not know. It will depend, in large measure, how counsel can digest all of this.

**Village Manager Hess:** I do not believe we will be able to have a draft back prior to the 25<sup>th</sup>. You should have an idea on the 25<sup>th</sup> when counsel will have the draft findings back to the Trustees. He is not back until the middle of next week.

**Mayor Kinnally:** I want to see if the Board has any different feelings about what I consider to be the primary question here: whether or not the concept of a CCRC is something that the Board wants in the community.

**Trustee Holdstein:** I want to note publicly that the Andrus people have invited all of us to look at the model and have made some slight alterations to one of the buildings and some talk about alterations to others. At this moment, nothing that has been discussed has pushed me off the mark that I stated at the outset of our last meeting. There are some interesting things that I would like to have some dialogue on one-on-one with my fellow Trustees, based on digesting some things tonight. But, at present, I am not moved off my original position.

**Trustee Walrath:** I still feel, with appropriate size and I am not sure what it is, it is an appropriate use of the site.

**Trustee Apel:** I still feel the same.

**Trustee Holdstein:** One point I would like to throw out comes back to the thing I mentioned earlier that seems to be such a logjam: this concept of height and density. We were uniform in saying that we all had concerns about the height and density. But we have not quantified that. We have not said, as a Board, it could be 100 less residents or three less buildings. I know that your feeling is that this first question has to be answered before we go to that point, but I still think it may have some meaningful dialogue. This Planning document said there were concerns about height and density. The four of us said it. But there has been no quantifying of would there be anything that would be acceptable.

**Trustee Apel:** I am concerned about that. I do not think we should get in that position of deciding whether or not it should be two stories, one story, this wide or that wide. We are just responding to the proposal that they gave us, and the proposal that they gave us is too dense and too high, period. If they came back with something else, we would respond to that.

**Trustee Holdstein:** So quantifying it any way, you do not feel is relevant.

**Trustee Apel:** No, I do not think it is relevant.

**Trustee Walrath:** The problem is that they will not be able to reduce it without recreating the financial model. We just need to put in our findings what we can, and if there is a possibility of future dialogue they would have to make the decision to go back to the state. It is very time-consuming because it will set everything they have accomplished to date back to square one as far as signing people up and so forth. The time to talk about it is if they decide that they want to go back to the state. I would hope we could talk before they go back. At that point we would have a lot to talk about.

**Trustee Holdstein:** But not unlike what we did last week when we started this. We had the discussion about the CCRC. We took a straw poll. Then we set that aside and proceeded to discuss all these other elements. Then we hit the height and density. Let us put aside the issue of a CCRC. They have got to a point where this is as small as they can get, and this Board says we think it is too high and too dense, and they say we cannot make it any less high or less dense without blowing the whole thing up and starting all over with an economic model. We have killed the project right there. They have got to start all over again.

**Trustee Walrath:** I am afraid that is the case. We could have negotiated two years ago.

**Trustee Holdstein:** So there is roadblock right there.

**Trustee Walrath:** I would like to say what I think are the right means of negotiation: that there is a way of bringing, and I would have liked to have seen it done this way, the stakeholders together for a mediated session and see what would be a consensus that would bring along a good portion of the people in the Village and would be acceptable to them. We should hear a lot more before we make that decision.

**Mayor Kinnally:** If the Board does not consider, regardless of the scope of the application, that the concept of the CCRC is appropriate for that site...

**Trustee Holdstein:** ...everything after it is irrelevant. I understand that. But just as you did last week, you hopped over that to have this dialogue.

**Mayor Kinnally:** We did not hop over it. We took a straw poll.

**Trustee Holdstein:** No, you said let us move on from that and discuss all these other elements. It seems to me that after that fact we still need a record.

**Mayor Kinnally:** In other words, do you want us to design what would be appropriate?

**Trustee Holdstein:** No.

**Mayor Kinnally:** But that is what you are talking about.

**Trustee Walrath:** We want to put enough in the record to let the applicant decide what to do if we do not approve it.

**Mayor Kinnally:** That may be it.

**Mr. Hutson:** If I could make one comment on this question of height and density, not necessarily in regard to this proposal. One of the things in our discussions from a Planning Board standpoint that is of interest is taking the Vision Plan and trying to get as much specificity as you can when we talk about "Village scale," which is a concept that is in there, and it relates to this project. What I have in mind are the projects that we are also looking at with Riverwalk and thinking about the waterfront and so on. The scale of the Village is that primarily the larger structures are three and four story structures. That is where I came from in terms of the Andrus project in my concern about height. That carries over for me into the consideration of these other projects. So to the extent that it is going to be helpful in spelling out what we mean by the terms and concepts we have in the Vision Plan to address these issues, I think it is important.

**Mayor Kinnally:** I am not so sure it is appropriate for the Village Board or for the Planning Board. I do not know. The line is somewhat blurred on this.

**Mr. Hutson:** I am not saying in regard to Andrus necessarily, but somewhere along the line we have to get to some of these clarifications in order to be able to have the consistency that we want to have in reviewing projects and that we had in mind through all of those sessions in the preparation of the Vision Plan. We realize this would be an evolving process, that we were not going to get it all nailed down right away. But one thing the Andrus project has helped me with is to think through some of these questions as to height, density, and scale on these larger structures and designs, because it is going to come up again and again.

**Trustee Apel:** I would like to respond to that. What I would like to see done this year is that we look at the zoning, and we start looking at what it is we put in there and what do we really mean by it. You went through all this trouble to put this Vision Plan together. It is time to finally match it up with the zone and have some meaningful discussion in the community, so that any developer that comes in knows we have already talked about it. They know, really, what we want. And it will not take such a long time. This process will not take forever. We are constantly responding to developers because we cannot define what we want in advance. So I think it is time to do it, and I think it is time to put it on our agenda.

**Mr. Hutson:** The greenspace overlay would be an example of where we may be able to move again. Sometimes it is hard to get too exact before you have a proposal.

**Trustee Walrath:** We have the large tracts. We have been through it with ShopRite, and now we have another proposal which requires a zoning change. Before we make that zoning change, I agree with you. It is time to look at what we want to have.

**Mayor Kinnally:** We are getting far afield. This a Special Meeting to deal with an exact location. It is not an academic discussion. By law we can only deal with the item that is on our agenda. Michael, do you have anything else on this?

**Trustee Holdstein:** You used a term that I discussed last time, and I want to qualify it. You made reference to the word "enclave" as it related to some other issues and alternate uses. Not for this meeting, but I think that, perhaps, you and I define enclaves differently. That term can be defined a lot of different ways.

**Mayor Kinnally:** You used it. How did you define it?

**Trustee Holdstein:** Issues of who it is designed for, how it is designed, help create whether it is an enclave or not. Economic requirements, and a lot of the other requirements that are stipulated



in the CCRC, are where I am a little uncomfortable, and get nervous about potential enclaves. I want for the record to state that you and I would have to come to the conclusion as to how we want to define enclave.

**Mayor Kinnally:** I do not want to define an enclave. I am just reacting to a comment that you made last time. You are the one that used the term "enclave."

**Trustee Walrath:** Does the phrase appear in the Vision Plan?

**Trustee Holdstein:** Yes, it does.

**Trustee Walrath:** Perhaps, if we do not know, we should go back and have the Planning Board tell us what they meant.

**Mayor Kinnally:** We have left the public comment period open. My suggestion is that we have the close of the public comment period next Friday, September 14, because counsel has to have a record from which to start preparing documents.

**Leslie Chervokas, 165 High Street:** But as long as you are continuing to keep the process open for discussion, then why should the public not continue to have the opportunity to comment?

**Mayor Kinnally:** People can talk all they want, but I am talking about formal submissions in paper form. For instance, Vanessa said she was going to prepare something for us. There has to be end to the process, and I think in all fairness the 14<sup>th</sup> is a good time. There is a tension here. Everybody says move on, but well, let's not move on. Well, it is time. We do not want to shut this down but we have to have a record that counsel can review.

**Trustee Holdstein:** I agree with you. It certainly does not close conversation but counsel needs the final comments to get moving on the document.

**Ms. Chervokas:** How about the 16<sup>th</sup>? It would permit us to work over the weekend.

**Mayor Kinnally:** Nine o'clock on the morning of the 17<sup>th</sup>. When I say comments I mean something new, not a repeat.

**Ms. Chervokas:** The additional weekend is helpful. I would agree with you that the matter should be brought to a close. I think that it is apparent that there are two Trustees who believe that the use of this facility as a continuing care retirement community is inappropriate for the community. And the applicant has determined that it cannot build a different project. So with those reasons, I really do not see any reason for delaying a vote on the zoning amendment.

I heard mention this evening that the existing zoning permits homes for the aged, convalescent homes, and nursing homes, and those would be enclaves. If those facilities were open to people who were Medicaid and Medicare patients, and people who are private pay, that is a different population and it is not in the nature of an enclave in the sense that is set forth in the Vision Plan.

I do not think anyone has touched upon this: another reason not to permit this project to go forward is because it would be an expansion of the nonconforming use that it presently enjoys. That would be a violation of the Zoning Code

**Vanessa Merton, 111 Pinecrest Drive:** I want to clarify the point that was discussed about the order of the processes . At the last session Mr. Chertok clarified that the applicant could have come to the Planning and Zoning Boards and the Board of Trustees with a proposal and then taken the resulting proposal, worked out additional financials, and gone to the state. There is no requirement that they get the state approval first.

**Mayor Kinnally:** You may be right. I do not particularly recall that. But that is what we are dealing with here.

**Ms. Merton:** Well, it was a choice. The second point is to follow up on the vulnerability of large tracts of land. There was a session on Monday night discussing a concrete planning process for the downtown; there has been a moratorium to permit that process to go forward. It seems strange and ironic that we cannot take the same approach to these large tracts of land.

**Mayor Kinnally:** You are right but we can only deal with the application before us tonight.

**Ms. Merton:** Regarding the issue of whether it is wise and prudent for the Board to take a position on the appropriateness of the use versus on the appropriateness of this proposal: once the Board takes a position on the appropriateness of this use it is much more problematic.

**Mayor Kinnally:** It may be, but I have not heard anything that would change my approach. I think that the first question that has to be addressed is whether or not a CCRC is an appropriate use for the site, but reasonable people will differ on this.

**Ms. Merton:** What you just said is a general planning process, which would not be appropriate, rather than simply looking at this particular proposal and analyzing its costs and benefits to the Village. Once you talk about a use as opposed to a particular proposal it is a much broader conclusion on the part of the Village, and the issue becomes did the Village Board have a sufficient factual predicate, sufficient data, to make that kind of determination.

**Mayor Kinnally:** We will rely upon counsel for that.

**Jeff Bogart, 5 Jordan Road:** The primary focus should be not the use but the height and the density. I would think that the Board would want to focus on that first, and then there might not be any need to get to whether a particular use is appropriate or not.

I keep hearing it said that these alternative uses are as of right. I thought they had to go for Special Permit. It would be interesting to have some clarification as to whether a Special Permit would restrict what they want to do. As an example, the case of a PILOT. If they want to do something, it is possible that if it were not a not-for-profit the Board still could say how about a PILOT instead of taxes? It would seem to me that each of these special permitted uses might, or might not, be acceptable on the basis of height and density. A museum might be great. I do not know whether we are going to get a museum if it were less than two or three stories, but would we want anything there that is more than two or three stories. We start by saying no, and then it would be up to the developer to figure out what he has to do to meet the overall specs that are set for that zone.

I am not certain you have to agree or disagree with the Planning Board's SEQRA findings before coming to your own decision. The SEQRA process is established to produce information that can be helpful to the Board in reaching its decision, but the Board is not restricted to that alone.

**Mayor Kinnally:** You are absolutely right. That is why I asked the questions at the end. We are not wedded to what the Planning Board did, and we are not here to review what the Planning Board did. We simply used it as a template, because the issues were at least identified there. So we are not here to pass judgment, to affirm or disavow what the Planning Board did. But there is no sense starting from scratch. The Planning Board's findings reflect all that came up before in the hearings. It just seems a better use of our time.

**Trustee Apel:** We also have the decision by the Zoning Board of Appeals, which is another piece of information which would be part of the record.

**David Shapiro, 6 Amherst Drive:** I am not clear on the framework that you propose. I agree with you that this matter should be brought to resolution as quickly as possible. I also agree that there has probably been some tension around the question of how long this is taking, and let us wrap it up quickly. I disagree with you as to the source of the tension. The source of the tension is that there is such overwhelming opposition to this matter that the continued advocacy of the project by yourself and Trustee Walrath is what is prolonging the matter. I would like to be clear on what you see as the time frame.

**Mayor Kinnally:** I do not know what the time frame is. It depends in large part on the ability of counsel to generate the findings. No matter how anybody feels about the project, and we have all spoken about the pros and the cons of this project, I do not think anybody up here has been an advocate for the project. I am

not up here to move it quickly to a vote. As the presiding person, I am here to make sure that the entire process is fair: to the people who live in the home, the applicants, the people in the community, the people who are in favor of it, the people who are opposed to it, and the people who do not care. More than anything else, this process is going to be fair. Would I like to deal with something else on a Thursday night? Yes, I would, but not at the expense of any application. If you come before this Board with an application I am sure that you would want this Board to spend as much time as necessary, and be fair. That is what we are trying to do.

**Mr. Shapiro:** I think that has been done, but it is just hard to understand the necessity for prolongation.

**Trustee Walrath:** I will not ask you to explain it tonight in detail because the hour is getting late, but sometime tell me what on earth you thought I did and said up here that was advocacy of the project. I do not see in any way that anything I have said or done up here delayed us getting to a decision. If you want to answer me, fine. If you want to save it for later, I will be glad to hear from you personally.

**Mr. Shapiro:** I do not think that is a question, and I would rather not.

**Trustee Walrath:** Okay, but you made the statement.

**Bill Berner, 191 S. Broadway:** A request that it be put clearly into the findings that the current application would not prevent additional developments of this sort in the Village. I understand before I arrived this evening there was some talk about how the original floating zone proposal met with so much dissatisfaction in the community because it opened up the potential for similar uses on other sites, and that one of the benefits of the current proposal was that this could be the only one of its kind. Mr. Chertok pointed out last week that that was not the case, that it would be possible for other sites to be assembled. There might be some confusion among the community of what the parameters of the current proposal are.

What is the rest of the process? I now understand that Mr. Chertok needs to write findings. I presume you then have to discuss the findings to see if they are acceptable. Do you then go back to more discussion of substance, or is then the next and final step to then vote on it? What are we looking at in terms of what needs to happen to bring it to an end?

**Mayor Kinnally:** I do not know. It depends upon the findings and the Board's reaction to the findings. I would assume that there is going to come a point where the Board is at least in consensus on contents of the findings. We will put it on for a vote.

**Village Manager Hess:** The Board will have two resolutions. One will be consideration and adoption of the findings. The second resolution is consideration of the application.

**Mr. Bogart:** I do not see the need to wait to vote on the application until you get the attorney's draft of the findings. The Board has the application, it has discussed it, it seems like it knows what it wants to do, and why prolong it? The attorney can draft the findings that substantiate or rationalize the decision if you have to do that.

**Village Manager Hess:** It is part of the legal process the Board has to go through. They are going to need a draft of their findings; they are the ones who have to make the ultimate decision.

**Mark Knispel, 21 Warren Street:** At the last meeting pretty the Board asked for clarification on the transfer of funds from the corporation, and the applicant said that they would send that clarification. Has anything been received?

**Mayor Kinnally:** Marge raised the issue. She still has some outstanding questions, but the big issue was what would happen if a resident ran out of funds, and that was submitted to us.

**Mr. Knispel:** I think the question came as to why this transfer happened, what is the motivation, and what is the process. The applicant definitely said they were going to get back to you on that.

**Mayor Kinnally:** I do not recall that.

**Trustee Apel:** The \$30 million was brought up, and it was not discussed.

**Mayor Kinnally:** I do not believe that was the case, but I think that information is in the FEIS. If that has to be supplemented, I am sure they will supplement it.

**Mr. Knispel:** The community has been pretty critical of that; it underscores the way the parameters of the entire application were set to come out with a desired outcome.

### **EXECUTIVE SESSION**

On MOTION of Trustee Holdstein, SECONDED by Trustee Apel with a voice vote of all in favor, the Board scheduled an Executive Session immediately following the Special Meeting to discuss land acquisition and personnel.

### **ADJOURNMENT**

On MOTION of Trustee Holdstein, SECONDED by Trustee Apel with a voice vote of all in favor, Mayor Kinnally adjourned the Special Meeting at 10:20 p.m.