

VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
BOARD OF TRUSTEES
SPECIAL MEETING
OCTOBER 9, 2001

A Special Meeting was held by the Board of Trustees on Tuesday, October 9, 2001 at 8:15 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, Village Manager Neil P. Hess, and Village Clerk Susan Maggiotto

CITIZENS: Twenty-two (22)

Mayor Kinnally: The purpose of this special meeting is to consider an alternate proposal on the Andrus Retirement Community.

Fred Moon, Andrus Project: I am a member of the Andrus family, and have been involved with the project for over 15 years and been on the board of John E. since 1985. A lot of words have been spoken here. I have been at two of the meetings, in June and in August, and I know how heated the discussion has been. It has been painful for us, given our family name of Andrus, to have that name attached, and certain suggestions made. I asked the Mayor if it would be appropriate to give some background about the family, what we have done in Westchester, about how we managed the John E. over the years, and what led up to the transfer of money out of the project before the joint venture with Beth Abraham.

John Andrus was born in 1841. He lived into his nineties, to 1934. He was a resident of Westchester. He had a pharmaceutical business. He was mayor of Yonkers after his sixtieth birthday, and an eight-year congressman from Westchester in his sixties. He was an investor in the pharmaceutical business; it did not succeed past the Depression. But he was an investor in hard assets. He liked land, office buildings, timber, mining, and the like, and was very successful with those kinds of transactions all over the country, including Alaska, California, and New Mexico.

In 1917 he founded the SURDNA Foundation, which is the family name, Andrus, spelled backwards. He placed approximately half of his wealth in the SURDNA Foundation.

In 1928 he founded the Julia Dyckman Andrus Memorial. His wife, Julia Dyckman, had been reared at the Dyckman Farm. She was an orphan from Switzerland. In memory of her, he created an orphanage on what was the Dyckman Farm, which today sits partially in Hastings and partially in Yonkers.

In 1953, some years after his death, his youngest daughter, Helen Benedict, because his will had specifically mentioned serving youth and old age, created the John E. Andrus Memorial to honor him. That is the project that we are talking about here.

A couple of personal notes. My mother and her sister were born in the Dyckman House, at 1165 North Broadway. Peter Benedict, my cousin, who is chair of the Andrus on Hudson board and who, regrettably, had a serious accident and could not be here tonight, lived for many, many years in that house. He was reared during his adolescence there. And I remember being here in Hastings in 1953 at the opening of the John E. Memorial.

The family has 350 descendants of our founder, John Andrus. Most of them are not individually wealthy. The active members of the family are in the fourth and fifth and sixth generation, and you can appreciate estate taxes, and dividing whatever monies were given to our family. So we are not individually wealthy people that are managing these charitable assets. We are just a family that is using the opportunity of managing these assets as a way of educating ourselves in civic life and community service, and providing a kind of cohesive nature for the family.

The family has served on the two boards of the John E. and the Julia Dyckman for decades. Thirteen members of the family come now from all over the country (there are no local members), from California, Florida, Minnesota, four to ten times a year to Hastings as uncompensated directors of this service. We are silent neighbors of yours, and have been for many years. We think of Hastings and Yonkers as our, kind of, family homestead. Young members of the family come, and have recently planted trees on the two properties as a kind of ritual. Because, as you can imagine with a family this large, there is no single place. This is the place: Hastings and Yonkers.

We have tried to blend over the years professionalism in the management of these homes with a kind of family style, and have taken pains to make the boards more professional, to not have as much overlap. Twenty years or so ago there was considerable overlap on these boards; now there is not. I am one of the few holdovers, serving on all of the boards. And we have made an attempt to broaden the boards, to have community members. Hastings residents Joan Newman and Sue Smith have served on the "JEAM" board, as we call it.

Briefly some comments about the SURDNA Foundation. It is a foundation now with \$600 million in assets. It is based in New York. At 5% spending, we give away about \$30 million a year. In the late 1980's there was a major shift to a professionally staffed organization from a family-run one, and we now have five major programs. We are a national funder. We tend to take strategic positions with other nationally known foundations.

We work systematically with particular issues, looking for national and regional solutions. We work collaboratively with our grantees, and focus on planning, management, technology, and effectiveness issues. Many of the grants have touched Westchester: water issues, the Hudson River, land use, public transportation, and education. As a family board and staff, we have developed a keen sense of the effectiveness of philanthropic dollars over the last 15 or 20 years. We spend a lot of time on evaluation, asking if we could be smarter or if we could do things better. This work has had an impact on how we have managed the two family memorials.

A quick word about the Children's Home. It was founded, as I said, in 1928 as an orphanage. It faced operating difficulties in the 1960's. Its original mission, serving orphans, was no longer an appropriate one, and the Home almost closed in the seventies. But the directors in the seventies were able to reposition the Home as a residential treatment center for learning disabled children. The long-term orphanage dorms were renovated into shorter-term, or residential, treatment beds. The dairy farm was converted to a day school. We have added new buildings for diagnostic work and a large school over the years. Thousands of children have benefitted in the years since 1928, 1,500 in the residential treatment program alone. Most recently we have added a community based preventive outreach program, working with families and children in Westchester. Approximately 500 families have been served in the last five years. And 85% of all children and families served are Westchester residents. At the moment, it is fair to say that we have a national and international reputation under the leadership of Dr. Gary Carman.

In the late forties, when Helen Benedict conceived the idea of a residential home for the elderly, this was quite visionary. It was before Social Security and Medicaid. The idea was to provide for residential and health care, for life, of those in Westchester who had served the community well but who did not have retirement benefits or individual wealth. This focused on teachers and health professionals and the like. In the early years there were no financial criteria for acceptance to the Home. It was fully charitable. SURDNA gave grants to build up the endowment of the Home, and made annual gifts of support as well.

I have been on the board since 1985, and about that time we started looking for ways to make the Home more viable and contemporary. It took no public funds and it did not relate well to other institutions within the community; it was built on a financial model of private support which really was not useful to the field. So we set about a series of major studies over ten years, from 1985 to 1995, and two major consultants were hired. Along that way, in the late eighties, we started taking federal Medicaid funds, which we had not done up until that point. We looked at a variety of models of ways to make the different levels of service within the existing footprints of the building viable. I note with great interest that many of the

alternatives you and the planning committee have looked at are the very ones that we explored during this time. One was a CCRC that is very much like the project that is in front of you now, with new independent living units. But in the early nineties we concluded that the regulatory environment in New York State was not ready for a continuing care system. We feel differently now. During that time we changed the executive director twice.

In 1995 we reached a number of conclusions. First, the health care business, which we are operating for the elderly, is an increasingly complicated, regulated business. Our ability, as a family-run non-profit, to find and keep a CEO and leadership capable of leading a single site organization was highly questionable. Second, organizations in the field were consolidating into much larger units, which could provide a range of services seamlessly and economically. The funding streams increasingly followed the organization of service delivery. Third was the scale of what we doing in our building. The building on the site was a strength and a weakness. The strength was that it was built in a first class way and very, very solid. The weakness was that renovations were very, very costly, because it was built so well. Basic systems 50 years later: the plumbing, the electrical, the heating, were old and in need of entire replacement. The capital costs of the renovations on the options we considered often approached the costs of new construction, as we worked with specific project ideas. Fourth, the finances just did not make sense. SURDNA was contributing between \$3 and 5million a year, even after the acceptance of public funds and the full spending from the endowment that was in the agency. So the financial and service model we had in place needed major work. Financial independence, we felt, was a reasonable and achievable goal.

In 1995 we decided to reconstruct the whole institution, and we hired yet another consultant. We realized that this time we needed to consider joint venture, and merger, with another agency, one that had a management in place that was capable of building a new institution, and one that would provide a link to a continuum of care and other services that we were not able to provide on our existing site. We looked at three major groups of possible partners: major teaching hospitals in the city, regional hospitals, and long-term care providers. Among the three, and we looked at 30 potential partners, we felt that an organization with residential experience was most aligned with our historical mission of serving the residential needs of the elderly. We feel that these are the same reasons why you, in your discussion which I heard in August when you were talking about hospitals, had concerns about a hospital on the site. We had always focused on residential living. Hastings is a residential community; we felt it was a good match. Among our choices we selected Beth Abraham, and with a consultant's help, we negotiated a joint venture agreement with a business plan as the centerpiece. This grew out of our SURDNA experience. It was non-profits trying to act as businesses, as more profit-like.

Our goals, as we approached negotiations, were, first and foremost, the care for the existing residents. That has been in the family's mind the number one criteria all along. Second, to modernize the program, and to bring the site into alignment with the field. We felt that a CCRC was probably the most likely service system to do that with. And third, to achieve financial sufficiency over time. Each side in the partnership made significant contributions to the joint venture. On the Andrus side we contributed, as our equity to the project, as much land on the site as was needed, the buildings, and financing during the planning stages to support the development expenses and care for the residents. This amounted to, over the last five years, over \$4 million in gifts to operations, and capital loans of over \$13 million. With the charitable assets in excess, we created a new foundation to serve the elderly in Westchester. We did so knowing that the capital required beyond that named in our business plan would be a multiple size of the endowment, and that borrowings in significant sums would be the method achieved to raise those dollars. We had just finished a professionally-led negotiation determining the amount of financial resources that should be left in the joint venture project, and we also knew from our collective experience from SURDNA that we could put this excess money to effective use.

So we named the new foundation after Helen Benedict. She was the youngest daughter of John Andrus who, in the late forties and fifties, created the memorial for her father. She walked the talk. She lived on-site. There is a house on the property, which you may know, where she lived and where she reared her grandson, Peter Benedict. She was responsible for the Andrus Pavilion at St. John's Riverside Hospital. Her portrait hangs around the corner in the Hastings library, along with a plaque acknowledging the contribution to the town from the SURDNA Foundation. The focus on the Helen Benedict Foundation is on the well elderly. We are looking at that period of life after retirement as one of assets rather than liabilities, looking at what community structures we need to put in place to help keep older people active and healthy.

The assets of the foundation now stand at \$27 million. In the last two years we have granted \$3 million to 20 groups, all working in Westchester County. We have brought in national leaders in the field to help evaluate needs in Westchester, and to link together resources within this community. We built a data base of needs and services, and have had meetings convening grantees and those interested in serving the elderly. We are promoting inter-generational programs, senior centers, transportation, and community involvement all across the county. We think we have made a good start. Next Tuesday, the Westchester Public/Private Partnership For Ageing Services is having a lunch to honor the Helen Benedict Foundation for our work in the last year and a half.

I know some of you feel, and have used the phrase, that we "cooked the books" in describing the transfer of these assets. We honestly believe we have made a thoughtful division of philanthropic assets for the benefit of older people in Westchester County.

Now the project: Hennie will describe the revised project that you, Mayor, referenced a moment ago. But just a word: I think that the site absorbs the project well. Over the years I have been struck by how many people do not even know that the large building that has sat there for 50 years is even there. On the margin, we are trying to maximize the use of these charitable dollars in Westchester. The family very much wants the project to go through, and we are prepared to make an additional contribution to enable that. But it must be clear to all of you now that that contribution comes from the Helen Benedict Foundation, and that dollars that are needed to accomplish any revised proposal are dollars taken out of the base that earns money to provide services for the elderly in Westchester.

So I thank you for your kind attention, and my ability to stand here and tell you about our family and what we have done.

Henriette Cole: I want to describe the modifications to the project that we have discussed with the Andrus family that primarily address the issue that has been discussed so frequently regarding height and density. If you picture the project, as we have been displaying it over the past several years, there is a building that sits on the northeast side, which we refer to as Building E. That building is currently comprised of 31 units with 44,000 square feet. We are proposing to remove that building from the project, to reduce the number of independent living units that we have proposed from 201 to 170. That is the removal of the 31 units. The FAR changes from a 0.40 to approximately a 0.35. We quantified, in a general sense, the effect of removing that building, so the numbers are generalities at this point. If that reduction represents a \$12 million reduction in construction costs, then we looked at what that would mean for the project financially. Our presentation has always been that the project size is contingent on the feasibility of the financial mode. What those 31 units remove from the fluidity of the project is approximately \$15 million in entrance fees, and whatever that would mean in monthly maintenance fees. The difference would be made up with a sponsor contribution.

We have also frequently mentioned the concurrent approvals from the Department of Health, primarily in the form of approvals of the Life Care Council. We have had those approvals from Andrus on Hudson for approximately two years. In preliminary conversations with the Health Department we have been assured that if the Department of Insurance feels that the model, with this reduction, would meet their financial tests, assuming a contribution to make

up what would be the gap, they will support a modification and work with us to keep our approvals in place.

Trustee Holdstein: Mr. Moon, you said that in the early nineties a CCRC was not an appropriate use of the site but later on you decided it was.

Mr. Moon: While in some other states continuing care, life care, was being funded and approved, our reading of the political environment was that New York State was not yet ready for them and we would not be able to get Health Department approvals.

Trustee Holdstein: Do you know if there were CCRC's in existence in the early nineties in New York State?

Mr. Moon: I do not think there were.

Dave Schiff, Saccardi & Schiff, Inc.: There were not. New York State laws dealing with CCRC's, or life care communities, changed sometime in the mid-nineties to make it more feasible. Before that it was not feasible for financial and insurance kinds of reasons. So whereas this kind of project had been developed in other states, particularly Pennsylvania, the New York State laws were drawn in such a way that it could not really be done. It is only in the last half-dozen years that any have been built around the state.

Trustee Holdstein: You made reference to the eighties about the federal funding.

Mr. Moon: We did not apply for Medicaid. All of the operating expenses of the Home were privately funded by the SURDNA Foundation, one hundred percent.

Trustee Holdstein: Later you mentioned that it was costing you between \$3 and 5 million a year to privately support the Andrus for many years. Was that correct?

Mr. Moon: Correct.

Trustee Holdstein: With the new proposal, by the removal of Boarding E and making up the shortfall both for the initial as well as the annual, are you still back to that \$3 to 5 million from SURDNA into the project?

Mr. Moon: No, I do not believe so. Hennie mentioned that we are willing to make an additional contribution. Our forecasts the developer is doing indicate that this would be necessary to get ratios where they need to be for financing acceptance. But it would not

require, after the project is financed and up and going, ongoing support from SURDNA or from Ellen Benedict.

Trustee Holdstein: After it is built and, hypothetically, 95% sold there will not be any contribution needed from the SURDNA Foundation to maintain it?

Mr. Moon: Correct.

Trustee Holdstein: Did you imply that supporting this revised plan would take the Andrus Foundation out of its ability to donate monies elsewhere around the county?

Mr. Moon: Yes. The Helen Benedict Foundation is one pot of funds. It is up and going, and making grants in Westchester. If we are asked to make an additional contribution to this Andrus on Hudson project it will come from that, out of the corpus, and reduce the base on which we earn money to give money. So, again, from a marginal effectiveness of philanthropic dollars, a million dollars in money moved from one pot to the other means \$50,000 less a year in perpetuity for programs for the elderly in Westchester.

Trustee Holdstein: The proposal says that the reduction in construction costs with this new proposal, while there is a savings, there is a loss of revenue from that many less units being sold initially. But then, there are annual monies that will not be coming in. It was my understanding that the annual monies were also being picked up by Andrus. It sounds like there is a shortfall, but I do not know where. Am I confused?

Ms. Cole: No, you are not confused. There is, in fact, that additional shortfall. But all of that is quantified up front. In order for us to take that to the Department of Insurance for the model to be feasible they have to approve the financial model as it goes out across the years similarly as it does now. So whatever that shortfall is, to replace the lack of influx of fees initially, as well as ongoing, will be quantified. That will be the contribution that we need from the sponsor. So it will not be that it is an ongoing need because the model has to be funded. We have to show how it is funded. It is not like every year that has to be made up. We have to see how to make that up, and how that works. You are talking actuarial runs. This is a general concept where the financial pieces have not been complete. We wanted to discuss this with you, and give you the important pieces, which is whatever the shortfall shows up-front and within the model. There has been a pledge from the family to support that contribution.

You are asking if every year are we going to need a certain amount of money. The entire math is reworked, and that contribution will then be quantified. That is how the model

works. You do not infuse money each year. It has to be shown that every year this amount of money, as it enters the model, creates a series of events that makes the model fluid all those years afterwards.

Trustee Apel: The cost of Building E was \$12 million, so you would save \$12 million in construction. The entrance fees that you would lose would be \$15 million, so the difference is \$3 million, is that correct?

Ms. Cole: Approximately, yes.

Trustee Apel: How much will you save in personnel and services by not having to service that building?

Ms. Cole: Those are independent living units similar to a home. If it affected the healthcare center, where there is a staffing pattern and staffing ratios, it would be easier to quantify. The services that would come out would be the amenities services included in the package. We are talking about that one week of housekeeping, and whatever services they might have needed from, let us say, a homecare agency if they had had those challenges later on. So what we were providing was a meal a day for a month and a housekeeping service. That is the best that I could estimate.

Trustee Walrath: There would be utility costs and things like that related to the building.

Ms. Cole: Yes.

Trustee Walrath: I heard \$15 million less in entry fees, and \$12 million savings in construction. Do I understand that you are still working on the full savings on the operating portion of it: monthly fees versus cost savings?

Ms. Cole: Yes, because we have to re-run the model in order to resubmit it to the Department of Health. We need all that data.

Trustee Apel: I presume that the PILOT would remain the same, because you have not brought it up.

Ms. Cole: I have not brought it up because we have not had those kinds of discussions. We have made a proposal for the PILOT. I have not offered a modification to that proposal.

Mayor Kinnally: When we spoke the other day, and in conversations I had earlier today with one of your counsel, it was indicated that the four elements we were looking at—height, density, affordable housing, and the PILOT— we would address the PILOT. Anything on the affordable housing?

Ms. Cole: Let me reiterate the discussions we had on affordable housing. We have proposed a corpus of dollars, some in-kind consultation. There was discussion at the Planning Board level regarding a small piece of property on the north of the island that was a potentiality, and there were informal conversations about a piece of property across the street from the church co-owned by the children's home as well as the Andrus family. That is a conversation we would have to take to the two boards because there are now two boards of directors involved in that process. It was a conversation that we certainly had started to have.

Trustee Walrath: Would you comment on the sizing of the skilled nursing facility, why it has not been reduced?

Ms. Cole: The current size of the nursing facility remains to accommodate the residents that are at the Andrus, and estimated to be at Andrus, on opening a year after construction, which is 72.

Trustee Walrath: That number has shifted slightly.

Ms. Cole: That is correct. When we were looking at possibilities to affect density, or height, or to continue to work with recommendations and respond to concerns, we looked at the number 72 at the nursing facility building and had some conversations regarding reducing, possibly, the healthcare center building. The difficulty would be that it would require relocating a certain number of residents upon opening. We looked at the possibility of reducing a third of the building. How many square feet would that reduce the project? What would that do to density? How could we care for those residents? Could we approach St. John's, that is just opening a nursing home, and see if they could be nearby, or if Beth Abraham's facilities could take those residents, and if that was something we could make palatable for those residents or their families. It was a discussion. The reality is, when we looked at Building E and we looked at the reduction that that would create in square footage and in moving the FAR, it was more viable, in a responsive sense, to some of the comments that were made publicly. Then we did not have to relocate, or displace, any of the current residents.

Mayor Kinnally: If the next 18 months shows a significant decline in the census, which would then lessen the need for the number of units in the nursing component, could you shrink the building to accommodate that?

Ms. Cole: We seem to be strangely and eerily on target with the actuarial charts and the reduction of the residents. We could consider a reduction in the building, but it would cause a relocation of a certain number of residents. We are trying to consider anything we can to be responsive, so we could consider making that building smaller. We felt this option gave us the largest potentiality for reduction.

Trustee Walrath: If the number of residents is determining the sizing of that building I would like to have it reviewed in view of the delays we have had, and see if there can be a reduction that goes along with the reduction that you are proposing.

Ms. Cole: In light of the fact that they will be re-running the actuarials, I am sure they can make that estimation as they did before. That is reasonable.

Susan Richman, 21 Pinecrest Drive: I would really like to commend the family. What they are doing, and what they have done, as a family is really wonderful. We should all applaud them, and hopefully they will continue.

Did you look at the possibility of lowering some of the other buildings? What other possibilities have you looked at and could we address them now, since this was all impossible and could not have been done a month ago, and now, it seems, a world of possibilities has been opened.

Ms. Cole: I want to reinforce the fact that the reduction in the building is directly related to a contribution by the sponsor; it was financially difficult to do that as the model stood. The goal of looking at Building E was to maximize the reduction and to move the FAR number to the best place we thought we could do that. At the same time, we have been involved in a process for our financing, which has to go concurrently as we try to achieve approvals. In order to do that we have to get a certain number of depositors so that we can show that we can be financially feasible and are ready to go through a financing process. All those units have deposits on those apartments which people have chosen because we need to have that running concurrently with the Village approvals. We tried to look at something that would be simple, something that we could quantify, although not exactly but we will do that, and something that would reduce by the largest number of square feet.

Michael Ambrozek, 16 Sheldon Place: I also would like thank Fred Moon for his description of the Andrus family history and the work that the SURDNA Foundation has done, not just here but around the country. My understanding is that SURDNA is the organization that has the relationship with Beth Abraham in developing the Andrus property. Is there any relationship of the Helen Benedict Foundation to this arrangement in any financial way, or any relationship to that partnership as well?

Mr. Moon: The SURDNA Foundation is not party to the arrangement with Beth Abraham, the party that is the John E. Andrus Memorial. That is a legal entity. The family members on the board are part of a members corporation, and it is that group that is in partnership with Beth Abraham. The Helen Benedict Foundation has its own board. It is 100% in overlap with the family members on the John E. Andrus Board, so we have been using the earnings from the Helen Benedict Foundation to satisfy the operating requirements in our agreement with Beth Abraham during the his five year period leading to financing. Andrus on Hudson is the short name we are using for the joint venture.

Mary Jane Shimsky, 35 Ashley Road: Which units were eliminated in terms of square footage, number of bedrooms, and so on?

Betsy Biddle, Executive Director Andrus: They are diverse kinds, a cross-section of one-bedrooms, two-bedrooms, etc. I can provide you exact details.

Terry Sherkus, 2 Warren Street: I cannot see how the affordable housing is going to be an advantage. This project would further spread out into the community and increase the density. Is this affordable housing for the Village?

Mayor Kinnally: Yes, it would be part of the Village's initiative and commitment to affordable housing within our borders. We have set up a priority list of those categories of employees who would be eligible or the affordable housing. It would include volunteer firemen, people who work in municipal services, including the Village and the school.

Ms. Sherkus: This is using up further greenspace. Is this a better idea than keeping it enclosed in the meadow area, and keeping this whole project intact?

Mayor Kinnally: I think that in incorporating it into the project there were problems with the state. But also the Planning Board discussed siting this in the meadow, and the Planning Board wanted to keep that open space.

Ms. Sherkus: The remaining buildings are still going to be entirely too high. Could we get 31 fewer units by lowering the buildings that were in the original plan?

Neil Bogan, 72 Pinecrest Parkway: Since the beginning of this process I have become very familiar with the philanthropy of the Andrus family and feel very grateful for that. I work in the non-profit field, and I am very familiar with the needs of non-profits at this time to make earned income changes in the non-profit field that have driven those sorts of institutional changes. I never thought that the books in this project were cooked. I felt that this group of organizations has the assets to accomplish many different visions at the site, but I do not feel a real willingness to respond to community concerns and explore other avenues.

I feel very strongly that the people who are residents in the facility are my neighbors. With the discussion of the SURDNA Foundation, I continue to feel it is not clear where the accountability for the project lies. Even as a person who is familiar with keeping track of organizations, I still have a hard time. I do understand how large, and how empowered, an organization is represented here. I hope that they will continue to consider the community concerns, and consider changes in this proposal.

Jason Chervokas, 165 High Street: The applicant has shown they have no credibility on the numbers. For two years after being asked at every level to come back with a smaller project, somehow, at the 11th hour, it is possible to reduce square footage by 10% and reduce units 13-ish percent. All for the price of a \$3 million equity contribution from the family? At best, that is an offering gambit and it could have come two years ago. It opens a lot more questions than it answers. The foundation's gift of the project was \$4 million worth of land and buildings. An independent appraiser would call that property, and that building, worth more than \$4 million. So an additional \$3 million equity contribution does not seem like an undue hardship, particularly to a group with these kinds of resources. We are still talking about a group of buildings at 10 units an acre, more than double the current zoning. Since a lot of these units will be two-bedroom units, it will be somewhere north of the 10 people an acre and still seems unacceptable to me.

Jeff Bogart, 5 Jordan Road: It sounds like some of the money that was taken out is coming back in. The reduction is not enough. I do not want to see an expansion of what I would consider commercial development in a single-family zone. As laudable as the motives may be for the proposal, or for taking away some of the monies for other purposes, we still have to consider the impact on our community. I agree that we are looking at a credibility issue. Finally, we are now starting to negotiate and we have a proposal before the Board. I would urge this board to vote on the existing proposal before considering a modification. Even if the applicant withdraws I would still like to see the Board vote on the proposal.

Michele Hamon, 276 Old Broadway: The height is still in excess. The 30 units will not make enough of a difference in the traffic patterns. It is still too big.

Robert Sanborn, 12 Kent Avenue: The PILOT is of most concern to a lot of folks in this village. With the change in the independent units, we net a number of dollars per unit. They go up \$270, roughly speaking, from about \$1,500. The range of PILOT's goes from \$1,000 to \$4,500 per unit. The average household pays over \$10,000 in this village. These numbers strain credulity when we look at what is being offered. What is being proposed by Andrus is the third-densest of all the cumulative projects in the state. This project can drop much further and still be viable. This land was donated; other projects have acquisition costs as well as construction and operating costs, and they run their projects at much lower density.

I urge the Board to take the project at face value and vote it down. We can build a smaller project. What the Planning Board did was incorrect to allow a height much higher than most households in the Village. It could be run in a more efficient manner. They had fixed costs in the consultant range, which is not particularly heard of, and a fixed cost on the nursing home units, which is not being adjusting accordingly. The ratios of the nursing home units to independent units should drop accordingly if you have fewer independent units.

Barbara Merling, 9 Hudson Street: This proposal is still unacceptable to many people. I urge the Board to vote on the proposal before you. I think you run the risk of losing confidence in this board. The process has not been set forth clearly. We are still waiting to get closure on the previous meetings and whether a findings report has been issued. The lack of clarity about the process gives an appearance of ineptness and a lack of knowledge on what the exact process is.

Leslie Chervokas, 165 High Street: I would like to thank the applicant for explaining the philanthropy of the Andrus family to the group. I was aware of that philanthropy, and I did appreciate it in the past. Nothing said in opposition to the project has been meant to cast any aspersions on the Andrus family. I never thought that the books were cooked. \$31 million was transferred from JEAM to the Helen Benedict Foundation, and the applicant, at the same time, had pleaded poverty. It pleaded an inability to be able to modify the project to reduce its size, or lower its revenue.

The proposal should be voted upon now. Another reason for that is that the events of September 11 have changed the economic climate in which the original proposal was put forth. There are assumptions about the prices of the units, the prices that people will be able to sell their houses to afford these entrance fees, that I am not sure are valid any longer. Before we allow the project to be tinkered with indefinitely, we should apply ourselves to the proposal before us and vote it down.

Kay Schotz, Andrus resident: I could not sit here and listen to the talk about the buildings being so high. They are not going to be any higher than the second floor of the existing building. I was amused when we first heard the plans, and the architects were talking about putting on attractive roofs because the buildings would be so low that they wanted to roofs to be presentable to the people who were peering down on them. It is frustrating because I have checked many times and that is still in the plans. I would like to say thank you to Mr. Moon. It has been a difficult few years for residents at Andrus, and it is always nice to hear a family member say you will be taken care of.

Ms. Richman: It depends on the perspective that you are looking at it. If it is not any higher than the second floor of a building sitting up on a hill that is one thing, unless you are looking up at five stories from a lower perspective. It should be taken in relative context. It disturbed me that for simplicity's sake, they decided to take out Building E. We want the best project built and simplicity should have nothing to do with it.

David Shapiro, 6 Amherst Drive: I agree the matter should be voted on , and I would like to ask the status of Mr. Chertok's findings.

Mayor Kinnally: It is in preparation. It depends in large part on what the content of today's presentation was and whether or not the applicant is going to make any modification in its application.

Special Counsel Chertok: The applicant has made a proposal to modify the project. It is not clear to me whether the applicant is also proposing to modify the proposed zoning ordinance, the amendments, which are the subject of this meeting tonight, and of the application before the Village Board. Until we know the exact status it is hard to make an ultimate determination and, therefore, to draft findings to reflect a contemplated determination. One had to wait until this evening to see this proposal to understand it and go forward.

Mr. Shapiro: What are the options, given the fact that these alternatives have been proposed? What are procedural implications?

Special Counsel Chertok: The applicant has not indicated, and that is one question I have outstanding, whether they are proposing that the zoning amendments which have been the subject of the proceeding before the Village Board, are modified, for example, adding a lower FAR in the text of the ordinance which is under consideration. Until we have the information from the applicant, we could not proceed. When the applicant clarifies that, we can prepare findings and the Board will reach closure.

Mr. Shapiro: What would SEQRA require with reference to modified proposals?

Special Counsel Chertok: The EIS encompasses impacts that are greater than the project proposed tonight because it considers the zoning amendments. Even if the applicant reduced the FAR, for example, in the zoning amendments that would not require further review under SEQRA because those impacts already have been enveloped, so to speak, within the EIS that has been prepared. You would not have to go back and redo part of the SEQRA process.

Mr. Shapiro: If the applicant proposed these modifications would that new proposal have to go back before the Planning Board or the Zoning Board, and if so, which one?

Special Counsel Chertok: Neither. It only has to go back for a review for referral if the changes in the zoning text are what is called material. The proposal tonight indicates that any change that might be proposed, and it is not clear to me one is being proposed, would reduce the effect of the zoning, because it would reduce density and population on the site, and those impacts were encompassed in the impacts discussed in the EIS.

Mr. Shapiro: What would be a material change?

Special Counsel Chertok: Changes that are not the subject of tonight, for example, if the applicant decided to request rather than—this is a hypothetical—an FAR of 0.5 in the zoning amendment an FAR of 1.5. That would triple density and would probably be considered material. If the applicant proposed to add to the amendment not only a CCRC but a different type of use entirely, which would have entirely different land impacts, that would be material. Those are just illustrations and they are not before us tonight.

Mr. Schiff: Just to clarify, it is our intent to resubmit revisions to the zoning in accordance with the new proposal.

Mayor Kinnally: Do you have a time table for that?

Mr. Schiff: Within the next couple of days.

Mr. Bogart: Are we voting on an amendment that is being drafted by the attorney for the developer or on an amendment that is being proposed by the Board of Trustees? If it is being proposed by a member of the Board of Trustees, and seconded by another member of the Board of Trustees, do we need to wait? And why do we not just vote on the amendment as it seems to have been originally conceived?

Special Counsel Chertok: The amendments were generated by the applicant's request for rezoning. The amendments to the Zoning Code are proposed, and sought, by the applicant. This did not originate with this Board, and they were drafted initially by the applicants and then redone before the Planning Board. A floating zone, to which many of the public had objected, was eliminated and that was revised. When we talk about a modification, what I understand the applicant to be saying is they will submit, probably, several limited sections to modify the existing proposal for a zoning ordinance, which is their proposal and is now before the Board.

Mr. Bogart: If the amendment being proposed by the developer said one thing is that all that will be voted on, or might there be a proposal from a Board member?

Special Counsel Chertok: I cannot speculate on a proposal by a Board member. But the zoning amendments are in the EIS, and what I understand the applicant to be saying is that they are going to amend that proposal to add provisions that reflect their proposal tonight, primarily, the lower FAR. Those would be submitted and considered by the Board.

Ms. Merling: What is the process for the Board voting on that? The question of whether a CCRC is an appropriate use of this property is still up in the air and I have not heard any discussion about when the Board is going to vote on that question.

Mayor Kinnally: It is my intention to bifurcate this issue. The proposal in front of us has a number of different components. The first component is to amend the Zoning Code to add the definition of a continuing care facility. It also contains a proposal to specify permitted accessory uses for a continuing senior care facility. The other provisions of the proposed zoning text deal with specifics: FAR, parking, and so forth. I would like to carve out from a resolution those portions of the proposed zoning text that deal with the definition of a continuing senior care facility and the permitted accessory uses for a continuing senior care facility, and vote on that: whether or not a CCRC is an appropriate use for the site, without dealing with the particulars. Then we can address the other things depending upon that vote. It would be my hope to put that resolution before the Board at our next regular meeting.

Trustee Holdstein: I would like to ask counsel, in terms of process, where a vote like that falls?

Special Counsel Chertok: I think the vote would be a sense of the Board. Let us put it that way, rather than a formal resolution that would require the findings in advance. You have to indicate some sense of where you are headed in order for me to draft a final set of findings. It would be a sense of the Board, a straw poll, as it were. That is how I would call it, for

terminology proposes. The Planning Board tried to have a straw poll of where members felt on different issues so I could prepare the findings for them to review.

Trustee Holdstein: So having a straw vote on this prior to a findings document is not an issue of process.

Special Counsel Chertok: It is non-binding, and therefore it is not problematic. But it gives an indication of where people stand and allows me to prepare a final draft of the findings.

Trustee Apel: I do not see why we cannot vote now. We have had discussion on it. We have listened to this tonight.

Trustee Walrath: I am willing to vote, but I am not sure whether this is the meeting to vote. Is your comment that we should vote tonight, or vote at the next regular meeting?

Trustee Apel: If our lawyer is waiting for a straw vote in order to complete the findings of fact, we could do the straw vote now.

Village Manager Hess: This is a special meeting. You can only do what the agenda says you can do.

Special Counsel Chertok: That is my problem. It would probably be more prudent to defer that, given the agenda and the lack of notice.

Mayor Kinnally: I would recommend that we do it at a regular Board meeting. I do not want to do anything that could be challenged. It is a non-binding vote. Since we advertised this meeting as the alternate proposal Andrus Retirement Community, the right way to do it would be to put this on the agenda for our next regular Board meeting. It is still a straw vote.

Trustee Apel: Is that because the findings will not be ready?

Mayor Kinnally: No, the findings are not going to be ready in any event. Mark needs direction from the Board in the form of some type of straw vote so he can prepare the findings consistent with the sense of the Board. Also we need an updated application, if we are going to get one, from the applicant to incorporate those numbers in findings. There is no sense reacting to a proposal that is no longer before us. There was a suggestion earlier that we vote on something that may not be before us. I do not know how much sense that makes, but once again I will defer to counsel.

Trustee Apel: How will you bifurcate this?

Mayor Kinnally: We will have a straw poll on whether or not a CCRC is an appropriate use of the site first, and then deal with the findings and the specifics in the application second.

Trustee Holdstein: All parties—the applicant and the community—have been very patient through a long process. But it is important that we follow the advice of counsel, and follow this process in a proper manner. I do not want to put this village in any light but a positive one for the process. Rushing votes would be irresponsible of this board. We have to make sure that we, as a representative body, have done our job and done it fairly.

Ms. Chervokas: I think they should withdraw the original proposal and it should not be under consideration any longer.

Mr. Bogart: We could at least determine the language of the straw poll. Once that is done, whatever drafting has to be done by Mr. Chertok could be done so that we could move ahead with the final vote on the proposal. If we know what the language is, he can draft it one way if it is a yea and another way if it is a nay.

Mr. Chervokas: We are still talking about a 410, 420 square foot project, five-story buildings, lighted parking in the middle of a residential neighborhood, and about 10 unit per acre density. We are still talking about a project that does not meet the Village scale and the Village character test. Despite counsel's continuing contention that this is not a rezoning, I think there still remain legal issues both over the issue of spot zoning and non-conforming use as a basis of this zoning change. There is probably a procedural question about whether or not a change in the zoning amendment requires it to be kicked back to the ZBA.

Ms. Shimsky: In light of the fact that the international economy was in a great deal of flux before September 11, and now is in a lot more flux and may be in a lot more flux still, at what point will changes in the economic system be material enough to require a much more detailed financial analysis of this project?

Special Counsel Chertok: It would be entirely speculative for this Board to try to discern what the economy will bring over the foreseeable future. SEQRA does not require one to speculate. It would be quite dangerous to engage in that. If you follow that logic, it would mean that every application before every board now in which there is an issue regarding finances would have to be redone, and that is not a reasonable approach. Second, in this matter there is the responsibility of the Department of Insurance, so you are getting that secondary check in any event.

Mr. Shapiro: If the vote is 2-2 and the proposal is voted down, what would be the legal danger? This is an elected body. They are not going to proceed by a 78.

Special Counsel Chertok: It is an elected body, but I am not sure they cannot proceed by a 78. They cannot bring an Article 78, but you can bring what is called a declaratory judgement. If your concern is litigation, they could bring it. I am not going to discuss what possible theories the applicant could have to sue the Board. A 2-2 vote does not mean it is defeated. It means it is not approved, as a technical matter.

Frank Sherkus, 2 Warren Street: We live right across the street, and Andrus has been a good neighbor over the last 45 years. I do not think it is any longer the Benedict Foundation. It is Beth Israel that is coming now, and we have to still bear in mind that this so-called modification does not change anything. It just takes away one building. The buildings are still five stories high. This is exactly what the outcry of the Village was in saying vote no against the proposal. It is going to destroy the character of the Village.

Mr. Bogart: If this straw vote is unrelated to any reality of things like height and size and it is not approved, does that mean that it ends there?

Special Counsel Chertok: I would have to draft the findings, and that would reflect the lack of an approval of that concept. So there would have to be findings adopted memorializing that. But, for practical purposes, the answer is yes.

Mr. Bogart: When would the final vote be?

Mayor Kinnally: Either November 6 or 20. We have not seen the findings, and the Board is going to have to have discussion about them.

Mr. Sanborn: By bifurcating you would be contravening what the Planning Board refused to do, which is take the application and change it in the middle of discussion, and not vote on the application as a whole.

Mayor Kinnally: I do not want counsel to prepare two different sets of findings. He has got to have some definition of where the Board is going before he can do that. What the Planning Board did and what we do are two different things.

Special Counsel Chertok: I was at a lot of the Planning Board meetings, and there were straw polls taken by the Board on specific issues. Ultimately, the findings as a single document were voted on, but there were individual straw polls on different issues.

Mr. Sanborn: But not on the important issue, which was the adjustment on the number of units, or the use.

Special Counsel Chertok: The Planning Board did not have any dispute on that issue, so that is why you did not have a straw poll on that issue. Here there is obviously some apparent differing of opinions. But there were straw polls on other issues there.

Mr. Sanborn: I am not sure of the legality behind it, but you are suggesting that you will be spot-zoning this by voting on a particular use as opposed to leaving it open.

Mayor Kinnally: I understand your comments. I have to take guidance from counsel.

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 for Thursday, October 11, 2001 to discuss 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 9:55 p.m.