

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK  
BOARD OF TRUSTEES  
REGULAR MEETING  
OCTOBER 19, 2004**

A Regular Meeting was held by the Board of Trustees on Tuesday, October 19, 2004 at 8:05 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

**PRESENT:** Mayor Wm. Lee Kinnally, Jr., Trustee Michael Holdstein, Trustee Bruce Jennings, Trustee Marjorie Apel, Trustee Peter Swiderski, Village Manager Neil P. Hess, Deputy Village Attorney Marianne Stecich, and Deputy Village Manager/Clerk Susan Maggiotto.

**CITIZENS:** Four (4).

**APPROVAL OF MINUTES**

On MOTION of Trustee Holdstein, SECONDED by Trustee Apel with a voice vote of all in favor, the Minutes of the Public Hearing (1) of October 5, 2004 were approved as presented.

On MOTION of Trustee Holdstein, SECONDED by Trustee Apel with a voice vote of all in favor, the Minutes of the Public Hearing (2) of October 5, 2004 were approved as presented.

**Trustee Holdstein:** Page 12, middle of the page, “improve” not “approve.”

**Trustee Apel:** Page 22, the next to last line, “I” not “it.” Page 23, indicate I was pointing to the Deputy Village Attorney.

On MOTION of Trustee Holdstein, SECONDED by Trustee Swiderski with a voice vote of all in favor, the Minutes of the Regular Meeting of Oct 5, 2004 were approved as amended.

**APPROVAL OF WARRANTS**

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

Multi-Fund No. 35-2004-05 \$56,434.27

Multi-Fund No. 37-2004-05 \$95,664.58

**81:04 CHANGE ORDER EC-03 - JULIUS M. CHEMKA POOL PROJECT**

**Village Manager Hess:** You have an e-mail from Vincent DeCollibus of Ward Associates, indicating that for EC-03 there was an existing large-diameter underground electrical feeder

conduit that was supposed to be reused as per the contract documents. The contractor tried to run the new cables through them and was unsuccessful. There was a blockage in the existing conduit, or possibly even the conduit collapsed. Based on the field condition, that change order was written to remove the existing underground conduit and install a new underground conduit. We discussed this in July.

**Trustee Holdstein:** It says that Ray Gomes is not comfortable with the contractor showing overtime hours on his change order request. But given the explanation here, he should not have felt uncomfortable.

**Village Manager Hess:** That is neither here nor there.

**Trustee Holdstein:** It has just created confusion on what was essentially the same rates for the journeyman hours.

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

**RESOLVED:** that the Mayor and Board of Trustees approve Change Order EC-03 of RLJ Electrical Corporation for the Julius M. Chemka Pool Project to increase the electrical construction contract in the amount of \$5,417.41.

<b>ROLL CALL VOTE</b>	<b>AYE</b>	<b>NAY</b>
Trustee Michael Holdstein	X	
Trustee Bruce Jennings	X	
Trustee Marjorie Apel	X	
Trustee Peter Swiderski	X	
Mayor Wm. Lee Kinnally, Jr.	X	

**82:04 CHANGE ORDER EC-04 - JULIUS M. CHEMKA POOL PROJECT**

**Village Manager Hess:** On EC-04 the contract drawings showed the demolition and/or abandonment of sump, sump pump, conduit, wire, and switch-controlled outlet in the filter room. The contractor demolished the conduit, wire, and switch-controlled outlet as per the contract documents. A decision was made to maintain the sump and sump pump for future use. Based on the above, a change order was written for the installation of a new conduit wire and switch-controlled outlet to replace the items that had been removed.

**Trustee Holdstein:** The last sentence in that first paragraph is bothersome. That again falls in the lap of Ward's advising us in this project. You either decide you are going to keep the sump pump and use it, or you do not. It is a decision that should have been made sooner. It is only a \$900 expenditure. But that sentence goes to a continuing inadequacy on his communicating the plan.

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

**RESOLVED:** that the Mayor and Board of Trustees approve Change Order EC-04 of RLJ Electrical Corporation for the Julius M. Chemka Pool Project to increase the electrical construction contract in the amount of \$938.48.

<b>ROLL CALL VOTE</b>	<b>AYE</b>	<b>NAY</b>
Trustee Michael Holdstein	X	
Trustee Bruce Jennings	X	
Trustee Marjorie Apel	X	
Trustee Peter Swiderski	X	
Mayor Wm. Lee Kinnally, Jr.	X	

**84:04 PROPOSED LOCAL LAW NO. 8 OF 2004 - IMPOSING A TEMPORARY MORATORIUM ON DEVELOPMENT IN THE VILLAGE'S LIMITED INDUSTRY (LI)ZONING DISTRICT**

**Mayor Kinnally:** This matter was the subject of a public hearing at our last meeting on October 5, 2004, and we received both oral and written comments in connection therewith.

**Trustee Jennings:** What is detailed here is a history of a great deal of work that the Planning Board had done, that the Village Board had done, to try to resolve this zoning change and make the situation what we want it to be in that area. I support extending the moratorium, but I would like to urge our colleagues on the Planning Board and my colleagues on the Village Board to finish this up. I do not want to extend this again.

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

- WHEREAS,** the Board of Trustees of the Village of Hastings-on-Hudson adopted Local Law No. 4 of 2003, which imposed a temporary moratorium on development in the Village's Limited Industry (LI) Zoning District located on Route 9A in the Village; and
- WHEREAS,** said Local Law became effective on or about September 15, 2003 and, by its terms, expired 90 days later on or about December 15, 2003; and
- WHEREAS,** said Local law directed the Planning Board of the Village of Hastings-on-Hudson to prepare appropriate zoning amendments for the LI District located on Route 9A or other zoning amendments because of the Village Board of Trustees' concern about significant adverse potential traffic impacts in the Route 9A Corridor that would arise from development of lands within the LI District for uses now permitted as of right or by special permit; and
- WHEREAS,** the Planning Board commenced studies for the preparation of such zoning amendment, but had not completed such studies nor issued any recommendation to the Board of Trustees by the expiration date of Local Law No. 4 of 2003, and
- WHEREAS,** the Board of Trustees adopted Local Law No. 1 of 2004, which reenacted a temporary moratorium on development in the Village's Limited Industry (LI) Zoning District located on Route 9A in the Village; and
- WHEREAS,** such Local Law became effective on or about February 23, 2004, and by its terms, expired 90 days later on or about May 23, 2004, and
- WHEREAS,** the Planning Board prepared and recommended zoning amendments for the LI District located on Route 9A that were the subject of a State Environmental Quality Review Act (SEQRA) and zoning amendment process, which was expected to be completed within 60 days, and
- WHEREAS,** the Board of Trustees adopted Local Law No. 4 of 2004, which reenacted a temporary moratorium on development in the LI Zoning District, and

**WHEREAS,** such Local Law became effective on or about June 29, 2004, and by its terms, expired 60 days later on or about August 29, 2004, and

**WHEREAS,** the Board of Trustees is in the process of making its final changes to the draft amendment to the Zoning Code for the LI District, and

**WHEREAS,** the Board of Trustees desires to preserve the status quo and act to ensure that existing traffic problems in the Route 9A Corridor do not worsen until such zoning amendments can be acted upon by the Board of Trustees; and

**WHEREAS,** the Board of Trustees finds it necessary to reinstate and effectively continue the temporary moratorium set forth in Local Law No. 4 of 2003,

**NOW, THEREFORE, BE IT ENACTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF HASTINGS-ON-HUDSON** as follows:

Section 1: Purpose and Findings

The Board of Trustees of the Village of Hastings-on-Hudson finds that serious traffic impacts in the Route 9A Corridor would occur if undeveloped or underdeveloped lands in the Village's existing Limited Industry (LI) District are developed for uses permitted as of right or by special permit under the Village's LI District regulations. Accordingly, the Board of Trustees hereby directs the Planning Board to prepare appropriate zoning amendments that could include a modification of the list of permitted uses in the Limited Industry (LI) District, located on Route 9A, or other zoning amendments to reduce such impacts. In order to insure that existing traffic problems do not worsen and to assure that all future development in the Limited Industry (LI) District is consistent with those zoning amendments, the Board of Trustees finds it necessary to enact a temporary moratorium on development in that district.

Section 2: Applicability

This Local Law shall apply to the Village's Limited Industry (LI) District, as shown on the Zoning Map, Village of Hastings-on-Hudson, dated May 1, 1979, and any amendments to that Map.

Section 3: Development Limitations

For a period of sixty days after the date of the filing of this Local Law with the Secretary of State, no application for:

- (1) a building permit, or
- (2) a special use permit, or
- (3) site plan approval, or
- (4) subdivision approval, or
- (5) use variance, or
- (6) a variance involving the construction of new or expanded floor space.

for properties within the area designated in section 2 of this Local Law shall be accepted, and no final decision on any such application shall be made, except as set forth below:

- a. An application for a building permit where final site plan approval has already been granted.
- b. An application for a sign permit pursuant to Chapter 234 of the Code of the Village of Hastings-on-Hudson.
- c. An application involving the interior renovation, rehabilitation, or alteration of an existing building or structure provided: (1) the application does not involve a change in use, and (2) the cost of the renovation, rehabilitation, or alteration does not exceed \$10,000.

#### Section 4: Waiver

A. The Village Board shall have the power to waive the application of any provision of this Local Law upon its determination, in its reasoned legislative discretion, that such waiver is required to alleviate undue hardship, is consistent with the proposed amendments to the Zoning Code, as such may be known, and is consistent with the health, safety, and general welfare of the Village. The hardship must be the result of unique circumstances, and the waiver must be the minimum necessary to alleviate the hardship.

B. Upon receiving any application for a waiver of this Local Law, the Village Board shall conduct a public hearing on the application, on at least ten days notice, within sixty days after the application is referred to it. The Village Board shall render its decision within thirty-five days after the public hearing is closed.

C. If the Village Board grants a waiver under this section, the application for which the waiver was sought shall be referred back to the office or board responsible for processing such an application, and the application shall be processed according to existing law and procedures.

Section 5: Interim Suspension of Other Laws

All ordinances or local laws or provisions of the Code of the Village of Hastings-on-Hudson in conflict with the provisions of this local law are hereby suspended to the extent necessary to give this Local Law full force and effect during the effective period. This Local Law is intended to invoke the supersession provisions of Section 10(1)(ii)(e)(3) of the Municipal Home Rule Law and to supersede, during the effective period of this Local Law, inconsistent provisions of the Village Law, including Article 7.

Section 6: Validity

Should any word, phrase, clause, sentence, paragraph, part, or provision of this Local Law be found to be invalid, such decision shall not affect the validity of any other part of this Local Law that can be given effect.

Section 7: Effective Date

This Local Law shall take effect immediately upon filing with the Secretary of State of the State of New York.

<b>ROLL CALL VOTE</b>	<b>AYE</b>	<b>NAY</b>
Trustee Michael Holdstein	X	
Trustee Bruce Jennings	X	
Trustee Marjorie Apel	X	
Trustee Peter Swiderski	X	
Mayor Wm. Lee Kinnally, Jr.	X	

**85:04 CONSOLIDATION OF VOTING DISTRICTS FOR VILLAGE ELECTIONS**

**Mayor Kinnally:** A point of clarification: this only deals with Village elections. The regular elections in November will still be at the eight polling places. Those elections are run by the Westchester County Board of Elections and we have no control over those.

**Village Manager Hess:** The Town is going to run into the same problem in terms of the Voting Rights Act and disability accessibility in the future. They may have to consider some changes also.

**Trustee Apel:** I want to thank Susan for her hard work. My concerns are to ensure that the people in the Andrus Home are not disenfranchised; we discussed things like transportation that we could do, and I would like to have a sunset provision so that it is reviewed annually for the next few years. Can we put these requirements into the resolution?

**Mayor Kinnally:** I would not add anything having to do with one particular polling place. There is a commitment from the Board and there are a number of ways we can make voting as easy as possible: making available absentee ballots, transportation, and so forth. Let me ask the attorney about a sunset provision.

**Deputy Village Attorney Stecich:** The question is whether you want it to automatically expire after 2005, or you want to resolve that the Board of Trustees review this resolution.

**Village Manager Hess:** Since you are doing it by resolution, not local law, doing a sunset would be difficult.

**Deputy Village Attorney Stecich:** Why do you not just resolve that the Board of Trustees will review this matter for, say, a year from today?

**Mayor Kinnally:** As soon as possible after the Village's 2005 elections.

**Trustee Jennings:** It would be sufficient simply to put in the record that we were going to review and evaluate. We want to do it in a timely way but not too quickly after the election because we want to give enough time to get feedback from the community.

**Jeff Bogart, 5 Jordan Road:** Do you have a place? You were considering consolidating into one location.

**Mayor Kinnally:** The Orr Room in the library.

**Village Manager Hess:** It is not in the resolution, but it will be when they vote on setting the polling place.

On MOTION of Trustee Jennings, SECONDED by Trustee Apel with a voice vote of all in favor, the Board of Trustees amended Resolution 83:04 to state that the Board of Trustees will review the advisability of continuing the consolidation after the March, 2005 elections.

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

**WHEREAS,** there are currently eight election districts in the Village of Hastings-on-Hudson, and

**WHEREAS,** New York State Election Law §15-110 authorizes the Board of Trustees to change the number of elections districts by resolution



adopted at least 120 days prior to the general Village election, provided that no district contains more than 800 qualified voters, defined as the average of the number of persons who voted in the three preceding Village elections, and

**WHEREAS,** in the March, 2004 Village elections 169 persons voted; and in the March, 2003 Village elections 1,332 persons voted; and in the March, 2002 Village elections 211 persons voted; yielding the average number of persons voting in the three preceding elections as 571, and

**WHEREAS,** the Board of Trustees desires to decrease the number of election districts from eight to one in order to consolidate voting at one location, thereby ensuring disability accessibility, cost savings, adequate staffing, compliance with bilingual directions of the Voting Rights Act, and efficient oversight, now therefore be it

**RESOLVED:** that there shall be one election district encompassing the entire Village of Hastings-on-Hudson, effective at the March, 2005 Village Election, and be it further

**RESOLVED:** that the Board of Trustees will review the advisability of continuing the consolidation after the March, 2005 elections, and be it further

**RESOLVED:** that all resolutions previously enacted which are inconsistent with the provisions of this resolution are hereby repealed, and be it further

**RESOLVED:** that this resolution shall take effect immediately.

<b>ROLL CALL VOTE</b>	<b>AYE</b>	<b>NAY</b>
Trustee Michael Holdstein	X	
Trustee Bruce Jennings	X	
Trustee Marjorie Apel	X	
Trustee Peter Swiderski	X	
Mayor Wm. Lee Kinnally, Jr.	X	

### **VILLAGE MANAGER'S REPORT**

**Village Manager Hess:** You have the proposal from the McLaren Engineering Group on Kinnally Cove. A committee of Trustee Swiderski, Ray Gomes, Susan Maggiotto, Angie

Witkowski, David Hutson, Sandeep Mahrotra, and myself reviewed the proposals. We interviewed three. Of the members that attended, it was unanimous in recommending McLaren. One thing that came out of the interviews was the amount of time it is going to take to get the permits from the Army Corps and the DEC for this project. I would like authorization to either sign an agreement with McLaren or let him provide one to use after review by the Village Attorney so we can move ahead on this.

**Trustee Apel:** I would like some time to look this over.

**Village Manager Hess:** That is fine. Would you like to interview them?

**Trustee Apel:** No, just to look it over.

**Mayor Kinnally:** Why do we not call a special meeting for next Tuesday to approve this so we can at least get a week's jump on it?

On MOTION of Trustee Apel, SECONDED by Trustee Jennings with a voice vote of all in favor, the Board scheduled a Special Meeting for Tuesday, Oct. 26, 2004 at 8:00 p.m. to consider the proposal submitted by McLaren Engineering.

**Village Manager Hess:** On Kinnally Cove the bathymetric surveys are completed. We plan to have the specs done over the winter on that project.

I have been noticing more political signs within the right-of-way. We are going to remove them. Political signs on private property are perfectly legal.

**Trustee Holdstein:** Historically in the Village during local elections a great many signs go up in the rights-of-way.

**Village Manager Hess:** They are put up on poles, and they are either taken down by the candidates or by Con Ed or by NYNEX. If they are on our poles we remove them.

The steps out front are 99% complete. The railings have to be put back up. They have already replaced the wood on the columns that needed replacement. The steps have to be acid washed and then it will be completed.

We had scheduled next Tuesday for flu shots at the Community Center through Westchester County Department of Health. We normally get 150 flu shots but the county has notified us we will only have about 70. They have required us to have people sign up and to develop a waiting list. They will prescreen people at the clinic next Tuesday. It is going to be

prioritized for the following high-risk individuals: all children age six to 23 months old; all adults age 65 or older; persons age two to 64 years with underlying chronic medical conditions; all women who will be pregnant during the influenza season; residents of nursing homes and long-term care facilities; children six months to 18 years of age on chronic aspirin therapy; healthcare workers with direct patient care; and out-of-home caregivers and household contacts of children aged under six months.

We have about 130 people signed up right now for 70 shots. The county has indicated that more vaccine will be available in January. If you have the opportunity with your own private physician to get your flu shot, then do that.

**Trustee Jennings:** Since we now have a public health board, if we could notify them by e-mail of this plan in case they do not already know. They have a meeting scheduled Thursday next, and this would be one thing for them to talk about.

**Village Manager Hess:** We have gotten quite a few surveys back. If you have not submitted your survey yet, it is on page 41 and 42 of the Village newsletter. We will have some good information for the Board.

## **BOARD DISCUSSION AND COMMENTS**

### **1. Update on the Waterfront**

**Mayor Kinnally:** There is no update at this point. Anything from the Board?

**Trustee Holdstein:** Building 2 still stands. When are they are going to get started?

**Village Manager Hess:** They will notify us when they get all the necessary permits.

### **2. Boulanger Plaza**

**Christina Griffin, architect:** I am here with Anthony Sarubbi, the structural engineer. In September the Village prepared some excavation pits so we could look more carefully at the wall. Based on Mr. Sarubbi's recommendations, we have prepared what we think is a more economical scheme. We have found that the entire lower wall, even though it is very thick, does not have a footing. Any kind of disturbance of this wall would mean underpinning it. The last time we met we had two options. One was to put a wall against this wall. But to do that, we would have to underpin the entire length, which would add a tremendous amount to the cost. So we looked at other options, and Mr. Sarubbi has come up with a design where part of this wall can remain. This scheme will reduce the length of the wall, and provide

access so that this area can be maintained. The primary reason for the demise of this wall is the giant trees that are right up against it. We want to make sure that this is planted again with something like ivy, low-maintenance shrubbery, and a way to get into this area so we can properly maintain the plants. I want to distribute this cost estimate, which is based on this recent scheme.

**Mayor Kinnally:** Is there any way of salvaging any of the facing stone from the existing upper wall and using it in connection with the stucco?

**Ms. Griffin:** We could have that as an add alternate. We had that in our original bid and were amazed at the cost for saving, removing, cleaning, and putting the stone back.

**Trustee Holdstein:** Is the lower wall all going to stay?

**Anthony Sarubbi, Engineer:** Yes. I checked that wall. It is very plumb, has not moved at all. There are some cracks in the lower wall which are going to be addressed individually. The joints will be opened up, re-cemented, the stones re-locked together. The rest of this wall is in good condition, surprisingly, without a foundation. There is a tremendous tree back in there that has to come out.

**Mayor Kinnally:** Are we going to be able to get the root structure out?

**Mr. Sarubbi:** You have got to take them out. They are destroying the walls. That wall has been cracked in four places by trees, and the trees are as much as 16 inches in diameter. They have to be removed.

When the corners were opened up I saw that the deepest part of the wall was only 1-foot-3 below the sidewalk. By code, it should be 3-foot-6. I was amazed it was still stable. This dotted line represents the existing wall. It is as much as four to five inches out of plumb from the top of the wall down to grade. This is the high wall in the back. I do not know where the footing for that is, but the fact that it has rotated indicates that it does not have much of a footing, if it has any at all. When this wall was built, all of this earth behind the wall had to be disturbed to build this wall. So this existing wall was put on backfill and it is not virgin soil. Backfill does not have the resistance that virgin soil has. This wall in red is my proposed wall; it is back at least four feet from the back of the existing wall. I can put a reverse footing into the bank on the VFW side. That would do two things. The pressure on this wall would still be there. However, there is also the weight of the earth on this footing, so the earth that is pushing is also the earth that is helping to keep it stable. This is the normal pressure diagram. It is approximately a slope of 45 degrees. We came up with a wall that is only about 12 feet high instead of 18 ½, including the footing, which reduces the

thickness to one foot instead of 1½. The volume has been cut down tremendously; it has brought the bottom up from 3½ feet below grade up to 3 feet above grade. That is a 6½ foot difference. The wall is stable in this design, and it will save you tons of money.

**Trustee Holdstein:** Between the walls you have a flat landscaping area.

**Ms. Griffin:** This area was for two reasons: to reduce the length of the wall to cut costs, and because it is important to see how this space is going to be landscaped and maintained. This area should be very low maintenance plants, like ivy. No trees.

**Trustee Holdstein:** I like what you are doing, but it appears that the wall is cutting in and is right on the front lawn of the VFW. If I pull my car up I would be looking at that wall.

**Mr. Sarubbi:** There would be six inches of wall sticking up, and a fence on top of that.

**Ms. Griffin:** This idea helped us bring the project within our original budget, by trading landscaping for the wall.

**Mayor Kinnally:** This new wall is not going to give the lower wall any more pressure?

**Mr. Sarubbi:** There was more pressure before. When this wall was there it exerted a lot more pressure. It was already leaning toward it and exerting pressure on it. By doing what I did, we picked up about a foot-and-a-half in space so they could work in there, and the reverse footing eliminates the pressure on that wall.

**Trustee Apel:** Is this all on Village property, or we now onto property that we do not own?

**Ms. Griffin:** The property line is right along this wall. But then it jogs in here for the Village. I think the wall straddles it from one to the other. But we should look at that carefully. We had a pre-bid interview with the contractors and they felt it was impractical to give them a space slightly more than two feet wide to work in. We always knew we had to replace the upper wall. But to have a wall in front of this wall and bury that is now impractical because we have to add something like \$75,000 just to underpin this wall. So it makes sense to keep away from this lower wall.

**Trustee Holdstein:** You do not see any need for any additional below-grade or underground support for the front wall.

**Mr. Sarubbi:** Based on my field measurements, it was perfectly plumb. And it was straight with the undue pressure it was receiving, which was amazing to me. So I say leave it,

otherwise you are going to excavate, underpin the whole thing, and disturb it. You have the stone that you like. You like the appearance of it. It is plumb. Let us leave it alone, take some pressure off it, and have a new wall up above. This one would be concrete, and it would be stuccoed to give it a better finish.

**Ms. Griffin:** Stone adds dramatically to the cost. Stucco comes in any color you can imagine and many textures. I would love to pick a color that has a nice earth tone, but is in harmony with the colors that are in the stone.

**Trustee Apel:** Could you have plants from the edge coming down?

**Ms. Griffin:** Absolutely. We have increased our budget for landscaping because it is important to handle this properly so it can be maintained. The fencing is important also. We had chain link in our base bid, and wrought iron as an add alternate. But if we have to, we could look at aluminum and aluminum/wrought iron as add alternates. Now it is quite unattractive with a chain link fence and no room for shrubbery to disguise it.

**Mayor Kinnally:** Given the feasibility of retaining the front retaining wall, it makes the rest of the project softer and certainly softer on the pocketbook. Opening that area up and making it more visible from a planting standpoint is a step in the right direction. We can try to camouflage the wall in the back, knowing that cost is going to be a problem to put any stone back. The more we can get in the way of low maintenance plantings that can cover it up and keep it somewhat green the better.

**Trustee Apel:** We have come a long way. After everyone banging their head against the wall they are coming up with something that we can deal with, and that works within the budget and with the rest of the plan for the parking lot.

**Ms. Griffin:** We would be prepared to go out to bid at the end of November if we were able to go ahead soon so that we can get prices during the winter.

**Mayor Kinnally:** I know you are anxious to go out to bid on this thing. My suggestion is that we pick up on this at our work session next Tuesday night.

**Ms. Griffin:** There needs to be discussion about the VFW property.

**Mayor Kinnally:** I have to get a sense to see what kind of an impact that is going to have on that area. We will have to talk to the VFW.

**Trustee Holdstein:** Can we stake this out?

**Ms. Griffin:** We could put up a few stakes with bright-colored ribbon.

### 3. Community Center

**Village Manager Hess:** I am asking the Board for a decision tonight. I gave you a breakdown of the expected cost of the new Community Center with a renovation, with new construction without a second floor, and with new construction with a second floor. I would like to get some direction from the Board on how to proceed. A renovated building, 7000 square feet, estimated construction cost \$2,000,000, annual debt payment \$193,000. New construction without a second floor, 12,500 square feet, estimated construction costs \$4,080,000, annual debt payment \$326,400. New construction with a second floor, 14,400 square feet, estimated construction costs \$4,896,000, annual debt payment of \$390,000.

**Mayor Kinnally:** Anybody want to do the renovation?

**Trustee Apel:** Spending money on a renovation is not worth it because there is not a lot of space. If we are going to do something, we might as well provide more space. No one is happy with the building. And when we looked at the designs of the renovation, it was not great and I would rather not throw money away at a building that has lots of problems.

**Trustee Holdstein:** No desire to do the renovation.

**Trustee Swiderski:** Zero.

**Trustee Jennings:** I agree.

**Mayor Kinnally:** Let us move on to the new construction without the second floor.

**Trustee Apel:** My preference is for the second floor. Whenever you finish building you always seem to be out of space. It would be more costly to decide later that we were going to add on, so I would rather bite the bullet now and proceed with adding the space on the top.

**Trustee Holdstein:** I take an opposite approach. You are looking at a \$4,000,000 project. You are looking at hundreds of thousands of dollars on Boulanger Plaza. You are looking at bond resolutions we passed on resurfacing, and maybe a re-discussion of curbs and sidewalks. The Manager has done an outstanding job for 20 years of maintaining our debt structure at the right percentages not only by state guidelines but by his self-imposed guidelines, to keep the Village in a fiscally responsible condition. But we are adding a lot of debt and a lot of expenditures, all for very good projects. At some point you have to say you cannot have everything. The additional \$800,000 is a lot of money for another 2,500 square

feet. I am in favor of the project, but I would be in favor of not proceeding with the second floor, from a cost and need standpoint.

**Trustee Swiderski:** While the expense is serious for the second floor, and with all due respect to our technology director, probably not merited strictly for studio use, as space that is likely to be reused in other ways down the line, it is better to do it than have buyer's regret in a couple of years. It would be penny-wise and pound-foolish over the 50-year lifespan of the building. I lean in the direction of a second floor. I am always astounded at the expense of construction in the public sector in terms of what you get for \$800,000. It would be more than a 2,500 square foot building if you were building a free-standing house. However, in the long term I think it is the wise decision and we will put it to good use.

**Trustee Jennings:** The additional roughly 2,000 square feet that we are getting for the second story seems to be not more expensive than the previous cost per 2,000 square feet of the earlier plan. So there is not a big jump in marginal incremental costs, which is good. Therefore, it is a straightforward matter of how much we want to spend for how much space we want to buy. I agree that we should make an investment in more space. I am sure that Marge is right. Adding space later to the building when we find that we want it is going to be much less cost effective than doing it as a part of the original construction project. It is almost a no-brainer to say that we will be able to use 4,000 square feet if we have it, and use it well. I have some questions about the plans for the utilization of the second story space, but we could leave that to another time.

**Mayor Kinnally:** I, too, do not want to deal with the utilization of the space. I choke on the numbers also. We added a substantial amount of space to the library, and everybody has a very usable and community-wide resource available. This is an opportunity to look forward and say this is an expense, but it is an investment in the future. The current building is unworkable. The square footage in the building is dishonest because it is so underutilized and so poorly laid out and uninviting that it is of very little value to the community. We have an opportunity not just from a cost standpoint, but from a solid planning standpoint to add something to the inventory of our space in **the** community. It adds another 20% to the yearly cost of carrying this debt, but it is an investment that we can and should make.

**Trustee Jennings:** I am the liaison to the Library Board. You are absolutely right. Not only did we build additional space in the library renovation, but it is booked up solid all the time. They even have to turn away requests to use those rooms. But investing this kind of money, we have to follow that up with programming. All of us here and on the staff are fully committed to making sure that this investment turns into a facility that is used. If the library is any indication, there are a lot of things in this Village that people want to do if we give them the right facilities to do it.



**Trustee Holdstein:** I am concerned about the fiscal responsibility of that \$800,000 add-on. We added on the square footage of the library and there is no question it is all being utilized. But you are already adding on from 7,300 to 12,500. I would ask if what you envision for the extra second floor could be reworked in the additional 5,000 square feet that we are already gaining from the existing building. We are creating much more square footage. We should be able to accommodate our needs in it. For the additional 1,900 square feet for \$800,000 we could buy a building for less than \$800,000. Yes, if you buy a house that goes up for sale on Maple or on Main you are taking something off the tax roll. But \$800,000 for 1,900 square feet when you are already gaining from 7,300 to 12,500, the numbers do not work for me in terms of \$800,000 more of debt with all the other projects we have.

**Mr. Bogart:** What would someone pay in taxes in terms of carrying costs, both with and without that second story?

**Village Manager Hess:** It would be going from about \$8 per \$1,000 up to \$9 per \$1,000. Without the extra story it would be about \$128, with the extra story about \$144 per average home per year.

To get a bond resolution costs us several thousand dollars, so before I bring a bond resolution to the Board I want to get some indication that there would be four yes votes to approve. There also has to be a discussion of what to do with the second floor. We thought it would be an ideal location for a technology/TV studio. That is going to make a difference in the specifications, so if people have other ideas for the second floor, I would like to hear them.

**Mayor Kinnally:** That is a lot of space to turn over to technology. I do not know how much actual programming we will do on a week-to-week basis that would require a studio, but I open it up for discussion.

**Trustee Jennings:** We need to look at the Village functions as a whole over the next five years, do an assessment of the space available, and see what role the Community Center facility should play in that. For example, we are going to have a lot of planning activity in relationship to the waterfront. I do not know if we have sufficient office space for that in this building in coming years. So a shift of space from this building to another building in the Village would make some sense. Michael raises an intriguing idea in terms of getting and converting to administrative use some other kinds of building space in the Village near Village Hall. We have already earmarked a good deal of space in the Community Center for the Parks & Recreation Department offices; we need to take a look at the bigger picture.

As far as the second floor is concerned, I would hope that we would not have to use it entirely for Village office or Village functions, that we would have some space available that

the general public or groups could utilize. But that will only come after we have had this broader conversation about the space needs of the Village as a whole.

**Trustee Holdstein:** Bruce's point is that the second floor should be used not just for technology but for expanded uses of the Community Center. But that is what the initial design without the second floor gave us.

**Trustee Jennings:** You and I may differ on whether we think the second floor is needed for Community Center-type activities. I happen to think it is. But I recognize that we have to look at the space needs of the entire Village government. It may be the case that some of the Community Center square footage will have to be devoted to other government functions, because this building is not big enough to hold all of the functions and space that we need. As far as I am concerned, if you turned the second floor into Village offices, the second floor is no longer a part of the Community Center. It may come to that. I hope it does not. I hope we can have some Community Center stuff on the second floor. But it should be used in the best way, and that is why I am saying we should do this in the context of assessing what all the space needs of the Village are.

**Trustee Apel:** I am always in favor of technology because I love that kind of stuff. I can see how we need the TV studio and the technology. This is the media of the times and it is part of what the community does. We have students who are very interested in this type of media, so it is a program that can be used. Technology is ever-growing, and we can never estimate how much we are going to need and what we are going to use it for. So having space for that is important.

At the same time, I have always felt that it is like anything else: you build it, and whenever you build it, it is not big enough. We could be adding more personnel and you may need another office. But if it is an empty space now and you have to build a wall later, you build a wall. That is not an expensive thing. The expensive thing is getting the whole second story up there and having that available. I do not think we have to consider that now. Internal walls are not a big deal.

**Village Manager Hess:** I am not talking about walls. I am talking about wiring and things like that.

**Trustee Apel:** You should wire it for as much technology as you can possibly envision.

**Village Manager Hess:** I understand that; we did that in this building. What I envisioned was developing a full-blown TV studio there. We already work with the schools and have interns here. There will be six people crowded in a little office trying to do their work. They

produce the newsletter. We put on all sorts of programs. But to do any filming we have to jury-rig what we do. We have to bring people in here where the sound may not be that good, or we have to do it in the conference room. That kind of facility over there frees up space here, such as moving the planning director out of the building department where she sits in the hallway and moving her up to an office up here. There are ways you can move things around. I just do not want to leave it as an empty space.

**Trustee Apel:** No, I do not think we should, but it should be wired for the TV studio and technology. You do it because that is the one thing you definitely want to do. There is nothing wrong with putting it in. If later, for some reason, you have to convert something to an office, so you have the wiring in there.

**Technology Director Zaratzian:** The rear end of the space was going to be used for the TV studio. If this space becomes available and the TV studio is put there, we are not talking just about Channel 75 anymore. This will give us the opportunity to take over the other two channels, which we have the right to do, and the school will have its own channel. I have been talking with Sue Guiney, the technology director for the school. They are very interested in pursuing a course in video production. This would facilitate that. The other section of the building was going to be for training and technology, and there would be a section for maintenance of computers because we seem to have them all over the place on the second floor in this building.

That was the way we currently looked at it, but things can change. If that facility is opened up the Village can provide three channels of productions. We would take over 75, 76, 77. When, or if, we renew the cable franchise agreement there is the chance that Greenburgh will not be providing public access, in which case we will need some place to provide it. It is part of the FCC rule.

**Village Manager Hess:** This floor is about 4,000 square feet. So you are talking about an area that is about half this size. Right now they are squeezed into two small offices. The computer repairs have expanded into the finance office.

**Technology Director Zaratzian:** We would move as much as possible over there, but some things would have to be left here: the wiring closet for this building and one or two servers. This also gives us better backup and emergency capability.

**Mayor Kinnally:** You have guidance?

**Village Manager Hess:** I believe so. So we can get a bond resolution for the next meeting?

#### **4. Proposed Local Law No. 7 - Amending Definition of Mixed-Use Building**

**Deputy Village Attorney Stecich:** The definition at the top of the memo is the current definition of mixed-use building in the zoning code. That definition applies wherever mixed-use are allowed in the Village: the CC district, the MRO district, the MRC district, and also the LI because the CC cascades down to the LI. This current definition reads: “a building with one or more principal non-residential uses located on the ground floor story, and with one or more residential dwellings or non-residential uses above the ground floor story.” An applicant went to the Zoning Board of Appeals for an interpretation of this. They wanted to put some residential on the ground floor. The interpretation was, under this definition, you cannot have any residential on the ground floor.

The second item is a definition you called for the public hearing on, but was actually the definition proposed by A&F for its 10 West Main project. That definition reads: “a building containing both residential and non-residential uses, provided that only non-residential uses are permitted on that portion of the ground floor story that fronts on the street” and the exception just means for common areas. You could have residential on the ground floor so long as it does not front on a street. If you have a very big ground floor and the back of it does not front on a street, you could have apartments back there. That would be the definition in all four of the districts that allow mixed-use buildings.

When that definition was sent to the Planning Board for its recommendation, the Planning Board said it was always their intent that in the MRO and the MRC districts you could have residential on the ground floor. They did not realize that the definition that they adopted would not allow it. So they think that in the MRO and MRC districts you should be able to permit residential on the ground floor; in those districts you can have apartment buildings, so you can have residential on the ground floor. For the CC district, however, the Planning Board did think that you should only be able to have residential that does not front on the street. So the limitation would be, on the ground floor you could have residential, but only if all of the area fronting on the street is non-residential.

A suggestion made by a couple of members of the Zoning Board, because the Board did not come up with a unified decision, was that in the CC district, with this latter definition, you also put a limitation on how much of the ground floor could be residential, say 50%.

**Trustee Apel:** My concern in this concept is access to residential: that this would become a huge lobby. Does that mean that it could become more than just the access?

**Deputy Village Attorney Stecich:** You could not have residential in the access area.

**Trustee Apel:** But you could, based upon where this is. “Only non-residential uses are permitted on that portion of the ground floor that fronts on the street except for areas providing common access to the residential portion of the building.”

**Mayor Kinnally:** But its common access is a limitation. If you have more than common access you would have residential, right?

**Trustee Apel:** I know what you are saying, but I do not think it reads this way.

**Mayor Kinnally:** I do not think it reads well one way or the other. I do not understand what this is supposed to accomplish. We should get away from the definition and start talking about the concepts of what we want to do or not do. I really have trouble diagraming these sentences and figuring out what we are talking about. Let us consider West Main Street.

**Trustee Apel:** It wants to be able to have apartments facing the commuter lot, but I do not know why he would want to look at the lot. The rest of the floor would be stores.

**Mayor Kinnally:** As things currently exist, what can go on the parking lot level?

**Deputy Village Attorney Stecich:** Only non-residential.

**Mayor Kinnally:** So they want to have residential facing the parking lot and non-residential on West Main Street?

**Deputy Village Attorney Stecich:** Right. They want to permit some residential on the ground floor.

**Village Manager Hess:** If it does not front a street.

**Trustee Holdstein:** They are saying apartments would be allowed on the first floor in the back. It is simple as that.

**Trustee Swiderski:** I cannot see why that is a problem. Entry into the garage was one of the precipitating factors. The entry into the garage, at least as architecturally rendered, is covered with doors that look like, not French doors, but that style.

**Trustee Apel:** Where are other areas in this CC district that this would apply to? And what would happen if we allowed this to happen?

**Mayor Kinnally:** Well, where would you have multiple fronts on Spring Street?

**Deputy Village Attorney Stecich:** This would not just apply in multiple-front buildings.

**Trustee Apel:** It would apply to all of them.

**Deputy Village Attorney Stecich:** Right. It just happens that this one has more.

**Trustee Swiderski:** But the issue is the lot size. When I first saw this I went through the map. There are four or five lots that could accommodate this in total. The lot sizes in the central commercial district are generally small, and the most you are going to get is a skinny building because of the parking requirement which forces a good deal of the first floor rear area to be used as parking.

**Trustee Holdstein:** If Hastings Prime Meat wanted to cut their store in half, the back side that faces out as an entrance to the parking lot could be converted to an apartment. Any of the businesses along Warburton could divide the footprint and make the back half of that first floor living space.

**Trustee Apel:** I do not know if that is what we want. We want people to have access to the stores from the parking lots, too.

**Mayor Kinnally:** It would destroy the commercial because you would not have that access.

**Deputy Village Attorney Stecich:** You could modify it so it says any portion of a ground floor story that fronts on a street or public parking lot, if that was your concern.

**Mr. Bogart:** I just had a question about a corner lot. When you say fronting on a street, since a building only has one front...

**Deputy Village Attorney Stecich:** If it were a corner lot it would have to be, under this definition, commercial on both.

**Mr. Bogart:** So it seems you have to consider whether you want the business district to be a business district, or whether you want it to be a mixed-use district and turn it partially into residential, at least on the ground floor. There may be some desirable areas where you have the back of a building look on a good view, for example, which might make it interesting from the standpoint of a business to locate there. Are you doing it to accommodate a particular developer's request, and finding that in order to accommodate it you are having to change everything?

**Mayor Kinnally:** I think you know the answer to that, Jeff. That is why we are wrestling with it.

**Deputy Village Attorney Stecich:** In the CC district, multi-family residential is not allowed. The applicant is trying to get 10 West Main in as a mixed-use building. His first proposal showed the first floor with residential and non-residential. I told him this does not fit the definition of mixed-use building. Their attorney did not agree with me. They went before the Zoning Board. The Zoning Board said that the definition is that you cannot have residential on the ground floor in a mixed-use building. So then they requested a zoning change.

**Trustee Holdstein:** So the buildings that are on West Main are grandfathered. The code has been changed, and any future has got to have non-residential on that first floor.

**Deputy Village Attorney Stecich:** As it reads now, yes.

**Village Manager Hess:** What they requested was a definition change, not a zoning change.

**Trustee Apel:** I think it is a mistake to rezone it.

**Mayor Kinnally:** We are in receipt of a letter from Mr. and Mrs. Quinlan.

**Jeremiah Quinlan, 39 Hillside Avenue:** I covered all the major points that I think are very important in that letter. I come from a certain perspective, having served on the Zoning Board, and being part of the downtown rezoning committee, and a property owner in the commercial district and residential districts. I do not think this is a good idea for the reasons stated in my letter. We will have chopped-up buildings and the commercial core will be severely damaged. We need that in the Village, we have always had it, and it is a big part of our Village character.

The one thing I did not bring up in the letter that is important, that I find very unusual, is that a private corporation is asking for a zoning change. They are saying they are asking for it because the rezoning committee did not know what they were doing, or made a mistake, or did not realize what they were proposing. And that is not true. I was part of that committee, and we did realize what we were doing. We were 10 or 15 members, all citizens of Hastings, all taxpayers, a great cross-section: real estate agents, Planning Board, Zoning Board, regular citizens. We met over a long period of time. We hashed out a lot of problems. We made our recommendations to the Board of Trustees. You adopted some, did not adopt some, changed the zoning for the commercial district. We hired, with Village money, a consultant. We had

walking tours of the Village. We had the Village part-time planner with us at that time. We spent a lot of time and money to formulate this zoning proposal.

Now we have a developer who is asking you to change the zoning, saying we did not really know what we were doing. It will be a disaster for the Village. Why is he doing it? He is doing it for one reason only. He is asking you to change zoning and send everything out of whack in the whole commercial district so he can put a big building in there, have two small stores, and jam elevators and duplexes and everything in the back on the parking lot with an access to a parking garage at that little corner. The parking garage is going to be down by the parking lot. There are not going to be apartments down there with beautiful windows.

That is what it comes down to, and that is just not fair. That is not the way government and zoning works. We should not accommodate a non-taxpaying developer to change our zoning so that he can put a huge building in Hastings when we worked for a good plan.

**Mayor Kinnally:** I think that crystallizes it. In the 9-A discussions, everyone said we wanted to encourage the residential mix in the commercial district in our downtown to the extent that we can encourage it. This seems that we are backtracking a bit from it. Peter said there were four lots that it would apply to.

**Trustee Swiderski:** That was my impression but if it, indeed, applies to every small lot it would make no sense whatsoever.

**Mayor Kinnally:** It seems to me like anybody who has a non-residential use could consider a residential use.

**Trustee Swiderski:** That would be insane.

**Mayor Kinnally:** What gives me pause is that it is the first development out of the box and already we are starting to tinker with what a good cross-section of the community looked at.

**Trustee Holdstein:** That is one of my big issues. You put a new code in and you are already changing it. It negates all the hard work people did and some good thought. If 20 years from now the landscape has changed dramatically and somebody goes before the Zoning Code, it is a different story.

**Trustee Jennings:** What Jerry just said makes a lot of sense to me. I do not want to see buildings chopped up. If residential is so much more profitable than retail, people are going cut down retail and put in residential, and it will destroy our downtown. I certainly do not want that to happen. I do favor the concept of mixed-use planning and development, and



retail and residential side by side. I do not know what to think without hearing more. I am thinking of the concept of someone who owns a store that is in the front of the building and lives in the back of the building. I can think of at least one friend of mine who has such a setup right now on Southside. I do not see anything wrong with that and I am not sure why we would want to prohibit that, but there are broader ramifications.

**Trustee Holdstein:** But he could also live upstairs. The whole floor could be the non-residential and that person could live upstairs in a mixed-use building, which is what we have right now.

**Trustee Jennings:** Yes, but the concept of living on the ground floor does not offend me. I know a lot of very nice places around the country where they have residential on the streetfront as well as in the back, and you walk down the street at night and you look in people's living rooms. That is not so bad.

I do not want to overturn the wisdom of a long process with a lot of people involved who came to the decision that there should not be residential on ground floors, front or back, so I have no basis for wanting to make exceptions already. At the moment I am not particularly in favor of making this change.

**Mayor Kinnally:** Well, I get the sense that nobody is at this point. Somebody has to make a change here, and I sense it has to be the developer.

**Trustee Apel:** We did go through a whole process. We looked at everything. It sends a signal to developers that we are serious about the zone that we voted in. We like it. You should not be coming to us with changes; we are going to stand behind what we voted.

**Mayor Kinnally:** Please report back to the Planning Board that we are not going to take any action on this.

**Deputy Village Attorney Stecich:** The Planning Board will report back to the developer since he is the one who requested it. I will give their attorney a call tomorrow.

**Trustee Swiderski:** I have a question for legal clarification. When a building does not comply with the current zoning, for example, the other buildings on West Main which are not mixed-use, if they were to be substantially altered in any way, would they be forced to comply currently, or they automatically grandfathered in?

**Deputy Village Attorney Stecich:** No, they cannot expand a non-conforming use or change the non-conforming use. Once they do that they lose their legal non-conforming use status

and they become illegal. The only thing you could do is make it less non-conforming. They could make their buildings mixed-use buildings.

**Trustee Holdstein:** Which means they would have to eliminate all the apartments on the first floor.

**Deputy Village Attorney Stecich:** Probably. That would be a tricky legal question, actually, because they are making it less non-conforming.

## **5. Protest Petition**

**Mayor Kinnally:** A protest petition on the MUPDD rezoning was filed by two adjacent property owners, Mill Saw and Purdue Pharma.

**Deputy Village Attorney Stecich:** At the last meeting the attorney representing Mill Saw/Purdue told me that she had the materials showing ownership of the property directly opposite, but what she had just did not show it. So they were to bring some materials to my office. They did not arrive until Friday. When I looked at them I was still not satisfied by what they produced that they said demonstrated that Purdue and Mill Saw owned 20% of the requisite property across the street. There were some conflicts, so we asked them for a title report showing ownership.

**Trustee Holdstein:** If their assertions are correct all things stand as voted. If their assertions are incorrect, then the super-majority would not be in place and it would revert back to the...

**Deputy Village Attorney Stecich:** Their assertions could be incorrect, but they could still own 20%, because they asserted that they owned 100%.

**Trustee Holdstein:** Let us say it falls below that 20%.

**Deputy Village Attorney Stecich:** Then you have adopted the MUPDD.

**Mayor Kinnally:** One of the things we want to consider for future work sessions is whether or not we want to deal with that super-majority. I remember Peter's first reaction is, Can this be that somebody who does not even live in our community has a vote on this Board? That is essentially what happened here.

**Trustee Swiderski:** Yes, we are stuck with it.

**Mayor Kinnally:** We are stuck with it now, but we can change it for the future.

**Trustee Swiderski:** We can change what for the future?

**Mayor Kinnally:** To opt out of the super-majority. Is that not correct?

**Deputy Village Attorney Stecich:** Right. You have the authority to supersede. Several municipalities have used their supersession powers to eliminate the super-majority; you pass a law that says we intend to supersede this provision of the Village law and any local zoning law is to be enacted by a majority vote irrespective of any protest petitions.

**Trustee Swiderski:** Is the protest petition law a state law?

**Deputy Village Attorney Stecich:** Yes. You do also have it in the Hastings law, but that is because the Hastings law tracks the village law in zoning things. But it is a matter of state law, which is why you would have to use your supersession authority to change it.

**Trustee Jennings:** So you cannot do that on a case-by-case basis. You have to do that for everything. If we did that, would we then have to take up the matter of the MUPDD all over again, or would that retroactively change the status of that vote?

**Trustee Apel:** It would not change it because we voted.

**Deputy Village Attorney Stecich:** You could vote on it again. I do not think it would change that vote, because when that vote happened the super-majority would have applied.

**Trustee Jennings:** Would we have to have another hearing?

**Deputy Village Attorney Stecich:** If you were going to enact the law again, you would have to call for another local law to have a public hearing. You have to give the public an opportunity to be heard. But you have done most of your thinking on it.

**Trustee Swiderski:** Do you need a super-majority to supersede?

**Deputy Village Attorney Stecich:** No, that would be a majority vote.

**Trustee Swiderski:** Why does not every community override?

**Deputy Village Attorney Stecich:** Quite a few have. Maybe they have not thought of it. It does not come up much. If you combined the different municipalities I have been representing, I could say in 40 years, it was the first time I came across it.

**Trustee Swiderski:** But to be able to supersede a super-majority law by a simple majority seems counterintuitive to me.

**Deputy Village Attorney Stecich:** It is one of the few occasions that the supersession authority has been used. There is an appellate division decision that dealt with that precise issue and said it is okay to do. I am not saying that if you do it that you might not get challenged, but you can do it.

**Mr. Bogart:** I believe that the super-majority may have been used in connection with the Andrus vote.

**Mayor Kinnally:** It was not. No protest petition was ever received by this board.

**Trustee Apel:** They considered it, but I do not think it got done.

**Trustee Holdstein:** How soon do you anticipate having a final determination of this issue?

**Deputy Village Attorney Stecich:** They are very nervous, so I think they are going to get their title report as quickly as possible.

**Mayor Kinnally:** Within a month?

**Deputy Village Attorney Stecich:** I would guess within a month.

**Trustee Swiderski:** Given that we have approved another ticking clock, and given that the title search will not yield any surprises and it will still stand as currently described, and who knows whether the idea of superseding super-session or whatever will happen, shouldn't we schedule a time to talk about what we are going to do?

**Mayor Kinnally:** What we should do is engage the Planning Board. It is not just something that is going to spring from us. We have to have Planning Board input into this. We told the Planning Board to give us your best shot, and they did.

**Village Manager Hess:** They did. They gave you the MUPDD.

**Trustee Swiderski:** That is why I hesitate to put them through this again.

**Mayor Kinnally:** We cannot avoid putting them through it again, though, can we?

**Deputy Village Attorney Stecich:** I do not know how you could send it back to them, Lee. I worked with the Planning Board through this whole process. They originally started out as this Board might have, by looking at the uses in the LI district and saying do we want to allow these or not. And they said it does not make sense to deal with these things individually, we want to deal with this thing as a whole. They grappled over this, and I do not see how they are going to come up with another recommendation.

**Mayor Kinnally:** Those are two separate things. I am not talking about whether they are going to come up with anything else. As part of the process, do we have to refer it back to the Planning Board?

**Deputy Village Attorney Stecich:** Eventually, but you can come up with your own zoning proposal.

**Mayor Kinnally:** But it has to go back to them.

**Deputy Village Attorney Stecich:** Right, but it is a question of who it comes from. You come up with it, and then it is referred to them and to the Zoning Code.

**Trustee Apel:** I guess that is what we have to do.

**Trustee Swiderski:** Should we not talk about when we would schedule that? I share Bruce's concern about renewal after renewal.

**Mayor Kinnally:** Here is the problem, and this is the mischief that the protest petition brought. We had the Planning Board recommending it and the Village Board adopting it. We have a majority of the Village Board in favor of the process, and now we are saying we want to go back to the drawing board. The only reason we are going back to the drawing board is because we got this crazy provision. But the majority of this Village Board, in conjunction with the ZBA and the Planning Board, said this is what we want to have in our community. Now we got to go back and scrub it and say we are going to start from scratch.

**Trustee Jennings:** But now we have an alternative.

**Village Manager Hess:** Bruce raised the alternative.

**Mayor Kinnally:** We have the alternative and we ought to look at the supersession and not spin our wheels, if that is what we want to do.

**Trustee Holdstein:** We can revoke that, and then...?

**Mayor Kinnally:** We would vote on it again.

**Trustee Apel:** Really?

**Mayor Kinnally:** Why not. It is not dead. The proposal is still there.

**Village Manager Hess:** So you could call for a public hearing in November.

**Mayor Kinnally:** On the issue of the supersession.

**Trustee Jennings:** The merits of the MUPDD to one side, the supersession has merit in and of itself. I do not agree with the state law that allows the corporation to intervene in that fashion. If we have the right to avoid such interference with local government we ought to.

**Mayor Kinnally:** But do not focus just on corporations. Anybody can do this. Anybody in Hastings can do it. A corporation down in Timbuktu could do it.

**Trustee Jennings:** I cannot think of a single actor in Hastings who ought to have the right to be able to derail a process that has gone on for over a year and has involved both elected and expert people in the Village. It is simply a bad way to run the government.

**Mayor Kinnally:** That is the frustration I am having. The majority of this Board said yes to the proposal.

**Trustee Holdstein:** If every single neighbor that surrounded the Andrus property had come forward and signed this petition, in effect demanding of this Board a super-majority vote, do you feel as strongly about taking away that piece? Now you are talking about people within our community dealing with a property within our community.

**Mayor Kinnally:** Then you are giving them a vote on the Village Board.

**Trustee Jennings:** My answer to your question is yes. I feel strongly about that for reasons that I have expressed before. Mere physical closeness to a particular project that should be evaluated in terms of its impact on the Village as a whole should not give residents special influence, special leverage, or special power in the government's decision. At the end of the day Village Trustees are elected, and they vote, and they should be accountable. If you do not like what they vote for you should elect someone else. That is the way to do it, not by giving deferential influence and impact to people based on their physical address.

**Trustee Holdstein:** I agree with you.

**Mayor Kinnally:** . When I told Peter, getting on the train, about the protest petition, I did not see anybody else but I told him. I did not know how he was going to vote. But he was really stunned by it. He came in to our meeting in the back, and without saying what went on in the meeting, he was incredulous that this could happen. He was focusing on somebody outside the Village. But anybody could come in and say the regular rules are suspended here. It really can be mischievous. The people who were adjacent to Andrus had more of an investment in the day-to-day living with the project.

**Trustee Swiderski:** Was that equivalent? Was a zoning change before the Board?

**Mayor Kinnally:** It was a zoning change.

**Trustee Swiderski:** And they were not able to find 20% of the property owners?

**Mayor Kinnally:** That is right.

**Trustee Apel:** You have to look at what was adjacent. There are only a couple of houses across the street.

**Deputy Village Attorney Stecich:** I will call the municipal law resource center to see if they have any articles that deal with this issue. Is there a downside to eliminating it?

**Mayor Kinnally:** I am going to go beyond 9-A. It brought the message home to us that the rules of the game are changed dramatically so that the will of the people and the will of the Board is frustrated. We operate on majority. If there were an absence on the Board, and four people were voting, all four would have to vote for it.

**Village Manager Hess:** Do you want to call for a public hearing for November 2?

**Mayor Kinnally:** That is election night.

**Trustee Swiderski:** I might not even be in the state.

**Trustee Apel:** I think we should postpone it.

**Mayor Kinnally:** November 9?

**Trustee Apel:** Yes.

**Trustee Swiderski:** I would be comfortable with that.

**Village Manager Hess:** Let me suggest this. Call a special meeting. Have a hearing/special meeting, not only on the hearing, but vote on the MUPDD that night, too.

**Trustee Apel:** That is not right. You cannot have a hearing that night, and then vote on it.

**Mayor Kinnally:** Well, we have done it. But can we vote on the MUPDD? Will the local law be effective that night? I think it is effective upon filing with the secretary of state. So you have a delay anyway.

**Village Manager Hess:** You are right.

**Mayor Kinnally:** So let us have a public hearing on November 9 on the issue of the super-majority, and vote on it on November 16.

**Village Manager Hess:** Then you will not be able to consider the MUPDD until December.

**Mayor Kinnally:** That is all right.

**Trustee Swiderski:** That will be within the 60-day period, right?

**Deputy Village Attorney Stecich:** Yes, you will be okay.

**Mayor Kinnally:** There is a potential of five meetings in November, right?

**Village Manager Hess:** Unless you want to cancel the 2<sup>nd</sup> and make it the 9<sup>th</sup>. The next regular meeting is November 19.

**Trustee Swiderski:** I would be all for that. I do not know if I will be here on the 2<sup>nd</sup>. I was intending to be in Pennsylvania for the day for elections.

**Trustee Holdstein:** I think I am absent the 16<sup>th</sup>.

**Village Manager Hess:** Michael is going to be absent on the 16<sup>th</sup>. So planning the vote on the super-majority on the 16<sup>th</sup> is not the wisest thing to do.

**Trustee Apel:** Have a meeting the 9<sup>th</sup> and the 16<sup>th</sup>, and then vote on the first Tuesday in December.

**Trustee Jennings:** How about the 30<sup>th</sup> of November?



**Mayor Kinnally:** I suggest we still have our meeting on the 2<sup>nd</sup> and have a public hearing on the issue of the super-majority on the 2<sup>nd</sup>.

**Trustee Holdstein:** I disagree. Given the nature of this year's election and given the sensitivity of this super-majority thing, it is unfair to the community.

**Mayor Kinnally:** I do not understand. Our meetings start at 8 o'clock. Everybody will have voted. What are they going to do afterwards? Be glued to a TV? Nothing is going to change.

**Trustee Apel:** It is not for us to decide.

**Mayor Kinnally:** This is a pretty important issue for this Board and this Village. Everybody is complaining about the window of opportunity we have on the moratorium. We are going to continue rolling into December, and I do not want to hear that Santa Claus is coming and we have to get the dreidels out and everything else. We have work to do here. I know the 2<sup>nd</sup> is a big night, but it is a public hearing. How many people are really going to deal with the super-majority? We are not talking about the MUPDD. And this cannot be a Trojan Horse for the MUPDD. This is an issue as to whether or not the Board of Trustees and the Village wants to eliminate the super-majority. I will not hear any discussion about the MUPDD that night.

**Trustee Holdstein:** You have made a compelling argument. I have no problem with the 2<sup>nd</sup>.

**Trustee Apel:** I disagree, and it is linked, because you would not be bringing this up if the MUPDD had not come up. We would not even bother to think about it. I see where this is going; the MUPDD is going to be enacted. Those people that thought it was defeated are going to want to come to that meeting and talk about the super-majority because it is linked.

**Mayor Kinnally:** Well, it is only linked if they want to link it.

**Trustee Apel:** Oh, come on... A lot of people that may be interested in this issue are very interested in the political things that are going on for that election. They are going to be busy, and they may be making phone calls.

**Mayor Kinnally:** Not at 9 o'clock they are not going to be.

**Trustee Apel:** There are other parts of the country.

**Mayor Kinnally:** Well, what are we going to do? Wait for Guam to come in?

**Trustee Apel:** On other issues we have waited. We can wait on this one.

**Mayor Kinnally:** How long are we going to wait? You would be a lot different if we were running out of a moratorium or if we had voted the moratorium down tonight. There are many agendas here. That 60-day period runs till the end of December. We are going to have a meeting on the 7<sup>th</sup> and the 14<sup>th</sup>. I do not want to have a meeting on the 21<sup>st</sup>.

**Trustee Swiderski:** Lee, what about next Tuesday?

**Mayor Kinnally:** Because to have a public hearing you need 10 days. It is a provision in our zoning code. You are changing the zoning code. You need 10 days notice. It has to be published in a newspaper.

**Trustee Apel:** I think it should be November 9<sup>th</sup>.

[After discussion, all Trustees are available.]

**Village Manager Hess:** So what if everybody agrees to have the hearing and the vote on the 9<sup>th</sup>?

**Trustee Apel:** I am never pleased with that.

**Trustee Swiderski:** What is gained in delaying it? It just pushes it out another two or three weeks, and I do not want to run into the moratorium lapsing on us in 60 days' time.

**Trustee Apel:** I do not buy it. I am not comfortable with that.

**Trustee Holdstein:** What changes? I have to agree with Bruce about how this kind of law affects a lot of other folks. I know how you feel as it relates to this in particular.

**Trustee Apel:** I think this is a big issue for the community.

**Trustee Holdstein:** If we vote a week later versus voting the same night, what you get that week is additional people who could not come to submit their opinions in writing or e-mail. Most of the things that we would get in that week mirror, or echo, the comments of those that would be in attendance stating their same opinions. It is three more people who send an e-mail concurring with what we might have heard from the people there. But in the week, or even two, between the time that we have the public hearing and vote I don't think any one of us is going to be swayed by the comments to change our vote or alter our thought process. I do not know that it changes over a week, or two.

**Trustee Apel:** Besides the fact that we are hearing it, other people are going to see it on TV and have thoughts on it and would contribute their thoughts, which they may not have done before. It gives them time to do that.

**Mayor Kinnally:** Public hearing the 9<sup>th</sup>, and we vote on the 16<sup>th</sup>. How about that?

**Village Manager Hess:** Michael is away.

**Mayor Kinnally:** Put it on for the 16<sup>th</sup> and we can always move it. Michael is not positive.

**Trustee Apel:** And we are having a meeting on the 2<sup>nd</sup>?

**Mayor Kinnally:** I would like to have the meeting on the 2<sup>nd</sup>. There will be a meeting on the 16<sup>th</sup>, and we will endeavor to put it on for the 16<sup>th</sup>, but Michael will let us know.

**Trustee Jennings:** If some reason the 16<sup>th</sup> does not work out, we can do the 30<sup>th</sup>. We are all going to be here.

### **PUBLIC HEARING**

On MOTION of Trustee Holdstein, SECONDED by Trustee Apel, the Board of Trustees scheduled a Public Hearing on the rescission of the super-majority law for Tuesday, Nov. 9, 2004 at 8:00 p.m.

**Mayor Kinnally:** I would like to note the passing of Liz Keaney, the wife of former Trustee Jim Keaney. I would ask that we adjourn in her memory this evening.

### **ADJOURNMENT**

On MOTION of Trustee Holdstein, SECONDED by Trustee Jennings with a voice vote of all in favor, Mayor Kinnally adjourned the Regular Meeting in memory of Liz Keaney at 11:00 p.m.