

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
BOARD OF TRUSTEES
REGULAR MEETING
DECEMBER 7, 2004**

A Regular Meeting was held by the Board of Trustees on Tuesday, December 7, 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 Village Clerk Susan Maggiotto.

CITIZENS: Twenty-four (24).

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 of November 9, 2004 were approved as presented.

On MOTION of Trustee Apel, SECONDED by Trustee Holdstein with a voice vote of all in favor, the Minutes of the Special Meeting of November 9, 2004 were approved as presented.

On MOTION of Trustee Apel, SECONDED by Trustee Jennings with a voice vote of all in favor, the Minutes of the Regular Meeting of November 16, 2004 were approved as presented.

APPROVAL OF WARRANTS

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

Multi-Fund No. 44-2004-05 \$243,216.96
Multi-Fund No. 45-2004-05 \$ 26,151.74
Multi-Fund No. 46-2004-05 \$ 32,492.15
Multi-Fund No. 47-2004-05 \$ 16,552.39

92:04 REJECTION OF MILLSAW REALTY, L.P. PROTEST PETITION

Mayor Kinnally: This resolution was the result of a meeting that the Board of Trustees had with counsel prior to our Regular Meeting on November 16, 2004. This is the public declaration of the action of the Board.

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

RESOLVED: that the Mayor and Board of Trustees reject the Protest Petition filed by Millsaw Realty, L.P. on Oct. 5, 2004 for the reasons stated in the following opinion.

STATE OF NEW YORK
VILLAGE OF HASTINGS-ON-HUDSON

In the Matter of the Petition of
MILLSAW REALTY, L.P.
Pursuant to Village Law § 7-709 and
Hastings-on-Hudson Code § 295-157(G)
in Opposition to the Proposed Rezoning of
Certain Specified Real Property

OPINION

On November 16, 2004, the Board of Trustees of the Village of Hastings-on-Hudson determined that the Protest Petition filed by Millsaw Realty, L.P., on October 5, 2004, in connection with the rezoning of the 7.45 acre parcel of property on Route 9A in the Village, identified on the Village Tax Map as Section 11, Sheet 22, Parcels P4 and P4A from LI (Limited Industry) to MUPDD (Mixed Use Planned Development District), was invalid for the following reasons:

1. The Protest Petition states that Millsaw Realty “is the owner in fee simple absolute” of the buildings designated as 410, 430 and 440 Saw Mill River Road, and other property located on Saw Mill River Road (SMRR). All of this property is part of a condominium, consisting of four buildings, or units, and common elements. (The building designated 410 SMRR is also known as “Unit 1” of the condominium. The building designated 430-440 SMRR is also known as “Unit 3.”)

2. The letter from Commonwealth Land Title Insurance Company, dated November 15, 2004, provided by Millsaw Realty as proof of ownership, states that Millsaw Realty is not the fee owner of 430-440 SMRR; rather, “the basic fee title to [the building] is held by the

County of Westchester Industrial Development Agency.” Millsaw Realty has a “contract vendee’s interest” in the building designated 430-440 SMRR.

3. None of the buildings that Millsaw Realty holds, either in fee simple or as contract vendee, is located within 100 feet of the street frontage opposite the 7.45 acre property that was the subject of the zoning amendment.

4. The only building within 100 feet of the opposite street frontage is a small portion of a building owned in fee by Purdue Pharma, P.C. Purdue Pharma, however, did not file a protest petition with respect to the condominium parcel.

5. All of the property within 100 feet of the opposite street frontage, other than the portion of the Purdue Pharma building, consists of the “common elements” of the condominium.

6. According to both the deed to Millsaw Realty and the Declaration Establishing a Plan of Condominium Ownership, the common elements of the property are owned by the unit owners “in an undivided interest” of varying proportions. Each unit owner has an undivided interest in a proportion fixed in the Declaration (*i.e.*, Unit 1 has a 20.21% interest; Unit 2, 15.93%; Unit 3, 36.29%; and Unit 4, 27.57%.)

7. An owner of an undivided interest cannot bind the co-owners of that interest, unless authorized. Millsaw did not submit proof of any such authority. Therefore, all of the unit owners would have to consent to the Protest Petition in order for the common elements to be included in the 20% ownership interest required by Village Law § 7-708.

8. Apparently in recognition of the need for consent of all unit owners, on November 12, 2004, Purdue Pharma and Millsaw Realty entered into a “Unanimous Written Consent of Unit Owners in Lieu of Meeting” (“Written Consent”), which they dated “as of October 1, 2004.” Certification of the Written Consent was signed on November 12, 2004.

9. The Written Consent does not support the Protest Petition, because it was not entered into until *after* the Protest Petition was submitted and *after* the vote had been taken on the Zoning Amendment.

10. In addition, the Written Consent does not support the Protest Petition because Purdue Pharma did not file a protest petition with respect to the condominium property.

11. In addition, the Written Consent is inadequate because it does not include consent of the Westchester County Industrial Development Agency, one of the unit owners.

12. The multitude of irregularities in the Protest Petition filed by Millsaw Realty, L.P. renders it invalid.

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

93:04 DESIGNATION OF LEAD AGENCY FOR COMMUNITY CENTER

Village Manager Hess: We have to go through SEQRA even on construction of Village-owned buildings, and this is the Board designating itself as lead agency in this matter.

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

RESOLVED: that the Mayor and Board of Trustees designate the Board of Trustees as Lead Agency pursuant to the State Environmental Quality Review Act for the demolition of the existing James Harmon Community Center and construction of an expanded 3-story 14,400 square foot building at 44 Main Street, Village of Hastings-on-Hudson, New York.

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

94:04 AMENDED AGREEMENT LOTHROP ASSOCIATES

Village Manager Hess: With a change in the scope of the Community Center: the square footage, the overall budget cost and construction cost it will be necessary to amend our original agreement with Lothrop Associates. This will include reimbursables such as civil and site engineering, any environmental studies that need to be done, the detailed cost estimates, and all soil borings. Those will all be reimbursable items. The total project budget is \$5 million. Expected cost of construction is \$4.1million.

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

RESOLVED: that the Mayor and Board of Trustees authorize the Village Manager to sign the amended agreement with Lothrop Associates, Valhalla, New York, for architectural services for the James Harmon Community Center.

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

95:04 INTERMUNICIPAL AGREEMENT POLICE DEPARTMENTS MUTUAL AID AND RESPONSE PLAN

Village Manager Hess: Through the Westchester County police chiefs' association a new rapid response mutual aid program was developed. It has been approved by the county, and we are recommending approval.

Mayor Kinnally: Chief O'Sullivan has urged that we enter into the agreement because it would help in the coordination and response of the river villages to any disaster and coordinate efforts throughout the county.

Trustee Apel: The city, town, or village that invokes this is going to bear the cost of this?

Village Manager Hess: Yes. If we respond to calls we get reimbursed, and if we call in a number of departments under this we would have to reimburse them.

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 authorize the Village Manager to sign the Intermunicipal Agreement with Westchester County for the Mutual Aid and Rapid Response Plan for the Police Departments of Westchester County.

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

96:04 AUTHORIZATION TO PURCHASE DIGITAL TV CONTROL SYSTEM

Village Manager Hess: Our TV station is funded through the Betterment Fund through fees from Cablevision and/or filming in the Village. This is a digital system, and I am going to ask Raf to explain it.

Technology Director Zaratzian: Currently we have seven VCRs allowing us to show seven programs a day multiple times, but just those seven programs. This is a completely digital system that would allow us to show multiple programs and public service announcements and archive them on DVDs to save space. It will save time and money, and it is the wave of the future. I feel it is important, and the cable committee agrees as well. We will have two VCRs, one DVD player, and the rest will be on a hard drive.

Trustee Jennings: Will it have any effect on the picture quality, and could you give us some examples of how it will save money?

Technology Director Zaratzian: It will improve some of the picture quality because the audio and video will be constant; they are coming from the same source. It will save money because instead of buying a tape for each program we will be able to do a program, go right to the hard drive, and put multiple programs on one DVD. The price on DVDs is dropping daily. It saves space, as well.

Jim Metzger, 427 Warburton Avenue: Do you have a backup and archiving system in place for this? If that hard drive fails, what happens to the records of all of the meetings that you have recorded?

Technology Director Zaratzian: We would not archive the programs on the hard drives. We would archive every program on the DVDs and would be able to put a month's worth of meetings on one DVD. The hard drive would be an arrayed type of drive, and it would be recoverable, and I do not see us losing more than a program if that were to crash. But we would have backups.

Village Manager Hess: Plus, the DVDs have a longer shelf life than videotapes.

Kevin Dawkins, 126 Washington, Cable Committee: It is not the wave of the future. It is the wave of today. The largest retailer in Great Britain is no longer selling videotape players or recorders. That is an obsolete format, and digital is replacing it. Even that technology is rapidly changing, with higher density, greater capacity on disks almost on a monthly basis. Raf would be able to program emergency messaging from a remote location. If there was a terrible snowstorm and information to get out to the residents, he could do that from a computer at home. That is a valuable feature of this system.

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

RESOLVED, that the Mayor and Board of Trustees authorize the purchase of a Digital Video Master Control System from MaestroVision, Vandreuil, Quebec, at a cost of \$6,765.00 to be paid from the Betterment Fund.

ROLL CALL VOTE	AYE	NAY
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 a copy of the bathymetric survey of Sugar Pond, which was interesting considering the indications of the top layer of sediment and the bottom versus the shoreline. We will receive a report along with the original bathymetric survey in the next several weeks, but I thought it was important to get this off to everybody since it was fairly telling. We are in better shape than I thought we were with the pond.

The holiday tree lighting is this Friday night at 7:30 p.m. at VFW park. Breakfast with Santa, registration required, is Saturday at 9:30 a.m. at Andrus. We will also maintain the mailboxes to Santa.

The Board has approved free two-hour parking in the downtown from Dec. 6 through Dec. 24. We got a request for an additional week of free parking which we will discuss at next week's meeting. We want to see how the parking in the downtown is in terms of merchants and employees using the free parking as opposed to shoppers.

A reminder that the budget season is coming up very shortly, and if the Board has any ideas, comments, thoughts they want us to consider, please send me an e-mail.

BOARD DISCUSSION AND COMMENTS

1. Update on the Waterfront

Mayor Kinnally: I am going to turn it over to Mr. Hess for an update on the Zinsser Bridge, and some recent developments which are going to have a substantial impact on how we can proceed with the waterfront and the costs to be incurred.

Village Manager Hess: We have had discussions for the past two years about the responsibility for the replacement of the Zinsser bridge at a cost of approximately \$5million, with the Village footing about \$250,000 and the rest of it covered by grants. In Angie Witkowski's discussions with the Department of State, and their discussions with MTA, MTA has assumed responsibility to replace that bridge. They will do it through the same grant process, but they have assumed that responsibility, which is great news. They are going to reprogram the funds they were going to give to us for other waterfront-related projects. We held off long enough that someone else picked it up, since we could not convince the Town it was their responsibility.

Trustee Holdstein: Is this a direct result of their raising the bridge? Did this force their hand?

Village Manager Hess: That is part of it. Within the next four to five years they are going to be doing bridge-raising all along this line. So their taking responsibility for it, and having the feds pay for the majority of that, helps them in terms of their capital improvements.

Trustee Apel: Do we have input as to how wide it will be? This is an opportunity to have a second good bridge to access the waterfront.

Village Manager Hess: At the time, you will have discussions with MTA about that. It could be there. It might even be in another location.

Mayor Kinnally: I hope that this latest round of discussions and funding will result in a coordination by MTA with DOT and a recognition by the DOT that they have to look at the Dock Street bridge, and raising one and not the other makes no sense at all.

Trustee Holdstein: Is that building demise completed? I saw the trailer still there. Is more cleanup involved?

Mayor Kinnally: It looked to me that everything was done; they have left on-site the brick rubble, which they had intended to. That trailer may have been there beforehand; we can check into it. But there is nobody on-site doing any work right now.

Trustee Holdstein: Does the Village have some final check-off with them to confirm our satisfaction that it is done and nothing has been left behind?

Village Manager Hess: We usually get a final report from the Department of Labor, the DEC, which will come through ARCO.

Trustee Swiderski: Any word on Building 15?

Mayor Kinnally: I met with Dave Kalet of ARCO. I was encouraged at how aggressive a timetable he was setting for Building 15 and some of the surrounding buildings. They are talking about coming in with designs for the demolition of those buildings fairly quickly. They are trying to do what they can to get the site ready and to deal with what they consider to be derelict buildings. The aluminum-clad building will remain for the time being; part of it is generating a little income, but it is used also for security because Riverside Auto has control of the site during the day before the people in the trailer take over night security.

2. Zoning Code Definition of "Mixed Use"

Mayor Kinnally: We have had two discussions on this in the last month or so. Eric Anderson has sent further correspondence and he and Jim Surdoval are here tonight.

Eric Anderson, A&F Commercial Builders LLC: I would like to thank the Board for the opportunity to have this conversation again. It is important to reiterate a couple of highlights. We think the rezoning effort, which we were very much involved with as it went through its thinking process, is very good and very comprehensive. Allowing residential in the downtown is exactly right. The expansion of the retail streetfront is also exactly right. But there are some unintended consequences that were simply not thought through at the time.

We used 45 Main Street as the exemplar of how the new zoning would work; we had residential units on the back of the building on the first floor and it was never raised as an issue during the zoning conversation. We believe, as our correspondence suggests, the requirement to have a retail street wall is exactly right. But the notion of having a retail requirement on the entire first floor is not. In fact, on the few larger sites that this would qualify for, it would have the unintended consequence of perhaps putting too much commercial space in one area. Because commercial space under 2,500 square feet does not have a parking requirement, it might put an additional burden on municipal parking. Residential units, regardless of their size, have a parking requirement, i.e. parking must be provided within the building.

Jim Surdoval, representing A&F: We believe this proposed text change would empower your land use boards to review projects on a case-by-case basis and to have discretion; on a large site such as 10 West Main perhaps it does not serve the public policy goal to have the entire floor commercial use or retail use. We still have to go to the Planning Board and make an argument why it should apply to our project. The fact that the Planning Board has supported this text change does not mean they support our project. They have not taken any position on our project yet. The focus should not be just on 10 West Main, although we are the first experience of how this problem is developing. But this is something that empowers your boards to look at this issue and make the best determination for the Village.

Jeremiah Quinlan, 39 Hillside: Eileen and I own 535 Warburton Avenue, which is in the mailing area of this project. There are three things I would like the Board to consider: how a village goes about changing a zoning code, use variance, and parking variance.

It is important before the zoning code gets changed that there be a public democratic process, which is what we had last time. A committee is formed, they meet. We had over six public hearings. We had input from the Planning Board, the Zoning Board, the community. As Patty said at the last meeting, there was some confusion about the other two districts that we created, whether we wanted mixed-use or residential use on the ground floor. But I also believe she did not come out and support mixed-use in the commercial district and I do not think that was our intention. There are other things that could be tweaked if we took a good look at it. What I do not think the Board of Trustees should do is change the zoning code because a developer would like the code changed to meet his own particular purposes.

A developer has a vehicle to get what he wants without tinkering with the zoning code: he can go before the Zoning Board and ask for a use variance. They decided not to do that because it would be too difficult. I never spoke to them, but that is the only reason that I could imagine. It is more difficult to get a use variance than an area variance. But as a practical matter, it depends on the facts of the case. If you go for a use variance that is reasonable and minor, and fits in with the character of the village, there is a good likelihood that you will get it. If you go for a use variance that is completely out of whack and does not belong in the Village, then there is a good chance you will not. They should go for a use variance first and see where that leads them.

There was a lot of discussion about the parking: if someone wants to create another use for the ground floor of a commercial district they will have to get a parking variance. That argument is circuitous. It should be pointed out they need a parking variance for the huge

development they are proposing for 10 West Main Street. Parking variances are granted when someone comes with a reasonable request. You need less parking for a residence than you need for a restaurant or office space. You have no trouble proving hardship. At Warburton and Spring is impossible to meet our current parking regulations, which are draconian and should be changed. We talked about this in committee; a lot of us decided that parking variances are something that could very well be looked at. Two parking variances come to mind, both of which I voted for when I was on the Zoning Board because they were reasonable. One was Scoops and the other was Thomas's. They had no trouble. I think it was unanimous. People can come before the Board and get parking variances, so that is a non-argument.

Mayor Kinnally: The requirement for residences in the CC district is that the parking has to be within the structure. The variances for Scoops and Thomas's had to do with on-street parking. Can the Zoning Board give a variance from the requirement that the parking be in the structure itself?

Mr. Quinlan: The Zoning Board can give any kind of variance for parking. They met the hardship requirement. A parking variance is an exception to the strict application of the zoning code, and it can be done.

I would like to ask the developer a small favor. I do not know how many people on the Board have seen the plans to this particular development. After the first of the year, could they put these plans in the library so that the public can see exactly what is going on here. When you get off the train and you see this development as it is currently planned you are not going to believe that you are in Hastings-on-Hudson. You are going to think you are somewhere else.

Jim Metzger, 427 Warburton: I am on the Warburton Avenue neighborhood association steering committee. Some of the arguments we have heard tonight use 45 Main Street as a real-life example as to why the zoning change should occur, but that building does not exist yet. We do not know whether that building is going to be successful or not. We do not know if the tandem parking is going to be successful. So to base an argument to make a substantial change to zoning on something that does not exist is inappropriate.

They talk about unintended consequences of too much commercial. The unintended consequence of this change would be a substantial loss of commercial space. Zoning exists not necessarily to benefit anybody financially but to enrich the life of the community and to

sustain the community. If we allow a change of this magnitude, there is nothing to prevent other landlords from converting their commercial space which may not be too successful to residential which would be more successful. The goal of zoning is to promote a vibrant community, and to get rid of commercial space to make a bunch of small stores as opposed to some larger stores, like the Hastings Market or the stationery store, would encourage us to leave the Village to do our shopping, and we are going to end up with a ghost town.

On a personal note, A&F has started some demolition at 422 Warburton and they have left us a very nice note on the front of the building. It says, You are parked illegally, we will have you towed. Cut it out, A&F owners. I would like to thank them for that Hallmark card as a welcome to our community.

Jim Stadler, 8 West Main Street: The code has two effects: to preserve a vibrant downtown business community and to preserve the character of the Village as we know it. You have to ask yourself what is the character. One of our most valuable assets is greenspace. No matter where you go, we have airiness, open spaces, terrific river views. When you get off the train, what you see now is forests; you don't see houses. This will be gone for nothing more than profit for these people. They have no care for the residents that live here now. Their only motive is make as much money as they can. They come, they buy, they build, they leave. We are stuck with what they have. Our quality of life suffers.

I was at an ARB meeting protesting the sheer size of it, how it would block the views. I live next door to where this building is going up, and I am going to have this massive wall where I will be looking at bricks. I will not see anything out any of my windows anymore. We were bluntly told, and this a quote of an A&F representative, You do not own those views, you only borrowed them. This arrogant attitude is a revelation to people that have stayed here. I have lived here almost 60 years. People move in town, and you ask them why do they move here. It is the school system, it is the openness, it is the airiness, it is the greenspace we have.

This is just another step in turning us into a version of Yonkers. Leave the code as it reads now. The parking for the commercial space will only exacerbate the parking problem. Their only alternative is to make it smaller. As it stands now, it does not fit in no matter what is in there. But the zoning code, as it reads, will have the effect of making them fit into the character of the downtown.

Trustee Holdstein: If the law were changed and if Hastings Prime Meats wanted to take half their space and make residential, the law says they would have to provide parking in the building. Is that correct?

Deputy Village Attorney Stecich: The code does not say that it has to be in the building, but as a practical matter it has to be in the building because there is no other place to provide it on-site.

Trustee Holdstein: Where Gastronomica used to be at the far end of town, let us say the building owner owns that building and the parking lot next door. He could put an apartment in half the first floor and provide parking in the lot next door, correct?

Deputy Village Attorney Stecich: As long as he also has enough parking for his other use, yes, he could do that.

Trustee Holdstein: I hear people speaking this evening who have greater objections to the project itself than a possible change in the code. I would like to try to separate the two issues. If we leave the code as it is, I am not sure that it forces Anderson to make a smaller project. It just means that the first floor is going to be commercial instead of residential. So by opposing the zoning change some people are not going to get what they want, which is a smaller project. When we initially voted to leave it alone, and Jerry Quinlan spoke and we had a letter, it made a lot of sense to me at that time. Then we hear some other convincing arguments, and we may want to think about this a little more, but it does not mean we are going to suddenly change again. I am concerned that the issues about variances versus the size of the project are being balled together. This often happens when people have a larger objection to something and they mix up a small piece that really does not address their objection.

Mayor Kinnally: It is a good observation. Although in fairness to people who have spoken, there may be a cause and effect here to why we are having this change. In part, it is because there is a request made by A&F.

Trustee Holdstein: I understand that. I would like to look more closely at the code and get some opinions from Marianne and Angela and the Planning Board. Several of us on the Board have said that the last thing we want is to have a new code in place and shortly thereafter people are getting variances. What is the point of the new code then? We hope that we have done something that will benefit the community for a long period of time.

As the Anderson people have pointed out, 10 West Main is not in the retail flow of our community. That does not mean that I am prepared to let them have what they want. We always have to factor in parking and all the sites within the zone. We may force them to go back to the drawing board and redesign it, and they may still have as big a building. We have to separate and look at that more closely. One is a broader change of zone, the other is a specific project.

Trustee Jennings: I have a hard time balancing the apparent benefits to the 10 West Main site on the one hand and the apparent risks elsewhere in the downtown on the other, so I tend to fall back on a procedural way out rather than a substantive decision. In general one ought to try the lesser remedy before the more drastic one. I would like to understand better the problem with trying the use variance route, and see if the particular and unique problems of 10 West Main could not be solved that way without a general zoning change.

Trustee Apel: My concern is that we have a cascading zone. If we make a zoning change here, it is going to affect other zones. That is not what we intended to do. They are trying to separate that out, but it is not going to happen right now.

I thought from the beginning that the use variance is the way to go. Marianne had said there are four criteria; one of them is to prove there was not any alternative. The developer has got to prove that there are no alternatives, and I have not heard that yet. They need to go through those procedures first, they are there for a reason, and let us see what happens. There is no reason to keep changing a zone. It will have larger ramifications than we can envision as much as we try to see the future.

Trustee Swiderski: The West Main Street site is a substantial footprint. To have retail space on the full first floor would result in something we do not necessarily want. Either it will be a very large restaurant or a large CVS or some equivalent store that is not intended for that spot. That was not the intended effect of the zoning code as it was written, to put a large retail complex in a place that is not on the main thoroughfare and that would burden the local parking. I see a flaw in the zoning and I do not have a problem with the modification.

If it did not have a cascading influence on the light industrial zone located on 9-A and Southside, I would have no trouble with this. But by passing this we would create a truly flexible mixed-use site for 9-A through the back door, introducing much of the development issues we are debating about in other meetings here, so I cannot support it for that alone. To grant the Planning Board the flexibility to allow a mix of retail and residential on that first floor was in keeping with what was intended when the mixed-use development zone was originally derived. But because of the cascading issue, I join Bruce and Marge in saying the use variance is the best

way to square this circle. Or address the cascading connection along the light industrial and central commercial, and sever it at that point.

Trustee Holdstein: Instead of one large, 5,000 square foot store, it could be five 1,000 square foot shops; having a series of additional storefronts there may work. So there are options.

Trustee Swiderski: There is only a small percentage of this site facing West Main. The majority of the site is buried back from West Main. The alley between the building structures could conceivably become a retail thoroughfare, but no one anticipated that the center of gravity of retail in town would suddenly shift enough to support, off-street, four or five shops in that area. It might be something interesting that could happen. But that was not the idea of the new zoning. It is a clever way a developer might beat the parking requirement in the current zoning, however. But I do not know if you can rent five stores, three of which would be buried behind the frontage, and whether that is either economically feasible or a likely place to shop.

Trustee Apel: There could be more than one store, but are other commercial things you can do there, like law offices. If it is going to be a mews, then you have to open it up and the design would have to be changed to make it a place where people want to walk. The design could be more creative, and maybe that will solve some of the problems people had.

Mayor Kinnally: This is such a unique proposed building that there is nothing in town that really parallels it, and we do not have any experience with something similar. My initial impression is that we may have a black hole at the parking lot down on the lower level. You are going to have stores that will be unsuccessful because you are not on a street attracting both vehicular and pedestrian traffic. If you are shopping on Warburton Avenue you are not going to get to that area in your normal course of events. We have difficulty enough now when we have the Farmers' Market in getting people to park in the area by Maud's, much less further down by the train station, to come up and shop.

Jerry raises a good point about the ZBA. We have gotten some information from the Planning Board and the Zoning Board, and I thank them for their input. I would like to have more information from Marianne and Angie and from some of the other resources we have. We are not trying to duck this, but if you distill everything that the Board said here there is a problem. We need to try to get more information and more guidance. The concerns about the cascading effect are legitimate concerns.

Mr. Metzger: It is probably too late for this, but the 10 West Main site would have been the perfect place to put the new Community Center, and the Community Center would be on a main street that would generate foot traffic.

Mayor Kinnally: Interesting. Thank you.

Trustee Jennings: When we talk about the waterfront we talk about integrating the waterfront with the downtown area, and the flow. We have here a potential flow-way that could be very different in the future than it is now. I could see, with a much more attractive parkway, a lot of people walking through there. It is not pertinent to what we are talking about tonight and it is not for the immediate time. But when we get the waterfront developed a few years from now this whole area is going to look different and be considerably different economically than it is now.

Mayor Kinnally: Maybe we can have a meeting with counsel to go over the alternatives, and also get more input from Angie, from the Planning Board and the Zoning Board, and maybe look at what they have given us in the past in a different light. What we have heard tonight and in our prior meetings may help us. Is everybody in agreement on that?

Trustee Swiderski: Generally, yes. What precisely are you charging Angie and crowd to do?

Mayor Kinnally: To be a resource. If we have any questions or need any additional information, to reach out to them. We, in turn, should review what they have given to us already. Because it may mean something different now that we have heard things, or may spur some other questions or other ways of looking at it.

Trustee Apel: But in fairness to the builder he should be seriously looking at the use variance. Enough of us have said that already. If he wants to move his project along instead of waiting for us, that might be the way to go.

Mayor Kinnally: But I do not want to tell him we are not going to look at it. He certainly should look at it, but he has heard some pretty good comments tonight that have given him some food for thought. Whether or not you choose to chew on it, that is something else.

Trustee Holdstein: A request for our packages: if Angie could distill the passages on the specific requirements in the CC area: residential, commercial, building size, parking, everything having to do with the CC.

3. Draper Park - Request by Dawkins

Village Manager Hess: You have been recopied on the information relative to Mr. and Mrs. Dawkins' request. This has been reviewed by the Parks & Recreation Commission. My understanding is that all the work would be completed by the Dawkinses, and the improvements to the area in question in Draper Park would be donated to the Village. There are no license agreements involved here, so it is a matter of the Board of Trustees authorizing approval.

Mr. Dawkins: We are here to revisit the request we had made earlier to improve an eight foot strip of land that resulted from the paving of Park Drive between that and the property line for the lease that we hold. It needs to be rehabilitated. It is very difficult to park there. It is muddy for long periods of time. Our plan was to use a combination of natural materials, gravel and sand, to raise the level of the strip up to the level of the road so that some of the water that flows down from the park and accumulates when it rains will go into the drainage system across the drive from the rear of our house. It is an opportunity not only to improve our parking area, but also aesthetically to improve what is now a muddy strip of land. We had talked about doing some of the landscaping by following the concept of a rain garden, which is not only aesthetically pleasing but an ecologically sound way of dealing with storm water runoff problems.

Because the relationship between us and the Village and the Village and the land is an unusual situation, one place to look for guidance is the recommendations in the protection plan. It suggests that owners embellish this area with plantings, curbs, upgraded paving, etc. That is what we would like to do.

Village Manager Hess: Did you meet with the Draper Park Review Board?

Mr. Dawkins: We had a discussion with Sue about it initially, prior to our going to the Parks & Recreation Commission.

Mayor Kinnally: Sue, do you expect that this will come before the full Draper Park Review Board?

Sue Smith, Draper Park Review Board: The review board did discuss it and had met with Kevin about it, and also had sent a memo to the Parks & Recreation Department. I presume they included that in their discussion and then came up with a recommendation to you.

Village Manager Hess: If the Board is positively disposed, we will put it on for action next Tuesday night, to authorize the work.

Vladimir Lunis, 130 Washington Avenue: I am at Number 1 in Draper Park. The Dawkinses are at cottage 2 and 3 in Draper Park. I participated in the initial discussion on May 18. That discussion was an entire surprise to us. Despite the fact that the Dawkins' proposal would affect our access,, we were not made aware of the transactions that were taking place between the Dawkinses and the review board and the Parks & Recreation Commission. The Draper Park review board did not make us aware that the Dawkinses requested that a part of the access drive, which is an area where Draper Park homeowners have rights under the lease agreement rights, ought to be transferred to the Dawkinses exclusively. It is surprising and disappointing that the request based on the transfer of rights to these holders, using the same drive for access as the Dawkins', was not discussed with the two homeowners whose rights would be transferred.

Mayor Kinnally: Have you talked with the Dawkinses and with the other owners of the houses in the area?

Mr. Lunis: We made a proposal to Mr. Dawkins and to the other homeowner using the same access drive on June 4. That proposal includes three approaches to completing the access drive. Approach one, the Village completes the work. Approach two, the Village provides materials, we hire appropriate equipment and labor to complete the work. Approach three, we complete the work together, sharing all expenses. We have not received a response from Mr. Dawkins.

Mayor Kinnally: I know you submitted a proposal, but have you people sat down and tried to have a regular conversation?

Mr. Lunis: Mr. Mayor, this is an issue based on certain rights that we received under our lease agreement with the Village of Hastings being transferred to another leaseholder. It is not a matter of a personal relationship.

Mayor Kinnally: I am not saying you have to have a personal relationship with them. I am just saying have you sat down and talked to them about this? Your alternatives may have some merit, but rather than us being the arbiter here, the neighbors should try to come to some common ground and then come to us with a joint proposal. I do not want to be in a position that we have to mediate a dispute between the Hatfields and the McCoys.

Mr. Lunis: I am sorry, Mr. Mayor, there is nothing to mediate. There is a request made by the Dawkinses to change the design of the access drive. The design of the access drive is provided to us in our lease agreement with the Village of Hastings. We object to this change. I wrote to you and to the members of the Board of Trustees on June 7. It is a two-page document accompanied by diagrams.

Mayor Kinnally: I think everybody has it. I understand that you object to it, and I know there is a transfer of rights. But I am trying to make our job a little easier or to understand if there is a dispute at all here. What I am asking is why do you not sit down with the people who live there and see if you cannot come to some common ground and then we will take a look at it. I see a wall being built here that may not be necessary.

Mr. Lunis: I am all for it. Mr. Dawkins does not want to discuss these issues with us.

Mr. Dawkins: We did sit down and talk about this about two years ago. Mr. Lunis suggested to me and Mr. Horelick that that entire strip of land, maybe 120, 150 feet, should be filled with gravel. Both Mr. Horelick and I did not think that was a good idea, and we were not willing to agree to that. That is where we thought the discussion ended. This multiple proposal I have never seen. I appreciate your concern. We certainly do not want the Village in a position of being an arbiter, but I quite honestly think discussion may be fruitless.

Mr. Lunis: The letter that I wrote to you on June 7 addresses the issue in a way that remains current. The letter ends with a paragraph: "We urge you, Mr. Mayor and the Trustees, to not approve the Dawkins proposal, but affirm the protection plan, the controlling document in our contracts, as the guide for completing the work on the access drive behind cottages one through five in Draper Park."

Trustee Holdstein: I have been up at the site a couple of times, and I am trying to understand how the improvements Mr. Dawkins makes between his back yard and the asphalt that is the drive behind his property impacts your cars on the asphalt drive to the back of your home.

Mr. Lunis: The Draper Park protection plan provides a design for the access drive based on two lanes. From the property line, 12 feet is the first lane with distinct surface, and then the second lane, the paved lane. The paved lane is for traffic. The first lane is for visitor parking. Mr. Dawkins is proposing to push his residential parking into the area which is, by design, meant for visitor parking. What happens to visitor parking? Visitors park in the driving lane, blocking access to our property. On numerous instances our access was blocked. Several of such instances were recorded. For example, on January 8, 2004 I wrote to Mr. Dawkins: "On

December 28, 2003 at around 7 p.m. my exit in Draper Park was blocked by a car parked in the traffic lane by a visitor to your house. I had to go to your house to negotiate my passage. Our access to our home had been blocked several times in the past. A number of such incidents were documented: May 7, 2002; October 23, 2001; October 5, 2001; November 25, 2000. Your moving the parking from the designated area is part of the problem. Once again, we are calling on you to take steps toward bringing your residential parking in compliance with the protection plan.” A copy of this letter went to Manager Hess.

Trustee Holdstein: The road is an asphalt road. To your understanding, it is not designed to be a two-lane road. It is a single-lane road and next to it is a space to park. Now, guests can pull up in what is now a muddy strip off the asphalt and park there. The improvements in raising the land, whether it is done with gravel or sand or dirt, the existence of that space behind the Dawkins’ for anyone to park there does not change, from what I understand.

Mr. Lunis: Yes, it does. Mr. Dawkins is not quite telling you the truth. Mr. Dawkins is proposing to surround this area with a border. That border indicates to anyone stay away, private property. And Mr. Dawkins told me, out of spite across the property line, that he will rent the house to tenants and will bring six to eight cars. He is setting up in this proposal seven parking spaces. They will be taken up by residential vehicles. There will be no room for visitors. Visitors will park on adjacent parkland. We have seen this happening, and they will destroy the adjacent parkland. Visitors will block our access. This design is intelligent. This design is appropriate. This design is a guarantee for our access and a guarantee for the protection of adjacent parkland. We are asking you to affirm the design provided to us in our contract. If you tell us this contract that Mr. Hess signed for the Village with my wife and me is not worth anything we will take it to court.

Mayor Kinnally: I do not want to do violence to any contract or document that we have here. But I want to see if we can be reasonable. The number of times I have been up there I have never had a problem getting through that area. In fact, I have not seen too many cars parked up there when I have been there, and that has been on the weekends and at night and during the day in the summertime. But I am going to ask Kevin to stake out the area under discussion. If we can get up there individually, we will have an idea the impact that it has and maybe come to some resolution.

I understand what the underlying document is, and we are not looking to do anything that would adversely affect anybody. But if it is a change that does not have a substantial impact on the area, we owe it to everybody to take a look at it, certainly taking into consideration your concerns. But I would encourage everyone to start talking. This is supposed to be a nice, quiet,

residential area that we were hoping to get restored. Unfortunately, not everything is being restored, but progress is being made. If something can be accommodated reasonably I am looking to do that, but not at anybody's expense. And if you have a problem with somebody impeding it, you do not have to send letters. Pick up the phone and ask the person to move the car.

Mr. Lunis: I am sorry. Documenting seemed the only way to deal with it. I wrote to Manager Hess on October 5, asking for an opportunity to examine the additional documentation that Mr. Dawkins reportedly provided in support of his proposal. I have received no response from Mr. Hess.

Mayor Kinnally: To the extent that we have any additional documentation we will make that available to you.

Mr. Lunis: Thank you. On May 19 I wrote to Sue Smith, saying we learned from the Village Manager that the Board received and considered a proposal by the Dawkinses that affects our interest. Could we have a copy of your Board's minutes and related materials, referrals, recommendations, opinions? We would also like to see the proposal. I received no response.

Mayor Kinnally: Sue, to the extent that we have anything Mr. Lunis has not been provided, would you do so?

Mr. Lunis: This proposal was put through Draper Park Review Board as a secret from us, we are directly affected, and through the Parks & Recreation Commission in a stealthy way.

Mayor Kinnally: There is no stealth here. Everything is transparent. But to the extent that any documents exist that you do not have, we will provide it to you.

Village Manager Hess: I believe you were notified of tonight's meeting. Correct, Mr. Lunis?

Mr. Lunis: Oh, yes. Thank you, Mr. Hess. This morning.

Village Manager Hess: The requirements under the ground lease agreements in the protection plan have to do with the individual properties that are covered under the ground lease, not the entire park. The protection plan includes the entire park. We did not give up any rights of the Village or the Board of Trustees to determine what to do in public parkland. That is totally within your prerogative. It is not encumbered by any of those leaseholds.

4. Verizon Request - Waiver from NYS PSC Procedures for Cable Franchising

John Butler, Verizon Regional Director of Community Affairs: Verizon is pleased to be able to offer a new 21st century network. It is called FTTP, Fiber To The Premise. We are bringing fiber to all the homes within Westchester County. Verizon is spending a billion dollars for a million customers in nine states this first year. We have intentions to go into other states. We are the first company to be able to bring this. It is going to reap benefits for all customers, both residential and business.

The cable issue part is a different issue altogether. We are trying to address those needs by requesting a waiver because years ago when cable came in they had to have different types of committees and whatnot to demonstrate that this is going to be good for the community. The waiver is going to bypass that and get to negotiations.

Brian Johnson, Wiley Rein & Fielding: We represent Verizon New York's holding company in Washington, D.C., and we are assisting them on their video project, which is part of the FTTP. We met with the consortium cable committee on October 26, and there were representatives from the Village at that meeting. Also in attendance were Steve Shaye and John Figliozzi from the municipal assistance division of the PCS, whom we had met with previously. We discussed the waiver with the committee, and we passed out an example of a waiver letter. It is a request for relief made by the community to not have to go through certain preliminary procedures. These requirements are the formation of an advisory committee to learn about cable television and determine the community's communication needs, for that committee to make a report to the community, and for the community then to issue requests for proposals on both a local and nationwide basis for cable television applicants. Those are just not relevant to this process.

Verizon is upgrading its current system. It is replacing its copper network with fiber. The fiber services initially are going to be telephone and information Internet services, what they are currently providing with their copper network. In late 2005 they will be able to do some additional work to make it capable of providing video services. In order to do that they need a franchise from the community to provide cable television services, so we will want to negotiate a franchise with the community. The request from relief from these preliminary steps has been granted many times by the PSC. Mr. Shaye and Mr. Figliozzi both supported this concept at that consortium cable committee meeting and explained why it was unnecessary. It will allow us to bring competition to the community faster in cable. We will still have to negotiate a franchise, it

will have to be approved at a public hearing, it will have to be submitted to the PSC for approval and issuance of a certificate of confirmation. It does not change any of that process.

The purpose of this meeting is to try to get this waiver in process. We have gone to the other communities in Westchester County, all of the Greenburgh villages, and the Town. We have received a signed waiver from Greenburgh, Elmsford approved it last night, and we are expecting approvals from the other communities shortly. Then we want to consolidate them into a single filing and submit them to the PSC so they process them in a consolidated rule-making.

Mayor Kinnally: We have received a memo from counsel with the request from relief from the procedure.

Trustee Apel: What is the down side of having the waiver?

Mr. Johnson: It is a request for relief for the community's benefit. It allows us to do this process more quickly. I do not see any down side. I do not know why you would want to appoint an advisory committee to find out about cable television. You all know all about cable television. You have a consortium committee that is doing that for you now. You are in renewal negotiations. You are very experienced in this area. You know your communication needs. I do not see a reason to issue a national RFP. Verizon is coming down the streets with its fiber network which will be capable of video. It has enough capacity so that once it is in and they do some additional work, they can build a system to bring in programming to the fiber network. At first it will be telephone and Internet information services. But in a little less than a year from now it can be made capable of providing video services like a cable system. It is a waste of time, money, and effort to form a committee at this stage, and it will slow us down.

Trustee Holdstein: Is what you are proposing giving you a monopoly franchise in Hastings? Will I be a Verizon customer for the same HBO, NBC, Fox Channel, and MSNBC that I get now through Cablevision?

Mr. Johnson: No. By law, cable franchises must be non-exclusive. We are not entitled to have an exclusive franchise, nor is Cablevision or anyone else. There will be two cable providers in this community and the residents will be able to select between them. That means competition and typically more stabilized rates. You will not have the same kinds of rate increases you have seen because there is a competitor. It means far improved service. This is based on GAO reports where this occurs. There are not a lot of places in this country where it does occur, because the cost to build a new cable system is immense. To construct a cable system, to overbuild Cablevision and then compete for its customers, is prohibitive almost. Verizon is

putting FTTP down whether it does cable or not. The telephone company is putting in an upgrade of its existing telephone and Internet service. It will be able to provide 860 MHZ of video. It is like a pipe so big for communication purposes it makes cable seem like a thread.

Trustee Holdstein: So you are adding this for your phone customers and now it is an opportunity for us to have a second alternative for television.

Mr. Johnson: In most communities where this occurs, more people subscribe to cable. As a result, the 5% franchise fee grows for the community. When we negotiate we will talk about your communication needs and the things that you will want to have from Verizon. We know you have a level playing field and most favored nations requirements, and we are going to have to honor those with you. You will decide what those are. It does not have to be apples to apples.

Trustee Holdstein: Would we still have access to those channels that are owned by Cablevision, HBO, Showtime, that sort of thing?

Mr. Johnson: We will have all that sort of stuff. We will have more, actually, because we will have much more capacity. But they have to negotiate with each of the program suppliers. These are proprietary in nature. Madison Square Garden would be proprietary, and if they do not want to allow us to carry it we would not be able to carry it.

Deputy Village Attorney Stecich: . This has nothing to do with approving their operating in Hastings, but you can eliminate these archaic requirements that should be out of the law. Since the law has not changed, the way they deal with it is to say get the community to request a waiver.

Trustee Holdstein: Can the impact of Verizon coming in affect what Cablevision gives to Hastings?

Mr. Johnson: Yes, hopefully it will give you better rates and better service from them. They are doing Internet with the cable modem and they are doing some telephone services as well, and they provide a bundled package. Verizon will be doing the same thing, and it is going to be very competitive. They have another thing they can add to it, and that is wireless. So the bundled package could be very attractive. I think the cable service itself is going to be very attractive. Cablevision has a news channel here locally. That is something that we probably would not be able to get them to agree to let us carry. So there will be some differences.

Trustee Jennings: I am glad to hear that there is going to be competition in Hastings and that consumers are going to have a choice. The Board of Trustees is concerned about the public involvement and transparency of any process for the agreement that we would enter into with you. By requesting this waiver and dispensing with some of these older procedures we are not compromising the public's role in that negotiating process. We have a citizens' committee in place; we are going to have public hearings; we are going to have open meetings. Information about the nature of our relationship with you will be available to the public. So this waiver is not dispensing with any of that. It is just dispensing with some preliminaries which are no longer necessary. If I am right about that, then I support this entirely.

Trustee Swiderski: I would be delighted to kick out Cablevision and replace it with Verizon, given the usurious rates we pay them. Any opportunity to encourage competition by smoothing the road, and yet insuring that the process remains transparent, I will sign off on in a second.

Village Manager Hess: The boxes you are putting around the Village are at a height which I consider dangerous, especially for children; when they are running or even playing around at night they could run into them and get hurt. You have even had some of your own employees get hurt on the larger boxes that have been around for awhile. Is there any plan to have these boxes moved up higher?

Mr. Johnson: We have been putting them higher up in areas where they have been a safety concern, so we can work with you on that.

Village Manager Hess: We would like that done throughout the Village.

Mr. Johnson: The first step is to get a list of hub sites and I will e-mail you that hub list. Then you can arrange to have the police chief and the DPW sit down with our engineer and go through the ones that would be your concern, if that is agreeable to you.

Village Manager Hess: That is agreeable, but all of them are of concern.

Mr. Johnson: I am not sure that they can raise the large ones if there are some large ones involved. There are three sizes. The reason the large ones are down low is so that the people can work on them without having to do it from a truck that is parked and have a lift. If they raise them they have to put a platform around them to stand on while they work on them, and that is not so nice-looking either. This may be more of an evil than the box. So it may be a relocation of the box to another pole where it is not an eyesore or not unsafe.

Village Manager Hess: That is really not what I am talking about. What about the height as opposed to relocation?

Mr. Butler: We cannot negotiate this here. The engineer has to do that because there are requirements for where they are placed, how far we can move them.

Village Manager Hess: I understand. But moving it up to a 12-foot, 14-foot height as opposed to a four foot height, where someone is going to get hurt, that is what I am referring to.

Mr. Johnson: They can do that with the two sizes. They will review all the sites and tell you what they can and cannot do, and do the best they can for you. A contractor is doing most of this work. I have seen some of these box placements. They are not the greatest. They have moved a lot of the boxes. They have raised a lot of the boxes. They are a necessary evil. It is a splicing device. The problem with it is, since it is a splicer, the more dense the population area the more feeder lines that go out from the box to serve the residents. So it is a bigger box.

Trustee Apel: You are never going to put them underground?

Mr. Johnson: Cannot do it. They might be able to put them on a pedestal in some places.

Mr. Butler: Places that we could put it on a pedestal, we prefer to do that and then shrub it. But I would have to work with you and the engineer to find out if there are locations in the Village that we could do that.

Village Manager Hess: You have done a couple of locations and they have ended up being maintenance people trash heaps, where they do the repairs and leave their lunch bags and everything else there. When you have had labor negotiation problems you have had wires cut, etc. What are you going to do in relation to that, if you have the boxes at an easily reachable location as opposed to having to get up in a bucket truck?

Mr. Johnson: I have been with the company 15 years, and there are ingenious ways to do damage and vandalism. I am sure whether it was high or low, they would be able to do something. We hope that the police would be able to report those things and we can work with our security folks. But we really do not have any control over that. There is plenty of work for our workers these days with this project, and they are getting plenty of overtime. I think we are going to be happy for many years to come.

Keith Fagan, 384 Warburton Avenue: I am on the cable committee in Hastings. We are at step five of a five-step process. We are currently negotiating our franchise fee with Cablevision. Verizon is asking to come in and meet us at step five. They are not asking for us to negotiate anything with them. They cannot do that until they get to step five.

Steve Halpern, 26 Ravensdale Road: I would like to urge the Board to grant this waiver. With respect to the question that Neil had about the boxes, there are already boxes in the Village. We cannot have competition for Internet service because we are fed into boxes which are sitting on most of our street corners at the height where a vandal can get to them, which then take fiber back to the central office, and they do not have enough bandwidth to provide the Internet service. So you are replacing something that already exists.

I am a retired Nynex employee. When there is vandalism in the network during a strike, it happens. If you are going to break something, do not go into a neighborhood and break 20 people's telephone service. Go to a major central area, cut the fiber, and cut service to all of Westchester if you can. That is where the vandalism happens. I cannot speak for Verizon, but if I were bringing fiber down the street, my plan would be to build out in the communities that granted the waiver. We drastically need it in this village. We have been waiting a long time for an alternative to Cablevision. The Village should grant the waiver.

Mr. Metzger: One of the major issues is the boxes are impeding on the sidewalks. If they were rotated 90 degrees on the pole so that they were parallel to the street instead of perpendicular it might eliminate some of the problems on the boxes that could not be raised.

Mr. Johnson: That is something that Mr. Hess and the engineer will address right away. If it is in the right-of-way on sidewalks, we move them up right away, because the Village will be sued and we will in turn be sued. We do not want that to happen.

Village Manager Hess: In 1913 your predecessor, New York Telephone, gave us an indemnification for anything you do on your poles in the rights-of-way. However, it is going to happen. They are going to end up suing both of us, and we still have to defend.

Trustee Holdstein: It seems fairly unanimous.

Mayor Kinnally: It is not on our agenda to vote on it tonight. We should put it on for next week.

5. Other

Mayor Kinnally: I met last Christmas with Joel Dean and he raised the possibility of contributing money to the Village Betterment Fund for landscaping of Boulanger Plaza. Through his foundation we have received a \$2,000 check for landscaping for the renovated parking area. I thank Mr. Dean and the foundation.

Metro North has sent us a letter indicating that work will begin this week on the overpass project. They will start bringing in equipment and material on the northbound platform and at ARCO.

We have a request from Mayor Monahan of Dobbs Ferry for the villages to discuss the possibility of sharing police and emergency dispatch functions. I have had preliminary discussions with the other mayors about that. Our chief has questions as to the ability of us to do that, but no harm in having a discussion. We will work with the other villages to see if there is anything that can be done.

Trustee Apel: I left you an article concerning leaf blowing machines. It is something we should look into; leaf blowing is an issue not just because of the noise but because of the health issues in terms of the gasoline that is thrown off because it does not get burned up. The person using the machine is polluting himself and the air. The Public Health Board might want to consider taking up this issue.

Trustee Jennings: As the liaison to that board, I will supply the chairperson with the information you shared and ask him if he would bring it up with them.

Trustee Apel: The second issue is my concern that we have not heard from the state over the petition request, and our moratorium is going to be up on January 4. It is incumbent upon the Board to look into an alternative to the MUPDD, to come up with something else for the LI zone. It has been stated that people do not want to extend the moratorium. But if we do not hear from the state and we do not have any resolution, we are doing a disservice to the community.

Peter and I went through the MUPDD, trying to keep the best of what was in there and trying to eliminate the most controversial parts. We came up with the concept of a LIPDD, a Light Industrial Planned Development District. You can see from the chart that we crossed out anything relating to residential. We felt that might be a way of salvaging what we thought was the best from the MUPDD and, at the same time, changing the LI so that it would take care of the concerns that everybody had.

Mayor Kinnally: I do not mean to cut you off, but we are going to have a brief meeting with Marianne after this and we will have a better idea of where we are at that point. Looking this over, we seem to be back to where we were before we started this process a year and a half ago with a planned development overlay.

Trustee Apel: Yes, we would have the planned development. But someone said they did not want hotels, so we took that out. We took out all the things that were questioned back and forth, and we left in those things that were added, like the artists' studios.

Mayor Kinnally: But where do we go from here? Should we go back to the Planning Board and ask them to consider this? Let me ask a question I have asked before. What do you want on the site? Do we want to have funeral parlors; do we want to have storage and warehousing establishments; in effect, do we want to have light industry there? If not, what is it that you want? That is really at the core of what we have to decide. What has happened in the last year and a half is something we do very well in the community, that is, to say no, we do not want this. We heard some people say we do not want to have X there. But what is the Y that you do want?

Trustee Apel: I understand what you are saying. But the concept of the MUPDD, and now the LIPDD, was to let the developer come up with something, and come to the Planning Board and the Village Board at the same time. That was the part of the MUPDD that we thought was so great. The developer was going to come up with the idea, not what we wanted.

Mayor Kinnally: On a mixed-use site.

Trustee Apel: Well, this is sort of mixed-use.

Mayor Kinnally: As long as it is light industrial. I understand that, and let us say it is great. But we are going to do zoning. What is it that you want there, and not be in a position of saying no? Do you want to see dry cleaners? Do you want to see funeral parlors? Do you want to see copying and offset centers? Do you want to see government offices? Do you want to see cleaning, dyeing, and laundry establishments? If that is the case, our neighbors from Ardsley will be delighted, because that is exactly what they have on 9-A to the north of us. It is a strip mall. That is what you are asking for. You have taken out the odious residential, but what we have left is exactly what we started with. Let us be proactive. What is it that you want on that site? It is not enough to mark up a document and say, here is what we do not want; we are going to leave it up to the developer to come up with something that we will either accept or, usually, say no to.

You say that there is a problem with the ending of the moratorium. That is not enough to throw your hands up and say we are going to take out that terrible residential thing and leave everything else in there, and we are going to put ourselves at the mercy of the craven developer who is going to come up with a plan for Shangri-La and we are going to love it. That is not going to happen. I know what is going to happen. People are going to say no. If you want to change a zone it has to be a positive change, and this is not a positive change. It is going back to a situation where nothing really fit within what we wanted. We have said no to a number of things already. I am not saying that it was wrong to say no, but you are not giving a developer anything concrete. It is a planned development but you are not giving him anything to plan with.

Trustee Apel: The only difference was residential. The other stuff that is in here was everything else that was left in there from the MUPDD except residential was removed.

Mayor Kinnally: But residential was the linchpin of the whole concept. I understand everything else that is left, but we could not do anything with what was left before we started this process.

Trustee Swiderski: But why is it now our problem to come up with a constructive use for that site? We do not have that responsibility for any other site in the Village.

Mayor Kinnally: We sure do have a responsibility to zone that site.

Trustee Swiderski: We certainly do not. I have no responsibility to say this must be a clothes-washing site. I have a responsibility to set out a set of uses. That is what this does.

Mayor Kinnally: But are those the uses that you want for the site?

Trustee Swiderski: I would like to see an office or a lab, like what is across the street.

Mayor Kinnally: So why are we going back to this stuff? Is it that you want to take out the residential?

Trustee Swiderski: Right.

Mayor Kinnally: But you are not leaving us with anything. Why do you want the rest of this stuff there?

Trustee Apel: It is not. We took out everything.

Deputy Village Attorney Stecich: You know what is confusing, Marge? I think we are talking about two different documents here. You have this chart here.

Mayor Kinnally: I am looking at the chart.

Deputy Village Attorney Stecich: Right, that is what Lee is looking at. The chart that has all these uses.

Trustee Apel: This was the original list. We went through all the permitted uses, then we looked from the CC when they changed the CC. This is what we got from the MUPDD, and we made those changes. We are just giving you our thinking. If they were not in the MUPDD, they

are not there. We were just showing you the comparison. If we cross off residential, I will tell you what is left: municipal parks, playgrounds, conservation areas, service buildings, business and professional offices excluding medical or dental offices. Then it went down to artists' studios.

Deputy Village Attorney Stecich: So you are saying they would be permitted as stand-alone uses. I understand what this would do for the LI parcel on 9-A. I assume you meant it also to apply to the other LI districts, and that could be a problem.

Trustee Apel: No, the MUPDD was just for 9-A. This is for 9-A.

Mayor Kinnally: What is the Board's pleasure on this? Michael, do you want to refer it to the Planning Board?

Trustee Holdstein: I would always want to get their input.

Trustee Jennings: Certainly I want to get the Planning Board's input. I would like them to address a couple of questions. How will the mixed-use concept work without residential as a part of the mix? They came up with their recommendation in part because they started this exercise going through use by use and they felt that was not a good way to zone that parcel, and that residential was an important part of the mixture. So I would like their reaction to how the concept works absent residential, since that is the main change that has been made here.

Also, we had identified a number of potential difficulties with the procedural aspects of this new zoning concept, which brings it to the Board of Trustees with a general concept plan, and coordinates the decision-making by the Board of Trustees with that of the SEQRA process of the Planning Board in a new way. In taking residential out of the mix, is that new process, more complicated with certain bad potential for politicization and conflict generation, worth the gamble anymore? If we are going to simply do a modified light industrial zone, why do we not just stick with the normal site plan approval process and be done with it? The extra procedural baggage made sense to me when residential was in the mix. Taking it out of the mix, I am not sure that it makes sense anymore.

I would prefer to have a mixed-use development that was set back from the street with limited visibility from 9A; that had interior roadways and construction; and was not a classic strip mall development with the parking in front of the retail and up against the road and the whole edifice completely visible from the road. It is a visual answer to your question. I hope we do not get a continuation of what we have north and south of that. With all due respect to my colleagues who disagree, the only way we are going to get that kind of visual effect is by keeping residential in the mix.

Trustee Swiderski: We cannot let the LI district stand as it is without addressing the potential for large box retail that it still poses. And because of the cascading effect, the current LI zone supports mixed-use. The cascading feature of the LI zone I would like to see severed. I would welcome the marked-up version of this being reviewed by the Planning Board. But even if they have problems and the Board no longer supports it, we still have a zone that poses a problem that if we cannot address via this we should address with a very selective, but straightforward, set of revisions that will ensure what we have there will not encourage another ShopRite. If I am going to say a continuum of what I would like to see, ShopRite remains my least favorite and what is across the street would be my most favorite. I reject the analysis that office space will put more traffic on Hastings roads. I do not believe it. I think it will put more traffic on the roads leading to the highways close to that site. Something has to happen to ensure that our most feared outcome does not reappear, which is large box retail. That would put unacceptable loads on traffic and lead to all sorts of other effects.

I know what I most want to see. I know what I least want to see. But I am not compelled to describe it other than by what we have here. That is partly up to the imagination of the developer, constrained by a lack of housing.

Mayor Kinnally: But when was the last time that this community embraced anything a developer brought here? If you can find that developer he will probably be drummed out of the ranks of the developers.

Trustee Swiderski: On the 9-A site, the answer is, not much. A&F has had less problems coming up with ideas for the sites within the Village, which seem to have less contest. The problem is, in part, the 9-A site has unique difficulties, but past a certain point that is not my problem or responsibility. It is unfortunate for the poor owner of that site, but that is his economic risk.

Mayor Kinnally: Procedurally, Marianne, what do we have to do here?

Deputy Village Attorney Stecich: Do you think it is realistic that it could be discussed at the Planning Board meeting on Dec. 16?

Planning Board Chairperson Speranza: I am sure we can start a discussion.

Deputy Village Attorney Stecich: I can get the memo out tomorrow from this Board with the recommendation and with Bruce's questions.

Planning Board Chairperson Speranza: One of the things we are going to be grappling with is direction from the Board about your going through and finding the uses to be acceptable. I am wondering about the goals.

Mayor Kinnally: When you say direction from the Board, remember that you have three people on this Board who said let us go with residential. So I do not know what kind of direction you are going to get. That is part of everybody's frustration. You are going to be chasing your tail, and we are going to be faced with the distinct possibility, and I am not lobbying for the super-majority, of any change being subject to a protest petition.

Trustee Apel: We have one proposal from you. We had the MUPDD. So you are looking at this proposal as an alternative proposal. You know what you think with the other ones, so now you have this one. Is it going to work, and it is worth what Bruce said? If we are going to do this, is it worth going through this other process? That is all.

Planning Board Chairperson Speranza: There were certain things that we were counting on, the mixed-use component, the addition of the residential as part of the planned unit development, to reduce traffic. We can go back and forth on that for a long time. My thought is that we identify what the elimination of that component potentially can do to the implementation of that zone on the property, both procedurally and in terms of the thought that went into the Planning Board decision to make it a mixed-use zone, including residential.

Trustee Swiderski: I do not understand why there would be a procedural impact. I think it is going to rather be the other piece.

Planning Board Chairperson Speranza: Because I do not believe there would be such a great concern about the type of mix of uses without residential being in there. Who really cares whether or not you have a lab next to a funeral parlor? Does that type of non-residential warrant an extra step? That is certainly something for you to decide, as well.

Trustee Jennings: And the rationale for the coordination of the entire 7.5 acres may be less, or disappear, without the residential also. That is the guts of the MUPDD proposal. This is not just the MUPDD proposal minus a couple of things that you have crossed out. This is an entirely different concept now, and I think we should consider it. But we should consider it as such.

Deputy Village Attorney Stecich: I have looked at the mixed-use stuff a lot and I have never seen these PUDs that did not have residential. For whatever reason, the planned development districts always have residential.

Mayor Kinnally: Because it is almost an evolution from cluster. And cluster always had the residential component to it. That is my understanding of it.

Deputy Village Attorney Stecich: I am not saying that it cannot be done, just that I do not know that there is not a reason for that. You might need to talk to a planner about that.

Trustee Swiderski: Why do you think that an elimination of a use would require a whole SEQRA and review process? We have taken a proposal that has X uses, the counterproposal has X minus one use. Every time this has come up for discussion, and whenever a zoning proposal loses a use, we have all agreed collectively that we do not have to put it through the entire lengthy review process.

Village Manager Hess: It depends on the impacts. If what you are proposing has greater impacts, then you would have to go through it.

Trustee Swiderski: That I will leave the Planning Board to decide, but I cannot imagine that it would be enough to trigger a SEQRA or other process.

Mayor Kinnally: We may have to go through the steps of a neg dec because we are starting this process over again. We have had a resolution and this is a whole new proposal.

Trustee Swiderski: I will defer to Marianne. Again, based on precedent over the last two years, I do not see more than that. If we are tweaking the existing LI zone to eliminate the worst outcome, I do not see why that triggers a SEQRA process.

Mayor Kinnally: I am not arguing against it; I am just saying it may not be a quick fix. If you are taking something out of the zone, remember that the basis of all of this is traffic. We have to look at traffic. You say you do not think there is going to be additional traffic on your street.

Trustee Swiderski: On a pure office, I do not.

Mayor Kinnally: But it may not be a pure office.

Mayor Kinnally: We will do it, but by January 4 we are not going to have anything in place.

Trustee Swiderski: Saw Mill and Sprain, I could care less about that traffic. That is not my traffic.

Mayor Kinnally: When the people from Ardsley come here you cannot agree with them on one point and then say we are going to jettison you on the other point.

Trustee Swiderski: They will agree that that traffic is not their traffic either. That traffic going to Ardsley Park is not coming through Hastings. I do not know a single person who works there, first of all. And second of all, it is just not putting a traffic load on our back streets. That traffic gets on and off the highways, and that traffic is not affecting downtown Ardsley or Hastings. It is such an obvious statement I am surprised because it gets muddied over the years.

Mayor Kinnally: I am not, because it will be used for whatever purpose the people want it to be used for, whether or not it has any basis.

EXECUTIVE SESSION

On MOTION of Trustee Holdstein, SECONDED by Trustee Swiderski with a voice vote of all in favor, the Board scheduled an Executive Session with counsel immediately following the Regular Meeting.

On MOTION of Trustee Holdstein, SECONDED by Trustee Swiderski with a voice vote of all in favor, the Board scheduled an Executive Session immediately following the Regular Meeting to discuss personnel items.

ADJOURNMENT

On MOTION of Trustee Apel, SECONDED by Trustee Swiderski with a voice vote of all in favor, Mayor Kinnally adjourned the Regular Meeting at 10:55 p.m.