

VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
BOARD OF TRUSTEES
REGULAR MEETING
OCTOBER 1, 1996

The Regular Meeting of the Board of Trustees was held on Tuesday, October 1, 1996 in the Meeting Room, Municipal Building, 7 Maple Avenue.

PRESENT: Mayor Wm. Lee Kinnally, Jr., Trustee James B. Keaney, Trustee Elsa C. DeVita, Trustee Michael Holdstein, Trustee Susan J. Winn, Deputy Village Attorney Brian Murphy, Village Manager Neil Hess, and Village Clerk Mary Callas.

APPROVAL OF WARRANTS

On MOTION of Trustee Winn, SECONDED by Trustee DeVita, with a voice vote of all in favor, the warrants were approved.

APPOINTMENTS: BOARDS AND COMMISSIONS

Mayor Kinnally: Item five on the agenda for this evening is appointments to various Boards and Commissions, but in light of our other agenda this evening I will put that over until our next meeting on the 15th of October; although most of the people who are on those appointments have been serving, so the delay is not going to affect their ability to volunteer for the Village.

BOARD DISCUSSION AND COMMENTS

Waterfront Zoning Discussions

Our amended agenda tonight includes, most particularly, discussion of what has been going on on the waterfront and the various proposals that have been exchanged and discussions that have been had between the owners and the representatives of the parties to the litigation that's pending in Supreme Court, Westchester County and White Plains.

As everyone knows, there has been discussion about the availability of Clarkstown as a facility that might be able to take the processed C&D debris that is in Building 15. When we met last week I was awaiting a call from the Supervisor in the Town of Clarkstown. Unfortunately, that call did not come directly in here, and I did not know until sometime on Wednesday that action had been taken by the Town Board in Clarkstown. A resolution was passed unanimously by the Town Board authorizing the Town Supervisor to enter into negotiations to see if the material coming out of Building 15 would be acceptable as material that could be used, in part, to close the landfill in Clarkstown. As a result of that resolution, there have been meetings held at the prodding of Judge Coppola to see if, indeed, that material will qualify under the contract that Ogden has with the Town of Clarkstown to close the facility.

Judge Coppola, the last time he had the parties in court, gave a deadline of last Friday for the parties to structure some type of proposal that would effect the removal of that debris. Friday came and went without a full proposal. Right now we still don't have a full proposal. There are many elements that are missing. But suffice to say that negotiations have been ongoing in the hopes that a final plan for the removal of that debris will be in place. The next time the Judge has us in court is Thursday morning. He has given the parties an ultimatum: either you come up with a proposal and an agreement yourselves or I will order. In the scheme of things, my preference is that we be the masters of our own destiny and come up with something that is acceptable to the Village, that is doable, and that will rid us of this mountain of debris that is on our waterfront.

This evening we have with us the General Counsel to the New York State Department of Environmental Conservation, John Cahill, counsel who has represented DEC. in the litigation, Ben Conlan, Drew Lent, who is on the staff of DEC and who has worked very closely with everyone on assessing the site and in periodically going down there and seeing what's right and what's wrong and issuing violations.

Jose Torres and Joyce DeLuca, also from the Westchester County Department of Health, are working with all layers of government to try to remediate this situation. The people in the Village who have been working on this, in addition to my colleagues on the Board and Mr. Hess, include Brian Murphy, who has been counsel for the Village throughout all the proceedings before Judge Coppola.

What happened in the last couple of weeks is that there have been meetings between DEC, the Village, the A.G.'s office, and the representatives of the owners pursuing the possibility of Clarkstown taking this debris. The proposal that has been exchanged -- and we have not heard any response from the owners to this proposal -- is really in two parts, and I'll see if I can keep them straight. What everybody is looking at here is to clean up the waterfront. I don't mean remediation of the soil. I mean all of the debris that is on top of the soil. That would include all the debris that's in Building 15, all of the debris that is outside any of the buildings, various caches of tires that are down there, and other waste and toxic substances which the owners have been cited for. The parties have been looking to structure a global settlement of all the violations on the waterfront, which would establish various penalties for the owners and various deadlines which would have to be adhered to -- no matter what the structure of the settlement -- whether it be a consent decree, an order on consent, or an order from the court. It will be so ordered by the court. It will constitute an order of a justice of the Supreme Court of the State of New York and the court would retain continuing jurisdiction except as to those matters which are purely DEC violations; and then it would be handled administratively within DEC

The first part of the proposal (and it's been titled a consent order as opposed to the second part, which has been titled an order on consent) has to do purely with DEC administrative violations

and various agreements on the part of the owners to take certain steps within certain periods of time and to pay certain fines, some of which would be suspended pending total cleanup of the site. I'm going to ask now if Ben Conlan from DEC will explain the first part of the proposal. That is the consent order dealing directly with the DEC administrative violations.

Ben Conlan: On March 12th and March 13th of this year the Department conducted a multimedia inspection of the facility at the Harbor Hastings. Mainly, we inspected the entire 27-acre parcel for all types of violations that could exist under the Environmental Conservation Law. Based on that inspection in May we issued a report, which the Village got a copy of, which identified numerous violations in the facility in many of the buildings and outside the buildings; many of which related to drum storage of oil and other waste at the sites that had to be taken care of immediately and was taken care of immediately by the facility. The drums were over-packed and put inside a building and then tested, and most of those drums have been taken out. There are still a few drums left there that still need to be tested. In addition, there were tires located in some of the buildings; our estimates are potentially in excess of 5,000 tires were in one building. Those tires have been moving out at a relatively slow rate, but as of this date 3,300 tires have moved off-site. Potentially another 3,000 or 4,000 are left, we're not quite sure. All of those issues are contained in the consent order that we've drafted. In addition, there were various solid waste violations, including debris from buildings and such that were left strewn about in many locations, waste in anything from a van lines trailer to overflowing dumpsters on the site. Basically the facility was not in real good shape, according to our view.

Based on that we have negotiated what is a consent order with the owners which will require them on certain given dates to complete each task which has been identified as a violation in our inspection report. The owners may argue whether or not some of those are violations or not, but they are not arguing as to whether or not they need to remediate all the issues. That's the biggest issue for us: we need to get the site cleaned up. There is a penalty proposed in the order, and there is a suspended penalty if they fail to comply with the order, that they would be forced to pay over automatically in relation to failure to comply with the dates in the order.

That's pretty much everything included in the order. Right now the order is not available to the public because it's still under final negotiations and review between DEC and the parties. But if anybody has any general questions, I can answer.

Mayor Kinnally: Why don't we hold off on any questions. Thank you for that report. We'll get all of the facts out on the floor first, and then we'll open it up for discussion and comment. The consent order that Mr. Conlan just described: while the Village has been in discussions with the state and DEC over this, we are not a party nor would we be one of the signatories to this consent order. However, we are the prime beneficiaries of it.

The second part of the proposal and, again, this is nothing but a proposal that has been discussed at length on our side...there have been some discussions with the representatives of the owner on the other side. But the second draft that the Board received on Sunday afternoon...we have not received from the owners' counsel any responses to our proposals in that order on consent. Let me go through the various broad provisions that we're looking at to remediate the site. Miss Merton, I have a copy of this for you. You had asked us for it. We left a message for you on your machine today and it's been her waiting for you.

The parties to this would be the Village, New York State DEC, the A.G.'s office, the various owner entities on the site, including Mr. Eisenberg, Harbor at Hastings, F.C. Hastings, L.P., Eastshore Corporation, Eastshore Associates, L.P., and Columbia River Corporation; in short, anyone who has an ownership interest in the property will be bound by an order of the court to clean up the site.

Before I get into some of the terms and conditions I will give a little historical overview, and maybe that will put some of the terms in perspective. When I got back on the Board in early 1992 the first meeting we had was an Executive Session, and Neil showed us photographs of what has now become infamous Building 15. I was aghast at what had been stockpiled down there. The discussion from that night, my discussion and the Board's discussion -- no matter who the incumbents on the Board were at that time, have not wavered from one principle, and that is that the site was to be cleaned up by the owners -- ultimately by the owners -- without it costing the Village one dime. When we started the process of litigation to move this concept along that was our underlying hope. That was our underlying theme and the direction. When we spoke with Mr. Eisenberg about a month ago, we said the same thing in public: not a dime of Village's monies was going to be used to clean this up. And, indeed, that is what we have before us. But before we even got into litigation an intergovernmental task force on the cleanup of the Hastings waterfront was appointed by the Mayor and they came up with various reviews and proposals of what was doable on the waterfront, both from a negotiating posture and from a litigation posture.

The report that was submitted by the task force in June of 1993 reviewed various options and opined on whether or not they were. But the conclusion of the report was that there should be a mixture of various pressures brought to bear on the owners, including litigation, to force them to clean up the waterfront. Earlier this year, Judge Coppola rendered a decision and said that what was going on at the waterfront constituted a nuisance, and that steps would have to be taken by the owners. Much jockeying has taken place in Court. This Board has been sued after we turned down an application for the operation of a five-year waste transfer station on the waterfront. An Article 78 proceeding was commenced. That is still pending. That is one of the items that's before Judge Coppola. He has put a decision on all of the issues in suspense while the parties have tried to come to some sort of resolution. But what has not changed in the litigation posture is that the Judge still adheres to his finding that the situation down there is intolerable, and

constitutes a threat to the health, safety, and welfare, not only of this Village but also to the Hudson River.

The conclusion of the task force report was that the owner had to come up with some plan and explore various options in the surrounding area to find available landfills that would take this processed debris. Now, I've use the term "processed debris" in a number of instances tonight. Let me give some perspective to that. We have a mountain of construction and demolition debris down there which constitutes dirt, rock, gypsum board, wood, newspapers, metal, rubber -- all types of debris that would come out of buildings and people would just get rid of. It has found its way here, and no landfill in New York State can and will take that debris in its current nature. In discussions with DEC and with various other areas that have available landfills, our unanimous answer to the question is, No, we will not take this material and process it on our site. You must process this material on your site. What does processing the material consist of? Essentially it consists of sorting the debris, whether by hand or mechanically, pulling out various items that cannot be taken to a landfill site. Those items would be the wood, the newspaper, the metal; and then screening the debris, such that I think right now the specifications for the Town of Clarkstown is that the debris has to go through a nine-sixteenth screen. That's what it has to be screened down to. Because it has to meet certain compaction specifications, other fill has to be added to that screened debris before it can be accepted by any landfill here in the state. That means that other debris has to be introduced to the mixture. That debris can come from one of two sources, the first source being on-site and the second source being from other sites outside of the waterfront. It would have to pass inspection first. It can only be of a certain type. It would then be added to the screened debris such that it met specifications. The added material would be that which is on-site. There is a mound of dirt and rock on-site that has been stockpiled by the owners and by the Fuccis and Age Carting and whatever. That can be used to bring the mixture up to specifications. We don't know what the yield would be from that mixture. We do know that the yield from the debris that's in Building 15 will probably be somewhere in the area of 50 percent. That's quite a reduction, but a lot of the wood when it's taken out of there takes up a lot of room so that the mound of material would shrink appreciably once that debris is taken out.

The material that's on-site, if it's in the nature of dirt, could be screened right away and introduced into the screened mixture from Building 15. To the extent that it includes any rock, we may have to have some rock-crushing activity on the waterfront. Discussions have been had with the owners, DEC, and the A.G.'s office about limiting the type of rock-crushing operations, the placement of the operations, and the duration of the operations. The rock crusher also comes into play where the owners have considered demolishing some of the buildings on-site and using the concrete and brick from the buildings to add to the mix. That would have to be first run over by the various caterpillars down there and then introduced into the rock crusher to be, essentially, pulverized. Having a rock crusher operate on the waterfront is not my idea of the way I want this debris processed, but I think it's unavoidable for a few reasons and beneficial for

one reason. It cuts down on the amount of debris that has to be trucked into the Village to add to the mix. The concrete, stone, and brick from those buildings has to leave the site sometime, and I would rather have it go out in the debris that's going to the landfill so that we're rid of it once and for all.

I have talked about the debris that would be coming in from off-site. It would not be C&D debris. It would be debris such as asphalt, concrete, roadwork, dirt, and rock from construction sites. It could not be any hazardous or toxic material. DEC has safeguards that they've proposed in the plan, and it would have to meet those specifications before it came on-site and would have to be crushed and mixed to a certain consistency such that the debris from Building 15 would meet the compaction specifications of DEC and the contractor who is overseeing the closure of the Clarkstown site.

Let me go through some of the elements. Again, this is a working document that has been proposed and given to the other side, and we have not received any reaction following the submission of this most recent draft from the other side.

This order on consent would authorize the removal of the debris from Building 15 only. It authorizes remediation of the site. It does not authorize, nor is anybody looking into having, a waste transfer station operating on the site. There are a series of penalties for noncompliance. There are really two parts of the consent order as far as deadlines or requirements. The first is the waste removal violations, and that is the removal of the material in Building 15. Then there are other non-waste-removal violations. Those penalties for the waste removal violations go from \$1,000 a day for the first through the 30th day to \$5,000 a day each day beyond the 60th day, and there are steps in between. For other violations, it's \$500 a day for the first 30 days, and \$2,500 a day for each day beyond the 60th day. The parties have not structured the terms of the discontinuance of the actions. That's part of it, and also the discontinuance of the federal actions. We do not control the ultimate destiny of the federal actions because the Riverkeeper is a party plaintiff in those actions.

The heart of the order on consent is the compliance requirements which are found at the end of the order on consent that authorize the owners to operate a construction and demolition debris processing facility expressly for the purpose of correcting the existing violations on the site. I'm going to give you the highlights. Storage of the incoming material that would be mixed is limited to Building 19 and may not exceed 2,000 cubic yards at any time unless expressly authorized by DEC. The material that's separated from the screened debris -- the wood, etc. -- is to be separated within Building 15 and stored in Building 15, and may not exceed at any one time 200 cubic yards, which means that when they fill up a 200 cubic yard container it goes off the site. We are not going to stockpile any more debris at the site that has been sifted from Building 15. Storage of solid waste generalized from the processing activities is limited to Building 15 and within 150 feet from the southern end of Building 15. The defendants shall

store no more than 200 cubic yards of waste outside Building 15 at any time. The waste processing activities and the rock crushing activities must all take place within Building 15. There are immediate notification requirements if various unauthorized materials, or liquid materials, are found on the site. Those materials must be removed within 24 hours. There must be steps taken to minimize noise, dust, and runoff from the site. Falcon, in the first instance, is authorized to conduct the processing activities. However, if at any point Falcon no longer is being used by the owner, for whatever reason, the owner must notify us of the identity of anyone else. The Village and the state retain the right to disapprove the use of any other operator.

The heart of this proposal is the ability of Clarkstown to take this material. Clarkstown has a very fast timetable. They're looking to close their site within a year. They need this material yesterday, and they have a source for this material. Hastings is not their primary source, but they have agreed to take this material so long as it meets their requirements.

We're looking to start processing on the site almost immediately, as soon as the owners can get the equipment on-site and get the various men and trucks lined up. The waste removal schedule: the proposal is that commencing on October 1 the owners shall remove at least 9,000 cubic yards of waste within Building 15 every three months. If greater than 36,000 cubic yards of waste within Building 15 are utilized as part of the Clarkstown landfill, all waste within Building 15 shall be removed and transported by December 31, 1997. That means it would be gone by the end of next year; no more processing operations on-site; nothing else would be introduced on-site. If they have removed at least 30,000 cubic yards by May 1 we will not require a fire lane, but they'll have to remove subsequent debris in such a way that we can create fire lanes. .. There are various notification and inspection requirements.

There is a provision dealing with the consent order that we discussed earlier. The hours of operation for the site at present are proposed for 7 a.m. to 7 p.m. There is a question as far as the amount of truck traffic and the timing of the truck traffic. As things stand now, we anticipate the trucks will utilize Spring Street, make a left on Warburton Avenue, and proceed up Route 9 to the Tappan Zee Bridge. The defendants would have to post a performance bond equal to 15 times the number of cubic yards of new debris brought onto the site.

Perhaps the most important element of our thinking and our discussions with the DEC and the A.G.'s office, is the issue of monitoring of the site. The proposal that we have now is blank in that regard. There has been some discussion about how the monitoring would take place, who the monitors would be, and who would pay. The state has indicated a potential source of some funding. I'm not committing the state to any of that, but it is a matter under discussion. The bulk of the funding we anticipate to come from the owners. The monitoring, as the Board has discussed with counsel and with some of the other parties, would be such that we would want somebody on-site whenever operations were taking place on the site. The operations they anticipate to run six days a week, except for holidays, from 7 a.m. to 7 p.m. That does not

necessarily mean that trucking would occur at all those hours. But our position at this time, not having heard from the other parties, is that we would want a monitor on-site, paid for by the owners, answerable to the Village and to the state, looking at the overall processing operation, and, most especially, what comes on the site, what's stored on the site, and what leaves the site.

That is a broad brush description and an overview of what we have right now on the table. The silence from the owners at this point has been deafening. We have a deadline of Thursday to see the judge. My conclusion after speaking to counsel and to some of the other parties is that the judge would like to have at least an agreement in principle from the various parties -- where they stand on a proposal to clean up the site. Remember, when we commenced all of this -- all the legal proceedings and all the wrangling with the Fuccis and with Eisenberg and everybody else -- our ultimate goal was to get this site cleaned up. My understanding, without having discussed anything with the owners, is that the owners have worked together with Clarkstown and the various people to come up with a proposal to do just that: to remove this debris from the site; to get it out of here so that the future soil contamination can be taken care of and we can ultimately get this site not just cleaned up, but developed. The cleanup of the site is a requirement of any development going forward on this site.

That's my overview. I saw some people in the Village over the weekend and I said that the Board was going to discuss a proposal tonight, and that there was a possibility that the Board may have to vote on something tonight. We do not have a final proposal to vote on tonight, but I would think that at the very least we should give our attorney some guidance one way or the other to go to the judge and to say, We have an agreement in principle on getting this site cleaned up. We do not have everything in place. Given the timetable that everybody has operated under, we could not get everything in place. But, what the judge wants to hear is that the Village wants this site cleaned up. I hope tonight we can share information with everyone, and that this Board can come to some agreement. Maybe we can't, but I would hope that at least we're headed in the right direction to give some authorization to our Village Attorney where we go here in authorizing him not only to report to the Judge but also to continue negotiations with the various other parties to clean up our waterfront.

I'm sure some people have some questions. The night can be a very long one. The length of the night is not as important as the quality of the information we can dispense and the discussion that can be helpful. I am going to ask whoever wants to speak, whether they be in the audience or on the Board, to direct any questions or comments to the Chair, and that everybody be limited to three minutes either in questions or a statement, and that once you've had an opportunity to speak that you wait until everybody else has had an opportunity to speak before asking again to speak.

It's interesting that the Chief is the first speaker because one year ago today we were fighting fires on the waterfront. Some of the conflagrations are depicted in the photographs that are behind the Board and on the side.

Fire Chief Drumm: I'm here to speak for the Fire Department. As you've said, it was just about one year ago that we had that five-day conflagration at Building 15.

I am completely in support of the agreement in principle, and I certainly hope that we can get to that point at this meeting where we will support the Village Board in supporting an agreement in principle. What we have here is a clear and present danger. That fire that we had a year ago could erupt again. There is no question that we could have another fire that would be extremely expensive and dangerous.

But fires are not the only thing that we have to think about. When I call this a clear and present danger I would like to describe it as probably like a land mine, probably the most dangerous place -- maybe I'm speaking hyperbole -- but probably the most dangerous place this side of Bosnia. If you get some 14- or 15-year-old kid that comes in on a kayak or a canoe off the river and decides to explore that place, there is no question that he or she is going to be seriously injured. I say that because there are probably only two people who have explored the top of that debris: Andrew Lent, from DEC, and myself. That debris is extremely dangerous. You have pits, cliffs, great shards of glass, spikes. You have everything that you could possibly think to seriously injure somebody. Two reasons: number one, the fact that we're probably going to have a fire down there unless we do something; and number two, we're probably going to have a very seriously injured person down there unless we do something.

Mr. Apel, 111 Rosedale Avenue: Do you get any feeling from the judge as to what he would do if we for some reason couldn't reach an accord here?

Mayor Kinnally: I'm going to ask Mr. Murphy to address that, if he can. Of course, this is speculation, but he's been in chambers with the Judge.

Deputy Village Attorney Brian Murphy: To the degree that we have discussed this matter with the Judge, the Judge has expressed a willingness, if the parties cannot come to a conclusion, to impose an order pursuant to the outstanding motions that he now has before him that he feels will remediate the situation. He has, on several occasions in open court, stressed to the Village that if you are not part of the solution you are part of the problem. He has expressed disappointment and some concern -- while recognizing that democracy requires a little more time than private industry -- he has repeatedly expressed concern over the Village requiring, or requesting, more time to consider various proposals. Perhaps the strongest statement he has given is the one I alluded to which is, he said, directed at us, the Village, that if you are not part of the solution you are part of the problem. Which I took as a rather mainline statement as to what he might do if his desires were frustrated, if I can use that term.

Mayor Kinnally: I've had some pretty frank discussions with the Judge, also. Aside from what the Judge's statements have been to counsel and also to me, the lawsuit was started because the

owners were irresponsible and didn't do what they should do, and that is clean up the site. It appears to me that everybody is headed toward that consensus that it has to be done. I would rather have this Village retain control over how that site is cleaned up. The Judge was brought in because the owners weren't doing what they were supposed to do. It really isn't the Judge's position, and we shouldn't make it the Judge's position, to decide what is our job, and that is to come up with a reasonable, responsible plan that has built-in deadlines and built-in safeguards. Our job is to make sure that the waterfront gets cleaned up. The Judge's job is to make sure the owners don't break the law. We can duck it, and say, Okay, Judge, we'll put it in your hands. But, if you take a look at what's happening in Yonkers with Judge Sand in the desegregation case you see how a municipality can lose control of what should be within their control.

I'm not looking to duck an issue, and I'm not cowering because the Judge has said I want something done and if you don't do it I'll take it into my hands. I think it's the responsible thing for the Board to do to take a look at a situation, to negotiate what is best for us, get the best possible deal, and get on with things.

Marie Oelkers, 208 Farragut Avenue: Previously you had said that the trucks are going to be coming up Spring Street going to the Tappan Zee Bridge. How are they getting into the Village?

Mayor Kinnally: I gave my statement based upon a discussion I had with Mr. Festa. To get into the Village they'd come down Broadway, Warburton Avenue, Spring Street, Southside, and across the bridge. If Falcon, or the owners, find debris that can be mixed from areas south of here or east of here that routing could change.

Ms. Oelkers: I'm in favor of having the debris removed, so if it's necessary to come down Farragut or Broadway from any direction I'm in support of it and hope that it gets done soon.

Village Manager Hess: What's coming in is cleanfill as defined by DEC. If they have cleanfill at another location -- construction on the Sawmill Parkway, let's say -- and they have to come down 9A and over Ravensdale, that's a possibility. But the original plan is that the material will be trucked out. They will be using the same trucks to pick up other fill material in the area of Clarkstown and bringing it back here for the processing operation. So, initially, it looks like everything is on Broadway.

Jeff Bogart, 5 Jordan Road: Is there an escrow established?

Mayor Kinnally: No, a performance bond has been proposed. It would cover the removal of any cleanfill brought onto the site.

Mr. Bogart: How loud is the rock crusher? It sounds like it's a loud piece of machinery.

Mayor Kinnally: I don't know how loud it is. Part of our concern is that the crushing occur inside Building 15. I saw Mr. Festa the other day and he said he didn't know how he could do that. Our feeling is that the best buffer for the noise would be the debris that's down there. Perhaps they can carve out a work area in the middle of, or adjacent to, where the debris is to absorb the sound. We don't want the crusher outside.

Trustee Holdstein: Just a point that was made to us by Mr. Conlan last Friday. There are two types of crushers. One works on a pounding system, and the other is more like your fingers coming in and crushing it. The pounding one tends to be a lot noisier, and we're not going to have that one used if at all possible. I believe the target plan was to use this less noisy type.

Mr. Bogart: There are additional expenses that the Village has borne and will continue to bear: the expense of attorneys' fees; the expense to which the citizens in the Village have been put to even consider what has happened down there. I don't think there should be a settlement without some penalty that goes, not only to completely defray those types of expenses, but on top of that to make a statement that this won't happen again.

Mayor Kinnally: You're right. It's one of the elements that we've talked about at length. I said earlier that the removal of the debris would be without any cost to the Village. Certainly, there are expenses. I was quite clear and precise in my choice of words because we have, up to this point, had to bear the substantial legal fees, not only for the Supreme Court case, but also for the litigation in federal court. It is an element that we've discussed. It's not something that we've completely turned away from. But I don't think that in the realm of the discussions we've had to date that it is an element that is going to be in the mix in the end. I'm not going to go to the Judge and say, We're not going to settle this case unless we get our pound of flesh. You have to take the temperature of the courtroom, and I think it'll be an inferno if that happens. There's a tremendous amount of frustration on everybody's part because we're all footing the bill. But I don't want to paint a rosy picture here that's not going to be realistic. I don't think that it's going to be an element of the settlement.

Village Manager Hess: As chairman of the task force on the waterfront, our recommendations were quite clear from several subcommittees, one of them being the solid waste. The ultimate conclusions and the recommendations had to do with the Village pursuing all available legal options, and there were various other recommendations given at that time. The Board has pursued -- both this Board, and the prior Board when the report was issued, has complied, or adhered to, the recommendations of that task force, which contained 20-some residents, public officials, and professionals. So, all those recommendations have been adhered to by the Board, and it moved along on that basis.

Mr. Bogart: I would just say that I disagree with calling what I've described as "a pound of flesh." I'm really after making the Village whole again, and insuring that there's some detriment

in the future to people who, and an example, to people who would go ahead and misuse the waterfront the way these people have. To the extent that it's possible within the process, and the alternatives that remain to be explored, I think that they should be explored.

Mayor Kinnally: I'm not saying that we're not going to try to pursue it, but I don't want too rosy a picture.

Thomas Brown, Overlook Road: What I can see in this plan is that there seems to be more questions than there are answers. At this late date -- and I think the deadline is by Thursday -- we're asked to decide an awful lot of things which we're not ever going to know whether they're right or wrong. When you talk about you don't want to lose control of this problem...I think that we lost control of it a long time ago. We haven't had control of it in many years. It's interesting that the Judge, who says if you're not part of the solution you're part of the problem, takes seven months to rule on this. I would suggest that we let the Judge become part of the solution, and rule on it. If we don't like what the Judge rules on we can always appeal it. But if we go in with some plan which is not a plan, some plan which is something that we're not sure of, what can we appeal? We agreed to it. I think we should allow the Judge to make this decision at this point in time. I don't think that we should stick ourselves in a hole on a plan like this.

George Haloukas, Westchester County Department Commissioner of Health: I'd like to go on record and fully support the Village's action in regard to this case. We were involved initially. We will, as budget allows, commit staff to monitor the removal of the debris during this process.

Steve Halpern, 26 Ravensdale Road: One of the things that I think is really missing from this agreement is that there doesn't seem to be a compliance requirement on the waste material once it leaves the site. There are a lot of safeguards -- assuming that anyone pays any attention to them -- on the site. There's no mention of the type of vehicles, how the Village will be protected, what the recourse on cleanup is should there be a major accident with one of these trucks and some other vehicle and spillage on our streets. I think that's something that many people in the Village have addressed as a concern in the removal. There have even been suggestions that the waste be taken out on a barge, if that were possible, in the past.

In addition to that, I have a concern about the dust that will be created in the rock crushing and removal. A lot of what is in old construction debris has lead paint in it, which means that we're going to be crushing stone and cement that has lead paint in it; how is the wood going to be treated before it's taken off-site?

Mayor Kinnally: It'll be ground.

Mr. Halpern: So that wood is undoubtedly covered with lead paint as well. The idea of trucks going through the Village, even diluted 50 percent with waste that has lead in it, is not very attractive. I think the vehicles that truck off the site should be self-contained. They should not be closed with a tarp, because the tarps float up in the air and the debris comes out.

Mayor Kinnally: These are some of the particulars that we haven't gotten into. Let me address the first point that you made that there doesn't seem to be any recourse. The entire operation is under the jurisdiction of the DEC. The entire operation must comply with the various rules, regulations, and laws of the DEC. Violations of that under paragraph 8 of the order on consent, in addition to being a violation of the court order, would subject the owners to the various administrative or regulatory schemes of the DEC.

Mr. Halpern: What keeps running through my mind is the people who do not pay taxes that take legal recourse instead of paying their legal obligations. They can be fined and fined and fined, and all they have to do is go bankrupt as a recourse. In addition to that, the damage is being done to the city...any fine is going to go someplace else other than the city. We could easily be left...and that's what I meant...I don't see a recourse. I don't know what kind of monitoring will be able to be done. The gentleman from Westchester said that it would be within the budget constraints of Westchester. I think it should be more specific. Are we going to monitor contamination in the streets and down at the site?

Mayor Kinnally: I agree. If you recall I indicated that on this draft item, number 10, is blank on the monitoring. It is something that will be addressed in further discussions between all the parties. But the DEC has committed to periodic monitoring of the site. There are the reporting requirements. Westchester County Department of Health gave a commitment tonight. The Village, in addition to the full-time monitor that we want down there, our building inspector and our fire inspector will be periodically going down.

Mr. Halpern: Are we talking visual monitoring and instruments that are going to measure contamination in the air?

Mayor Kinnally: No, I don't know what type of monitoring instrumentation-wise the DEC is going to do. We're talking about physical monitoring.

Mr. Halpern: I play tennis down there. A good wind, and I could be breathing lead. It's a concern.

Mayor Kinnally: That's why all of the processing operations must take place in Building 15. They cannot take place outside.

Vanessa Merton, 111 Pinecrest Drive: I think the Judge is probably right about the observation that if you're not part of the solution you're part of the problem. I think part of the problem here is that we've been essentially in a reactive stance ever since the Judge's opinion in March of this year. Why don't we, just to put something else out on the table, go back with a proactive proposal that is what we want rather than reacting to this. Some of the things that it seems to me would be included in a proposal include the following: not using Falcon Recycling, which is a fly-by-night operation that we looked at in great depth in February and found entirely wanting in its history, its experience, its facilities and equipment, and everything else about it; not having what this proposal would establish, which is a C&D processing plant on our waterfront until at least September of 1997, and with a performance bond which amounts to \$30,000...that's fifteen times \$2,000, which is the amount of cubic yards permitted of storage on the site. Am I correct?

Mayor Kinnally: That's right.

Ms. Merton: So, it's a total of \$30,00 in the performance bond. That is, I submit, laughable. It doesn't cover anything.

Mayor Kinnally: . It's only meant to cover the introduction of the cleanfill. It's not meant as a guarantee for the removal of the C&D debris in 15.

Ms. Merton: No. I just want to make that perfectly clear, because I'm not sure that when it was referred to as a performance bond, a lot of people might assume it was intended to cover the cost of doing what this agreement purports to do.

Mayor Kinnally: Thanks for the clarification. It was not.

Ms. Merton: We could also emphasize that we don't want the processing to occur on this site. If it's going to cost them money to process it elsewhere that's really too bad. That's tough.

Mayor Kinnally: If the processing has to take place off-site, Clarkstown is not an available site.

Ms. Merton: In February we heard about another site in New Jersey and the pressure was on, we had to take advantage of it, it was the only window of opportunity. Now we're back to Clarkstown. I'm not sure that that's a reason to accept such a deficient plan. The previous proposal, which I finally got a copy of pursuant to my FOIL request of July on Saturday, and reviewed -- was a plan that all of you described at that last meeting as laughable, pathetic, horrific. I think those were some of the words that you used. It was infinitely more detailed and carefully laid out than this present document. In terms of compliance, as has been noted... penalties of \$3,000, \$2,000, \$1,000, when we haven't been able to collect a dime of taxes...when, according to what Chief Drumm told us, this site has been, at least for a year and probably longer

in stark violation of New York State Fire Prevention 1191.3 -- a criminal violation. It's been in violation of our own Zoning Code 313.13 and 404. It's been, qualifying under the DEC summary abatement powers, which should have been used and could still be used because it's an imminently hazardous site. There are a lot of other options available to us that we haven't explored, contrary to your observation, Neil, about the task force. The task force, about which we've never had a public hearing on that report, did recommend specifically looking at other kinds of options than the futile pursuit of the Fucci brothers, which is what we expended almost \$200,000 in various ways trying to do.

We can do better than this, and we don't need to accept a waste transfer station. I know you said it's not a waste transfer station. That's what we said in this room in 1991 about Age Carting: "It's not a waste transfer station." We said that the cap on what would be permitted by Age Carting would be less than the cap on what's permitted to be stored on this site according to this agreement. Well, we all know what happened.

Mayor Kinnally: Yes, we do. That's why we're here tonight.

Carolyn Summers, 63 Ferndale Drive: I'm delighted to hear that we might actually get rid of all that stuff in under two years now. I sat through the presentation by Falcon in which he was describing the number of trucks in fairly complicated mathematics: How many trucks taking how many cubic yards of material over how many days equals something like five years. I don't understand how it's physically possible now to get the same amount of debris out using, presumably, less trucks in a much shorter time.

Mayor Kinnally: I'm not going to pretend to go through the mathematics of it. The proposal that was before us in the wintertime was to operate over a five-year period a waste transfer station so that the owners could generate sufficient funds to pay for the removal of the debris in Building 15. Our objection from day one to everyone when this proposal was floated -- indeed, the proposal that Ms. Merton referred to was also a waste transfer station, I believe -- we did not want the introduction of any new C&D material on that site. Falcon's proposal, or whoever's proposal it was in the wintertime, had two components: the partial removal in an incremental basis of what was in Building 15, and the ongoing processing of additional C&D material in a waste transfer station. That's why the application was before the Board of Trustees, because the Board had to give its approval to any change of use on the waterfront, and we would not agree to a waste transfer station down there.

This is a remediation effort and the Village cannot stop remediation efforts that are under the aegis of the DEC. We cannot tell them that they can't have processing on the site. We can have our input, but we have no veto over it. It's a waste site that has been cited; it's deemed to be hazardous; the Judge has made a finding that it constitutes a threat to the health, safety, and welfare of the Village. So, we can't stand by and say we're going to blow the whistle on

everybody and shut it down. If it has to be remediated we have to get out of the way, and the state can order a remediation on the site.

Ms. Summers: So, in other words, there has been some calculation that shows that it is physically possible to remove that debris in the amount of time that we're talking about without round-the-clock operation?

Mayor Kinnally: Falcon told me that he can process about 800 to 1,000 cubic yards a day. They have been doing some processing down there, and I understand that material was available for Clarkstown to assess today. I don't know if it happened.

Village Manager Hess: First of all, the task force on the waterfront had a total of six public hearings, with all committees making reports in the interim. The solid waste committee indicated various legal options, and I will quote from the report: "The subcommittee had concluded, however, that consultation with experienced and knowledgeable attorneys who specialize in regulation and abatement would be highly advisable" (which we did, hiring Sive, Paget & Riesel, the environmental counsel to the Village and, in conjunction with the Village Attorney's office, developed an approach).

To read another section of the same task force report and the same subcommittee on which Ms. Merton served: "It is suggested that municipalities with perhaps a 50-mile radius be surveyed to ascertain if a closure plan is being prepared by a consultant for their municipal waste sites." In other words, the committee recommended that the Board hire environmental counsel to look at the various options and to make recommendations to the Board, which happened.

The committee also recommended that the possibility of landfills in the area be surveyed to find out if they could be used for the material. The last part I will read is: "It will be necessary to screen the C&D materials currently at the waterfront in Hastings to separate the soil from the other waste material" (which is basically the attachment to the order on consent, which is presented tonight).

Mayor Kinnally: I have had discussions with the Supervisor of the Town of Clarkstown, and with the consultant who has been retained by the Town of Clarkstown to work with Ogden in remediating the site. I raised the possibility of processing on-site. They said that because of the size of the site and their timetable they would not allow any processing on the site. Indeed, in discussions with a number of people I haven't found a situation where anyone would allow debris to be trucked from another site onto another site and processed. They would need a permit, I think, from the DEC to accept that debris. I don't think the DEC is going to allow this debris in the current condition off-site.

We have explored a number of other options. This is not the first shot we've had at considering what alternatives are. There was discussion this past spring and summer about a site in Onondaga County. That was pursued. It never panned out. It was questionable whether or not this type of material could be taken there. The good news about Clarkstown is that it's 12 miles from here. The turnaround time for the trucks is fairly quick, depending on the time of day on the bridge. I'm not going to say that there isn't going to be substantial truck traffic. It will be about the same traffic that went through our streets when they were bringing this junk in.

But in addition to the debris that's going to Clarkstown there will be the other waste debris that's been separated out of there that will have to be taken off the site at the same time. That will be taken out under the observation of the DEC, and will have to be disposed of in accordance with DEC regulations.

Let me also talk about the potential seasonal nature of the work. It is the hope that they can process this debris year-round, all through this winter. It may be that they'll have to shut down if they can't get cleanfill to mix with the processed debris. If we have a winter like last year it could very well be that they're shut down for three months. If we have a winter like two years ago they could operate pretty much all winter long. Two years ago most of the work on our Food Emporium was done and I can't think of more than one or two days that the job was shut down because of snow or ice or inclement weather. It is the hope of Ogden that they can operate all winter long. I have discussed with them the possibility of storing some of the debris on-site even if they can't spread it in the wintertime. Their initial reaction was that there wouldn't be room to do that, but they haven't closed the door on that possibility. In my discussion with the Supervisor, and with the consultant, they have been nothing but forthcoming with us. They're in a tough position. They're under a deadline to get this site closed by the state. They're also in a contract with Ogden, and if they delay Ogden it's money out of Ogden's pocket. They do not want to jeopardize the speedy closure of this site with any problems of debris down here. That's why if this plan goes through I can only wish Mr. Festa, Falcon, and the people the best of luck in getting this stuff out of there, and that it qualifies. Because if it doesn't qualify it can't be taken at Clarkstown. Then the owners have a much larger tag in disposing of this material and finding a home for it, and they will have to pay dearly to be able to dispose of this.

One question that came up with DEC in our review of this material was, What happens if the material goes out and it doesn't meet specs? Does it come back on-site? The answer is no. They cannot bring it on-site. They don't have a permit for it. We will not allow it in there. That's one of the reasons we want monitoring.

Let me also discuss timing. The first time the Board had a real opportunity to discuss a proposal was when we met with counsel and with some representatives of the state on Friday afternoon. This has been a fairly quick process, to date. None of this comes as a surprise to anybody. Certainly, the potential of Clarkstown has been there for awhile, and a number of people have

hoped that Clarkstown would be receptive to this debris. I apologize to everyone for the speed. It's not done this way to deprive anybody of an opportunity to enquire into this. Many of the points that have been raised tonight have been discussed at length by the Board in Executive Session. But, this is not the final proposal; we are not giving up on some items we hope to get.

Ken Tuccillo, 14 Edgewood Avenue: This is really, with a few minor changes, the same proposal that was submitted in March that the Village basically gave a resounding "no" to. It's being called a C&D processing plant rather than a waste transfer station, but it's really a distinction without a difference. The same things that we objected to back in March are still present with this plan. There's still going to be processing on the site and hundreds and hundreds of truck trips through the Village. It wasn't acceptable back in March. It's not acceptable now.

What would be acceptable would be processing the material off-site and removing it by barge. Just as our holding to the line that we're not going to pay a cent for this cleanup, the other line that we should hold to is that this is not going to be done on-site. Maybe it's not going to be in New York State, maybe it's going to be somewhere else. But it has to be removed and taken off-site to be processed, and it has to be removed by some means other than truck.

Mr. Bogart: Again, I'd like to clarify: Who pays Falcon?

Mayor Kinnally: The owners.

Mr. Bogart: We know that they have the money to do that? They can't pay their taxes.

Mayor Kinnally: My understanding is that there may be some new investors; I'm not sure. But they have to find the money. Whether they borrow it or whatever, they have to find the money because they're under an obligation to clean it up. I don't know where they're getting it from, but it is present, and let's not look a gift horse in the mouth.

Mr. Bogart: I'm certain that we're looking a gift horse in the mouth because I haven't seen the gift horse yet. I'd like to pursue it a little further. We don't have a bond that covers nonperformance here.

Mayor Kinnally: I don't know if there is a court order yet. Assuming there may be, things may change. There's a decision by the court, but there's no court order.

Mr. Bogart: Have these people been acting in good faith, in your opinion, since this began?

Mayor Kinnally: No, but in the pursuit of Clarkstown my impression is yes. There have been substantial violations and citations by the DEC on the site. I think there has been a dose of reality administered to the owners, and that they have finally come to us with a proposal. This,

in part, is their proposal. I think at this juncture at this late hour, yes, there has been a measure of good faith on the part of the owners. It may be because there is sword of Damocles hanging over their head, but I don't really care. They have come, and they have discussed with Clarkstown and with Ogden wanting to remove this debris. Let me put it in perspective: They have come to us and said, Yes, we are going to remove this debris.

Mr. Bogart: The debris is going for landfill.

Mayor Kinnally: No, it's going to a landfill. It's part of the closure requirements of the DEC.

Mr. Bogart: So, there's no money flowing to the owners as a result of this in any way. They're paying, not receiving.

Mayor Kinnally: They're paying to dispose of it. Is that correct? DEC nods Yes.

Ms. Merton: Part of the frustration here is that I try to ask questions and then I don't really hear answers. I'd like to go back and pick up a few answers. First, though, I'd like to observe, it just isn't true to say that we're not paying for this. We are subsidizing this. Those are our tax dollars that Eisenberg is using. Correct me if I'm wrong, but the Fuccis were in violation of court orders since at least 1994. That's what the whole contempt proceeding against them was, which culminated in our agreeing with the court to hold them responsible for a measly \$150,000.

Mayor Kinnally: No, you're wrong. We did not consent to that. That was a court order.

Ms. Merton: Do you want me to show it to you? It was a court-ordered...

Village Attorney Murphy: It was a court finding. Basically, all parties agreed that the court was not prepared to push further than 150 because there was nothing sufficient there that would warrant...

Ms. Merton: Even though Mr. Conlan had filed in that action an extensive affidavit demonstrating to the court that the financial records, including basic documents such as corporate tax income records, were not made available by the Fuccis or by Age Carting. That was part of the court record. We certainly could have challenged that finding on the part of the court.

Mayor Kinnally: We've been through this. We could have done it. That, unfortunately, is history. Let me bring our discussion back to what we're really talking about tonight, and that is an opportunity not to hang anybody in the public square but to get this crap off the waterfront. We can drag Fucci and Festa and Eisenberg and all the other riff-raff through the streets here, but it's not going to get rid of that junk.

Ms. Merton: I think you are missing my point, Lee. I am not leading the faction in favor of keeping the debris on the waterfront, believe it or not. My point is this: There has been a court order in effect that directed the Fuccis to prepare a plan to remove the waste from the waterfront, and with all the penalties that the Supreme Court could hold against someone, was it not a grand total of \$150,000.

Mayor Kinnally: Yes.

Ms. Merton: So, to keep talking about how we have these sources of monitoring...the reason that we're concerned here is that while this is very pretty to read and it would make a lawyer -- particularly a lawyer who doesn't live here -- very happy to read this nice order, it doesn't mean anything. It's just words unless we have real guarantees that what's going to happen is not that more stuff is going to be trucked down to the waterfront. Under this plan, we will once again be permitting trucks to bring something that's supposed to be cleanfill into the waterfront. That's what it was supposed to be the last time. But unfortunately there was not supposed to be 80,000 cubic yards brought onto the waterfront, and somehow there was. The monitoring, and inspection, is really the key issue.

Mayor Kinnally: I agree with you.

Ms. Merton: Two meetings ago I asked some questions about the \$25,000 worth of waste that supposedly had already been removed from the waterfront by Falcon pursuant to this consent order that we entered into back in July. We asked some questions like, Where did it go? What assurances do we have that it was taken out? Where are the manifests? Where are the monitoring reports? Where are the truck reports? Where is the information about where it went? How do we document that, in fact, any of it was removed? At that time we were told there were a lot of detailed reports. There were inspection reports. There were manifests. All of this material was easily and readily available, we were assured, if we wanted to look at it. When this thing broke this weekend, I requested the copies of the following: any inspection reports or other documents describing the contents of Building 15; any inspection reports, records, manifests, or other documents describing or pertaining the removal of material from Building 15, and so on.

This is what I got: three pages, which are nothing more than a form of violations of Building 15, with absolutely no information about the removal of waste, any indication of any records whatsoever.

Mayor Kinnally: I agree. You're out of time, and let me respond if I can. First of all, I got this letter this morning. . I had a conversation both with counsel and with Mr. Hess. As you know, under FOIL we have five days to respond. But I wasn't going to hold that to five days, and I said to Neil, Let's see what we can get Miss Merton right away. I asked him about the reports. He

said he did not have the reports directly accessible right now. So I told him to make the plan that we were delivered on Sunday available to you. That was part of your request.

Ms. Merton: That plan says nothing about monitoring.

Mayor Kinnally: It doesn't say anything about monitoring, because it hasn't been part of the discussions yet. But the fact is that we responded immediately, and I made the proposal available to you. A message was left on your machine. I gave it to you tonight because nobody picked it up. We have been trying to be as responsive as possible.

Ms. Merton: I'm not complaining about there being a delay in responding to the request. My point is that it was reasonable to assume that if you're going to have this discussion tonight that questions are going to be raised about monitoring and about the sufficiency of our ability to keep track of what is, in fact, happening on the waterfront.

Mayor Kinnally: The first thing I discussed tonight was monitoring. It is a concern that we have, and it is something that has to be fleshed out before we go forward with anything. I agree.

Ms. Merton: So it is your statement, then, that before we agree -- before we represent to the court -- that we are going to agree to let Falcon be responsible for removal of this stuff that we will, in fact, have much more detailed and satisfactory monitoring plans than were in the previous plan, for example?

Mayor Kinnally: As far as I'm concerned, there was very little of monitoring in the previous plan. We have to work out the issues of monitoring. We are not going to tell the court that we have something in place until those issues are taken care of.

Mike Bennett, S. Clinton Avenue: I'm here to support the removal of the debris. I think we have a moral obligation. When I look at the fires...and we would let people from this Village go down there as one of the main places where they could get hurt in the debris...and what the Chief said...I think we should go on. We are going to be monitored by the state and the county. I think we must take this opportunity. If you're going to come back here a year from now or two years from now, you're not going to find the landfills open that you're finding now. They're closing them all over the state. This is the biggest fight -- whether it's Albany, or New York City. They're closing Fresh Kills in about a year or two years. So, if you have an opportunity to start this moving, I think it should be done. The people I talk to...everybody, wants it removed.

Mayor Kinnally: Mr. Bennett indicated Fresh Kills. We had discussions about that in court in January, and that has been inquired into. The people in Fresh Kills said that they will not take this debris.

Judah Shapiro, 33 Brandt Street: With all due respect to my friend Ken, I have a little different recollection as to what was going on in the spring. I don't think that plan that was presented was rejected. I don't think everybody was thrilled about it, but it was accepted. I thought the problem was the people who were going to do the work. That is my recollection of what was going on in the spring; that the plan was acceded to, and after a lengthy debate that it was at least an acceptable plan. But there was significant concern that the people doing the work might not be reliable. Who's doing the work this time around?

Mayor Kinnally: Festa is the contractor that has been retained by the owners. There is a difference in the plan. It's not a waste transfer station. The volume of the material, the volume of the operation, the length of time...you know, if we can be out of there by December of '97...if Clarkstown isn't available it's a December, '98 deadline. If Clarkstown's available they're out of there by December, '97. We don't have a steady stream of C&D material coming in. I don't think it's a distinction without a difference to say that cleanfill can be brought in. That isn't the technical term, but we've been using it. Again, we don't have a veto over what remediation operations can take place on the waterfront. It's a DEC operation. The DEC has issued the violations. The DEC will oversee the cleanup. And only the DEC can certify that the site is cleaned up and that the owners are released from their obligations on the site. It's not just Building 15 material. It's everything else that's above ground on the site. It's got to be cleaned up. I spoke with the consultant in Clarkstown, in particular the other day about the issue of lead paint. His position is if any of this brick has lead on it, it's not going to be put into the mix.

In part we had concerns about the people involved, but we also had grave misgivings about a C&D station operating in such a fashion.

Marvin Winn, 208 Farragut: As one of the firefighters that fought this fire, I'm in favor of the debris going out the way it came in, which was by trucks and not by barges.

Mayor Kinnally: Let me address the issue of the barging, and it's something we've been pursuing for a long time. There are physical limitations on the site with barging. We may have to get Army Corps of Engineer approvals. If Clarkstown is the site, the only way to get that material there is by truck because there's no place on the other side of the river to off-load this. Given the timing and the cost and the logistics involved, we could not get that material onto a barge, find a place to moor the barge, off-load it, and get it to the site in time. From everything I've heard and all the people I've talked to, it's not a possibility. Would we like it? Of course we'd like it. But, I don't think in today's world it's practical. We can argue. We can negotiate. We can say it is a deal breaker. But I think it's unrealistic.

Thomas Brown, Overlook Road: I don't think anybody here is not in favor of removing the debris. Some months ago most people I spoke to in the town were not only not in favor of the

Fuccis doing it, they were not in favor of the plan. They were appalled by the plan of trucks going through their Village, and a waste processing station, by any name, on the waterfront.

Let's see if we can move forward for a minute. Mr. Tuccillo asked some very interesting questions about negotiating positions. I'd like to see if we can get an answer other than thank you to Mr. Tuccillo's questions. Maybe Mr. Murphy or Mr. Kinnally can answer what our negotiating positions are going to be.

Mayor Kinnally: I think I gave Ken some answers to his questions. It doesn't seem too logical to me to put all of our cards on the table.

Mr. Brown: I'm only asking for a couple, and there don't seem to be a lot. Ken, you want to ask your questions again, and maybe we could get some kind of dialogue and response to him. Because I thought there were some very good beginning positions to negotiate. I'd settle for even a couple of cards on the table.

Mayor Kinnally: I know you would, but I don't think it's the wisest thing in the world. Part of our position is the result of discussions with counsel. I think it's foolhardy to divulge our discussions with counsel.

Mr. Brown: You'd rather not share that with the people of this meeting and Village.

Mayor Kinnally: I would be happy to share whatever we can share so long as it doesn't jeopardize our position. Phil was here last time. Phil, if you want to discuss in public what your negotiating position is, I'd be happy to discuss in public what our negotiating position is. But I don't want to put this Village in a disadvantageous position. It's not an issue of keeping from the Village what information maybe they should have. If Ken has any more questions I'd be happy to answer everybody's questions tonight. But you have to remember, we can't put everything out in a public forum.

Mr. Conlan: I'd just like to take a moment to clarify a couple of things that were said. In relation to lead paint and those issues, the DEC, and the Department of Health, who is here tonight, have tested the waste numerous times and we don't believe there's a lead paint issue or a lead issue in relation to the waste.

First, in relation to the closure of the Clarkstown landfill, that's being done under state oversight. It's being done under EQBA funding. It is one of our closures that we look over very carefully. We have no interest in putting waste there that can't go there or that's going to cause a problem in the future. We're going to be very cautious in what would go there ourselves, much less the Town of Clarkstown and their contractors.

Secondly, in relation to trucks. Trucks will have insurance. If there's an accident on the road, they're required by the Department, and by D.O.T. requirements, to have insurance. That will take care of issues in relation to trucks.

Third, in relation to the Fuccis. The Fuccis paid \$150,000 to purge themselves of contempt. That's all they got. There is no reason whatsoever that the state can't continue after the Fuccis if we believe there is money is available, and the Village as well.

Lastly, the state has taken a position of supporting the Village under every instance in relation to the cleanup. Even when the Village didn't have the authority, the state in the person of myself has said that even if the Village doesn't have that authority we will support it, and we will take it upon ourselves to exercise our authority where the Village doesn't. We've gone out on a limb in relation to that in a number of instances, and we're looking for closure of this site. We believe that this might be an opportunity. If Clarkstown doesn't work, Clarkstown doesn't work. Under the proposed order the waste still goes. If they sign it, worst case scenario is they can be held in contempt and be put in jail or other things that the Judge would decide would be necessary under his ruling. But at least we'll have something that we can enforce in the future. Right now we have waste sitting at the site that's not moving. I think it should get moving.

Ms. Merton: I want to thank Mr. Conlan for bringing up a couple of important points, and clarifying that we don't need to worry about the fact that the DEC has this ultimate authority and can do whatever it wants in terms of remediation, because, once again, as we did hear from the DEC last February, we've heard reaffirmed that their position is they're not going to ram anything down our throats, and that they are going to allow us to participate in a meaningful way in the development of a solution to this problem. So I don't think that that's what we need to be afraid of.

Let's cut to the chase and ask the question. Why are we afraid of going back to the Judge with what we want, with a clearly-defined set of proposals that include, for example, not barging the stuff directly to Clarkstown but barging it to Mr. Festa's facility in Greenpoint. Let him process it on his facility in Greenpoint and let the defendants pay for it. Yes, it would cost more, but that's the idea, that we don't have to subsidize this cleanup.

You said that we weren't going to have to pay for the cost of this cleanup. We have to endure that traffic, and the real costs that Mr. Halpern talked about. The lead paint issue, Mr. Conlan, doesn't concern what's already down there, about which we know very little, but the fact that there might be lead contamination in the waste that's going to be brought in as part of the process that's proposed here.

Why don't we put out, clearly, what we want and what we deserve because we are not responsible for this problem. There's only one possible down side to that approach. It is what was raised at the very beginning when you talked about your concern about a global settlement

of all the outstanding issues. There is this little matter of this pending Article 78 against the Village which says that we should be held partially responsible for this problem because our Village officials knew about the unlawful accumulation on the waterfront and failed to enforce the law against the tenant of the property owner, and thus we contributed to, and were responsible for, this problem.

Is there, or is there not, any truth to that? Because if there is no truth to that, then I don't think we need to worry about that action at all. And if there is truth to it, then those officials who were, in fact, responsible at the time for allowing this to happen are the ones who ought to be paying the price, not the people of this Village having to endure this plan, which is no improvement on the previous set of plans, or a very slight improvement. Is there any truth to that, or is there none?

Mayor Kinnally: No truth to the allegations. This comes out of our discussion when you asked what the worst thing was that could happen. I said that I don't know what the worst thing is, but remember we do have a lawsuit that's outstanding, and we're not dealing from a position of weakness. But we're not worried about the lawsuit. We're not worried about ultimate liability because the Village was clearly within its powers to do what it did in denying the application for the waste transfer station. That's what this came out of: the denial of the application for C of O for a waste transfer station.

Ms. Merton: And the third-party claim that the Village was partially responsible for the problem.

Mayor Kinnally: Exactly. Now, I'm not saying that we're going in with hat in hand, bowing and scraping and saying, Judge, we want to make you the happiest person in the world. We're not dealing from a position of weakness here. What I said earlier still holds. There is a problem down there, and we have gone to Court and beaten the owners and everybody else over the head and said, Be responsible -- clean up the site. They finally have stepped up and said, We're going to clean up the site. I'm not going to say in public what we're going to do with the Judge. We'll discuss that with counsel. But rest assured that the reality of the situation will come into play in the decisions we make with the court. We're not in a defensive posture at all with the court, with any of the parties, with the state, with anyone else. The Village has always said that what happened down there was wrong, that the Village bears no responsibility for what happened, that the owners and the Fuccis have to get the site cleaned up, and we hold to it today. We'll hold to it when we see the Judge. But that's a far cry from going in there, digging in our heels, and saying to the Judge, We're not even going to consider any proposal.

Ms. Merton: We have a proposal of our own to put on the table. Four points: attorneys' fees paid; bargaining; getting it cleaned up; the processing off-site. That's all we need to say...that those are the bottom lines...that's what we want. If they're not willing to go along with that then let's go ahead. What do we have to lose? That's my question to you.

Mayor Kinnally: We will take that into consideration in discussing it with counsel.

Ms. Merton: I've heard again and again that this is such a dangerous site. Why is it we have not criminally prosecuted the owners of this property under the several provisions of law that make it a crime -- not just a civil liability, but a crime? Mr. Conlan said the ultimate remedy would be if they had to go to jail, which is far more likely to happen, I submit, in a criminal prosecution than as a result of any kind of attempt proceeding. I'm sure that Mr. Murphy and Mr. Conlan would agree that that was so. We have several crimes that could have been charged against the owner of this property for this particular problem. We have, as yet, never prosecuted. Why?

Deputy Village Attorney Murphy: Excuse me. We have prosecuted the owners. Keep in mind these are corporate owners.

Ms. Merton: Yes, I am aware of that. I'm talking about Mr. Eisenberg.

Deputy Village Attorney Murphy: Mr. Eisenberg is not an owner individually.

Ms. Merton: Mr. Eisenberg, as an officer of the corporation involved, is certainly chargeable with knowledge of this offense.

Deputy Village Attorney Murphy: We have brought charges against the corporations. We've done that from the beginning. There are now pending several charges before the Village Court for their alleged violations of the Fire Code.

Mayor Kinnally: The DEC has violations against the owners, also.

Ms. Merton: I see this list of violations, and you keep coming back to that as what we have to hold over their heads. But it doesn't seem to be having the desired impact. Whereas there are specific state law crimes, not Village ordinance crimes, which could have been charged and which weren't. That's a choice that we continue to make every day because it's a continuing offense. So each and every day Mr. Eisenberg could have been held responsible for a fine.

Deputy Village Attorney Murphy: The Village can't prosecute state laws.

Ms. Merton: You can request. Absolutely, you can be a complainant in a state court.

Deputy Village Attorney Murphy: Now you're saying request, then you're saying charge. Which is it? Can we request? Yes.

Ms. Merton: When anybody complains that they've been robbed or in any way had a crime committed against them, that's considered bringing charges. We haven't filed a complaint.

Mayor Kinnally: You're right. We haven't.

Ann Schnibbe, 8 Edmarth Place: If this is the opportunity we have to get rid of that junk on the waterfront . If it can't go out by barge, then let's do it by truck. From what I've heard tonight it's going to be monitored. I know there's a lot of things you're going to have to discuss about that, but it will be done properly. Nobody wants to see truck traffic, but I've lived here all my life; Anaconda had trucks galore going up and down the hills all the time, and that was for many, many years. You're talking about a-year-and-a-half, two years perhaps? You have my support.

David Shapiro, 5 Travis Place: Nobody is saying that they want the debris to stay there. Everybody wants it moved. One of the problems is that the people that are operating down there, and who will apparently continue to operate, offer no realistic hope of truly doing the job. When we had a hearing a couple of weeks ago my understanding was that they were supposed to remove a certain number of thousand cubic feet of debris from Building 15. At that time we weren't exactly sure how much had been done. But I believe the representation was made that by the end of September "x" amount was supposed to be gone. I'm not hearing that it has been gone. There's no basis to believe that this will be done. There's no credibility. In fact, there's good reason to disbelieve these claims.

Mayor Kinnally: Some debris has been processed. Some of the C&D debris is put off to the side on the south wall of Building 15. I was down there the other day, and on the southeast side of the building there was a good deal of what they call "municipal solid waste" which had been separated. I don't know how much went out of Building 15, if any, but a good deal of debris has been taken off the site. I was down there on Saturday morning. They were loading very large trucks with various and sundry stones, rocks, wood, stumps of trees, and all kinds of crap that was in the area due east of the south side of Building 15. That has been ongoing. They had two very large trucks that they were filling and taking stuff off-site. I don't know the amount that has been taken out during the month. They were given authorization to process that material. They'll only get paid for what they moved out of there.

Mr. Shapiro: What is your basis for confidence in Falcon, given their lack of reliability in the past, for example, their bounced check?

Mayor Kinnally: That does not give me very much comfort. I questioned whether or not Falcon had the wherewithal to operate a waste transfer station and process the debris. Now it's different. All they're doing is processing the debris in there. Do I have any confidence in them? I don't know one way or the other if they can do it. I spent about 15 or 20 minutes with Jerry Festa the other day discussing his proposals: the type of machinery he was bringing it, his staging, his timetable, his ability to turn the stuff around. If he can deliver as he plans we'll be all right. But at the end of the day I don't really care because if it's not Falcon it's going to have to be somebody else, because the owners aren't off the hook if Falcon falls flat on its face. This

plan is not designed for Falcon. This plan is designed to get the material off the site. If Falcon can't do the job someone else will have to come in and qualify to do the job.

Village Manager Hess: Mayor, can I request a recess?

[meeting recess]

Mayor Kinnally: Mr. Shapiro had the floor. I think I answered your question.

Mr. Shapiro: If I'm correct, I had asked if you had confidence in Falcon and I don't believe you said that you did.

Mayor Kinnally: I don't have much to answer that question with. He has operated a facility. He knows the machinery. I think he knows the logistics. He has been processing the material down there, and he has been mixing. I can't answer the question. I'm not trying to duck it. I just don't have that crystal ball. I'm not here to champion his cause, and I'm not here to unduly bash him because I don't have a hell of a lot to go on. I wasn't too thrilled with the fact that he bounced a check last time and I did have serious reservations whether he could handle the job that they were proposing earlier this year. This is not, as I said earlier, a sink-or-swim operation as far as Festa is concern -- Falcon is concerned. If Falcon cannot do it, it does not relieve the owners of their responsibility to move this stuff off-site.

Mr. Shapiro: I understand that. But if they don't, and I think there's reason to think that they can't be relied upon, then it would retard for a long period of time serious efforts, and perhaps more effective efforts, to clean up the mess.

Mayor Kinnally: Yes, it might, most definitely.

Trustee Holdstein: -If Falcon doesn't get it done, they're still under this order by the DEC and they still have specific timetables. If you look at point "J" in the document, it says "The state authorizes Falcon, as defendant's agent, to conduct the activities specified herein. However, if the defendants, at any point during the site cleanup, decide to use another contractor it must so notify the state and the Village." The defendants, the owners of the property, are still under this timetable. They still have to meet timetables with Clarkstown. They still have to meet timetables to have this out by December of '97. So, it's their problem. If Falcon isn't getting it done they're still liable, and the DEC will be over them to find somebody who will get it done.

Mr. Shapiro: It's our problem, Mike.

Mayor Kinnally: It continues to be our problem. As long as this stuff is there, it's our problem.

Bob Kornfeld, 47 Summit Drive: I have a couple of questions about Falcon, also. The owner's record for compliance is pretty bad, since even now they seem to be operating in violation in all different ways, including they're still operating without a C of O on other properties on the site.

Mayor Kinnally: That's right.

Mr. Kornfeld: So, that's not encouraging to begin with. As far as Falcon, when they were here before I asked Mr. Festa a couple of questions about things like his equipment, and it seemed like he didn't have that much equipment. I asked him how many trucks he had, and it was a fairly small number. I asked where the other trucks were coming from, and he said they'll be subcontracting to various waste haulers throughout the region. It seems like that would make it so difficult to monitor who's coming from what site. It's going to be very complicated to track.

Mayor Kinnally: The monitoring will be done at the entrance to our site as far as material being brought in. Once they hit the gate they're going to be monitored if they're bringing anything in.

Mr. Kornfeld: It's not necessarily that easy to tell what someone's bringing in. I don't know if you look at a load of soil, for example, that looks like clean soil. I don't know how you tell if it's laced with PCB's or something like that. Or, if you do testing, how long it takes to get the tests back, and what happens if it's already mixed in.

Mayor Kinnally: The type of material that we're talking about here is excavation material, broken up pavement, things of this nature.

Mr. Kornfeld: It could be excavated from a filling station somewhere

Mayor Kinnally: I guess you're right. But if it's excavated from a filling station pursuant to the DEC, the DEC is going to want to know where that material is going. I said it a few times, and maybe it's some naivete on my part, but we have to assume -- and Vanessa's shaking her head -- that the DEC this time is going to do its job. The question was asked earlier whether or not the owners were evidencing any good faith in discussing this matter. I'll opine on the DEC. As much as the DEC gets battered about for the shortcomings that got us into this mess, they have gone more than the extra mile to work out a possible resolution of this situation. I'm not privy to all of the information. But I think it's safe to say that Clarkstown would not be a reality but for the DEC. The DEC told us that they would assist us in trying to find a site and, as far as I'm concerned, they have done that. The DEC is trying to clean up the site. It's not trying to create another problem, if nothing else. But I think some peoples' jobs may be on the line if there's a screw-up. I may be more confident that the DEC will do its job than Mr. Festa. I don't know, but hope springs eternal.

Village Manager Hess: I would also like to add to your question. If you look at point "E"...this is copies of inspection reports. This has to do with the in-going and outgoing of the stuff, and you'll see a long list of things that are required on a daily basis. So, to answer your question about who's inspecting, there's a requirement of daily inspection of the things that are coming in.

Mr. Kornfeld: At the last meeting when someone asked why Falcon was chosen in the first place rather than some of the better-known companies, it turned out that it was because they had a super-low bid. Their bid was so far below anyone else's that it was the only one...I guess the owner felt that...

Mayor Kinnally: I don't think that was the case. There were discussions with some of the larger waste haulers -- BFI Waste Management -- they did not want anything to do with this site. If they were to do anything on the site it was to operate a waste transfer station. We didn't want a waste transfer station. There was another entity that Phil brought down there -- Chambers -- and we said no. The big operators don't want a cleanup operation. They want a transfer station operation. You're really talking about someone who's going to do separation, mixing, and carting. That's it, under a cleanup order. You don't need someone from M.I.T. to do this stuff. You need somebody responsible. I don't have enough right now to say that Festa's irresponsible. Their performance is going to go a long way. If they fall down on the job the availability of Clarkstown is not going to be in the equation. So, it's in everybody's interest that Clarkstown takes this debris and that it qualifies.

Mr. Kornfeld: The issue has come up over and over of having more material brought on the site and mixing it here, basically using it as a processing station. Is there really no realistic way of doing that off-site somewhere?

Mayor Kinnally: Let me pursue off-site at Clarkstown. No, they will not allow processing to take place on-site. My understanding, and Mr. Conlan can correct me, is that the DEC will not allow this material off-site in its present condition. Somebody is going to have to have a permit to take this material in. This is not going to wander the face of the earth. They're not going to allow it. Am I right, Mr. Conlan?

Mr. Conlan: Basically, the material as it sits right now can go to a number of locations in whole. It can go to a municipal solid waste landfill, at a cost which will run somewhere in the vicinity of \$3-4 million, for a total cleanup of Building 15. It can go to a transfer facility which is authorized to accept this material, like Star Recycling, who will process it on-site and then move it to another location like Clarkstown landfill. The problem is, now you've added loading the material twice, and processing the material in another location. That equates to about \$8 per cubic yard, plus transport of the material to Brooklyn and then back down to Clarkstown or wherever else, and it's another \$4 per cubic yard. Now you're adding \$10 to \$12 per cubic yard additional on 60,000 or 80,000 cubic yards of waste. You're adding \$750,000 in costs for cleanup.

While there are other locations logistically, financially, and control-wise, I would prefer that the material be processed there. We utilize what's on-site, and the other problems that are on-site get taken care of at the same time in order to solve the whole problem at the facility globally. If there are buildings that need to be taken down we crush up the brick in relation to those buildings, combine it with material...less material has to come on, thus, taking care of those problems...removing, basically dilapidated buildings off the site...and making the facility in the future more usable.

Mr. Kornfeld: Based on that, I don't understand why it's particularly in our interest to try to save that money for the owner of the property. That's not money that would be coming out of our pockets, is it?

Mayor Kinnally: It is not. We're not putting any money out. However, under that scenario Clarkstown wouldn't be available.

Mr. Kornfeld: If they processed it in Brooklyn and then moved it to Clarkstown?

Mayor Kinnally: That assumes Star would take it, but it wouldn't be available because of the logistics. They've got a very, very short timetable over there, and if you had to go through the logistics of qualifying this material via Star, Clarkstown would say, enough, we've got other material. We don't need this headache. Part of this is being driven by the availability of the site at Clarkstown. The contractor at Clarkstown doesn't want to add to its cost, or think down its profit margin, by delaying. They have to get a guaranteed stream of this material. It'll either come from Hastings, or somewhere else. There is plenty of material out there that they can acquire.

Al Mesnikoff, 35 Scenic Drive: I remember being at the Farragut School when members of the Board were talking about playing poker with the developer because they didn't want to reveal their cards. It seems to me we lost all the way in playing poker with those people. I hope that we're not playing poker again in terms of not revealing openly. That may be better than playing poker, since we don't appear to be very good poker players.

Mayor Kinnally: The poker analogy may be apt to a certain extent, but what the people want us to do in revealing our cards is akin to strip poker on our part. I don't think it's the wisest thing in the world, especially since we're televising this.

Mr. Mesnikoff: Falcon was paid \$25,000 to remove 1,000 yards. So that if you multiply \$25,000 by 80 you come up with \$2 million. That's the cost that he estimates. He also said that he had to make \$10,00 a week when he was here...

Mayor Kinnally: That's a different proposal. That was a combination. Part of the

\$10,000 that he needed in profit was coming from operating a transfer station. Out of those proceeds he was going to process some of the C&D debris to take it out of there. Those numbers, and that approach, aren't here anymore. We're not considering that.

Mr. Mesnikoff: The estimated cost was \$2 million to do it, and your judgment is that for \$2 million this man can do this and make a profit.

Mayor Kinnally: No. It doesn't even enter into our thinking.

Mr. Mesnikoff: But those are the numbers.

Mayor Kinnally: I don't know what the numbers are. It doesn't really matter to us what the economics are because the owners have to strike their deal with the landfill, with the truckers, and with the processors. Whatever it costs the owners to clean this up, they have to absorb.

Mr. Mesnikoff: But they've presented some numbers. Are they realistic at all in terms of their capacity?

Mayor Kinnally: They haven't presented the numbers to us, and it doesn't matter. Why does it matter to the Village how much it's going to cost the owners to clean up the site?

Mr. Mesnikoff: Whether these people are responsible in making their estimates.

Mayor Kinnally: I don't know the deal that the owners have with Falcon. From our perspective and from the state's perspective, God love all of them if they can strike a good deal. At the end of the day, regardless of the money that anybody gets or pays, the junk has to be out of there.

Mr. Mesnikoff: But I think you have to look at whether these people are presenting something - - as a businessman -- whether they're realistic in terms of being able to carry it out using their own numbers, at \$25,000 for 1,000 yards.

Mayor Kinnally: Is the question, are they prudent? I don't know.

Mr. Mesnikoff: To look at whether they're reliable and realistic as to whether they can actually do this, rather than grasping at straws. They're going to bring in 40,000 yards in order to mix it. They're going to bring in 5,000 and take out 10,000. Is that the understanding?

Mayor Kinnally: No. It depends on the yield. Whatever they sift out of there is going out automatically, and they have to come to a certain composition. I don't know how much they're going to have to bring in because I don't know what the composition of the material being brought in is, whether it's going to be dirt, or rock, or concrete. But, they may not have to bring in everything if they're going to knock down the buildings on-site. If they knock down those

buildings it adds to their mix, and gets rid of that debris forever. It's going to go off-site whether it's part of this mix, or some future date.

Mr. Mesnikoff: And the DEC is going to be responsible for their plans, and what they're going to bring in, and all of that. Is that correct?

Mayor Kinnally: So they've said.

Mr. Mesnikoff: You mention that there were new investors. Could you say something about who these new investors are?

Mayor Kinnally: I can't, because I don't really know at this point.

Mr. Mesnikoff: This was an expensive site to begin with, and it was going to take \$15 million to clean it up or \$18 million to clean it up, from all of the PCB's and whatever else was there. So it's now going to be a much more expensive site. Is there any understanding or discussion about what they are going to require of the Village in terms of zoning and permissions in order to justify this highly speculative investment by these new investors, for them to feel that they have some right to expect a return from what they're doing?

Mayor Kinnally: None whatsoever.

Mr. Mesnikoff: Are these people...they're not crazy. There's something that has to be involved with the size of the project that's going to return them this profit in order to make this kind of investment.

Mayor Kinnally: I don't know, but they can't do anything with the site until it's cleaned up. By law they have to clean it up.

Mr. Mesnikoff: Do you know who these investors are or what their motivation is?

Mayor Kinnally: No, I have no idea. I assume like any other investor their motivation is to make money, but I don't know. There has been no discussion at all with them about the development of this site. There will be no quid pro quo, I guarantee you.

Lyn Osborne, 17 Villard: Is this proposal able to be seen by the public?

Mayor Kinnally: Yes, it's right on the table.

Ms. Osborne: I have an order of consent, but I don't have anything from Falcon, do I?

Mayor Kinnally: Falcon had a proposal to the owners, but we're not party to that.

Ms. Osborne: We don't know from Falcon anything about how many trucks are going to come through?

Mayor Kinnally: There has been some discussion, and I'm not positive of the mix here. I think Falcon said to me on Saturday that he's going to have eight trucks making four round trips a day, or vice versa -- I think it's eight and four -- of the material going out of 15, the processed material, and cleanfill coming in. In addition to that, the wood and the municipal solid waste will be going out. Anything that cannot go to Clarkstown must be taken off-site to other approved facilities.

Ms. Osborne: I feel that if I'm going to have this big an operation in my Village, as an official I'd want to know more about it than just this is somebody else's agreement.

Mayor Kinnally: No, that's not the case. We've had discussions about the potential truck traffic: about the size of the trucks, the number of trips, when the trucks would come in come out of the Village, the noise, the placement of the equipment.

Ms. Osborne: Has there been any investigation since last March of Falcon and how reputable his business is?

Mayor Kinnally: No. Not on my part.

Ms. Osborne: You've done no investigation of this gentleman whatsoever, even though his proposal in March was inadequate?

Mayor Kinnally: No. It wasn't necessarily his proposal. I believe the applicant was Phil Eisenberg. Maybe it was him. But, no, I haven't looked any further into Mr. Festa and Falcon other than the investigation we did back then. As I said, we made calls to various sites, spoke to people at DEC, had D&B information done.

Ms. Osborne: Can you tell me how this decision is going to be made? Do we have a decision to make as to whether this will go ahead, or do we not?

Mayor Kinnally: Yes. We'll discuss it tonight when we close the question and answer period.

Ms. Osborne: Will this be a public discussion?

Mayor Kinnally: Of course it will.

Ms. Osborne: Will there be a vote?

Mayor Kinnally: Yes, there will.

Ms. Osborne: I just found out about this, I think, Sunday night, and it was difficult to find out...and there's been nothing published. When I came into the Village Hall there wasn't even an agenda on the wall downstairs.

Village Manager Hess: That's not true.

Ms. Osborne: Well, it is true.

Mayor Kinnally: We put this on Channel 16 on Friday and it was given out to the newspapers. Word of mouth got it out.

Ms. Osborne: I don't think that's enough.

Mayor Kinnally: I'm not disagreeing with you. But we have deadlines. We had a good turnout tonight. A lot of people have spoken to each of us individually, phone calls, stopping us in the Village. It's all that we have, unfortunately. The document that we discussed this evening I didn't get until Sunday afternoon, so we're all under some short time frame. As I said earlier, I apologize to everyone but that's what we have to deal with at this point.

Ms. Osborne: My father was a salesman. He was a very good salesman. He's in a salesman hall of fame in Boston. One of the things he would never do is to buy under pressure, because it's unwise. I'm very concerned about buying this under pressure.

Ms. Merton: We just heard Mr. Conlan tell us that the material could be processed off-site and that we don't have to necessarily even bring cleanfill in. We could require them to use the material that is there, which would eliminate a lot of monitoring costs.

Mayor Kinnally: They have said that *they* want to use the material on-site. It's not in their financial interest to bring material in from off-site. If they can use what's on-site they will.

Ms. Merton: I'm not really interested in what's in their financial interest, although we seem to be very concerned about that. The amount of additional costs that Mr. Conlan cited that would be added if, in fact, the material was processed off-site and was taken away...and, as you said, it's really not our concern where it goes. We shouldn't care about that. He mentioned a figure of about three-quarters-of-a-million dollars in additional costs. That's still considerably less than the property owes us in back taxes, for example. I don't see why we are accepting anything that is not in our interest in order to save them money.

In terms of the failure to do any further investigation of Festa and Falcon: In February I asked about the following information; at that time Festa was described as having been in business for over ten years in the New York metropolitan area. I had found out that Falcon was incorporated in 1993. I ask the question: Under what other names has Mr. Festa done business? For whom

has he worked? Do we have a list of his previous customers? Where is the list of references that was allegedly provided to the DEC, which was never made publicly available? Are there annual reports for Falcon? I had requested those. Where are its balance sheets, particularly outstanding debt? We don't know anything about whether Falcon owes a lot of money already to anybody else. Has Falcon ever been prosecuted for anything? Has Falcon agreed to make the Village of Hastings a priority secured creditor in the event of bankruptcy? At that time, we were talking about a bond of \$250,000, not a bond of \$30,000. It was grossly inadequate at that point.

At that time, on a plan that was going to take five years, the truck traffic was described...and I want to be precise here...as in excess of 32 round-trips per day, from 6 a.m. to 10 p.m. on work days and half-days on Saturdays. Now, if it was going to take five years...I understand at that point there was also an issue of more being brought in...but if that level of traffic was necessary over a five-year period, what level of traffic can we assume would be necessary to clean this up, or to get it out of here by December of 1997, the target date? When you talk inspection and monitoring I don't think, when you responded to Mr. Kornfeld, that you adequately explained how it is. Yes, you said, it's supposed to be clean concrete fill -- the stuff that's coming in -- but is visual inspection alone...

[change sides of meeting tape - lost words]

...opening each and every truck and investigating it. That's a very expensive proposition itself. If we took out of this equation -- took out of this plan -- the importation of additional material, that would relieve a lot of the fears of many of us. If all we were talking about is what Mr. Conlan had originally described, and described as having occurred this summer...with the material being taken out...and I think you just said a little while ago that only about 45 cubic yards of cleanfill had been brought in over the course of that \$25,000 worth of work, is that right?

Mayor Kinnally: What is the point?

Ms. Merton: That you could make a counter-proposal which does not involve any material coming in. Because material coming in is what got us into trouble in the first place.

Mayor Kinnally: I agree. Without the material coming in Clarkstown is not in the picture.

Ms. Merton: Unless the stuff is taken off-site, mixed, and taken to Clarkstown.

Mayor Kinnally: No. Clarkstown will not be in the picture if this material has to be taken off-site. First of all, we don't have a processor who's willing to do it at this time. Secondly, there's no guarantee that the timing is going to be proper. And thirdly, Clarkstown has indicated that it must be done now, not later, and if there's any indication that there is going to be a delay

in the setup of who's going to do the processing and where it's going to be done Clarkstown is going to say, Forget about it...we'll get the debris elsewhere to close this site.

Ms. Merton: Can't all of those issues be resolved by the simple addition of money? If the defendants paid enough they could get that done.

Mayor Kinnally: Maybe. But if Clarkstown gets a whiff that there's a problem here they will walk away from this deal. They don't need the Hastings debris.

Ms. Merton: Oh, I understand that.

Mayor Kinnally: I'm not looking at it financially from the owners. I could care less how much money they have to pay to get this stuff out of there.

Ms. Merton: So why don't you go in on Thursday morning and say to the Judge, Here's the deal Your Honor; this will get this resolved. Lay it out to him. You talk about keeping our cards off the table. What do we have to hide, Lee? It's clear what we want -- what would be in our best interest. We can just put it out there. There're no secrets here that Mr. Eisenberg isn't capable of figuring out. We want all our expenses paid, including our attorneys' fees, and we want...

Mayor Kinnally: I understand. We've been through this.

Ms. Merton: I still haven't heard you say why we can't put that option out there.

Mayor Kinnally: I guess in the end it's my choice -- it's my gut feeling -- that it's not proper to put these options...or discuss this at length...and tell everybody what our negotiating position is going to be. We will take everything into consideration. There are many, many open items that have to be discussed, not only with the owners but also with the DEC and the state. Remember, we're not the only party here.

In the end, this is the DEC's ball game. The DEC is committed to getting this site closed. There are open violations, and the DEC has said to the owners, You must remediate this site. So we don't have a veto on any of this, although as Mr. Conlan said, he has given great deference to the Village. Our voice will continue to be heard.

Mr. Apel: Mr. Murphy, when the Judge made his decision of, apparently, holding the Fuccis to come up with \$150,000 was he aware that there was another party who was secretary of Age Carting?

Deputy Village Attorney Murphy: Thomas Abrosio (sp?).

Mayor Kinnally: We've been through this already.

Mr. Apel: We have, but I haven't gotten an answer. Was he aware?

Deputy Village Attorney Murphy: We're aware of all the stockholders and shareholders.

Mr. Bogart: Apparently there are two streams of material that are going to flow out of this site if this is approved. One will go to Clarkstown and the other will go somewhere else. Do we have any idea of how much volume we're talking about for the other location, and is it mandatory under the terms that we're talking about for that to definitely move off-site?

Mayor Kinnally: Yes. I mentioned the amount of municipal solid waste that could be on the site at any one time, and that was up to 200 cubic yards. The wood, all of this stuff has to get off-site. They cannot store the separated debris on-site. That has to go out. It may go to multiple sites, depending on the type of material. For instance, if it's wood that's gone through the tub grinder that has been chipped up, they may be able to take it to a municipal recovery site to burn it. I don't know all of the sites that they're going to, but they have to find those sites and they have to be accounted for and be acceptable to the DEC

Mr. Bogart: Will there be consideration here in the discussion and the vote that goes on later in terms of modifying this document that we looked at tonight, or is it basically going to be a "yes/no" vote?

Mayor Kinnally: Tonight it's going to be an authorization. I'd like an authorization for the Village Attorney to pursue the settlement in principle, subject to negotiating a number of items.

Mr. Bogart: So, nothing in this document is going to be cast in stone as a result of the discussion tonight?

Mayor Kinnally: It can't be because we don't know, at this point, what the owners' counter-proposal is, or reaction. I've said we haven't heard from the owners. Let me just clarify. As far as I know, the DEC hasn't. But, Mr. Conlan has not been in his office today. It could very well be there is something sitting on his desk. But, as far as we know, I don't know what their position is at this point.

Mr. Bogart: I would just like to urge the Board of Trustees to consider the fact that there is no teeth, to speak of, in this document, and urge you to put some teeth in the document. We all want to see the waterfront cleaned up, and we sat with that down there for quite awhile. But, one of the reasons we have is because nothing has really forced the hand of the owner. We don't really know the economics, based on the discussion here, that makes it doable for him and Falcon to actually remove this. So, there's a possibility...and we have people who have not acted in good faith...there's a possibility that it may, in fact, not get done.

There needs to be an incentive other than DEC, other than a judge who hasn't really moved for seven months. There needs to be an independent mechanism set up so that the owner, who doesn't pay his taxes, and Falcon, who bounces checks, will feel some pain if they don't perform properly. All of this is very nice in principle. But, we're spinning our wheels if we don't set up a mechanism that makes it work. So, I'd urge you to put that in the document.

Mr. Kornfeld: Any agreement that the Village makes should include the right for us to require the owner to terminate the contractor if we believe that he's not performing properly. If we believe that something is going wrong I don't know what authority we have to affect it. But if we had the right to insist that he terminate the contract I think that would be helpful.

Mayor Kinnally: The DEC will come to that conclusion at the same time, and they're going to be looking long and hard at what the performance is down there. Remember, Clarkstown will only take this material if it conforms to their specs, and they have to hit certain minimum requirements or there's going to be penalties imposed. I don't think the DEC is going to be absent down there. Our contention at this point is that we're going to have full-time monitoring, and we'll know what's happening when it's happening.

Mr. Kornfeld: I'm thinking also of dust and noise.

Mayor Kinnally: Solely within the DEC's responsibility. If there's noise or dust I think we're going to have about 8,000 monitors in the Village helping us out. We'll have shovel-to-shovel coverage down there.

Mr. Tuccillo: It sounds to me like the Village Board is going to vote on whether to authorize the Village Attorney to negotiate this and sign off on it. It sounds like this would be the last vote and from there on the Village Attorney would negotiate and then sign it. Will there be another vote after this to approve the final settlement?

Mayor Kinnally: I don't really know. A lot is going to depend on what's happened with the owners, and what's happened with the court. Obviously, if there's an appreciable change in anything, this Board will have to consider it. I've said all the time that any changes like this we're going to make public. It may be that it's last-minute. We didn't find out about it until the last minute. The first time this Board met about this was Friday afternoon. But if there is an appreciable change this community will know about it.

Mr. Tuccillo: I would urge that there be a final vote once the plan is approved, that it not be just carte blanche given to the Village Attorney, but that the Village Board have an opportunity once it's settled and on the table to vote as a Board on whether to accept it.

Ms. Merton: Two questions: When would I be able to obtain the records I requested about inspection and monitoring with regard to Falcon's operation this Summer?

Mayor Kinnally: As soon as we can find out the information. As soon as we go through our files.

Ms. Merton: One might have thought it would have been here, but okay.

Mayor Kinnally: We had materials for you and you didn't pick them up today.

Ms. Merton: The only thing you had for me was that proposal. That was of very little interest.

Mayor Kinnally: I don't want to argue. What's the second question?

Ms. Merton: We've been coming here many months and this is the first time we've had this marvelous gallery of lurid photographs. Whose decision was it to put up these photographs?

Village Manager Hess: I put up the photographs.

Mayor Kinnally: These photographs have been shown before.

Village Manager Hess: And been brought to the Court.

Sal Gargiulo, 89 Burnside Drive: I was down there a few times, and there is a very dangerous situation with the building now. If you go in there -- I mean, me being a certified landfill operating engineer -- with a heavy piece of equipment will only damage the sides and maybe fall in. So, there's a liability thing there, number one. I had a few suggestions by bringing in conveyors and taking it out in the open and then putting it into trucks.

Mayor Kinnally: None of the processing is going to be allowed outside of Building 15. It will be done inside with front-end loaders.

Mr. Gargiulo: I know, but you're putting pressure on both sides of that brick building. There's a liability thing going on.

Mayor Kinnally: One of the problems is that the material is so compacted that you're going to have to scoop it out.

Mr. Gargiulo: You could scoop it out, but it's still a dangerous situation for someone to go in.

Mayor Kinnally: The proposal isn't a firm and fixed proposal. The DEC, the A.G.'s office, and the good judge want some reaction from the Board to the proposal. Speaking for myself, it doesn't answer all the questions that we have, in large part because it has not been fully negotiated. One of the glaring holes in the proposal is the issue of monitoring. The Village's

position is that we want full monitoring. All hours of operation are to have a monitor, reportable to the Board and to the state and paid for by the owners. There are certain other things that have to be looked into, items of logistics, etc., in part because the contractor's plan hasn't been given to us yet, either. My reading of the situation is that the court is looking for some type of authorization, some type of an agreement in principle, by the Village Board in reaction to the proposal that we have so far.

Trustee Keaney: The number one goal is that the debris has to go. It's hindering our cleanup of the soil. It's hindering a return of the property to productive use. Getting it out is going to cause short-term pain to the Village in terms of truck traffic up our hills, but it's got to go out sooner or later. The longer it stays there...we go through another fire season, we're really tempting fate...like the fires we had last year and the good luck that we had this year in terms of the weather.

I'm very wary of bringing anything on the site. The concerns with mixing stuff off-site with what's there, apart from the truck trips, are noise and the fear of introducing something to the stuff that's there that shouldn't be there. Those are legitimate concerns. The parameters we're dealing with in this proposed fluid negotiation document have controls. It has mitigation on these points, especially if we get a full-time physical monitor, which I think is important. It's not perfect, but it's good enough, as I see it, to move on, in view of the overriding goal that we all share of getting rid of the debris.

Trustee Winn: I agree with Trustee Keaney, and I don't think there's anybody in this room that doesn't agree with him.

After the discussion tonight we've come up with a lot of information. I had a whole list of questions, and now I have another whole list of questions. Someone made a comment tonight about us not having the chance to control anything that had gone on there up until this point. I think now we have the opportunity to try to control the solution to it. I don't want anybody to think that comments have been made here tonight have fallen on any deaf ears because I don't believe they have, whether it be the Board's ears or your neighbors' ears or DEC ears or the Department of Health or anybody else's.

Getting the stuff off the waterfront is our first priority and I don't think anybody will disagree with that. It's going to be a problem working out how to go about doing it, but if people have to make adjustments for a short period of time...it's not a five-years span like the transfer station was...then maybe we just have to bite the bullet and do that. I think that authorizing Brian to go into further negotiations on this is a very smart move on our part. I have to commend the DEC because maybe up until a short while ago they didn't act in good faith when it came to the Village. But, Mr. Conlan, Mr. Lent, everybody that we've been dealing with now does have the Village at heart. I have to believe that. I see some people snickering. Snicker away, but that's something that I believe. I just hope that we can go forward with this and get it out of there.

Trustee DeVita: I'm going to say a lot of the same things: that we all agree that the debris needs to...and Building 15 is a serious situation. It needs remediation and it needs it soon. The draft order on consent provides for cleanup in about a-year-and-a-half, and that's great that it can be removed so quickly. It's helpful to utilize the other debris that's on-site for processing and, therefore, remediating some of the other areas besides Building 15.

We have tremendous support from other agencies outside the Village -- the DEC especially -- in support of this order on consent, and in promise of monitoring the cleanup. I realize that the remediation does create tremendous, serious problems, and is an insult to the people of Hastings and also in neighboring communities, unfortunately: the truck traffic, noise, dust, wear-and-tear on our downtown, and just the general safety of our Village, our people. This situation, however, must be remediated, and we, as a Village, should be part of the solution.

Trustee Holdstein: I have so much I'd like to say, but I'm going to try to curtail some of my comments because I'm very frustrated about a lot of what I heard tonight. When I ran six months ago to become a Trustee, one of the points I made was that I was not an attorney, but rather a businessman. I heard one gentleman, Tom Brown, talk about appeal, appeal, appeal. I'm tired of this thing dragging through the courts. I heard people want to talk, and give credit and credibility to certain forms of adjudication, i.e. Judge Coppola; and yet, he sat on this thing for seven months and nothing's happened. It's enough, already with the courts. We've got to get this stuff off-site. The same gentleman was concerned about Mr. Tuccillo's questions about barging and processing off-site. Barging is not an option -- not if we're going to do this on a timely basis. I think this is a terrible pill to swallow. I think the truck traffic is going to be horrible. I have three young children. I'm in the Village every Saturday. I don't like it any more than anybody else. It is a tough pill to swallow, but it's a window of opportunity to get rid of the stuff and that's our primary function.

Would I like to see some of the owners of the waterfront, and some of the people who put it there, tarred and feathered at V.F.W. Park? You bet I would. But it's not going to solve the problem of getting it off the waterfront, and that's what we have to do.

I would also like the Village to stop and think, and put the shoe on the other foot. Suppose Great Neck, Long Island had this problem, and we had a landfill site in Hastings to fill. Would we want it processed here? I think you have to think about that. There's a lot of things we could have done, should have done; this never should have been there. But it's there, it needs to go, and you have to realize that we can't put our troubles and our problems and our waste in somebody else's lap to be processed. We're stuck with it. But, we've got a plan here. We've got the DEC with what I think is some teeth. There're questions about Falcon, but the fact is the document clearly says it's the owners of the property's responsibility to adhere to the guidelines when they enjoin and sign this document. So, the question that Ken raised earlier about, Are we signing off on Thursday? No, we had to see where they're going to come back. This is a negotiation, but they're the ones responsible, not Falcon. If Falcon isn't meeting the 9,000 yards

every three months, the DEC is going to tell the owners of the property, Find somebody else to fill this property.

To run this thing through the courts and continue to delay when we have this window of opportunity...you know, the argument about money, and who pays. Yes, Phil Eisenberg should pay his taxes. Yes, he should maybe pay for more of this. But it's not going to make it go away any faster. I want it off the site. We have a chance to get it off in a year and three months and I think we should be doing that. If six months into the plan there's a problem, we're six months down the road to removing half of it. But to not take this opportunity now, and to not sit on the DEC and be as attentive as we can, I think is a grave mistake, based on the numbers of people I've spoken to in this Village who I think uniformly believe that we should get it off.

I think we should commend Mr. Conlan and Mr. Lent, and Mr. Cahill, who left a little while ago, and I think they're going to be very attentive to this thing. I happen to be a Democrat and I did not vote for Governor Pataki, but he's taken an interest. Mr. Cahill is a Pataki appointment. Pataki is up for election in November of '98, and if it changes hands again we lose the support of Governor Pataki through Mr. Cahill, Mr. Conlan, et. al. It's another factor in moving on this. We've got it now. We've got it in our hands, and if we drop the ball it's a big mistake.

I am absolutely in favor of pursuing this thing. Again, it does not minimize that there are problems. We discussed in Executive Session the trucking hours, the monitoring, a lot of the issues that were raised tonight. I want our police force all over those trucks to make sure they adhere to the speed limit in this Village. I want tickets written left and right to make sure those trucks aren't speeding down Warburton and down Broadway. But, we can't wait any longer. We can't drag this through the courts any longer. It doesn't remediate the problem. I'm tired of the court system. My apologies to all of you who are attorneys, but when I see situations like Polly Klass' killer, who gets 15 years worth of appeals. I'm sick of the court system because it doesn't get things done fast enough. We can't help our tax structure. We can't develop this property until we clean this site. This is a possibility, a proposal -- a solid one, with DEC backing -- and it's primarily their call. Let's not forget that.

I think we should move on this, and move on it now. In a year from now that stuff is gone, and we can start dealing with the underground contaminants. I can't, in all good conscience as a representative of this Village, not try to pursue solving this problem now.

Mayor Kinnally: The discussion that we had on Friday with the DEC, and with our own counsel and Mr. Hess, was really a microcosm of what he heard tonight. There was a tremendous amount of frustration on the part of everybody as to having Festa back involved, and the timing, and some of the questions that we raised -- many of the same questions that you raised tonight. But I think there is movement. There's great potential for this problem being taken care. We don't have all of the answers. But if we go back a year and see where we were with the burning debris and the state just really getting involved, we've come a long way in a

year. There were some half-baked proposals that were floated by the owners. Finally, they have seen what the issue is, and that is something with no strings getting that stuff off the waterfront.

Trustee DeVita: I would just like to take this opportunity to thank you, Mayor, for the way you handled this meeting. I thought it went well.

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

That the Village Attorney be authorized to advise the Supreme Court Justice, Honorable Matthew Coppola, that the Board of Trustees of the Village of Hastings-on-Hudson agrees in principle to the outline of the Order on Consent considered at the Board Meeting on October 1, 1996, subject to the further negotiation of an acceptable monitoring plan agreeable to all parties and other items such as traffic and scheduling.

ROLL CALL VOTE	AYE	NAY
Trustee James B. Keaney	X	
Trustee Elsa C. DeVita	X	
Trustee Michael Holdstein	X	
Trustee Susan J. Winn	X	
Mayor Wm. Lee Kinnally, Jr.	X	

ADJOURNMENT

On MOTION of Trustee Winn, SECONDED by Trustee Holdstein, with a voice vote of all in favor, Mayor Kinnally adjourned the meeting.