

VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
BOARD OF TRUSTEES
SPECIAL MEETING
OCTOBER 8, 1996

The Special Meeting of the Board of Trustees was held on Tuesday, October 8, 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.

BOARD DISCUSSION AND COMMENTS

1. Update on Waterfront

Mayor Kinnally: The limited agenda for tonight's meeting has to do with an update on the waterfront.

There has been some progress in the Mobil situation. Mobil has entered into a voluntary agreement with DEC to investigate the site and prepare a remedial investigation feasibility study. That's been under negotiation for awhile, and it certainly is a positive development. That has to do with the cleanup underground.

In addition, a meeting has been scheduled at Pace Law School for October 30 with the Village, ARCO, Pace, and the Riverkeeper to discuss progress with ARCO on their study to clean up their site. Following up on the discussion we had last week with the possibility of resolving all our disputes arising out of Building 15 and the other debris that is on-site above ground at the waterfront: there have been continued discussions with the court and with the parties. The situation remains fluid, so fluid that we're going to need a motion for an Executive Session to discuss this matter, not only with counsel but also with some of our co-plaintiffs and co-defendants. I'm not sure what I can report on because I'm not positive what, if any, progress has been made over the last few days. Suffice to say that the judge has called for yet another conference with counsel and the parties tomorrow morning at 10 o'clock in White Plains. So part of what we're going to do tonight is figure out exactly what our response to the court and to our adversaries will be tomorrow morning.

If I can have a motion for an Executive Session to discuss litigation, we'll be able to report, I hope, on something quite soon.

EXECUTIVE SESSION

On MOTION of Trustee Keaney, SECONDED by Trustee Winn, with a voice vote of all in favor, the Board agreed to an Executive Session to discuss litigation.

Mayor Kinnally: We'll stand in recess for about 15 or 20 minutes.

SPECIAL MEETING (CONTINUATION)

Mayor Kinnally: I call the Special Meeting back to order. We have just finished an Executive Session with counsel. We had a telephone call from the attorney from the Attorney General's office who has been representing the state in this action. Midway through the meeting, Greg Caito, the Director of Enforcement at DEC joined us. The situation is fluid and changes from hour to hour, but I'll try to bring everybody up to date on where we are and where we understand the owners are, and what might happen in the not too distant future. We hope to have some resolution of this tomorrow.

The Judge has called us all in for conference tomorrow. The Judge has said that the parties should negotiate long and hard. When we met last week, I explained that we were going to have a meeting with the Judge. That meeting took place. I was unable to attend. Trustee Keaney went in my stead, and spent all day in going through a number of proposals, counter-proposals, and a lot of what I call "the merry minuet" of negotiating. A lot of posturing went on. The owners dug their heels in. We dug ours in a little deeper, and they backed off on many, many of the points that they had. When I said that everybody was operating in good faith early on that day I think I may have spoken a little too soon. But the owners did come back to the table and saw what the reality was. I will go through, to the best that I can, the status of the order on consent that we reviewed last week.

The parties have been working on an agreement in principle and, in effect, we still have that agreement in principle. There has been some tinkering done to some of the terms and conditions, but essentially what we're talking about is the cleanup of whatever is in Building 15, and the cleanup of whatever is above ground on the entire site. My understanding is that the owners have come to us with a proposal that we give them a complete list of all outstanding violations on the site, and there will be a multi-media inspection done by DEC of the site to inventory everything that's been done. The owners will enter into a consent decree for everything on the site. I don't have an outside date for that. I just heard about this about forty-five minutes ago. But we are looking at a global settlement of all problems on the site above-ground with the owners, and in connection with what's below-ground.

I indicated earlier substantial progress. Mobil has signed off with DEC on testing and the preliminary assessment of the site. There is a meeting scheduled for the 30th at Pace with ARCO, the Riverkeeper, the Village, and other interested parties, to address their cleanup of the site. So there is more than a glimmer of hope. I really think we're going to see some rays of sunshine, and substantial progress on the waterfront.

Let me address the order on consent as it exists at the present time. Clarkstown has indicated that they will take the material. A lot of this is predicated on Clarkstown being available,

although the compliance by the owners with the various deadlines is not conditioned on Clarkstown being available. We still have access to the site. One of the negotiating ploys of the owners was that the Village was not to be a party to this, the Village was not to have access, and the Village was not to have any say in the cleanup. We told them in no uncertain terms that we're a party. Nothing's going to go on down there without us. They have backed away completely from that.

The penalties have been restructured somewhat. As I indicated last week, there were two different categories of penalties. That has been restructured. The penalties per day are starting at \$500, going up to \$2,500, notwithstanding the various penalties. No penalties shall be imposed during the first six months after the effective date, provided that at least 18,000 cubic yards of waste are removed from the building. The two different types of penalties have been consolidated into one. There will be a dismissal of the actions, with prejudice, following the removal of all the waste from Building 15. Nothing has changed there.

One of the concerns that was addressed was the status of our appeal in the Second Circuit. The language as it appears now is that within one week after the entry with the Clerk of the Court of this order on consent, the Village shall submit to the United States Court of Appeals in the Second Circuit documents necessary to dismiss our appeal. It does not dismiss the appeal in the Second Circuit, but only so much of the appeal that involved the Village of Hastings-on-Hudson. The issue will be moot in as much as the owners have agreed to clean up the site. The language of that is still being worked out. The attorneys are working on language that is acceptable to them, and then we have to pass it by the Clerk of the Court and see exactly what type of paperwork the Clerk will want.

The compliance requirements -- what we had called the "cleanfill" -- shall not exceed 2,000 cubic yards at any time. That debris is to be brought into Building 19. If there is a source of this cleanfill which is readily available, or if Clarkstown needed quicker processing and more cleanfill had to be brought in, that would have to get DEC permission. One of the concerns was that there would be sufficient bonding to cover the removal of that debris. Bond was to be posted for that cleanfill: \$15 per cubic yard. That is not addressed in the agreement that we are considering. We raised this this evening with the state. The state indicated that part of their agreement in the future to allow anything in excess of 2,000 cubic yards of clean fill on the site would be sufficient bonding to cover the removal of that debris in the event it did not go out in the mix.

Municipal solid waste cannot exceed 200 cubic yards at any time, and that does not apply to separated non-municipal solid waste such as wood, metal, newspapers, tires, and recyclables. This is a clarification. They cannot now store more than 250 cubic yards of waste outside Building 15 at any time. This is an increase of 50 yards.

There had been a provision in the prior draft dealing with removal of various unauthorized materials and/or liquid or solid waste, asbestos, etc. from the site that said that it had to be removed within 24 hours. This was reviewed by DEC, by the A.G., and also by the owners. There is a practical problem in removing it within 24 hours. Some of this debris, if it were to be brought on-site, could not be quickly brought off-site because it has to be segregated and labeled. Notification has to be given to the administrative agencies who have control over this. The provision has been changed to within such time period as required by law.

The Village has agreed to provide a container to be used for the removal of bundled newspapers. One of the complaints the owners made was that much of the debris in Building 15 had to do with newspapers that were picked up by Age Carting on behalf of the Village; therefore, they should not have to remove it. They were looking to us to bring us in as a party. What we said to them early on, and they finally agreed to, was that to the extent that you can segregate any clean bundled newspapers we will put a container there and we will get rid of them. We'll probably make money on them.

The schedule: All waste within Building 15 is to be removed from the site and transported to a legally authorized solid waste management facility by December 31, 1997. However, if the Town of Clarkstown is unwilling or unable to use all the processed waste from Building 15 the removal is to be completed by September 1, 1998. That previous date was June 30, so they're getting two more months out of it. The six-month extension is gone. There were a lot of conditions that the owners had placed on their ability to move things out in certain periods of time; how much money they would have to pay. We went back and forth on that; it's all out. They've got a drop-dead of September 1, 1998. If Clarkstown is in the market for this material, it's December 31, 1997.

Hours of operation have changed. They were 7 to 7. They are 6:30 to 7:30.

It's not here, but let me tell you what's happened with monitoring. We are getting \$30,000 up front to deal with the monitoring. The Village will retain the services of a monitor to protect our interests and to make sure that everything happens according to the plan. Obviously, \$30,000 isn't going to do it, especially if we have a situation where the clean-up extends to the outside of September 1, 1998. We have asked the judge for access to the Fucci money, and the judge said to make application for it. So instead of the Fucci money being used to remove the debris, the Fucci money will be used to pay for the monitoring on site. At the present time very little in the way of removal costs have been charged against the Fucci funds. Whatever is in the pipeline is de minimus, also. We are looking at the Fucci funds as being the source of the monitoring costs. In addition, the state has said that they will ensure that the money will never drop below \$30,000. We went into these negotiations insisting that the site be cleaned up, that it not cost us anything, and that we have full monitoring, and we're coming out with that.

My understanding is, and this is second- or third-hand, that the owners have agreed to all the terms and conditions that I just read off. The owners' representatives will be in court tomorrow morning. DEC, the A.G.'s office, and Mr. Hess and Mr. Murphy, on behalf of the Village, will be there. I can't be there. Trustee DeVita can be there. I would expect that the Judge is going to want to know exactly what the status is and, if possible, put something to bed.

Nothing's been signed. I'm sure there will be changes in some of the language. I'm not saying that any of the substantive provisions will change. But, as is usually the case, there are matters that are addressed in the quiet of everyone's study and they say it could be written better. I think there will be some give-and-take tonight and tomorrow on that issue.

Greg Caito, Director of Enforcement, DEC: I want to clarify a couple of things. For the first time, the order calls for the cleanup of the entire site. We went in seeking just Building 15. This action against the owners that the state brought, together with the Village, merely sought to hold them responsible for the waste, even though it was put there by the Fuccis. The judge granted our motion, and I think it's important to realize that now we have a settlement on the table where not just Building 15 gets taken care of but the entire 27 acre parcel.

Secondly, you have monitoring requirements independent of the State of New York. I understand there were some problems with the monitoring between the years 1989 and 1991. Not only does the Village have a monitor, but the state will provide a uniformed environmental conservation officer to go to the site at the times when the monitor cannot be there, in other words, at 1 or 2 o'clock in the morning, which is what we're worried about.

The third thing I'd like to bring up is the fact that the Clarkstown situation is very fluid. It's very close. I don't want to comment tonight. There are a lot of newspaper people here and I'm worried that that might interfere with the contract being finalized. But we feel very good about it; that if that happens, there will be an accelerated schedule, as you say, December 31, 1997.

There is no question what the state will do this time. I can't speak for what happened before, but I will tell you that the operation continues to be run out of Albany, that the matter will be handled by my office, that we offer to the Board and its members the opportunity to come here on a quarterly basis whenever you want us to brief you and keep you up to date: either myself, Mr. Conlan, or our technical people. The only way this gets resolved is if we work together as we did in the litigation and back each other up. I can make that commitment for the state tonight.

Mayor Kinnally: In the few years that we have been working closely with the state they have not wavered in their commitment and their support of the Village, not only in the litigation but, more importantly, in these efforts to get a global cleanup of the site. I want to thank you and everyone on your staff for their commitment.

Daniel Marin, 64 Amherst Drive: I have heard that the schedule for the cleanup will be accelerated if the Clarkstown Village Manager and his staff agrees to use the Clarkstown landfill as a deposit site by December 31. However, if that is not agreed to, which it probably will be, but if it is not by September 1, 1998, where would that waste end up?

Mayor Kinnally: We don't know. Some other facility that's authorized to accept this type of debris.

Vanessa Merton, 111 Pinecrest Drive: I think I'm correct that every change that's been made from the proposal as it was presented last week is favorable to the owners of the site. They have a longer period of time to do it. They can keep, if authorized, an additional amount of debris brought into the site. They do not have to remove unauthorized waste within 24 hours. I have gone over every provision that you mentioned, and I think they are not paying for all the monitoring. The monitoring if, indeed, the money's that's left...and the money that's left can't be more than \$125,000, isn't that right, since \$25,000 was paid out to Falcon already?

Mayor Kinnally: No, it wasn't. Let me back up for a second. I said that the monitoring and the removal would not cost the Village a dime. I said I don't care where the money comes from, but it's not going to cost the Village a dime. The Fucci funds were there to remove the debris from the site which, in effect, relieved the owners of paying for that removal. Those funds are not going to be available for the owners to remove debris. They're going to be available for us to monitor the site. So we have two funds for our monitoring: \$30,000 that's being put up by the state and by the owners, plus whatever remains in the Fucci fund.

Ms. Merton: We had entered into an agreement in July of this year. We signed an agreement that was filed with the court in which it was stated as fact that already Falcon had been paid \$25,000 from that \$150,000 fund. I don't know whether or not that's true, but that is what it states. Do you want me to show you the order? It stated that, Whereas \$25,000 has been paid...

Mayor Kinnally: I don't think that's the case.

Speaker: I believe the \$25,000 was already paid out by the owners.

Ms. Merton: It was specified in this order as being part of the \$150,000. Assume there's 150 to work with. So we have a total of \$180,000. What is your estimate is of how much monitoring that buys us: what kind of personnel, what kind of qualifications, during what hours, through what period of time?

Mayor Kinnally: Our understanding is that it will cost \$4,000 to \$5,000 a month for monitoring. That will buy us maybe 25 to 30 months of monitoring. This would be someone with an engineering background, or engineering-related; someone who would be responsible for

ensuring compliance on the site; someone who would be familiar with the type of debris that will be brought onto the site, the type of debris that should be leaving the site, the type of paperwork that should accompany that. And, to the extent that the monitor is not there, someone to cover all hours of operation on the site.

Ms. Merton: Six-thirty in the morning to 7:30 at night; 13 hours a day, five days a week.

Village Manager Hess: It's going to be a combination. DEC has indicated they will provide spot monitoring on the site. They also indicated the enforcement officer who would come at off hours, but remember that there are going to be people from Region 3 who are going to inspect during hours of operation. Although we are not required to as part of this agreement, the Village is also going to monitor. The Building Department, the Fire Inspector, etc. will also inspect.

Ms. Merton: That is a cost to us.

Village Manager Hess: We are looking for environmental engineering firm; a person who is going to be on-site for a number of those hours, probably 40 of the 72. I don't think it will be a consistent schedule. We may have a rotating schedule so that person comes in at different times.

Ms. Merton: The proposal that was released last week says on page two that 7,000 cubic yards have been removed from the site since December, 1995. In proposal number one it said that during November and December of 1995, 7,000 cubic yards were removed. In both places they said 7,000 cubic yards were removed; they just said it happened at different times. Where did that 7,000 cubic yards go, and what records do we have of any monitoring with respect to it? Have you had an opportunity to review the documentation and monitoring with respect to that?

Mayor Kinnally: I have not looked at it.

Village Manager Hess: The state has received those reports, as required by law.

Ms. Merton: Is it true, as reported in the Enterprise, that Clarkstown expects to save somewhere between \$250,000 and \$300,000 by taking this debris?

Mayor Kinnally: I don't know.

Ms. Merton: So, you've had no discussion with Clarkstown about that?

Mayor Kinnally: Yes, I have. My saying I don't know if they're going to save money doesn't mean I haven't had discussions with them. I said it last week: that I had to have discussions with the supervisor of the Town of Clarkstown and with their technical consultant, who is dealing directly with Ogden on the closure of this site.

Ms. Merton: And did those discussions leave you with the impression that this is going to be financially advantageous to Clarkstown?

Mayor Kinnally: No, it did not.

Ms. Merton: So that's different than what was reported?

Mayor Kinnally: No. They can report it. I didn't come away with the impression that it was going to be financially advantageous to the Town of Clarkstown.

Ms. Merton: Well, you're aware that that's what the reporter stated, that the mayor has said that they would save somewhere between \$250,000 and \$300,000 dollars? You weren't aware of that? You didn't read the article?

Mayor Kinnally: I read the article. I can't say I remember it right now.

Ms. Merton: I know one of the big concerns that's been expressed by the Board is that this is finally going to get us out of court. It's very interesting that we've now agreed to dismiss the Second Circuit appeal. That is another provision favorable to the owner that was added as a result of the negotiations between last week and this week. The penalties now are going to be \$500 the first 30 days per day, and then go up to a max of \$2,500. Those are approximately the same penalties that are available, for example, for daily violations of the Village's various safety and health and zoning ordinances: \$500 a day of continuing offenses, and some of the ECL violations, which the state is supposed to be responsible for enforcing. Those penalties, in the context of Village ordinances and state law, did not strike terror into the hearts of these defendants and, in fact, no reason they should have because they've never had to pay a dime of penalties up until this point, am I right?

Why do you feel so confident that we are not going to wind up back in court trying to enforce this agreement against these people exactly as we have been forced to go into court over the last several years against their colleagues? In terms of enforcement, I don't understand why you think this agreement gives us any advantage whatsoever over the legal rights and obligations that these people had under state law and the Village ordinances already, preexisting.

We spent over \$100,000, at least...maybe by now it's twice that...in trying to get something from these people so far in court actions. We were operating under a scheme of law that had penalties somewhat comparable to these penalties. What makes you, members of the Board, particularly the members of the Board that see this as the way out of court, so optimistic or confident that this will be more enforceable, and that they will be more responsible than in the past?

Mayor Kinnally: I can't crystal-ball it. But the Supreme Court has continuing jurisdiction over this. We don't have to try any of the issues. If there's a breach, it's right there in black and white what they're supposed to do. I can't guarantee you what the court is going to do in the future. But the penalties are there. Remember, the owners have agreed to move this stuff out.

Ms. Merton: How is it different from the contempt of court that we had pending against the Fuccis?

Mayor Kinnally: Because it was the Fuccis. These are the owners. You also have to look at this as one prong of a two-prong approach to the waterfront. In addition to the order on consent, there's a consent order directly with DEC providing for a schedule of the cleanup of the site and also for a fine of \$50,000, \$35,000 of which is being suspended but \$15,000 of which has to be paid immediately; and continuing monitoring and supervision of the site by DEC

I think there are teeth in these provisions. We started this long process to get the site cleaned up, and I see this as cleaning the site up. The future may show that my optimism is unfounded, but the time periods here and the availability of Clarkstown lead me to have some confidence that we're going to get this debris out of there.

Ms. Merton: Can you summarize and explain why it is that over the last week all of these developments have made the agreement a little bit more favorable for the owners? Can you point to anything that we got in exchange?

Trustee Keaney: We didn't have the monitoring last week. We had a document that was our document, and I think the Mayor announced that the other side hadn't commented on it. Well, they did comment on it, and what they commented on was very negative. I was there all day. I'm not saying I negotiated it because I didn't. But I can tell you that the owners were at a point where there was almost no consent order. We said we wanted certain things; they said you can't have them. At the end of the day, the document that we started out with, which they hadn't commented on when we spoke Tuesday night, turned out to be -- and we can see it tonight, and you may disagree -- a document that, I think, has teeth, as the Mayor said. It has a monitor, which is very important to us, that we're not paying for. The owners are paying for it or it's coming from the Fucci money. We're not.

Mr. Caito: Anyone that can spin this as favorable to the owners, in my mind, after what happened last week is not credible, and I'll tell you why. Last week's document said October 1, 1998, regardless of Clarkstown or not. This week's document says December, 1997 if Clarkstown's available, September 1, 1998 if Clarkstown's not available. This document addresses the entire 27 acre parcel; the other document did not. This document provides for monitoring; the other document did not. This document encompasses everything, and it provides for continuing court jurisdiction.

The Village and the state are not without a remedy. Judge Coppola is still there. We fought like crazy, and we are dealing with a judge who is a very nice man and I'm not here to criticize him. I'm just saying that he wanted a settlement and we provided the best settlement that we think is appropriate. This document is much stronger than the document last week -- stipulated penalties. It's a big issue, but these guys have a financial incentive to bring this thing to Clarkstown now. If they don't do it, they're stupid. They know that. We know that. They'll never have another opportunity. This stuff is going to where it makes the most financial sense. This is a seriously credible document compared to the last one I saw.

Mayor Kinnally: Let me bring us back to the negotiations that went on Tuesday, Wednesday, and Thursday. I don't know how much can ever be accomplished by pounding on the table and saying we're inflexible; we have to have it our way or there'll be no way at all. That's probably what would have happened. There is always give-and-take. I felt that we were going in and dealing from strength. Coming out, I feel the same way, and I'm not the least bit defensive about what we got out of this thing. I think it is a strong document. It helps the Village to get rid of this debris. We have a luxury this year of not having anything burning down there.

I'll give you a little insight into some of the positions that the owners were taking. When they started negotiating, or even before they came in to negotiate, they said let's talk about settling the tax case, too. We're going to tie in the cleanup of Building 15 to the tax case. We said absolutely, positively not. They made motions in front of the judge and they thought they were going to get a receptive hearing. I don't know if it ever went to the judge. I don't know if the judge ever heard of that particular position. Our position was, You want to try to link it? We're going to tell the judge there has been absolutely, positively no progress at all in reaching a settlement of this issue. The judge says he is fully ready, willing, and able to sign an order directing the cleanup of the site. We'll leave it in the judge's lap, at which point they suddenly changed their tune and they wanted to come back and talk because they did not want the judge to resolve their fate. They finally started talking seriously about removing the debris. I think in the end economics play a very, very big part in it, and they know this is a tremendous opportunity for them to get rid of this debris. Number one, it's probably a little cheaper elsewhere. But they've only got a 12- or 24-mile round trip to get the stuff over there. That has to help them also.

Whatever moved them to settle it certainly wasn't our folding our cards. We didn't get everything we wanted and sure, there are differences here. That's why I laid them on the table. I wanted to show everybody what the changes were. Do I think that it undermines the Village's position or in any way jeopardizes the Village's ability to get that site cleaned up? Not at all. I think its strength is our position. I think our outside date is a very strong date: September 1, 1998.

Ms. Merton: I have to correct what Mr. Caito said. The provision last week was not that it would be done by October 1, 1998...I'm reading directly from it...it was all waste located within Building 15 would be removed by June 30, 1998, and only if greater than 36,000 cubic yards of waste could be utilized as part of Clarkstown it would be done by December 31, 1997. Now we've changed that provision so only if the entire amount can be taken by Clarkstown, which is much more than the 36,000 cubic yards in last week's version... is it December 31; and if not, it's extended to October of 1998. So there's no conceivable way you can read that as being faster. This is only the version that was distributed to the public last Tuesday.

Mayor Kinnally: That's one of the problems: There are so many different versions and so many things that went back and forth, some of which never went to the other side. I said to people last week that this is something that had been generated, had been given to the other side, and we hadn't gotten any response to it. At any one particular time I'm sure people were talking about two or three different documents. Right now, this is what we have. Tomorrow, who knows?

Ms. Merton: You're saying this is a good deal. Whenever one is negotiating anything the question is, a good deal compared to what? Compared to what the alternative would be. I think the difficult thing for some of us to understand is what you just said a few moments ago. It seems quite clear that the alternative...rather than giving more and more concessions because these gentlemen said, no, we don't want what you propose...that doesn't surprise me that they said that. I think not only what you mentioned -- the Clarkstown and economic factors -- but possibly the pendency of the federal appeal had something to do with their willingness to think more about this.

It doesn't matter what was going on in their heads. The interesting thing is that we decided that we had to give more concessions and develop a plan that would be more acceptable to them rather than face the alternative of going back to the judge and saying that this is unreasonable. As a result, you're going to have to move forward with an order implementing the decision of last March.

Mayor Kinnally: I can't quibble with you. Yes, there are changes, whether you want to call them concessions or negotiations. When you get into discussions there is a give-and-take on both sides. I wasn't there for the full dynamic. Certainly, the other side put its cards on the table and made certain demands and they backed down from those demands. To me, the whole idea of telling the Village that the Village had no standing at all in developing a plan, in monitoring the plan, and ensuring any compliance with the plan...and if you want to talk about the removal of the debris, then you better come sit down at the table and talk about the resolution of the taxes. That, to me, set the tone for the negotiations. Then when we said that we'll go to the judge, then they came back in and talked.

Are there changes? Yes. Are there changes that benefit the owners? Yes, and that's why I said to everybody tonight, these are the changes. Yes, some of them benefit the owners. I absolutely do not feel that this particular document is any way adverse to the Village's position..

Village Manager Hess: Many of the comments from the Board members last week on previous plans that were put out by the owners were part of the negotiations. If you think back awhile, what they had brought to the table was a transfer station. What they brought to the table was a five-year removal plan, operating a C&D on the waterfront. Although the Village took a position that that wasn't appropriate, they presented that to the court and the judge was willing to consider it. You have to take a step back even further than last week's document on where the owners were starting from; not only the global settlement on taxes, but on having a transfer station on the waterfront and a five-year removal plan. They wanted until 2001 to get rid of the stuff.

Mayor Kinnally: When I was in front of the judge in June of '95 the judge said there's no way the owners can afford to remove this debris without operating a waste transfer station down there. They simply don't have the money. The Village has to get used to that. A transfer station was the only way to see ourselves out of this mess.

Ms. Merton: Part of the problem in understanding the great difference between that point and where we are now, and what appears to be the outcome, is that in terms of the difference..the way in which this is not a waste transfer station is quite limited in the sense that now they can bring in up to 2,000 cubic yards of stuff that's supposed to be cleanfill. Now there's another possibility of their being able to get permission from DEC to bring more than that, if necessary, under various circumstances, which are defined as well as can be defined in a document of this sort.

In terms of detailed information about the operation, the prior plan--which everybody on the Board characterized as laughable and nightmarish--is much more detailed than anything that was put out this past week about the actual operation.

Mayor Kinnally: It had to be, because they were making application with DEC This is fundamentally different.

Ms. Merton: I understand. I'm saying we had more detailed information about that proposal. I guess what you were saying is, What would have happened if we hadn't entered into this negotiation? Is it something worse, possibly?

Mayor Kinnally: Exactly. It could have been something worse. But we went into this saying that we were going to get the debris removed. Not removed at any cost. The owners finally said, we will remove the debris without a waste transfer station, we will put up the security, we

will clean up the rest of the site, and we will do so within a certain timetable. What's the worst that could happen? I don't know, but I haven't changed my outlook on this. We went to court to make sure that the owners cleaned up the site.

Ms. Merton: Which is what they had to do. They were not doing us any favors.

Mayor Kinnally: Nobody's doing us any favors. They're doing the right thing.

Ms. Merton: And it's cost us a lot of money to do that.

Mayor Kinnally: Yes, but let's look forward. I would much rather have control over the site and over the terms and conditions of the cleanup than have a judge impose terms and conditions on which we had no input. One of the fears is that there would be no monitoring and we'd be back in the same position. We got the monitoring without any cost to us.

Ms. Merton: We got some monitoring, but there is a concern that this does not really protect us in terms of the amount of hours it's going to cover. Four or five thousand dollars a month, as you said, is limited. If these folks behave as the Age Carting folks behaved...somehow that 80,000 cubic yards got down there despite the best efforts of our Village enforcement people.

Mayor Kinnally: All the work that's being done in removing the debris is being done as part of a DEC remediation. I think times have changed. The mere fact that we couldn't get someone to look at the operation five, six, seven years ago, and now we get counsel to DEC, head of enforcement of DEC and various attorneys here whenever we ask, indicates a substantial change on Albany's part to a problem that exists here. They know it's a serious problem. I can't tell you if in six months or a year they have a change of heart. But if their concern and their work with us over the last year is any indication, they're committed to getting the site cleaned up and off their agenda. They want it closed, they want it cleaned up, and they want to see the Village able to go forward and develop it. Because nothing is going to happen there until the debris on top and the problems below ground are taken care of. It's as simple as that.

Ms. Merton: Paragraph five of what was distributed last week has a sentence that I don't understand. In the proposed consent decree that was distributed last week the first sentence reads, "Any modifications to any schedule or requirements shall be made."

Mayor Kinnally: It's been taken out. It doesn't make any sense. It reads now, "No modification to this order on consent shall be effective unless and until the state, Village, and defendants, by their attorneys of record, approve such modification in writing and the court so orders such modification."

Ms. Merton: So now the defendants have to approve any modification. Last week it was just the state and the Village.

Mayor Kinnally: Yes, initially they had taken out the Village. I'm looking at their draft here. Now the defendants are in there. That's exactly right.

Ms. Merton: So they would have to approve any change in the schedule?

Mayor Kinnally: Yes, and the court has to so order it. The court wouldn't so order it without the parties signing off on it.

Ms. Merton: Whether or not we could have gotten it is a different question from what changes we agreed to. Am I correct that you said with paragraph seven that at least this has not changed: there will be no dismissal of the action until after the removal? Does it still say from all the waste from Building 15, or does it say all the waste on the site?

Mr. Caito: The Board has no jurisdiction over the entire site. The state does.

Ms. Merton: A few moments ago you said what a triumph it is that this now covers the removal of waste from the entire site.

Mayor Kinnally: I think he said it does. But as far as the dismissal of this action is concerned, once they take care of Building 15, which is what's before the Board, we will take care of the dismissal with prejudice. But 15 must be taken care of.

Ms. Merton: And this action is not only the Village's action but the State of New York's action, isn't it?

Mayor Kinnally: Yes, involving Building 15.

Ms. Merton: According to this provision, we will dismiss this action if Building 15 is cleaned up, technically even if all the waste were taken out and spread over the rest of the site.

Mayor Kinnally: No, you have to look at the whole document. The document says that the material has to be processed and removed from Building 15, to be placed in an approved landfill. It doesn't say you can take it and dump it outside the building.

Ms. Merton: My point is that we're going to dismiss this action, which means giving up the continuing jurisdiction, which is an important part of the faith you have in the enforceability of this action, right?

Mayor Kinnally: Once Building 15 has been cleaned up, then what we set out to do in this lawsuit has been taken care of.

Ms. Merton: Well, that's fine. But then let's not say this is so wonderful because it covers everything else on the site.

Mayor Kinnally: Because the settlement does, and I'll let Mr. Caito address that.

Mr. Caito: There'll be a separate order with the state covering the entire site. This court does not have jurisdiction over things outside Building 15. You don't need to understand the legalities here. There's a lot of pulling and stretching of the legalities. It's quite simple: the owners were held responsible by our motion with the Village. The owners did not put the waste there; the Fuccis did. The argument was made by us successfully that they sat back and created a public nuisance. We held them responsible. The Fuccis are bankrupt. The corporation has filed bankruptcy. The Judge has ordered them to pay \$150,000 into the Court. If we would pursue the Fuccis into bankruptcy court I can't tell you the result. The Fuccis have secreted their assets. We could fight that out for the next two to three years. Nothing is in their name; it's in other peoples' names. Who knows what they own? We have completed the financial review to the extent of the law that appeal allows. The owners, we got a judgement. So that's the alternative. A longer period of time, a short period of time. Some pain, yes, but removal nevertheless. The state gets the entire site cleaned up. The Village gets the entire site cleaned up.

Ms. Merton: I hope it's clear that nobody is suggesting we waste more time and money going after the Fuccis. That that was obviously a ridiculous strategy.

Carolyn Summers, 63 Ferndale Drive: I have a question about the penalties: No penalties for the first six months, you said, until some figure...was it 8,000 cubic yards?

Mayor Kinnally: I'll read it: "Notwithstanding the above, no penalties shall be imposed during the first six months after the effective date, provided that at least 18,000 cubic yards of waste are removed from Building 15 during that time."

Ms. Summers: The 2,000 cubic yards, and more by permission of DEC: what is the procedure for DEC to allow that? Will there be a public notice given that DEC is going to let them store more fill?

Mr. Caito: If Clarkstown takes this waste, because of the organic content of the waste, it needs to be meshed with so-called clean fill: dirt, rock, and other items. That gets mixed and processed and taken to Clarkstown. If Clarkstown says, we can take it sooner and faster, at an accelerated rate, they will necessarily need to bring more dirt and rock onto the site to mix with it. Only in that event, and once the agency has confirmation from Clarkstown in consultation with the

Village...and if the Village decides public comment is warranted we will certainly go along with whatever the Village wants. That is the genesis of that provision. Everyone should understand that if Clarkstown takes it, it needs to be mixed. It is not just a removal where they pick up the stuff and cart it away. In order for capping and closure provisions, the mixing is required to bring down the organic content; that's what our scientists have told us.

Ms. Summers: If Clarkstown were to accelerate their rate of acceptance of material wouldn't the operation need to expand its hours of operation? Conceivably it's operating at max going from 6:30 to 7:30. So if Clarkstown says we can take it faster, wouldn't they have to expand their hours of operation?

Mr. Caito: If they had to expand their operation they talked about doubling the equipment inside the building; instead of one screener two screeners would be used and twice as much the amount of material could be processed in the same building.

Ms. Summers: But you still need the trucks to get it out.

Mr. Caito: Trucks are a fair constant. They will stockpile material as it is processed to get ahead of the equation, so that as they process the material they will create a larger pile of processed material. There's going to be a finite limit that's limited by equipment.

Ms. Summers: Has there been any suggestion that those hours of operation would need to be expanded in the event Clarkstown wants to take the stuff faster.

Mayor Kinnally: They'll have to go to court to do it, I would think. But we've talked about these hours. I haven't heard anything beyond that.

Village Manager Hess: Their position was four hours. They wanted until 9 p.m.

Ms. Summers: So the only permission they can come back to us or to DEC for is to expand the amount of cleanfill brought on-site. They cannot ask to expand their hours of operation.

Mayor Kinnally: Sure they can come back. Anybody can ask to change it. We make a provision in the agreement that any modifications have to be signed off by all the parties and by the judge. Certainly they can come back. They don't have to get written changes in the agreement to bring more than 2,000 cubic yards of the clean fill on-site. It's not just if Clarkstown has a greater need for this material. Let's say that they can get another 1,000 cubic yards quickly and the opportunity would be closing. They could go to DEC for that permission to bring it on-site. But it is not being brought on-site to be stockpiled or to be warehoused. It's being brought on-site to mix and go out the door.

Ms. Summers: Is the \$15 per cubic yard for bonding standard? And, apparently that was not addressed in the document itself but you had some kind of side agreement?

Mayor Kinnally: No. Originally they could have 2,000 yards on-site and they would put up a bond of \$15 a yard. What happens if they have more than 2,000 yards on-site was not specifically addressed in the agreement. DEC said that to the extent that they are coming to DEC one of the terms and conditions for allowing additional fill on-site would be to post sufficient bonding so that we would be covered for that additional material.

Ms. Summers: So, you have that agreement verbally from DEC?

Mayor Kinnally: I do.

Ms. Summers: Not in writing?

Mayor Kinnally: No.

Ms. Summers: The phrase "within such time periods a required by law." That referred to the hazardous materials. Do we know what time periods those are, and are there time periods?

Mayor Kinnally: It depends on the material. It depends on the substance. And it's state and federal statutes. Isn't that right, Mr. Caito?

Mr. Caito: Yes.

Ms. Summers: One would assume that those time periods had already expired at this point in time.

Mayor Kinnally: No, we're talking about additional waste that would be brought in. We're not talking about anything that's on-site now.

Ms. Summers: In terms of the monitoring, by what mechanism will the state insure that that fund will never drop below \$30,000?

Mayor Kinnally: I've spoken to the A.G.'s office and DEC. I don't know what the mechanism will be, but they've told us that they will ensure that.

Speaker: They can't release any of the money from the fund until the Village consents to it. It requires three signatures: the judge's, the state's, and ours; part of the escrow. They cannot release it without the consent of everybody.

Ms. Summers: What I'm anticipating is that if we expend all of the money on monitoring, the implication was that DEC would put in money so that we wouldn't drop below \$30,000.

Mayor Kinnally: No, the statement was that steps would be taken to ensure that at no time would there be less than \$30,000 in that fund available to meet the needs of the Village.

Ms. Summers: So, what if we spend all 180? What happens?

Mayor Kinnally: We're only going until September 1, 1998, so we would not expend all that money.

Ms. Summers: What will be the outcome of our collecting taxes from Eisenberg?

Mayor Kinnally: It's in certiorari proceeding in White Plains. The position we took is that it should remain in that part. Judge Coppola should not deal with that as part of the cleanup of the site. And we strenuously opposed any effort by the owners to consolidate the actions.

Ms. Summers: The \$50,000 fine to DEC, all of which but \$15,000 was suspended: what does suspended mean?

Mayor Kinnally: Assuming compliance, they pay 15. If they don't comply, it's 50. Once again, that's the consent order that we're not a party to. This is strictly between DEC and the owners.

Wendy Mesnikoff, 35 Scenic: Is there a citizen participation component in this process from DEC or for the Village? Who is going to monitor the monitors?

Village Manager Hess: I have a position for monitor available, if anyone's interested.

Mayor Kinnally: A lot of people will be watching what's going on in and out of that place, and I have no fear that there will be constant vigilance of what's happening down there.

Ms. Merton: Will the progress reports described in paragraph four under Notification be available to the public, and if not I'd ask why not?

Mayor Kinnally: To the extent that they are subject to FOIL they're available.

Ms. Merton: Why to the extent they are subject to FOIL? Why not say they going to be available? The Village Attorney will have them.

Mayor Kinnally: I don't know what they're going to be. I don't know the volume of this stuff.

Ms. Merton: What could possibly be the rationale for not making them public?

Mayor Kinnally: I didn't say we weren't going to make them public.

Ms. Merton: I know you didn't. You left it open. They might be made public; they might not be.

Mayor Kinnally: No, I said to the extent that they're available under FOIL they'll be...

Ms. Merton: That's not anything in addition to what the law requires. What conceivable reason would the Board have for not making these reports available to the public?

Village Manager Hess: Whatever's a public document is a public document.

Mayor Kinnally: I never said they wouldn't be made available to the public.

Ms. Merton: You won't answer the question.

Mayor Kinnally: I think I did. I said, To the extent that any documents are available under FOIL they will...

Ms. Merton: Suppose they don't have to be released under FOIL? The Village still retains the power to release them, correct?

Mayor Kinnally: I'll have to see the documents. I can't give you a blanket answer. We make whatever we can available. We don't keep anything secret. Last week we had the agreement. We made it available to everybody.

Ms. Merton: Well, after three months of waiting

Mayor Kinnally: I didn't get it until that day.

Ms. Merton: No, I'm talking about the original proposal. I'm not talking about last week's proposal.

Ms. Merton: In terms of the newspapers, we're taking over responsibility for the disposal of any newspapers that are attributable to municipal waste. Could you expand on that provision?

Mayor Kinnally: To the extent that the newspapers are bundled and uncontaminated we will take responsibility in removing them from the site.

Ms. Merton: Why are we doing that, and how many cubic yards do you estimate that involves?

Mayor Kinnally: The "why" is essentially calling the owners' bluff on it because they made a big deal of this, and I don't know what the potential cost would be, or the volume. Our thinking is we'll probably make money on it because people are paying money for newspapers now.

Village Manager Hess: It was indicated to me by Falcon Recycling that we probably wouldn't even need to put a container down there. What I did was agree to provide a container. We have extra containers. I'll put one there for bundled, uncontaminated newspaper.

Ms. Merton: And we have to remove whatever's there?

Village Manager Hess: Exactly. At \$30 a ton we'll make money on it.

Ms. Merton: There are no costs for us associated with it?

Village Manager Hess: No. None whatsoever.

Ms. Merton: It doesn't cost us anything to take it off the site?

Village Manager Hess: No. We have to pick up newspaper. We pick it up around the Village. We collect it at our recycling center, then we remove it. If there is bundled newspaper in the container there that they remove from the building, we'll remove that also. One more stop on the recycling trip.

Ms. Merton: But we don't have an guesstimate about how much cubic yards that involves?

Village Manager Hess: Very little to none.

Ms. Merton: Okay. All I can say is I'm glad to hear that you've stopped negotiating. Better stop now.

Trustee Winn: Would Mr. Caito explain about the fill. There's been a lot of concern about contaminated and hazardous things coming in and not being there and being removed. I'd like you to explain the process of who monitors the fill coming in and where it can come from and who has to make approvals.

Mr. Caito: The material that comes into the site that needs to be mixed with the C&D that we process and take into a landfill: when it comes in the Village monitor will monitor it as it comes in and we will have our technical solid waste staff on-call and on-site to monitor as it comes in. I know there are strong passions about this matter. There's no question it's taken up one year of

my life. But if there's any non-cleanfill, any inappropriate materials that come in, we will be there with as many police officers as I can round up from the agency, and we will write as many tickets as possible. And we will go back to court, and there will be no deals. We are going to try it the judge's way and we are going to spend state resources and the owners' resources. We're not expending Village resources. But I will tell you that this will be the most stringent monitoring operation of any site in the State of New York. If there is a problem I will personally appear here to explain it, and to tell you how it will be rectified. I know there's a lot of skepticism in the Village, and considering what we faced and where we were last year, we've come a long way. If there's a problem I can guarantee the full vigor of the state will come down on the owners.

Daniel Marin, 64 Amherst Drive: It was said that the material would be processed to an approved landfill site. Who would be the ones who would be approving that site?

Mayor Kinnally: DEC. This is a remediation effort, and the DEC has jurisdiction over remediation.

Ms. Mesnikoff: Does DEC have a built-in participation process?

Mr. Caito: What I said earlier was that we will come down here at any time the Village wants us on any schedule the Village wants, whether it's quarterly, monthly. We will come to your meetings and will be happy to brief you on the status and give you an opportunity to comment. That's a commitment I can make for the agency.

Ken Tuccillo, 14 Edgewood Avenue: There are two approaches that could be taken to settling this suit, and we've discussed them only tangentially. The one that we are not seriously considering at this point, and may still want to consider at some point, is the idea of both sides submitting a proposed order to the judge and having the judge make a decision. Lee, you've done a lot of litigation. Jim, you have. You know that this is a common practice to have both sides submit a proposed order. Up to now we've been a little afraid that the judge might sign Phil Eisenberg's order saying that he would have a waste processing facility. It's hard for me to believe that if the DEC and the Village of Hastings-on-Hudson submitted a reasonable proposed order to Judge Coppola, and Phil Eisenberg submitted the kind of order that he's famous for as proposed orders, that Judge Coppola would sign off on Phil Eisenberg's order. I think it's something that we should still consider as these negotiations linger on. At some point we might want to consider just saying, Judge, we're not getting anywhere with this guy; every time we come back with something reasonable he comes back with something ridiculous. Judge, here's our proposed order. It's reasonable. It's outlined. It's very similar to what's on the table now. We would like you to go through with that order that you gave us in March, which is that they would have ninety days to comply with whatever order the court signs off on. If the court signs off on Phil Eisenberg's order, which I highly doubt, then so be it. But I think that that's a strategy we might want to consider as this drags on and on, as I think it will.

Mayor Kinnally: If it does drag on I certainly would take that into consideration. I think the end is very near. We've looked at that. I've done it in my private practice. But the difference there: it's not a take-it-or-leave-it situation. It's not like baseball arbitration where one side goes in with one number, the other side goes in with another. The arbitrator must pick one or the other. There's no middle ground. There's no discretion given to the arbitrator. Here, the judge can do whatever he wants to do, no matter how reasonable we may feel our order is.

But certainly, it's something to think of. I'm not adverse to rolling the dice, but I just think if we can be the masters of our own destiny I think we should do that.

Mr. Tuccillo: I don't think it's really a roll of the dice so much if we put a reasonable order before the judge, one that reflects what's been discussed up till now, and Eisenberg does not.

Mayor Kinnally: Ken, Brian reminds me of something. The judge is not without orders. He's had orders submitted to him that have been sitting on his desk since March or April. So he knows what our position is. He simply hasn't signed them. Plus, he has orders to show cause in front of him, and various motions, but he knows our position. We've told him informally. We've told him formally. We submitted orders. He hasn't acted on it.

Mr. Tuccillo: So long as we continue negotiating he won't make a decision. But if, at some point, we say, judge, this is it; we would really like you to decide...

Mayor Kinnally: He's said that. That's why he had us back in. He's at that point, too. He's not going to let negotiations drag out.

Mr. Tuccillo: Is there a certain point where he will come up with an order on his own, or is he going to accept one side or the other's?

Mayor Kinnally: I don't think he's ever going to accept one side or the other. He'll write the order. He's the judge, you know.

Mr. Tuccillo: He wrote the order in March, too.

Mayor Kinnally: He wrote the decision in. Pursuant to that decision, in which he said settle the order within a certain amount of time, we settled the order. It's there. It's waiting. Opportunity knocks. He chooses not to avail himself of it.

Pam Zahn, Crossbar Road: Regarding the monitor, can you have a group of citizens involved with that selection? We have citizens who are highly qualified to be a part of that decision.

Mayor Kinnally: I don't think we've even reached that point. I know we've made inquiries as to who might be available. I don't know if we're at that point right now. Let me take that into consideration.

Village Manager Hess: If there are any suggested names of firms, give them to me.

Ms. Zahn: More than suggested names of firms, a group of citizens that are involved with whoever from the Village Board is a part of that decision-making process is, I think, very critical.

Ms. Merton: Do you anticipate, based on what you know at this point, any further concessions being made to the owners? Do you think that we've reached our bottom line?

Mayor Kinnally: I'm going to take a little issue with the word "concessions." I don't think we've made any concessions to the owners. I think we've negotiated with the owners. My understanding is that the owners have signed off on what we have discussed this evening. They haven't signed the document, but my understanding is that they've agreed to the concepts that we've discussed today. What will happen tomorrow, I don't know. But my understanding from the parties involved is that the owners have said yes to this and we will go to the court with that understanding. Some language may still have to be worked out. But depending upon what action the Board wishes to take tonight, our Village Attorney will be directed accordingly.

Ms. Merton: I'm not trying to be disrespectful or snide, or anything like that, but it's very difficult from the standpoint of looking at this whole situation, having been aware and following its history over the last several years. It's one thing if this were presented as we're in a bad situation and this is the best we can do and it's not terrific but it's the best we think we can do. There's just something a little unseemly about this outcome being presented as some kind of great victory, or some kind of great accomplishment. We've spent a tremendous amount of money which we're not getting back, and each time we talk about how it's not costing us anything we should be mindful that it's cost the taxpayers of this town, not only...

Mayor Kinnally: As I have been reminded repeatedly, and I know because we sign the checks up here. But this lawsuit is only one part of the battle. You have to give DEC some opportunity to speak with a certain amount of pride for what has been accomplished from their standpoint. Our lawsuit deals with Building 15. DEC is charged with the responsibility of cleaning up the whole site. DEC feels that they are getting a global settlement of the whole site. That's DEC's perspective. From our perspective, I want to see the site cleaned up, too. But first and foremost I want to see the junk in Building 15 go out the door processed, never to return again.

This Board would not agree to a settlement from a position of weakness. I don't perceive what we have here as anything involving concessions to the owner. There were negotiations and various things were proposed -- counter-proposals made -- and not, I might add, all proposals of

the Village's. Many of these terms and provisions are DEC's. The DEC is a party, also. There are many negotiations going on: us with the owner, us with DEC, us with the A.G., us with the Court, and among and between all of us up here. Some of the discussions get quite heated among ourselves. Trying to structure a Board perspective about how things should be negotiated sometimes is a little contentious because there is a great difference of opinion here on the Board, and in many ways it reflects a lot of what we hear at these Board meetings. Some people didn't want to give an inch, and some people feel that we have to be realistic and work with everybody and everything that's at our disposal. I would never say that we'll take it because it's the best we can get. I don't think we've ever approached it that way. We've always set forth our agenda and what we were looking for and what we want to get out of this negotiation.

I'll use the fines as an example. The fines were put in there...the state discussed the fines. Our given, our non-negotiable point, was the monitoring. We had to get the monitoring. We got the monitoring. There's give-and-take. There are concessions made among our own people. But it's not concessions as much as it is negotiations. And I think in the end, from what I can see and knowing what I know about the evolution of the various positions, that there was good faith discussions had by the owners. The owners are at the point where they want to see this thing go away. Maybe they're tired of paying attorneys' fees. I don't know what their motivation is.

Ms. Merton: It seems pretty obvious that their motivation is the upswing in the real estate market and the fact that they're going to have an extremely valuable property on their hands. Basically, we've financed the legal work to bring that about, because if it hadn't been for the DEC and the Village's pressing these legal actions, and pursuing ARCO and Mobil and so forth, to which the landowner has contributed nothing, it's quite likely that that would not be the outcome. He's going to walk away with an extremely valuable site, having spent some small fraction of the probable profits from the Age Carting debacle in the cleanup, which is only what he should have spent in any event. It's nothing additional. I don't think it's completely honest to represent that as a triumph. It may be the best that we could have come out of, but ironically nobody in this entire situation, the people who were reasonable for it, will in any sense have gotten hurt except the people of this Village who have had to pay for the lawyers' fees and the opportunity costs of the delay in development of this site. That's a sad outcome, not an outcome to celebrate,.

Mayor Kinnally: Well, there'll be no celebrating. We'll move on to a resolution, if there's nothing else.

Village Manager Hess: The saddest thing is the fact that a task force of citizens were appointed which made recommendations to the Board, including legal action, and now you come before the Board and criticize them for that when you were part of that report. I find that sad.

Ms. Merton: I assure you that the recommendations that were made...some of them were made...many, many were not. And, certainly, those recommendations never included settling

these actions without at least the expenses, the actual costs, the legal fees that we've expended., being paid.

Village Manager Hess: I suggest you read the report again.

Ms. Merton: I know the report very, very well.

Trustee Holdstein: I want to comment on Ms. Zahn's suggestion. I thought Neil made a good point, that if people in the environmental world could offer some suggestions for us to use to hire for monitoring, it would be great if names were submitted to the Village Manager. I think that was an outstanding suggestion, so I'd like to make sure we follow up on that. Also, I think a couple of citizens to work with Neil and with Lee in choosing the ultimate monitor is an excellent idea.

Mayor Kinnally: Part of my not jumping completely out on this is timing. This may happen very, very quickly.

Trustee Holdstein: So any suggestions of names should happen quickly, as well.

Mayor Kinnally: I don't know if we want a formal thing. Certainly, anybody can give input to either Neil or any of us up here, and sooner rather than later because it could happen quickly.

I'm a little annoyed they don't have equipment on-site ready to start processing. I would expect that they will be up and running within a week, two weeks.

Village Manager Hess: Clarkstown's ready to take this stuff, so we have to roll..

Mayor Kinnally: Whether they're bringing anything in, but certainly they have to bring the equipment up. So, we're talking about something happening very, very quickly down here.

Village Manager Hess: Mr. Caito, is that correct: that Clarkstown, assuming they come on-board with this, is ready to roll?

Mr. Caito: They come on board ready to roll, and the reason there's no equipment down there is probably because you don't have a signed agreement for the cash to flow.

Let me say one more thing. Here's why agency views this as a triumph, and here's why, from our perspective -- understanding and being very sympathetic towards the Village the last five to seven years -- we view this, at least the new administration views this, as a legacy that was left to this DEC to clean up by the prior administration. This debris accumulated not on our watch. We hope and we pray, and we are vigilant to make sure, that this will never happen on our watch. We view it as a triumph because we started the process rolling, along with the Village. You

started it before we did, probably. We came in to clean it up, and we view this as a triumph for the new administration. That's where I'm coming from when I say it's a triumph. I think the enforcement efforts by the previous administration were deficient, and I'm excited that we resolved it. At least I hope we resolved it.

Ms. Merton: You just raised a very significant issue about the monitoring. I gather that we're not going to do this on competitive bidding or anything like that in terms of selection.

Mayor Kinnally: I have no idea, but this is professional services. Tonight I found out what the result of the negotiations are, so I haven't really given this a lot of thought.

Ms. Merton: But if we're thinking about starting the next few days to a week, may I make a suggestion. I think who the monitor is is an extremely important decision. I'm still very troubled by the fact that the Board did not do any further investigation of Falcon from the time they were first raised as a possibility in February.

Mayor Kinnally: Let me stop you right there. We have no control over Falcon.

Ms. Merton: We could have investigated them.

Mayor Kinnally: We did investigate them. I made calls. DEC investigated them. We did D&B check. I spoke with municipalities. I called municipalities in New Jersey. I ran a Lexus search. We did what we could do. We asked the DEC about their compliance record.

Ms. Merton: We don't have their basic financial reports. We don't know who their shareholders are, etc. All you said was that we didn't do any investigation between February and now. The selection of the monitor is such an important decision to the success of this project that it might make sense to try to work out an arrangement where there's a temporary contract. One possibility might be to retain someone immediately, on a short-term basis, to be on-site to do what needs to be done to make sure the situation is under control and buy us a little bit of time -- two weeks, a month -- to more fully investigate alternative possibilities for that more permanent role.

Mayor Kinnally: That's one of the things we had looked into.

Trustee Holdstein: I agree 110-percent with Vanessa. I think the monitoring is crucial and I am not interested in the bidding process. I want to get what we can best determine is the best monitor out there, which is why I open it to anybody in the Village who knows people in this profession to see if we can't get the best possible. But if we're hiring them we can fire them.

Ms. Merton: Not if we sign a contract for the whole project.

Trustee Holdstein: If they're deficient in their job to that contract, or their performance, yes, we can fire them.

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

WHEREAS, the Village, the State, and DEC have engaged in litigation and negotiations concerning the cleanup and remediation of Building 15 on the waterfront, and

WHEREAS, the parties have tentatively agreed to enter into an order on consent to effectuate the cleanup and remediation of Building 15, subject to final negotiation by the parties, and

WHEREAS, DEC is prepared to enter into a separate consent order, which further defines the property owners' obligations to clean up Building 15, as well as the site in general, and

WHEREAS, the order on consent requires that all debris, materials, and/or substances that are situated within, or overflowing from, Building 15 be removed no later than December 31, 1997 if the material will be accepted by the Town of Clarkstown, and no later than September 1, 1998 in any event, and

WHEREAS, the Board of Trustees believes that the order on consent, as outlined, offers the opportunity to clean up Building 15, end litigation now pending, and serve the best interests of the Village; now therefore be it

RESOLVED: that the Village Attorney be authorized to enter into the order on consent, the outlines of which have previously been approved by this Board.

This is essentially similar to what we did last week. It authorizes the Village Attorney to give effect to what we have discussed here tonight, subject to certain other modifications. But, obviously, if there's anything of substance that is changed the Village Attorney would get back to us to convey that to us and to have us reconsider our authorization.

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	

Mayor Kinnally: We will be in court tomorrow before Judge Coppola; the Village Attorney and Trustee DeVita will be there. If there are any changes calls will be made and we can be available on short notice to consider anything. Under the broad outline, I believe that we can go ahead and bring this sorry chapter to a close.

It's not on the agenda, but it's a proud moment for the Village. I understand that today one of our residents, William Vickery, was awarded the Nobel Prize in economics. My congratulations to him. It's nice to have some good news. Happy day for the Village.

ADJOURNMENT

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