

VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK
BOARD OF TRUSTEES
SPECIAL MEETING
TUESDAY, JULY 21, 1998

The Special Meeting of the Board of Trustees was held on Tuesday, July 21, 1998 at 8:10 p.m. 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 (8:11 p.m.), Trustee Anthony Gagliardi, Deputy Village Attorney Brian Murphy, Village Manager Neil Hess, and Village Clerk Susan Maggiotto.

CITIZENS: Eight (8)

Mayor Kinnally: This is a Special Meeting, so only those items which are listed on the resolutions for the Special Meeting may be considered at this meeting. There are two resolutions on the agenda for this evening. The first is the adoption of Local Law No. 3 of 1998 authorizing the payment of eligible delinquent taxes in installments, or the enabling legislation for tax trust agreements.

The second item is 53:98, which is the approval of a Tax Trust Agreement with Harbor at Hastings, or the approval of the proposed tax settlement.

Let me deal with the second resolution first. After our meeting last week, and taking into consideration a number of the comments, the Board will act on a resolution later this evening for a Special Meeting for next Tuesday night to consider the approval of the tax settlement proposal. After consideration of the adoption of Local Law No. 3 tonight we will consider public comments on the proposed tax settlement.

52:98 ADOPTION OF LOCAL LAW NO. 3 OF 1998 AUTHORIZING THE PAYMENT OF ELIGIBLE DELINQUENT TAXES IN INSTALLMENTS

Mayor Kinnally: I will open this meeting by asking for comments on the adoption of Local Law No. 3, which would authorize the Village to enter into agreements for the payment of eligible delinquent taxes and installments. Local Law No. 3 is a four-page document, which is made part of this resolution.

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

RESOLVED: that the Mayor and Board of Trustees hereby adopt Local Law No. 3 of 1998 Authorizing the Payment of Eligible Taxes in Installments as attached.

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

Mayor Kinnally: The approval of this Local Law does not directly affect the proposed tax settlement agreement. Rather, it gives the Village the opportunity to enter into tax trust agreements in general.

53:98 APPROVAL OF TAX TRUST AGREEMENT WITH HARBOR AT HASTINGS

Mayor Kinnally: The second item on the agenda for this Special Meeting is resolution 53:98 Approval of the Tax Trust Agreement with Harbor at Hastings.

We have not finalized a proposed tax trust agreement. As I indicated at the start of this meeting, the Board is not going to pass on this this evening. If I could have a motion to table this until the next Special Meeting on July 28 at 8 p.m.?

On MOTION of Trustee Holdstein, SECONDED by Trustee Gagliardi, consideration of the resolution to approve a tax trust agreement with Harbor at Hastings was tabled until the next Special Meeting on July 28 at 8 p.m.

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

On MOTION of Trustee Holdstein, SECONDED by Trustee DeVita with a voice vote of all in favor, the Board voted to hold a Special Meeting on Tuesday, July 28 at 8 p.m. in the Municipal Building to discuss the resolution to approve a tax trust agreement with Harbor at Hastings.

Larry Apel, 111 Rosedale: I want to ask about the general concept of tax trust agreements. When we enter into something of that nature is there a trustee of the tax trust agreement?

Mayor Kinnally: No, there isn't. But this is the nomenclature that the legislature has given to it.

Mr. Apel: So would the drafts only have our names on it...no one else as payee?

Village Manager Hess: The enforcing officer, or the Village.

Mayor Kinnally: The checks come to us.

Mr. Apel: Nothing is being held in escrow, is it? When the monies are due, as of generally a certain time, we actually receive them?

Mayor Kinnally: Yes. The monies go into our General Fund.

Mr. Apel: Pertaining to the 1991 tax year...if I am adding it up correctly, the amount of monies that Harbor at Hastings Associates would have owed is about \$222,000 or so, approximately.

Mayor Kinnally: Right.

Mr. Apel: And they are willing to come up with \$500,000 in approximately September or October?

Mayor Kinnally: We are not settling anything. We are receiving 100 cents on the dollar: \$395,787.42, which will continue to accrue interest as of the date of the execution of the proposed Tax Trust Agreement.

Mr. Apel: I understood the last time around that we were going to receive like \$500,000.

Mayor Kinnally: By December 31 we will have received \$100,000 on execution of the agreement; we receive the first half '98-'99 taxes; we receive \$395,000 on October 15; and then we receive the quarterly payment of \$37,443 and change on November 1. So we will be getting over \$540,000 – \$585,000 will be paid by the end of the year, plus accruing interest.

Mr. Apel: There is no question, if there is no protest, that we would have been able to have pursued a matter certainly in 1991 by a suit on a contract for over \$200,000. They would have owed that. Plus, since 1991 we are talking about interest accruing since that time that is very substantial.

Mayor Kinnally: We are getting 77% interest on the money that was due in 1991-92. We are getting \$395,000.

Mr. Apel: In light of what we are ultimately disposing this matter of, the bulk of it would have come to us just in 1991, and that way we would not have given up any other further rights that we might have had.

Mayor Kinnally: We have not given up any rights. Let me clarify about '91-'92. They are paying us 100 cents on the dollar plus accrued interest of 77%. So we are getting everything.

Village Manager Hess: Actually it works out to 79%.

Mayor Kinnally: We have not given up anything. That is one of the problems that they did not contest that year so they owed us everything.

Mr. Apel: I understand. But we could have foreclosed on that year.

Mayor Kinnally: Yes, I guess we could have foreclosed on that year.

Josephine Novak, Hamilton Avenue: My question has very little to do with the math, because I do not understand it. It seems sort of like a rotten deal to me, but I honestly do not know. My question has to do with my concern in the way it was approached. If there had not been a protest we would not have had time to look into this. Why did you not automatically build in time for the Village to become aware of this and to understand it, and make comment?

Mayor Kinnally: Actually we did, but as often happens where you start, and have ongoing negotiations, the structured proposal was not really fleshed out until right before the 4th of July. We had anticipated that this would have been in somewhat finalized form prior to that.

Ms. Novak: I understand. It does seem to be a pattern, though, that we have to protest before we get time to consider things. I would ask that in general we be given more time. We elect a Board but we also, on matters as urgent and important as this, need to have input.

Mayor Kinnally: That is why we pushed it back an additional week, and I gave notice to two people on last Wednesday evening of that fact.

Susan Richman, 21 Pinecrest Drive: When would we see the written agreement?

Mayor Kinnally: As soon as we have finalized it. I had indicated last week that we were hoping it would be done at the end of the week and be available at the beginning of this week, and it is not finalized at the present time.

Ms. Richman: So my question then to you is, Why, then, next week? Could we at least have a week's time to digest this? We have so many lawyers in the Village and so many people that are very interested in what is going on. If you are not even having it ready tonight to give us a week to look at it, what is the rush?

Mayor Kinnally: Good point. So many lawyers, so little time. Actually, the agreement is just incorporating the terms that we have here.

Ms. Richman: But legalese are everything, aren't they?

Mayor Kinnally: No, it is not everything. The terms of this agreement are not going to be changed in that legal document. I do not anticipate vetting, or renegotiating, the legal document in a public meeting. The legal document is being knocked out right now between counsel, with input by members of the Board. The terms of the agreement, the payment terms, the timing, the interest, the up-front payment, the October 15 payment – none of that is going to change.

Ms. Richman: Can we get a week from when it is ready to look at it?

Mayor Kinnally: No. We are going to pass on this unless something substantive is brought to our attention. We are not going to approve the agreement. We are going to authorize the Village Manager to execute a document that incorporates the terms of the proposed tax settlement. This is something that is frequently done. As soon as we have the agreement in final form we will make it available to the public.

Village Manager Hess: All the elements of the agreement are up at the front table. They were last week, and there are additional copies here.

Ms. Richman: I have that, but how things are worded is very critical, I would think.

Ken Tuccillo, 14 Edgewood Avenue: I do not have a question. I have a written statement that I would like to read.

"I object to the way this so-called public comment process is being conducted. It could not be more obvious that you are trying to ram this through as quickly as possible, and that you really have no interest whatsoever in public comment. In fact, you all have your minds made up already, and that is why the Trustees have not said a single word, as usual, and don't have a single question. It is absurd that you claim that this is our last public comment opportunity when you don't even have a written agreement yet."

"How can anybody, either Trustee or citizen, comment on a document which does not yet even exist. The answer is because that this is not a real public comment process – it is a mockery of one. The truth is, you don't want us to ask questions because you don't really even know what you have agreed to vote for. How can you, when you don't even have an agreement yet? There should be no doubt in anybody's mind that you already have your minds made up to vote for this settlement. As usual, you had your minds made up in Executive Session long before you told anyone in the community that there was even an issue. You wonder why hundreds of voters are angry and upset enough to vote against the incumbents, but when you pull a stunt like this it should be obvious. If you insult our intelligence, and ignore the democratic process, then each election each year you will have to bear the cost, just as you are all making us bear the cost of millions of dollars of your unilateral decisions. This may be a good tax settlement, but that is not the point. The point is that we, as taxpayers, have a right to see the agreement and question it, and we have a right to participate in this decision."

David Shapiro, 5 Travis Place: For you to respond to a question as to why there has been no provision made for public discussion by saying that we had planned to do but it did not work out, is really not acceptable. The implications of entering into something like this in the middle of July, with half the Village out-of-town, is very damning and really reflects very, very badly. We are left with nothing. We are basically told to take it or leave it.

Mr. Apel: I believe at the last meeting you mentioned that you thought the expenses involved might run about \$250,000. Could we get a breakdown as to what that would encompass?

Mayor Kinnally: I broke it down last time between experts' fees for preparing the valuation report, and for preparing the report having to do with remediation and the contamination of the site. In addition to that there would be the fees for the experts to prepare for, and testify at, the hearing. There would be the attorneys' fees in preparation for an attendance at the hearing, and also the post-trial, or the post-hearing, submissions that are required in that particular part.

Mr. Apel: Is the attorney that is here the attorney that is representing us?

Mayor Kinnally: Yes. Mr. Murphy, in the *certiorari* proceeding. But we also had input from environmental counsel in connection with this. As I indicated earlier, I also spoke with the legal department at NYCOM and also the New York City Corporation Counsel's Office that deals with tax *certiorari* matters. It may not be Brian in particular who does it, but someone in the Ponzini office.

Mr. Apel: If the only lawsuit pending is the tax *certiorari* brought by the developer, they have the burden of proof. They should have the enormous expense involved. We, I would think,

would not mind if there was a low assessment. Indeed, I think it might even possibly benefit us in that we have the power of eminent domain. We could condemn the property. The assessment has been agreed at \$450,000. Do you have any idea what their expert assessed this property at? There has to be an exchange of appraisal reports in a lawsuit.

Mayor Kinnally: Prior to the hearing there has to be an exchange.

Mr. Apel: Do you have any idea what their appraiser came it at?

Mayor Kinnally: No. Because we did not exchange reports. We did not incur that expense.

Mr. Apel: We basically relied upon the town.

Mayor Kinnally: No. We went through this last week. We had access to a partial report from the town because that report did not cover all the years in question. I will not say we relied on it. Certainly it went into some of the consideration here, and discussions with certiorari counsel.

Mr. Apel: . Section 1440 in the real property tax law, when there is tax delinquency, allows the Village Manager to bring some sort of a contract action against the delinquent taxpayer. And that would be effective as of 1995. If we had the \$200,000 for that 1991 period which they never protested, I think we would be in far better shape.

Mayor Kinnally: We could not do it because, as you said last week in talking to me, that law does not apply to a period prior to 1995.

Mr. Apel: As of January 1, 1995 we cannot sell tax liens. That has been taken out of our hands. However, for those tax liens that matured or came to the Village prior to December 31, 1994 we could still do various things, one of which was to sell, another is to actually enforce. I think that we would be in better shape to do a number of these things. It would require effort, and probably monies and so forth, but I think in the long run that it would be better for the Village if we did not take this proposal, because I think they are exceedingly low on that assessment figure of \$450,000. Which, incidentally, if there is no building on that lot, could last for a long, long time to come. I think they are getting a real ride on that one.

Mayor Kinnally: Let me just go back to your comment, Are there other things we could pursue? Possibly, but we still have the lawsuit to face; they are going to put the case back on the calendar.

Mr. Apel: We could condemn that property and it would be ours. We would have title and control and do what we want. And then we could turn around to ARCO, or anybody else, and say, work with us in developing something.

Mayor Kinnally: We have talked about that in the context of foreclosure, but the valuation on condemnation is the highest and best use of that property; it may not be the current use of the property. We still can pursue foreclosure under the proposed tax settlement because of the foreclosure option available to us. We cannot ignore the gorilla in the room, and that is the tax lawsuit. Although the petitioner may have the burden of proof we still have to bring something to the dance.

Mr. Apel: You mean the tax *certiorari*, which is reducing the assessment. That is all it is, really.

Mayor Kinnally: Are you saying that we roll over and play dead on that?

Mr. Apel: Just about. Why not?

Mayor Kinnally: Because then we will not get any money on the back taxes.

Mr. Apel: But we certainly could foreclose, couldn't we?

Mayor Kinnally: One has nothing to do with the other.

Mr. Apel: The settlement that is being proposed is one involving the reduction of a tax *certiorari*, plus the back taxes that are owed. So one has something to do with the other here. It is somewhat related.

Mayor Kinnally: Right. But instead of just walking away and getting no money on the tax *certiorari*, and having the option to foreclose, what we are doing is getting upwards of \$800,000...\$900,000.

Village Manager Hess: Are we getting terms confused here? You are talking about reducing a value and you keep mentioning foreclosure as opposed to condemnation. I thought you were worrying about condemnation.

Mr. Apel: At first I mentioned condemnation, which is the eminent domain.

Village Manager Hess: Foreclosure can happen. No matter what the value is, foreclosure can happen. Condemnation, as I understood what you had said before, was to accept a very low

appraisal and turn around and condemn the property. Not foreclose on the property, but condemn the property.

Mayor Kinnally: We can still do that. If we roll over and play dead in the tax *certiorari* case we will not get anything out of it.

Mr. Apel: From a treasurer's standpoint, from actual pecuniary receipt of monies, I will agree with you. However, I think that is short-term thinking. I am sure there are some people out there that would like that. I am just thinking longer. I think there is a sizeable number in this Village who believe that the long-term approach is maybe the best approach, to acquire the site.

Mayor Kinnally: This particular settlement does not rule that out. It is not something that the Village has said "no" to. It is something that the Village continues to pursue. But it is not something we can talk about in public at the present time.

Trustee Keaney: You mentioned, and I think you are right, that the important thing here is the the assessment, \$450,000. You said that you thought it was exceedingly low. Why?

Mr. Apel: I think it should be closer to about \$650,000 or \$700,000. I think because you were able to collect on the full assessment for '91 there was a break made on the remainder of the years. No one ever explained where the \$450,000 came from. Clearly there are tenants down there that are paying rent. If we had started a plain collection case we could have advised them to pay us. The \$450,000 was somehow reached to their satisfaction and I do not think we should be considering their satisfaction. Usually the situation is the person pays the taxes and then if he wins he gets a refund. In this case they waved their fingers at us and never bothered to pay any taxes. And, on top of that, collect the tenants' monies. I just thought the \$450,000 was low.

Trustee Keaney: It is just a feeling of yours that it should be higher.

Mr. Apel: That is correct.

Ms. Richman: Will any future assessments of this land be based on this \$450,000 figure? You are only allowed to raise it by increments?

Mayor Kinnally: No. Absolutely not. This \$450,000 number would stay in effect during the term of the tax trust agreement, which runs through the year 2000. After that the Village is free to reassess the property, depending upon the conditions at the time.

Mr. Shapiro: I have one question: why must it be done now on such short notice?

Mayor Kinnally: The Village will have had two weeks to consider the terms of the tax trust agreement.

Mr. Shapiro: Who determined it had to be done within two weeks?

Mayor Kinnally: Nobody determined it had to be done within two weeks. We have made a scheduling decision, as the Village Board has to do, as far as soliciting public comment and input on the proposal.

Mr. Shapiro: Why was it done in the middle of the summer? Half of the Village is out-of-town.

Mayor Kinnally: That is just the way the negotiation process turned out, unfortunately. I had hoped it would have been done earlier, as I said, but the process dragged on longer than any of us anticipated.

Mr. Shapiro: The issue is fair consideration in front of the Village at a time when most people are home. If it could be done with some sort of public education, some sort of public meetings, some sort of discussion.

Mayor Kinnally: That is exactly what we are doing here.

Mr. Shapiro: There are six people here.

Mayor Kinnally: Because a lot of people have already commented to us about the proposal. The people who are in favor of it apparently are not coming out. This past week a number of people have said, that it is a good agreement and we should move forward with it. Other than the people who have spoken here, I have a letter here from Mitch Furman and Lisa Barr saying that the proposal is bad. We are giving people an opportunity to review it and to comment on it. I understand your feeling about the timing, but there comes a time when we have to make a decision. This is a decision not that the Village Board is trying to shove down anyone's throat, but it is a decision that has to be made by the Village Board. Given the pendency of the lawsuit, the contamination of the site, the vagaries that all of us have recognized with that site, is it in the best interest of the Village? I just want to give the public an opportunity to consider the terms of the proposed tax settlement.

Trustee DeVita: I would like to comment, since I will not be here next week. I support this settlement. I feel it is a fair and fiscally sound settlement, with significant amounts of money being paid to us in a timely fashion. It helps us to avoid litigation costs and time and experts'

fees. It avoids taking a chance of getting a much smaller settlement. Most importantly, it removes yet one more obstacle in the way of development. I feel the Board has acted responsibly and appropriately. We have worked very long and very hard on the figures that you have before you. I agree that the time is very limited in terms of the time that you have had to look at this; the negotiations went on longer than we had anticipated. But the results were a good and sound agreement.

Mr. Apel: I foresee, even when this expires in 2000, that we may be stuck with this \$450,000 assessment because nothing may be built because of the problems that exist. I see nothing in their past actions that we should be fair with them. Our only consideration should be for the Village.

Mayor Kinnally: We are not trying to be fair to F.C. Hastings. I can guarantee you that they feel that some of the terms are not fair, but they have agreed to them. It was a negotiation process.

Mr. Apel: It seems to be in the interest of F.C. Hastings to reach some sort of accord before 1999. There is something in the statute that gives us four years in which to act.

Mayor Kinnally: The statute gives us a right to collect money. That is what we are doing here. I would much rather have money in our coffers than our name on a case in the New York Court of Appeals. We are not going to get much more money than we have now. This lawsuit would not be independent of the *certiorari* action. We are only going to be able to collect taxes based upon whatever assessment the court says. And I guarantee you, the court will not agree to the assessment that we have on the property. Everybody can try to speculate what the future is going to hold. But in trying to come to a responsible settlement for the Village I do not want to roll the dice, spending \$250,000 of the Village's money knowing we are going to get knocked down in an assessment and still not have a dime coming into this Village.

This proposal is a sound, reasonable one for the Village. I am not saying it is a fair one for F.C. Hastings. Nobody has ever tried this law before. We will look into it, but given the fact that we are staring at a trial date early in 1999 on the *certiorari* matter I do not see how we have very much wiggle room here. We can pursue it, but I do not want to roll the dice on an untested law.

Village Manager Hess: We talked about the lawsuit. I will relate it back to the amount you said you thought the property was worth, \$750,000 – \$300,000 more in terms of assessment. If that figure was sustained in a court action, what that would bring the Village in terms of tax revenue is \$30,000 more a year. If you spend \$250,000 to bring in an additional \$30,000, which is the figure you thought, it is going to take you eight or nine years to recover that money back in terms of the lawsuit. Based on the appraisal information we received from the Town of

Greenburgh for part of the years in question – '91 through '92 – based on financials, rent rolls that we were able to review during the negotiation process, the \$450,000 assessment, I believe, is a fair settlement for the Village, not a fair settlement for the owners.

Mr. Apel: The Town of Greenburgh lowered that assessment to about 30%. I do not see where we should be taking anything less.

Mayor Kinnally: We are taking more than the Town of Greenburgh. The Town of Greenburgh's assessment on this property is half of ours under the proposed tax settlement. Two million dollars is the agreed market value under the Town settlement. The Village's agreed market value is \$5,250,000. It is so vastly different, and better than the Town's.

Mr. Apel: But I am talking about the percentage of reduction.

Mayor Kinnally: Our deal is so far superior to the town's. As I indicated last week, the town asked us to join in and we declined. From our standpoint it was not good enough even to start consideration of it when they entered into it. They looked at that as a ceiling. We looked at their settlement as the floor for us. We did have a plan, and the plan was not to come in with anything as low as the Town of Greenburgh, and to get the highest money that we could for the Village of Hastings-on-Hudson. I do not want to knock the Town of Greenburgh's plan. They did what they did for whatever reasons, but do not hold up the town settlement as a paragon that we should follow.

Trustee Keaney: Larry, you thought the \$450,000 assessment was exceedingly low. But according to my figures, the town's assessment for the same years, '97 and '98, was \$214,000.

Mayor Kinnally: The last year of their tax trust agreement our assessment is \$450,000; the town's assessment is \$171,400. I would focus on those numbers. The bottom line is that we got more money out of this than the town did.

We will have a Special Meeting to continue public comments next week. When we have the draft agreements ready we will make them available for the public to pick up at the Municipal Building.

ADJOURNMENT

On MOTION of Trustee Keaney, SECONDED by Trustee Gagliardi, with a voice vote of all in favor, Mayor Kinnally adjourned the Special Meeting at 9:07 p.m.