

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK**  
**BOARD OF TRUSTEES**  
**REGULAR MEETING**  
**OCTOBER 6, 1998**

The Regular Meeting of the Board of Trustees was held on Tuesday, October 6, 1998 at 8:05 p.m. in the Municipal Offices, 615 Broadway.

**PRESENT:** Mayor Wm. Lee Kinnally, Jr., Trustee James B. Keaney, Trustee Elsa C. DeVita, Trustee Michael Holdstein, Trustee Anthony Gagliardi, Deputy Village Attorney Stecich, Village Manager Neil Hess, and Village Clerk Susan Maggiotto.

**CITIZENS:** Nine (9)

**PRESENTATION - AWARD OF MERIT**

**Mayor Kinnally:** I'd like to ask David Harrison to come forward. David, on behalf of the Village I would like to present you with an Award of Merit in appreciation for your 10 years of service on the Zoning Board of Appeals, and chair for nine years. You have been there a long time and you have been through some tough times on the Board, and I want to thank you for all the service you have done for the Village.

**David Harrison:** Thank you all for this very generous award, and the opportunity to be of service to the Village. It was a remarkable time for me, and I enjoyed just about every minute of it.

I would like to say that the job was made much easier by a number of the Village employees: Mark Gennarelli, Charlie Wucherer and, of course, the inimitable Ed Maleska, who taught me the ropes; and of course, undoubtedly, the most important person on the Board was Marie Oelkers, who taught me everything I know. I was very disappointed when the Village instituted stenographic reporters for the meeting because Marie was very generous in reshaping our words. She made our sentences grammatical. She made our talks coherent. Having our words taken down literally was very disappointing. Thank you all very much.

**Trustee Keaney:** I want to thank you also. I I have been to many Zoning Board meetings over the past few years when you were chairman. I recall some of them were pretty contentious. But you were always judicious, and judicial, and you always represented the Village very well.

**APPROVAL OF MINUTES**

On MOTION of Trustee Keaney, SECONDED by Trustee Gagliardi, with a voice vote of all in favor, the minutes of the Public Hearing of September 15, 1998 were approved as presented.

Trustee Holdstein had the following corrections to the minutes of the Regular Meeting of September 15, 1998:



Trustee James B. Keaney	X
Trustee Elsa C. DeVita	X
Trustee Michael Holdstein	X
Trustee Anthony Gagliardi	X
Mayor Wm. Lee Kinnally, Jr.	X

### **61:98 AUTHORIZATION OF CONTRACT FOR SEWER RECONSTRUCTION**

**Village Manager Hess:** Several years ago we had major sewer problems along Warburton Avenue and Whitman Street. We were successful in obtaining funds from the Community Development Block Grant Program to undertake a review and a proposed rehabilitation project. We were granted, in this phase, approximately \$25,000 for construction, and another \$5,000 for the preparation of plans and specifications. We were able to get the CDBG amount increased to \$34,980.32. The total cost of the project is estimated at \$175,000. The plans and specifications are done, and we would go out to bid over the winter with expected construction next spring.

**RESOLVED:** that the Mayor and Board of Trustees authorize the Village Manager to execute a contract for \$34,980.32 with Westchester County for the Wittman Street area sewer reconstruction.

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

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

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

**Village Manager Hess:** The bids on the Municipal Building are expected on October 13 and will be considered at the Board meeting of October 20. We have had 24 contractors pick up plans and specifications, and approximately 15 contractors attended our preconstruction conference October 1.

I am pleased to announce the receipt of two grants. We received a \$4,000 grant for our DARE program from New York State. I received notice from Greenway that we will receive \$5,000 for planning on the waterfront.

We are looking into a new grant program with applications due in mid-November to develop cooperative services between municipalities and school districts. I will be meeting with Jay Russell to see if we can develop coordinated programs, possibly related to Channel 16.

I am planning to put together a package for the Board's review of our position on the state revenue sharing program for review at the October 20 meeting. There is a five-point package that has been developed by the New York State Conference of Mayors. Hopefully we can take action that night.

We are co-sponsoring with Harvest on Hudson Restaurant a pie baking contest on Sunday, October 25. This is our First Annual Pie Baking Contest. If you need information contact the Recreation Department, at 478-2380.

The Affordable Housing Project on Warburton Avenue has been in discussion and in the planning stages for some time now. The Affordable Housing Fund has sent a letter requesting transfer of the property to them of the Warburton Avenue site. What is contemplated at that site are two ownership homes, each with rental apartments. The priority in selecting the owners and renters would be: 1) members of the Volunteer Fire Department and Ambulance Corps living in, or serving, Hastings; 2) Village of Hastings-on-Hudson municipal employees; 3) Hastings school district employees; 4) households whose head of household, or spouse, is 65 years or older and living in Hastings; 5) households whose head of household, or spouse, is 30 years old, or younger, and living in Hastings; 6) any other Hastings resident meeting income eligibility requirements; 7) immediate family members of Hastings residents; 8) other persons employed in Hastings; and 9) all others. Applications are now available for prospective purchasers at the Municipal Building, at the library or the Community Center, and the fire houses. The applications must be returned to Village Hall by November 2. I am recommending that the Board refer this matter to the Planning Board for their recommendation at their October 15 meeting, and that the Board have a public hearing October 20 on the transfer of this property.

On MOTION of Trustee Keaney, SECONDED by Trustee Gagliardi with a voice vote of all in favor, the Board referred the request of the Affordable Housing Fund to the Planning Board.

On MOTION of Trustee DeVita, SECONDED by Trustee Gagliardi with a voice vote of all in favor, the Board scheduled a Public Hearing regarding the Affordable Housing Fund property transfer for October 20 at 8:00 p.m.

**Susan Richman:** I do not understand how you can make this motion at this time because there is a lawsuit pending. As you know, the county has denied that they have made any commitment to give funds to grant this project. They have come out publicly and said that to lawyers and judges: that there has been no commitment to this project, to date. How can we talk about transferring land until we know the project will be done?

**Mayor Kinnally:** We are not talking about transferring land. We simply have made a motion to refer it to the Planning Board. There is not any stay on the lawsuit. The Village's business does not come to a grinding halt because there is litigation pending.

**Ms. Richman:** But you do not have the monetary commitment to build these houses yet, since you are counting on county funds to do so.

**Mayor Kinnally:** We are not making a commitment at this point. We are referring it to the Planning Board for their recommendation. We are simply putting things in motion. This is what has to be done whether there is a lawsuit or not. If there are facts that come out in the course of the Planning Board discussion and the meeting before the Board of Trustees we will take that into consideration. There is a motion to dismiss the lawsuit that is pending, and will be returnable on Friday. I do not know how quickly the court will decide that, but there is no stay in effect. So, we will move forward and assess the whole situation. If there are facts that come to our attention, or if there is court intervention, we will act accordingly.

**Ms. Richman:** Until you get a commitment for this county money and that this is going to be built, will you not transfer the land?

**Mayor Kinnally:** If I make that decision right now then there is no reason for a referral to the Planning Board.

**Ms. Richman:** Will you transfer the land without a financial commitment?

**Mayor Kinnally:** We are not committing right now that we are going to transfer the land. If we were to say now that we are going to transfer the land, why would we have a public hearing and why would we refer it to the Planning Board?.

**Ms. Richman:** I am very concerned that the land will be transferred; it will not get the funding and then we will lose what I think is a park.

**Mayor Kinnally:** That gets to the merits of it, and we are not dealing with the merits tonight.

**Ms. Richman:** Can you transfer the land without the funding?

**Mayor Kinnally:** This Board right now does not have the information necessary to make a decision, nor is it appropriate for us to make a decision because it is not on the agenda. I do not know what all the issues are, or will be at that time. I do not know what all the funding requirements are going to be. That is the purpose of having a public hearing and having a recommendation from the Planning Board.

**Ms. Richman:** Before you commit to transferring this land can you make it conditional that the project is a "go?"

**Mayor Kinnally:** I guess we could, but I do not know what we will do. It is premature right now.

**Ms. Richman:** Is it not logical to make sure that it is a completed project before you transfer the land? I am beating it in the ground because I feel like I am not being heard.

**Mayor Kinnally:** You are being heard. I am not going to make a commitment one way or the other tonight because I do not have all the facts. It would be short changing everyone, including those in favor of the project, those against the project, those who do not give a darn about the project, but, most importantly, the Village as a whole. We get all the information we need and then we make a decision. If we do not have all the information it will not be put on the agenda. The public will have an opportunity to be heard.

**Vanessa Merton, 111 Pinecrest Drive:** Do you have any update of the other affordable housing project, the Division Street project?

**Village Manager Hess:** Currently under study by the county.

**Ms. Merton:** Have you taken any steps to acquire that property?

**Mayor Kinnally:** I do not want to get into a debate about one project against the other.

**Village Manager Hess:** We can ask Sue Smith to come to a future meeting and give us an update on all these projects.

**Mayor Kinnally:** We do not have any information right now on the status of the Division Street matter.

**Ms. Merton:** Don't you think it would be a good idea to pursue that before we lose it?

**Village Manager Hess:** We have a commitment from the town that the Affordable Housing Fund is the preferred developer for one year, through February or March of 1999.

**Ms. Merton:** If we do not do something to move the county forward, the study by the county may exceed the period of time that we have a guarantee from the town.

**Mayor Kinnally:** If we are butting up against the deadline from the town, and the logjam is with the county, we will approach both the county and the town to get an extension. The town is working with us, and they would prefer that we go forward.

**Ms. Merton:** I think it would be helpful if you would try to get the Affordable Housing Committee to move forward on the Division Street Project and push forward with it.

**Mayor Kinnally:** I will take your request to Susan. We will see if we can move the county along and the Affordable Housing Committee along on the Division Street site.

**Trustee Holdstein:** I would like to respond to Ms. Richman. There are some very simple components, as I understand affordable housing: if the funding is not there, it cannot be affordable. It requires our donating land, and funding from a variety of sources. I would go on record to say that I would be in favor, at that point, if the funding is not there, for a conditional transfer. But understand that unless all these things are lined up it cannot get built. We could convey the land, but it is going to sit there because the funding is not there. Unless we have all of our "i's" dotted and "t's" crossed a conditional conveyance would seem to make sense to me.

**Village Manager Hess:** There are sources other than Westchester County, although the county has made a commitment to move forward. The county has, as recently as two weeks ago, met with us relative to this project. It also includes the New York State Affordable Housing Corporation as a source of funding, and the Federal Home Loan Bank. The county has authorized our Affordable Housing Fund as well as the architect on the project, Mr. Dickinson to move forward in terms of finalization.

**Trustee Holdstein:** My comments are in reference to any funding that would make this an affordable project, and having those monies in place wherever they may be coming from.

**Ms. Richman:** My understanding is that as of last week, through their attorney, no commitment was made and they vehemently denied...and that is a major part of their lawsuit, so it is interesting they met with you last week.

**Mayor Kinnally:** Who is their attorney?

**Ms. Richman:** I do not have my papers in front of me.

**Mayor Kinnally:** Who is the "they?"

**Ms. Richman:** The county's.

**Village Manager Hess:** The County Attorney told you that?

**Trustee Keaney:** Your attorney? Are you a part of this lawsuit?

**Ms. Richman:** Sure. Pinecrest Association.

**Village Manager Hess:** Okay, so it is your attorney, not the county attorney, who said this?

**Ms. Richman:** No, the county attorney told our attorney. Their reason for dropping the lawsuit is that the county has absolutely not made any commitment. That is the reason for them requesting we drop the lawsuit: that no commitment has yet been made.

**Mayor Kinnally:** We will follow up on that.

## **BOARD DISCUSSION AND COMMENTS**

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

**Mayor Kinnally:** The waterfront weekend was a rousing success. My hat is off to everybody who put it together. Adam Hart worked very hard in putting the musical component of it together. Trustee Keaney was the emcee; Jean Zimmerman, Michelle Zoe, Christina Griffin, Teresa Caruso. My wife was out bagging meters at 6 o'clock on the morning on Saturday.

**Village Manager Hess:** A number of people worked very hard on it. Ray Gomes from the Village did an outstanding job.

**Mayor Kinnally:** It really was wonderful. There were different things going on all throughout the Village, which made it very special. I was at the ribbon-cutting for the playhouse at Draper Park and it was really very special. Kudos also to Michael Ankuda, who supervised and oversaw the restoration of the playhouse. It is a tremendous addition to that jewel of a park we have there.

Further on the waterfront, there has been a conveyance of the property from Harbor at Hastings Associates to ARCO Remediation. As part of that conveyance there was an assignment of the Tax Trust Agreement, pursuant to the terms of the Tax Trust Agreement, in the event of an



assignment. There was an automatic accelerated payment due the Village of \$150,000, which has been received by the Village. There is, within the next nine days, a \$400,000 payment due under the Tax Trust Agreement. So we will have received well over \$600,000 by the end of the year on the Tax Trust Agreement.

I had a phone call last week from Erin Crotty, head of remediation at DEC, asking my position on requests that had been made, both by ARCO and by members of the community for an extension of the comment period on the PRAP. I said that I am not sure how much discussion there is in the PRAP on the bulkhead, and whether or not any of it is tied into the remediation. I said that to the extent that there is any tie-in we were opposed to any extension as it related to going forward on the bulkheading. To the extent that it had to do with consideration of comments on the PCB's, etc., I did not have an objection to a reasonable (i.e., 30-day) extension. We were advised today that the DEC is extending the comment period 30 days.

I have not gotten an update on the engineering reports that have been in process for the bulkheading. I understand there have been further discussions between ARCO and the DEC on that. I hope on the 20th to have an update on where they stand on the bulkheading, on the permitting, on the engineering, and also on commencement of construction. We are hoping it gets done soon. Any delay in the bulkhead reconstruction will delay the ultimate removal of the PCB's and everything else on the site.

**Village Manager Hess:** The Board will have a discussion at the meeting on October 20 of a response to the PRAP. We will have a copy of our document available by that point.

**Trustee Holdstein:** We are in receipt this week of a letter from Mr. Andrew Lent, our chief monitor during the cleanup of Building 15, letting us know that Dorson's services were no longer needed; Building 15 was cleaned up. I want to enter into the record the closing paragraph.

"Dorson and the Village were the DEC's eyes and ears during the almost two-year cleanup project. This was critical to the successful cleanup of the former transfer station. Thank you for providing administrative oversight of Dorson, and for working closely with the DEC for the past several years to correct this significant environmental problem."

I want to thank Mr. Lent, who was really on top of the Building 15 project, Dorson, and all the people who got that building cleaned out. As Trustee Gagliardi mentioned at one point, we keep removing the roadblocks to progress on the waterfront.

**Village Manager Hess:** The court has awarded us all the final funds for the monitor costs.

## **2. Hastings 1999**

**Trustee Keaney:** The clash of arms is getting closer. You may have heard it. The preparations are almost finalized for the Battle of Edgar's Lane. Please check out the *Enterprise* and WHOH, for exact times of the events on Saturday and Sunday.

In doing this 1999, again I am amazed at the number and the quality of volunteers in this Village. There have been so many, but I want to mention one: the lady who was the chairman of the committee in 1978, who took it upon herself to do some research and go back in the archives of what was done in 1978, for the 200th anniversary of the Battle; to get in touch with me and to give me some research material that was pretty valuable. If you do not remember Jean Kenney, that is the lady I am talking about. I just wanted to say thank you.

**Village Manager Hess:** Residents can be a commissioned officer or a soldier in either the British or the Continental Army. You can even be a Hessian. In true revolutionary fashion, or even Civil War fashion, those who are richer get higher rank. So with a contribution to Hastings 1999, for \$5 you can become a private, for \$10 a corporal, \$25 a sergeant, \$50 a lieutenant, \$75 a captain, \$100 a colonel, \$250 for a major. If you really want to be a general, \$500. We have one general already and several colonels. We even have a 9 year old drummer. We will have a commission ceremony the night before the Battle at Draper Park.

## **3. Commuter Parking Lots**

**Mayor Kinnally:** An issue has come up recently, but we have this periodically on the commuter parking lots. Trustee Holdstein, do you want to give a brief background on that?

**Trustee Holdstein:** Several residents have come to me with a problem: an imbalance between the meters and the prepaid parking permits. We sell prepaid annual permits at \$200 in the month of December, and after that quarterly throughout the year. We also have parking spaces for nonresidents on the River Street side. Non-residents pay twice the cost, \$400 a year. The problem seems to be that the meters fill up much faster, and if you are making an 8:45 or a 9:09 train and the meters are filled and you have no place to park, many people have been putting their cars in the prepaid lots. In some cases people have put dollars in their windshields and come back at the end of the day and they have received no ticket. I am not sure that that is the best way to do things. It is obvious that the commuting population in Hastings is way up.

We have limited space there, but I would like to suggest a couple of things. We should study the situation, put together a committee that can study over a two-week period at different hours what

is happening. Perhaps we need to either add more meters or encourage more sales of the permits.

In addition, I am concerned that the price of a ticket for parking without a prepaid permit is \$25. I think that is a little high. I have been reviewing some of the other ticketing fines throughout the Village. I recommend that this Board look at the entire parking ticket fine structure, because I think there are quite a few inequities in it. We should have public hearings and discussion of what each ticket is and review what we are charging for different things such as parking in fire zones, parking in handicapped parking, when meters run out, etc.

It is a two-fold project that we should be looking at. It would be very difficult to create more spaces, but maybe we are not using the space that we have in the best way. We need to raise awareness about the problem, look at the number of spaces, do a little analysis, see if we have to fine tune the lot, and look at the fine structure. A further problem is people who have a later schedule and find all the meters filled by 10:00 a.m.

**Mayor Kinnally:** The same thing can happen with the prepaid and it did happen in years past.

**Trustee Holdstein:** It could ebb and flow, and that is part of the problem. There is no way to solve it exactly, but we can do a study over a two-week period to see if every day there are 15 extra spaces in the prepaid; then maybe there is an adjustment we can make. Maybe we can put together a blue ribbon committee. And I would like to look at the whole fine structure.

### **PUBLIC COMMENTS**

**Ms. Merton:** This is so nice to be in a more level position and having this conversation. I wish you could take another look at the possibility of trying to reconfigure your meeting space in the Municipal Building to make it a little less distant. From this side it is a little more comfortable.

I am glad to hear that the Village is going to file a formal, written response to the PRAP. The only comment that is going to carry significant weight is that which is made on behalf of the Village as a whole. And that is going to come from you. After 13 years of struggle around the issue of the cleanup, this is game, set, and match. The decision that the DEC makes with respect to how much ARCO has to clean up, and when, and in what way, is going to be decisive for our future in many, many ways. It is going to have a tremendous impact on the work of the LWRP. As a member of the Economic Development Subcommittee we have been assembling information about different possible uses. The assumption we were instructed to work with is that the property would be completely cleaned up and therefore suitable for any kind of use. So what the DEC decides to tell ARCO to do is really a big deal. In light of that I have some thoughts I would ask you to consider.

**Mayor Kinnally:** Is this in addition to what was on the record at the hearing?

**Ms. Merton:** That was mostly asking questions. Also, the Board at that point was not focusing so much on what your response should be. I did have a question about your input to the DEC. I understand there was a meeting on August 28 with ARCO and the DEC; was it the whole Board?

**Mayor Kinnally:** No. It was Trustee Keaney, Neil Hess, Susan Maggiotto, Mark Chertok, and myself. I have reported on this in the past. We had a meeting to discuss strategy and to have an opportunity both for the DEC to get information from us and us to get information from the DEC.

**Ms. Merton:** Would your input at that stage be considered part of the record?

**Mayor Kinnally:** No, because there was nothing to react to. The record is only on the PRAP. It was an informal meeting, but it was one of the most productive meetings I have had with any state agency.

**Ms. Merton:** Mark Moran, when he was regional director, wrote a letter last December in which he said that remediation of any Class 2 hazardous waste site must to the greatest practical extent remove all significant threats to the environment and to human health. He said that ARCO will be required to remediate this property to the highest cleanup level possible. It might be worth reminding them that their own stated purpose is remedial action that effectively eliminates the threat posed by the site, and that whenever possible the state will select a remedy that permanently reduces or eliminates the contamination. It is their duty to screen every alternative that may be a possible way of achieving that goal.

I was under the impression that we were talking about excavating a really substantial amount at the site. The amount of excavation they are talking about at this point is in the neighborhood of 3, 10, or 12 percent. The high level of PCB's was only discovered in February, though testing has been done for over 10 years. So one problem with this approach is that it is not possible for us to be confident that 20 or 30 years from now we discover huge chunks of other PCB's.

The PCB's are, in some sense, the least of the problem. The biggest problem is the pervasive concentration of very dangerous metals and chemicals. The Board has to raise with the DEC consideration of the option to excavate the entire site: removal of all the contaminated soil and replacing it with clean fill. Another option is greater excavation, plus cover over the rest of the property; that would lead to the kind of remediation the law says the DEC is supposed to require, in which institutional controls are at the bottom of the hierarchy...the least desirable approach...and it is obvious why. The institutional controls in the PRAP require us to have faith that in the future there will be a DEC, that it will be staffed by good environmentalists that care

about Hastings, and that if an issue of development comes up those folks will be vigilant and take the appropriate action.

**Mayor Kinnally:** I raised my skepticism of institutional controls with Erin Crotty. It was a phrase that kept coming up in the meeting, and as the meeting wore on people became quite ill at ease with the concept of institutional controls. You might be putting off until tomorrow that which should be addressed today. I told her I do not understand how the institutional controls would work. Let us say you do whatever you say you are going to do under the PRAP. You clean up all the PCB's, you bring in fill, and you cover all of the hot spots up to at least two feet of clean fill over everything else. The site remains as it is, and in five or ten years someone wants to build and dig down 30 feet to put in piles and raceways for utilities, etc. What does the DEC do at that point? What are the institutional controls? She said that before anything can be done the DEC has to be notified and has to review the plans: how the site will be disturbed, if they remove any of the subsoil how it has to be contained, how it has to be protected, and, if there hot spots, how the stuff has to be removed. I cannot say my skepticism is totally evaporated by that.

**Ms. Merton:** Who are the people going to be making those decision? And worse, even assuming they make great decisions that get us very clean at that point, question we need to have answered is this: Once this Record of Decision is entered into, ARCO is signed, sealed, delivered; this is what ARCO has to do. According to a couple of lawyers I have talked to, it does not mean it is definitive....once that is done, and ARCO says what the ROD says...what it is required to do, that is it. That is ARCO's responsibility qua, as, remediator.

**Mayor Kinnally:** I never got an answer from her on this. On the issue of institutional controls, I do not know if there is a complete sign off and this is one of the things we have to talk to our attorney about: whether or not, when they say institutional controls have to be put in place, and if a situation arises when there is excavation, if ARCO has to remediate this site.

**Ms. Merton:** Now is the time. We have as much as anything if this is ever going to be in our favor. We have favorable people in the statehouse. The Business Council of the State of New York has recently put forward a legislative provision to eliminate very large chunks of SEQRA. There is a distinct possibility the law could change, and if we have not had a full remediation, it is too late. We have struggled so hard. You have worked so hard. We have overcome so many obstacles. It does not make sense to let ARCO off the hook for anything less than these people promised us, and the governor promised, and the spokespeople for the DEC have been promising us. You are the only people who can bring home that bacon for this community. Please consider asking the DEC to do a thorough explanation of these two other options and do not allow them to sign off on what is nothing more than a 10 percent solution for us.

**Mayor Kinnally:** I am sure that Mr. Heitzman left the meeting the other night knowing that those were concerns of the people in the Village, and they will be addressed.

**Robin Herbert, Hastings resident:** I am a physician who specializes in environmental and occupational medicine. PCB's really are not the primary health concern at this site. It is the lead, mercury, arsenic, and the PAH's. I asked George Heitzman yesterday if there is a way the public is prevented from exposure to non-PCB contaminants once the remediation is done. He said that public protection will be afforded by leaving in place everything on the site: the asphalt and all the dilapidated buildings. That is the institutional control, in addition to deed restrictions for subsequent buyers. What he communicated to me is that ARCO was going to remove the PCB's, leave the site in a condition in which nothing else could be done because you cannot remove asphalt or remove the buildings without then exposing the people of Hastings to the lead and the mercury and everything else. I do not understand why you could not excavate two feet down and replace with two feet of soil. He did a back-of-the-envelope calculation which was something like 1.8-million dollars. So there are partial remediation solutions that are not extraordinarily expensive. He said that if the Village does not ask for it they are going to get the PCB's cleaned up, and that is it; we walk away.

I hope that you will consider asking for a broader cleanup and I hope you will encourage the people in town skilled in this field to get involved during this important time.

**Mayor Kinnally:** I know that the Conservation Commission is looking into this. Certainly a number of these questions have to be raised. Mr. Heitzman is not sweeping any of this under the rug. The issue of the buildings remaining and then a developer having to assume those costs is not something that is very welcome here, and it also puts off to too far into the future dealing with this thing. That is not to say removing the buildings is going to pose a hazard, because I do not know what is under the buildings.

**Ms. Herbert:** The other issue is that they have done a fairly good job of characterizing this soil with respect to PCB's, but they have only done 90 samples on 26 acres for the other contaminants. What else is there that people do not know about?

**Trustee Holdstein:** That sounds like a very troubling phone conversation. I would like to ask the Mayor to follow up, because what he said to you, and what we are looking for, sound a little far apart on that issue.

**Mayor Kinnally:** We will be reaching out to him.

**Michele Hertz:** Was the bulk of the testing started this year?

**Village Manager Hess:** It would have been two years ago, right after we brought the lawsuit against ARCO.

**Ms. Hertz:** How many wells did they drill two years ago as opposed to the beginning of the summer? Did they start drilling more wells in the beginning of the summer?

**Village Manager Hess:** Yes, they were directed to do additional testing all the way through by the DEC.

**Ms. Hertz:** I am just wondering when the most drilling was done.

**Village Manager Hess:** Whether there was most, or less, it is really the content of what you are getting out of the drilling. Over the last six months they have been doing the most sediment testing out in the river. As they get positive results they keep moving the tests farther and farther away from the site.

**Ms. Hertz:** Do you know when they were drilling under the water tower, and when they drilled and found those PCB's just north of the water tower?

**Village Manager Hess:** I would say, probably, spring.

**Ms. Hertz:** Something was mentioned at the ARCO meeting about construction debris being mixed with PCB's, and that somebody got fined more money for that: Falcon, or Age Carting, or Harbor at Hastings.

**Mayor Kinnally:** There was a fine levied for rock that was brought onto the site in the summer of '97; they were going to patch the riprap and they had dumped some rock in that area near the PCB's.

**Ms. Hertz:** What did they do with that rock?

**Village Manager Hess:** It had to be removed, and it was under the supervision of the environmental company. It was just southeast of the water tower, just when you come between those buildings. Falcon had dumped some rock there. Falcon was an agent for Harbor at Hastings, so Harbor at Hastings was the responsible party.

**Bob Zahn:** So much has happened in this Village of a positive nature regarding the waterfront that I am really encouraged by what is happening. I want to thank all of you. I think that the Village deserves a lot of credit. Since the waterfront festival on September 13, 1997, there have

been incredible strides in the waterfront. I was asked to help with the project, and I did a documentary which was called "Miracle on the Waterfront." All five Village Trustees here contributed to that in some way, along with the Village Manager, Neil Hess, by supporting this financially. A neighbor said in the piece that they had lost interest in the Village because they did not think there was an impetus for change and did not think anything was going to happen on the waterfront in their lifetime. This was something that was unfortunate, but it was important to be said. And now we are talking about going forward. ARCO has an opportunity to make a strong commitment to this property, and it is important for us to support them but also to let them know clearly that this is for our future and our children's future. I would like, again, to offer this videotape to the Village Board as a document of what the people, including yourselves, say about the future of the waterfront and how important that is to them. This is a fantastic opportunity for us to make it happen in our lifetime. Thank you.

**Ken Tuccillo:** It is a real victory that we are getting sheet piling bulkheads for the waterfront instead of riprap, that we are excavating the PCB's to a level of 40 feet, and that Building 15 is cleared out. We have gotten rid of Harbor at Hastings and Eisenberg – a tremendous victory. We are really close to something wonderful happening on the waterfront. The restaurant has really made the waterfront park come alive. The festivals that we are having there are making people aware of what can happen on the waterfront. But we cannot settle for what is now being proposed by the DEC and ARCO. We need to tear down the buildings and get cover over the toxic and hazardous waste, at the very minimum, and that the Village should settle for no less than that. If we do that, I would consider this consent decree and this order a victory for the waterfront, and a real jumping-off point for something to happen.

**Ms. Richman:** What is to prevent the owner from putting a fence around the property and paying a reduced tax because there is contaminant there; that would be far cheaper compared to 150 million dollars that it might cost to excavate the whole site. What would be the economic incentive for them to really clean up the site so we can build on it?

**Mayor Kinnally:** It does not come down to an economic incentive. The DEC is mandating that this site be cleaned up. If ARCO does not do it the DEC will use Superfund money and do it themselves. So ARCO cannot let the land lie fallow and allow the PCB's to migrate into the river.

**Ms. Richman:** The PCB's are being required. I am talking about the heavy metals, and any other things found that a developer, we found out, may be required to pay for.

**Mayor Kinnally:** The property is not going to remain as it is now. The issue is not whether the property is going to be cleaned up; the issue is to what level the property will be cleaned up. They cannot simply build a fence and leave the property the way it is now.



**Ms. Richman:** If we force them to clean up and excavate the whole site now it becomes very attractive for anyone to develop. If we do not force them to clean up the whole site now then they will do what they are required to do, and one of the possibilities then is to not do anything: just pay a much cheaper taxes as an undeveloped piece of property, and leave it sit.

**Mayor Kinnally:** Ultimately we do not have control over the site. The DEC has the control. Once the DEC cleans it up to a certain level it is up to a developer to decide to invest money in this site. If they choose not to develop the site they can put a fence up around the site. Regardless of the level of cleanup they can say there are just too many problems, we do not have enough money, or we are just going to let the land lie fallow. They could do that.

**Ms. Richman:** But why can we cannot ask the DEC now to clean it all up now? If ARCO is forced to spend 150 million, 200 million, whatever it is to clean it up, then ARCO has the incentive to build something fabulous that is going to make them money, or sell it to somebody to build something fabulous and make money. If it is cleaned up, that is the incentive to do something. If it is not cleaned up, as we have seen by other, much less contaminated sites in our Village like the Jennie Station, Division Street, the Mobil site, it is cheaper just to pay the tax or to let it go.

**Mayor Kinnally:** We said we would take this all into consideration. I hear your concerns. We are going to put together a comment package. I do not have the answers that you are looking for.

**Ms. Richman:** I personally would not consider it a victory and be very fearful about this decision. And maybe a lot of other people feel the way I do.

**Mr. Zahn:** Is there a progress report from the LWRP that is valuable at this point; that is something that should be mentioned at some point, because it will impact on the ultimate end of the waterfront.

**Trustee Keaney:** We are not dealing with the remediation. We have about 40 people working on various subcommittees. During November we hope to gather back from the subcommittees their drafts of inventory and analysis that we hope to turn into a draft inventory and analysis for presentation to the public and the Board.

**Ms. Merton:** The LWRP says what we think should be on the site, but the property owner retains the option. We cannot compel development. Unless the owner wants a new C of O, or a subdivision, or something that they have to get from us, we cannot force them to do anything. Unless there is an economic incentive to do something it is possible for them to lock it out. I would like you to tell DEC that this is not an adequate requirement of ARCO because it does not create any economic incentive for development.

**Mayor Kinnally:** I am as concerned as you are about a number of the elements that have been discussed tonight and at the other meetings and after reading the PRAP. After we have discussed it with counsel and find out what the legal requirements are, then we will formulate what our response is going to be.

**Trustee Holdstein:** I do not want to speak for anybody else on the Board, but my sense, in working with this Board, is we are absolutely committed to getting a maximum cleanup. I do not know if putting two feet of fill, after we level everything, or three feet, or five feet, is the right amount, or how far down we dig. But my position is that it has to be to the maximum level.

They have every right to throw up a fence and do nothing. It is private property. We now have an LWRP process that gives us an ability to work with the developer who then has to work with us because of the state LWRP program. We have other zoning tools, and people debate what we should do, and we'll all have different opinions. But we have other tools for that second part of the equation.

Your concern is two different things, and one should not muddy the other. For me, maximum cleanup and demanding the most that we can is a given. What happens after that is something that we have to work on. I think we are dedicated to doing the absolute most that we can. Then we have to work with the owner to try to make a reasonable development in the hope that they do not foolishly throw up that fence.

**Ms. Richman:** If we find more contaminants in five years, is Superfund required to pay to clean it up?

**Mayor Kinnally:** We do not have the answer to that.

**Trustee Holdstein:** We are saying that if ARCO decides to do nothing the state has said they will provide the Superfund. Then they turn around and sue ARCO because ARCO is the party responsible.

**Mayor Kinnally:** But that does not answer the issue: to what level? That is what we will have to come to.

**Ms. Richman:** Are all the members of the Board totally committed to saying to the DEC that we want the highest level? That is what the community wants to hear.

**Mayor Kinnally:** I think we are on record. The issue is what is the highest level required by law? And in order for us to draft a response we need to seek assistance of counsel. No one is saying here that we are going to let them off the hook.

**Ms. Merton:** Here is the concern. Finally the document is front of us. Of the five alternatives the highest level does not even reduce the levels of heavy metals, polyaromatics, and maybe PCB's because the concern is we cannot be sure we know where all those PCB's are. We need to year from you that you will say that we are not going to settle for less than the highest level of cleanup that this Village needs, not necessarily what the DEC has chosen at this point to define.

**Trustee Keaney:** I have a question for Vanessa. I heard some numbers that you mentioned about your estimated cost of these other alternatives. Do you have any kind of idea on that?

**Ms. Merton:** A number I have heard thrown around informally by people associated with the Riverkeeper for total excavation was about 155 million. But, I have no idea. That is complete excavation of everything.

**Trustee Keaney:** How far down?

**Ms. Merton:** I do not even know. That is my point. The PRAP ought to have alternative 6 and alternative 7. And just as it worked through the costs and benefits of 1, 2, 3, 4, and 5, it should work through 6 and 7. At one point in that meeting George seemed to say that the reason why we did not fully develop this alternative is the cost. But later, Mike Lesser, who is their attorney, made the comment, "Oh, no. It's not the cost. Whatever else it is it's not the cost." There was some confusion back and forth about that. But a citizen came forward at that meeting and said that Exxon was required for a small oil spill in California to take out an entire beach and put an entire beach back at a cost of 246 million dollars. Last year ARCO made 2 billion dollars in net profit, after taxes. It is not out of the question, and if we make them spend a lot of money they have a tremendous incentive to make our waterfront pay.

### **EXECUTIVE SESSION**

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

### **ADJOURNMENT**

On MOTION of Trustee Holdstein, SECONDED by Trustee Gagliardi with a voice vote of all in favor, Mayor Kinnally adjourned the Regular Meeting at 10:15 p.m.