

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK**  
**BOARD OF TRUSTEES**  
**SPECIAL MEETING**  
**FEBRUARY 10, 2016**

A Special Meeting was held by the Board of Trustees on Tuesday, February 10, 2016 at 7:36 p.m. in the James V. Harmon Community Center, 44 Main Street.

**PRESENT:** Mayor Peter Swiderski, Trustee Meg Walker, Trustee Daniel Lemons, Village Manager Francis A. Frobel, Special Counsel Mark Chertok, and Village Clerk Susan Maggiotto.

**ABSENT:** Trustee Marjorie Apel, Trustee Nicola Armacost

**CITIZENS:** Forty (40).

**DISCUSSION – Renegotiated 2003 Consent Decree with Atlantic Richfield**

**Mayor Swiderski:** Trustee Armacost and Trustee Apel are out of the state. They will review the video of the meeting and will hear your comments. The format is the same as we had the last meeting. We are going to go through the names on the sign-in sheet. We are going to do three minutes, then invite anyone who did not sign up but wants to speak to approach the microphone. Once we are done with everybody who has spoken once, we will give everybody a chance to speak a second time.

If a question is posed we will try to respond to it on the spot, if we are so capable. If not, we will be posting answers over the course of the next week to 10 days to questions raised here as well as in the last meeting. If you want to comment further you can send an e-mail to [board@hastingsgov.org](mailto:board@hastingsgov.org) and it will be considered part of the record. Anything you send in to that address is considered a public document that can be requested by anyone as part of the Freedom of Information filing. So do not write anything you would not be willing to share, just as if you were up here speaking into the microphone. If e-mail does not appeal, then you can write us a letter at Board of Trustees, Municipal Building, 7 Maple Avenue, 10706.

**John Gonder, 153 James Street:** The 2016 consent decree, this is what I like about it, the \$1.3 million for Quarry Park and a connecting trail to the river. Maybe Meg Walker negotiated this, I think she is happy about that part of it. I like the two acres turned over to the Village. It should be more. I like the depth of the cap from five feet to 11 feet. And if you keep Building 52 I hope they put 11 feet around it, and that is 3 ½ feet over my hand. I hope they put 11 feet in the bottom floor. That would protect the building, maybe, from some of the PCBs and water problems. I like the 100 feet from the shoreline and 60 feet from the cove for buildings, and not little buildings but bigger ones. I would love Building 52 to be demolished. That is a priority. I like money for the Hastings Historical Society of \$50,000. That is a very good deal. I like the \$1.4 million trust fund existing in the 2000

decree for river-related projects. I do not like dedicating up to \$1.35 million in matching funds for the water tower. BP could have said here is a million dollars, no matching funds. I do not like the height of the new buildings that cannot exceed 65 feet. I believe it should be 30 feet, and I hope you restrict it by zoning. This is different thing, but some people are saying they want a referendum on Building 52. That is a mistake. You are put in office for making these decisions, and I hope you will.

I understand, and this surprised me, that in talking to Building Inspector Minozzi today I said if I wanted a building permit could I get one for a building. He said yes. So why does the Board have to make the decision? Apparently, it is only because it is waterfront. If Anaconda built that building when they owned the Burke Estate up there Mr. Minozzi could sign it off.

A lot of times I talked about wisdom to the Board in Board meetings. I hope you use wisdom and accept this decree. It has been so long, over 13 years, because the first consent you had to negotiate for several years, too. I know our former mayor, Mr. Kinnally, said let us expedite and get this going.

**Jim Metzger, 427 Warburton Avenue:** I believe this is a bad plan for Hastings. First of all, it did not take 13 years to renegotiate, it only took a few years because there was a lot of work going on in the site. I do not believe there were any planners on the negotiating team, and a good part of this document has to do with zoning and planning. I believe it goes against our Comprehensive Plan, the fact that we are supposed to be doing form-based planning on the waterfront before we make decisions about what sort of buildings are going to be going down there. I want to thank Jacques Padawer. Without his input so many years ago this cleanup would not have happened the way it is going to happen, so we need to thank him. The 65 feet is an arbitrary height. It was based on a building that was previously down there. A lot of people believe this is an 11-foot height. It is not, it is 11 feet above a mythical water table. BP should be required, like every other large developer in the community, to put indicators up on the waterfront showing where the land is going to be and then how high the buildings are going to be and where the extent of those buildings could be built so we can get a sense of how this will affect the view. It is going to be a problem. We should do our form-based planning.

A 65-foot building this wide is going to block a lot more view than, say, an 80-foot building this tall but narrow. We should not be confining ourselves this way until we do the form-based planning. It is a problem. Descriptions of what is happening on the waterfront, without diagrams, are way too obtuse. I do not believe anybody understands where any of the heights are going to be down there unless we have actual diagrams to look at.

I want to know how this plan affects the conclusions of the Infrastructure Committee, with 8 to 14 acres of open space, and how that is going to affect what we do down there in terms of putting in roads and facilities. The shoreline treatment that is called for is a very 1990s kind of the, riprap and planting. Planting does not work on the Hudson River. Beczak told us that about 15 years ago. We cannot do planting; you cannot maintain it. We have to look for other options there. It should not be in this decree. We need a detailed monitoring plan of the cleanup before we say they are going to monitor. I want to know what they are monitoring and how it going to affect us. Let us remember, the site will not be clean. It is going to be remediated to a certain point. It is not going to be free of PCBs. Anybody that builds down there is going to have to clean up whatever they put in as part of their foundation work. So let us all be clear about what the term "clean" means. It is not really going to be clean. The two feet of "clean fill," and I use that term loosely, over the entire site is a maximum two feet. They say if you want to make it lower or higher it is only going to be two feet. We may only have a foot of fill in some areas and may have three feet in other areas. Developers can go up to 14 feet above the mean water level. We need more documentation. This is written by lawyers. We need to have some planners looking at this as well.

**Mayor Swiderski:** Just a point of clarification, and I do not intend to this often, it is not two feet everywhere. It is 11 feet where there will be development, and that may differ from point to point on the waterfront depending upon what the level of the soil is there. So in some cases you might be putting seven feet of soil and other places only two feet, but that is the state-mandated minimum.

**Mr. Metzger:** Which goes to my point that this document does not give us enough information to make a good decision on whether it is good for the Village or not

**Danielle Goodman, 445 Warburton Avenue:** I again protest the three minute limit. I think it is arbitrary, capricious and subverting First Amendment rights here. I urge you not to approve the consent decree as proposed. It has been 13 years since the first consent decree was adopted. In those 13 years, not one shovel of despoiled ground has been remediated, removed or otherwise touched. We are still in the design phase. My first point of objection is that this consent decree, now 2016, sets no time limits. Perhaps that is not the ordinary way things go with remediation, but we should look at our history and put some time limits in. If you do not want to put time limits in, put penalties. Twenty-percent of your revenue stream has been off-line for, my estimate conservatively, 36 years. I went back to what we have said over the years about time. At a public hearing, 9-22-09, Trustee Quinlan, who was advocating for removing buildings, and does that sound familiar, said we are still negotiating on how we will clean up the place, and we have no timeline. My guess is that the cleanup will sometime start, and hopefully complete in five years. That was 2009. Then Mayor

Swiderski in his presentation online, says remediation will take likely four or even five years more. So between the two of you that is already in excess of a decade. There is no apology to the Village. People have left because the taxes are toxic. No apologies, no explanation. I was part of the government for two years so I will make my apologies for whatever I could not get done in the two years that I served except to complain that the public was being shut out of the meetings.

That brings me to point two. I do not agree with your proposal for a period of one year, where the Village will continue to meet on a periodic basis, non-publicly, to talk about title to the property, et cetera. I guess I will ask for more time later.

**Mayor Swiderski:** A clarification on schedule. There is a schedule here, and I will ask the representative from ARCO to confirm it. The final design is due the end of March next year, correct?

**Male Voice:** Sometime around then.

**Mayor Swiderski:** So the engineering design for the I cleanup is due then. Then at that point, approval by the state, then the bidding process to begin the remediation starts at that point. Depending upon how long it takes the state to approve the remedial engineering design, that will drive how quickly we actually see something happen.

**Special Counsel Chertok:** There is a consent order with the state that can be enforced, and this decree provides that the Village can also enforce schedules that are entered into between ARCO and the DEC. There are penalties that the DEC can impose in the consent order and the federal court has broad equitable and other powers.

**Morgen Fleisig, 101 Scenic Drive:** I did send an e-mail last week that Trustee Lemons responded to so I will assume that will be in the record and will be answered. There were a bunch of questions. I am new to the town. My wife and I just moved here about a year and a half ago so I realize this has a lot of history to it. My one main concern is the amount of open space that we are going to preserve. I did read the consent decree, tried to make sense of it. What I understood is that there were two definitions about open space, one a 30-foot strip along the waterfront and another one which was a 100-foot setback from the low water line. I have noticed from time to time the Hudson recedes, so I am wondering where we are measuring that 100 feet from. In terms of the open space, I read 2.5 acres plus two acres at the northwest corner plus 1.75 to be determined plus an optional eight. My concern is that we are not preserving enough open space and enough open space along the riverfront.

**Steven Siebert, 71 Mt. Hope Boulevard:** Unlike the case of Building 52 I am not an authority on the consent decree. But it seems like there is something rotten in the state of Denmark. I am not unsympathetic to BP's plight. Their losses this quarter are staggering, their losses for the year are even more staggering. I have also done some research on ARCO, and ARCO's purchase of Anaconda was not successful in any way. So it is very difficult to look at an oil company, with the price of oil falling and people say they will not recover even until next year and even big companies like BP are in seemingly precarious situations. Those are all genuine concerns, and I recognize that. But that does not make much of a difference in the case at hand. It is also, parenthetically, a shame given how BP is tied to carbon in such a way that they did not take the proposal made years ago that they turn Building 52 into a green laboratory on the waterfront, with solar panels on the south-facing roofs, and exploring wind power and hydropower in the river. It is tragic they did not do that because they would be in a different position today if they had diversified back then.

But in many ways BP's plight because of the is of their own making. I do not think their plight should lead us to believe that this is a good consent decree for the Village. There is a lot here that does not smell right. Why, for example, is BP committing money towards the quarry? I know a lot of people who are actively involved in the quarry and a number of them think it is strange that suddenly monies appear for the quarry. One even said to me that they thought this seemed like they were being bought off on other issues, and they spoke explicitly about Building 52. What guarantee do we have that the monies being promised will be allocated and used for those purposes? I recall when Building 51 came down, the Village was promised \$2 million to help stabilize Building 52. But where have those monies gone? It seems like BP has retracted their commitment there and used those monies for something else. How can we have any assurance that that will not happen again?

As far as BP being willing to pa half the cost of preserving the water tower, even *The Enterprise*, which is hardly a bastion of radicalism, thinks they should pay the whole amount, given the delays on cleanup of the waterfront. Picking up what Danielle said, in terms of the time BP has left that land unavailable for productive use to the Village, if you take the 20 percent figure over 36 years and add that up, how much that would come to is quite astonishing and I do not think we should be satisfied with this. Again, if the Village had said and you had told us this is not a great plan for the Village but it is all we can do, we would feel differently. But to be told this is a good plan for the village seems to be a mistake.

**Kathleen Sullivan, 17 Wilson Place:** Who makes decisions and who has our back? Who will be deciding if ARCO has given enough consideration to our comments on the remedial design plan when they say those cost too much? It is in Hastings' interest not to have toxic materials trucked through the Village. Who decides ARCO made a reasonable effort to use barges and rail when the semis roll through? Has the Board of Trustees had other regulatory

groups review this consent decree? Construction is complicated and there are a lot of players: Army Corps of Engineers, Fish & Wildlife. If they do not permit the work it might not happen. Things are not very clear in this, which is not good for a contract. I think there is a major typo in section 4.2, where it should refer to article 4, not 5. Are there any other errors? This is alarming to see at this stage. Smaller, but still in error, the definition of the southern remainder refers to a map where it is not shown. The consent decree should include an accurate map. It also should define public access. Is it 24/7 or every other Sunday? The northwest corner is precisely described. Recent investigations seem to show the pollution in that area has grown. How does a consent decree adapt to this kind of added information? We should spell out the implied goals in this consent decree when it talks about the fill. I believe the consent decree envisions a waterfront that may meet flood guidelines, but does not accommodate projected water rise due to climate change. That is left to a developer. I suggest that these are Hastings' goals. Ensure that changes to the waterfront are resilient additions to Hastings for many generations. Because the waterfront will be a high-risk flood zone, ensure access to flood insurance. Protect the Village and future users of the waterfront from costs to restore property after a flood.

My concerns are that if a consent decree does not create a site that accommodates climate change it flies in the face of resilient design practices post Sandy. Requirements are changing itself, based on proposed changes to the state building code that are coming this year. The site heights in the consent decree might be too low. And a conservative interpretation is that no fill might be permitted. But things need to go forward so I offer an approach. Performance versus prescriptive. ARCO's remedial design needs to meet the performance requirements laid out by the state. How to do so is not prescribed. Suggest that the consent decree follow the same approach. State our goals and let the design show and meet the criteria because the steps are not clearly defined yet by FEMA, by the National Flood Insurance program and by the state.

The big question here is what is the plan, and ambiguity is not good in a contract. Many decisions rely upon some undefined plan. Raising the site's flood levels, concurrent with site redevelopment and Village-approved and zoned plan. Open space in a development proposal formally submitted to the Village for approval. Open space conditioned on an agreement of ARCO and Hastings on the development plan. And within one year, talks to decide how to redevelop the site. What is the plan? Not to duck taking on creating that place. What is the process? Open, transparent, inclusive. That hurts, but it is worthwhile. And what is the goal? The goal is a cleaned-up and awesome addition to the Village for generations. And what is the process to redevelop the site, why one year? If the process to make decisions to redevelop the site has a one-year clock, then we better start talking together soon. When is the Board free?

**Ms. Goodman:** I would like to just take a moment to talk about the heights.

**Mayor Swiderski:** You should come back for a second three minutes.

**Roger Torda, 17 Wilson Place:** Thank you for this opportunity. Decisions like the fate of Building 52 are difficult without a clear vision for the waterfront. Developing that vision depends on good planning. I attended several meetings of the Infrastructure Committee. At one, a committee member asked the chairman if the committee was bound by the Village's Comprehensive Plan. The answer was no. That surprised me and I think it illustrates a problem. Without a continuous, cumulative and transparent process leading to a road map for the waterfront, like decisions to tear down Building 52, will remain very difficult to make. I think a road map must also include financial planning, for potential costs are obviously tremendous. Some costs are intangible. I count my blessings every morning when I stand on the train platform and peer across at the Palisades. Or from the side of the library, when I see the George Washington Bridge and a Manhattan skyline. The Infrastructure Committee spent a lot of time discussing view corridors. A few view corridors between massive, 70-foot condo buildings are a poor alternative to unobstructed vistas.

Much of the public access detailed in the consent decree is for a narrow walkway on a sloped shoreline designed primarily for erosion control. That is a diminished alternative to a wide swath of parkland. The cost here is one of a lost opportunity to create generous open space along the waterfront. There will be hard costs, too, when scores or even hundreds of luxury condos rise up. It is possible that gains in property taxes will not balance the cost of educating children who live there. There may be costs to the community from a large bond issue. There also may be costs and liability for pollution that will remain under the site forever. A member of the Infrastructure Committee remarked at the meeting that everyone is in favor of a park for the waterfront until they hear that property taxes will go down with private development. This kind of talk is loose. There is a presumption that public access and good views can be purchased for the waterfront only with fees from developers. This may be the case, but I have not seen any analysis more recent than the 2004 Waterfront Implementation Strategy report, and that report discussed deficits of up to \$24 million. So I worry that declarations about the value of massive private development remained unchallenged.

I also worry about the opposite. Let us say it is demonstrated that massive private development is necessary to find money for public amenities. What happens if the private development never happens? Do we know if there can be, and I am going to wait until that beeping ends and wrap up, if you do not mind. So while I worry about declarations about the value of massive public development and those declarations remaining unchallenged, I also worry about the opposite. Let us say it is demonstrated that massive private development is

necessary to find money for public amenities. What happens if the private development never happens? Do we know if there can be large-scale construction on land that is still likely to flood? Or perhaps the community will not tolerate large buildings on stilts. It is possible that building codes will not permit habitable structures on the first floor of waterfront buildings. That could increase pressure on a developer to build up to the maximum height.

Maybe it turns out that there is no affordable way to build a heavy-duty foundation on the landfill mess that lies just under the surface of the site. Or perhaps people will not want to live or raise families above a site laden with PCBs and heavy metals. So while I am worried the calls for large-scale private development are based on unproven economics, I also worry that plans may rest on development that may never happen. I used to smile to myself every day as I walked or drove over the crest of the hill at the Five Corners intersection. I loved the emerging of an amazing view of the Palisades over the business district. That small pleasure is gone with the fourth floor of 45 Main. The waterfront is not a small pleasure, in contrast. Development there will affect everybody. To make good planning and economic decisions we must have a vision for the entire site. We must understand all tangible and intangible costs, and we must understand the arithmetic of the financing. Without all three, we are likely to make big, costly mistakes. We do not have a plan, we do not know the costs, we do not know the math. So let us work together on these three challenges. If we set our minds to it we can do so efficiently and with reasonable speed. Thank you, and thank you for the extra time.

**Patrick Randolph Bell:** There were some thoughts I heard out of the crowd I thought were good ideas. If you can get a lower height for the buildings now it might be a good idea. I still find it interesting that we are getting the most polluted part of the entire site as our park. That sketches me out a little, the northwest corner. Maybe somewhere along the way we can get more acreage out of it. I do not know, it is your negotiation. I do wonder about when we do finally get all this stuff out of here, someone said all this stuff gets sent up to Niagara Falls. Where does our pollution go? Are we polluting another community so ours is not as polluted? That is something that Hastings being the green village it tries to say it is worries me a little. When people finally figure out where does our trash go.

I did like the idea of the penalty and the timeline requirements. I think you said there is something that will accomplish that in the future. I did have a couple questions about the process again and the timing. Part of it says if the Village does not approve the demolition of the water tower, that is another reason to renegotiate this consent decree again. I wonder when we are going to have this Village-wide vote for the water tower. We are going to have a) keep the water tower and fix it; b) this thing is so broken let us try to put up a replica and c) none of the above, which is the way you described it on your one summary of the consent

decree. So let us say we say c) and we do not decide to keep it, or take it down. The Board of Trustees is supposed to vote on this come March 3? Is that the date?

**Mayor Swiderski:** I think it is March 1.

**Mr. Bell:** OK, March 1 for the consent decree. When is the Village-wide vote for the water tower? Are you going to have to re-vote this? You are getting Building 52 done, we all know you are tearing it down. You are going to tear that down and you are going to approve this consent decree. But you do not know what the Village is going to do when you have a Village-wide vote on the water tower. Does that mean you might have to go back to the drawing board again and renegotiate the consent decree and then re-vote it again? I am just saying maybe you would like to vote on this consent decree until after you get the Village-wide vote on the water tower. The process seems a little backwards to me.

**Mayor Swiderski:** A clarification on the water tower. The water tower sits on a hot pocket of pollution and is coming down regardless. There is no referendum on whether the tower is coming down. And it is not really a referendum because it is not our property and is not something we can hold a referendum on. What this is is public input, and we do not know yet how we are going to structure that. But it is going to be in the form of some sort of vote to determine, after we figure out if the tower can be taken down and stored, whether a new one should be put up instead if it cannot be stored or if nothing should be done. It was never envisioned that the referendum would be on preventing the tower from coming down. The tower sits on a hot pocket of pollution, it is coming down. The tower vote would probably be late spring. We need to organize. First of all, we have got to hire an engineer to determine if the tower can be saved. It may be so rusted that it cannot be brought down in a neat fashion and stored. That will take not much time, since we have already had that priced out and are ready to go. Once we have that, we need to formulate the mechanism that we will engage in to get public opinion, whether it is a mail-in vote or whatever, and formulate the questions so they are clean, fair and transparent so people understand the issue before them.

The reason we are engaging this, in part, is because if the tower can be saved there is likely to be a substantial cost. I do not know that for a fact. It is one of the things we will have to ascertain. But that is a large structure and would have to be stored somewhere for five years. That is worth asking people if that is a cost they want to bear. I have an affection for the water tower and find it iconic, but whether that is worth what it might cost to preserve it is something different.

**Andy Zimmerman, 7 Ridge Street:** I would like to take my three minutes to talk about the water tower. We talked about Building 52 already, and what I am going to say about the water tower, to some extent, could apply to Building 52 as well. I love this village. That is

why I have lived here for a long time. I think we all do, but sometimes I feel like this love shades into something that disturbs me, which is this idea that it is perfect, it should never change, it can never get any better than it is now. Or it can never get any better than the way it was when we were growing up here or when we moved here. It should go back to the past somehow. That leads to a sentimentality, nostalgia, reactionary backward thinking. Unfortunately, if you do not change you do not survive. I am afraid if Hastings gets stuck in amber it will become a ghost town. That is what we see happening to the downtown now, I am afraid. Anaconda had a lot of good and bad things about it, which are worth remembering. But what it has left to us is this water tower. I look at it out my window. I do not know how closely you look at it. It is junk. It is rusted, it is caving in, it has a coating on the top of it of guano. Should I use Anglo-Saxon? Bird shit is what is on the top of it.

**Mayor Swiderski:** "Guano" was good.

**Mr. Zimmerman:** There is a maxim of modern architecture that says form follows function, and at one point it was a functional building. Now it has no function. It used to hold water, now it does not. And even as a tower it does not do anything else that a tower should do except, I guess, look cute. But if you owned this land you would never build this water tower the way it is now, would you? You would not. It does not fit in with anything that could possibly be built in the waterfront, and it is a mistake to make whoever is going to build something down there build something to fit in with the water tower.

If I was going to build a tower there I would want to build a tower that you could climb up to the top of, or there might be an elevator up to the top of. Maybe there would be a restaurant on the top or a gift shop where you can make the money back that you spent on it. It could become a tourist attraction for Hastings. I am just hypothesizing here. Maybe it would spin around like some towers do. It would have some function besides sitting there as some emblem of nostalgia. Ned Baldwin is with us tonight. I would hire him because he designed the CN Tower in Canada, which was the largest tower in the world. I think he has designed some other towers since then. He is a Village resident. I would have him design it, and I would like to suggest that that might be the best way to go.

**Chris Lomolino, 24 Aqueduct Lane:** I am one of the original members of the Quarry Committee. The committee was set up by a group of residents in 2004. I wanted to give a little background, since there is a certain mystery involved in how the Quarry Park project is attached to this consent decree. Members of our committee were not at the negotiating table. But there is a history here that I wanted to share. There is an extremely comprehensive report that our committee prepared for the Trustees in 2005. If anybody wants to know the whole soup to nuts history and story and incredible illustrations of the history, they can go to the Village website to the 2005 documents and see the Quarry Park report.

There is some logic involved in the connection between the quarry site and what happens on the waterfront. The site itself, the 5 ½ acre site, was once owned by Anaconda, as was the strip of land that took the marble from the quarry on a little inclined railroad down to the Hastings waterfront where the dressed marble was put on sloops and was a very important part of the history of the river as an avenue of commerce in the 19th century. There is another connection other than the fact that Anaconda, the predecessor company to BP/ARCO, was involved with the site itself long ago. The other connection is that the original consent decree from 2003 had a fund, an environmental trust fund, specifically for a project connected to the Hudson River. Our committee had sought funding for the remediation of the landfill that is on the quarry site from that fund. The decision about what projects might be eligible for that fund was to be made by the parties to the consent decree. The Village supported our committee in accessing the funds, the original consent decree fund from 2003, but the other parties had different analyses of the legal terms that established the criteria for utilizing the funds. So we were not able to fund the project through the original trust fund.

This consent decree has established a second fund. The first fund was \$1.4 million, this one is \$1.3 million. I gather there was a discussion about whether this fund could be utilized for a public project. Because the quarry had long sought to access the initial environmental trust fund to remediate the site and return it to the public as a public park, it became an aspect of the renegotiated consent decree. Our committee is a single-issue committee. We are a bunch of concerned residents who have sought to establish a former landfill as public parkland. As such, we do not have an opinion on the adaptive reuse of Building 52 or many of the other issues in the consent order. But I wanted to point out a bit of the history that everybody may not know to date.

**Mayor Swiderski:** Point of clarification for the record. Riverkeeper was the party that nixed the original request for the monies. Riverkeeper is one of the three signers to the decree, and that was that. It ended there. The history is accurate regarding the connection to the waterfront. Everything else, I will stress, is personal supposition. It is not necessarily what went down in the negotiating room, but thank you.

**Lin Osborne, 17 Villard Avenue:** There are a lot of 17s in this room tonight. Just an observation. I was reluctant to stand because I feel so disappointed in this whole process. I feel there is a lot of process going on, but very little substantive input from the Village as a whole. We had one committee, I do not remember, 15 years ago. It was called the Mayor's Waterfront Committee. It had no parameters. It said what do you want. That is all it said, that was the whole purpose of it: what do you want? There were several hundred people in the Village that got together and played around and hashed it out. We got a consensus for what we wanted. But that is not planned development, that was not an open process.

That is all over this document. We were not in the room to look at this. We do not have anything in English. I work in health insurance, I know how to read a contract. There is nothing in English to tell the people what is really going on. This plan, should something go wrong, is dismissed with prejudice. It means we do not get to re-sue. That is it, we are stuck with whatever we come up with here, whatever comes out of this. I find it so disappointing. Our plans do not seem to reflect anything that has been successful up the river which we can look at. A narrow walkway is fine, but the places that have a walkway also have a big park, there are repurposed industrial buildings. But we want to just go our own way and, you know, this is a little village. There are not a lot of folks here. And we could probably get along and decide together, but we do not get that chance. That is why I am so disappointed because it is always folks in the room yelling at you folks up here. That is a terrible shame, and great opportunities have been missed and are being missed now and will undoubtedly be missed in the future. I hope what you are reading there is more interesting than what I have to say.

**Mayor Swiderski:** The consent decree does not speak to use. We do intend to go through a form-based planning effort to determine, in part, view sheds, building envelope sizes, et cetera. But this does not speak to use quite deliberately. We are not at that point, we do not speak about zoning here. We try to establish a framework in terms of both the level of cleanup and a height to the waterfront so the maximum number of uses can happen. But ultimately the determination of use and the determination of zoning is ahead of us, not behind us.

**Mark Kuniholm:** I urge the Board to accept the consent decree. I would rather see something happen versus nothing. I have small kids, we love the idea of Quarry Park. That sounds great, more parks in the town. But I took the train up to Cold Spring with my family this past weekend, and there are some beautiful spaces like Irvington. There is a lot of wasteland along the river. So Hastings, I do not think, is unique in having riverfront property. Despite the putative uses, some of which are speculative of Building 52, to me it is the PCBs and how are you going to use the property without razing everything and getting the contaminants out which cause cancer. .

**Mayor Swiderski:** We are now done with the list, so we are going to ask people who have not signed up and have not spoken.

**Ann:** I wanted to ask if it would be possible for the council to have a meeting with the community where citizens could present renderings of their vision for the waterfront, and if we could not try to repurpose Building 52 for the benefit of our community, if we could not have a public dialogue about it, with images, about the opportunities and possibilities.

**Donna Taylor, 10 Valley Place:** I am pleased that you are talking to us this time. Last time, there was no interaction. Maybe it is because there are less people here. Mr. Lemons came to listen to the Hastings Waterfront Alliance for about two hours. He said the reason we could not save Building 52 is because we do not have an angel, a benefactor, that will allow us to. The other evening when we met I said do we have any impact from last week. I said you saw the renderings and so forth of Mr. Alligood. He said yes, they were very nice drawings. Again, why is you cannot meet with the Hastings Waterfront Alliance, with Mr. Alligood - he was good enough to do your general presentation of the waterfront - before you do the legal work of tearing down Building 52.

**Mairead Daly-Diep, 385 Warburton Avenue:** I would like to follow up on what Jim Metzger said about planners not being involved or heavily enough involved in the consent decree. I do not think it is too late. We have been relying too much on ourselves. I would like to see us bring in an outside expert who has planned successfully for a similar site. There are quite a few of them, and I am very happy to put some names forward. Also, I would like everybody to remember, moving forward, when we are talking about development on the waterfront people keep bringing up residential as an option for future planning on the waterfront. Not only is it an issue that people may not want to live on a superfund site or an ex-superfund site, but also, our school district does not have the capacity for more than a few more families in Hastings. Residential would only work if it were for senior housing. I cannot see it working any other way. We have to stop rehashing the same things. Please, can we just stop talking about residential on the waterfront because I do not think it is going to happen.

**Mayor Swiderski:** A comment on consultants. We have a grant from the DEC that we will be engaging a series of consultants to address planning the shoreline. This is going to be over the next nine months because we want to provide input into the design process so it is clear where the walkway should go, where the connections to water uses should be, et cetera. That is going to employ the sort of expertise you are talking about, in addition to a working group, so we can help provide input to BP at this point in time when they are in the middle of their engineering design. We will be specifying what at this point in time we can specify. We cannot yet specify larger issues of development or use. We have not started that zoning process or that use discussion – that is not yet in the public dialogue – but the shoreline design is and that is something that will unfold over the course of spring and summer.

**Ms. Daly-Diep:** I am totally not an expert, but what I would like to put forward is that when we engage someone to advise us on the shoreline that they also take an overall view of the entire area. Not to plan for use, but just to plan for general things like where roads can go, et cetera. I know that work was done on this prior. I do not know if it was Doug Alligood who did it.

**Mayor Swiderski:** It was a group.

**Ms. Daly-Diep:** But we need an expert who has done this successfully before to take a look at what we have in mind, what we have done, and let us know if it is possible. We need a starting point. I am not suggesting we jump the use at this point. I just think we need a starting point. Also, I would like to know how we are going to find the expert. If there is a plan in process I would like to see it be opened up to anyone who would be interested in getting involved who has worked on a similar or larger project in the past, successfully.

**Mayor Swiderski:** Anyone else who has not spoken yet? Then on to repeat performers.

**Mr. Gonder:** Again I hear people saying about the process. I think the process was great, the American way. BP has a lawyer, an attorney, probably one of the best in the world, I do not know. The Village had an attorney.

**Mayor Swiderski:** A pretty good one.

**Mr. Gonder:** And you also had a consultant, I think he is here. Jeremiah would do a good job with the Village assisting your attorney. Riverkeeper has a great attorney. This is the American way. And now the Board has to make a decision based on this. People want planning and this and that. We have been going on this for 13 years or more. I remember back in the '80s when they closed the plant there were problems, and it was Riverkeeper with the boats going up and down and checking something in the water and whatnot. We knew there was a problem many years ago, and it is probably coming, finally, to finalize it. The Board has to make a decision, and it is a tough decision. I hope you can make it, but process? We had the best process in the world.

**Ms. Goodman:** Not to repeat myself, but the three-minute rule has stunted the conversation here, particularly my own. The point I was trying to make is that this document pretends, or not pretends, it is, a planning and a zoning document. What some of us are trying to say is, that does not belong here. There are use restrictions. For example, 7.4 at paragraph B, I was complaining about the process there. Any discussions I would like to suggest, from here on out when you sign this, should be done at work sessions. About title to the property, you say you are going to be negotiating in good faith to explore possible mechanisms for redevelopment of the site for non-industrial purposes. What does that mean? I do not want housing down there either. But what if like Paul Feiner, who has managed to have a whole biotech corridor in Eastview and Greenburgh, what if one of those companies came here and said there is no room for us at the old Union Carbide site, we want to put a campus there. Then we are going to look at this and say non-industrial? What does that mean? You have

four pages of definition and I could not find it. There is also deed restrictions. So you are saying there cannot be single-family houses. Maybe two big estates are better than 300 condos. So why are you limiting us? This should not be the purpose of this document. We should have an open discussion, because if five or 10 years from now, when you are talking about the title to property and redevelopment, if you are going to limit us to three minutes at least have a public record of the conversations. No more protect negotiations. You have gotten a blank check on time limits, the lack thereof. I hope this board sets its mind to imposing the time limits, whatever they are, with the DEC or otherwise and penalties. Because it has gone on too long. No one disagrees with that.

Lastly, I want to say that the height restriction issue is also a planning and zoning point. That does not belong here, it just does not. Also, I objected to the linking of the site remedy, demolition of Building 52, to this agreement. Also, there should be consideration given to how the materials are being removed. You have 400 truckloads. If you demolish Building 52, if you look at the demolition permit, there are 400 truckloads at least of stuff that are going to go out of the Village. For the rest of it, I think it should go by barge or train. Because how much are you going to subject us to? That clause in this consent decree you could drive a truck through. May, use, reasonable; how about shall go by barge or train? Particularly if we have 400 trucks on top of how many other trucks that took out the other buildings.

**Mayor Swiderski:** A comment about the use restrictions. This consent decree is a three-way negotiation. Those use restrictions are from the first consent decree. They survived the original document. I do not believe I would throw my colleagues at Riverkeeper under the bus when I say they had strong feelings about a number of those restrictions, including a 100-foot setback from the water's edge, and the height of the building. The height of the building was originally driven by the tallest building on the site at the time. Their concern, and for me this is anecdotal because I was not in the room when that consent decree was negotiated, my understanding was that they did not want the sort of tower complex that had been proposed in the '80s for the site. They wanted something that would be less intrusive on the users of the river. In terms of the private dwelling, the driver for that, and again this is anecdotal but I have been told that it is true, the concern about individual homes is the DEC?

**Special Counsel Chertok:** The DEC proscribes single-family residences on a site like this.

**Mayor Swiderski:** The concern is that people will take unilateral action without worrying about things like building permits and drive a pool in the ground and it will land up piercing a cap. The idea is it is less likely to happen in a condo or a co-op if there is residential on the waterfront, while private dwellings with fences and all that, things might happen.

**Special Counsel Chertok:** This is a proscription that applies across the state on any site that is cleaned up under DEC auspices.

**Mayor Swiderski:** There is also a proscription against wells, same idea. They are trying to prevent behaviors that would put the general public at risk. I agree there are planning implications out of that, but some of them are artifacts of a previous negotiation and others are DEC-imposed.

**Mr. Metzger:** To tie us to the consent decree of 2003 and what was in play 13 years ago, ties us to what was going on in the 1980s. It is one of the issues I have with this consent decree is it keeps making reference to a document that is 13 years old that we were told was immutable and you could not do anything to it, it was cast in stone and this is what was happening, until we found more pollution. Which brings me to one of my first problems, article one, jurisdiction, validity. "Parties agree not to contest the validity of this consent decree in any subsequent proceeding to implement or enforce its terms." How can you have a document that tells you can no longer argue about what is in the document, when we do not know what is going on on the site? It makes no sense to shut down the ability of parties to challenge what is going on when we do not have full view of what is going on in the site.

Engineering is going to be done in March of next year. Two years ago-plus we were told the engineering was going to be done in one year. Our Infrastructure Committee said six months, you got to get it to us right now, hurry, hurry, hurry. We are still waiting, it is two years. So I have no faith that BP cares one whit or another about time frame.

To Mr. Chertok's thing that the DEC can impose penalties. Well, no, they cannot, not according to this consent decree. What is says is they can have the court enforce the terms of the consent decree, but there are no penalties identified. You have to enforce what is in here, but there is nothing about penalties that you will incur if you do not do what is in here. I want to know what the penalties are. Because when a company like BP, and I am not talking about the gentleman that is sitting here but rather than about the corporation, when they can blow up a wellhead in the Gulf of Mexico and get hit with billions of dollars in fines the company just keeps going along. They wanted to drill more down there without changing anything. Penalties to a company like BP are immaterial. I do not care how much money they lost in the last year. Put that against the billions and billions of dollars they made in the previous 10 or 15 years. Yes, we all go up and down in our income levels. It is not putting them out of business.

You can turn off the timer. I am not leaving until I am done. The water's edge study has a time frame because the engineers are coming back to us. That is what they told the Infrastructure Committee. I say you know what? We are going to be looking at the water's

edge, we take as much time as we need. It is going to be critically important. That should not be rushed on the Village's end because BP has some notion about when their engineers might be ready. They have to wait for us to tell them what we want. But that becomes a problem as well. That problem is, this whole process is being done piece by piece. First we talked about infrastructure, then we talked about Building 51 a few years ago, now Building 52, the water tower, waterfront, the water's edge development. It should not have been looked by the Village this way.

Riverkeeper may have their thing about what they want to do. But we are the ones that have to live here and they do not. This 65-foot thing, they came up with that 13 years ago: there is a building, let us keep it at that height. What if there was a 75-foot building or a 100-foot building, let us keep it at that height. It is a meaningless number. Until we as a village get to look at what happens down on this waterfront these are all meaningless numbers. To sign a document that restricts us to these numbers is foolhardy. And yes, it may take another couple of years. But it has been 36 years or 40 years. Another couple of years to get it right is what we need to do. Because otherwise, this idea of I just want something done, not when you are going to live with it for the next hundred years. You are going to lament that whole thought process. Let us get it right.

Has New York Fish & Wildlife Service signed off any of this? A number of years ago, when there was talk about driving sheet piling into the river to contain a outflow of pollutants in the northwest corner, a hue and cry went up. Six months got delayed, or possibly longer. Fish & Wildlife Service said you cannot drive anything into that riverbed. It will disturb the pollution, it is going to ruin the fish breeding grounds, cannot happen. Now we have a consent decree that talks about marinas and docks and all sorts of things. I do not see Fish & Wildlife Service as part of this. When are they going to show up and say you cannot do any of that. I want to see their sign-off that what we are talking about doing is a possibility. Or else guess what? The consent decree is gone again, we get to start from scratch.

We had \$1.4 million put into a trust fund in 2003. I believe that is being paraded around as money that is coming to us. It was supposed to go in in 2003. What sort of interest have we accrued on that money? What are we going to use that money for? I would like to know where it is and how much it is worth. Because if we need to sit on that for another 10 years while this cleanup is happening, what are we going to have in the bank account to try and achieve some of the things we need to achieve?

Brings me to my next point, and this was something that Vanessa Merton brought up. Who agreed on any of these numbers? Fifty-thousand dollars to try and save documentation on what the waterfront was? If you would hire a photographer to document Building 52 you are probably looking at \$15,000 to \$20,000 to do that properly. The \$50,000 is spitting in the

wind. It is a meaningless number, I think a lot of these numbers are meaningless. Money is going into trust funds, but you do not get to draw off the principal, you get to draw off the interest. What is that generating for us?

Zoning, as Danielle Goodman has said, as I have said, several other people have said, cannot be part of this document. We have not looked at this. I am sorry, environmental attorneys are not land use attorneys, not even a sense of the word. Our Comprehensive Plan calls for a form-based zone on the waterfront. To do this project piece by piece flies in the face of what we spent three years doing, the Board spent over a year reviewing. We had people show up and say we want to save the water tower. To Andy's point, yes, it may be a piece of junk as it stands now, but look at any document that has come out of this village in the last 40 years that does not feature that water tower on the cover. It is an iconic building, and that means that it represents who we were and who we are and it is worth preserving. I said 10 years ago when we talked about this, we can take down the water tower that is there, but we need to put something up in its place that is representative of it. Every time I come over the Tappan Zee Bridge I look down the river for that water tower because that is where I live. That is what everybody who knows Hastings knows, it is the water tower on the river. You look at every chart, boats coming up and down the river rely on that water tower as an iconic point midway between the Tappan Zee and the GW. To tear that down would be shortsighted.

**Mayor Swiderski:** Mr. Metzger?

**Mr. Metzger:** I am sorry, Mr. Mayor. This bears ...

**Mayor Swiderski:** I know, but everybody else restricted themselves to the three minutes.

**Mr. Metzger:** I understand. We have been talking for an hour and 20 minutes about a project that has been going on for 16 years.

**Mayor Swiderski:** I give everybody else a chance to continue and get another bite of the apple.

**Mr. Metzger:** I would ask that you give them the same amount of time you gave me.

**Mr. Siebert:** Chris, I really appreciated the background on the quarry. And I would say something a little differently than I said it without having known that. But the quarry is an interesting case in point because as one person who loves a quarry said to me, what we are going to be doing is exactly the same thing we did with the quarry. We are going to make a decision to use it irresponsibly as a dump, and then 20 years later we are going to say we

made a big mistake. That is what we are doing in lots of ways here. We are making a very shortsighted decision. Twenty years later, when we have other people who are in your positions, they will say what were those people thinking. Very shortsighted. They will also say, and this is what dismays me most of all, that they were really not listening to the people. What do you do tonight? You have a group of 50 of us and the vast majority are saying one thing. I enjoy hearing Mr. Gonder speak. And Andy is my friend, and even though I disagree with him I enjoy hearing him talk. So what do you do when you hear all these people here tonight and you have the vast majority saying there is something profoundly wrong with the process? What do you do? You ignore us essentially. You go about your own way. You are all my friends, I party with you, but you are not listening to the people in the Village, and that dismays me beyond belief. What do you do tonight? You had the majority of people saying you are not listening. What are you going to say? There are only 10 people who said this so that is only 10 people in the Village, it does not really matter. But maybe there are more of us. I am going to say something sort of facetious and stupid. I came home from the last meeting to a sign on my door that said "Siebert for Mayor." Now, I am not the least bit interested in anything like that.

**Mayor Swiderski:** You definitely should not be.

**Mr. Siebert:** All right, I do not take that as an insult at all. But I have talked to a lot of people this week who say they just do not listen. So in terms of the request Donna made about our meeting, you are willing to meet with us. But are you willing to call a Village-wide meeting, a public meeting, that is under the auspices of the Village and ask the Waterfront Preservation Committee, the remnant to that now, the Hastings Waterfront Alliance, to present their plans to the Village? I no longer expect BP/ARCO to pay for this, but what if we had a plan that was feasible? Are you willing to let us speak to the whole Village under official Village auspices? We have gone back to the minutes and we have seen the charge you gave our committee. You gave us full authorization to talk to people, but when you first set us up people were not willing to talk to us when Mr. Kinnally was Mayor. Then the meeting following, that was changed to give people full authorization to talk to us. If you are willing to give us that authorization so we can have a public meeting under the auspices of the Village that would show you are starting to listen. If you do not do that we will have that meeting on our own. What that will do is show the Village how poorly you listen to the voices in the Village. The issue here to me now is primarily process. We are going to lose Building 52 perhaps, but we should not lose it with the five of you making a decision that is irrevocable, irreplaceable in haste without listening to the voices of the people in the Village.

You say in your report that we were very much informed by the concerns and feedback we have heard over the years regarding the waterfront. That is certainly not true about Building

52. The Comprehensive Plan committee was charged with listening to people in the Village, and their recommendation was, again in their words, that they considered the building a local landmark that should be preserved and adaptively reused. You did not listen to the voice of people who spent many years under the charge of the Village about what they thought about that building. Instead, a small group of people made a decision that the building could be abandoned in your discussions with BP and that no fight was made, no effort was made. And that is particularly true if you had never once invited our committee to present our findings to the Village. We think we can show something that makes economic sense to the Village. What dismays me, and here Lin Osborne, the way she spoke tonight, just this lament and despair. What does it mean that people we know who are friends do not know how to listen. You are not listening to us. What does it take to get you to listen to us? It just dismays beyond belief.

**Mayor Swiderski:** I will check with the Village Attorney. I have no issue with seeing if we can get this room on a pro bono basis and the Village putting out a note for attendance at a meeting. Assuming that there is no issue. I have to check. There is a qualitative difference between listening and agreeing. One can listen and not agree.

**Ms. Sullivan:** I have a couple of comments specific about some of the changes between the original consent decree and this one. The first issue is the setback of the buildings from the water's edge. Originally, the setback was measured from the site edge, and there was a plan to have a bulkhead so there was not a sloped shoreline being planned. The walkway was 30 feet as well and up against the water's edge so there would be a distance of about 70 feet between the edge of the walkway and these buildings. Now, because the sloped shoreline is being designed the walkway is getting pushed closer to where the buildings are. I would like to make sure that does not happen to a degree where that walkway starts to feel privatized and no longer a public space.

The other thing I noted in the consent decree, and I am very concerned about this in regards to views, is, the original consent decree, the building height of 65 feet was pegged to an absolute value, to an elevation established off the survey benchmark. Right now, the building is in relationship to whatever the height of the developable portion of the site is.

**Mayor Swiderski:** Eleven feet above it, LMSL.

**Ms. Sullivan:** Correct. So that brings it up a couple of feet. And potentially, if there is an additional fill put on, it could raise it even higher. I would ask it be brought back to the original height of the consent decree, especially since the rationale is that it is the height of a building that was once in place. Let us stop it from floating around up and down, and get it pegged at what it was originally.

I wanted to spend a moment just to try to get an understanding of where these heights are in reference. I have heard people talk about there is going to be 11 feet of fill put on the site. From my understanding, that is not correct. What is happening is that there are two benchmarks being talked about. One is a land benchmark, which is where land separators tie things in, and there is a marine benchmark which is the low mean sea level, which is what some of the things on the consent decree are pegged to. The difference between the two is about six inches. The marine benchmark is six inches above the land, plus or minus, in this area. When there is talk about the height of something being 11 feet above the mean sea level it is going to be 11 foot six from to surveyor's benchmark. On the site, I thought it was about four to 10 feet. I saw some documents that ARCO is using three to 11 feet. So the heights are 11 feet minus 11 and 11 feet minus three. That is going to be the differential of fill that is potentially put on the site.

We are not talking a heck of a lot in one case, and the highest part is close to Metro-North. The lowest part is close to the shoreline. I had a couple conversations with the DEC this week, and one of them was to try to get an understanding of the kinds of fill that are being placed on the site. I believe the DEC is very good about qualifying this because they have not received a design. But I believe they will most likely want to see two feet of fill across the site, end of story, after the remediation, because that means they can walk away from the cleanup. I do not mean that literally, but they can say the cleanup is such that it protects humans from the contamination that will remain. That becomes our benchmark we look at.

This consent decree talks about two feet of fill gets put across the developable site, end of story. So we are talking potentially four feet of fill that is going to be placed if we stay with the strict reading. I know there are some ups and downs. So in a sense, it is complicated to understand what we are going to see at the end of the day. That brings me back to my remark of trying to set up what our goals are for this fill. Because potentially, Peter, the 11-foot height is already too low, based on things that are going to be happening this year with the change in building codes and also the change in some of the flood insurance requirements. So I just bring that out there. Not 11 feet of fill, two feet maybe, maybe a few feet more. But it is not going to be expansive additions of fill to the site, which is something I have always tried to visualize. I may have the story wrong. This would be very helpful, I think, to get that information out correctly to people. And I may or may not have been able to explain it tonight.

**Mayor Swiderski:** Counselor, do you want to take a whack at describing it, or do you want me to try and you can correct me?

**Special Counsel Chertok:** In essence, after the excavation is brought back to the prior level then there is two feet of fill put on, unless the DEC gives a waiver of that, because in certain instances, if the area is paved you do not need two feet of clean fill. It is either pavement, concrete, or clean fill. But let us assume it is basically two feet of clean fill across the site. Then you have another two feet as part of the consent decree that is not required by the DEC, but is designed to bring up the site to a higher elevation. That can be put at three feet in one spot and one foot in another, but an average of four feet.

In addition, this is not a cap. The 11 feet is what ARCO will provide fill to reach, in essence. But if there is a development later, and there is a requirement of bringing a site up higher to meet floodplain or other requirements, then any developer or any further user of the site will have to bring that site up. So it is not a cap of 11 feet, it is a minimum in essence what will be achieved through the consent decree. Just like the building height is a maximum height, but it does not mean it will be achieved. It is a cap, but it is not something that has to be achieved. The 100-foot setback which is referenced, basically at this point matches the slope. Because there cannot be any development on the slope shoreline, and that slope shoreline basically is estimated by the various consultants most likely between, if I recall, 80 to 100 feet but not more than 110 feet.

Just for your information, in addition to the other persons, the Village had Berger Consultants with them during the entire period of the negotiations. So we had remediation engineers, and they also have planners and other people on board who assisted in developing some of the provisions from the Village's perspective in the consent decree.

**Mayor Swiderski:** To put it another way, the site is essentially going to be composed of a slope leading up to an 11-foot high table. So it is 11 feet above the low mean sea level, which we felt at that time gave us protection from Sandy plus three feet of climate change. There may be more now, but because we were concerned there was going to be more we also included a stipulation that the engineering for that 11 feet would be able to accommodate up to 14 feet, which at that point visually, I think, is a little higher than the train platform if you are trying to imagine what that means on the waterfront. It is about at your knees if you are standing on the train platform. It is 14 feet above mean sea level.

**Ms. Sullivan:** It is 11 feet at the edge of Metro-North, so you are talking three feet above that. I do not think you are there.

**Mayor Swiderski:** Well, that is the way it was characterized to me. But the point is that we are engineering it to handle 14 feet.

**Ms. Sullivan:** Thank you for letting me come back. So 4.9, which talks about the contact barrier and cover, part A talks about after the remediation is complete then this happens, which is that two feet of fill will be placed across the soil, it is seeded, and that is that. Then there is another level of fill which is added, which is prior to or concurrent with site redevelopment when that happens. What that is, to be determined, then the clean soil should be placed in a developable portion of the site to a minimum height of mean sea level. That does not happen, per se. It happens with redevelopment. If there is not a redevelopment plan there are ways of getting ARCO to put money aside for that to the Village or for a developer. Then when a developer wishes the site gets raised to 14 feet. That does not necessarily happen. Right now, again, looking at the current flood maps we have a base flood elevation of 10. We most likely, by the state's requirements, have to add two feet to that. So we are talking 12, and that does not include climate change. Climate change right now, by the federal government, is looking at two to three feet.

I mentioned earlier that the decision is made. Sandy has been just an ongoing train to try to catch, and we need to be a little more protective of the fact that we do not know because people have not been able to tell us what we should do to try to address those two things.

**Mr. Torda:** I am another one of those 17 people. I think there is an elephant in the room, and I would like to either have that confirmed or be told that I am wrong, because it is really important, and it has come up several different times today. It has to do with housing and what presumptions there are about development on the site. I mentioned when I spoke earlier that I think there is a widespread presumption that the only way the Village can gain the public good it wants for the site is through fees that are imposed on private development. I think this is not controversial. I think it is widely presumed. But I do not think what is clearly articulated is that any model for that, plus or minus, is something like 200 or 250 not single-family homes but apartments or condos or co-ops. I would like you to stand up to the plate to clarify that, if that is true, or say why it is not, and not say that it is not based on some vague suggestion of planning in the future. Any planners that have been looking at what could be at the waterfront do, in fact, presume that a significant number of large, massive housing units have to be part of the picture for the economics to work. Furthermore, and somebody can correct me if I am wrong, that presumption underlies all the work of the Infrastructure Committee. I attended several meetings. I may have misunderstood things, but all their work is founded on the presumption that that is the development that must go on the waterfront in order for public good to be gained in return. I am confused because I think that is clear, but I think in the community there is lack of clarity about that point. And that is very important. This is a matter of fact almost and not a matter of opinion. Is it correct that most of the experts that have looked at what could go up or should go up on the waterfront presume that many scores of private condos or apartments must be part of the picture for the economic projections to work? Is that correct?

**Mayor Swiderski:** I am not meaning to hedge here, but I do not know if that is correct. It has been mentioned as a possibility for the site. We have also spoken about Google's northern corporate campus, we have talked about all sorts of possible uses, including mixed and other. But there is no working assumption here. And, in fact, the zoning approach we are looking at for the site steers clear of use and talks rather about the massing of buildings and where they will go. I am absolutely agnostic; it "needs to make sense." But I am not going to be the one to determine that. That is going to be a lengthy rezoning process that has not begun yet. There may be people who feel that way, and there may be planners who said that out loud, but it is not an assumed assumption at all.

**Mr. Torda:** When somebody at the meeting last week tried to quote planners who came in and made presentations to the committee, John Shapiro, I think he was misquoted. I do not mean to be mean spirited to the gentleman who spoke, but said the idea is that we need a lightning strike for the waterfront. I do not think that was the point. I think the point was that we cannot wait on lightning strikes. So when you talk about Google, you talk about annexes to museums in the city, those are lightning strikes. The point is you cannot wait for those. With that notion in mind, I wonder if it is true that the best thoughts that are going currently toward what could happen on the waterfront, when the thinking tries to encompass economic projections and planning, is that people are thinking about several hundred housing units?

**Mayor Swiderski:** Nobody is doing any real planning on uses on the waterfront, nobody. Not the Planning Board.

**Mr. Torda:** This is a problem then. The potential costs are tremendous. There is a wide variety of costs, intangible and tangible liabilities. But it goes to the point people have made here. This is piecemeal, this is whack-a-mole. Without a master vision and the financial planning to support it, you are working hard and making good faith efforts to do your job and grapple with difficult issues. But without that, some kind of master vision that the community buys into and where the finances are worked out, how can you make any decisions without just making random stabs?

**Mayor Swiderski:** That is fair, and I am going to address that broadly. You are speaking of the quintessential elements of a total paralysis by analysis. This is being done in the logical steps driven by what has to happen on the waterfront. The first thing, the primary thing, the only thing I truly care about is cleaning up the site. This is not a barren site without serious issues. This is a deeply toxic site that has to be remediated. That is BP's primary concern. BP ultimately, whatever they realize in "sales" from that site is going to be a small, miniscule fraction of the \$350 million they are going to have to spend, at least, on the cleanup.

The entire issue of the future development model for that site, including finances, uses and zoning, I do not say that does not have to happen. But it certainly does not have to happen as a part of the consent decree approval process, negotiation, or discussion here. We are not talking about uses. We are talking about creating an 11-foot high platform that somebody smarter than me is going to work out the uses for. We are going to leave the site clean and prepared for whatever the Village determines belongs there. I can tell you with some assurance I am not going to be around for that, and with a great deal of pleasure, because that is going to be a difficult process, but it is not one we have to do now in talking about cleaning up the site, which is, ultimately, mostly what the consent decree is about.

**Mr. Torda:** But whether those decisions are baked into the consent decree or not my point is that they are baked into the decision-making process. What about what I said about the Infrastructure Committee? Is it not true that the work of the Infrastructure Committee was pretty much based on the notion that the infrastructure they were laying out and designing was to support large apartment or condo buildings?

**Mayor Swiderski:** No, and I do not know if a member of the Infrastructure Committee is here. I believe Doug is. I am going to speak for him. I will tell you the charge we gave them: to come up with infrastructure that could handle the maximum development for that site. You do not want to specify something that will only support something minimal. So in determining, without getting too exact, the diameter of pipes that might belong on the site, it was under the assumption of the maximum potential development on the site, only because that is absolutely 100 percent the prudent thing to do.

I cannot speak to the wisdom of this village in what direction they are going to take over the next five and ten years determining what is going to go there. But if it turns out to be the lightning strike which happens to involve a Google campus that is bigger than perhaps we planned on but provides all sorts of neat benefits, or something else, and we did not plan for that accordingly when planning that infrastructure then, indeed, we erred. The driver here, when we charged them, was to plan for the biggest case. If you land up using a small portion of that, OK, but at least you planned for that biggest cases. There were no assumptions about use, just size.

**Mr. Torda:** I am obviously interested in keeping on the table the notion that the land might be used for parkland or as much open space as possible. Whether that is practical or not, who knows? But with that in mind, could you explain this eight acre restriction? To me, it sounds like it is a restriction. It says whatever happens there can only be eight additional acres. I do not read that and understand why you might say maybe it could be all a massive park.

**Mayor Swiderski:** There is nothing that rules that out, right?

**Special Counsel Chertok:** The northwest corner cannot be used for any type of development, and that is by the direction of the DEC.

**Mr. Torda:** No, we are not talking about that. We are talking about the company may designate as open space and, once designated, allow public access up to an additional eight acres. I do not understand why there is that limitation.

**Special Counsel Chertok:** I think the answer is, this is privately-owned property. A lot of the discussion tonight seems to assume that the Village owns, controls and can direct things like that in terms of a cleanup, which is not the case. What you have here is an agreement, after negotiations, that guaranteed a certain amount of open space. It does not mean there cannot be more. But it is most likely that it is going to happen if and when this site, after it is remediated, is developed.

**Mr. Torda:** But this seems to preclude more than eight acres of additional open space.

**Special Counsel Chertok:** No, it is part of the consent decree that it cannot go beyond eight acres. But let us assume ARCO flips the property three years from now when the remediation is well underway and some developer is rather confident that it will be completed. That developer may say I want to have 15 acres of open space. Once somebody else owns the property the consent decree does not bind them to eight. This is what the Village is getting out of the consent decree.

**Mr. Zimmerman:** I would like to applaud what the Mayor said in redirecting our attention to the fact that the main thing here is about cleaning up the site and making sure that human beings and all other forms of life are safe from whatever poisons are down there.

**Mayor Swiderski:** Safer.

**Mr. Zimmerman:** Safer. They can never be completely safe because we are leaving a lot of poisons down there no matter what. But as safe as we know how. So thank you for pointing that out. I never can get this straight. The 65 feet, is that on top of the 11 feet or the 14 feet?

**Mayor Swiderski:** On top of the 11.

**Mr. Zimmerman:** So that is 76 feet. What I do not understand about that is that it seems arbitrary to begin with. I am going to talk a little against my desire for something like the CN tower down there, which was a little rhetorical flourish anyway. If the idea was to make something no higher than the buildings that were already there, would you not want to keep it to that 65 feet and not have it be 76 feet? That would make more sense to me.

**Special Counsel Chertok:** Again, it is a maximum height. It does not mean a building has to be that high.

**Mr. Zimmerman:** But why have the maximum height higher than it already was?

**Special Counsel Chertok:** Because the greater the flexibility you have in the consent decree the more flexibility the Village will have in its future planning. That gives you more flexibility for what you are going to do on the site.

**Mr. Siebert:** Peter, I completely agree with you that listening does not mean agreeing. I think a step has been taken tonight in letting people speak beyond their three minutes. That was really important. It feels like there is some listening going on. I think that is vital.

One suggestion I might make, picking up on the editorial in *The Enterprise*, saying this seems like it is an awfully quick process. I think you would find that people in the Village have more confidence in you and governance if this were delayed slightly. I am not talking about nine months, a year, two years or whatever. But what would it affect, and this is a question for you, too, BP/ARCO if there were, say, a period of three months where there was the chance for all stakeholders to come together under various auspices to talk about this? There would be a sense that people are being listened to, and that would go a long ways towards the sense of who we are as a village and how we feel about governance.

This process of hearing people out on Building 52, the idea that we can present our plans to the Village as a whole is something that means a lot to us, both in terms of what we have to offer and the larger process. I do not know that the building can be saved. Maybe it has to come down. But to have that discussion in the full light of day, where you bring out all the facts, everything you know and you find out it does not work, then it comes down and it is OK. But that process is important to a lot of us, so I would suggest you consider delaying this briefly.

I am going back over my papers over the last week. I wrote a letter to the Trustees in 2010 when Building 51 came down. It called for a public discussion, bringing all the stakeholders together. I listed about a dozen different parties, and I sent it to our group this last week. I said, in Yogi Berra's term, it is déjà vu all over again. The exact same thing, just calling for

more discussion before decisions be made in a precipitous manner, is really important for who we are as a village. It is really important for us as people. With your role you need to also be people and not just governors. That means you need to listen. Again, that does not mean you have to agree. But I would recommend, for the sake of who we are, our civic body, our life together as a community, that there be a more leisurely pace on these very important decisions.

**Mr. Bell:** We are talking about 65 feet I think he was trying to get at. Why do you not make it 54 feet. The 11 plus the 54 would be the 65 of the original. But is there some maximal building height for the Tappan Terminal? Did anybody negotiate that? No, right? So they can put up whatever the ground can take. Like downtown Manhattan can take bigger buildings, or midtown can than downtown. Something like that.

**Mayor Swiderski:** There are zoning issues. Within the restrictions of Hastings' notoriously lax planning and zoning review process, yes.

**Mr. Bell:** OK, but there is no concrete number. I want to reiterate that it is being made safer, not completely safe. A lot of people think that all the PCBs are disappearing magically and that all the other chemicals down at the southern site that they are still venting from those vents are going to disappear magically. It is still very polluted. Hopefully, we can just entomb it so much that nothing ever leaks back out again, but we will see. A lot of people think we are getting rid of all of them. We cannot.

I had a question about the water tower. If it is not approved to restore it or to put one in its place and, instead, the Village says, in our vote, we do not want it at all if we cannot keep the original, does that \$1.35 million in matching funds go to something else?

**Mayor Swiderski:** We can always ask, but it is not part of the consent decree. That is what I was saying. That 4.7(f) clause and 8.3, I think, are the two interplays with what happens with that money. That will be part of the renegotiation of this consent decree. Is that in our power or is that in BP's plans to say we will let you do it. Or too bad, you do not get any money now. Who is in charge? Can we go back to the table and force them to go back to the table to renegotiate that \$1.3 million?

**Special Counsel Chertok:** You cannot force anyone because we have a 13<sup>th</sup> Amendment, but you can always ask.

**Mr. Bell:** So we are powerless basically. So we might lose that \$1.35 million for the water tower if we do not do something with it.

**Special Counsel Chertok:** Just to be clear, you do not have \$1.3 million unless there is matching funds, it is not like having it and losing it. Up to 1.3 or 50 percent, whichever is less, of the cost of restoration.

**Mr. Bell:** Someone else also brought up the 1.3 for the quarry. This has a lot to do with, maybe, BP strategy. I get used to the bell at all these Board of Trustees meetings.

**Mayor Swiderski:** Do not get too used to it.

**Mr. Bell:** I am trying not to. I am almost done. If not, I will come up at the end again in a circle. But the 1.3, some of our Trustees' pet projects was this quarry. A lot of the Village loves this quarry. BP give it 1.3. I do not want the Trustees to conflate these two things and get them mixed up. You are voting on this consent decree. Do not go I am getting my 1.3 for the quarry, I could not find this anywhere else. Vote for the consent decree. Ignore the quarry part of that 1.3. Pay attention to the rest, please, is what I would ask the Board.

A lot of this has to do with the rush we are talking about. A lot of it is politics, and BP is very good at that. They do it around the country. For us, at least if we can get this vote in by March, everybody should remember there is a contested election March 15 in the Village. March 1 is when everyone wants to get this vote done. If they vote yes, guess what? Everybody's thing now says, I got 1.3 for the quarry, I passed this consent decree, we are the best people ever, vote for our people I want to make sure that is not what has influenced you on making this vote happen on March 1, when everybody else is out here saying can we wait a little. I want you to wait because we don't even know what we are going to do with the water tower yet and that could throw this all back into a big loop again. We are going to be done by the end of March you said, somewhere in the spring. Why can we not wait until after that vote and then you vote on the consent decree based on how that turned out?

**Mayor Swiderski:** Once again, the determination on the water tower has nothing to do with the outcome on the consent decree overall. The water tower is coming down because it is sitting on a hot pocket.

**Mr. Bell:** So you are saying that if we refuse allowing them to take it down at all, is that what that is? It is not that we do not approve of doing something with it. If we say, you have to keep it there, then they are like no, we are going to renegotiate. But if we take it down, then it does not matter if we keep it or not and it is still up to BP to negotiate. We might lose the \$1.35 million and it does not matter, this still goes the same way.

**Mayor Swiderski:** You entirely lost me.

**Mr. Bell:** I am totally lost on this, too. Can somebody explain this?

**Special Counsel Chertok:** It is pretty simple. If the water tower is not allowed to be demolished BP has a right to seek to renegotiate the consent decree. However, as a practical matter the DEC will require it to come down because you cannot do the remediation under the water tower without removing it. So it gives us a little leverage the way I describe it.

**Mr. Bell:** Because it is a public hearing, the last thing I want to say is to reiterate what I said the last time about Trustee Armacost with the money for 12 Miles North. I was hoping if anybody knew whether she had asked one of the five ethics members to start an investigation. She can ask herself, does she ask the Village Attorney, is she going to be allowed to vote on any of these things. We have tried to get some of the documents from her, we have not heard back.

**Mayor Swiderski:** Trustee Armacost has asked our attorney, Linda Whitehead, for a determination on whether there is any conflict. The attorney is looking into it.

**Mr. Bell:** Will the attorney ask the Board of Ethics whose job that is in Hastings to do that?

**Mayor Swiderski:** No, it is really a point of law. The attorney is looking into whether there is an issue here or not.

**Mr. Bell:** Is anybody in here, any of them? Phyllis Frankel, James Keaney, Harrison Bloom, Maureen Cole, Barron Lerner? Any of you who might be watching on television also could pull this together and say we want to start our own investigation. One of those people could do that.

**Mayor Swiderski:** It does not require an investigation. It is a point of law. It is pretty straightforward.

**Mr. Bell:** Have we ever done one of these before? I do not know if it is that straightforward. I know, in our ethics code, we can ask, she can ask as an officer to bring this board together just for her on this one issue and get a ruling quick.

**Mr. Metzger:** Mr. Mayor, what does this have to do with the consent decree?

**Mayor Swiderski:** It does not, I have answered the question.

**Mr. Bell:** What is does, she cannot vote on the consent decree if it goes one way or the other.

**Mayor Swiderski:** Right.

**Mr. Bell:** So that is what it has to do with the consent decree, and she cannot discuss the consent decree with anybody else on this board if she does have that conflict. I needed to put that on the record one more time because that was a different meeting than it was last week.

**Mayor Swiderski:** You have, but this is not a political meeting.

**Mr. Bell:** It is not politics. I just want to make sure all you guys' hard work turns out well.

**Mayor Swiderski:** That is terrific. I am very moved, but the question has been answered and that determination will drive whether she votes or not. I have said it three times, I am not going to repeat it.

**Mr. Bell:** And I would like the Village Attorney to look at that. Just one more thing. Article 18 of the New York State general municipal law, section 805 is violations. Section 805(a), certain action prohibited. I think that is where the problem is, the certain action prohibited part, where if it looks like there could be something bad, that might give you a problem with the New York State ethics law. Other than, thank you very much again. I appreciate your time.

**Ms. Goodman:** These are questions about the pollution. I know, over the years, more testing was done. I did try to download the data, and my computer was not happy with the number of pages. So forgive me if you have covered these points, but my impression was that the testing that was done between the time of the last consent decree and this one was worse than was anticipated? More in some places?

**Mayor Swiderski:** Chris, I would not characterize your testing. That is a broad question, that is hard to answer with the time.

**Ms. Goodman:** I was just trying to understand if this new version of the consent decree was digging less, taking out less. I just wanted some reassurance.

**Special Counsel Chertok:** No, it does not.

**Ms. Goodman:** I was just trying to understand the data, and I was trying to cross-reference.

**Special Counsel Chertok:** This consent decree addresses the new ROD that was issued by the DEC for the remediation and, in particular, talks about the slope shoreline. The depth of

the excavations, if I recall, are the same other than the northwest corner which goes further out into to the river to deal with the contamination in that corner. The main difference between the remediation in the 2003 ROD and the current ROD is a northwest corner and the slope shoreline rather than bulkheading the entire shoreline. The bulkhead is limited to the northwest corner now. The ROD means Record of Decision. It is a DEC determination.

**Ms. Goodman:** The reason I started looking at the data is because some references were made to 52, and I was trying to backtrack and find where the new test data was and what was the level of the PCBs, and how did that compare to what levels were found before.

**Chris Greco, Atlantic Richfield:** Regarding the recent data that has been collected after the 2011 ROD amendment, it has been part of the pre-design investigation. That has been more focused on a much finer grid defining the limits of the excavation that will be done in accordance with the ROD. I cannot speak between the 2003 consent decree and sampling that was done between in terms of whether it is worse or better. But as Mark said, the excavation depths have not changed from what is required, it has just been to find exactly where that is going to happen as part of the implementation of the remedy.

**Robert Licht, 1 David Lane:** I have lived in the Village since 1943 to 1998. I moved to Lenoir Preserve to 1 David Lane, which the Hastings property runs through. I had friends, relatives and friends work at Anaconda, and I would think if they ever did a survey of how a lot of these people died you would find out that a lot of them have died of cancer. It is unbelievable how some of these people have suffered. I know a lot of friends, schoolchildren and parents have died of cancer working there. Regarding Building 52, if that building is not torn down there is no way we can remediate the soil. It would be absurd to think you can clean up that contamination. It is crazy. If you leave that building standing Hastings is going to own that contamination forever until they would have to remediate it at a later time. This is the time to remediate it, the whole property. You cannot do it piecemeal and leave that building standing.

**Vassilis Bakopoulos, 351 Warburton Avenue:** A question to follow up on the 65-foot question. The word you used was "flexibility." Whose interests are we protecting by keeping that flexibility? The Village's? I certainly see that as a risk, from my point of view.

**Special Counsel Chertok:** The initial building height maximum was derived from Riverkeeper in the original negotiations. Now it has been slightly modified to be increased so it provides flexibility for the Village when they do their planning and zoning. If, a big if, they wanted to have a building higher, particularly in a given location for example, that gives them a little additional height and therefore flexibility. But it does not dictate it, it only allows it.

**Mr. Bakopoulos:** So then the question is why do we need that flexibility if it is above the height we have in the Village? Why do we need that extra flexibility? What additional options does it give that we want to keep?

**Special Counsel Chertok:** You have not done the zoning and planning, and therefore the greater flexibility you have the better the planning process will be. It gives you flexibility when the Village does that planning and zoning. It does not dictate it. Your zoning could say the height could only be 30 feet.

**Mr. Bakopoulos:** But it would be later, right? This is what you are hearing again and again. These things are happening at different times, there are too many ifs and buts and later. That flexibility, what you see as flexibility, the people see as risk. This is again and again the same thing, that we are not going to talk about vision for anything like that. I am just going to talk about why do we need to have that flexibility? Why can we not just move some of these things out of the way? Some people can feel more comfortable by saying the worse cannot be superbad. It can be maybe we have an upside, maybe there is a vision. But the bad is not going to be really bad, because the 65 plus 14 is really bad.

**Special Counsel Chertok:** One option which could be, except Riverkeeper would not accept it and they are a party to this agreement because there were three parties in the litigation, is to have no restriction.

**Mr. Bakopoulos:** Right. So we say it is 65 or a million, right? There is no like below 65 for some reason. We can easily be 65, or then the sky is the limit.

**Special Counsel Chertok:** The point is, when you do more detailed planning and zoning the Village will determine what the appropriate height is and this is a cap on that height. If you can get Riverkeeper to change their mind you may be able to have flexibility in that. This is not an ARCO requirement, it is a Riverkeeper requirement.

**Mark Sameth, 48 Fenwick Road:** May I address one question to Chris? Consent decree aside, and if money were no object, does the science exist to remediate at a finer level than what the consent decree calls for? Can more pollution be pulled out, can this be cleaner, if money were no object, the consent decree were not the issue? Does the science exist to allow that?

**Special Counsel Chertok:** To some extent, the extent of the excavation was determined, of course, by the DEC. Part of the problem was that this is a landfilled area. To the extent you go too deep, the deeper you go you run the risk of having a collapse into the river of the

entire site. That was one of a number of issues that drove the extent of the excavation, that you did not want to have that risk. It is a cost-benefit analysis that the DEC, frankly, went through when they issued their Record of Decision. There are, technically, techniques you can excavate deeper. But then when you do that, you have that risk. The likelihood of getting all of those PCBs out is very slender, so to avoid that risk then you have other techniques to encapsulate and cover and make sure it is capped and not readily accessible. That is one of the reasons you have restrictions on certain types of uses and certain types of development in different areas of the site, so you avoid digging into the residual contamination.

**Mr. Sameth:** So there is no way to stabilize that area to allow for deeper excavation. Is that it?

**Special Counsel Chertok:** The problem is the area, and Chris can talk to this better than I. But somebody mentioned, I think it was at last week's hearing, that there are scores, or literally probably hundreds, of piles that supported the prior buildings on that site. That makes excavation very difficult and it creates risk of subsidence, which is why you have certain limits to that type of work.

**Mr. Greco:** As Mark said, anything I guess is technically possible in terms of the excavation. But there is a lot of risk and complication in terms of the water that would enter the excavation that would have to be managed. So practically it is not feasible to get every drop of PCBs out of the site, if money was no object.

**Trustee Walker:** Chris, I wanted to ask in the tests that you have been doing, you said you were refining the locations of the areas that you were going to be excavating. In doing that, I think you still are planning on excavating in these areas. It is not just capping, except the northwest corner where the PCBs are so deep that it is dangerous to go down that deep to excavate. But in other areas you will be excavating.

**Mr. Greco:** Yes, we are going to excavate in the northwest corner down to a depth of up to nine feet. The rest of the site is the maximum depth of 12 feet. And yes, the investigation we are doing is not about where we need to excavate. That was decided as part of the ROD. It is about we have one boring here that is contaminated, how far to the north, south, east or west do we have to excavate.

**Trustee Walker:** I wanted to make sure everybody understood, you are going down to a depth of 12 feet where you can on most of the site that has significant concentrations of PCBs, except for the northwest corner where you are going down to nine feet.

**Mr. Greco:** That is correct.

**Ben Diep, 385 Warburton Avenue:** There is a lot of information I do not quite understand. You are saying you are excavating down to nine feet for the north portion of the building, right?

**Mayor Swiderski:** No, northwest corner of the site.

**Mr. Diep:** The corner. How big is the space, a footing, two by two feet?

**Mr. Greco:** That is all defined in the Record of Decision. The northwest corner itself is two acres so that is where we are going down there.

**Mr. Diep:** Because I think it was a previous meeting it was clarified that they are not digging down to the footing of the building. Because once they take the building down they are going to cover it with eight feet of dirt. So which is right?

**Special Counsel Chertok:** You are talking about the building that is currently there?

**Mr. Diep:** Building 52.

**Special Counsel Chertok:** Building 52 is not in the northwest corner, really. That is not in part of the corner area.

**Mr. Diep:** So it is not the northwest corner of the building.

**Special Counsel Chertok:** No, it is the northwest corner of the site.

**Mr. Diep:** So if you take down the building you are not removing the concrete platform of that building, right?

**Special Counsel Chertok:** No, the building comes down, the slab remains until the full remediation is done. Then at that point, the slab is removed.

**Mr. Diep:** Because I am responding ...

**Mayor Swiderski:** Listen to the answer. It is very important.

**Special Counsel Chertok:** It is being left, in the interim, so there is no dust and exposure to the PCBs in the soil beneath the slab.

**Mr. Diep:** But you never remove it. The slab stays.

**Special Counsel Chertok:** No. As I said, when the full remediation of the entire site is done that slab is removed so the soil that is contaminated with PCBs under it can be excavated.

**Mayor Swiderski:** It is worth revisiting so everybody understands what we are talking about in remediation. Wherever there is a concentration above the limit the state set, imagine these cores are put into the ground. That core comes up, and they are able to tell at what depth the PCBs are in that core. Let us say there were PCBs found at six feet, but not at 12 feet. In that particular case, BP will excavate down to six feet and remove the contamination while testing around while they are doing that to determine if they are removing it all. Then into that six foot hole they are going to put clean fill and then another four feet of clean fill, and then even more above that, conceivably up to 11 feet. So they are responsible for going down as far as the pollution is, up to 12 feet down everywhere on the site except for the two acres in the northwest corner. There, they are only going down nine feet.

Now let us talk about the building. The DEC has said a building plus a concrete slab is an effective cap on existing pollution, that that is equivalent to digging it out. That does not speak to the future of that pollution on the site under that building. And that is important because that is the driver for BP's decision to want the building down. They want to get at that pollution and remove it. Regardless of the fact that the building plus cap is an effective cap, there is a long-term liability with that building if it should be damaged in a fire or flood, whatever. At that point, even 20 years from now, BP is on the hook and they have got to remediate.

**Mr. Diep:** So they hope to take the building down so they can remove all the toxic possible.

**Mayor Swiderski:** That is correct.

**Mr. Diep:** What about the rest, the south side of that building, the south side of all this land now having been filled? Are they going to do that, too?

**Mayor Swiderski:** The northern 28 acres, which is BP's, is being treated 12 feet down and wherever there is contamination, filled back up to grade with fill, and then additional fill on top of that. The property owned by Exxon is being remediated differently. The chemicals that pollute that site are largely volatile organic compounds, the result mostly of gasoline and other fuel storage tanks on the site that leaked over the decades. That is being bioremediated, which accelerates a natural process of that stuff venting off. What Exxon, or actually

Chevron, has been doing is pumping essentially a contamination of Miracle-Gro and diluted bleach, which promotes a bloom of bacteria that is eating the volatile organics underground and speeding up the process which would occur naturally, but over decades, and theoretically getting that done in a matter of three or four years.

**Mr. Diep:** So north of that, where the fence is and all the grass is being grown, that is the north part belonging to ARCO.

**Mayor Swiderski:** That is right.

**Mr. Diep:** And that is going to be excavated where they find toxics.

**Mayor Swiderski:** Yes.

**Mr. Diep:** As far down as possible.

**Mayor Swiderski:** Up to 12 feet. If the pollution goes down to the 12 foot mark, have I gotten this right so far? Good. After years of this I would hope I got that right. Back to the building. The ultimate goal, once the building is down, is to break that slab and remove the pollution under that building down to that 12 feet. If the pollution under the building goes down 12 feet they are obligated to dig down 12 feet below that building to get that pollution up and out.

**Mr. Diep:** And ARCO has a lot of buildings on that land.

**Mayor Swiderski:** One.

**Mr. Diep:** I mean the whole 29 acres they had all these buildings that have been taken down. Have you done a test to know whether it is around the footing of the building structures or the center or wherever the site is where this processing part was done? So maybe it is a minimal surgical removal of toxics without having to touch the building. Is that not possible?

**Mr. Greco:** Within the interior of the building there has been limited sampling. We have PCBs in 30 percent, 40 percent of the boring. Some of it is down to eight feet. We do not have it delineated vertically so we do not know if it goes down to 12 feet. Immediately adjacent to the building we have borings as part of the pre-design investigation. Again, over a good portion of the building there is contamination directly adjacent to the building. Excavation depths along the building would range from probably two feet in some areas to a lot of six feet. I think down to 10 feet would be the maximum. In order to remediate that

with the building standing we would have to do some type of shoring. That shoring, in and of itself, would leave a gap of soil between the building and the shoring and we would not be able to get all of the contamination out. So that, in addition to the contamination, we know and suspect is under the building is the reason we would like to demolish the building, so we can move forward with a comprehensive remedy for the site.

**Mr. Diep:** There is one more point I would like to bring up. Last year, when I came to the meeting, I walked away thinking we do not have a lot of leverage against this. Questions as to how you are going to go in to make tests, they said it is too dangerous. Why do you not remove the roof and keep the skeleton, cover it up, and then go and do your tests? This has been dragging for so many years, and I thought maybe this is just beyond us, beyond our ability. Everyone here worked very hard, and the big company has experts. These are well-paid lawyers and we are not up to the task. Maybe we need someone on the same level to have the same leverage to negotiate. You are talking about having Riverkeeper giving us a guideline of 65 feet. Why have they determined that ruling for us, where we have to impose those kinds of rulings?

I think we have no leverage at all in the negotiations, and this is going to be the future of Hastings for hundreds of years. I applaud you for working so hard but, at the same time, you need to rethink and maybe bring someone in who can be matching the same level of them. These are experts. We cannot ...

**Mayor Swiderski:** I am going to speak up for my lawyer here. Not only is he very well paid, but is the equivalent of BP's lawyers. The firm he comes from is absolutely the topflight environmental law firm in the city.

**Mr. Diep:** So these lawyers represent us?

**Mayor Swiderski:** Yes.

**Special Counsel Chertok:** You also had experts from Berger, and previously a firm called Malcolm Pirnie, during this entire period.

**Mayor Swiderski:** Top-flight engineering firms. We never lacked for consulting advice.

**Mr. Metzger:** At the Building 52 meeting I thought somebody had said they were only going to remove part of the slab of Building 52, or are they planning on removing the entire slab?

**Mr. Greco:** During the remediation we will remove the slab as needed to remediate the rest of the building. The rest of the slab would remain in place until development.

**Mr. Metzger:** So to understand, you would check to see where the pollution is. You would leave slabs where there appears to be no pollution under the slab.

**Mr. Greco:** To the extent we know portions of the slab have PCBs that have absorbed into the concrete, we would obviously clean that as well.

**Special Counsel Chertok:** I think the consent decree provides that the area has to be available for development and to put piles through. So in my view, the slab has to be removed unless you are proposing something different.

**Mr. Metzger:** The other question I have has to do with the future building on the site. Mr. Chertok, you keep talking about the cap. I think people are believing it is a cap you cannot go below. But the reality is that anything that gets built on that site is going to penetrate that cap for foundation work. The cap is not immutable. It is a plastic orange fence that when you hit that fence, whoever goes below that has to then remediate whatever is below that to whatever the current requirements are. A developer is going to be doing future remediation below that cap.

**Special Counsel Chertok:** That is not correct, but I will clarify that after.

**Mr. Metzger:** That being said, when the fill is placed on the site the building code says when you are putting in a foundation it has to be on compacted fill. You cannot excavate a site, put dirt in it, and then just build on it. Is the fill that is being placed going to be compacted to a point that when someone comes in to build it will be able to sustain the required loads?

**Special Counsel Chertok:** Yes, there is a provision in the consent decree that provides it has to be appropriate for future development and to hold the weight on top of it. In terms of the so-called cap, the cap, or cover system, under state law is either two feet of clean fill or asphalt or concrete. Here, we are going to have closer to four feet in most places, and perhaps more. The plastic fence you are referring to is put over the areas of excavation underneath the clean fill or concrete, and it alerts someone that they are penetrating into an area that may have residual contamination. Before there is any work on the site there has to be notification to the state and the Village as well, and there has to be a health and safety plan in place so if that area is penetrated there is appropriate worker protection. There does not have to be further remediation.

The soil may or may not be contaminated, but the fencing is there to alert people to that potential. For example, if you were digging a cellar foundation, and I do not think this is very likely because buildings will be on piles most likely, then you would remove whatever soil is appropriate. That soil would have to be sampled and characterized and disposed of properly. But there would not be a whole new remediation effort.

**Mayor Swiderski:** Just two more people. We hit the 10 o'clock magical witching hour.

**Mark Sameth:** I am only back because somebody handed me this article on her smartphone. Technological Leap in Treating PCB Contamination in the Environment: Three New Bacteria Could Break Down PCB. "Scientists have developed a novel approach that could greatly enhance the effectiveness of destroying PCBs in the environment. They discovered three powerful bacteria that can degrade PCBs. In addition, the researchers also developed an effective method of culturing these PCB to chlorinators in large quantities to enhance the degradation efficiency." I do not even know what I just said, but the point is I want to echo and support the call for taking a little more time. Science is moving, it moves very rapidly. There are a lot of great points that were raised tonight. And there were a lot of things that we might benefit, the Village might benefit. Once Building 52 comes down it is down forever. Once the consent decree is approved by the Board that is it, we live with it forever. We are feeling the urge to have it done, but as one of my favorite philosophers, Lao-Tzu, said, a short is tested by long.

**Mayor Swiderski:** And I can only say that driving public policy by the leading edge of science leads to paralysis of a special sort. It leads to people never installing solar cells on their roof because you are convinced just around the corner are those magical super-cheap cells that are even better than the ones you can do now. Any number of decisions like that where this may be years away before the DEC would approve it as a means for remediating the site is just not responsible public policymaking; to count on a maybe that may be years out.

**Ellen Hendrickx:** It is just a thought. There has been a lot of consternation about the 65-foot height on the waterfront in the consent decree. As an esteemed and very talented colleague once said, Michael Graves or a very well-known architect might come along and design a tower which would not be a huge impediment to view. And that architect is sitting right here, Jim. The consent decree gives us the allowance for maybe that being the lightning strike, but it does not dictate. As has been said repeatedly, that does not dictate that 65 feet would apply for all the buildings, but there might just be that one lightning strike that allows us to put up one building that really is a beacon.

**Mayor Swiderski:** Thank you. I did say that was the last one, in fairness. I thank everybody for holding on, and I urge anyone, should they feel their questions were unanswered, please write and will answer them. I will be posting those answers online so they are available more broadly. We have received probably about 20 comments from the public, maybe 25, by e-mail, and we always welcome them.

**CLOSE OF SPECIAL MEETING**

On MOTION of Trustee Lemons, SECONDED by Trustee Walker with a voice vote of all in favor, Mayor Swiderski closed the Special Meeting at 10:05 p.m.