

Text of Presentation on the Consent Decree
January 7th, 2016 7:00PM
Community Center

Thank you for coming here tonight. This is an important moment and I am excited to present a major milestone that will have real and immediate implications for our village. I have with me tonight Mark Chertok, our village environmental attorney, Jerry Quinlan, a former trustee who has worked with me over the past seven years on waterfront issues, Chris Greco and Maria Viso of Arco and Paul Gallay and Leah Rae of Riverkeeper.

Tonight's presentation will focus on the Consent Decree that has been prepared with Riverkeeper and BP/Arco for signing once it is approved by the board next month. I'm going to provide some background, and then step you through all the major components. I'd like to save the questions for the end. The text of the Consent Decree will be posted tonight on the Village website, to be followed by this powerpoint and the text of this presentation.

Background

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Riverkeeper sued BP in the late 1990s to accelerate the clean-up of the waterfront. The Village joined that suit. BP had inherited the liability of the clean-up by purchasing Arco, which itself was several companies distant from those that had originally participated in the PCB pollution of the waterfront. We are, as I have mentioned on numerous occasions, the literal birthplace of PCBs, not a distinction we enjoy. The Village, Riverkeeper, and BP signed the original Consent Decree in 2003 that resolved that lawsuit. It was, coincidentally, the first order of business I encountered as I started out as a green Trustee on the Board back then, 13 years ago.

That Consent Decree was negotiated and signed while BP was negotiating with the NYS Dept of Environmental Conservation over the clean-up of the land portion of the waterfront and those negotiations informed how the original Consent Decree was written. In subsequent years, BP worked with the DEC to come to determine the extent and nature of the clean-up of the underwater portion of the site which BP also owns. In doing so, the DEC and BP realized that the approach for the clean-up of the underwater and land portion of the sites needed to be integrated and consequently the original agreement for how the land portion was to be done needed to be modified. Nine years later, in 2012, they finally came to terms on how the entire clean-up should look.

Those terms, captured in a document called the Record of Decision, had evolved enough that, as a result, the Consent Decree we had negotiated with BP needed to be updated to reflect those changes. It was also an opportunity to re-examine suppositions in place at the time and make sure it reflected all our priorities.

What are some of the things that had changed? From our perspective, among other factors, Superstorm Sandy and the realization that climate change and rising sea levels would impact the waterfront had resulted in a shift in how we thought about the ground cover on the waterfront. Overall height became more important to us than the thickness of the cover. Also, we understood that the water tower was important enough to people in the community that options for its preservation should be included in an updated version of this document. We also believed that access to the waterfront was so crucial to the future that we wanted to make sure that any remedy incorporated explicit references to things like kayak put-ins and floating docks so that any engineering of the final design included these considerations.

Over the last two years, the three parties to the original Consent Decree negotiated to rework this legal agreement to reflect the new state requirements as well as other issues, including those just mentioned. Legal negotiations, as anyone who has gone through them is aware, can be prolonged and painfully detailed affairs where every word matters. This was no different. They're also events that take place behind closed doors, with lawyers and, in this case, engineers dominating the conversations. However, while these were closed-door negotiations, they were very much informed by the concerns and the feedback we have heard over the years regarding the waterfront. And we believe that, in the end, we have come to a result that incorporates those concerns and desires while respecting the ultimate goal of this effort, which is a remediation of this waterfront that leaves it available for all possible uses.

BP is the current owner of the portion of the waterfront covered by this agreement - the northern 28 acres of this 42 acre site. It is their property, their buildings, and the pollution beneath its soil and waters is their problem. But its ultimate disposition is our Village's interest and hence why we joined the lawsuit and were active participants in all parts of this process. Our interests here are as follows:

1. We want to see the waterfront clean enough to support all potential uses for future development.
2. We want to see public access to the waterfront, via an esplanade and parks, as well as to the water, via boat launches, piers, or floating docks and to tie down as much open space as we can, now.
3. We want to preserve history where we can, since the waterfront's role was so core to Hasting's origins.
4. And, finally, we want this process to move forward as expeditiously as safety allows so that we can actually enjoy the fruits of this cleanup in our lifetime, and not let another generation slip away.

With those objectives, we went to work. These are the broad areas covered by the decree.

Shoreline

The Northwest Corner of the site will be extended approximately .7 acres into the Hudson, and

the remediation will involve removing some deeply contaminated soils and capping the site. The water's edge will be finished with sheet piling forming a bulkhead to the Hudson. It will be engineered to allow a walkway out to a floating dock. No heavy structures, pilings or pillars can be built in this area, though lightweight structures such as small cafes, kiosks or ticket booths will be allowed. The Northwest Corner will be dedicated open space that will be turned over to the Village.

While the Consent Decree allows the rest of the shoreline to be either bulkhead or a sloped shoreline to the water, we expect it to be largely a sloped shoreline covered with rocks (known as rip-rap) to armor it and prevent erosion (similar to what you see in Dobbs Ferry and Irvington), and then vegetated. A portion of the sloped shoreline will include a thirty-foot-wide flat esplanade dedicated to the Village as open space for public use. We also include a provision for a concrete ramp or similar boat launch intended for light watercraft like kayaks or canoes.

We will be working with consultants (funded by a grant we have received from NYSDEC) and AR to finalize the design on this shoreline over the next year. The process to design the shoreline will involve opportunities for substantial public input. We will release a schedule for this in the upcoming weeks.

Site Elevation and Restrictions

The previous Consent Decree specified a five-foot-thick cap on the site, once the site was remediated to the point that it was safe for even residential use. We have replaced that with a guideline that the developable portion of the site be raised to 11 feet above low mean sea level (not above existing elevation). We have moved to this formulation with an eye to storm surges and sea level rise. (Those of you who were here during Super Storm Sandy understand why this became a priority to us.) Because there is concern that even 11 feet may not be enough, we have agreed that the remediation be designed to avoid creating any obstacles if a developer later wants to raise it to 14 feet above mean sea level .

Building height on the site cannot exceed 65 feet above the finished elevation of the site, although we can set a lower maximum height through zoning if desired, and all new buildings shall be constructed no closer than 100 feet from the shoreline (or 60 feet from the coves). This does not prevent facilities like boathouses or boat storage buildings, small cafes or public seating areas from being constructed within these 100 feet limits or within the Northwest Corner. Wells cannot be installed anywhere on the site, nor detached single-family structures built.

Dedicated Parkland

Between 6.25 acres and 14.25 acres of the 28-acre site will be set aside as dedicated open space:

- AR will designate the Northwest Corner (approximately 2 acres) as open space and dedicate it to the Village.
- A 30-foot esplanade approximately 2.5 acres in size will run along the shoreline and also be dedicated to the Village.
- Another 1.75 acres of open space to be dedicated to the Village shall also be identified on a development proposal for the site formally submitted to the Village.
- Finally, AR may dedicate to the Village an additional 8 acres as open space, conditioned upon the agreement of AR and the Village on a development plan for the site.

Water Tower

The iconic water tower sits atop a substantial pocket of pollution and has always been slated to be removed during part of the remediation effort. What was in question was the cooperation we could expect in saving that structure (if the condition of the tower allows it) and rebuilding it in the future, or creating a replica tower. To that end, we are pleased that AR has agreed to price out a full removal of the water tower and contribute those monies to the Village if we determine that the structure is sound enough to be saved and can be brought down in an orderly fashion to be rebuilt in the future. This would need to be done in a reasonably expeditious way that would not interfere with the remediation of the waterfront.

Additionally, we are very pleased to report that AR is also dedicating up to \$1,350,000 in matching funds to help either restore or create a new water tower on the site.

Ultimately, the fate of the water tower belongs in the hands of Village residents. To that end, the Village will soon determine whether the tower is structurally sound enough to take down and preserve for eventual restoration. We will be doing this shortly. Then, we will seek public input on the fate of the water tower via a village vote that will ask if the public wants the water tower restored (if that is an option), replaced, or not replaced and also if that should be something the Village should pay for. This process would unfold over the first half of this year so we could decide in time so that it does not interfere with the remediation efforts expected to start next year.

Building 52

Building 52 carries the weight of history for the waterfront. It is both a resonant structure that speaks to the industrial past of the waterfront, as well as the literal birthplace of PCBs and source of the PCB pollution that stains the northern portion of the site. We would like to have seen a way to negotiate the salvage of the structure, but given the degree of pollution and our desire to see the site as fully remediated as can be managed without years of further delay, we are not opposed to Arco's position that the demolition of Building 52 will effectuate remediation of the soils contaminated with PCBs and other hazardous substances underneath, within and in the immediate vicinity of the building.

To that end, the Consent Decree was submitted along with an application for a permit to demolish the building. If the Board of Trustees approves the demolition permit, we would expect to see the structure brought down by the middle of this year. The Consent Decree will need to be renegotiated if the demolition permit is not granted.

Trust Fund, Quarry Park and Historical Society funding

The Trust Fund originally set up under the first Consent Decree remains in effect, seeded with \$1,400,000. Those monies can be used for river-related projects that the three parties agree on which could include parks and amenities.

Additionally, we are very pleased to announce that AR will fund the Village Trust Fund with an additional \$1.3 million dollars to clean up and restore Quarry Park and finish restoring the trail that links Quarry Park with the waterfront. Quarry Park, found between Draper Park and the Aqueduct, has been shut for decades since it was used as a Village dump. These monies would be sufficient to clean up and return this site to public use. This would renovate the last acreage of parkland left east of the railroad tracks in Hastings, creating a continuous chain of parks and trails from the waterfront to Broadway, and then via the Burke Estate to Farragut Avenue. It provides additional parkland to the Washington Avenue and Warburton Avenue neighborhood and undoes a historical mistake where this beautiful property was so terribly wasted as a dump.

Finally, once the remediation is complete, AR will fund the Village Trust Fund with \$50,000 for use by the Historical Society to preserve and present historical documents, photos and other materials related to the history of the site.

Other clauses

The Consent decree includes other provisions worth noting and of significant importance to the Village:

- AR will provide \$300,000 to cover the engineering costs that Hastings incurs to verify the remediation is being done correctly. NYSDEC will also be carefully monitoring the remediation process. AR has also agreed to pay \$40,000 of the legal costs the Village has incurred in negotiating this version of the Consent Decree, covering the substantial majority of the expense incurred.
- It asks AR to use all reasonable efforts to maximize the use of barges and rail to transport materials excavated from the site and to bring equipment and material to the site rather than running what could be thousands of truckloads through the Village.
- Trenches for new utilities will be over-excavated to remove contaminants so it can be maintained in the future without requiring future excavation of soils.
- AR will be responsible for maintaining the bulkheads, sloped shoreline, and cap for 100 years. The village will be responsible for planting and maintaining the open spaces dedicated to public use.

In summary, this document is a critical milestone to the future of the waterfront. It specifies a minimum overall elevation for the developable land (11 feet). It specifies the location of open space and a dedicated walkway along the water's edge, as well as placing development at least 100 feet back from the water's edge (and 60 feet from the coves). It stipulates that Building 52 should come down to further the cleanup of the site. It provides substantial monies (over \$4 million) to the Village for restoration of Quarry Park, matching monies for restoration or replacement of the water tower, an existing trust fund for riverfront projects and for the historical society to preserve and present the history of the waterfront. There are other clauses, but these will have the most visible impact.

While the implications of this Consent Decree are far-reaching, it is just one step of many in the path to our future. As a community, we've undergone several exercises at envisioning a future for the waterfront over the years and those efforts have informed these negotiations. Most recently, a group of residents completed a plan for the infrastructure of the waterfront that will inform the design of the clean-up and the ultimate shape of the waterfront. As mentioned in this presentation, we will be kicking off an effort to design the shoreline of the waterfront that will engage the community in the practical issues of exactly how this shoreline will look. We will also be polling the community to determine the next steps on the water tower. And we're also likely to begin the process of rezoning the waterfront from the current industrial uses to something that will reflect what we ultimately want there. This is an exciting moment for us as a community. This Consent Decree will yield real results, but these follow-on efforts will truly shape the waterfront to reflect what we want there, as a community. No doubt, there are competing visions for the ultimate uses on the waterfront. But this is where we begin sculpting the ultimate outcome. We are, as our name emphatically states, Hastings-on-Hudson. It is back to the Hudson that we are headed, and all this waiting, for decades, is evolving to

certainty. Mind you, remediation will take years - likely 4 or even 5 - but the shape of our future is starting to form and we will be active participants, making it what we want it to be.

I believe that we have come to terms here that satisfy our priorities. These were negotiations. All parties came away with something they wanted, and all parties left something on the table. I know that there will be items here that satisfy some members of the public, and others that won't. That is the nature of a negotiated settlement.

At every critical juncture during the negotiations of this Consent Decree, the Board was kept informed as to the decisions being made and provided input and support. Trustee Walker, especially, focused on waterfront uses, but all Trustees participated in reviewing the progress of these negotiations. The Trustees are prepared to sign this consent decree. On February 3rd, we will have a meeting for the public where residents can provide public comment on the Demolition Permit that has been submitted, and provide public input on the Consent Decree. On February 16th, we will vote on the decree in its current form and the Demolition Permit. Public comment and input can still sway Board opinion – and if either the Permit or the Decree fails to garner three votes, they will require a renegotiation.

That may take some time and may further delay the clean-up, and result in a change of terms that may mean we lose some things we gained as a result of negotiation. But if the Board deems that worth the delay, so be it. I believe, however, that the Decree yields, as I have described, many benefits to the community while moving this critical project forward. I think it deserves your support, and I believe it will enjoy that support from most residents.