

July 16, 2005

## HASTINGS NEWS

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### Hastings Board of Trustees Names New Village Manager



The former town manager of Coventry, R.I., a suburb of Providence and that state's largest town, has been picked by Hastings' board of trustees to be the village's new manager, effective Monday, July 18. Francis A. Frobel, 53, replaces Neil P. Hess, who has been on a leave of absence, battling cancer, and who retires July 31.

Frobel, who has been described as "typically stone-faced" by the *Providence Journal*, served as Town Manager of Coventry, which has an area of 64.8 square miles and a population of over 33,000, for 19 years through late April. Before that, he was assistant town manager of Killingly, Ct., in eastern Connecticut, for eight years. He received a B.A. degree in political science and public administration from Central Connecticut State University and a Master's degree in public administration from the University of Hartford.

See below for a Hastings News interview with new village manager Francis A. Frobel

Frobel's appointment does not also include the position of village treasurer, an additional post that Hess held. The

new village manager will make recommendations to the board of trustees about filling that spot, Mayor Wm. Lee Kinnally Jr. told *Hastings News*. "He will be looking at the way we are structured in general; I would expect that from our new manager," Kinnally said.

Frobel will be paid \$140,000 plus benefits that include retirement, health, three weeks vacation, a moving allowance and a housing allowance, Kinnally also said. As Coventry town manager, he received \$104,275, according to another *Providence Journal* report.

Frobel was the board's top choice, Kinnally noted in response to a question.

The mayor said that Frobel will replace Susan Maggiotto as Acting Village Manager for the rest of the month, until Hess's retirement becomes effective. Maggiotto will continue as Acting Treasurer, he said. The board of trustees expects to approve Frobel's employment contract at a special meeting called for Monday at 8 p.m.

### Reasons for Selection

Why Frobel? "We were impressed by his credentials, with the job he had done in Coventry, by his approach to management and team-building," Kinnally told *Hastings News*.

A village news release written by Kinnally provides some reasons for Frobel's selection. It quotes the mayor as saying: "Fran brings a wealth of knowledge and experience to our Village. His track record is a solid one, and we believe he will work well with our current team of dedicated department heads and personnel."

In the same release, Frobel says: "The chance to relocate my family to this part of the northeast and to serve as Hastings-on-Hudson's chief administrative officer is a terrific opportunity. I look forward to bringing my skills, energy and commitment to public service and am eager to work with the Village's employees, professional staff, volunteers and elected and appointed public officials."

The release also quotes Frobel as to why he applied for the job: "I was impressed by the Trustees' sense of pride, shared vision for community development, integrity and dedication to good government. . . . [T]he community's spirit of volunteerism, enthusiasm and respect for the environment, historic preservation, local businesses, and the upcoming waterfront redevelopment were apparent."

### Search Process

The appointment ends a somewhat secretive selection process by the board, meeting in executive sessions. *Hastings News* has pieced together the process based on public information and talks with various sources.

In fall 2004, the board hired Bennett Yarger Associates, a firm based in Scituate, Mass., that specializes in recruiting state and local government employees, to conduct a nationwide search for candidates. The search firm developed specifications for the position in conjunction with the board, which drew, perhaps, on factors submitted by residents in response to a request by the board for criteria. The resulting specifications were not publicized, and a request for them about two weeks ago by this reporter was turned down. Asked for a copy earlier this week, Kinnally said the specifications had been posted on the village's Web site; but a check of the site did not find them. Asked again, he referred this reporter to the Bennett Yarger web site, where candidates could find background on Hastings, challenges to be faced by the new village manager, and qualifications for the "ideal candidate." (see *Measuring Up*, below, for the qualifications).

Reached on vacation in Maine, Richard T. Bennett, the owner of Bennett Yarger, told *Hastings News* that the position was advertised in six print and electronic publications, including the biweekly newsletter of the International City Management Association and the *Public Sector Job Bulletin*. The ad drew over 35 responses, he said. Additional names, he said, were obtained through "sourcing," which typically involves research and referrals.

The advertised salary range was \$130,000 to \$140,000 plus benefits. Residency was said to be desirable but waivable by the Board of Trustees. The stated application deadline was April 15, 2005.

On May 18, Bennett met in executive session with the Hastings Board of Trustees and presented them with a set of names winnowed from the overall response. The board reduced the list to five persons, whom it invited to visit Hastings for interviews on the weekend of June 11. Kinnally declined to identify or describe the four finalists. A person familiar with the process has told *Hastings News* that they included, besides Frobels, two from the New York City area, a woman from Connecticut and a person from the Midwest.

### Visiting Hastings

The board received four acceptances to its invitation, according to Kinnally. The candidates appeared at a mixer with the mayor, the trustees and key village employees on Friday, June 10. The mixer, apparently attended by some 20 people besides the candidates, was followed by interviews on Saturday and Sunday. The candidates toured the village assisted by guides, one of whom was former village trustee James Keane.

After the first day, the board had narrowed the candidates to three, Kinnally said. One of the three was Acting Village Manager Susan Maggiotto, he said. Maggiotto, who has been the village's longtime deputy village manager and clerk, had been appointed by the board to fill in for Hess during his leave of absence. It was she who prepared the village's current budget, adopted by the board in May.

On Sunday, June 12, the board apparently held an executive session. It decided that day preliminarily to hire Frobels subject to working out an acceptable agreement, according to Kinnally. Thereafter, negotiations over terms began, and a written offer apparently was made about the weekend of June 17. The negotiations apparently concluded this Monday (July 11). Kinnally announced the appointment at the trustee meeting on Tuesday (July 12).

### Coventry on Hudson?

How comparable is Coventry to Hastings?

"It's structured similarly around a council-manager form of government and has the same type of services," Kinnally told *Hastings News*. Are the issues the same? "I don't know; there are overlapping and different issues," he said. "The challenges facing him here and the abilities he will need to bring to bear are the same," the mayor added.

Coventry is a community that has grown and continues to grow, compared with Hastings, which is "essentially built out," Kinnally noted. "We looked at Frobels' experience in handling issues," he said.

Has Frobels been given an agenda or marching orders? He has not, Kinnally responded.

### "A Very Highly Recommended Candidate"

Why Frobels? *Hastings News* asked Bennett, the recruiter. "He is a very highly recommended candidate with a history of tenure and of accomplishing some very significant things in the community that he served for 19 years," Bennett replied. "He is a very good fit for the Hastings community. He has been in a community for years that values participation of people, a hands-on type of individual. He has a nice style—works very well with the elected and appointed leadership. He does not try to be out front—the elected people are. He recruited a good staff in Coventry, built a good organization. He was one of the longest tenured and is well respected by his colleagues. He managed in an area that is both urban and very rural, with differing opinions as to what the community should be."

## Five Townhouses Proposed for Uniontown/Pulvers Woods Area

A Dobbs Ferry couple, said to own much of the property flanked by Green Street and Farragut Parkway, want to build five two-story, clustered, single-family townhouses in the area behind the Valero gas station on Farragut and next to Pulver's Woods.

Michael and Annette Foley, who are reported to own the land housing the gas station, Amjo's, and other stores in that area as well as residential property at 270 Farragut, hope the village will permit them to construct the clustered housing even if it does not meet existing zoning requirements. They have also indicated they are willing to donate some of their land to add to Pulvers Woods, if need be, to win permission for the clustering.

Foley and his architect, Ed Weinstein, appeared at a meeting of the Planning Board on June 16 to broach the idea. It would put a part of a portion of vacant property to tax-generating use, he said, and could lead to expansion of Pulvers Woods, they said. The units would be mid-priced, somewhere between the price for apartments and one-family homes, they added. ■

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May 27, 2005

## HASTINGS NEWS

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- More Anti-Semitic Flyers Reported Distributed in Hastings
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- Trustee Action on Kinnally Cove Bogs Down in Discussion Over Marshland, Muck and Canada Geese
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## Deer Collides With Car

A deer collided with a car heading south on Broadway across from the Burke Estate on Friday evening, March 25, according to Hastings police. The car, a green 2002 Honda with Virginia plates, was hit on the driver's side and damaged, Lt. David Bloomer told *Hastings News*. The deer was not killed, he said. This reporter saw police blocking traffic on Broadway in both directions to allow the animal to make its way off the road and onto the Burke Estate, where, Bloomer said, it went into the woods. Bloomer declined to give the name of the driver of the car. ■

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## Trustee Action on Kinnally Cove Bogs Down in Discussion Over Marshland, Muck and Canada Geese

Trustees waded through murky water at their May 17 meeting as they discussed how to deal with marshland, muck and Canada geese at the proposed Kinnally Cove park on the Hastings waterfront.

Marjorie Apel addressed the issue of whether a planted marsh at the Yonkers Beczak Environmental Center in Yonkers was a failure that might doom a similar marshland proposed for a portion of the cove. To find out, she said, she had spoken to the center's director and came away thinking that the marsh at Beczak was a cautionary tale but not one that should prevent Hastings from creating a marsh of its own.

At Beczak when constructing a marshland, workers had erected an anti-geese fence to keep geese from eating the young marsh plants, Apel told the board. But the geese gained access to the marsh by getting under the fence, and they pulled out the plants, which had not yet become rooted, she said. Beczak expects the contractor to replant the marsh and anchor the fence more deeply in the ground, she added.

Apel said that the board should further study whether to create a marshland at the cove, including inviting a consultant to Beczak to attend a board meeting to educate the trustees. The cove will have geese no matter what is done with it, she said, but if barriers are put up to keep them from landing, they will not land.

Mayor Wm. Lee Kinnally Jr. responded that he was willing to listen to the Beczak consultant. But he noted that geese can fly into the marshland as well as crawl under a fence.

Some Hastings residents have volunteered to clean up the cove along the road, clearing out weeds and debris, Kinnally also said. They are willing to put up a fence and put in some plantings to make the cove presentable and give the trustees a better idea of what portion of the property might be devoted to marshland.

Michael Holdstein urged the board to move slowly before committing large chunks of money for a kayak launch facility. First clear the cove and see how many people use the facility for boating, he suggested. Boat enthusiasts might find other launch spots on the waterfront once it is developed, he noted, so that the village may not have to spend lots of money for a municipal launch. "Let's walk before we run," he said. "Let's see who starts to use it" before we invest more money in it. "Let's make it useable; let's open it up" but move slowly. We can, he added, launch boats from the water as opposed to building a dock.

"You cannot launch a kayak from the river in the cove," countered Kinnally. "You will sink in mud. It's impossible to do."

But with enough water, the kayak will float, Holdstein said.

But you will have to walk in the water, and you will sink in the mud, Kinnally persisted in contradicting him. "I'm telling you, it's impossible to do."

But the engineering consultants want lay a "geo grid" atop the riverbed under the water to provide a firm footing, Holdstein noted.

They won't put down a test area, Kinnally said, and he is unwilling to spend \$50,000 without a test. They have also been unable to come up with any testimonials in favor of using a geo grid, he added.

Holdstein said he does not want to spend \$300,000 to \$400,000 on a floating dock.

No one is saying that we should do that at this point, Kinnally replied.

Further discussion appeared halted, pending appearance of the Beczak consultant to help the trustees battle the geese and, perhaps, make their way out of the muck. ■

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February 25, 2004

## HASTINGS NEWS

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- How Hastings' Per-Student Cost Compares
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## Compromise on Affordable Housing for 422 Warburton; A Vote for Westhab; A Critical Look at Hastings Snow Removal

### ➤ Calendar

## School Chief Seeks 8.9% Tax Hike to Fund Bigger School Budget Next Year

Hastings School District Superintendent John (Jay) Russell is proposing an 11.13% increase in the school budget for next school year, to \$31,963,054, along with an estimated 8.9% increase in the property tax rate—to \$541.03 per \$1,000 assessed valuation--to help pay for it. He presented an overview of the budget to the school board at the board's Monday (February 23) meeting.

Russell will present details of his proposed non-instruction budget for next year at the school board's meeting on Monday, March 15, followed by details of his proposed instruction budget on Monday, March 29. Time has been scheduled for additional budget discussion at the board's Monday, April 12 meeting. Russell hopes the board will adopt the budget at its Tuesday, April 20, meeting. A school board session at which the public can ask questions about the budget—but not change it—is scheduled for May 4. A contingency budget is scheduled to be mailed to voters on May 5. The budget vote—along with election of board members—is set for May 18.

The proposed tax rate increase for the annual operating budget has risen from 4.73% for the 1997-98 school year to 5.96% in 1998-99, stayed essentially flat at 5.98% in 1999-2000, then jumped to 7.71% in 2000-2001, and to 9.33% in 2002-2003 before dipping to 7.95% for the current year. The rate proposed for next year will be the second highest over the seven-year period.

"I believe the tax rate, while high, will still place us in the lower half of tax rate increases in Westchester County," Russell told the board.

He compared the budget increase with a consumer price index increase for Westchester County of 2.3 percent.

### Reasons for Tax Rate Increase

In a letter addressed to the school board members, Russell pinned the proposed increase in the tax rate for 2004-05 on several factors: "a projected 6.8% increase in High School enrollment, the continuation of unfunded state mandates, an increase of 23.2% in the cost of providing special education programs and services, a decrease of \$214,762 in the school property tax assessment roll, an estimated 10% increase in transportation costs, a 9.9% increase in health insurance premiums, an estimated 84% increase in payments to the Teachers Retirement System (TRS), a 60% increase in payments to the Employee Retirement System (ERS), and the first principal payment on the 2001 Capital Project Bond."

### Revenue Sources

The lion's share of the budget is funded from property taxes. For the proposed budget, those taxes would make up 81.3% of the total funding.

State aid is the second largest source of revenue. Russell's proposed budget includes an estimate for state aid, since the actual amount is not known until the state legislature agrees on the state budget—something that consistently fails to happen until after school budgets are voted on by taxpayers. The amount of state aid currently being received by the school district (as opposed to the amount Russell estimated last year as part of the budget approved by voters) is \$3,331,399. Russell's proposed budget estimates a 6.9 percent increase from that amount next year--to \$3,560,395.

The estimated \$3,560,395 in state aid next year, which includes basic, building, BOCES and textbook aid, would contribute 11.1% to next year's total revenue. In 1980, state aid contributed 29% to the school district's total

revenue, Russell said when discussing his budget proposal a year ago.

"Excluding the increase in [state] building aid, the district will receive \$8,536 less in state aid in 2004-05 than in 2003-04," Russell noted.

Besides property taxes and state aid, 7.6 percent of the proposed budget would be funded from several other sources. These include tuition paid by non residents who attend Hastings schools (\$150,000, no change from this year's adopted budget), interest on deposits and investments (\$65,000, down from \$160,000 this year), the sales tax (\$225,000, no change from this year) and BOCES rentals (\$170,000, up from \$160,450 this year). In addition, to lessen the property tax increase, the proposed budget would transfer to revenue money from the Debt Service Fund (\$376,000, no change), the Fund Balance (\$573,000, up from \$525,000) and the Tax Certiorari Fund (\$250,000, down from \$271,008). The proposed budget also would transfer to revenue \$450,000 from an account known as Designation for Capital Expenditures, for use in completing the school district's 2001 capital improvement program.

| School District Proposed 2004-05 Budget – Revenue   |                        |                         |              |
|---|------------------------|-------------------------|--------------|
| Revenue   | 2003-2004<br>(Adopted) | 2004-2005<br>(Proposed) | % Change     |
| Total State Aid*  | \$2,788,000            | \$3,560,395             | 27.7         |
| Revenue—Other   | 842,450                | 770,000                 | (8.60)       |
| Interfund Transfer  | 376,000                | 376,000                 | 0            |
| Appropriated Fund Balance   | 525,000                | 573,000                 | 9.14         |
| Designation for Capital Expenditures  |                        | 450,000                 | NC           |
| Reserve for Certiorari  | 271,008                | 250,000                 | 7.75         |
| Taxes   | 23,961,132             | 25,984,259              | 8.44         |
| <b>TOTAL REVENUE</b>  | <b>28,763,590</b>      | <b>31,963,654</b>       | <b>11.13</b> |
| <b>Estimated Tax Rate Per \$1,000</b>   | <b>\$496.82</b>        | <b>\$541.03</b>         | <b>8.90</b>  |
| <small>*Total State Aid for 2003-04 is the amount estimated at the time of the budget vote, not the actual amount being received. Total actual state aid resulting from the budget finally enacted by the state for 2003-04 is \$3,331,399. The increase in estimated state aid for 2004-05 over actual state aid for 2003-04 is 6.87%.<br/>           NC=Not calculable.<br/>           Source: Hastings School District; % derived by Hastings News</small> |                        |                         |              |

### Expenditures

"The expenditure portion of the budget is specifically targeted to advance the goals of the school district, to maintain the district's commitment to small class size, to address the state learning standards, and to effectively manage the increasing enrollment at the High School and decreasing enrollment at the Middle School and Hillside School," the letter notes.

The largest overall expense category would for Instruction, accounting for 62 percent of the total proposed budget. The top three items in the Instruction budget are for teaching (\$11,756,101), special education (\$4,057,110), and supervision (\$1,013,699); together, they make up 85.4% of the total Instruction budget.

The undistributed expenditure category consists of employee benefits (\$5,878,112), debt service (\$1,452,164) and interfund transfer (\$519,700). The amount for employee benefits includes payment of health-benefit premiums and state-mandated contributions to two employee retirement systems, Russell said. The amount for debt service includes the school district's initial repayment of the principal on the district's 2001 bond issue, used to finance the current capital improvements program.

Below is a general breakdown of proposed expenditures:

| School District Proposed 2004-05 Budget – Expenditures |                             |                              |                 |                            |
|--|-----------------------------|------------------------------|-----------------|----------------------------|
| Expenditures   | 2003-04 Budget<br>(Adopted) | 2004-05 Budget<br>(Proposed) | Increase<br>(%) | 2004-05<br>Contrib.<br>(%) |
| General Support  | \$3,151,242                 | \$ 3,235,842                 | 2.68            | 10.12                      |

|                |                     |                     |              |             |
|----------------|---------------------|---------------------|--------------|-------------|
| Instruction    | 17,865,979          | 19,694,502          | 10.23        | 61.62       |
| Transportation | 1,072,216           | 1,183,334           | 10.36        | 3.70        |
| Undistributed  | 6,674,153           | 7,849,976           | 17.62        | 24.56       |
| <b>TOTAL</b>   | <b>\$28,763,590</b> | <b>\$31,963,654</b> | <b>11.13</b> | <b>100%</b> |

Source: Hastings School District; % derived by *Hastings News*

Russell suggested that expenditures for teacher benefits should be combined with the amount spent on instruction instead of being included in Undistributed expenditures. If so, 77 percent of the school district's budget would go for instruction instead of 62 percent.

In his presentation at the meeting, attended by only one member of the public other than this reporter, Russell noted that over 1,850 Hastings school district homes received STAR program reimbursement of school taxes last year, for a total of \$4,815,741 and an average reduction in taxes of \$2,600. ■

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### ZBA Set to Consider Variances For Revised Affordable Housing Project

The Zoning Board of Appeals (ZBA) will hear this Thursday, Feb. 26 a request by A&F Commercial Builders for five zoning code variances for A&F's revised affordable-housing project proposed for 422 Warburton Avenue at Division Street. The ZBA meets at 8 p.m. in the Municipal Building.

Eric Anderson, a senior partner in A&F, told *Hastings News* that A&F's revised project is for 16 residential units with no commercial space and that current plans are for eight of the units to be affordable and eight to be market-rate. The project's four buildings would be separated by alleyways. Exterior stairways located between the buildings, contained in A&F's previous proposal for the site, have been eliminated. Off-street parking, located in the rear, would be accessed from Division Street.

### A&F Reported Seeking to Buy Site Next to 422 Warburton

*Hastings News* has been told that A&F Commercial Buildings is seeking to purchase the property immediately north of 422 Warburton Avenue.

"I've received an unsolicited proposal by A&F and am reviewing it," the owner of 446 Warburton, Joseph Klementowicz, told *Hastings News* on Tuesday. "I am reviewing it but have not yet made a decision. There have been two proposals—to purchase part and all of the property. The offers are still pending."

Eric Anderson, a senior partner in A&F, declined Wednesday to comment.

The site would apparently, if purchased and combined with 422 Warburton, eliminate A&F's need for some variances for its 422 Warburton, affordable housing project.

The property at 446 Warburton was described by Klementowicz as consisting of five lots covering 12,500 square feet and containing a two-family, 52-year-old house on the northern portion. Klementowicz, who said he retired eight years

ago from the Port Authority as an engineer, also said he has lived in the house with his family for 32 years. He also has a tenant living in the house.

As a former licensed real estate salesperson, Klementowicz said, he has some idea of the value of the site.

Asked earlier by *Hastings News* whether he knew of an effort by A&F to purchase 446 Warburton, Stephen Tilly, whose Dobbs Ferry firm is the project architect for the affordable housing project, said, "It's news to me." ■

A legal notice issued by the Zoning Board of Appeals states that the requested variances are from zoning requirements for recreation area, off-street parking lot widths, minimum lot size, unpaved yards, and side-yard setback. The notice indicates that the developer wants to be allowed to provide

- 3,681 square feet of recreation area instead of the required 6,800 square feet,
- four off-street parking spaces that would be 8 feet nine inches wide instead of the required 9 feet;
- a 24,616 square-foot lot instead of the required minimum of 26,000 square-feet;
- a rear yard consisting of 10 unpaved feet and 20 paved feet instead of a completely unpaved, 30-foot yard;
- a side-yard setback on the north side of the site of 6 feet nine inches instead of the required 21 feet.

#### Round Two

This is the second time A&F has asked the ZBA to exempt it from zoning code requirements. The developer's first application was for 12 variances in connection with its earlier proposal for a project composed of 18 "affordable" residential units and five commercial spaces for offices or artist studios.

At its Nov. 13 meeting, the ZBA denied eight and approved four of the 12 variances. The board also gave view-preservation approval to the project [see *Hastings News*, 11/20/03]. Because of the denials, the developer has revised the project, eliminating the commercial spaces.

If the ZBA this Thursday approves all five variances, the project will have received a total of nine.

Site-plan approval for the project had been given by the Planning Board subject to the ARB's approval of the design and to the ZBA's approval of the variances. The ARB approved the design at its Nov. 3 meeting.

#### Previously Approved Variances

Below is a list of the variances approved by the five-person ZBA at its November hearing:

| ZBA Variances Granted in November 2003 for 422 Warburton Avenue |                              |                     |            |   |
|---|------------------------------|---------------------|------------|---|
| Description   | Code Requirement for Project | Provided by Project | ZBA Action | Vote  |
| Front yard setback  | 10 feet                      | None                | Approved   | 3-2<br>For approval: Pycior; Magun; Deitz<br>Against approval: Hansen; Furman |

|  |   |  |          |   |
|--|---|--|----------|---|
| Side yard setback—south (Division St.) | 20 feet   | 8 ft. 2 in.  | Approved | 3-2<br>For approval: Pycior; Magun; Deitz<br>Against approval: Furman; Hansen |
| Rear yard—obstruction                  | Walls or fences on top of walls exceeding 6.5 ft. in height shall be set back | Retaining walls in the rear yard exceed 6.5 ft. high along the east side of the parking area | Approved | 3-2<br>For approval: Hansen; Magun; Deitz<br>Against approval: Pycior; Furman |
| Building Height                        | 40 feet and 3 stories   | Meets 40-foot requirement; but two of the four buildings would be four stories               | Approved | 5-0   |

Some of the variance requests to be considered this Thursday appear similar to some of those denied by the ZBA in November.

| Some ZBA Denials in November 2003 of Variances Sought for 422 Warburton Avenue |  |  |            |   |
|--|--|--|------------|---|
| Description  | Code Requirement for Project                         | Provided by Project                            | ZBA Action | Vote  |
| Recreation area  | 4,800 sq. feet at minimum                            | 2,970 sq. feet                                 | Denied     | 4-1<br>For denial: Hansen; Pycior; Magun; Furman<br>Against denial: Deitz |
| Minimum lot size   | 29,000 sq. ft. at minimum                            | 24,616 sq. feet                                | Denied     | 4-1<br>For denial: Hansen; Pycior; Magun; Furman<br>Against denial: Deitz |
| Side yard setback—north  | 21 feet at minimum                                   | 6 ft. 7 in.                                    | Denied     | 3-2<br>For denial: Hansen; Pycior; Furman<br>Against denial: Magun; Deitz |
| Rear yard—paving   | No portion of required 30-ft. yard may be paved      | 10 ft. portion of 69-ft. yard would be unpaved | Denied     | 3-2<br>For denial: Hansen; Pycior; Magun<br>Against denial: Furman; Deitz |
| Yard encroachment  | No parking space shall encroach on any required yard | Encroaches                                     | Denied     | 4-1<br>For denial: Hansen, Pycior, Furman, Magun<br>Against denial: Deitz |

Based on the legal notice, three variances previously denied by the ZBA in November are not being reconsidered at this Thursday's hearing. Eliminating the commercial spaces from the project means the project no longer needed variances for two studio units that were smaller than the minimum square footage required by the code. It also eliminated the need to seek a variance from the code's requirement that off-street parking be provided for commercial spaces. The developer also has apparently found a way to provide sufficient off-street residential parking space, so as to eliminate a need to seek to be allowed to provide three spaces less than required. However, four of its parking spaces are three inches narrower than required, resulting in the current request for a parking-related variance.

The legal notice makes no mention of a variance from the requirement that no parking space shall encroach on any required yard. The ZBA denied this variance request last time. Anderson has indicated to *Hastings News* that the revised project still does not meet the code requirement that there be a 30-foot rear-yard setback exclusive of space use for parking. "We provide more like a 60-foot setback," he said, "but that setback is where we put our parking. From the property line to the parking area, there is about a 12-foot setback, and there is a 15 to 20 foot area for circulation between the lot and the buildings." He said he believes the current request for a rear-yard variance includes a variance from this aspect of the code, as well.

### Rooftops as Green Space

A&F will propose to the ZBA that the roofs of the buildings be considered as "green space" for purposes of helping the project meet the code's recreational area requirements, Anderson told *Hastings News*. If the ZBA okays this possibility, A&F will seek to design the rooftops for that purpose, he said. Asked if that might pose a view preservation issue requiring Planning Board approval because of the need for railings on the rooftops, he replied that A&F will need to go back to the Planning Board anyway because of other revisions to the project—eliminating the exterior stairs and modifying the parking lot.

Anderson also said that his project provides more than the amount of open space required by the code except that some of it is used for parking and so cannot be used to meet the code's requirements. He contended that as a result of a revision to the code about a year ago, he is being held to meet open space requirements that properties pre-dating the change do not have to meet because they have been "grandfathered in."

### Financing Gap

In discussing the current version of the project, Anderson said that it faces a "financing gap of nearly one-half million dollars, to be met from subsidies from the other two projects." He said the previous, mixed-used version required no such subsidy. However, he also said later that the previous version of the project had included "a small gap" that was to have been funded either from the other two projects or from "my pocket." The other two projects being developed by A&F are 45 Main Street and 10 West Main Street.

Asked whether he had stated in previous meetings that the three projects were not linked, Anderson said he had repeatedly stated publicly that the three were linked. "No developer would do the Division Street project solely based on the income of the project, inclusive of government funding and the other tolls that I'm using," he said. "We have a simple advantage over a nonprofit developer. What is that difference? We're a general contractor as well as a developer. So we have the ability to control costs in ways a nonprofit does not. I don't know of any nonprofits in this area and perhaps nationally that are builders, with the exception of Habitat for Humanity, which is different because it relies on volunteers."

Anderson also said, "Even with 18 units and commercial space, the Division Street project barely stood on its own. Whether a direct subsidy to close the gap or a return subsidy to make the Division Street project acceptable was needed, there has always been a direct or implied subsidy between the projects based on a lack of return under the previous proposal—however, it is more explicit under the current proposal."

"Why," he asked in support of his proposal, "in a very competitive marketplace, hasn't this site been built?"

Asked why the 422 Warburton site might not be developed by erecting a new structure on the site of the existing building instead of by his current proposal, Anderson replied that economics and the need to provide off-street parking in the rear prohibited that approach.

Anderson also remarked, "People seem to have lost sight of the fact that there is a huge housing crisis in the New York area."

### A Popularity Contest?

The last ZBA hearing was "clearly a popularity contest," Anderson said. He indicated that he believes the hearing was influenced by what the public would like and not like to see built on the site, instead of evaluating the proposed variance request on its merits.

"The conversation was 85 percent or almost entirely about parking," he also said. "So as a responsible developer, we've focused on that. As a result, we're not asking for parking variances anymore. So 85 percent of the public's comments have been satisfied. On Thursday, I think you'll learn that parking is not really the issue."

Residents of the neighborhood opposed to the project have challenged it on various grounds in public meetings, including parking, traffic, lack of recreational/open space and the "footprint" of the buildings. ■

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## LETTERS TO THE EDITOR

### Likes Home Sale Data

Re: "Home Sale Data for 2003 Show Median Price Up 19% Over 2002" [Hastings News, 1/23/04]: This is the best write-up of the Real Estate market that I have ever read in a newspaper! Think about making it a regular annual feature. I, for one, would look forward to it.

--Peter Aranow  
665 Broadway  
1/25/04

### Of Time Warps and the Party Line

To the editor:

Re: Your story about cross-endorsements and the absence of Republican-backed candidates for local Hastings office this year [Hastings News, 2/9/04]: While a majority of Westchester voters belong to one of the two serious political parties, it isn't always necessary to vote for a candidate only because he or she is a member of one's own party. The nature of bi-partisanship is to achieve the best possible government for all citizens.

I certainly don't blame every Democrat for the problems of the world. I voted for Daniel Patrick Moynihan three times-- he was one of the great U.S. Senators in our history-- as well as for Ed Koch at least twice. Heck, I even voted once for Eliot Spitzer, in 1998. Likewise, I wouldn't expect thinking Democrats to blame their personal misery on Republicans. That would be narrow-minded partisanship in its worst form.

Neither I--as chairman of the Hastings Republican Committee and the Greenburgh Republican Town Committee-- nor my fellow Republicans here in Hastings had anything against either Bruce Jennings or Michael Holdstein enough

to challenge their re-election in March. We held an open caucus in January, and nobody showed to raise for their ouster. Both Trustees--Democrats--have been doing a superb job for our community.

There is little reason for Democrats in Hastings to vent their frustrations with national Republican figures--such as our president--on local Republicans. There will be a federal election in November, and all citizens are free to vote for whichever national candidate they choose.

By the way, are you enjoying the consternation the Republicans' cross-endorsement of Tom Abinanti, a Democrat, has caused so far? [Abinanti was re-elected to the County Legislature last fall]. I am proud to say it was my idea. I like Tom, too, and he has performed well for the residents of Greenburgh and its villages. But the partisan Democrats still have yet to get over 2000--or, more likely, they have yet to get over 1980 and 1984, or 1972, or any of those times when one of their romanticized candidates failed to resonate sufficiently with reasonable voters throughout the country.

But many of the activist Hastings Democrats seem to live in anger and a time warp.

Oh well, I trust our village will survive this.

--Timothy S. ("Tim") Hays  
59 Stratford Lane  
2/11/04

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*"Hastings News" welcomes short letters from our readers on local Hastings issues. We reserve the right to edit them for such concerns as length and libel.*

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May 26, 2003

## HASTINGS NEWS

### IN THIS ISSUE:

- Residents Quiz Consultants at Meeting on Settlement of Waterfront Lawsuit
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- Chart Show PCBs on the Atlantic Richfield Waterfront Site
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- An Environmental Scientist Replies to Questions About PCB Remediation
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- Calendar

## Residents Quiz Consultants at Meeting on Settlement of Waterfront Lawsuit

- *The integrity of the cap*
- *Danger to residents from excavation*
- *Deeper excavation*
- *No excavation*
- *Control of the environmental-projects fund*
- *Tougher deed restrictions*
- *Fewer deed restrictions*

Those were just some of the issues raised by Hastings residents gathered at a public meeting on May 13 as they took advantage of the opportunity to quiz the village's trustees, the executive director of Riverkeeper Inc. and a panel of their consultants on the proposed settlement of the lawsuit brought against the Atlantic Richfield Company (AR) by the Village and the Riverkeeper organization in connection with the company's polluted Hastings waterfront site.

About 50 residents—including more than a few environmental attorneys and scientists—attended the meeting. About 25 of them went to the microphone to ask questions. There was praise for the settlement, but the emphasis was on pointing out what the speakers saw as weaknesses in its terms.

*[Hastings News has reported the basic details of the settlement in previous issues. This story seeks to focus on new information. Earlier Hastings News stories will be e-mailed on request. Comments on the settlement are being received by the village through May 27 at 4 p.m. The settlement term sheet is available at the office of the Village Clerk, at the Hastings Public Library, and on the Village's web site <http://Hastingsgov.org>.]*

The consultants, who sought to reply to as many of the questions as they could keep track of, included Mark Chertok, a partner, and Kate Sinding, an associate, at the law firm of Sive, Paget, & Riesel, environmental counsel to the Board; Warren Riznychok, a principal in the Village's environmental engineering firm, Malcolm Pirnie; Karl Coplan, co-director of the Pace Law School Environmental Law Clinic and counsel to the Riverkeeper; and Bruce A. Bell, with the Riverkeeper's engineering firm, Carpenter Environmental Associates. The executive director of Riverkeeper is Alex Matthiessen. An attorney from Arnold & Porter, which represents AR, was present in the audience to monitor the meeting but remained silent.

About 25 percent of the three hours and forty-five minute session was spent on opening remarks by the consultants, including a slide presentation by Chertok that provided a history of the site, its environmental condition, the role of the New York State Department of Environmental Conservation (DEC) as ultimate authority to order and supervise the cleanup, details of the lawsuit and proposed settlement, and next steps. Chertok was followed by the other consultants, who explained the settlement's benefits.

At the outset, Mayor William Lee Kinnally, Jr. set two ground rules: First, questioners would each be limited to five minutes; but if time permitted after others got the chance to ask, they could return to continue the grilling. Second, the panelists would not reveal the different positions of the parties during the negotiations. "Positions shifted all over the place as is normal in settlement negotiations," Kinnally disclosed, "but this was a particularly moveable set of negotiations." He did not elaborate. Kinnally also announced that he had just received a request from AR for a meeting to discuss site-acquisition negotiations.

### Settlement Benefits

In his slide talk, Chertok said the trustees' and Riverkeeper's settlement objective was safety for the full range of uses that have been proposed for the waterfront and benefit for the Hudson River environment. The proposed settlement's features, as set forth in one of the slides, include the removal of "the vast majority of PCBs at concentrations above the State cleanup criteria from the site; encapsulates and shields what is left, and provides slurry walls, bulkheads, and sufficient ground cap and cover to ensure the protection of human health and the environment."

Chertok noted that the 100 year-maintenance fund to be established by AR for the site bulkhead and cap compare with 30 years typically required by DEC for state superfund sites. New York State clean-up guidelines call for PCBs on the site to be 1 part per million (PPM) at the surface and 10 PPM in the subsurface or under an impermeable cap. The development height and setback restrictions on the site called for by the proposed settlement are "basically parallel those contained in the waterfront zone" approved some years ago by the village but never applied to the property.

Riznychok said that PCBs (polychlorinated biphenyls) are dangerous if they are swallowed, inhaled or come into contact with the skin. The proposed settlement eliminates those risks, he said. He also said that excavating PCBs at depths greater than proposed under the settlement would increase, not reduce, the danger of widespread contamination of PCBs across the site. He added that the 12 feet of cover provided in the areas of greatest PCB concentration was more than he had seen required elsewhere by DEC.

Bell told the audience that while his firm has been concerned with the impact of the site on public health, its emphasis, as a representative of the Riverkeeper, has been on the River and the environment. On the "vast majority" of the site, there are no PCBs, he noted. Under the proposed settlement, PCBs will be removed and encapsulated, he said, adding: "It's our belief that what's left in there will have—we'll never say 'never'—an extremely small chance of getting in the River to pollute the River with PCBs. So we think, and we've advised Riverkeeper, that we believe this settlement does in fact protect human health and the environment in a very practical way."

Coplan noted that when he began working on the lawsuit in 1994, he believed, like the Riverkeeper—then John Cronin and now Alex Matthiessen—that "every last molecule of PCBs" should be removed from the site. Over the years as the lawsuit progressed, he said, "I've come around to believing" that the settlement "is a really good solution for this site." Alternative No. 1 is really the focus of the settlement, he said, with the other alternatives being "contingencies" if DEC requires something other than covered in the settlement. He called the five feet of fill on top of a six-inch asphalt cap everywhere on the entire site "a pretty healthy barrier between any people--as well as between the air and of course the River with steel bulkhead--and any remaining contaminants on the site."

In the northwest corner of the site and along the shoreline from the northwest corner to the north cove, PCBs in some places go down 40 feet, Coplan said. Based on what experts have said, excavating at that depth is complicated, he noted, and would involve digging up wet PCBs and removing the water from them, which would require a dewatering plant some place in Hastings. "At some point you say, we could fight about this [extent of the cleanup] for another 10 years and maybe we'll get there and maybe not. But if we really want to stop the PCBs going into the river right now—to a certain extent PCB migration [is] going on every time a wave washes up against that site—we've got to move on this site. And this does it. This accomplishes it." Concerning reasons for settling the lawsuit, he noted that the judge in the case had denied the plaintiffs' request for a summary judgment, which meant, he said, that the judge was saying that in a trial, the case "could go either way."

Matthiessen said that although the Riverkeeper had initiated the lawsuit to protect the River and its ecology from PCB contamination, the organization ultimately—and especially in settlement negotiations—had committed itself "first and foremost" to public health and safety. "We do strongly believe that of all the alternatives including perhaps even excavating the entire site, this is the safest from an all around standpoint." He called it "a golden opportunity for all of us to reclaim our rights basically to the site." The settlement is "in no way" a compromise,

he said, but is "a win-win solution." He added, "On the whole, this is a very, very good settlement for the public, especially since, as Carl [Coplan] pointed out, the alternative, quite realistically, is probably a minimum of another five or 10 years of extended and protracted lawsuits. I just don't think that . . . even if we prevailed [in the lawsuit] in the end that we would necessarily get a settlement as good as this. And I think that's an awfully long time for the public to wait to regain access to this important waterfront area.""

### Undecided

Amy Parekh, the coordinator for Waterfront Watch who lives at 14 Glenn Place, was the first person to the microphone from the audience. Waterfront Watch, which has played an active role over the years in monitoring waterfront cleanup and development efforts, has not yet taken a position on the settlement, she said, because its members are not in agreement about it and are still digesting its terms.

### Earthquakes and Roots

Andrew Zimmerman, 7 Ridge Street and a member of Waterfront Watch, was full of questions, most of them focusing on the proposed asphalt cap. "Have you estimated the magnitude of the earthquake it would take to rupture the cap and the other barriers, and what's the likelihood of an earthquake taking place within the next 100 years?" he asked. Chertok and Riznychok replied that the earthquake issue is "a design issue" that DEC will take into account. Riznychok added that DEC often hires oversight contractors to review designs done by remediation contractors to ensure that they meet all of the criteria necessary to protect the site and that the work is properly done. In Hastings' case, he said, the contractor would ensure that the barriers and slurry walls meet "whatever criteria are needed to protect the site against earthquakes."

Wouldn't the asphalt cap be breached when sewer lines from buildings on the site are connected to sewer lines underneath the asphalt cap; and if the sewer backs up, how would you fix the clog? Zimmerman wanted to know. Chertok replied in part that you could breach the barrier, then repair it, and that there could be covered manholes in the cap.

Won't the roots of trees planted on the site or that spring up as weeds rupture the integrity of the cap? asked Zimmerman. Shallow-rooted trees will be planted, and the developer will need to bring in additional fill to raise the site to above the flood-plain level, Chertok said. How would the cap under five feet of fill be monitored for fissures, and how would problems with the cap under buildings on the site be monitored and fixed without having to knock down the buildings? Zimmerman asked. Typically, shallow and deep wells are sunk to check migration of any contaminants remaining on the site up or down through the cap, as well as to detect any changes in their characteristics, Riznychok replied. Concerning fissures in the cap under a building, Chertok noted that the building itself acts as a cap.

Responding to other questions from Zimmerman, Chertok said that

- DEC "invariably" requires that a monitor be on site at all times to monitor the cleanup, that ARCO would be paying for the monitor, and that it will be possible for the village to have its own monitor on site, as well.
- "No piles or other penetration of the cap" would occur in the Northwest Corner or the Shoreline Area "where PCBs over 10 ppm would be left." In areas of lesser concentration, piles for buildings would be allowed to penetrate the cap.
- no additional site sampling to discover contaminants is anticipated because the parties believe extensive sampling has already been done, resulting in over 800 samples; during remediation, samples will be taken to ensure that "certain limits are reached."
- the settlement's use of four feet of clean fill doubles the typical remedy required by DEC and the state's

Department of Health for contaminants besides lead and PCBs, which remedy is "two feet or so of clean fill" and adds a cap.

- use of asphalt as the material for the barrier is not dictated by the settlement, and "geotextiles" could be used if desirable; DEC ultimately determines what is used. (Riznychok noted that the site is filled with sharp materials that might tear a membrane used as a barrier.)
- Under a consent order that AR will have to sign with DEC, AR will have the responsibility after the cleanup is over to return to correct problems on the site that DEC determines are health and safety threats. "ARCO can't walk away from the site" after the remediation.
- Concerning the advisability of the village's giving up its right to challenge DEC in court, "we've got a guaranteed cleanup of at least seven feet that is what is necessary to protect health and safety. If DEC requires less, then ARCO's already agreed to do more. If DEC requires more, there's hardly a reason to go to court to sue DEC for ordering more than what we believe is already there."

In response to a question from Zimmerman about the possible evaporation of PCBs, Riznychok replied that PCBs "do not evaporate. PCBs in this case are in an oxygenated environment. In order for PCBs to become volatile, they need to be in an anaerobic environment, and they probably will need sulfur-reducing bacteria. That is not the case at this site. In fact, a lot of the PCBs down deep are in a gelatinous form because of the oxygen, and they will stay in that gelatinous form."

Why does AR get control over the trust fund, even after they sell the property? Zimmerman asked. Coplan noted that AR has a say in how the funds are used but not veto power and that the village and Riverkeeper can go to court if AR seeks to block a project. In every open-ended fund resulting from settlements in which he's been involved, Coplan said, the company putting up the money has participated in fund administration. Kinnally said the village will go back to AR to see if it can re-open the subject of how the fund is administered. Chertok said the settlement consent decree will have more specific criteria for selection of projects and that they have to be in Hastings.

#### Reasonable Discretions?

Peter Wolf, an attorney at 36 Main Street, questioned the settlement language that gives AR "reasonable discretion" in achieving the specified objectives of the remediation. In reply, Chertok said that ultimately DEC determines the exact methodologies employed in the cleanup and that any work plan proposed by ARCO will have to be reviewed by DEC. Wolf said that he believes asphalt might not be the best material to use for a contact barrier and called for a study of the best material to use. The material for the barrier is up to DEC, replied Chertok. Independent monitoring and supervision of the cleanup is needed because the village cannot rely on AR and DEC is underfunded, Wolf commented. If added monitoring is needed, the village is not closing its options on the matter, Kinnally replied, although it is not certain about how it would be done. Wolf said the term sheet should have more details about how the transfer of AR property to the village for use as open space will occur. Kinnally replied that the village does not know yet how it wants to hold the property—perhaps as an easement, perhaps taking title, perhaps in several forms—and that state agencies might be involved.

MaryJane Shimsky, 35 Ashley Road, called the proposed settlement "the envy of just about any community in the country." Noting that "the science of environmental remediation is in its infancy," she urged post-cleanup monitoring of possible leaching of contaminants contained on the site into the rest of the site and into the river. The village is "dealing with a dynamic environment right near the river—landfill on top of landfill on top of landfill—and there are a couple of fault lines in that we cannot predict future events that may cause problems down there," she said, adding: "It's important to have regular post-cleanup testing that will alert us to the development of the breach of any containment before we start seeing a problem with the public health which would alert us to it." Chertok replied that when DEC issues a ROD [Record of Decision], it will include provisions for monitoring. After that, he said, issues for consideration by the village will be the sufficiency of DEC's provisions

and the extent to which the village wants to provide its own monitoring. (A Record of Decision is a document that sets forth the final remedy DEC has selected from among the alternatives it has considered for cleanup of a site)

### Ending the Heritage?

Nonnie Balcer, the co-president of the Hastings Historical Society who lives at 46 Summit Drive, and Stuart Cadenhead, 5 Valley Place, expressed concern about the fate of the water tower and buildings now on the site. If the settlement is implemented, all the structures will have to be removed to make way for the excavation, cap and fill, Kinnally said. The water tower might be dismantled, removed and preserved, he suggested. Under the Local Waterfront Revitalization Program (LWRP), the preservation of specific buildings is a priority as part of preserving the village's industrial heritage, Cadenhead noted. LWRP priorities were set before the waterfront settlement, Kinnally said.

Douglass Alligood, an architect who lives at 157 Rosedale Avenue, asked why one methodology had to be used throughout the site and why the cap and fill had to be the same depth throughout the site. Kinnally replied, "There were discussions about, 'Well, what if you have the cap at different levels. If you do have, there is no integrity of the cap. It's almost impossible to maintain the isolation that we set out to do.'" Later in the meeting, Chertok said that the preservation of buildings and the water tower will be an issue to be discussed by the village with AR.

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### Calendar

1. Tues. May 27 Deadline of 4 p.m. for written public comments to village on proposed settlement of suit against Atlantic Richfield over toxic waste on its waterfront site. Comments should be sent to the Village Clerks Office and, by E-mail, to [Hastings@Hastingsgov.org](mailto:Hastings@Hastingsgov.org).
2. Thurs. May 29 Route 9A Committee, Barnes Room at the Hastings Library, 8:00 PM
3. Mon. June 2 Architectural Review Board, 8:00 PM
4. Mon. June 2 Parks & Recreation Commission, Community Center, 8:00 PM
5. Tues. June 3 School Board Elections, Budget Vote, High School Gym, 7:00 AM-9:00 PM
6. Tues. June 3 Board of Trustees. Agenda includes voting on Waterfront Redevelopment Strategy Study Proposal and Salaries for Non-Union Personnel. 8:00 PM
7. Wed. June 4 Youth Council, Library's Barnes Room, 8:00 PM
8. Sat. June 7 Spring Thing/Farmers' Market/Library Book Sale
9. Mon. June 9 School Board meeting. 8:00 PM
10. Thurs. June 19 Planning Board—Discussion of proposed two-family structure on Ridge Street. Public Hearing and discussion of site plan approval for 422 Warburton, 8:15 PM
11. Thurs. July 10 Planning Board, 8:15 PM

(all locations Municipal Bldg., unless otherwise indicated)

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Who else should receive *Hastings News*? Let us have their e-mail addresses; we'll send them a sample, ask them if they wish to "opt in" and, if so, add them to our list!

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