

Chapter V
Mounting Pressures
1974-1982

In May of 1974, Robert Kurzius, developer of Colonial Gardens, whose sixty-acre parcel (formerly the Stoothoff place) lay partly in the two-acre and partly in the five-acre zone, applied for a variance that would permit him to subdivide the entire parcel into two-acre plots. The Board of the Village was determined, as the Minutes record it, vigorously to defend the Master Plan as it stood. The developer took the Village to court, and this case, coterminous with most of this last period in this survey of Upper Brookville's half-century as an incorporated Village, epitomizes the accelerating forces at work within the corpus thereof. Let us follow it in context, rather than in isolation.

But first some antecedent isolation, for emphasis, or to wind up other threads. Take a bulletin, unwelcome and fortunately unique: Colton P. Wagner, he of Humes, Andrews, Botzow & Wagner, the Village Attorneys, whose home is on Remsen's Lane, was wounded in the bombing of Fraunces Tavern perpetrated by Puerto Rican liberationists on January 25, 1975. He was one of the fortunate--well enough to walk, and was so pictured, with ambulance people, in The New York Times.

The Brookville School

Another unhappy development was the closing of the Brookville School. The event was bitterly contested by many villagers, who loved the school because it had given their children a good education--indeed, not a few had moved to the Village partly because of it, the present Mayor being one. The Henry Wickhams found the school in operation, housed in the core of the present structure, in 1941 (it had started in a wooden building, complete with

belfry, which Wickham wanted to buy as a nucleus of a house). Young parents joined the PTA and helped to build the school, with the able direction of the principal, Lillian Y. Weatherlow. Some of this building was a matter of hand labor, as for example, that of Francis Nichols, president of the school board, who personally planted azaleas. The three teachers and the Principal shared instructional responsibilities, through the top, which was at Grade Eight. Hilbert Trachman recalls that his introduction to civic life in the Village was through the school board, which could draw a goodly crowd of parents.

An earlier crisis in the history of the school had come in the late 1950's, when it was drawn into the Locust Valley district. This move was bitterly contested by the villagers, who saw in it a political move which would only increase costs and erode the excellence of their school.

The Commissioner, by State Law, is permitted to lay out an area for centralization. The proposition must be approved by the voters of the "district" which he has created. The trick, of course, is to include a high value low density district in with one or more low value/high density districts. Since it is the total vote that counts, the district with the high assessment (large revenue) is automatically outnumbered and outvoted.

The Commissioner's ploy for initiating centralization (they had started as early as 1936) was to deny Locust Valley's application for a high school, threatening to deny accreditation if they ignored the decision. Although many people in Locust Valley were sympathetic to the Brookville school district, they had little choice--and voted approval. So did Bayville. Result: Brookville, with its high assessed valuation and small population, automatically lost.

A delegation was asked to go to Albany to stop the development, a delegation consisting of Alfred Seaman, Chairman of the committee to fight centralization, and

Hilbert Trachman. The latter recalls a heated meeting with the Commissioner of Education, James E. Allen, who, after or despite the arguments advanced on behalf of the people, told his visitors that the change would be effected regardless.

The Brookville District then sued in the State Supreme Court of New York and lost. It then appealed to the Appellate Division. The State Education Department succeeded in changing the venue to Albany (where its headquarters were) and Brookville lost again. At a large and emotional meeting the residents indicated their desire to appeal to the Supreme Court of the United States. That Court refused certiorari and the independent little school was swallowed up. All the predictions and calculations of the Committee to Fight Centralization turned out to be correct. Their only error was that their predictions of tax increases and loss of school identity turned out to be too conservative.

Subsequently, there were other complexities--e.g., an acrimonious dispute over the celebration of Christmas in the Brookville School, coinciding with national unrest over the constitutionality of prayer in schools, although some of the Village parents felt that this festivity was as much concerned with the music program of the school, led by an ingenious teacher, John Gaul, as it was with anything else.

In June of 1977, villagers wanted to hold a flea market at Filasky's farm to raise money for it--and the Board, despite the personal sympathy of its members, had to decline to grant permission, given zoning restrictions.

In August of 1978, the Board called a hearing to discuss the action of Central School District Number Three in closing the school, which drew in about a dozen villagers, who expressed strong feelings about the final result, which would require their children to go to Locust Valley or Bayville. The Mayor himself, a former member of the

school board, had written a letter of expostulation in the matter, recalling the history of the excellent little school. Closing it would have not only educational ramifications; it would also affect real estate values, and leave empty buildings for the play of vandals. He cited personal assurances of the Commissioner of Education. But again, Village protests did not prevail.

With no choice, the community turned in the fall of 1978 to persuasions to the School District to keep the building accessible to community use. It is worth noting here that the Village Board had no control other than rejecting proposed uses which would violate zoning.

The following spring, the Board and villagers were considering alternative uses for the premises: non-profit athletics, a meeting place, children's programs, and so on, for people in the school district only. The Parents Council planned to run a country fair in June to raise money for maintenance--the Board approving.

In due course, Anthony Grandinette, formerly the physical education director of the school, proposed a non-profit athletic or fitness class in the building. The Council also sought to stage a marathon, with perhaps 800 runners; the Board advised them to consult the Village Attorney in the matter of insurance.

In March of 1980, the Brookville Council, Inc., meeting at the school, proposed a program for children, leasing premises there from the school district.

And so it has gone. That summer, the school was setting up for a country fair (all antiques offered had to be from the five villages only, decreed the Board). However, in the fall of 1981, a request by the Parents Council to sell Christmas trees there for the Council's program was denied, for familiar reasons. The Board and its appurtenances, and the Police Justice Court, use the premises for meetings and elections, paying by the occasion.

The Russian Property on Mill River Road

But there was a final solution to the perennial problem of the collection of taxes from the government of the USSR for its premises on Mill River Road. Late in 1977, the officials there asked for permission to erect cottages for a sort of summer camp for the UN delegation. The idea was passed along by the Department of State in Washington for approval by the Village, which was not forthcoming, since the zoning system did not countenance such a use. In the meantime, fortified by treaties and the action of Nassau County, the Russians had once again suspended payment of Village taxes. This time, the Department of State advised the Village that if it persisted in the matter, it might be prosecuted. And so, in October of 1980, the ultimate--or primary--political unit in the matter, the Village of Upper Brookville, accepted the tax-exempt status of the premises involved.

The Old Brookville Police Department

Relations with the police continued in the new mode of collective bargaining between the Board of Police Commissioners and the PBA. Three contract negotiations, at approximately biennial intervals, were conducted during this period, and they were not always easy. Late in the 1975, the Commissioners had to accept binding arbitration. Starting in 1976, they retained a special labor counsel to deal with the PBA, but for all of that, the Minutes twice in subsequent years suggest the approach of impasse. Both were surmounted. Police Costs for the Village climbed from about \$146,000 in 1975 to \$209,000 in 1980. The rate followed, moving from \$2.80 to \$3.44 in those years. The force now has thirty-one uniformed men, including the Chief, and a three-man detective division. It operates seven cars, to cover the 130-odd miles in the five-village area.

Villagers, who continued to write in to express appreciation, saw their police in familiar protective and helpful roles.

In the spring of 1976, the report from the police was that there had been an increase in burglaries over the preceding year. In these days, there was increasing irritation in the Village over the false-alarm problem. Burglar alarms and their foibles--and those of their owners--were a continuous theme in the Minutes of late 1976. A hearing--actually, over the fire contract--brought the suggestion that an exception be made for the inadvertent tripping of these devices, and that fines be reduced. In time, this was worked into the regulations, which do allow for the forgiveness of the first three accidental alarms.

Vandals continued their mindless and trackless wanderings wreaking their futility on targets of opportunity--mailboxes, even street signs (in mid-1979, the Board abandoned wing street signs and replaced them with the relatively invulnerable vertical-letter posts). In May of 1980, the police scored a triumph, in the apprehension of the "silver Honda" burglars, a couple of ex-youths from this general area, who, since age fifteen or so, had indulged in about ninety burglaries.

In his 1981 report, Chief Capobianco was happy to report a general decline in crime in the five-village area of about one part in four, with the greatest reduction credited to the category of burglary. The Village had no fatalities of the sort tallied in police reports, although there were over sixty auto-related injuries, usually because the vehicle was operated over speed limits. There were only three fires in dwellings to report. After a careful tabulation of summonses, tickets, and the like, the Chief moved on to reports of burglary, seventeen for this Village, as opposed to twenty-six in the year of the "silver Honda" arrest. Among other investigations entered into the report, there was a relatively new one--"family disturbances"--in which, unaccountably, this Village led the other four.

Complaints were few. One was registered during the Bicentennial, when a loud party produced fifty parked cars, which (said one sufferer) should not have been allowed. The OBPD, to counter the rash of recent charges of "police brutality," has installed a video tape system wherewith all arrests are recorded, a "first" in the County.

The Village Court continues to meet regularly, in the echoing cavern of what was the gymnasium of the school. Those pleading "not guilty" may go to conference with one of the Village Prosecuting Attorneys, or even ask for a jury trial--which can be held in that courtroom. A "guilty" plea takes one before the judge, Lindley Miller (stipend: \$1.00 per month). All fines assessed--a typical session may bring in \$2,000--go to Albany, whence a portion is returned to the Village. Early in April, 1982, there were perhaps fifty first-offenders on the docket, most of whom did not appear, opening themselves to a second call, failing which, they are subject to warrant. Most offenses are for automobile violations; Judge Miller on the April occasion frequently cited a recent study on fatalities. Justice was laced with reason. One offender, for example, who could not speak English, was allowed to leave the court to fetch his spouse, who could. He returned. Village informality does not belie the honoring of Village ordinances.

One of the activities of the OBPD continues to be the training of the Auxiliary Police, in first aid, "civilian use of deadly force," the use of mace, and the like. Civil Defense remains formally in place, and the latest report of the Acting Director (no change in personnel here for the entire period of the CD institution) is worth citing, almost in full. The date is June 1, 1982:

Capt. Paul Feldman's report, enclosed, tells of the activities of the Auxiliary Police. Sgt. Al Wolf of the Old Brookville Police Department

attends their meetings and supervises their training. Car #10 is well maintained and will have the necessary painting.

In the beginning of our Civil Defense activities here, we had many discussions about evacuation in case of necessity. Then we decided any such effort would be useless, as I believe it would be today.

The Minutes record one fatality not of the sort to be found on a police or Civil Defense report. On November 1, 1981, death came to Robert F. DeGraff, former Trustee and Mayor, who had lived in the Village and neighboring Mill Neck for fifty years. The Board made a formal resolution of sympathy and appreciation. Of the many anecdotes which might be presented in the memory of Robert DeGraff, hear one from Mrs. Reginald Rose of Mill River Road. It was at the time when the bridge project of Robert Moses was finally laid to rest. DeGraff had led the fight. On that triumphant afternoon, celebrants were gathered at the Fox Point Beach of the Piping Rock Club, when Bob walked in. As one person, all stood and cheered. Conquering hero!

Mill River Road

The more some things change, the more they are the same. In the late 1970's, the annual budget for this use hovered around \$20,000; in the 1980's, the average had moved up by about \$5,000. The Trustees recorded a drainage survey of the road being made by the County early in 1976. In July, the Village made a pro-forma application to the Federal Safety Program for its legal entitlement. In September of that same year, Hurricane Belle wreaked sufficient havoc to bring in the Army Corps of Engineers, and a similar application for federal aid. In the middle of the next year, a Mayoral letter addressed the old problem. It concluded:

A total solution to all the problems of Mill River Road is not only beyond the resources of the

Village, but would also seriously change the character of the neighborhood.

By September of 1977, the idea emerged that perhaps the County might alleviate some of the conditions causing flooding. After all, it was County land--the Christie and Mackay places in Muttontown--draining down the Mill River Road gully which was largely to blame for it all. But what of drainage from State lands? Water from 25A, a State road, also made a big contribution to the problem. No help was forthcoming here, either.

And so the notations accumulate. Bids were submitted in the late spring of 1981 for relocating the ditch and guide rails in some places, ranging up to \$28,000, and were rejected, in favor of having the work done in stages. And so most of us continue to use this leafy lane, perhaps daily, without a thought--which is as it should be. Truly, a meander--how lovely it is!

Development and Litigation

Inexorably, the partition of the old places continued. At the time, the process was more attenuated than it can be in retrospect, and had a different feel. Although not all of his colleagues agreed, Trustee Trachman in May of 1974 held that there was no need to update the Master Plan, because "no significant changes in the Village or the surrounding areas have taken place which warrant an updating"--which anyway would cost in the neighborhood of \$15,000.

The Minutes offer the familiar melange of items touching on growth: a horse farm on Rte. 107, held to be in violation of the zoning; later in 1974, the tripartition of David Grace property. At the end of the year, the Trustees were withholding a certificate of occupancy for the Mill River Club, until the Club, which already had more than 350 members, conformed to Village rules on the makeup of its own managing board.

Attention swung in mid-1975 to the plans of the New

York Department of Transportation to widen Rte. 107, to cut down, it was said, on "hundreds of accidents".

Eventually, after many meetings involving the State, Brookville and Upper Brookville, the present plan was agreed upon. From the Village's point of view it was an imperfect solution to a difficult set of problems but did provide a reasonable balance between local property holders' wishes for minimum disturbance and what the police and State considered important safety considerations, such as reducing the curve and making speed detection by radar more effective.

In the day-to-day sequence of protective moves, the Board early in 1976 sought to strengthen its ordinances by imposing fines up to \$250, per day of violation, and putting violations on a cumulative basis. At the hearing, some questioned whether these changes could be used as a form of harassment. At the end of the hearing, when the matter was properly understood, the overwhelming majority of those present voiced approval. The new Local Law 1-1976 passed unanimously in the Board itself.

Newsday took a different view of the Village in February, 1976, under the title "Old Money, Old Everything". The statistics presented suggested that the title might have been something of a misnomer. It emerged that the average age of the Upper Brookvillian was between 32 and 36, that the median earned income was \$29,878, that the median span of education was 14.2 years. According to the Clerk, in the past decade about 160 families had moved in. Republicans, it was discovered, outnumbered Democrats by five to one.

The State made a requirement in the middle of 1976 which was, in its way, supportive of the conservationist drive of the Board. It was decreed that all villages must adopt a freshwater wetlands ordinance, or lose jurisdiction to the County. Accordingly, a hearing of the residents was called, and in due course Local Law 2-1976 was

adopted, in compliance.

Not long thereafter, a tag sale was held at what purported to be the former home of Huntington Hartford, on Lawn Lane. There was such congestion that the OBPD had to halt the sale--and Mr. Hartford, whose name had been incorrectly used, was, it was said, considering bringing suit. More characteristic of underlying changes in the Village was the subdivision, later in 1976, of the place of former Mayor Ault, who had moved out of the State.

Another sign of the times appeared in the regular meeting of the Trustees in January, 1977 (a meeting otherwise extraordinary in that notice of it was published, following recent legislation requiring open meetings). Cable TV interests were exploring the possibility of franchises in North Shore villages; the Board decided to take no action until a survey of public opinion was made. Village opinion was also consulted in a hearing in March on Local Law 1-1977, "Environmental Quality Review Act." More immediately of interest, perhaps, to some voters was the decision in April that the practice of the distributor of Pennysaver of hanging the paper on mailboxes caused security problems for people on vacation. Thus, permission, in written form, must be gotten from each recipient before the practice could be continued.

In the background of these actions, the Kurzius case was being heard in Supreme Court, Nassau County. On April 19, 1977, that Court handed down its opinion--and the Village was elated to find that the plaintiff had not carried the day. The OP-1 or five-acre zone was upheld, in this nineteen-page document. The Board felt its hand in the concurrent Whitney Park down-zone suit strengthened by this decision which upheld the constitutionality of the zoning system.

Growth, sales, people moving: The turnover of land continued. October brought word of the partitioning of the Karagheusian place on Mill River Road.

But that month brought more portentous news, for the Trustees and the Village: the Kurzius decision was to be appealed.

As for garage sales--this melange of agenda entries was nothing unusual--the decision in March of 1979 was that one might be held only once by an owner who was on the point of moving away (and no sale-salting would be countenanced!) and the seller must hire someone to direct traffic and the parking of cars.

The next month, the Mayor felt it needful to write a letter to the voters, to advise them that the Appellate Division had sustained Mr. Kurzius' appeal, in a decision dated March 26, 1979.

This was the first case in New York against large lot zoning (the NAACP 1971 suit against Oyster Bay and its villages, similar in some ways, had been withdrawn). The Leader, the Guardian, Newsday, the New York Daily News, and The New York Times all covered the story. The last, for example, cited the judge's observation that Village leaders, after consulting large landowners, "decided to use their zoning power to preserve the Village as a citadel of privilege." The court had gone on to say:

No longer may governmental agencies retain or adopt discriminatory, exclusionary or selective zoning ordinances which are designed solely to protect the interest of their more affluent residents by turning a blind eye and a deaf ear to the plight of the less fortunate.

Perhaps the Leader best expressed the pro-zoning view:

The decision...to knock down five acre zoning in the Village of Upper Brookville has put this area into a state of deep shock. Support for retention of the five-acre limit has come not so much from those who live in large houses on large properties as it has come from young

people and those who live on the edge of the five acre villages and enjoy their open beauty. We believe five acre zoning is in keeping with the basic right to zone in order to maintain the health and welfare of the community. Five acre zoning is also a conservation tool, vital to maintain at least a few life sustaining open spaces that benefit all of the communities for miles around....There is nothing in the constitution that makes it mandatory for all of us to live alike. Since we are free to create the kind of community we want we must be free to protect what we create.

An opposing view, not necessarily that of the original plaintiff, was set forth in the New York Daily News, citing an attorney for the Suburban Action Institute, a low-cost housing group. The Appellate Division held the zoning to be "exclusionary," without specifying what a legitimate lot size would be. "Our aim is not so much on what size lot (housing) may be built but to get low-cost, low-income, multiple-family housing into these areas," the spokesman had observed.

The story was even big enough--if this is a valid calibration--to appear on NBC Evening News, whose reporter briefly interviewed Ralph Crews of Locust Lane. The Mayor, in his letter of April 30, 1979, stated:

After careful review of the Appellate Division decision and consultation with counsel, the Board has decided to appeal the matter to the Court of Appeals, the State's highest court.

The decision to appeal is based on the Board of Trustees' firm belief that the existing ordinance is a key factor in the preservation of the environment and the natural resources of the Village, and that the Board must continue its stewardship in protecting the rural character of

our community, which is an asset to the metropolitan area.

Other villages, using the device of amicus curiae, would also join in the appeal (Matinecock and Mill Neck also had five-acre zones).

At a Board meeting at the end of this eventful year there were developments of great significance. North Shore Unitarians were present, seeking to buy the Dalsimer property, the Garden Gate Shop and land. Their intention was to create a retirement complex with approximately one hundred apartments erected in clusters on the twenty-eight acre plot. The Trustees replied that they would consider the matter, although, they cautioned, it did propose "a drastic change" of the sort refused in the past. After further study, the project was rejected. The Unitarians were so advised in April, 1980.

The vigilance of the Trustees covered even nominal matters; later in 1980, they denied a builder the use of the name of the Village for a development that did not lie within its borders. Another challenge of potentially important character arose in a meeting of the Board in June, 1980, incidentally attended by a Newsday reporter. The Trustees had before them a request for downzoning so that a doctor could open an office in his home, located on Rte. 25A between two existing non-conforming enterprises. The answer was that he might not.

At the same meeting there was a report of a plan by the Office of Mental Retardation of the State to open a home for the handicapped, to be run by the AHRC, on the Oyster Bay-Glen Cove Road. The Village planned a hearing--if the owner actually did sell the parcel in question. In the same meeting, the Trustees learned that it would be necessary, given the burden of current litigation, to increase the budgeted sum for that purpose by \$14,000.

Miscellany: the Planning Board considered several

applications, including one to turn the old Filasky farm into a development with homes in the \$400,000 range.

By mid-summer, the State stated that it would insist on creating the projected home for the mentally retarded. Neighbors feared for property values, and urged that the home be more suitably located. By September, the Board had determined to call a hearing with the State, as provided by law.

Everywhere, one saw the lengthening entrenchments of change. It was reported that the Lundy place in Old Brookville was about to be made into the headquarters of a wine importer. The Mayor of Upper Brookville wrote the Mayor of Old Brookville, urging him to resist the commercial encroachment.

But it was in November that the biggest bulletin came down, and most heartening it was: the New York State Court of Appeals had once again upheld the Village in "Kurzius v. the Incorporated Village of Upper Brookville." The documentation of the decision was massive: there has been amici curiae briefs for the plaintiff from the National Association of Home Builders, the New York State Builders Association, and the Long Island Builders Institute; for the Village, one from the North Shore Mayors Joint Municipal Survey Committee and the Village of Cove Neck. But the essence of the matter was the Court's unanimous finding that a five-acre zoning system was a legitimate device to preserve open space, if it met regional needs and was not exclusionary. The developer (the Court continued) had failed to show that the 1960 Master Plan was of this nature.

However, in the midst of this second vindication, the Board cautioned itself that Kurzius might try to take his case to the Supreme Court of the United States, and the Minutes of the Board meeting of February, 1981, established that he had indeed done so.

The following month, the Supreme Court of the United

States rejected the application for certiorari, leaving intact the last ruling in the case, that of the New York Court of Appeals. The five-acre zone was sustained, twenty years after its creation. But in the meantime, the two-acre zone was being challenged. The North Shore Unitarian Society, under date of June 24, 1981, in a pre-trial maneuver, sent letters to Village residents setting forth their case for the development of the old Dalsimer place. The matter had been placed in litigation in the Supreme Court of New York, as a challenge to "the failure of the zoning ordinance of the Village of Upper Brookville to consider and provide for (the retirement home) type of housing as one which was needed not only in the Village but in the region." Trial came in 1982, with no decision yet made.

The force of development continued to erode the old structure. At the start, in 1930, it will be recalled, about 40,000 acres were under estates in the ten-village area of which this Village is a part. Fifty years later, about one-tenth of that acreage could still be so classified. And so it continued: in mid-1981 came applications for acceptance of subdivision plans for the Linden Estates and Overbrooke developments, at the eastern and western ends of the old Filasky farm area. Both were approved. In its fluctuating mix of business, the Board ruled that installers of burglar alarms might not seek free publicity for themselves by posting prominent warning and self-identifying signs visible from the road. In July of 1981, the Board entertained complaints about early morning noises made in the shooting of a TV show. Should there be yet another ordinance? Later, one finds notes on opposition by villagers to the idea of a retirement home, on the weight of trucks, about automatic shut-off devices for burglar alarms, touching on the Venditti class action suit, and on a proposal to hold a decorators' showcase in the old Iselin mansion (rejected as a commercial use).

This account has not attempted to follow in detail the continuing frictions between the Village and some of the operators on Rte. 25A during most of this period. At times, litigation was resorted to; stipulation served in other of these vis-a-vis. Some of these cases were, at last, settled. Perhaps progress, mortality, or shifts in fortunes will settle them all.

Take the familiar gas station-body shop-landscaping complex at Cohen's Corner. In the spring of 1976, the Trustees learned that the owner wanted to expand and modernize his gas station, which would put him afoul of the non-conforming use body of precedent. Behind the owner stood the Exxon Corporation, which had bought the corner lot, and wanted to create a much larger facility there. This grew into "Incorporated Village of Upper Brookville v. Van Wicklen et al." At the end of 1977, while the case was still going on, the Village retained an expert on gas stations. Early the next year, the Exxon people cited the economics of gas stations and location to justify a nine-pump operation, an exponential expansion over the existing cluttered wayside stop. The Board, by late summer of 1978, authorized the Mayor to settle the dispute out of court. Shortly thereafter, the Board approved a drawing of the proposed Exxon installation which the corporation had ordered with the ideas of the Trustees in mind. By mid-1979, this problem, ongoing since about the start of the decade, has been transmuted. The station was approved, although the settlement was highly complex, touching on everything from the uses to which the residual property might be put to the number of vending machines (three only) which would be permitted. As the Mayor put it in a letter to his constituents:

as a result of long negotiations outside court the owners of the property proposed a settlement which involves complete demolition of the buildings on the premises and the installation of a

new, attractive Exxon gasoline station located on the same site but set back further from the road so as to improve the appearance of the area. The Village has accepted this proposal subject to compliance with many conditions which will ensure that the new gasoline station will not adversely affect the area of the Village's zoning laws, and, in particular, will be restricted in size, services and character to conform strictly to the pre-existing rights. The Board of Trustees believes that such a disposition of this lawsuit is in the best interests of the Village and will give the owners of the property an equitable settlement.

Another veteran dispute, across the Village, was also so changed in nature as to be classifiable as "settled." The Whitney Park drive to rezone in the Pine Hollow Road area appeared again in the Minutes in mid-1977. The earlier Appellate Division decision for the Village had left the possibility for renewed litigation, and the new suit attacked the entire zoning system. Litigation continued for months--as late as May of 1981, the Minutes referred to it. In a letter of July, 1981, Mayor Seaman summarized the various challenges to the Village's zoning system being mounted in the courts:

This is a report of several challenges against the Zoning Ordinance in the Village of Upper Brookville. One, with which you are undoubtedly familiar, represents a major victory for the Village and will also have a positive impact on zoning throughout the country. A recent challenge to our zoning was successfully defended when in late 1980 the New York State Court of Appeals rendered a unanimous decision which upheld the Village's 5 acre zoning regulations. The plaintiff's application to appeal

that case to the United States Supreme Court was rejected last April.

The other three cases in this report are all current threats to the zoning laid down in our Master Plan (1961) and our Zoning Ordinance.

We want you all to be familiar with these actions. They seek to break down the Village's zoning for uses which the Board of Trustees believes are contrary to good planning for the Village and the region, and would adversely affect the rural country-like atmosphere of our community.

One case involves the Dalsimer property on the south side of Route 25A, on which is located the Garden Gate Shop. Members of the Dalsimer family and the North Shore Unitarian Society of Plandome, New York, as contract purchaser of the property, seek to have the zoning for that 28 acre parcel of land changed from its present 2 acre zoning to establish multi-family structures at a density of no less than five units per acre. This would represent the construction of large buildings containing over one hundred apartments. Such proposed use would be incompatible with the 2 acre residential subdivisions recently approved by the Village Planning Board for the farmland property located immediately to the north of the Dalsimer property between Linden Lane and Cedar Swamp Road. The Unitarian case is presently in the pre-trial stage and could come to trial within the next year. We intend to fight this case vigorously at whatever level necessary. The proposed project is undesirable and unacceptable in itself and would establish a precedent which could have a devastating effect on the entire North Shore.

The second case involves property located on Pine Hollow Road at the east end of the Village near the hamlet of Oyster Bay. In this case the property owner, Whitney Park Homes, Inc., is also attempting to have the existing 2 acre zoning regulations changed to establish a business use on the property or housing at a greater density. This case is also in the pre-trial state and will be staunchly opposed.

The remaining case involves an attempted "class action" in the Nassau County Supreme Court by ten individuals against the Village of Upper Brookville plus nine other North Shore Villages and the Town of Oyster Bay. In this case, the plaintiffs allege that the Zoning Ordinances of the involved municipalities are unconstitutional and violate their civil rights. They are asking the Court to require high density, low income housing throughout the entire North Shore area. The Village is defending this action in close cooperation with the other defendants.

The purpose of this report is to keep you informed about the continuing challenges facing the Village and to assure you that your Village will vigorously defend its zoning policies which have been a vital factor in preserving the environment and the rural, open space character of our community.

But in January of 1982, the Minutes record that Whitney Park Homes, Inc. property has passed to another party, who had submitted plans for development of Sagamore Woods to the Planning Board. Conmar would install the public improvements on this zone-conforming development--grading, recharge basin and so on.

The Board continued to fill its own vacancies, as when members resigned, as did Trachman and Higginson, who

were replaced ad interim by Innis O'Rourke and Edward C. Oelsner, Jr., and, later Ralph Crews.

Cullings from the Minutes of late 1981 and early 1982: subdivision of Sanford (Barrea) place; need to keep marker posts on Mill River Road from being pulled out by vandals by special anchoring; Cablevision; proposed partitioning of Triangle Nursery; letter to residents on how to prevent burglaries; Jericho Water District discusses the possibility of setting up a pumphouse on Linden Estates land; suggestion for the use of federal revenue sharing funds--about \$6,000; Police Department awards ceremony bestowed on thirteen men; PBA negotiations to commence soon; previously unpaved portion of Linden Lane, connecting Upper Brookville and Old Brookville, finally given to the former by Mr. William Osborn, who paved it at his own expense.

Perhaps the events of the last few years are best summed up by the letter that Mayor Seaman sent to the residents of the Village on February 18, 1983--just past the golden anniversary mark. He wrote:

It has been our custom in recent years to send bulletins on specific events rather than to issue general reports. At this time, however, there is enough business in process to justify a general report. The most important section has to do with the legal defense of our zoning ordinances, but other items are of significance as well.

DEFENSE OF ZONING

CASE I

As we have reported from time to time, we have had a continuing problem involving Whitney Park Homes on Pine Hollow Road adjacent to the sand pits. Originally, the owner sought to down-zone the property to allow for commercial

or apartment use. The Village won that case in the Courts, but questions were raised by the Court which could have had a negative impact on zoning for that particular piece of property.

The same developer also had other property to the north, between Mill River Road and Pine Hollow Road, consisting of two-acre and five-acre sections. The Planning Board, through a series of patient but diligent negotiations, took the position that all of this property, including Whitney Park Homes, should be treated as a single piece. This point of view prevailed and the matter was settled out of court. As a result, that entire section will be developed in conformity with our two and five acre ordinances.

The drainage requirements of this development are necessarily severe since nature made the whole Mill River Road valley a very special case. Since there had to be, by County requirements, a sump along Mill River Road, the Planning Board required not only the engineering plans but complete drawings of the sump area, thus assuring a minimum of visual disturbance and a maximum of natural beauty.

This would be a suitable occasion for presenting the Planning Board members: The Mayor is Chairman of the Planning Board; the other members are: Edward Fogarty, who lives on Mill River Road; Mrs. Virginia Kunken, who lives on Linden Lane and Jerald H. Melum, who also lives on Linden Lane.

CASE II

On July, 7, 1981, we wrote to you about the Dalsimer property on the south side of Route

25A, on which the Garden Gate Shop is located.

We reported that the Dalsimer family and the North Shore Unitarian Universalist Society, Inc. of Plandome, as contract purchaser, were seeking to have the zoning for the 28 acre parcel changed from its present two-acre zoning so as to build a senior citizens' complex of buildings containing over 100 apartments. We said then that: "We intend to fight this case vigorously at whatever level necessary. The proposed project is undesirable and unacceptable in itself and would establish a precedent which could have a devastating effect on the entire North Shore."

The trial, which took place this fall, lasted 29 days. They were not only tedious days, but expensive days--far beyond the usual trial of this type and far beyond what our attorneys, the firm of Sprague, Dwyer, Aspland & Tobin, could have anticipated. In blunderbuss fashion, assertions were made by the Unitarians, which whether founded or not, had to be answered methodically and factually so as to leave no loop holes nor any charge unanswered. The result was the need for many experts preparing and testifying for long periods, which is expensive. Naturally, legal defense fees pile up as well--more than twice what we had budgeted. We believe we have made a staunch defense and that the care, however costly, was necessary and wise.

Post-trial briefs are presently being prepared and will be submitted to the Court in the near future. It is estimated that the Court will render a decision before the end of next summer. We can expect additional expenditures

because the probability is that whoever loses will appeal the decision. Instead of a normal expectation of legal fees for a trial of this type (between twenty and forty thousand dollars), we were forced into expenditures of over \$100,000 in fees--for expert witnesses, and attorneys. Another \$20,000 will be required for briefs, printing, etc. by the time the Supreme Court in Mineola declares its decision.

Since the costs are obviously far beyond the prudent budget for this year, the Village will have to work out special financial arrangements for paying these bills. These costs will necessarily show themselves in Village budgets for the next several years, and we felt we should apprise you of this in advance.

As much as we regret expenditures of this magnitude, the alternative is to fall away before every predator who seeks, for one reason or another, to change the face and nature of our Village.

At this stage of our development, there is relatively little underdeveloped acreage left in our Village--but there is enough so we must be vigilant. We shall continue in the future, as we have in the past, to fight for the preservation of our Village Plan and the character of our community.

CASE III

This case is an action against ten North Shore villages (including Upper Brookville) and the Town of Oyster Bay. As is so customary in these carefully mounted attacks, nine individuals of otherwise modest pursuits, are involved in an expensive action, suing to have the

present zoning of this part of the North Shore declared unconstitutional.

During the past year, the Village and its co-defendants (the villages in this case are commonly represented by a distinguished New York law firm, Paul, Weiss, Rifkind, Wharton & Garrison, and individually represented by separate counsel) have been engaged in various pre-trial motions which are now being appealed in the Appellate Court. These are always complex and dangerous cases, but we are proceeding on sound grounds and are reasonably sanguine. Fortunately, a village can be insured against the cost of cases of this kind since the plaintiffs are seeking relief under the Federal Civil Rights Statutes. Our Village has carried such insurance and the defense costs of this case will be paid by our insurance company.

UPDATE OF MASTER PLAN

In 1960, the Village developed and approved a Master Plan, which set forth in specific details the ways in which we wanted our Village to develop--consistent with its history and intrinsic character. Having such a plan is an important consideration in the Courts whenever zoning is involved. Such a plan is also helpful in the administration of the Village. Our Master Plan has served us well.

After some 20 years, it is our judgement that it is wise and proper to update the plan. We have engaged a firm of planners, McCrosky-Reuter and Associates, with Mr. Reuter in charge of the project. The Village Planning Board has been working for some time now with the planner on the proposed Master Plan.

Preliminary indications are that certain refinements, but no major change in objectives or direction, will be recommended. Public hearings, which are required by law, will probably be held before the summer.

BOARD OF ZONING APPEALS

While dealing with matters of zoning, it is most appropriate to take public notice of the work of our Board of Zoning Appeals. It is a quasi-judicial body which adjudicates questions where possible variances in zoning are concerned. The Board must maintain the spirit of the Village's Zoning Ordinances, but it is empowered to grant relief in instances where common sense recommends that minor adjustments be made (to vary setbacks by a few feet because of unusual circumstances, for example, or allow for a swimming pool slightly beyond the prescribed confines). The Board is zoning's safety valve. Our Board has done an exemplary job for many years, and is to be highly commended for it.

The Chairman, who has served with distinction for 19 years, is William H. Osborn, Jr., who lives on Linden Lane. Other members are Mrs. Hermann W. Hertweck, who lives at The Knoll; John W. Lapsley, who lives on Mill River Road and R. Peter Rose, who lives on Mill River Road. Sadly, late last year, Mr. Albin D. Strandberg, Jr.--who had served ably and diligently for 8 years, died of a heart attack. All of his colleagues know how much he contributed to the Village, and how ably he performed his duties. We miss him greatly.

POLICE AND FIRE PROTECTION

As you know, Upper Brookville is one of five villages served by the Old Brookville Police Department. A Police Commission representing all five villages determines policies--with each representative being responsible to his own Board of Trustees. Chief Capobianco is the Chief Executive Officer. This arrangement has been very successful for about fifteen years and we have just signed another five year contract with the other villages. We look forward to the continuation of good relations and first-class service we have received from the Department.

We are in the midst of protracted negotiations with the P.B.A. at this time, but I am glad to report that we have evolved into an era when these negotiations are conducted with mutual good-will and with no disturbance of excellent service we receive from the officers and men of our Police Department.

As you know, we contract for fire protection from the East Norwich Volunteer Fire Department. Although the cost of this service, like others, has increased over the years, we have found the Fire Department consistently prudent about expenses and conservative in setting fees. Above all, they have provided us with best of fire protection. We look forward to a long relationship.

CABLE TV

Over the last several years, a number of Village residents have expressed an interest in obtaining cable TV service. However, until very recently, no company wanted to service low-density areas such as Upper Brookville because it would be unprofitable.

Last year, Cablevision of Woodbury, New York expressed a willingness to discuss the possibility of operating if enough villages were interested. The North Shore Mayors' Committee, including Upper Brookville, began discussions to work out a reasonable franchise agreement. Last summer, the Village of Mill Neck and Cablevision sought approval from the New York State Cable TV Commission of a proposed contract and rate schedule. Shortly thereafter, Upper Brookville and other North Shore villages also filed preliminary franchising applications. Last fall, the CATV Commission ruled that the rate structure be reduced as a consideration for approval.

As a result of a re-study of its own position and negotiations with Upper Brookville and other villages, Cablevision has now advised our Village that it intends to provide service under a rate schedule that is commensurate with that required by the CATV Commission.

A formal contract proposal is expected by the Village before the end of this month. The law requires that a hearing be held on the franchise proposal before a contract can be executed. You will be so advised.

It is anticipated that Upper Brookville will have cable TV service by next year--and possibly sooner in certain areas of the Village which are in close proximity to existing transmission lines. Each resident will have an individual choice as to whether or not he wants to subscribe to the service. The rate in the near term will not vary with the number of subscribers; in the longer term, the Commission decision requires that the rate be adjusted downward if the degree of development warrants it.

GENERAL

There are other bright spots on the horizon. The parcels of land on the north side of Route 25A, between Route 107 and Linden Lane, have been approved for development on two-acre plots. There are specific preliminary indicators that proper residential development will also take place in the near future on the south side of Route 25A as well. These moves already take us out from under the old argument for down-zoning; i.e., "Property on 25A is not suitable for residential use." Each such possible move helps make our zoning more secure.

We have mentioned the Planning Board and the Board of Zoning Appeals. There are others who do important work as well--almost all on a voluntary basis. We are grateful to them all--not least, Helen Dartt, who handles many things for us, with ability and enthusiasm. A list of Village officials is on the next page.

We thank you, the citizens of our Village, for your support.

A Final Look

Some interesting interlinks emerge when one examines the basic statistics over these past fifty years. The population has grown from 332 to 1,248, about four-fold. The tax rate has gone up much more quickly, from a low point of 16¢ to the 1982 rate of \$3.56, augmented by more than twenty times. Although the change in base makes for complications, note still that the total assessed valuation of the Village has gone from about 6.2 millions to 9.8 millions. The sum to be raised by taxes each year has gone from about \$17,000 in 1933 to \$363,423 in 1982. There is almost a Malthusian extrapolation here: the rise in population brings a disproportionately rapid increase

in costs.

But statistics cannot tell very much. There is a quality of life that is of the essence, and is at the heart of the debates about the shape of the next half-century.

VILLAGE OFFICIALS

Mayor

Alfred J. Seaman (1966)

Trustees

Richard W. Meyer (1966)
Innis O'Rourke (1976)
Edward M. Fogarty (1978)

Village Justice
Lindley G. Miller (1960)

Acting Village Justice
Daniel Ronan (1976)

Village Clerk-Treasurer
Helen S. Dartt (1958)

Old Brookville Police Department
Building Inspector
Engineer
Attorneys

Chief Charles Capobianco
Francis P. Bladykas
Sidney B. Bowne & Son
Humes, Andrews, Botzow &
Wagner

Auditor
Historian
Court Clerk

Joan E. Stapleton
John L. Rawlinson
Barbara C. Miller

Board of Zoning Appeals

Planning Board

William H. Osborn, Jr., Chairman
Lenice Hertweck
John W. Lapsley
R. Peter Rose
R.M. Geddes

Alfred J. Seaman, Chairman
Edward M. Fogarty
Virginia Kunken
George Sabo

(Date in parenthesis after each name indicates
year official first assumed office)