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REPLY TO:

Westchester office

April 25, 2024

Honorable Chairman Lynch and Members of the Board of Architectural Review
Village of Tuxedo Park
80 Lorillard Road
Tuxedo Park, New York 10987

RE: Fencing at 66 Summit Road, Village of Tuxedo Park, New York

Dear Chairman Lynch and Members of the Board of Architectural Review:

We are the attorneys for Sophia Delanner ("Applicant"), the owner of 66 Summit Road, Village of Tuxedo Park, New York ("Property") in connection with an application ("Application") for the installation of a fence ("Fence") at the Property pursuant to Section 100-18 of the Code of the Village of Tuxedo Park ("Code"). The proposed Fence meets all height and setback criteria contained in Section 100-18.A of the Code. Notwithstanding, pursuant to Section 100-18.A of the Code, as the Fence is over two feet six inches in height, a building permit and approval from the Board of Architectural Review ("BAR") is required.

At the BAR's April 15, 2024 meeting, this Board reviewed the Application and requested additional information regarding the type of Fence proposed and the type and location of any proposed landscaping at or near the Fence. In furtherance of the foregoing, and in response to the BAR's comments, enclosed please find a revised plan ("Plan") showing the location of and type of plantings proposed in the vicinity of the Fence. Additionally, as requested by the BAR, samples of the proposed Fence were submitted to the Building Inspector on April 23, 2024.

As detailed on the Plan, in the samples submitted, and in the type and location of the proposed plantings, Ms. Delanner has complied with BAR's requests. Moreover, pursuant to such submissions, Ms. Delanner has confirmed that the proposed Fence is compliant with Section 100-18 of the Code. In light of the above, it is therefore respectfully requested that at this Board's May 6, 2024 meeting, the BAR approve the Application in accordance with Section 100-18 of the Code.

We are also in receipt of a comment letter to the BAR from John A. Sarcone III of Cermele & Wood LLP, dated April 15, 2024 ("Sarcone Letter"). Mr. Sarcone states that he is the attorney

for Liu Summit Holdings, Inc. and First Island Nominees LTD, and Claudio Guazzoni de Zanett. The Sarcone Letter raises numerous points, the majority of which are irrelevant to the BAR's review of the Application.

We trust that the BAR will consider the matter that is before it, which is the review of a proposed Fence pursuant to Section 100-18 of the Code and not get distracted or sidetracked by matters that do not fall within the BAR's purview. Notwithstanding that numerous points raised in the Sarcone letter are not relevant to the BARs review of the Application, please note the following in response to such letter.

Chapter 49

In the Sarcone Letter, Mr. Sarcone claims that the application is in violation of Chapter 49 of the Village Code. However, Chapter 49 of the Village Code has sunset and is no longer applicable. The sunseting of Chapter 49 has been confirmed by the attorney for the Board of Zoning Appeals ("BZA") at the BZA's meeting on April 3, 2024 and was confirmed again by the Village Board of Trustees at its meeting on April 17, 2024. As stated in the opening paragraph of Chapter 49, "[t]he duration of this chapter is limited to the earlier of January 31, 2009, or the effective date of a new local law." As January 31, 2009 has passed, Chapter 49 has sunset and is no longer applicable.

Front Yard

In his letter, Mr. Sarcone also makes the claim that the "front" yard of Ms. Delanner's property should be in a different location then is currently under review by the BAR. Mr. Sarcone is incorrect in his claim that the "applicant" chose such a location. The front yard was determined by the Building Inspector, and is the yard where Ms. Delanner accesses her property. If Mr. Sarcone or his client had an issue with the Building Inspector's determination, they should have appealed the Building Inspector's determination in a timely fashion, which they did not. This Board does not have the authority and is not the proper venue to question the Building Inspector's determination.

Deed Restrictions and/or Easements Not Relevant

It is also not relevant to this Board's review if any of the alleged deed restrictions or easements raised by Mr. Sarcone in the Sarcone Letter exist or are relevant to the installation of the proposed Fence on the Property. The case law is clear that a

"use that may be made of land under a zoning ordinance and the use of the same land under an easement or restrictive covenant are, as a general rule, separate and distinct matters, the ordinance being a legislative enactment and the easement or covenant a matter of private agreement (*see, Ginsberg v Yeshiva of Far Rockaway*, 36 NY2d 706, *affg* 45 AD2d 334, 337-338; 4 Rathkopf, *The Law of Zoning and Planning* § 57.02 [4th ed]). Thus, a particular use of land may be enjoined as in violation of a restrictive covenant, although the use is permissible under the zoning ordinance (*Gordon v Incorporated Vil. of Lawrence*, 56 NY2d 1003, *affg* 84

AD2d 558, 559; *Regan v Tobin*, 89 AD2d 586, 587), and the issuance of a permit for a use allowed by a zoning ordinance may not be denied [****13] because the proposed use would be in violation of a restrictive covenant (*People ex rel. Rosevale Realty Co. v Kleinert*, 204 App Div 883, on later appeal 206 App Div 712, appeal dismissed 236 NY 605, order resettled 207 App Div 828, affd 237 NY 580, writ dismissed 268 U.S. 646; *Matter of 109 Main St. Corp. v Burns*, 14 Misc 2d 1037; *Matter of Forte v Wolf*, 225 NYS2d 858; cf. *Matter of Isenbarth v Bartnett*, 206 App Div 546, affd 237 NY 617).

Friends of Shawangunks, Inc. v Knowlton, 64 N.Y.2d 387, 392 (1985).

We trust that the BAR will consider the matter that is before it, which is the review of an application for a Fence in compliance with Section 100-18. We trust that the BAR will base its determination solely on the applicable Village Code provisions. It is respectfully requested that the BAR avoid being sidetracked and dragged into matters that involve private agreements and disputes between two neighboring property owners.¹ Which disputes Mr. Sarcone's client continues to escalate, as Mr. Sarcone's client, Mr. Guazzoni, recently sued Ms. Delanner in an effort to illegally take a portion of her Property.

This Honorable Board is not imbued with the powers to insert itself into such property disputes. The "Powers" of this Board are clearly defined in Article VIII of the Code. Article VIII does not include making determinations on the applicability of deed restrictions or easements. The Applicant is before the BAR in connection with requested Fence pursuant to Section 100-18 of the Code. The BAR should review the application in in light of Section 100-18 of the Code

Deed restrictions, easements or other similar agreements, and whether they exist, are enforceable, or even apply, are not for the BAR to decide. As noted above, the Courts have actually instructed zoning boards, like the BAR, to ignore any claims about private deed restrictions. Specifically, the court in Shawangunks stated that "the issuance of a permit for a use allowed by a zoning ordinance may not be denied because the proposed use would be in violation of a restrictive covenant." See Id.

Guidelines

Finally, the Sarcone Letter references the Tuxedo Park Architectural Design Guidelines ("Guidelines"). It is important to note that that the Guidelines are just that, guidelines, and do not

¹ As an example, in the Sarcone Letter, Mr. Sarcone claims that his client is granting Ms. Delanner "permission" to access her property through a shared driveway. This is not correct. As detailed in the letter, attached hereto as Exhibit 1, from Ms. Delanner's title insurance company, Westcor Land Title Insurance Company, she has a right to utilize the that shared driveway to access her Property. As a second example, Ms. Delanner's driveway is not actually "off of East Summit Road" as Mr. Sarcone falsely claims. Mr. Sarcone and his client are already aware of this as they were part of the opposition to Ms. Delanner's application to put a driveway in that location, which application was denied. These are just two examples of attempts by Mr. Sarcone to introduce details that need not and should not be considered by the BAR, as they are merely attempts to distract the BAR from reviewing the Application.

supersede applicable Code provisions.

In the Sarcone Letter, Mr. Sarcone incorrectly claims that the Guidelines forbid the proposed Fence. The Guidelines suggest that, if necessary, “simple utilitarian fences (chain link, plastic, lattice)” can be installed in the “rear or rear side yard locations where they do not compromise the historic character of the site or district.”

That is what Ms. Delanner has done, introduce “simple utilitarian fence”, in the rear and side yards of the Property, “where they do not compromise the historic character of the site or district.” Additionally, as Ms. Delanner’s front yard does not face any Village street, the proposed Fence in her front yard will similarly “not compromise the historic character of the site or district,” as recommended in the Guidelines.

The Guidelines also note that “deer fencing and gates should be minimally visible and blend into the topography and landscape background.” That is exactly what Ms. Delanner has done. With the combination of the deer Fence and proposed plantings, as requested by the BAR, Ms. Delanner’s is deterring deer from accessing her Property, while simultaneously introducing a Fence that will not “interfere... with the light or air of an adjoining lot or building thereon”, pursuant to Section 100-18 of the Code.

Finally, there are already fences on properties throughout the Village of Tuxedo Park in similar locations as the proposed fence or in many instances in even more visible locations along Village streets. Attached hereto as Exhibit 2 are photos taken by the Applicant of fences along the streets of the Village of Tuxedo Park. Moreover, it is our understanding that in just the past few years the BAR has approved several fences in similar locations on properties in the Village of Tuxedo Park.² The existing and approved fences currently in the Village of Tuxedo Park are such that the proposed Fence will “not compromise the historic character of the site or district,” as recommended in the Guidelines.

Conclusion

Section 100-18 of the Code allows for the proposed Fence. Section 100-18 of the Code provides that fences can be “erected in the front yard [but] shall not exceed four feet in height,” and that fences can be “erected in the rear or side yards [but] may not exceed six feet in height.” The proposed Fence complies with Section 100-18 of the Code. Moreover, based on this BAR’s comments from its April 15, 2024 meeting, additional landscaping is now proposed to assist in screening the Fence, which is already not minimally visible as designed. As detailed above, Ms. Delanner has chosen a Fence that is compliant with Section 100-18, is in accordance with the Guidelines, and, as requested by the BAR, is proposed with additional plantings.

We trust that the BAR will consider the matter that is before it, which is the review of a proposed fence pursuant to §100-18.A of the Code, and not get distracted or sidetracked by matters that do not fall within the BAR’s purview. As detailed on the Plan, in the samples submitted, and in the type and location of the proposed plantings, Ms. Delanner has complied with BAR’s

² 62 Clubhouse Road, October 21, 2021 (fence on side yard, replacing deer fence); Tower Hill Road Loop April 15 2021 (deer fence on border of property); 62 Clubhouse Road, September 17, 2020 (deer fence in rear of home).

requests. Moreover, pursuant to such submissions, Ms. Delanner has confirmed that the proposed Fence is compliant with Section 100-18 of the Code and the Guideline recommendations. In light of the above, it is therefore respectfully requested that at this Board's May 6, 2024 meeting, the BAR approve the Application in accordance with Section 100-18 of the Code.

Very truly yours,
Snyder & Snyder, LLP


Robert D. Gaudio

Enclosure

MS:sm

cc. Sophia Delanner

Z:\SSDATA\WPDATA\SS3\RDG\DELANNER\FENCE BAR APPLICATION\BAR RESPONSE LETTER.REV.DOCX

Exhibit 1



Barbara A. Farrell
Claims Counsel
321.214.6815
Bfarrell@wltic.com

February 19, 2024

Via First Class and Electronic Mail: john@cw.legal

John A. Sarcone III
Cermeme & Wood LLP
2 Westchester Park Drive, Suite 110
White Plains, NY 10604

Re: Private Driveway off of West Summit Road
Westcor Claim No. 2024115-WC-18269
Westcor Insured: Sophia M. Delanner and Inna Blavatnik
Subject Property 66 Summit Road, Tuxedo Park, NY 10987

Dear Mr. Sarcone.

Westcor Land title Insurance Company ("Westcor" or "Company") is in receipt of a claim submitted by its insured owners, Sophia M. Delanner and Inna Blavatnik ("Insured"), as a result of a letter you sent to them, dated January 11, 2024. In this letter, you assert that our Insured does not possess a right of access to her property over a common driveway. This driveway is shared by Liu Summit and Tuxedo Park Properties, LLC.

Please be advised that there is absolutely nothing in the public record that indicates Liu Summit and/or Tuxedo Park Properties, LLC, have superior rights to the common driveway or that their permission is required by the Insured. The common driveway was conveyed to the Insured along with the above referenced property and is reflected in the filed map of 1965 (copy attached). This map specifically refers to the subject driveway. The map states the driveway is to be used and maintained by Owners of Lots 222-1 and 207-1 and 222-1 and 223-1. Accordingly, any assertion that Liu Summit and/or Tuxedo Park Properties, LLC have superior rights, the authority to require an easement agreement, or the authority to revoke the Insureds' right to use of the driveway, is without merit. Further, any action taken by Liu Summit and/or Tuxedo Park Properties, LLC to interfere with or terminate the Insured's right to freely use the common driveway will be met with vigorous opposition.

Sincerely,
Westcor Land Title Insurance Company

A handwritten signature in cursive script, appearing to read "Barbara A. Farrell", written in black ink.

By: Barbara A. Farrell
Claims Counsel









Enclosure (1965 Filed Map)

#2131

NOTES:

1. DOWNSPOUT WET-WELLS ARE TO BE LOCATED A MINIMUM OF 20' FROM DWELLINGS.
2. PROPOSED WATER LINE ON LOT 207-1 SHALL PASS UNDER PROPOSED SANITARY SEWER LINE AND SHALL BE ENCLOSED IN 24" OF CONCRETE 10' ON EITHER SIDE OF CROSSING POINT.
3. NEW HOUSES SHALL BE EQUIPPED WITH 200 GALLON WATER SUPPLY TANKS AND AUXILIARY WATER PUMPS WITH MAXIMUM CAPACITY OF 3 GALLONS PER MINUTE.
4. COMMON DRIVEWAY SHALL BE USED AND MAINTAINED BY OWNERS OF LOTS 222-1 & 207-1.
5. COMMON DRIVEWAY TO BE USED AND MAINTAINED BY OWNERS OF LOTS 222-1 & 223-1.
6. ALL WATER LINES TO BE PLACED 4' BELOW GROUND LEVEL.

LEGEND

-  EXISTING SEWER
-  PREVIOUS LOT
-  GATE BOX (
-  MANHOLE (LAB
-  MONUMENT
-  LOT 221
-  PREVIOUS LOT
-  DOWNSPOUT

17

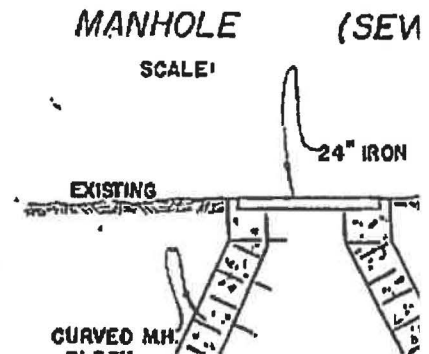
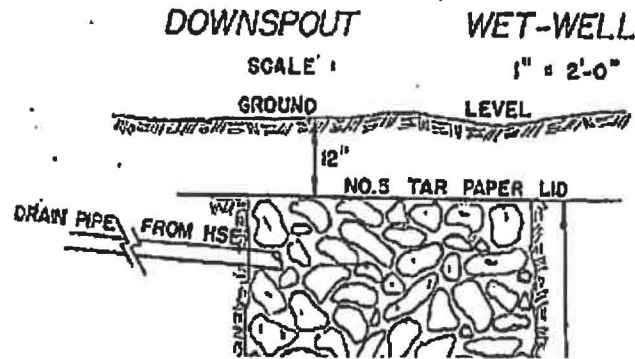


Exhibit 2

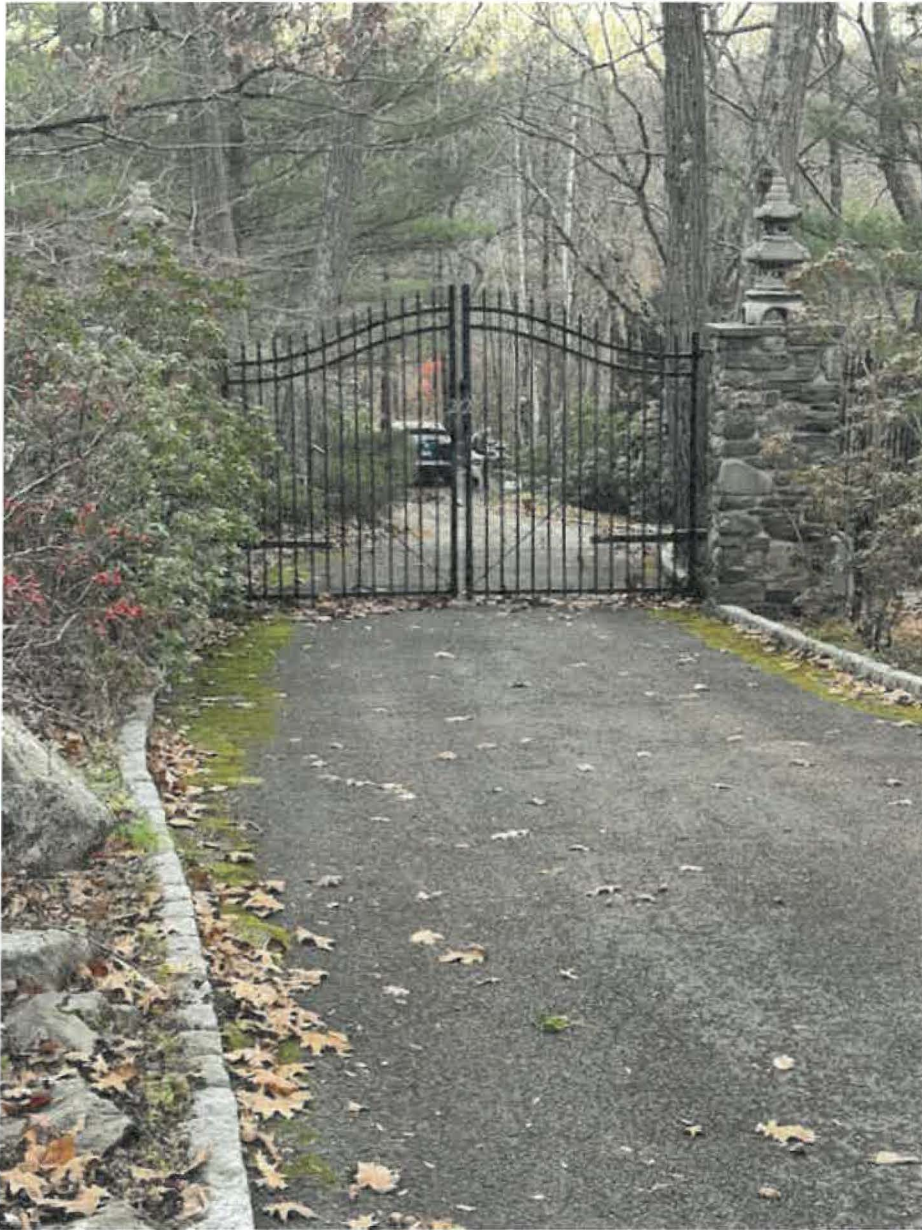


Photo Location Details*

Property Address: 22 Cannon Hill Road

Property Owner: Adrienne L. Lucas**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 22 Cannon Hill Road

Property Owner: Adrienne L. Lucas**

*All photos taken from the adjacent street
** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 22 Cannon Hill Road

Property Owner: Adrienne L. Lucas**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 41 Cannon Hill Road

Property Owner: Mark Brennan, Anne Brennan**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 41 Cannon Hill Road

Property Owner: Mark Brennan, Anne Brennan**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 41 Cannon Hill Road

Property Owner: Mark Brennan, Anne Brennan**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: Near 126 Summit Road (at the dead-end)

Property Owner: Alpha Three, LLC c/o Benjamin Monderer**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address:* Near 126 Summit Road**

Property Owner: Alpha Three, LLC c/o Benjamin Monderer**

* All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll

***Based on good faith effort to determine address

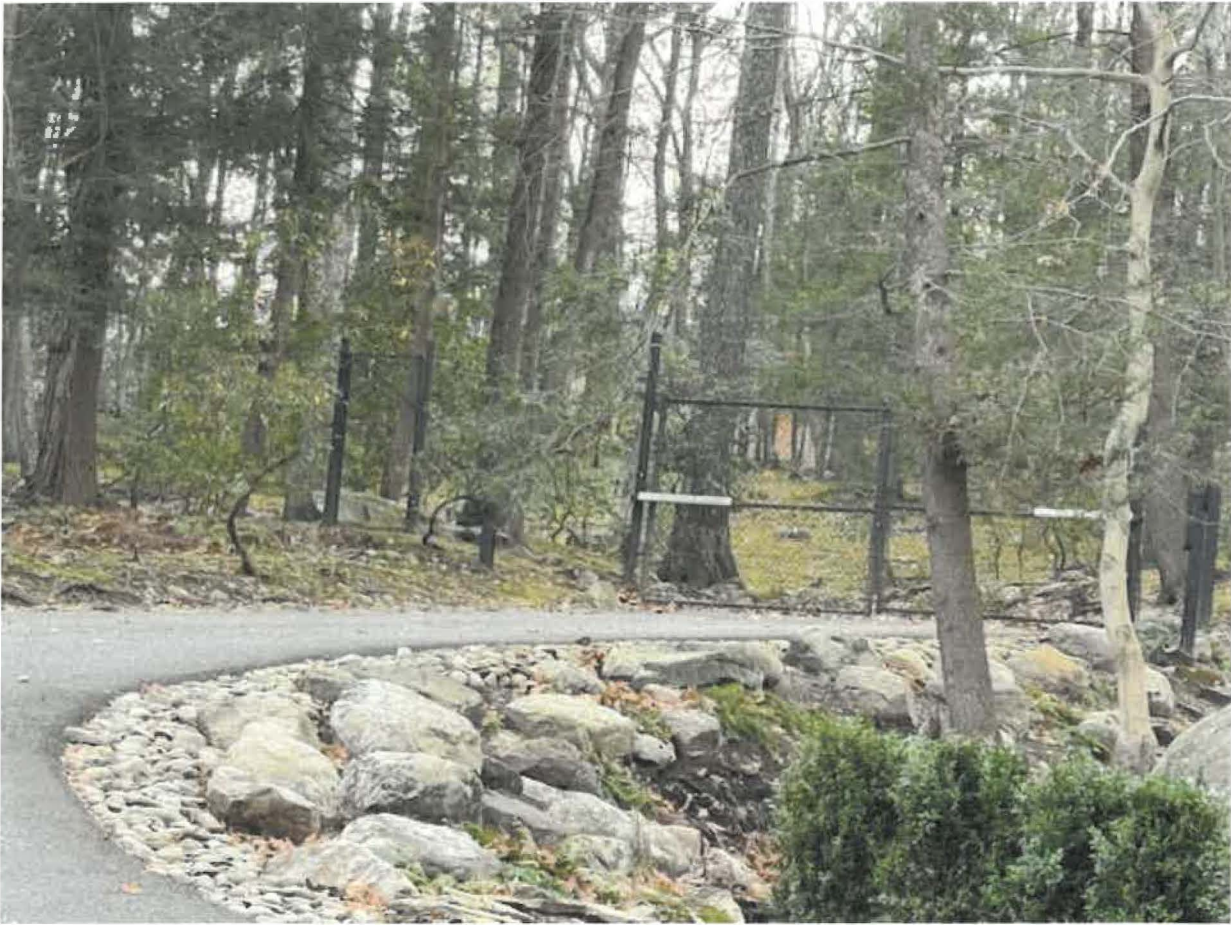


Photo Location Details*

Property Address: 306 West Lake Road

Property Owner: Gary Glynn**

*All photos taken from the adjacent street
** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 316 West Lake Road

Property Owner: Catherine B. Heckett**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 122 Turtle Point Road

Property Owner: Bo Bazylevsky, Christine Bazylevsky**

*All photos taken from the adjacent street
** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 225 East Lake Road

Property Owner: Inger Rein Gruterich**

*All photos taken from the adjacent street
** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 214 East Lake Road

Property Owner: Gregory A. Beard, Laurie A. Beard**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 214 East Lake Road (other entrance)

Property Owner: Gregory A. Beard, Laurie A. Beard**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll

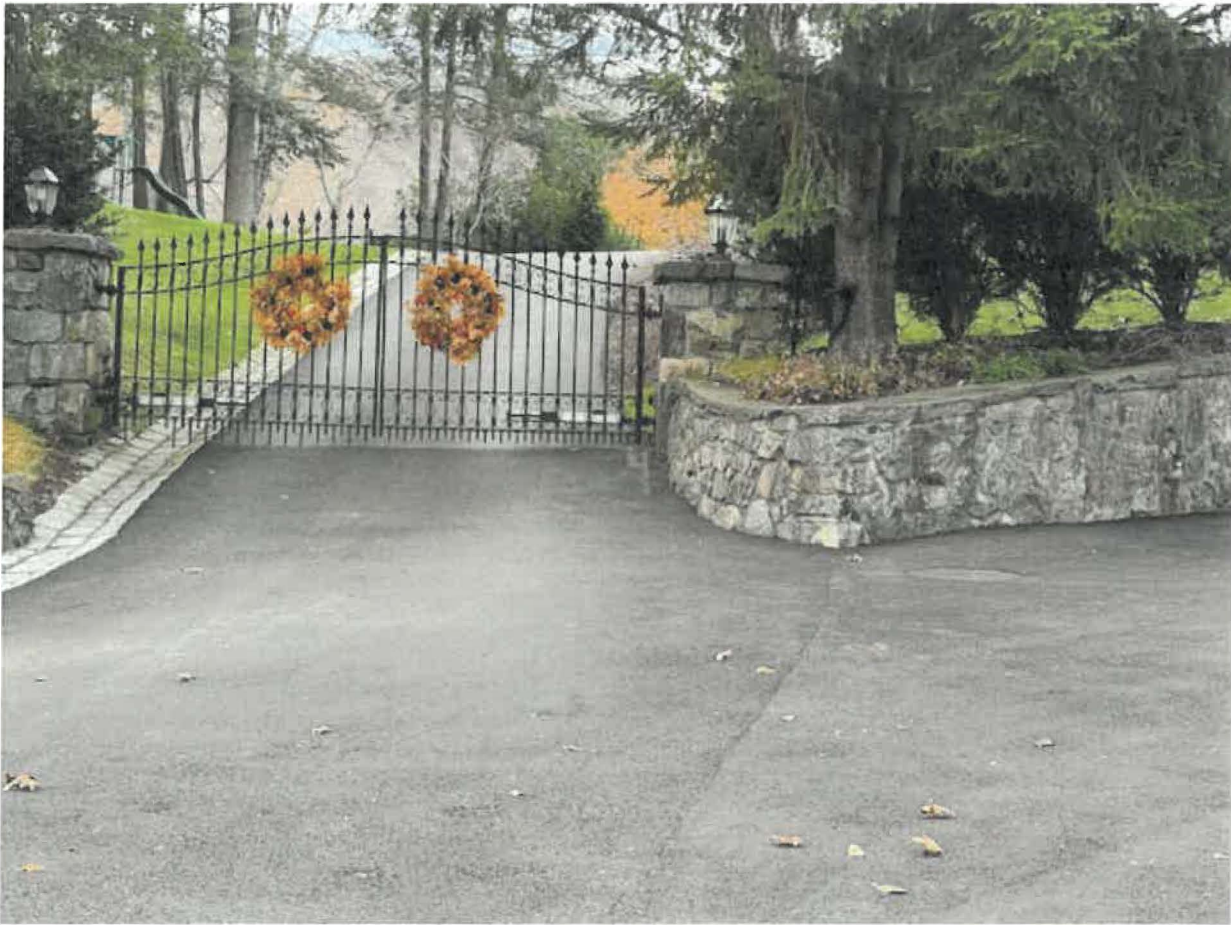


Photo Location Details*

Property Address: 194 East Lake Road

Property Owner: Sunnymede, LLC**

*All photos taken from the adjacent street
** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 174 East Lake Road

Property Owner: Chastellux Home, LLC**

*All photos taken from the adjacent street
** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 154 East Lake Road

Property Owner: Amy Gold**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 154 East Lake Road

Property Owner: Amy Gold**

*All photos taken from the adjacent street
** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 34 East Lake Road

Property Owner: Paul Brooke**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 22 Cannon Hill Road

Property Owner: Shefts Revocable Trust Family**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll



Photo Location Details*

Property Address: 37 West Lake Road

Property Owner: Theodore Wang**

*All photos taken from the adjacent street

** According to Village of Tuxedo Park 2023-2024 Final Assessment Roll

