

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into as of December 5, 2022 by and among Sean P. Madden residing at 64 Tower Hill Loop, Tuxedo Park, NY 10987 ("Madden" or "Petitioner"), and the Village of Tuxedo Park, a municipal corporation organized under the laws of the State of New York with offices at 80 Lorillard Road, Tuxedo Park, NY 10987, Debbie Matthews, solely in her official capacity as the Village Clerk for the Village of Tuxedo Park, and Claudio Guazzoni, solely in his official capacity as trustee of the Village of Tuxedo Park (collectively, the "Village" or "Respondents"). The Petitioner and the Village shall be referred to collectively as the "Parties" or singularly as a "Party". Capitalized but undefined terms used herein shall have the meaning ascribed thereto in the Proceeding (as defined herein).

WITNESSETH

WHEREAS in early 2017, Madden determined to oppose the reelection of Village trustee Claudio Guazzoni, and to communicate such opposition to Village residents in advance of the June 30, 2017 Village election; and

WHEREAS on February 22, 2017, Madden filed a request with the Village records access officer pursuant to New York's Freedom of Information Law ("FOIL") for "an electronic file with all the names and email addresses of Tuxedo Park residents that are in the records of the Village for whatever purpose"; and

WHEREAS Madden subsequently filed requests under FOIL for two specific email records created and sent by Guazzoni in his official capacity to an undisclosed list of Village residents, one dated June 29, 2016 (the "2016 Email"), and another dated June 1, 2017 (the "2017 Email"); and

WHEREAS Madden further requested under FOIL any resident email distribution list utilized by a trustee to communicate with Village residents regarding official Village business; and

WHEREAS during the relevant time period in the first half of 2017, Village trustees utilized personal email accounts to conduct official Village business, including communications with Village residents; and

WHEREAS the Village records access officer who is responsible for coordinating the Village's responses to FOIL requests did not have access to trustees' personal email accounts used to conduct official Village business; and

WHEREAS on May 24, 2017, the Village Legal Counsel, acting as FOIL appeals officer upon delegation of such authority from the Village Board of Trustees, ruled on Madden's FOIL appeal that to the extent that a Trustee is in possession of a list of recipient email addresses that is used for the purpose of communication with such recipients concerning Village business, such email addresses should be disclosed; and

WHEREAS on May 25, 2017, then Trustee David McFadden complied with the Village Legal Counsel's directive by producing his resident email distribution list in electronic format

(Excel) while then Trustee Guazzoni produced scanned photocopies of the membership directories of St. Mary's-In-Tuxedo and The Tuxedo Club; and

WHEREAS Guazzoni subsequently produced a single, scanned physical copy of the 2016 Email, which was not responsive to the FOIL request which sought such record in electronic format; and

WHEREAS no documents were produced responsive to the Third FOIL request; and

WHEREAS on June 7, 2017 Petitioner initiated a proceeding in Orange County Supreme Court (the "Court") pursuant to Article 78 of the Civil Practice Laws and Rules challenging Respondents' failure to comply with Petitioner's requests pursuant to FOIL (the "Proceeding"); and

WHEREAS on June 2, 2021, counsel for Respondents submitted to the Court the Affidavit of Claudio Guazzoni (the "Guazzoni Affidavit"), which declared ("under the penalty of perjury"): "The email list that I provided to the Village from my June 2016 email consisted of the same email list that was utilized for my June 1, 2017 email that was the subject of Mr. Madden's June 1, 2017 FOIL. Any response to Mr. Madden's June 1, 2017 FOIL request would constitute the same email list that was previously provided to Mr. Madden in response to his prior FOIL request."; and

WHEREAS Petitioner subsequently submitted to the Court the sworn affidavits and supporting email documentation of six Village residents who received the 2017 Email but not the 2016 Email; three of these residents attested to the fact that they were not resident in the Village when Guazzoni sent the 2016 Email; and

WHEREAS Petitioner has alleged that this evidence demonstrates the falsity of the Guazzoni Affidavit; and

WHEREAS by Decision and Order dated August 30, 2022 (the "Decision and Order"), the Court held that Petitioner is entitled to a judgment that Respondents violated FOIL and ordered that Respondents comply with Petitioner's Second and Third FOIL Requests and reimburse Petitioner for reasonable attorney's fees and costs related to the Proceeding; and

WHEREAS Guazzoni has not produced to the Village or the Petitioner, as required by the Court, the 2016 Email in electronic format or the 2017 Email in any format or otherwise responded to Village requests for responsive records.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and conditions stated in this Agreement, and upon the receipt of good and valuable consideration as hereinafter set forth, which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. As a condition precedent to the other obligations contained in this Agreement, at a regular or specially noticed meeting (the "Board Meeting") of the Village Board of Trustees (the "Board"), the Board shall approve and adopt a censure of the conduct of former Trustee Guazzoni in the form annexed hereto as Exhibit "A" (the "Censure").

2. The Village shall include the full text of the Censure and the results of the vote to approve and adopt the Censure in the minutes of the meeting at which the Censure is considered when such minutes are prepared by the Village in its ordinary course of business.
3. In accordance with this Court's Decision and Order, which awarded Petitioner reimbursement of reasonable attorneys' fees and costs, within a reasonable time following the Board Meeting, but not more than seven (7) days thereafter, the Village shall pay Madden \$105,000 in respect of reasonable attorneys' fees and costs (hereinafter, the "Settlement Amount") incurred in connection with the Proceeding. Receipt and clearance of the Settlement Amount shall be considered an automatic waiver by Madden of his right to enter a judgment for an award of attorneys' fees in the Proceeding.
4. Upon receipt and clearance of the Settlement Amount, Madden shall donate \$35,000 to the Village (the "Donation") of which \$25,000 shall be used solely for improvements to Wee Wah Park, with the balance to be utilized for other unbudgeted beautification projects that the Board in its discretion may adopt (which may include additional amounts for Wee Wah Park).
5. Promptly upon receiving the Donation, the Village shall furnish Madden with a letter on Village letterhead acknowledging the Donation, in form and substance as set forth in Exhibit "B".
6. The Parties acknowledge and agree that, by not providing the level of cooperation and candor required of him as a Village official under New York law, Guazzoni caused the Village to be unable to comply with FOIL. The Petitioner acknowledges that, to the best of his knowledge, no other Village official could reasonably be considered primarily responsible for the Village's violations of FOIL other than Guazzoni.
7. Petitioner acknowledges that, subsequent to initiation of the Proceeding, the Village adopted New York State's ".gov" email domain for the conduct of official Village business and that the Village's official policy is that all Village business be conducted using official Village e-mail addresses.
8. Upon the execution of this Agreement by the Parties, the Village shall promptly post a copy of this Agreement on the Village website.
9. Simultaneously with the execution of this Agreement, the Parties shall execute
 - (a) mutual releases (the "Releases") and (b) stipulation of discontinuance of the Proceeding (the "Stipulation of Discontinuance") in the form set forth in Exhibits "C", "D" and "E" (collectively the "Settlement Documents") and Respondents shall take any necessary steps to withdraw the pending appeal of the Decision and Order in accordance with current Appellate Division, Second Department rules, respectively. These Settlement Documents immediately shall be delivered to Petitioner's attorney to hold the same, in escrow, pending compliance with the obligations contained in this Agreement (the

"Obligations"). Upon completion of the Obligations. Petitioner shall (a) deliver the original Releases to each release, and (b) file the original stipulation of discontinuance with the Orange County Clerk.

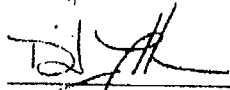
10. This Agreement constitutes the complete understanding of the parties. No modification of any provisions thereof shall be valid unless in writing and signed by both parties.

11. This Agreement is governed by the laws of the State of New York and the venue for matters arising under this Agreement shall be in the County of Orange.

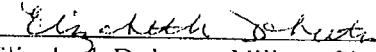
12. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

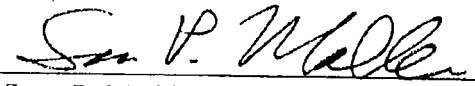
13. This Agreement shall be binding upon the parties and their respective legal representatives, successors, and assigns.

VILLAGE OF TUXEDO PARK

By: 
David McFadden, Mayor

Attest:

By: 
Elizabeth Doherty, Village Clerk

By: 
Sean P. Madden

INCORPORATED 1952
(845) 351-1745 (Voice)
(845) 351-2668 (Fax)
Website: tuxedopark-ny.gov

VILLAGE BOARD MEETING
THIRD WEDNESDAY OF THE MONTH

VILLAGE OF TUXEDO PARK
80 LORILLARD ROAD
P.O. BOX 31
TUXEDO PARK, NEW YORK 10987

David C. McFadden
Mayor

EXHIBIT A: Form of Donation Acknowledgement

December 5, 2022

Sean P. Madden
63 Tower Hill Loop Tuxedo
Park, NY 10987

Dear Mr. Madden:

On behalf of the Village of Tuxedo Park, thank you for your donation of \$35,000 to the Village, \$25,000 of which shall be used for improvements to and investments in Wee Wah Park, with the balance to be utilized for other unbudgeted beautification projects that the Village Board of Trustees in its discretion may adopt (which may include additional amounts for Wee Wah Park).

No goods or services have been provided by the Village as a consideration of making this gift. Please note that the Village of Tuxedo Park makes no representations concerning the tax benefits or consequences of such donation and any determinations relating to tax benefits or consequences must be made by you or your financial professionals.

Sincerely,



David McFadden



INCORPORATED 1952
(845) 351-4745 (Voice)
(845) 351-2668 (Fax)
Website: tuxedopark-ny.gov

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David C. McFadden
Mayor

EXHIBIT B: Form of Censure

December 5, 2022

The Village of Tuxedo Park Board of Trustees hereby censures the conduct of former trustee Claudio Guazzoni as an elected Village Trustee in 2017 that led to the Village's violations of New York's Freedom of Information Law (FOIL), as recently determined by a state court. In addition, former Trustee Guazzoni, in such capacity, failed to turn over all Village records in his possession related to his duties as a Village Trustee. By not providing the level of cooperation and candor required of him as a Village official under New York law, former Trustee Guazzoni caused the Village to be unable to comply with FOIL requirements which resulted in an adverse court decision against the Village. Consequently, Village taxpayers incurred significant costs in this matter. The Board of Trustees hereby calls on former Trustee Guazzoni to recognize the impact of his actions and requests that he makes a significant donation to the Village for the purposes of beautification efforts undertaken by the Board of Trustees.

