

**VILLAGE OF TUXEDO PARK
BOARD OF TRUSTEES
REGULAR MEETING
DECEMBER 21, 2022
MINUTES**

Present: Mayor David McFadden
Deputy Mayor Anna (Tinka) Shaw
Trustee Paul Brooke
Trustee Christopher Kasker
Trustee Joshua Scherer

Clerk: Elizabeth A. Doherty

Village Attorney: Brian Nugent, Esq. (Feerick Nugent MacCartney, PLLC)

Attendees: Building and Land Use Officer John Ledwith; Police Chief David Conklin;
DPW Superintendent Jeff Voss; Jim Hays (Climate Smart Community
Taskforce); Richard Witte (BAR Member) at Village Hall and about 30
members of the public via Zoom

Mayor McFadden called the Public Hearing to order at 7:00 p.m. with the Pledge of Allegiance.
Roll call was taken. Trustee Scherer arrived at 7:08 p.m.

**Open the Public Hearing on Draft Local Law #7 of 2022
Resolution 1221-01**

Be it resolved that the Board of Trustees open the Public Hearing to discuss Draft Local Law #7
of 2022 – Revising the Lake Laws Related to Dock Size.

Motion made by Mayor McFadden, seconded by Trustee Shaw.

Vote of the Board:

Deputy Mayor Tinka Shaw – Aye
Trustee Brooke – Aye
Trustee Christopher Kasker – Aye
Trustee Scherer – Absent
Mayor David C. McFadden – Did not vote

There was no discussion on this local law as the Board did not have anything in writing as of the
time of this public hearing.

Continue the Public Hearing on Draft Local Law #7 of 2022
Resolution 1221-02

Be it resolved that the Board of Trustees continue the Public Hearing to discuss Draft Local Law #7 of 2022 – Revising the Lake Laws Related to Dock Size to February 15, 2022 at 7:00 p.m.

Motion made by Mayor McFadden, seconded by Trustee Shaw.

Vote of the Board:

Deputy Mayor Tinka Shaw – Aye
Trustee Brooke – Aye
Trustee Christopher Kasker – Aye
Trustee Scherer – Absent
Mayor David C. McFadden – Did not vote

There are several pending local laws that the Board will be discussing over the next few meetings, one of which pertains to filming. Trustee Brooke has spoken with people about this and he gave a summary of some of the issues that came up in those conversations. There was a general sense that people didn't want anyone monetizing the Park. Is Tuxedo Park the background or is it the focus of the photo or film. Is the IP of the Park mentioned? Is the geotag? There was also great concern about influencers, are they monetizing themselves or the Park?

Another question is if it's relevant if the filming is done with a personal phone or a camera?

Where there are restrictions that are appropriate, are the issues covered by existing regulations: noise, light, parking, nuisance, etc.?

There was an episode of the TV show called, "Billions" that had a core tennis event here in the Park, though the Park was not mentioned. There was a positive response to being in the program. It was clearly not negative. Mayor McFadden added that this was on the interior of private property owned by the Tuxedo Club. It was run under the purview of the Tuxedo Club. It didn't violate any laws.

Trustee Brooke said in conclusion that our responsibility is to protect the integrity of the Village, to ensure that its values work. A certain amount of visibility is helpful.

There are also two more local laws that the Board will be considering, one of which is to allow the Building Inspector to make determinations in matters under \$100,000 rather than the BAR, and modifications to the Tree Code. BAR Chair Sheila Tralins said she is philosophically against the proposed changes and she questioned the basis for them.

Planning Board Chair JoAnn Hanson then addressed the Board. She said that the Planning Board supports the BAR's position that there should not be a dollar threshold in determining items that go before the BAR. Applicants before both boards are often educated and guided to best practices, which are ultimately beneficial to the applicants. In addition, the process allows neighbors to be aware of and comment on proposed changes. It is difficult and expensive to enforce code requirements when residents proceed with renovations without submitting proper plans in conforming to building codes.

Planning Board Chair Hanson also said that from a Planning Board perspective, the presence and maintenance of trees on properties is a key component in maintaining proper drainage of the property itself and the neighboring properties. Trees also provide privacy and screening between neighbors. Tuxedo Lake is the drinking water source for the Park and as such minimizing run-off into the lake is an important environmental consideration.

Planning Board Chair Hanson said in conclusion that their Board focuses on the property rights of applicants and the legitimate concerns of their neighbors, whose property rights may be impacted. If those processes are not worked through in advance and in public the potential for litigation exists.

Mayor McFadden clarified for the record that the tree law stipulates that four trees can be cut per year regardless of the size of the property. The thought was that it might be more fair and equitable to allow a person with a larger property to cut more than four trees. There are a lot of issues that have not yet been addressed, such as trees on the lake or lake properties.

The Mayor also addressed the proposal to allow the Building Inspector to make determinations without Board approval. He said it could be based on monetary value or project type or neither. It has not been determined yet. If something comes before the Building Inspector where the design guidelines are clear, it might not need to go before the BAR, and in the process they may be able to save the resident a lot of time.

Chiu Yin Hempel (Tree Advisory Board) addressed the Board. She said that historical architecture situated in the heavily wooded landscape is what distinguishes Tuxedo Park. These qualities earned our listing as a place on the National Register of Historic Places and they underpin our real estate values. Trustees are elected to be stewards of these important assets, mainly architecture and the landscape, for now and for future generations. What seems to be the smallest and cheapest modification, like changing the color of a historic house or the color of pebbles on the driveway to other than historically appropriate colors can significantly damage the overall esthetic besides causing big irritation to neighbors. Ms. Hempel urged the Board to consider this when making a decision.

Regarding tree removal, Ms. Hempel said please bear in mind that the early residents of Tuxedo Park spent hundreds of thousands of dollars between 1886 and the early 1930's to plant trees and shrubs on their properties. The rustic esthetics that we enjoy today were created at vast expense because the land had been commercially logged. We didn't used to have many trees. The place looked logged. The original residents rebuilt the tree canopy. Why are we considering laws that would destroy this priceless inheritance? Even if we were to forget for a minute the damage that

excessive tree cutting would do to the environment and to our drinking water reservoir, maintaining what is beautiful, important and peerless is never easy or simple. Nor should it ever be about making the maintenance rules easy or simple or user friendly at the expense of integrity.

Ms. Hempel also mentioned that the trees in the Park are already under threat by the emerald ash borer and the woolly adelgid.

Jim Hays then addressed the Board. He said that many trees are being cut and he emphasized that it is important, if there is any change in the law, to think about how the law will be enforced. Enforcing the law is not easy. It's not easy to take members of the community to court because the fine is small. Mr. Hays said that a more effective method of enforcement would be to make it the responsibility of the tree cutters. They lose permission to work in the Park if they cut down more trees than permitted.

Mayor McFadden asked Attorney Nugent if contractors could be held accountable for working without a permit. He said that contractors working on-site can be held responsible for knowing if a permit is in place before they do any work.

Trustee Brooke pointed out that if a resident is within the range of an allowable limit no permit is required. Trustee Kasker said he felt that a permit should be required any time a tree is cut. Tree cutting is very disruptive. It can involve three or four trucks coming along with wood chippers. Trustee Kasker has been blocked in when his neighbors had trees removed. This not only affects him but if one of the tree cutters is injured it means that an ambulance would have trouble reaching him. Having a formal process in place where the Building Inspector can ensure that narrow roads are not blocked is an appropriate oversight mechanism for the Village. It would also help enforce the limit on the number of trees being cut.

Consent Agenda
Resolution 1221-03

Be it resolved the Board of Trustees accept the items on the consent agenda.

Motion made by Mayor McFadden, seconded by Trustee Shaw.

Vote of the Board:

Deputy Mayor Tinka Shaw – Aye
Trustee Brooke – Aye
Trustee Christopher Kasker – Aye
Trustee Scherer – Aye
Mayor David C. McFadden – Did not vote

ITEMS ON THE CONSENT AGENDA

- a. Add all written reports to the permanent record
- b. Approve minutes from November 16, 2022
- c. Approve renewal of PERMA Third Party Administration Services
- d. Approve extending PSE&G agreement
- e. Approve BciCapital vehicle financing cancellation
- f. Approve retroactively to December 9, 2022, allowable delivery schedule for Fresh Direct to Mon-Sun, 8:00 a.m. to 9:00 p.m.
- g. Approve retroactively an expenditure of approximately \$2,000 snow tires from General Budget for the Police Department
- h. Approve retroactively an increase of \$1,500 in the agreement with QuickBooks consultant Fournalane

Joint Special Meeting with Town and Village Boards Resolution 1221-04

A meeting of the Village Board of the Village of Tuxedo Park was convened on **December 21, 2022 at 7:00 p.m.**

The following resolution was duly offered and seconded to wit:

RESOLUTION OF THE VILLAGE OF TUXEDO PARK AUTHORIZING A JOINT PUBLIC HEARING WITH THE TOWN OF TUXEDO REGARDING THE ANNEXATION OF TWO PARCELS

WHEREAS, the Village of Tuxedo Park and the Town of Tuxedo are committed to promoting the well-being and prosperity of their respective communities; and

WHEREAS, the Village of Tuxedo Park and the Town of Tuxedo have received a petition for the annexation of two parcels (SBL 208-1-25 and 209-1-26) from the Town of Tuxedo to the Village of Tuxedo Park; and

WHEREAS, the Village of Tuxedo Park and the Town of Tuxedo desire to provide an opportunity for the public to express their views on the proposed annexation; and

WHEREAS, notice of the joint public hearing shall be posted and published in accordance with applicable law.

NOW, THEREFORE, BE IT RESOLVED by the Village Board as follows:

Section 1. The above “WHEREAS” clauses are incorporated herein as if set forth in full.

Section 2. The Village of Tuxedo Park hereby schedules and approves a Joint Public Hearing on January 23, 2023 at 7:00 p.m. with the Town of Tuxedo Town Board at 1 Temple Lane, Tuxedo, New York 10987 to consider the petition for the annexation of two parcels (SBL 208-1-25 and 209-1-26) from the Town of Tuxedo to the Village of Tuxedo Park in accordance with Article 17 of the New York State General Municipal Law.

Section 3. This Resolution shall be effective immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>Ayes</u>	<u>Noes</u>	<u>Abstain</u>	<u>Absent</u>
Mayor David McFadden	[]	[]	[X]	[]
Deputy Mayor Tinka Shaw	[X]	[]	[]	[]
Trustee Christopher Kasker	[X]	[]	[]	[]
Trustee Joshua Scherer	[X]	[]	[]	[]
Trustee Paul Brooke	[X]	[]	[]	[]

The Resolution was thereupon duly adopted.

Enter Executive Session
Resolution 1019-05

Be it resolved that the Board of Trustees exit the Regular Meeting and enter into Executive Session at 7:45 p.m. to discuss water account, legal matters and an employee matter.

Motion made by Mayor McFadden, seconded by Deputy Mayor Shaw.

Vote of the Board:

Deputy Mayor Tinka Shaw – Absent
 Trustee Brooke – Aye
 Trustee Christopher Kasker – Aye
 Trustee Scherer – Could not vote
 Mayor David C. McFadden – Aye

Exit Executive Session
Resolution 1221-06

Be it resolved that the Board of Trustees exit Executive Session and re-enter the public meeting.

Motion made by Mayor McFadden, seconded by Trustee Brooke.

Vote of the Board:

Deputy Mayor Tinka Shaw – Aye
Trustee Brooke – Aye
Trustee Christopher Kasker – Aye
Trustee Scherer – Aye
Mayor David C. McFadden – Did not vote

Madden Settlement Agreement
Resolution 1221-07

Be it resolved that the Board of Trustees accept the settlement agreement in its entirety (Attachment A to these minutes).

Motion made by Mayor McFadden, seconded by Trustee Brooke.

Vote of the Board:

Deputy Mayor Tinka Shaw – Aye
Trustee Brooke – Aye
Trustee Christopher Kasker – Aye
Trustee Scherer – Aye
Mayor David C. McFadden – Did not vote

The Mayor read out loud the Form of Censure (Exhibit B in the settlement agreement) in its entirety.

Madden Settlement Agreement Censure
Resolution 1221-08

Be it resolved that the Board of Trustees approve Exhibit B, “Form of Censure” in the attached Madden Settlement Agreement.

Motion made by Mayor McFadden, seconded by Trustee Brooke.

Vote of the Board:

Deputy Mayor Tinka Shaw – Aye
Trustee Brooke – Aye
Trustee Christopher Kasker – Aye
Trustee Scherer – Aye
Mayor David C. McFadden – Did not vote

Adjournment
Resolution 1221-09

Be it resolved to adjourn the regular meeting at 7:59 p.m.

Motion made by Mayor McFadden, seconded by Deputy Mayor Shaw.

Vote of the Board:

Deputy Mayor Tinka Shaw – Aye
Trustee Brooke – Aye
Trustee Christopher Kasker – Aye
Trustee Scherer – Aye
Mayor David C. McFadden – Did not vote

Respectfully submitted,

A handwritten signature in cursive script that reads "Elizabeth A. Doherty".

Elizabeth A. Doherty
Village Clerk-Treasurer

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.

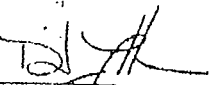
11. This Agreement is governed by the laws of the State of New York and the venue for matters arising under this Agreement shall be in the County of Orange.

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

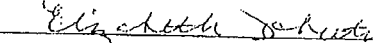
By:



David McFadden, Mayor

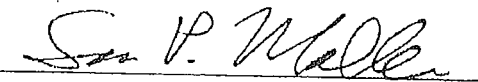
Attest:

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

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 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.

