

VILLAGE OF TUXEDO PARK
BOARD OF TRUSTEES SPECIAL MEETING
MARCH 12, 2024
10:30 A.M.

Present: Mayor Marc D. Citrin
Deputy Mayor Michele Lindsay
Trustee Paul Brooke (via Zoom)
Trustee Joshua Scherer (via Zoom)
Trustee Anna (Tinka) Shaw

Village Attorney: Brian S. Stolar, Esq. (Harris Beach, PLLC) via Zoom

Absent: Village Clerk Elizabeth Doherty

Attendees: Building and Land Use Officer John Ledwith

Mayor Citrin called the meeting to order at 10:40 a.m. Mayor Citrin apologized for the delay in starting the meeting. Roll call was taken. The meeting took place at Village Hall and was broadcast via Zoom. No members of the public were in attendance.

Mayor Citrin said that this meeting was called for the purpose of the Board of Trustees acting as the FOIL Appeal Officer.

Mayor Citrin turned the meeting over to Village Attorney Brian Stolar for further explanation. Attorney Stolar explained that under the Freedom of Information Law (FOIL) there is a Records Access Officer and a FOIL Appeal Officer. Village Code provides that the Record Access Officer can be one of a number of people, including the Village Clerk, but it does not make any reference to who the FOIL Appeal Officer should be. Under State statute this function is served by the Board of Trustees.

Attorney Stolar said that after a recent FOIL request was denied, a follow-up request was made for documents of legal opinions, memoranda or other kind of legal advice relating to any advice that Harris Beach, PLLC, the law firm of the Village, may have provided regarding the authority of Board members who participate remotely to vote at a meeting.

The submission was made to the Village Clerk, the Village Clerk denied the request under the FOIL, and as a result of the denial, the applicant exercised his right to appeal to the Appeals Officer (the Board of Trustees). That appeal was submitted at 4:40 p.m., ten business days ago, but because Village Hall closes at 4:00 p.m., technically it's considered filed the following day.

It is now the responsibility of the Board of Appeals to make a decision as to whether the legal advice that was provided is disclosable under FOIL. Attorney Stolar said that his firm has provided advice as to whether or not that advice is permitted. That, again, comes under the grounds of legal advice and is protected. It is not subject to disclosure.

There is a specific provision both in the Civil Practice Law and Rules (CPLR) and in the Public Officer's Law that protects that information. There is no requirement that it be provided under FOIL. Based on the specific request for legal advice, the Board's authority as a FOIL Appeal Officer, Attorney Stolar recommended that the Board adopt a decision further denying the request on the grounds mentioned above.

Denial of Appeal
Resolution 0312-01

WHEREAS, on February 22, 2024 John Sarcone submitted to the Records Access Officer a request, pursuant to FOIL, for any legal opinion, memorandum, letter, email, or text, to any Board member or Mayor, that provides the legal basis that virtual voting by a Board of Trustees is legal; and

WHEREAS, the Village Clerk responded on February 27, 2024, advising that the request is denied, as the information is exempt from disclosure under FOIL pursuant to Public Officers Law under 87(2)(a); and

WHEREAS, the denial also informed the applicant of the opportunity to appeal; and

WHEREAS, by email dated February 27, 2024 at 4:40 p.m. after the Village Hall closed, the requestor submitted an appeal; and

WHEREAS, the Board of Trustees serves as the FOIL Appeal Officer as of March 12, 2024,

NOW THEREFORE,

BE IT RESOLVED, that the Board makes the following determination:

1. The request by Mr. Sarcone is a request for a legal opinion;
2. The information requested to the extent given as a legal opinion by the Village attorney is prepared and provided in conjunction with the attorney-client relationship with the Village attorney and the Board of Trustees;
3. In accordance with the Public Officers Law and the Civil Practice Law and Rules the advice is not subject to disclosure; and

4. The Board determines that as a result the appeal is denied and no information regarding any legal opinion is to be provided to the requestor.

The motion was moved by Mayor Citrin and seconded by Trustee Shaw

Vote of the Board:

Mayor Citrin: Aye
 Deputy Mayor Lindsay: Aye
 Trustee Brooke: Aye
 Trustee Scherere: Aye
 Trustee Shaw: Aye

Appointment of FOIL Records Appeal Officer
Resolution 0312-02

On a motion made by Mayor Citrin, seconded by Deputy Mayor Lindsay, be it resolved that the Mayor be appointed the FOL Appeal Officer until Monday, July 1, 2024.

Vote of the Board:

Mayor Citrin: Aye
 Deputy Mayor Lindsay: Aye
 Trustee Brooke: Aye
 Trustee Scherere: Aye
 Trustee Shaw: Aye

Adjournment
Resolution 0312-03

On a motion made by Mayor Citrin, seconded by Trustee Shaw, it was resolved to adjourn the meeting at 11:02 a.m.

Vote of the Board:

Mayor Citrin – Aye
 Deputy Mayor Lindsay – Aye
 Trustee Brooke – Aye
 Trustee Scherer – Aye
 Trustee Shaw – Aye

Respectfully submitted,

Elizabeth A. Doherty

Elizabeth A. Doherty
 Village Clerk-Treasurer