

**VILLAGE OF TUXEDO PARK
BOARD OF TRUSTEES
FEBRUARY 21, 2007
7:30 P.M.**

Present: Mayor David McFadden
Deputy Mayor Christopher Hansen
Trustee Lawrence Darby
Trustee Oliver Parker
Trustee Houston Stebbins

Clerk: Deborah Matthews

Also: Richard Morrow, John Ledwith, James Roemer (Esq.) and Colleen Dooley, Donald Prutzman (Esq.), Henry Christensen (Esq.), Chris & Sally Sonne, Lucy Edwards, Nancy & Jim Hays, Mr. & Mrs. Pompan, Francine Liza-Rausch, Todd Yannuzzi, Susan Goodfellow, Jill Siegel, Mr. & Mrs. Heywood, Mrs. C. Hansen, Greg Libby, Caroline Roberts, Mary Graetzer, John Cassis, Geoff Isles, Peter Regna, Jim Jospe, Robin McFadden, JoAnn Hanson, Alan Barnett, Eric Honor, Phil Tavani, Tinka Shaw, Brett Ward and others

Mayor McFadden called the meeting to order and led the Pledge of Allegiance.

PUBLIC COMMENTS – A motion to open the public comment period at 7:35 p.m. was made by Mayor McFadden. The vote was 5-0 in favor.

Speakers: Todd Yannuzzi, Geoff Isles (read statement), Mary Graetzer (read statement), Chris Sonne (read statement-no copy provided), Jake Lindsay, Michele Lindsay, Cindy VanSchaack, Fran Rausch, Susan Goodfellow (read statement), Tinka Shaw

Comments: Concern about visual impact of Tuxedo Club docks - boats rarely used except on July 4th; there are more docks now than in 1991; Board needs to review website policy and what is posted; what happened to password protection on website; what is purpose of different versions of the Design Guidelines; picture proofs of book of historical houses being finalized; request Board's permission to publish Village owned facilities; how can Village sell a Village parcel that is dedicated parkland; concern about other Village parcels in the park; neighbor of Tuxedo Club in favor of Stop Work Order that was issued for the docks and encourages enforcement of laws on the books on an impartial basis; Andy Siegel appointed to fill vacancy on Town Board and Village residents should support him in next election; concern about race track dumping and hopes it will be closed; table Design Guidelines until the purpose of the Guidelines, their legal statues under the Code and other fundamentals are agreed upon.

Additional statements on the docks were read into the record and are attached: Drew Goldman, Tyler-Traffacanti, Philip Lobkowicz, Mark Shefts

Trustee Comments:

Mayor McFadden – 1) requests residents join the website committee as they are shorthanded. If official documents are requested, they can be obtained at the Village Office, 2) purchase of a Village parcel was requested by a Village resident - the parcel would have to be declared surplus, an appraiser hired and put out to bid, 3) no plans for converting or selling off protected Parkland within the Village.

Mayor McFadden made a motion, seconded by Deputy Mayor Hansen, to close the public comment period. The vote was 5-0 in favor.

REPORTS

POLICE – no representation present

DPW – Mayor McFadden asked for additional details regarding a proposal received from En-Tech Corp. for additional sewer pipe lining work that needs to be done on Wee Wah Road. The amount is \$72,449, and Mr. Morrow confirmed that it is a continuation of the most recent En-Tech Corp bid award. Trustee Parker noted that this section of pipe is not under DEC mandate but should be done now while the Village has the available funds. DPW Superintendent, Richie Morrow stated that he and Village Engineer Gene Ninnie will contact the DEC when the work is completed and inform them that the Village has done 1,000-1,300 additional linear feet of sewer pipe lining on its own.

SEWER PIPE LINING

A motion was made by Mayor McFadden, seconded by Deputy Mayor Hansen that the Board of Trustees accept the proposal for a contract extension dated January 16, 2007 by En-Tech Corp. to do 1,021 LF of sewer pipe lining (as specified in items A and B of the attached proposal) at a cost of \$70,449, and if needed, the televising of additional lines at a cost of \$3,000 per 8-hour day be approved as submitted.

Vote of the Board: Trustee Parker – aye
Trustee Darby – aye
Mayor McFadden – aye
Deputy Mayor Hansen – aye
Trustee Stebbins – aye

The motion was passed by a 5-0 vote.

ADVISORY COMMITTEES AND TRUSTEE LIAISONS

INFRASTRUCTURE – Trustee Parker reported that he spoke to Village Engineer Eugene Ninnie, President of CTE, regarding the dams. Mr. Ninnie stated that the requirements have changed since he last worked on the dams in 2002 and current dam work should be done by a specialty engineering firm. Mr. Ninnie also worked on the 2002 Tuxedo Lake Dam Emergency Action Plan and Trustee Parker recommended Mr. Ninnie be authorized to update the information, which involves names, telephone numbers, etc. The cost would be based on Mr. Ninnie's regular hourly rate of \$105.00 per hour. The Board agreed. Also, a comprehensive list of specialty dam firms was recommended by Environmental Attorney Drayton Grant and Trustee

Parker stated he has been receiving company profiles and trying to coordinate schedules to conduct interviews. Mayor McFadden stated that Drayton Grant is also working directly with the DEC on resolving the dam issue.

VIAC – Michele Lindsay gave the background of the Village Improvement Advisory Committee and listed proposed projects and those they have been working on. One of the ongoing projects (by the former Race Track Revitalization Committee) is finding a solution to the dumping problem at the Race Track, and the VIAC has been working in conjunction with the Environmental Committee for a resolution.

Tuxedo Road Guide Rail: Eric Honor, Chairman of the VIAC, reported VIAC would have no objection to replacing a significant section of Tuxedo Road guide rail with boulders, but there are certain areas where the drop-off is very steep and something akin to a guide rail would provide a safer environment. There are also some drainage issues that need to be addressed. They will continue to research options and report at the March or April meeting.

ENVIRONMENTAL - Sheila Pompan gave the report of the Environmental Advisory Committee and their findings regarding the Race Track. The VIAC and EAC have recommended, jointly, that the Race Track be closed immediately to dumping of trees, brush and leaves as requested by Mayor McFadden in the January meeting. Caroline Roberts also spoke on behalf of the Committee. A copy of their final report is attached. Trustee Darby stated that the EAC took up the Race Track as its first priority last summer and had formed a successful joint working group with VIAC in the fall to make joint recommendations. He considered this cooperation exemplary.

Trustee Parker thanked everyone who took part in the investigation and recommendations on the Race Track. In January, Mayor McFadden also negotiated with John Guggino (operator of Perfect Cut) and with Town Supervisor Peter Dolan on behalf of the Village, as well, as Tuxedo Reserve to gain early access to the Fox Hill Tract. Trustee Parker and Mr. Morrow have had several meetings in the last few months with Town Highway Superintendent Tripoli, with John Guggino (operator of Perfect Cut), and with Town Supervisor Peter Dolan as well. According to Trustee Parker, prior to last August these options were not available. They have since reached a mutual agreement on the Race Track options and he proposed the following motion.

A motion was made by Trustee Parker, seconded by Trustee Darby that the Board of Trustees pass a resolution to immediately close the Race Track dumping and mulching site and enter into a relationship with the Town of Tuxedo and the operator of its mulching site (Perfect Cut) under the following terms as provided for in the memorandum of agreement: 1) Permits, licenses and DEC approvals are in place for the Town site. The Village will be notified of any investigations by the DEC or non-compliance, 2) Residents and DPW of the Village will have free access for dumping and free mulch pickup, landscapers to be charged fees equivalent to other users, 3) If this proposal is approved at the Village Board of Trustees meeting on February 21, 2007, the Race Track will be closed immediately to dumping. As a gesture of good will to the Village, John Guggino will donate the use of his equipment, expertise and facilities to remove all of the accumulated debris (i.e. leaves, wood chips, etc.) from the Race Track to the Town facility. This will commence as soon as his equipment becomes available. The Village will reimburse John Guggino for fuel and labor costs up to \$20,000, an amount which is less than what is required by State law for mandatory competitive bidding.

Vote of the Board: Trustee Stebbins – aye
Deputy Mayor Hansen – aye
Mayor McFadden – aye
Trustee Darby – aye
Trustee Parker – aye

The motion was passed by a 5-0 vote.

ACCOUNTING

Deputy Mayor Hansen reported that he met with the Village's Accountant and received an update on the status of the fiscal year ending May 31, 2006. He reported the Village generated a revenue surplus of \$131,247. The major sources were \$101,000 under budget by the DPW and \$47,604 from interest. He also showed a surplus in the General Fund fund equity of \$406,404 (13 ½% of total budgeted expenses). Six months figures show all departments to be under budget for the 2006-2007 fiscal year. The Accountant is preparing the final financial statement and it will be put on the website when available.

Mayor McFadden thanked Deputy Mayor Hansen and his committee for all his hard work as Chief Financial Officer.

STOP WORK ORDERS

TUXEDO CLUB

A lengthy discussion followed by the Board of Trustees, Village Attorney James Roemer and Tuxedo Club Attorney Henry Christensen, which was recorded on audio tape.

A motion was made by Mayor McFadden, seconded by Deputy Mayor Hansen that the Board of Trustees uphold the Stop Work Order issued to the Tuxedo Club for Seasonal Docks No. 2 & No. 3 on February 16, 2007.

Vote of the Board: Mayor McFadden – aye
Deputy Mayor Hansen – aye
Trustee Darby – nay
Trustee Stebbins – nay
Trustee Parker - nay

The motion was defeated by a 3-2 vote.

MARCUS

Building Inspector John Ledwith issued a Stop Work Order on December 18th to Peter Marcus for doing exterior alternations, demolition, excavation, site work, and adding an accessory structure without a building permit. He worked with Mr. Marcus about a remedy and Mr. Marcus has removed the violations and returned his property to its original condition.

A motion was made by Mayor McFadden, seconded by Deputy Mayor Hansen that the Board of Trustees uphold the rescinding of the SWO issued on December 18, 2006 to Peter Marcus, West Lake Road, tax map no. 103-1-9.2, as the violation has been remedied.

Vote of the Board: Trustee Parker – aye
Trustee Darby – aye
Mayor McFadden – aye
Deputy Mayor Hansen – aye
Trustee Stebbins – aye

The motion was passed by a 5-0 vote.

GUINCHARD (Steps)

Building Inspector John Ledwith issued a Stop Work Order on February 2, 2007 to Claude Guinchard for doing extensive site work and installation of stairs and walls that do not appear to be in accordance with the previously approved plans. Part of the work is within 100' of the reservoir which would require a variance from the Board of Zoning Appeals. There is a walkway path shown on the plans but the site work being performed on January 31, 2007 was beyond what was reviewed at the BAR meetings. Site work being done consists of 5 sets of stairs with a platform or 2 in between, the grade is extensive, and there is concern on how the walkway will be accessed since there is a 25' drop behind the house. The SWO was issued only on the work being done for the walkway path and steps. The BAR would have reviewed an EAF form and there would be at minimum a siltation fence and an area of disturbance delineated on the plan. They were not done. Mr. Guinchard authorized Brett Ward, General Contractor of the Guinchard project, to act on his behalf.

Mr. Ward explained the amount of work couldn't be determined until they were in the field.

A motion was made by Mayor McFadden, seconded by Deputy Mayor Hansen that the Board of Trustees uphold the Stop Work Order issued to Claude Guinchard, 194 East Lake Road, tax map no. 105-1-49, for doing construction within 100' of Tuxedo Lake, and that Mr. Guinchard submit a detailed plan of the walkway path and a building permit application to the Building Inspector for his subsequent determination on appealing to the BZA for a variance.

Vote of the Board: Trustee Parker – aye
Trustee Stebbins – aye
Mayor McFadden – aye
Deputy Mayor Hansen – aye
Trustee Darby – abstain (because of professional association)

The motion was passed by a 4-0 vote.

UNFINISHED BUSINESS

RESCIND 2005 TUXEDO CLUB PERMIT FOR DOCKS

A lengthy discussion followed, which was recorded on audio tape.

A motion was made by Mayor McFadden, seconded by Deputy Mayor Hansen that the Board of Trustees rescind the 2005 permit for additional docks at the Tuxedo Club.

Vote of the Board: Mayor McFadden – aye
Deputy Mayor Hansen – aye
Trustee Darby – nay
Trustee Stebbins – nay
Trustee Parker – nay

The motion was defeated by a 3-2 vote.

REGNA-LINDSAY LAWSUIT

Trustee Darby explained that there is a lawsuit against the Village and the Mayor individually as a separate defendant lodged by Peter Regna and John Lindsay. There was a complaint filed on the September 20, 2006. It alleges that certain statements that were included in a Board of Trustees agenda item and which were posted on the Website were defamatory with respect to Mr. Lindsay and Mr. Regna. The Village answered the complaint denying the material allegations in the lawsuit. The Village later engaged the Tannenbaum Helpert firm and Donald Prutzman to represent it and act as substitute counsel for the Roemer Wallens firm and James Roemer in representing the Village. The Roemer firm did remain as attorney of record for Mayor McFadden. Discussions took place among the attorneys for the Village and Mayor McFadden and the attorney for Messrs. Lindsay and Regna to try to find a basis for settling the lawsuit. The Village and Mayor McFadden learned recently that the Messrs. Lindsay and Regna are willing to settle the lawsuit against the Village pursuant to the terms of a proposed Settlement Agreement. Copies of which were supplied to members of the Board of Trustees on February 20, 2007. The Settlement Agreement proposal is that Lindsay and Regna will withdraw the complaint against the Village with prejudice upon the Village issuing a statement which summarizes the results of the Board of Trustees' investigation (described below). The settlement agreement does not involve any payment by the Village and it would result in a withdrawal of the lawsuit against the Village with prejudice. There is also an offer to withdraw the lawsuit against Mr. McFadden if he would subscribe to the settlement on the same terms as presented to the Village.

Mayor McFadden stated that he is in favor of settling the case. He and the Trustees have worked hard to settle and it is not in the best interest of the Village to prolong it. Trustee Darby mentioned in his presentation of the settlement proposal that there had been an investigation by the Trustees with the advice of counsel concluding that there was no reason to believe that Messrs. Lindsay and Regna acted improperly in any way in connection with the matters involved in the lawsuit. Mayor McFadden stated that he could not sign this settlement agreement because there are things that are not factually correct or to his knowledge.

ADJOURN TO EXECUTIVE SESSION

A motion was made by Deputy Mayor Hansen, seconded by Mayor McFadden that the Board adjourn to Executive Session at 10:30 p.m. to discuss the issues related to the Lindsay-Regna lawsuit and that regular session will reopen in a half hour. The vote was 4-0 in favor with Mayor

McFadden recusing himself. It is noted that Mayor McFadden did not attend the private executive session with the Village Trustees and Attorney Donald Prutzman.

REOPEN REGULAR SESSION

A motion was made by Mayor McFadden, seconded by Deputy Mayor Hansen that the regular meeting be reopened at 11:05 p.m. The vote was 5-0 in favor.

CONTINUATION OF DISCUSSION TO SETTLE LAWSUIT

Deputy Mayor Hansen requested that the discussion be continued. The Board was in agreement.

Deputy Mayor Hansen asked if he could review a copy of the investigation. Mr. Prutzman stated that there was no formal written report. Mr. Prutzman stated the investigation included review of the relevant documents in the Village files concerning the history of the sewer moratorium and dealings with the DEC and documents Mr. Lindsay and Mr. Regna, and the Mayor considered relevant and submitted, and asking questions about the matters in question and considering the responses received. He assembled the documents, prepared a chronology, and based his conclusions on what it showed. Trustee Hansen asked if he could see a list of the documents. Mr. Prutzman said he would send a list of the documents (but he did not have a list with him). Trustee Hansen asked if Mr. Prutzman had as part of his investigation interviewed the other members of the Planning Board (no), members of the Zoning Board of Appeals (no), the Mayor (no), or the DEC (no). Mr. Prutzman said he had discussions with Mr. Roemer on behalf of the Mayor. Trustee Hansen asked if Mr. Prutzman had read all of the minutes of all the meetings. Mr. Prutzman stated he reviewed some of the minutes but did not systematically review all the minutes. Mr. Hansen asked if he had reviewed the DEC memos. Mr. Prutzman said he reviewed letters and communications with the DEC. Trustee Hansen then asked the Trustees what they reviewed. Trustee Stebbins stated the chronology indicated the time frames of the applications, and communications the Village has had with the DEC, and comparison of what the facts were over the time period under investigation. Deputy Mayor Hansen stated that he has not seen them and should be afforded the same opportunity to review the documents. Trustee Darby stated that the investigation is primarily carried out by counsel but he also reviewed documents and asked questions on behalf of the Board of Trustees.

Mayor McFadden asked Mr. Prutzman if he had seen a copy of a past NYSDEC letter referring to 12 sewer hookups and he stated he had.

Mayor McFadden Statement

Mayor McFadden made the following statement into the record: "Earlier today I received an e-mail from my attorney who received the documents by e-mail yesterday but was unable to review them until this morning which contained three separate documents. Two of them are entitled "Settlement Agreement" and both are identical, except that one includes me as a settling party and the other does not. The third document is entitled "Privileged and confidential for settlement purposes only without prejudice and is further captioned with the statement "Draft February 16, 2007". This third document is intended to be appendant to both of the aforementioned settlement agreements and is referenced in paragraph one in each of the settlement agreements. I am perfectly willing to execute a settlement agreement that contains all

of the language in the proposed settlement agreements with the exception of paragraph one that incorporates the draft statement previously mentioned. The reason I cannot sign the settlement agreement that attaches and incorporates this statement is that the statement contains several sentences and phrases which do not apply to me. For example, the statement says ‘The Board of Trustees has with the assistance of counsel recently reviewed the circumstances of the respective applications. There were changes in circumstances during the more than two years that elapsed between the approval of the Lindsay application and when the Tuxedo Partners application came before the Planning Board-BAR, including among other things, a deterioration in the Village’s compliance with its DEC wastewater permit. In the opinion of the Board of Trustees the changed circumstances as well as differences between the projects themselves explain the Planning Board-BAR’s decision on those different applications and the Planning Board-BAR had good reason for taking the actions it did.’ The Board of Trustees may have, indeed, reviewed the circumstances of the respective applications with the assistance of their counsel. They did not know whether this applies to all of the Trustees or some of them. What I can say for certain is that I was not part of that process and therefore I cannot agree to sign the settlement agreement which incorporates that statement knowing full well that I was not part of a process which led to conclusions which I cannot accept since I was not part of the process which led to those conclusions. I have authorized my attorney to communicate to the attorney for the plaintiffs and to the attorney for the Board of Trustees that absent a linkage that settlement as contained in paragraph one of the Settlement Agreement, I am more than willing to execute the settlement agreement in order to get this matter disposed of for the Village as a whole. The Village Board and me as elected Mayor to move on to the other pressing and important issues facing the village. End of Statement.”

Deputy Mayor Hansen stated that through the Chairman of the Planning Board, JoAnn Hanson, the Planning Board Attorney asked that no current applicants be mentioned in the Settlement Agreement.

With the plaintiffs present, Mayor McFadden stated that he is proposing tonight to accept the plaintiff’s proposal if there is no statement about the results of the investigation by the Trustees or that he agrees with it. He will sign a settlement tonight to end the lawsuit. His attorney is present to consult with if an agreement should be drafted.

Mayor McFadden stated that it is unfair to expect Deputy Mayor Hansen to vote when he hasn’t had time to review the documents for the first time this day.

Deputy Mayor Hansen responded by saying his concern is not about the Lindsay-Regna matter, but the Village as a whole. The settlement is the best thing so we can move forward. Trustee Darby stated that he believed the settlement was in the best interest of the Village and that it would end the possibility of a judgment against the Village for money damages or other relief without any payment by the Village.

A motion was made by Trustee Darby, seconded by Trustee Stebbins that the Trustees sign the Settlement Agreement between Peter Regna, John Lindsay and the Village of Tuxedo Park.

Vote of the Board: Trustee Stebbins – aye
Trustee Darby – aye
Trustee Parker – aye

Deputy Mayor Hansen – abstain-based upon not afforded review of the appropriate documents

Mayor McFadden – abstain-on the grounds that he made a proposal and didn't receive a response

The motion was passed by a vote of 3 ayes and 2 abstentions.

Trustee Darby stated that he is pleased that the Trustees were able to settle on behalf of the Village and hopes for continued discussions on settling the lawsuit against Mayor McFadden.

Mayor McFadden thanked the Trustees and Plaintiffs for working hard to come to a conclusion that would withdraw of the lawsuit against the Village and looks forward to continuing settlement discussions with the Plaintiffs to have the lawsuit withdrawn against the Mayor as well.

WEBSITE

Mayor McFadden proposed that because of the time (after midnight) and because no member of the public was still in attendance that all the remaining items on the agenda be tabled until a later date. Trustee Darby stated that he would like to follow up on the proposal he discussed last month that there be a section of the Village Website for Trustee comments and observations.

A very lengthy discussion was held on the merits of each Trustee having a combined and separate section on the website to post their comments and observations regarding Village issues. Mayor McFadden and Deputy Mayor Hansen are in favor of the Trustees having separate pages rather than a combined page representative of all the Trustees, and strongly object to the fact that they weren't given time to review or publicly debate Trustee Darby's proposal before the matter was brought to a vote as previously agreed. Trustee Darby stated that his proposal was the same as the one he made at the January 21st BOT meeting, with the change requested by Trustee Hansen that there be separate pages. More discussion followed.

A motion was made by Trustee Darby, seconded by Trustee Stebbins that the following resolution be made regarding the Village Website:

Resolved, that there be established sections of the website of the Village of Tuxedo Park denominated "Trustees Comments and Observations" available to each Trustee of the Village for posting comments and observations regarding any matter such Trustee considers to be of public interest to residents and taxpayers of the Village and persons dealing with the Village, which sections shall be constructed and maintained in a manner satisfactory to the Board of Trustees and be specifically identified for each Trustee;

Resolved, that any Trustee may submit such content to the webmaster for posting and such content shall be so posted by the webmaster as promptly as practicable and, if requested by the Trustee submitting content, notice of the posting of such contents shall be given to all persons on the Village e-mail list when the content is first posted;

Resolved, that the Village Website Policy dated November 15, 2005, be and is hereby amended to add under Point 1 Allowable Content: the following paragraph:

“Trustee Comments and Observations: Comments and observations submitted from time to time by any Trustee on any matter such Trustee considers to be of public interest to residents and taxpayers of the Village or persons dealing with the Village. Such postings shall include the following notice: “The content on the Trustee Comments and Observations sections of the Village of Tuxedo Park is published by the Trustee submitting such content does not necessarily reflect the views or opinions of the other members of the Board of Trustees, the Mayor, other elected or appointed boards, committees or their members, nor employees of the Village.”

Vote of the Board: Trustee Darby – aye
Trustee Parker – aye
Trustee Stebbins – aye
Mayor McFadden – Abstain
Deputy Mayor Hansen – opposed

The motion was passed by a 3-0 vote.

AUDIT OF CLAIMS – Bills in the amount of \$96,243.03 for the General Fund, claim numbers 2-1 to 2-100, and \$18,773.39 for the Water Fund, claim numbers W2-1 to W2-28, were audited and ordered paid.

TABLE AGENDA ITEMS TO NEXT MEETING

The following agenda items were tabled to the next Board of Trustees meeting: Orange County Landfill, Uniform Building Code, Sale of Village Property – Eagle Mt. & West Lake Road, and East Summit Road Property Sale, BAR Design Guidelines and Standards, Report on George Mason Public School (Greenwood Lake), PBA Fund, Approval of Minutes,

ADJOURNMENT

A motion was made by Mayor McFadden, seconded by Deputy Mayor Hansen that the meeting be adjourned at 12:18 a.m. The vote was 5-0 in favor.

Respectfully submitted,

Deborah A. Matthews
Clerk-Treasurer

Approved at the May 9, 2007 BOT meeting.