

**VILLAGE OF TUXEDO PARK
BOARD OF TRUSTEES MEETING
APRIL 29, 2013
6:00 P.M.**

Present: Mayor Thomas Wilson
Deputy Mayor David du Pont
Trustee Alan Heywood
Trustee John Kilduff
Trustee Liane Neuhauser

Clerk: Deborah Matthews

Also: Kelly Naughton, Esq., Mary Grimming, Barbara du Pont, Michael Bruno, Aleksandr Jakowec, Stephen Brodheim, Rob Zgonena, Bill Bortnowsky, Adrienne Lucas, Kathy Norris, Reverend McWhorter, Mr. McWhorter, Diane Larsen, Susan Rost, Karen Hart, Nancy & Jim Hays, Meg Vaught, Chris & Sally Sonne, Joanne Matthews, Tom Benvenuto, Paul & Mrs. Gluck, Sue Heywood, Gardiner & Chiu-yin Hempel, Cindy Booth, Bill Fairclough, David MacCartney, Esq., Ken DeGennaro, Eng., Chauncie Rodzianko, Mary Graetzer, Neal Garofano, Diane Gross, Paola Tocci, and others

Mayor Wilson called the meeting to order at 6:00 p.m. Trustee Neuhauser led the Pledge of Allegiance.

Appoint Election Inspectors

A motion was made by Mayor Wilson, seconded by Deputy Mayor du Pont that the following persons be appointed Election Inspectors for the Village Election being held on Tuesday, June 18, 2013 from 7:00 a.m. to 9:00 p.m. in the Village Hall: Nils Gerling (Sterling Mine Road) as Election Inspector and Chairperson at the rate of \$15.00 per hour, Dorothy Schmidt (Eagle Valley Road) as Election Inspector, and Christine McNerney (Woodlands Drive) as an alternate Election Inspector at the rate of \$13.50 per hour each.

Vote of the Board: 5 ayes, 0 nays

The motion was passed by a 5-0 vote.

Allied Biological Proposal

A motion was made by Mayor Wilson, seconded by Trustee Neuhauser that the Board approve the February 19, 2013 proposal of Allied Biological for the 2013 Professional Consulting Services-Lake Management Studies (on call basis) for the three Village lakes.

Vote of the Board: 5 ayes, 0 nays

The motion was passed by a 5-0 vote.

Hearing as Requested by Cindy Booth – Tuxedo Road Causeway Wall

Mayor Wilson opened the hearing at 6:08 p.m. Deputy Mayor du Pont recused himself because of a conflict of interest.

Mayor Wilson provided a brief history of the situation as well as an overview of the Village's position:

- Tonight we are conducting a hearing authorized by Village Code – Sections 83-11 and 75-24 – as requested by Ms. Cindy Booth, concerning the stone wall adjacent to the Tuxedo Road causeway.
- The hearing is open for the public to observe, but it is not open for public participation. It is Ms. Booth's hearing.
- First, I would like to give a Brief Overview of Events, talk about Structural Integrity of the Stone Wall, Ownership & Responsibility of the Stone Wall, along with Necessary Corrective Measures, and a Repair Timeframe.
- This hearing was requested after this Board notified Ms. Booth that the condition of the stone retaining wall on her property created a hazardous situation affecting public safety.
- She was advised that both the Village Engineers and an outside engineering firm had independently arrived at the same conclusion – that the retaining wall was significantly deformed in its geometry, and in danger of collapse onto Tuxedo Road.
- We asked Ms. Booth to submit a corrective plan and/or request a hearing before this Board. She requested this hearing.
- I want to make clear for the record and Ms. Booth, how the Board arrived at the authority, and need for requesting her to take corrective measures, to make the stone retaining wall safe.

Regarding the Structural Integrity of the Stone Wall

- On the evening of March 5th, a large stone dislodged from the stone wall and fell onto the adjacent Tuxedo Road. It was unknown at that time whether this was an indication of a simple necessary repair, or a larger issue of the structural integrity of the wall and the safety consequence to Village residents and others were it to fail.
- I made the decision that evening to close that section of Tuxedo Road until we could obtain an engineer's opinion on the problem. The wall was inspected the following day by the Village Engineers Weston & Sampson, P.E., and thereafter by another professional engineering firm, O'Brien & Gere. Both engineering firms issued reports
- The Weston & Sampson report concluded:

“Based on the new information relative to the wall thickness, construction, and stone size/thickness, it appears there is minimal to no factor of safety in the wall's current condition. We conclude that this wall poses a threat to public safety, and we agree that the Village should leave that portion of Tuxedo Road closed until reconstruction of the wall can be completed.”

- The O'Brien & Gere report concluded:

“The wall rotation and horizontal displacement clearly indicates that [the stone wall] has failed. The loss of the stone block indicates that the joint mortar has deteriorated sufficiently that it cannot hold individual masonry units in-place with a deformed wall geometry. It appears that wall failure is a combination of factors including the absence of drainage behind the wall and joint degradation from through seepage which exposes the mortar to excessive freeze-thaw damage. The wall will eventually collapse with no change in loading conditions as its center of gravity shifts toward the road. There is no reasonable way to predict when the structure, or a section thereof, will fail entirely. However, a modest increase in wall loading such as from an elevated groundwater level behind the wall resulting from a long-duration or heavy rain, or by vehicular traffic behind the wall, could initiate collapse.”
- Based upon the opinions of these two professional engineering firms, it was clear to the Board that, per the Village Code, the stone wall represented a hazardous condition, adverse to the safety of those in the Village, and requiring remediation by the party responsible for the wall's maintenance and repair.

Regarding the issue of the Ownership & Responsibility of the Retaining Wall

- Before the Board of Trustees had the authority to issue its notices to Ms. Booth under the Village Code, it was necessary to make a determination whether the maintenance and repair of the wall was the responsibility of Ms. Booth or the Village.
- The Village Attorney Rick Golden reviewed past property records for the property now owned by Ms. Booth, as well as the records involved when the Village accepted the offer of dedication of the roadways from Tuxedo Park Association, Inc. in 1953.
- There could be found no evidence in the title records or any other Village record that the Tuxedo Park Association owned the stone wall, as an appurtenance to the adjacent roadway or otherwise, at the time that the roads themselves were deeded to the Village.
- What is clear from the property records is that Ms. Booth's property line in that area lies east of the Village roadway,
- and the available surveys performed by Ms. Booth in 1983, and her predecessor in interest in 1974, clearly show that the stone retaining wall lies on Ms. Booth's property line.
- In addition, the Village Engineers, Weston & Sampson, had indicated that there was a distinct horizontal joint approximately 3 feet above the roadway,
- indicating that the wall may have been only 3 feet high initially, and not used as a retaining wall benefiting the roadway.
- Although there was no clear and definitive single document establishing the ownership of the stone retaining wall, the available information of ownership all pointed to ownership of the wall by the adjacent property owner, now Ms. Booth.
- Subsequent to this initial determination by the Board that Ms. Booth was the proper person responsible for the wall's maintenance and repair,

- other Village records were reviewed that made clear that since at least 1999 the Village had consistently taken the position that Ms. Booth was responsible for the maintenance and repair of “her” stone wall,
- asking her to repair and maintain her wall, including replacing and re-mortaring stones that had become loose.
- In one instance, by a letter dated January 8, 2002, the then Building Inspector thanked Ms. Booth for responding to his prior request to repair the wall,
- as she had her mason relocate the loose stones with the intention of mortaring them come warmer weather.
- Also, by a letter dated November 9, 2001, Ms. Booth complained to the Board of Trustees “concerning damage to my property,”
- including trucks colliding with the stone retaining wall.
- In addition, when Ms. Booth was required to install a new driveway in the 1990’s, following a dispute with her neighbor, she proceeded to cut away and modify the stone wall to make room for her driveway.
- She did this without ever requesting permission from the Village to modify the wall;
- only getting the normal approvals required of anyone modifying their own walls.
- Our Village Attorney also advised us that under New York law a property owner adjacent to even public improvements may be liable if that improvement provides a special benefit to the adjacent property owner;
- in this case such a benefit might be the wall retaining the soil and property grade of her property.
- Everything considered, it appears to the Board of Trustees, that Ms. Booth is responsible for the repair and maintenance of the stone retaining wall lying on her property line.
- However, if during this hearing Ms. Booth presents evidence that the wall is the responsibility of the Village, the Board will weigh that evidence, together with the evidence just referenced, and make a final determination on who is the responsible party to repair and maintain the wall.
- It should be noted that in recent years, there have been private properties adjacent to Village roadways that also had stone walls that were in need of repair and affected the safety of the adjacent traveled roadway.
- Each of these issues has been resolved amicably, with the results depending upon the particular circumstances involved.

Lastly regarding the Necessary Corrective Measures and Repair Timeframe

- The Board has been advised that the minimum work necessary to render the stone wall and passage on the adjacent roadway safe is to remove the soil located behind the wall to a sloping lower grade,
- such that it would allow for the affected length of the stone wall – approximately 200’ to 220’ – to be dismantled down to approximately three feet in height, the height of the present horizontal joint in the wall.
- The capstones presently on the wall could be re-installed, and the soil re-graded to accommodate this new height.
- We have been informed that this work could be accomplished in approximately 5 working days, weather permitting.

- If Ms. Booth is willing to cooperate in this endeavor, and given the importance of opening up the Tuxedo Road causeway as soon as possible, the Village is willing to utilize its own public works equipment and personnel, without cost to Ms. Booth, to perform the excavation and re-grading necessary,
- leaving to her only the cost of the mason to dismantle the wall and reconstitute it as a three-foot finished wall, or some other safe height that the Village Engineer and she chooses.
- Ironically, Ms. Booth & her attorney have questioned the legitimacy of this hearing, even though they requested it. Earlier today, Village Attorney Rick Golden responded to their objections as having no merit:
- The Village has provided Ms. Booth's attorney numerous documents in accordance with their FOIL demand, many of which were not required to be sent to them under FOIL – including 3 title search reports.
- There is no disclosure required to be made in accordance with the hearing that Ms. Booth has requested.
- The hearing is not dependent on responses to the FOIL demand, as a matter of due process or otherwise.
- Ms. Booth & her representatives have had ample time to prepare for this hearing, and to do whatever research is believed necessary to protect her interests.
- The Village has acted appropriately and within the bounds of the law in proceeding with this issue.
- We welcome your input at this hearing.

Mayor Wilson then opened the hearing to Ms. Booth and her Attorney, David MacCartney.

Mr. MacCartney also introduced Ms. Booth's Engineer Ken DeGennaro and her landscaper Bill Fairclough.

Village Attorney Kelly Naughton, in responding to Mr. MacCartney, stated that the hearing is not an evidentiary hearing and the Village would not be submitting evidence or testimony as they have determined that Ms. Booth owns the wall.

Mr. MacCartney wants the record to reflect his objection to the hearing procedure as he feels the Board has prejudged the issue prior to the hearing. He feels there are three main issues:

1) Ownership of the wall

Mr. MacCartney stated - Ms. Booth absolutely denies that she owns the wall.

2) Does the wall actually present a danger to the health, safety and welfare of the residents?

Mr. MacCartney stated - They don't feel it does.

3) What is the appropriate remedial measure?

Mr. MacCartney stated - No action is required under the circumstances. Lowering the height of the historic wall would cause a detriment not only to Ms. Booth's property, but also the residents and the integrity of the Village.

Mr. MacCartney presented several pages of documents inferring the Village is the owner of the wall and not Ms. Booth. He proceeded to expand on each point in his documents.

Mr. MacCartney asked Bill Fairclough and Ms. Booth's Engineer Ken DeGennaro to speak on behalf of Ms. Booth who both feel the wall is not in imminent danger of collapse.

Ms. Booth presented pictures she took of large trucks and vehicles from the Tuxedo Club boat house construction project closely passing by the wall and stated that she has filed complaints with the Police department. She also stated that the lowering of the wall would have a huge impact on her privacy and the value of her property.

Mayor Wilson thanked Ms. Booth and her Attorney for their presentation and stated that it is important to find a solution that both parties can agree on quickly so the road can be opened.

Close Booth Hearing

A motion was made by Mayor Wilson, seconded by Trustee Heywood that the Booth hearing be closed at 8:29 p.m.

Vote of the Board: 4 ayes, 0 nays

The motion was passed by a 4-0 vote.

Mayor Wilson stated that the Board will review all the documents presented by Mr. MacCartney and come to a decision as quickly as possible.

EAF – East Village Water Line

A motion was made by Mayor Wilson, seconded by Trustee Heywood that the Board declare itself Lead Agency for the East Lake Road Water Line Project and classify the action type as unlisted.

Vote of the Board: 4 ayes, 0 nays

The motion was passed by a 4-0 vote.

Adjournment

A motion was made by Mayor Wilson, seconded by Trustee Neuhauser that the meeting be adjourned at 8:33 p.m. The vote was 4-0 in favor.

Respectfully submitted,

Deborah A. Matthews
Village Clerk-Treasurer