

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

Present: Mayor Thomas Wilson
Trustee Alan Heywood
Trustee John Kilduff
Trustee Liane Neuhauser

Absent: Deputy Mayor David du Pont (also recused himself)

Clerk: Deborah Matthews

Also: Richard Golden, Esq., Carl Stone, Eng. (W&S), Meg Vaught, Mary Grimmig, Susan Goodfellow, Rolf Grueterich, Mary Graetzer, Paul & Mrs. Gluck, Barbara & Peter Regna, Sue Heywood, Stephen Brodheim, Jim Hays, Cindy Booth

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

Environmental Committee Update

Environmental Committee Chair Susan Goodfellow gave an update on the testing of the blue/green algae that has been discovered in Tuxedo Lake, which is a higher concentration than ever for this time of year. She suggested that the lake be treated with Copper Sulfate as soon as possible and asked permission to draw a second sample next week in order to determine whether there has been an increase in density.

The Board agreed that the sampling be done, and Mayor Wilson noted that the Village would not be where it is today were it not for the work of Mrs. Goodfellow, Jim Hays, Sue Heywood and many others who have served as activists regarding the health of the Village's lakes.

Mayor Wilson asked Mrs. Goodfellow if the rumor is true that she is running for Trustee in the June 18th Village Election. She acknowledged that she is running. She stated that maintaining the health of the Village Lakes is extremely important and believes that having a Trustee who can oversee their maintenance and ensure that it continues would be invaluable to the Village.

Tuxedo Road Causeway Wall

Mayor Wilson gave a brief recap of the Tuxedo Road causeway wall situation:

- Two independent, engineering firms concluded that the retaining wall has minimal to no factor of safety, and can collapse at any time.

- It appears to the Village Attorney & Village BOT that Cindy Booth, who resides at 262 Tuxedo Road, owns the wall.
- The BOT has requested that Ms. Booth take corrective measures to repair the wall, or request a hearing.
- She requested a hearing, and at the hearing made a presentation, and submitted a detailed written support of her positions.
- The hearing was then closed, and this meeting was scheduled a week later to allow the Board sufficient time to carefully review her written materials,
- And have the Village Attorney & Engineers advise the Board on certain legal & engineering issues raised by Ms. Booth's attorney & engineer.
- This Board now believes it has sufficient information to prudently make the necessary findings and determinations as provided in the Village Code.
- As a preliminary matter, I want to address an issue raised by Ms. Booth in her written submission that contends that I have not been a resident of the Village since April 5th, after our house was sold at 24 Pine Hill Road.
- My official residence is currently 1 Brook Farm Road, Tuxedo Park, New York, 10987. I have publicly stated that my wife suffers from Multiple Sclerosis and she is seeking a housing situation that will allow her more time to spend in an urban environment, which will improve her quality of life.
- In the meantime, my official residence will continue to be 1 Brook Farm Road, Tuxedo Park, throughout the rest of my term as Mayor, and for the foreseeable future well beyond that.
- I would now like to open discussion by the Board on each of the proposed findings and determinations in the draft resolution after "Now, therefore, be it resolved..."
- The Proposed Corrective Measures and Timing as noted in 1 & 2 following the first "Be it Further Resolved..."
- And the notice to Ms. Booth, noted in the second "Be it Further Resolved..."

After the Board reviewed the draft resolution,

A motion was made by Mayor Wilson, seconded by Trustee Heywood that the Board approve the resolution below regarding the decision concerning the retaining wall east of and along Tuxedo Road, and the need and responsibility for corrective measures:

WHEREAS, on March 5, 2013 a stone boulder dislodged from a certain section of a leaning stone retaining wall lying East of and along Tuxedo Road, which wall section is approximately 200 feet to 220 feet in length, and 8 feet in height rising from the road level of Tuxedo Road, and

WHEREAS, owing to a concern regarding the continued stability of this wall and its adverse affect on the adjacent Tuxedo Road if such wall were to collapse, a portion of Tuxedo Road was closed to the general traveling public along this main arterial of the Village, save for limited access for emergency vehicles and to the two properties that had no alternative access to their properties (and whose access in any event was not in the immediate area of the leaning stone retaining wall section from which the stone boulder dislodged), and

WHEREAS, based upon two prior surveys, the property upon which the stone retaining wall appeared to lie was 262 Tuxedo Road (Tax Parcel No.: 107-1-8.3), with Cindy Booth noted in the Village's records as the property owner, and

WHEREAS, by letter dated March 7, 2013 the Village Building Inspector notified Ms. Booth that the stone boulder had dislodged from the stone retaining wall, and that the Village was investigating the possible safety impacts to the adjacent roadway, and

WHEREAS, the Village engaged the services of its Village Engineers -- Weston and Sampson -- and a separate engineering firm -- O'Brien and Gere -- to obtain professional structural engineering opinions on the wall's stability, and also requested that the Village's Attorney, Richard B. Golden, further research the issue of property ownership of the stone retaining wall, and

WHEREAS, both engineering firms, independent from one another, concluded in a similar fashion as follows:

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."

and,

WHEREAS, the Village's Attorney, Richard B. 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, and 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, but what was 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 is coincident with Ms. Booth's property line, and

WHEREAS, 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, and

WHEREAS, based upon the above-noted investigation, professional opinions and research, the Village Board of Trustees concluded that Ms. Booth appeared to be responsible for the repair and maintenance of the stone retaining wall, sufficient for the Village Board of Trustees to invoke Village Code Sections 83-11 and 75-24, and then authorize a Notice letter to be sent to Ms. Booth as provided in said Code provisions, and

WHEREAS, the attorneys for Ms. Booth duly requested a hearing on the matter as allowed under the Village Code, and the Village Board of Trustees conducted such a hearing on April 29, 2013, wherein Ms. Booth and her counsel were provided a full opportunity to present information to the Board of Trustees relevant to issues raised by the above-referenced Notice, and took advantage of such opportunity by a verbal presentation, as well as detailed and lengthy written submission, and

WHEREAS, the Board of Trustees has considered the statements by Ms. Booth and others at her hearing, reviewed the written materials provided by her attorney, requested input from the Village's Attorney on the legal objections raised by Ms. Booth's attorney, and considered all of the information referenced above and below, and

WHEREAS, contrary to the representation of Ms. Booth and her attorney, the Mayor of the Village, at all times relevant to the April 29, 2013 hearing and these determinations, has been and continues to be a resident of the Village,

NOW, THEREFORE, BE IT RESOLVED that, based upon all of the above, and the Mayor's statement at the April 29, 2013 hearing (including all of the documents attached thereto), the Village of Tuxedo Park Board of Trustees hereby makes the following findings and determinations:

1. Approximately 200' to 220' of a stone retaining wall lying East of and along Tuxedo Road lacks any meaningful factor of safety and is deemed conducive to a hazardous collapse and adverse to the health, safety and welfare of the Village, its residents and guests traveling along Tuxedo Road in that area, requiring immediate action by the Village in order to safely open this area of Tuxedo Road, a major Village causeway;
2. Ms. Booth's engineer did not opine that the stone retaining wall was safe, or even address its factor of safety, but on the structural integrity of the wall opined simply that there did not appear to be any recent or sudden movement of the wall, and thus no cause for immediate concern;

3. Ms. Booth is the owner of the stone retaining wall, responsible for its repair and maintenance, based upon the following:
 - a. the 1974 and 1983 surveys involving the Booth property, showing the existing retaining wall coincident with Ms. Booth's property line (the proffered 1981 survey by Ms. Booth showing no wall is evidence of nothing),
 - b. the lack of evidence that Tuxedo Park Association, Inc. (grantor of roads to the Village in 1953) owned the stone retaining wall, and that the retaining wall is not an appurtenance included within the deeded rights to Tuxedo Road (nor the Village's responsibility under NY Highway Law Section 319) because it is neither necessary nor essential to the enjoyment of the roadway, as the roadway can function without it, as was conceded by Ms. Booth's engineer in his April 22, 2013 report ("The wall is not constructed to, nor does it, support the [dwelling] structure in any way; if the wall were to be removed, the natural slope in the front yard could be extended to the edge of the pavement."),
 - c. the consistent position of the Village since at least 1999 that Ms. Booth was the owner of the wall, as stated in various Village demands that Ms. Booth repair and/or attend to maintenance of her wall, which in at least one instance she complied with such demand,
 - d. Ms. Booth's letter dated November 9, 2011 in which she complained to the Village "concerning damage to my property," which included the complaint that the stone retaining wall had been damaged by trucks colliding with it,
 - e. Ms. Booth's removal and modification of a portion of the wall to install a new driveway onto her property from Tuxedo Road, without seeking the permission of the Village to do so, other than the Village Board of Architectural Review approval that is required of any property owner modifying their own stone wall, and with a submitted site plan map that depicts the stone wall as touching the Booth property line, and
 - f. contrary to the representation of Ms. Booth's attorney at the April 29, 2013 hearing, State law in 1953 allowed the Village to unanimously accept the offer of dedication of the now Village roads, including Tuxedo Road, even with a width of less than 33 feet, which it did;

and,

BE IT FURTHER RESOLVED that, based on the above findings and determinations, and after considering all reasonable and feasible alternatives, including those referenced by Ms. Booth's engineer, the Village of Tuxedo Park Board of Trustees hereby decides that the appropriate corrective measures that must be undertaken and accomplished by Ms. Cindy Booth, within the timeframes noted, are as follows:

1. Phase I: Dismantle approximately 200' to 220' of the stone retaining wall down to the horizontal seam in the wall (approximately 3 feet from the top of the adjacent roadway) in the area of the wall to be identified by the Village Engineer, together with the associated removal and temporary storage of the soil behind the wall. This will allow Tuxedo Road to be re-opened for travel. The Village has received an estimate that this work can be accomplished in 5 days, but hereby requires that Ms. Booth complete such work within 10 days;

2. Phase II: Rebuild the stone retaining wall to the approximate height of the wall existing just prior to the dismantling noted in Phase I, install such drainage as necessary to ensure the long-term structural integrity of a wall of that height (as determined by a New York licensed professional engineer), and backfill and grade the soil previously removed in Phase I so as to replicate the approximate grade prior to the removal of the soil. Phase II must be completed within 3 months after completion of Phase I. During work on Phase II, Tuxedo Road shall remain open at all times, except for partial lane closures to accomplish the work, if deemed necessary by the Village Superintendent of Public Works, and then such closures shall be only as directed by said Superintendent, and

BE IT FURTHER RESOLVED that Ms. Booth shall be notified of these findings and determinations, and advised to take the corrective measures as set forth above, in the timeframes noted above, and further notified that if she fails and/or refuses to complete Phase I and/or Phase II of the required corrective measures in the timeframes noted, that pursuant to Village Code Sections 83-12 and 75-25 the Village shall have the right to enter upon Ms. Booth's property, perform any or all of the above corrective measures, and assess the associated Village expenses upon Ms. Booth's property in accordance with said Code provisions.

Vote of the Board: 4 ayes, 0 nays

The motion was passed by a 4-0 vote.

Mayor Wilson stated that the Board is not accepting any further input by Ms. Booth or her representatives, either verbally or in written submission.

Adjournment

A motion was made by Mayor Wilson, seconded by Trustee Neuhauser that the meeting be adjourned at 6:30 p.m. The vote was 4-0 in favor.

Respectfully submitted,

Deborah A. Matthews
Village Clerk-Treasurer