

Sean P. Madden  
LCTP Real Estate LLC  
P.O. Box 101  
Tuxedo Park, NY 10987

November 10, 2023

Board of Trustees  
Village of Tuxedo Park  
Tuxedo Park, NY 10987

Comment Letter to Park Proposal & Renewed Offer to Purchase

Dear Mr. Mayor and Village Trustees:

Mayor Citrin, stop abusing your position to settle political scores. Your DOA announcement of an illegal park could have been avoided had you invested even a modicum of diligence before impetuously proclaiming that you would present the Trustees with a proposal to create a public park on a 15'-wide spit of dangerously sloped Village land that bisects our two properties in Heron Cove (the "Parcel"). Perhaps you should spend less time plotting retribution for your perceived enemies and more time with the Village Code, which precludes a park in this demonstrably unsuitable location. Stop wasting the Trustees' and residents' time with your impulsive, half-baked proposals and shoot-ready-aim approach to governing.

*Background*

Any resident with the slightest of civic awareness (apparently excluding the Mayor) would know that this Parcel has been the subject of extensive (even, exhaustive) public discussion and debate so I will be brief with the necessary background. In August 2020, the Village conditionally agreed in principle to sell us the Parcel, i.e. the westerly 100' portion of the 15'-wide paper road that runs from East Lake Road to Tuxedo Lake and which bisects two lots that we own. We were then, and are now, owners of the only two lots contiguous with the Parcel. The Village Code and longstanding Village tradition, policy and practice support the sale of discontinued roads to such neighbors and only such neighbors.

A necessary condition to any such proposed sale was the discontinuance of that portion of the road, which required notice and a public hearing. On December 16, 2020, the Board of Trustees voted unanimously to so discontinue the Parcel as a road, which as a matter of law required an explicit finding that the Parcel was of no use to the Village or its residents.

Throughout this period, Guazzoni was aggressively gaslighting Village residents regarding the Parcel, with multiple mass emails from his fraudulent alias. Guazzoni made a specious offer to purchase the Parcel to create a public park—offering the proverbial sleeves from his vest knowing full well his "offer" was illusory because the Parcel could not legally be sold on a stand-alone basis. Nevertheless, Guazzoni threatened to sue the Village if it sold the Parcel to us.

On February 24, 2021 (and again last week), we submitted to the Board a comprehensive comment letter demonstrating (a) how the Village Code precluded a sale of the Parcel on a stand-alone basis, and (b) why the Parcel was wholly unsuitable as a public park. We reaffirm these conclusions and reiterate that the Village cannot legally create a public park from the Parcel, as detailed below.

The Board recognized Guazzoni's threat was baseless, and the Village Attorney publicly agreed with us that the Village could not sell the Parcel on a stand-alone basis, for use as a park or otherwise. However, as stewards for taxpayers, the Trustees were unwilling to proceed with a sale absent full indemnification from us for any litigation, however frivolous, that Guazzoni might pursue. After months of frustration and wasted time provoked by Guazzoni's bad faith, we had no appetite for more and declined the Village's indemnification demand. The proposed transaction was thereby scuttled, out of sheer malevolence, by Guazzoni's bad faith and baseless threats, depriving Village taxpayers of a \$25,000 windfall for a Parcel the Board had already conclusively determined was of no use to the Village and its residents.

The matter was dormant until January 2023, when seemingly out of the blue, Guazzoni renewed his illusory offer for the Parcel. But it wasn't really out of the blue and instead a transparent attempt to somehow retaliate against me for the Board of Trustees recent public censure of Guazzoni, which in turn was the dénouement of my FOIL litigation that exposed his violations of law and perjury. We responded to this renewed bad faith "offer" by resubmitting our 2021 comment letter.

During the entirety of this period—which included multiple public meetings, countless mass emails, and many and varied voices—I am not aware that Citrin ever expressed any interest whatsoever in the Parcel or Guazzoni's proposal to create a park from it.

Shortly after Mayor Citrin was sworn in, Guazzoni lodged a complaint with the Building Inspector about our repaired pathway (which had been wiped away by heavy storms) potentially encroaching on the Parcel, which is not well marked (at least until it was vandalized). As I now know, shortly thereafter, Mayor Citrin expressed interest in the Parcel, to my knowledge for the very first time. Curious timing indeed.

On October 23, I learned that my contractors had mistakenly encroached on the Parcel when they repaired our pathway and attempted to make it more resilient to severe storms. I immediately instructed my contractor to rectify the encroachment ASAP, and the encroachment ceased by October 26, as confirmed by the Building Inspector the following day.

Although I was not in Tuxedo Park at the time, I learned of the unauthorized installation of orange flags and the application of fluorescent orange spray paint to boulders and even a tree on the Parcel, all in an obvious attempt to demarcate its boundaries. In my opinion, this defacement of public property (Criminal Mischief in the Fourth Degree)<sup>1</sup> was obviously the handiwork of

---

<sup>1</sup> Article 145 of the New York Penal Law makes Criminal Mischief in the Fourth Degree a Class A misdemeanor: "A person is guilty of criminal mischief in the fourth degree when, having no right to do so nor any reasonable grounds to believe that he or she has such right, he or she: 1. Intentionally damages property of another person." It

Claudio Guazzoni—singularly unique as the only resident to express the faintest interest in the Parcel. Accordingly, on October 30, I filed a criminal complaint with the Tuxedo Park Police Department. Guazzoni admitted to the TPPD that he (wrongfully) installed the orange flags on the Parcel, but he denied spray-painting the boulders and tree. (And if you believe that, please contact me about the sale of a very attractive bridge, cheap!)

That very same day, Mayor Citrin announced his intention to create a public park from the Parcel and to submit this proposal to the Trustees at the November Board meeting. Why the sudden interest in a park at the Parcel, Mr. Mayor? This was obviously Mayor Citrin’s transparent attempt to punish me for my public criticism of both (a) his brazen grab for taxpayer funding of a “conflict counsel” answerable only to him, and (b) his illegal attempt to unilaterally remove the BAR Chair, and in some twisted way to reward his cancerous confederate Guazzoni, who clearly inspired the Mayor’s sudden interest in creating a park from the Parcel.

By way of further background, on election night, when Guazzoni commenced his frivolous lawsuit (ultimately costing taxpayers \$300,000), I called out Citrin privately for his duplicity—even before he was outed as having run all his campaign emails through Guazzoni’s fraudulent alias. I have since publicly criticized Mayor Citrin for his abuse of office. I submit that Mayor Citrin’s sudden, unexplained interest in the Parcel constitutes brazen retaliation against me for opposing him and to reward his political ally Guazzoni. Sadly, Mayor Citrin seems to be establishing a pattern of abusing his office to settle scores and reward friends of Marc. However, in his haste to retaliate against me, Mayor Citrin has recklessly disregarded the Village Code and the interests of Village taxpayers.

### *The Village Cannot Legally Create a Park From the Parcel*

In his eagerness to retaliate against me, Citrin is betraying his responsibility as Mayor. Years ago, we established beyond serious debate the unsuitability of the Parcel as a public park and how any such park would violate both the letter and spirit of the Village Zoning Code. The Mayor is a lawyer. How can it be that he hasn’t read, or doesn’t comprehend, the Village Code?

The Parcel, like the properties that surround it, is within a statutorily mandated zone that permits only a “Four-Acre Single-Family Residence”. This limitation has two components: the use of a property (“Single-Family Residence”) and the minimum area requirements (“Four Acres”). Section 100-5 of the Code (“Compliance Required”) implements the use limitations: “After the effective date of this chapter [Feb. 18, 1987], no building or structure or land or any part thereof in the Village shall be used or maintained for any purpose other than the uses permitted therefor by this chapter.” (emphasis added)

The paper road from which the Parcel was created existed long before the Village Zoning Code was adopted so the Code by its terms grandfathered use of the road as a public road, as it did with other nonconforming uses in existence when the Code was adopted (not that such grandfathering was necessary for a public road given its special status under State law). However, this historical fact does not eliminate the requirement of obtaining a use variance

---

seems clear that, since the Village did not authorize these outrageous markings, a private citizen such as Guazzoni who effected this defacement is guilty of Criminal Mischief in the Fourth Degree.

because the use of the Parcel has changed by operation of law and thus is now fully subject to the use and area requirements of the Village Code.

Although Section 100-24.2 of the Village Code authorizes continued nonconforming uses that were in effect as of the date of adoption of the Code, it also strictly limits the enlargement, expansion or change of such nonconforming uses: “No nonconforming use shall be changed to another nonconforming use without approval by the [BZA], and then only by grant of a use variance upon satisfactory proof of eligibility for same.”<sup>2</sup> Once the Village discontinued the Parcel as a public road, any grandfathered nonconforming use ceased; and any future nonconforming use, such as a park, thus requires a use variance.

Our 2021 comment letter explains in great detail why the BZA is precluded as a matter of law from issuing a use variance with respect to the Parcel. New York State law mandates that a use variance be granted only when an applicant demonstrates “unnecessary hardship” by satisfying each of four independent requirements—requirements that the Village as a matter of law cannot satisfy with respect to the Parcel’s proposed nonconforming use as a park.

The Village Code is also explicit that it represents the floor for land use requirements and is intended to implement the most restrictive applicable standards to land use questions:

“In their interpretation and application, the provisions of this chapter shall be deemed to prescribe minimum requirements for promotion of health, safety, morals and general welfare of the Village....Wherever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances or private deed restrictions, the most restrictive or that imposing the higher standards shall govern.”<sup>3</sup>

Although Mayor Citrin dismissed any notion that the property owners most affected by his park proposal be accorded any distinct consideration, his position stands in opposition to New York law’s solicitude for such owners: to validly amend the Village Zoning Law to permit a park on the Parcel in the face of our opposition thereto would require a super-majority vote:

“Such regulations, restrictions and boundaries may from time to time be amended [after a public hearing]. Such an amendment shall be effected by a simple majority vote of the board of trustees, except that an amendment shall require the approval of at least...three-fourths of the members of the board of trustees in all other villages in the event such an amendment is the subject of a written protest, presented to the board and signed by...2. the owners of twenty percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred feet therefrom.”<sup>4</sup>

Our two lots constitute the vast majority “of the area of land immediately adjacent to” the Parcel so our written protest would trigger this super-majority requirement.

---

<sup>2</sup> Village Code § 100-24.2-c. The Village would also be required to appear before the BAR since the Mayor’s proposed park “would alter the external visual elements of a land parcel.” *Id.* at §100-31.

<sup>3</sup> Village Code § 100-25 (interpretation and Effect).

<sup>4</sup> N.Y. Village Law § 7-708 (Changes).

New York’s Village Law also requires a robust public process to implement or amend a village comprehensive plan. As the very name “comprehensive plan” indicates, State Law encourages such plans to address all current and contemplated municipal land use requirements, including “[e]xisting and proposed recreation facilities and parkland.”<sup>5</sup> I have requested but not yet been granted access to the Village’s latest comprehensive plan, which must be decades old now and would reflect the Parcel as part of the paper road from which it was created in 2020.

Because the Village’s latest comprehensive plan does not reflect use of the Parcel as a park, the Trustees may not now alter the use of the Parcel to be a park, nor may the Board allocate taxpayer money to such use:

Effect of adoption of the village comprehensive plan.

- (a) All village land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.
- (b) All plans for capital projects of another governmental agency on land included in the village comprehensive plan adopted pursuant to this section *shall* take such plan into consideration.<sup>6</sup>

In sum, New York law is clear that the Village may not create a park from the Parcel without undergoing the rigorous, public process of amending either the Village Zoning Code or its comprehensive plan (or both).

#### *Why Would the Mayor Recklessly Put Village Taxpayers At Risk?*

The Mayor is a personal injury lawyer so he should appreciate how reckless it is for the Village to invite residents to a demonstrably unsafe site, thereby exposing the Village and its taxpayers to potential liability. Has he consulted with the Village’s insurance carrier to determine whether it would even cover liability for such a park and if so how much it would cost? Do your diligence Mr. Mayor before promoting obviously reckless ideas.

The Parcel in its entirety (including the flattish Lakeside portion) is on a slope of 26.5 degrees, as evidenced by a stamped Topography Survey we submitted to the Building Inspector over two years ago (and which was prepared by a Professional Land Surveyor licensed as such in the State of New York). Spot slopes on the Parcel exceed 30 degrees, and the soil is rocky and loose. Why would the Mayor want to proactively invite residents onto such a dangerous tract of land where the risk of injury from a fall is not only foreseeable but actually foreseen?

The steepness of the Parcel is not a subjective determination: it is a verifiable fact with substantial import for appropriate land use. A “steep slope” is also a widely understood term of art in engineering and construction lexicon that refers to slopes in excess of 15 degrees, as explicitly recognized by the State of New York.<sup>7</sup> With spot slopes double this threshold, then-

---

<sup>5</sup> N.Y. Village Law § 7-722-3(j) (Village Comprehensive Plans).

<sup>6</sup> N.Y. Village Law § 7-722-11 (Village Comprehensive Plans)(emphasis added).

<sup>7</sup> See Model Local Laws to Improve Resilience, § 5.1 Steep Slopes (NYS Dept. of State 2019)(citing Westchester Cty. Planning Dept.: Key Elements of a Steep Slope Ordinance).

Mayor McFadden (an architect) correctly described the Parcel as very steep when Guazzoni previously proposed a park on the Parcel.

The slope of the Parcel is not a trivial matter but rather is a material fact that bears directly on the Mayor's preposterous proposal to create a public park on the Parcel. To put a 26.5 degree slope into context, consider that it is not recommended that an ADA-compliant ramp exceed five degrees; that the Village Code prohibits (a) driveways with spot grades exceeding 10%<sup>8</sup> and (b) building any structure "on a lot where 75% of the lot area has a slope or grade of 20% or steeper."<sup>9</sup> Perhaps most troublingly, generally accepted industry standards specify that a grade of 26.5 degrees requires stairs with railings, landings and lighting to safely navigate.<sup>10</sup> Our neighboring properties have BAR-approved pathways/stairs (with lighting) that utilize switchbacks and meander horizontally to reduce the slope of the stairs and make them safer—design features that are not available with the Parcel given its mere 15-foot width.

In an appendix hereto, we have detailed a list of questions that must be addressed by the Village to create a park from the Parcel even if such creation otherwise was legally permissible. These serious questions further reinforce the unsuitability of the Parcel to be utilized as a park.

The bottom line is that the Parcel is wholly unsuitable to be utilized as a public park. The siting of a park on this grossly nonconforming spit of land will degrade the view of Heron Cove from Tuxedo Lake, diminish the value of neighboring properties, debase the physical environment, and threaten our drinking water with additional erosion-driven pollutants. That Mayor Citrin has not even raised, let alone attempted to address these serious concerns evidences his lack of seriousness.

*Renewed Offer to Purchase (with Indemnification)*

We would like to put these issues regarding the Parcel behind us once and for all by purchasing it from the Village for \$25,000 and absorbing it into LCTP Real Estate's lot. We are prepared to fully indemnify the Village from any litigation challenging the validity of the purchase and sale transaction of the Parcel for the duration of the statute of limitations for any such Article 78 proceeding. This must be a better result for the Village and its taxpayers than for the Parcel to remain in limbo indefinitely.

Please be aware that we have retained counsel in this matter and intend to vigorously oppose the Mayor's ill-considered park proposal, including through litigation if necessary.

Thank you for your consideration,

Sean P. Madden  
LCTP Real Estate LLC

---

<sup>8</sup> Village Code § 100-21.

<sup>9</sup> Village Code § 100-12.

<sup>10</sup> See generally International Building Code, a model building code developed by the International Code Council and adopted by New York and most other states.

## Appendix: Unanswered Questions

Mayor Citrin’s ill-considered proposal for a park on the Parcel raises serious questions that must be addressed by the Village before it could create a park at the Parcel.

**The paper road leading to the Parcel cannot accommodate traffic, which will create intolerable levels of dust and noise in this serene neighborhood.** Mayor Citrin seems to contemplate only pedestrian traffic to his proposed park, but once the Village has established a park and invited the public, it cannot control whether residents walk or drive to the park. We have owned our boathouse lot abutting the Parcel for seven years and can attest to the fact that the only vehicular “traffic” on the road is seasonal use from us and the Bruners’ landscaping contractors. This dirt road is simply not suitable for increased traffic. Even a single vehicle can stir up dust, let alone the prospect of multiple vehicles throughout the day. Once the public has been invited into this previously unspoiled corner of the Village, there is no way to limit traffic on this unsuitable paper road and the noise, dust and pollution that such traffic would inevitably bring.

**There is no parking available, which will invite trespassing on our neighboring properties.** The unpaved paper road that leads to the Parcel is only 15-foot wide, which is not even enough space to turn a vehicle around without trespassing on our adjacent properties. Since there is no available parking, invited members of the public would predictably park either in the road, thus blocking it, or off to the side, thereby trespassing on our abutting properties. At present, there are no boundary markers indicating where the paper road ends and our surrounding properties begin. How can such a demarcation be implemented without spoiling either the viewshed from Tuxedo Lake or the bucolic environment around the paper road?

**How will the proposed park comply with the Village’s Property Maintenance Law requiring that premises be kept free of refuse, rubbish, and fallen trees, among other conditions?**<sup>11</sup> When the public is invited to a public space, it should be expected that they will bring with them the potential for litter. What is the plan for the proposed park to manage such issues? How will the park “collect, store and dispose of all refuse in a neat, safe and sanitary manner” as required by Village Code section 58-5? Further, how can the proposed park comply with Village Law section 58-6 that provides minimum standards for trash receptacles and requires that all such receptacles “be maintained out of direct view from both the road and from any neighbor’s home except on collection days”? How can the proposed park—the entirety of which is visible from Tuxedo Lake—satisfy the above requirements while not despoiling the viewshed of Heron Cove from Tuxedo Lake?

**How will the proposed park provide safe passage to the Lakeside down a very steep slope without diminishing the physical appearance of Heron Cove?** As discussed above, the steepness of the Parcel necessitates the installation of a stairway to reach the Lakeside, together with landings, handrails and lighting. How can this be accomplished on a 15-foot sliver of land without being an eyesore and despoiling Heron Cove, one of the most scenic spots on Tuxedo Lake?

---

<sup>11</sup> Village Code § 75-9 (Exterior Maintenance Standards).

**How will the park prevent increased soil erosion and the pollution it introduces into our reservoir?** New York State recognizes that steep slopes, if not properly maintained, can lead to serious environmental harm from erosion, which necessarily follows from increased foot traffic and utilization on a Parcel that already suffers from erosion problems. The environmental issues associated with erosion are magnified when the waterbody at the bottom of the slope provides our drinking water that is threatened with increased pollutants. New York’s Model Law regarding Steep Slopes explicitly adopts the approach already recommended by Westchester County’s Planning Guidance for Municipal Officials: slopes like the Parcel in excess of 25% may not be disturbed at all, whether through the installation of a stairway or the increased foot traffic a park would bring.<sup>12</sup>

**How will a new park comply with the ADA and similar New York State access requirements?** All newly established public facilities—including parks and trails—must adhere to the current accessibility design standards required by the Americans With Disabilities Act (and regulations thereunder) as well as the New York State Human Rights Law and the New York State Building Code, which in some cases require more rigorous standards than the ADA.

**How will the Village fund these necessary improvements to the park as well as ongoing maintenance and insurance costs?** Not only does the Mayor’s park proposal ignore the costly externalities it would impose on neighbors by diminishing their property values, it also is silent as to how the Village is expected to pay for the stairway and other upfront costs as well as the ongoing costs of maintenance and insurance.

---

<sup>12</sup> Model Local Laws, *supra*, § 5.1 at 4.