

Many residents have requested a status and detailed timeline of events concerning the wall along the Causeway. Others have requested an outline of the reasons supporting the Village Board's conclusion that the Village does not own the wall. Following is the timeline of events, the factual basis for the Board's conclusion that the adjacent property owner is responsible for repairing the wall, and the current status of the legal action.

As an update, the Village Board is presently following up with a request to get another opinion on the wall's structural integrity. The Board is also readying the final bid documents to receive quotes to determine the cost of dismantling and rebuilding that section of the wall in kind. The restored wall will use the same stones for the roadway face of the wall, add drainage and support on the backside of the wall, and restore the adjacent property.

1. On March 5th, a stone, approximately 12" x 16", fell out of the wall along the Causeway.





2. At the location where the stone was dislodged, the wall has a significant lean toward the roadway. The lean was later measured to be approximately 12" to 14" beyond vertical.







3. As a result, then-Mayor Tom Wilson closed a section of the Causeway on the evening of March 5<sup>th</sup>, so that the Village engineers could assess whether the wall was in danger of collapse, or if it was safe to re-open the Causeway despite the dislodged stone. The Village engineers were then dispatched to assess the situation and the safety of the wall.

4. On March 11<sup>th</sup> a structural engineer from the Village engineer's firm (Weston & Sampson) issued a written report of his first-hand observations and findings. The Village's engineers determined that the wall had a "minimal to no factor of safety," and "posed a threat to public safety" if the Causeway were to be re-opened. A second engineering firm (O'Brien & Gere) was then engaged, to provide an independent second opinion. The second engineering firm confirmed the Village engineer's conclusion, and issued its finding on March 14<sup>th</sup> that the "wall rotation and horizontal displacement clearly indicates that it [the wall] has failed." They further concluded that the wall will eventually collapse and, although there was no reasonable way to predict when it would do so, a collapse could be initiated by even "a modest increase in wall loading such as from an elevated groundwater level behind the wall resulting

from a long-duration or heavy rain.” Due to the obvious threat to public safety, the road along the wall remained closed, until recently when the Village engineers agreed that with certain protective structures in place one lane could safely be opened.

5. The Village engineer also noted that the distinct and continuous horizontal joint approximately 3 feet above the roadway indicates that the original wall was likely three feet in height and was subsequently added to, and filled behind, to achieve the present 8-foot wall that presently exists in this area.

6. On March 12<sup>th</sup> the Village Attorney ordered a title search to be done on the adjacent Cindy Booth property to determine if any deeds or filed maps would shed light on who owned the wall. Statements that the title search was ordered a month prior to the stone being dislodged from the wall are simply not true. That false conclusion rests on a reasonable misinterpretation of the title search cover sheet date of February 7<sup>th</sup>, which is not the date of the actual search, but the last date on which property documents were received by the County Clerk’s office and filed for public viewing. This is known as the verification date, which is determined by the County Clerk’s office. All documents that were received by the County Clerk’s office for filing between February 8<sup>th</sup> and the date of the title search on March 12<sup>th</sup> were waiting in the County Clerk’s office to be reviewed for correctness and then filed for the public and title searchers to view. The Village Attorney reviewed the title deeds involving the Booth property going back to the deed from Peter and Emily Lorillard to the Tuxedo Park Association in 1885. No deed specifically mentioned the stone wall. However, the Booth property was noted as being east of the Causeway road; the stone wall also is east of the Causeway road.

7. Also reviewed were the documents evidencing the offer by the Tuxedo Park Association to the Village of the approximately twenty-three miles of paved streets and eight miles of dirt roads that were then owned by the Tuxedo Park Association, subject to

certain restrictions as to their use by residents and limited others. Only these paved streets and dirt roads were offered by the Tuxedo Park Association, and which was unanimously accepted by the Village at the Board of Trustee meeting of May 9, 1953, with the concomitant undertaking to maintain these roadways in good repair. Because the acceptance of the offer of dedication was unanimous by the Village Board of Trustees, there is no requirement that the roadways must be 2 rods (33 feet) wide. The deed conveying such ownership in the roadways did not convey any additional rights-of-way or associated easements. The deed did include the appurtenances owned by Tuxedo Park Association, although no such appurtenances were specifically referenced, and no evidence has surfaced that indicates that the Tuxedo Park Association owned any walls as appurtenant to the roadways. It is a basic tenet of real property law that the grantee (buyer) of real property (here the Village) cannot possibly receive more than is owned and conveyed by the grantor (seller) (here the Tuxedo Park Association). Also, it has been long established in New York that the word “appurtenances” in a deed does not pass title to any land or property adjacent to that granted by the seller – title to land does not pass by implication.

8. The Village also had two surveys (1974 and 1983) in their possession on which the surveyor showed the stone wall as being on the Booth property line. Ms. Booth later produced a third survey showing in pictorial fashion the wall as not coincident with the boundary line, but still east of the Causeway road. The Village only owns up to the limit of the roadway.

9. Additional documents were also reviewed by the Board of Trustees that made it 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.

10. The Village Board was also aware that Ms. Booth applied to the Planning Board in the 1990s for an approval for a new driveway location for her property. This new driveway location involved the demolition of a portion of the wall along the Causeway to make room for her driveway entrance. Ms. Booth never requested any permission from the Village Board to modify the wall as Village property, and the Planning Board did not see the need to condition its approval on obtaining permission from the Village Board for altering the wall. Instead, just like any resident wanting to alter only their own property, the Planning Board reviewed and approved Ms. Booth's request without any comment on ownership of the wall to be demolished. The Planning Board only has authority to approve projects involving an applicant's own property, unless there is specific permission by another whose property would be modified by the application.

11. In accordance with Village Code provisions, Ms. Booth was offered a hearing on April 29<sup>th</sup> of this year, giving her the opportunity to be heard as to the Village's then preliminary determination that she was responsible to correct the wall condition. The Village Code provides:

“Any roadside condition occurring or emanating from private property, but adversely affecting the safety, health and welfare along, on or adjacent to any Village road or right-of-way shall be corrected by the subject property owner at his sole expense. Such conditions shall include but are not limited to deteriorating road walls . . . .”

After the hearing, and considering the matters raised by Ms. Booth's attorney, the Village Board determined on May 6<sup>th</sup> that Ms. Booth was responsible for correcting the wall along the Causeway.



Also in accordance with the Village Code, Ms. Booth was advised that if she failed to correct the wall within a little over three months time, that the Village would perform the corrective measures and assess the cost upon Ms. Booth's property.

12. During the next several months the Village and Ms. Booth had several discussions to try and come to a mutual compromise to resolve the situation, but were unable to come to an agreement. During this time a test pit was excavated with Ms. Booth's permission on June 4<sup>th</sup>. Upon viewing the excavation the Village engineer advised the Village that their opinion remained the same.



13. The Village engineers were then asked to begin preparing plans and specifications to dismantle the affected section of the wall, rebuild it with a structurally sound wall including necessary soil erosion control measures and proper drainage, replace the stone face of the wall using the same stones as removed, and restore Ms. Booth's property to its present condition.

14. At a special meeting of the Village Board on August 30<sup>th</sup>,



which was properly advertised in accordance with State law, and attended by Ms. Booth's attorney, the Village Board moved forward to undertake the necessary wall repair, directing the Village DPW to first take the wall down to a safe height, secure the property, and open the Causeway. The project to rebuild the wall in kind to the same height would then be put out to bid. Shortly after the DPW began their work on August 30<sup>th</sup> Ms. Booth sued the Village, arguing that the Village owned the wall but should be stopped from repairing it. She obtained a temporary restraining order preventing the Village from continuing with its plan for the wall restoration until a hearing could be conducted. Simultaneously, Ms. Booth also filed a writ of mandamus or Article 78 lawsuit alleging that the Village Board of Trustees acted in an arbitrary and capricious manner in determining that Ms. Booth was responsible for the repair and maintenance of the wall.

15. At a court hearing on September 13<sup>th</sup> a judge heard from both sides on Ms. Booth's application for a preliminary injunction to prevent the Village from working on the wall until the litigation was decided. At the conclusion of the hearing the judge stated that she was keeping the temporary restraining order in place until she could hold an evidentiary hearing on October 8<sup>th</sup> to decide fully the Article 78 lawsuit, *i.e.*, whether the Village Board was arbitrary and capricious in its determination that Ms. Booth was responsible for correcting the wall. The judge also stated on the record that she was not making a decision on the preliminary injunction request.

16. It is the Village's position that its determination that Ms. Booth was responsible to correct the wall was not arbitrary or capricious; the Village Board examined the record and had a rationale basis for concluding that the wall is the responsibility of the adjacent property owner. The Board was advised by its engineers and counsel through every step of the process, and followed the Village Code to the letter of the law.

17. One lane of the Causeway has recently been opened to traffic, after the Village engineer determined that it would be safe, provided that certain substantial protection measures were put in place to protect the traveling public from any danger of a potential wall collapse.

18. On September 24<sup>th</sup> Ms. Booth's lawsuit against the Village was assigned to a new judge, who has asked the attorneys for both sides to appear before him on October 8<sup>th</sup> for a status conference. It is expected that the new judge will then decide how he wants to proceed to hear this matter.