

## **SUMMARY OF STATUS OF CONSOLIDATED TOWN-VILLAGE PROCEEDINGS**

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This memorandum details the current status of the dual incorporation and consolidation procedure undertaken by Tuxedo, beginning in 2017. This memorandum also summarizes the electors' (and Town Board's) rationale for completing this procedure.

### **Background and current status:**

In basis terms, the Petition was a request by the Town residents who signed it to transform Tuxedo from a town to a consolidated town-village. A consolidated town-village is similar to a coterminous town-village, which is when a town and village include exactly the same boundaries, i.e. that both municipal boundaries start and end at the exact same place. The creation and operation of coterminous town-villages is governed by New York State law. This Petition specifically requested that two processes occur simultaneously: (1) a new Village of Tuxedo will be incorporated, which will extend to the entire borders of the Town but exclude the Village of Tuxedo Park, which is entirely within the Town; and (2) immediately the newly incorporated Village will be consolidated with the Town of Tuxedo. This Petition sought to create a consolidated town and village that will function together as a single government.

Because the Village of Tuxedo Park exists within the existing Town of Tuxedo (to simplify, think of Tuxedo Park as the "hole" within the "donut" of the Town of Tuxedo), the existing Town and newly created Village do not include exactly the same boundaries as a typical coterminous town-village. This is what makes this Petition's results different from the other five existing coterminous town-villages in the state. The newly created village followed the procedures outlined in Village Law § 2-200, which allows the incorporation area to be coterminous with the entire boundary of the Town refuse district pursuant to § 2-200(1)(b). This is why the Petition asked to create a "consolidated town-village," instead of a "coterminous town-village." Regardless of terminology, the idea behind the procedure remains the same. Following the incorporation procedure, the consolidation procedures, as outlined in NYS General Municipal Law Article 17-A, were completed in order to consolidate the newly created Village of Tuxedo with the existing Town of Tuxedo.

The below list summarizes the steps taken as of the date of this memorandum:

- Elector initiated incorporation and consolidation Petition filed with Town Clerk of Tuxedo—*February 25, 2019*;
- Petition signatures verified by Town Clerk—*March 5, 2019*;
- Town Board adopted resolution calling for public hearing on sufficiency of petition—*March 11, 2019*;
- Public hearing on sufficiency of Petition (meets requirement of not less than 20 days after March 5, nor more than 30)—*April 1, 2019*;
- Town Board adopts resolution calling for dual referendum and setting date for vote—*April 9, 2019*;
- Dual referendum date (both incorporation and consolidation questions pass)—*July 16, 2019*;

- Town Clerk files initial Report of Incorporation, including Certificate of Election, with Secretary of State, State Comptroller, Commissioner of Taxation and Finance, the Orange County Clerk and County Treasurer, and the Village Clerk of the Village of Tuxedo Park—*July 31, 2019*;
- Town Board meets to discuss reorganization (meets requirement of within 30 days of Certificate of Election)—*August 12, 2019*;
- Town Clerk refiles Report of Incorporation with above entities with additional information requested by Department of State—*October 25, 2019*;
- Town Clerk receives Certificate of Incorporation from Department of State—Village of Tuxedo officially created—*December 23, 2019*;
- Town Board prepares, discusses, approves draft Final Consolidation Plan based off of Elector-Initiated Plan (within 180 days of initial August 12, 2019 meeting, plan posted as required in anticipation of hearing)—*February 10, 2020*;
- Town Board sets required public hearing on draft Final Consolidation Plan for March 23, 2020—*February 10, 2020*;
- Public hearing held and closed (via Zoom due to Covid-19 shutdowns)—*March 23, 2020*;
- Town Board approved Final Consolidation Plan via resolution—*May 11, 2020*;
- Town Board must wait 45 days after May 11, 2020 to ensure that no referendum request is filed pursuant to GML § 765;
  - Due to continued tolling of NYS statutes of limitation per Governor Cuomo’s Executive Orders regarding the Covid-19 pandemic, the Town Board and its counsel made the executive decision to delay calculation of the 45 days until tolling ceased.
  - Tolling ceased on November 4, 2020—45 days after would be December 18. No request for a second referendum was filed as of this date.
- In order to have a cleaner effective date, the Town Board determined to announce that consolidation was final as of January 1, 2021.

As far as the NYS statutes are concerned, there is no real “transition” period. As of January 1, 2021, the town-village is considered a consolidated entity pursuant to GML § 765. All Town employees (appointive and elected) are now subject to the terms of the Consolidation Plan pursuant to GML § 767. Pursuant to GML §§ 767 and 769, all existing local laws, ordinances, and rules or regulations of the Town shall remain in full force and effect, until and if they are repealed or amended.<sup>1</sup> All other transition period terms are found in the Final Consolidation Plan.

However, the below list summarizes the practical items that Tuxedo should consider going forward in its new role as a consolidated town-village:

- **Taxation:** the Town attorney is still working with the NYS Office of the State Comptroller to determine whether we need to file a constitutional tax limit filing and other village taxation issues. This is expected to be resolved in the next few weeks.

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<sup>1</sup> *One thing to note:* Pursuant to GML § 769, the town-village must adopt new local laws, ordinances, rules, and regulations as necessary to “redress conflicts and otherwise redress ambiguities regarding the then-existing laws, ordinances, rules, or regulations for the common administration and uniform governance of the consolidated local government entity” within no longer than two years after the effective date of consolidation (January 1, 2021). We will address this as necessary in the upcoming two years (i.e. by January 1, 2023).

- **Website/Letterhead:** As suggested previously, it is recommended that the Town website be updated accordingly to state that the Town is now a “consolidated town-village” as of January 1, 2021. This information should also be included somewhere on the letterhead (note the Town has previously determined the Town seal will not be changing).
- **Municipality name:** Officially, the Town is now considered the Consolidated Town-Village of Tuxedo. However, the Town Board has previously decided that the Town will continue to be called the “Town of Tuxedo.”

**Rationale for this process:**

The rationale for undergoing and completing this dual incorporation and consolidation procedure was threefold:

- 1) **Authority to adopt additional village powers:** Towns and villages have different (and in many cases, villages have increased) powers in New York pursuant to state statute. As discussed previously, one of these powers includes a village Board of Trustees’ ability to prevent pipelines from traveling through their borders pursuant to NY Village Law § 7-700. This ability to combat the increasing development pressure from gas exploration companies—as the need for increased energy supplies in New York and throughout the country grows—has become one of the most desirable village powers. There is no similar provision in NY Town Law as relating to Town powers.
- 2) **Prevention of other villages:** The creation of a town-village prevents any other villages from incorporating within the town-village’s borders. This is because once a town includes a village, no other village can be created within its geographical boundaries pursuant to the New York Government Reorganization and Citizen Empowerment Act (i.e. Article 17-A of the New York State General Municipal Law). This has the added benefit of preventing future financial burdens to the town-village and its taxpayers by avoiding the threat of multiple unconsolidated municipal governments existing with the Town of Tuxedo. Multiple unconsolidated governments (such as in Woodbury) can create additional expenses for residents, as overlapping municipal governments in turn create overlapping taxes for the provision of redundant residential services.

Since January 1, 2021, the only way another village can be incorporated within the town-village is if the geographic boundaries of the town-village change at some point in the future, which is a highly unlikely scenario. For example, even if the town-village followed the “Dissolution” provisions of NYS GML § 773 et seq.<sup>2</sup> to dissolve the town-village back into an unconsolidated entity, a new village could not be created yet within the Town’s geographic borders. There would need to be an addition of land to the Town, i.e. via annexation or other statutorily authorized means—land that is not covered by the boundaries of the existing Village of Tuxedo—in order to incorporate another village. As there are many time-consuming procedural steps that would need to occur in order to incorporate a new village, it is highly unlikely this would ever occur.

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<sup>2</sup> Note that this process is wholly similar to the “Consolidation” proceedings and is therefore a lengthy and time-consuming process; therefore, there is little reason to believe dissolution proceedings would be initiated via an elector or future Town Board initiated Petition without further reason for doing so.

- 3) **Ability to choose between town and village governing structures** : Similar to #1 above, a consolidated municipal entity is able to decide the terms and conditions of how the new consolidated government will operate in the Final Consolidation Plan pursuant to GML § 765. Therefore, in this Plan, the consolidated municipal entity can pick and choose which village powers and which town powers it wishes to adopt. For example, in its Final Consolidation Plan, the Town of Tuxedo decided to adopt the following powers:

**“Rights, Duties, and Obligations** – The Town of Tuxedo, as consolidated, shall have all the existing rights, duties, and obligations of a town, together with the rights, duties, and obligations of a village. In the case of conflict, the Town may determine which shall be applicable, except in the matters of the governance of Tuxedo Park. This is because the relationship between the Town of Tuxedo and the Village of Tuxedo Park shall not be affected by the consolidation.

Specifically, the Town of Tuxedo, as consolidated, shall be empowered to regulate and restrict the height, number of stories and sizes of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residences, or other purposes pursuant to New York Village Law § 7-700. This explicitly includes the power to prevent certain infrastructure, including pipelines, from traveling through the Town of Tuxedo’s geographical borders.

In addition, should additional rights, powers, and privileges be granted by the New York State Legislature to villages and/or towns in the future, the Town may determine to adopt such additional powers.”