



## At New York State Court of Appeals: the Incorporated Township of Montauk

### Appeal filed

On August 3rd, 2005, an appeal was filed as a matter of Constitutional right by the Montauk Friends of Olmsted Parks / Montauk Trustee Corporation (Trustee Corp.) with the New York State Supreme Court, Court of Appeals in Albany (high court).

Montauk Trustee Corp. attempted to commence the special proceeding using an Order to Show Cause (OSC) and Petition pursuant to CPLR Article 78 after receiving an order from the high court on May 6th 2004. An OSC is a motion entered by a judge that orders why a subsequent order should not be entered. Two judges of the Supreme Court refused to sign the OSC, however, and the Appellate Division in Brooklyn denied our application to do so when it was properly presented to them pursuant to statute.

The justices can, of course, demur and not sign an OSC, and the above situation is provided for in the law. Trustee Corp. then filed and served an Amended Petition wherein only the first paragraph was changed to petition for the order to show cause which had been denied.

The special proceeding was then properly commenced according to court rules and the law.

The town board of the town of Easthampton answered the

Amended Petition, and a reply was then served by Trustee Corp. to the town board's answer. Other papers had been and were filed by Suffolk County and the Suffolk County Water Authority.

It was clear after the above submissions that Montauk had a solid, unrefuted case. However, by order dated July 19th, 2005, presiding Justice Daniel J. Loughlin followed the lead of the prior justices and the Appellate Division and simply denied the Petition. His order finally dismissed the special proceeding and set up our appeal to the Court of Appeals.

The Appeal was filed on August 3rd, 2005, and answered by the Town Board government of Easthampton on August 19th. An attorney has since noticed his appearance on behalf of the Nature Conservancy corporation.

The lower courts made clear that they were not going force the town board to show how it makes its claim to collect Montauk's taxes and control its land use and police when faced with Montauk's claim.

Sovereign American rights and powers are of enormous importance not only for Montauk but also for the People of the State of New York.

Easthampton is the birthplace of republican government in America, and of New York State government. We pray that the high court will take jurisdiction and hear our honest plea.

**see: [www.montauk.com](http://www.montauk.com)**

### "Freeholders"

The term "freeholder" keeps coming up in legal documents pertaining to the sovereign right property owners to govern their townships by town meeting.

For example, the 1686 "Dongan Patent" and colonial charter did

**"declare, determine and grant that the said... freeholders and inhabitants of the town of Easthampton... and their heirs and successors forever henceforth are and shall be one body corporate and politique in Deed and in name by the name of the Trustees of the freeholders and Commonalty of town of Easthampton".**

(Town records vol. I p. 199, Notice the spelling of the Town of "Easthampton".)

Chapter 64 of the laws of 1788 claims to "erect" new boundaries for the town of "East-Hampton" (sic) to include in it "the Isle of Wight, now called Gardiner's Island", and to do some other things including establish new town offices (including "Supervisor") and that the townships would continue to govern by town meeting and to set a schedule for that purpose.

The, effect of the 1788 act was

**"That none of the bounds or lines by this act**

**"Freeholders" on page 3**

### Town Meeting

One of the biggest concerns is what Montauk government will look like, and who will run it. Fortunately, your Montauk Trustee Corp. has been in existence and active defending Montauk since 1994, and we have a constitution for Montauk that we have presented to the courts and are excited about.

First incorporated in 1994 to protect a Montauk-wide park system designed by the firm of Frederick Law Olmsted, we proceeded to obtain a final determination from the courts on YOUR rights to a large scale PRIVATE park system in 1997.

*Continued on page 3*

### Distant Assemblies

The perennial problem of how to restrain or prohibit unconstitutional acts by distant assemblies is the central issue to Montauk's case.

This problem was well understood by our forebears. Oliver Cromwell shut down Parliament; the 1777 Constitution of the State of New York held that *"the present government of this colony... was established for the sole purpose of opposing the usurpation of the British Parliament"*; Congress currently passes laws claiming the power to enforce them within the boundaries of our states without

*Continued on page 2*

## Bob's peace

This document is written in its entirety by Robert A. Ficalora and published subsequent to its review by our board of directors, the acting trustees of Montauk.

I first came to Montauk for a short period in 1987 on a leave of absence from my employer (IBM) in order to assist my wife's parents with litigation pertaining to the property across the street from their motel, the Breakers Motel. I oversaw and assisted in submitting of the ultimately successful papers opposing a motion to dismiss and then returned to my employment.

Shortly thereafter I began to suffer symptoms of multiple sclerosis (including blindness), and by 1991 I was directed by my doctor to stop work. At that point I dropped almost all of my personal obligations and I returned to Montauk with my wife, Helen Ficalora, for her to run the motel so that we could feed our family.

I became unhappy with the handling of the *Breakers* lawsuit, however, so I founded the Montauk Friends of Olmsted Parks Corporation in 1994 to protect the park system. I was personally responsible for every segment of the citation of decisions that led to Montauk's rights being finally upheld in 1997. I have been in court ever since to recover the properties into trust for their administration for the rightful, equitable owners - all Montauk property owners.

The complication has been, however, that all Montauk property owners (freeholders) have the sovereign right to govern Montauk as a township under the 1686 Dongan Patent. You are currently paying taxes to a town board that postures itself as a government, but has no papers and doesn't even know where it came from.

The high court is fully aware of this and I have to believe it will not allow it to continue. I have done my best for you and will continue to do so to the best of my ability. Please go easy on me though, because I am sick and this hasn't been a picnic.

But this is my peace, to let you know about me and my interest in what the Montauk Trustee Corporation is doing. You know, what am I getting out of this?

Over the years I have spent in the neighborhood of \$50,000 of my own money out of pocket in the defense of Montauk. When we received an excellent decision from the high court after we intervened in the matter of People v. Vorpahl last year, it was clear that we would

have to take it back to the trial court and to hire an attorney.

I prepared some resolutions that I felt necessary to take the matter to court and we had a couple of board meetings at the residence of the Grimm family. I felt that the easiest way to go forward was for me to finance the litigation and, for the first time in a decade, I put in for some recovery and compensation for me.

So far the litigation has cost about \$25,000, mostly because of problems with a couple of attorneys. When we are successful in obtaining recovery in litigation, I will get that paid back. Additionally, however, I was given three percent (3%) of gross recovery for recovery and damages received through litigation. I believe that my share will be in the millions of dollars, with the balance being available for the use of the Township of Montauk.

Most importantly, our board's position into the future is clear: the Montauk Constitution establishes that the Supervisor's position that I hold is a "hired" position, not an elected or political one. After the town meeting is fully established and settled, I must resign and the twelve trustees and town meeting must go through the process of hiring my replacement.

*Please read and discuss*

**The Articulated Rights and Constitution  
of the Township of Montauk  
at [www.Montauk.com](http://www.Montauk.com)**

When all Montauk lands and franchises are recovered and consolidated within the township, we will want to discover and hire the best quality professional manager and "overseer" available.

The Montauk Trustee job, therefore, is to take us through the litigation with your concurrence. Please connect with any of our acting Trustees of Montauk to help with our effort. It is important that when the high court goes our way that we quickly and successfully convene and establish the Associations and the town meeting.

This can only happen with the fullest participation of you, the freeholders of Montauk that are in receipt of this mailing. We need you to read the Articulated Rights and talk with each other. The proposition is your participation in an orderly peaceable assembly with the sovereign power to govern Montauk.

Amazingly, it's the law!

## Distant Assemblies (cont.)

Constitutional prerogative; and, in Montauk's case our sovereign rights to govern our town were usurped and suppressed by the state legislature.

Fortunately, there is a remedy at law: the sovereign prerogative powers of mandamus and prohibition of the kings of England that were assumed by the state judiciaries upon independence and are still retained with the laws of the State of New York today.

It is notable that both the State of New York and the Incorporated Township of Montauk share the same original jurisdiction: a royal grant of the feudal tenure of the royal manor of East Greenwich in the County of Kent, the site of Greenwich Palace on the Thames River opposite the city of London. This is significant because it means that both the Trustees of Montauk and the Supreme Court of the State of New York are equally capable to issue these writs, although in most cases Montauk would petition the court for them to issue.

It is interesting that the federal courts are without the power to issue Mandamus or Prohibition to stop unconstitutional acts or actions by the federal government. Marbury v. Madison, U.S. Supreme, 1803. The only court of cognizable jurisdiction to issue mandamus and prohibition upon federal authorities may be a state court.

The idea was, and remains, that we, the People are sovereign, and that government closest to the people is best. Montauk freeholders' sovereign right to peaceably assemble and to govern by town meeting is should be understood, acted upon and protected.

We are at the New York State Supreme Court to obtain redress for our grievances and to restore sovereign government. We will ask that the court use it's sovereign powers as successor to royal authority to restrain distant assemblies claiming police powers over the lands and waters of Montauk. Such recourse is essential if our sovereign liberties are to be recovered and protected.

We have fully submitted to the jurisdiction of the highest court of what remains the sovereign state of New York. We pray that our plea will be heard and our cause allowed to proceed with their oversight, support and protection.

In God we trust.

## "Freeholders", cont.

**assigned for the limits of any or either of the said towns, shall be deemed to take away, abridge, destroy or affect, the right or title of any person or persons, bodies politic or corporate, in any manner or by any means whatsoever, nor be deemed, taken or construed as a confirmation of the bounds or the rights of any patent or patents whatsoever" (p.762)**

It should be noted that in 1783 Suffolk County had emerged from seven years of military occupation and that in 1788 it was re-forming its town governments under the Dongan Patents. CHAPTER 64 DID NOT INCORPORATE ANYTHING, nor does it affect the rights granted through the Dongan Patent for the towns of Easthampton or Montauk.

Chapter 64 also holds that::

**"the freeholders and inhabitants of each and every of the said towns... who are or shall be qualified by law to vote at town meetings, shall forever hereafter have full power and authority and they are hereby directed and required to assemble together and hold town meetings..." (p. 762)**

The word "freeholder" appears in the law again, one hundred and two years after the Dongan Patent was issued and we are DIRECTED AND REQUIRED by law to assemble together and hold town meetings. The liberties that they had fought so long and so hard to protect were not to be lost or forgotten.

To understand what a "freeholder" is requires an understanding feudalism. In early feudalism only a lord could own land, All sales had to go through him until a statute was issued in 1290 by Edward I (Quia Emptores) that allowed for the sale, exchange of lands within a lords domain with the superior fee retained by the lord (the "lord of the fee") thereby remaining under his jurisdiction.

Today a buyer receives his deed in "fee simple", with the a superior fee being in a government claiming eminent domain and the power to make laws, tax, police and determine land use. A freeholder of land in Easthampton or Montauk is not now, nor has ever been, subordinate to an English lord, yet the legislature has usurped and suppressed this liberty by imposing an illegal and

unconstitutional town board with the effective powers of a feudal lord.

In the Dongan Patent, as in Chapter 64 of the laws of 1788, government is only to be by town meeting of the Freeholders and Inhabitants assembled. The Town Meeting has the sovereign right therein to make all town laws, control its own justice court, determine all land use, and elect our own police. You, the Freeholders, are the democratic lords of the commonwealth.

No other body politic or assembly *anywhere* has jurisdiction or police powers within the property bounds and appurtenances set forth in the 1686 charter. Such colonial charters are the foundation of American sovereignty.

This was fully understood by our board of acting trustees when we labored through the many drafts of the Montauk Constitution that we adopted on December 5th, 2000. Among the most illustrative of the rights therein is that:

**I.v. No law or rule shall be enacted or enforced which is repugnant to the laws of the State of New York or of the United States of America or which punishes an individual or group of consenting adults for any action which does not harm the property or person of another, excepting and reserving laws and rules made in the public interest for the regulation of trade, public health and safety, and zoning.**

Mr. Bland, in his brilliant 1766 essay entitled "An inquiry into the rights of the English Colonies", protests Parliament's usurpation of the rights of freeholders and that Acts of Parliament were an "Act of Power, and not of Right".

Montauk's freeholders' rights must be understood and re-established. If you are on your own property and not hurting anyone or their property, or violating the public interest in the above excepted areas of law, you will have no fear and can do anything you want.

As a freeholder with rights through the 1686 Dongan Patent you are sovereign upon your property and within the boundaries of the Township of Montauk.

**THINK TOWN  
MEETING!**

## "Town Meeting" cont.

When the political reaction to our work caused the status quo political establishment to panic and attempt to impose a statutory village on us in 1996, we resolved to assume the powers of the 1852 Montauk Trustee Corporation. I (Bob Ficalora) filed the resolution with the Town of East Hampton on my way to hold an exit poll at the firehouse, an effort that I believe prevented planned electoral fraud.

Since that time we have been in court almost without pause, and are now back before the New York State Supreme Court, Court of Appeals in Albany (the state's highest court) for at least the fifth time.

*Without our law  
We have no liberty  
Without our Constitutions  
We have no country  
Without our king  
In God we trust*

It was during litigation that it became clear that the Montauk Trustee Corporation required a modern, updated charter to use and show the court. After significant effort and a great deal of work, our excellent board of directors of the MFOP/Montauk Trustee Corporation adopted that charter titled "The Articulated Rights and Constitution of the Township of Montauk" (Montauk Constitution) on December 5th, 2000. Shortly thereafter it was presented as and attachment to the high court as part of normal court process in one of our cases before them.

The Montauk Constitution is now formally before them for the first time as we assert our claim to be an incorporated township under the laws of the State of New York.

While we may have the rights, the high court has the power, and nothing will happen if they simply do nothing.

In the end, neither myself nor our honorable board of acting trustees lead you, you lead you, and we have done our best to make it as easy, lawful and as safe as possible for you, the freeholders of Montauk, to obtain what is rightfully yours.

**MFOP/Montauk Trustee Corp**

**P. O. Box 2612  
Montauk, NY 11954**

Acting Trustees: Jeff Bline, Helen Ficalora, Capt. Bill Grimm, Daniel Grimm, Herbert McKay, Richard Monahan, Dr. Alice Roos.  
ex-officio: Louise Nielsen, Constance Judson, Dr. John Jay Sayers, and over a decade of others.

Acting Supervisor: Robert A. Ficalora



“We would do well to recall how James Madison, the father of the Constitution, described our system of joint sovereignty to the people of New York: *'The powers delegated by the proposed constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite... The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State,'* The Federalist No. 45, pp. 292—293 (C. Rossiter ed. 1961)”

Hon. Sandra Day O'Connor, Associate Justice of the United States Supreme Court, *dissenting opinion*, Gonzalez v. Raich (03-1454) 352 F.3rd 1222, June 6, 2005

The federal Constitution of the United States of America was subsequently ratified by the New York State Assembly by a vote of 30 to 27, with twenty-seven members effectively voting to secede from the Union rather than to ratify. The Bill of Rights was then adopted specifically to restrain unintended federal power and to reserve all undelegated powers to the States or to the People.