



# The Montauk Gazette<sup>®</sup>

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## Notice of Assembly

To consider a Freeholders' Show Cause action and lawful government

Your Rights  
 Your Lands  
 Your Montauk

Take a stand  
 They are yours  
 Take them back!

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To all of the Freeholders and Inhabitants of the Incorporated Township of Montauk and also to the honorable Governor David A. Patterson, Chief Justice Jonathan Lippman, Attorney General Andrew M. Cuomo, and all of the magistrates, officials, Senators and Assemblymen of the State of New York, Suffolk County Legislators, the defendants in re: Town of Montauk, Inc., and the 1788 Towns of the State of New York,

### PLEASE TAKE NOTICE:

The five year matter of the Town of Montauk, Inc. v. Gov. Pataki, et. al. ended 2/12/09 at the New York State Supreme Court, Court of Appeals in Albany. An assembly will be convened at the

**Montauk firehouse  
 Sunday, Sept. 6th, 2009  
 from 11 a.m. to 2 p.m.**

to consider why Montauk's taxes should not be paid to the Town of Montauk until the Town of East Hampton shows how it claims Montauk's franchise to tax and to govern. Ten or more Montauk property owners are immediately sought to agree to pay their tax bill into an attorney's escrow.

Sandwiches and refreshments will be served.

### UPDATE

Town of Montauk, Inc. had been filed after Montauk received a clear and unambiguous order upon intervention, made as a matter of right pursuant to

see: *Update*, at p. 2

### The Issue

East Hampton has two governments, the chartered 1686 Trustee Corporation and a legally fictitious town board. The issue in Montauk is a state supported East Hampton town board posing as Montauk's government under the 1909 Town Law.

see: *Issue*, at p. 5

### The Plan

Montauk v. Pataki, et. al. was originally intended to be joined using an Order to Show Cause (OSC) in the same manner and type as in the 1851 case of Henry P. Hedges, et. al v. Trustees of the Freeholders and Inhabitants of the Town of Easthampton that led to Montauk being split off of Easthampton and then being incorporated by the State Legislature on April 2nd 1852.

see *The Plan* at p. 3

## Update from p.1

CPLR sect..1012 in the fishing rights case of People v. Stuart Bennet Vorpahl. The high court of Chief Justice Judith S. Kaye that recognized the intervention by the Incorporated Township of Montauk (People v. Vorpahl, (2 N.Y.3d 781, Motion No. 277 May 6, 2004).

The record before the high court in Vorpahl included Mr. Ficalora's 2001 Affidavit as *Amicus containing a comprehensive legal history of Montauk and the Articulated Rights and Constitution of the Township of Montauk adopted in December 2000. Nothing in the Court of Appeals order evidences that it denied intervention or otherwise failed recognize the corporation as the governing body of Montauk.*

In any event, the Town of Easthampton has two governments: the Trustees of the Freeholders and Inhabitants created by colonial patents and a 1686 charter and a Town Board government of legally undocumented origin or existence. The imposition of a state-supported, but legally fictitious, body posturing as a government over the lands and waters of Montauk constitutes the usurpation of Montauk property owners' longstanding franchise right to tax and to govern under the 1686 Dongan Patent and, therefore, continues to violate Chapter 2 of the laws of 1691.

The May 8th 2007 decision entered by the Appellate Division in Town of Montauk, Inc. (40 A.D 3rd 772, 773 (2d Dept. 2007)) is easily argued against simply by applying the same argument to the Town Board government in Easthampton.

First, it argues that the Town of Montauk, Inc. is not an established corporation because it has filed no incorporation papers with the Department of State. While Montauk was incorporated in 1686 and 1852 and we sought judicial interpretation of them, inquiries with that department about the

town board drew a complete blank. There is nothing there!

Second, the decision states that *"the Court of Appeals did not recognize it as a corporation, or as the governing body of Montauk, in People v Vorpahl (2 NY3d 781)".* While the acceptance of the intervention made as of right and clear language of that decision indicated to us that it did, it is not for an inferior court to flatly and adversely interpret a high court decision.

Third, the court held that the MFOP/Montauk Trustee Corporation is not successor to the 1852 corporation of the Trustees of Montauk despite its efforts and assertions and a board containing a majority of Montauk property owners.

The argument is more fully presented in attorney Michael H. Sussman's Motion to Reargue which can be read at <http://www.montauk.com>.

When the 1683 Constitution of New York was disallowed in 1686 by King James II for the making of laws, the Dongan Patents granted to townships the sovereign jurisdiction of the feudal tenure of the royal Manor of East Greenwich in the county of Kent (Greenwich Palace, the royal residence at London) over which Parliament had no jurisdiction. The patents granted the liberty and privilege to govern by town meeting for the making, administering and enforcement of law ***"so always as the said acts and order be in no wayes repugnant to the laws of England and of this Province which now are or hereafter may be established"***.

The foregoing feudal tenure was issued to most of the English colonies in America (now states or commonwealths), and for that reason the Dongan patents have been referred to as having granted "the rights of a state within a state". The protection of such colonial charters was a central cause in the Declaration of Independence. The 1777 Constitution of

the State of New York continued the laws of the province, contained the entire Declaration of Independence within it, and also expressly protected colonial charters to bodies politic and corporate such as the Dongan Patents.

On January 26, 1788 the draft of the proposed new federal Constitution was before the New York Assembly for ratification when a letter was published in Schenectady by James Madison (as "Publius") in the Independent Journal (now Weekly Gazette, Federalist #45). There was an urgent concern for the sovereign rights of the Freeholders and Inhabitants of the State of New York because they were deemed to be threatened by the proposed new federalist Constitution.

On March 7th, 1788 Chapter 64 of the laws of 1788 was signed into law by Governor George Clinton that either established or affirmed the townships of New York and held that:

*"The freeholders and inhabitants of each and every of the said towns... who are or shall be qualified 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..."*(emphasis added)

A Freeholder in New York (proprietor, yeoman) is a property owner who holds his land in fee simple with a sovereign jurisdiction within its meets and bounds. A township governed by a town meeting of the TRUSTEES of the freeholders and inhabitants assembled is an extension of that sovereignty. Such a government has sovereign jurisdiction within the meets and bounds of the township of the lord of the fee within it: eminent domain, escheat, and the making, administering and enforcement of law. These are foundational American liberties of good government..

## Threatened!

I first came to Montauk in 1987 when my wife Helen Ficalora's now late parents Madge and Bob Schneiderman asked for my help. They owned the Breakers Motel and when its access to the beach was threatened I took a ten month leave of absence from my job at IBM to oversee a law suit, the Breakers Motel, Inc. et al v. Sunbeach Montauk II, Inc., et ano. The case was over two years old and stalled by attorneys. I brought on new counsel and otherwise took care of business until I went back to my job at IBM.

After Madge died in 1991 I returned to take care of the business and the lawsuit. I again had to dismiss and hire counsel. I directed the new attorney to file a motion for summary judgement that I had drawn up from papers in the record. In 1993 the draft was submitted and filed, I retired from my position at the Breakers and turned the case over to my bother-in-law Jay Schneiderman.

Jay attempted unsuccessfully to withdraw the motion and it sat for almost a year while the town Zoning Board (of which Jay was a member) considered a dredge and dump application to take 32,000 cubic yards of toxic bottom out of Lake Montauk and dump it on the Benson Reservations. I remained in East Hampton to present at the hearings and signed the incorporation papers for the MFOP and mailed them in to Albany and then I departed for my home in Olympia, WA.

When I arrived in Olympia fellow plaintiff Louise Nielsen told me that a decision had been entered on the motion ending the case! She faxed it to me and I forwarded it to the ZBA ending the dredge and dump application. The decision was dated April 19, 2004 the day I signed the incorporation papers for the MFOP!

The MFOP/Montauk Trustee corporation continues to attempt to protect the Reservations which, due the Benson Covenants, are the commonwealth of Montauk Freeholders,

or the property of the Town of Montauk under the 1686 Dongan Patent.

Apparently, Judge Underwood was spooked in April 2004 when a corporation established to protect the Benson Reservations showed up on his desk after nine years dealing with parties that could not claim to represent YOU, Montauk property owners.

In 2006, when I grew unhappy with the handling of the Breakers case, I filed a brief as Amicus on behalf of MFOP to inform the court that it couldn't do anything for Mr. Biase because all Montauk property owners were not before the court. The decision was modified to reflect property ownership requirement of the Benson Covenants.

While stalled under protest of his treatment of our cases, Judge Underwood re-took and dismissed the 1998 case of Ficalora (as Assignee for MFOP) v. Town Board Gov't of the Town of East Hampton and Sunbeach Montauk, II, Inc. (Suffolk, 98-14806) after it had been reassigned to Hon. Robert Webster Oliver, J.S.C..

The title was then flipped to defendant Town Board with the probability of an unrecorded reverter clause within the transaction such had been stopped by Mr. Ficalora on behalf of the Breakers Motel in a Nature Conservancy/Suffolk County deal. New York law maintains that such clauses in unrecorded contracts are enforceable, so the property remains threatened.

I hope that the reader finds the above interesting. This and other similar problems can be summarily dealt with at the Montauk town meeting using the Montauk Constitution of December 2000.

Please understand that we are now at the end of the game to recover and protect the Benson Reservations and Montauk's other extensive commonwealth.

If you own property in Montauk you hold a full franchise right to vote and be a part of the final push to recovering Montauk's lands and franchises.

## The Plan from p. 1

It seemed easy, the case was essentially *res judicata*.

Despite the court's unfortunate avoidance of our cause, nothing changes the fact that we are left with an illegal and unconstitutional state supported entity claiming and injuring our commonwealth while usurping our sovereign franchise right to tax and to govern by town meeting.

What we were unsuccessful in obtaining through our judiciary I believe can be accomplished by a proposed process of civil duty to force the same result as sought in the OSC:

### *It's really that simple:*

Pay your property taxes into an attorney's escrow to the Town of Montauk. The East Hampton Town Board will have to show why you should not pay your taxes to the Town of Montauk instead of to them.

We are looking for ten or more good Montauk Freeholders to meet with us upon joining in the plan before the September 6th Assembly, or to come forward at the Assembly.

This mailing is going out to essentially all of the supreme court judges within our jurisdiction, as well as state and county legislators and the town board gov't of East Hampton.

Bob Ficalora will be in Montauk through the Labor Day Assembly for private or group meetings at the Breakers Motel and can be reached in Montauk at 631-238-5445 or by cell at 360-485-2692.



Montauk's Trustee Corporation  
Township of Montauk  
Est. 1686/1852/2000

## "Freeholders"

The term "freeholder" keeps coming up in legal documents pertaining to the sovereign right of 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 politque in Deed and in name by the name of the Trustees of the freeholders and Commonalty of towne of Easthampton".**

(Town records vol. 1 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"). The townships would continue to govern by town meeting and set a schedule for that purpose.

The, effect of the 1788 act was

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

Chapter 64 of the laws of 1788 has been posted with hyperlinks at [www.montauk.com](http://www.montauk.com). Initial review has found that while all of the existing State of New York was covered many of the towns set forth in it were apparently never chartered and that those that were later had Town Boards imposed under the 1909 town law. By its language, Chapter 64 was established in perpetuity and the rights of freeholders run with the land.

To understand what a "freeholder" is requires an understanding feudalism. In early feudalism only a lord could own or convey rights to land and hold jurisdiction over it. All land exchanges had to go through him until a statute was issued in 1290 by Edward I (Quia Emptores) allowed for the sale or exchange of lands in "fee simple" with the superior fee retained by the lord (the "lord of the fee"). *Quia Emptores* effectively eliminated lower level lords (subinfeudators) and replaced them with non-aristocratic owners of land. Powerful rights of jurisdiction, however, came from the ownership of land.

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 state legislature has usurped and suppressed this liberty by imposing illegal and unconstitutional town boards throughout New York with the effective powers of feudal lords.

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 of Montauk, 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. The reader can see why we suffer from fictitious, illegal and unconstitutional governmental impositions and these fundamental rights of sovereignty have been suppressed by a miscreant state government.

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.

***We can recover our lands and liberties through orderly assembly in town meeting.***

### **Montauk town meeting**

As the reader probably realises, we are talking about kicking the State of New York, Suffolk County and town of Easthampton out of Montauk and establishing a sovereign jurisdiction within the State of New York. We will methodically take back all of our lands, waters and fishing rights from them.

It has been presented to the court that because of the 1686 Dongan Patent the freeholders and inhabitants of Montauk assembled in town meeting enjoy the powers to make their own laws, assess their own taxes, and elect their own police.

We assert that we are a sovereign town under the jurisdiction of the Supreme Court of the State of New York. We will be establishing our own justice court that will be integrated vertically with the New York Court system. To understand how this will work please see ***The Articulated Rights and Constitution of the Township of Montauk*** at [www.montauk.com](http://www.montauk.com).

***The Freeholders' Show Cause will be an important start*** because if we rally ten or more Montauk freeholders to the cause it should end the media blackout and provide the opening for the owners of Montauk lands to assemble in Town meeting. Furthermore, it will probably lead to the class action lawsuit that should have been brought years ago that will provide the venue to reverse the Appellate Division decision of May 8th, 2007 in re:Town of Montauk, Inc..

The most important thing is for Montauk's freeholders to Assemble in Town meeting because of what can be accomplished by it.

### **Bob Ficalora**

Yeah, that's me. I write and publish the ~~Montauk Gazette~~ and Montauk Magazine at [www.montauk.com](http://www.montauk.com). I am not a Montauk freeholder. I have taken these issues to court over the past twenty (22) years to attempt to protect Montauk's commonwealth and the owners and inhabitants' sovereign liberties of jurisdiction.

But I am tired, I suffer from multiple sclerosis and this is my final effort. If ten or more Montauk freeholders join in the proposed action I will be there for you, otherwise I will sadly return to my retirement. It is up to you...

When the high court of appeals took jurisdiction in the matter in re: Town of Montauk, Inc. upon well presented pleadings I felt that I had done my job, that it was on their desks and off of mine. A series of unfortunate circumstances, however, led to the Appellate Division decision being let stand.

The past twenty-two years have been difficult for me. It is difficult to live every day with the realization that Montauk is a conquered place, that the government is illegal and corrupt, and that Montauk's commonwealth has been injured or stolen by this hideous game.

One of the major problems with my legal approach was not to bring all of Montauk's property owners into the case from the outset; but now the governor and attorney general's offices are fully knowledgeable of the significance of Montauk's rights and should be aware of the beauty of their recovery and use.

I don't think that we will fail if we ten or more Montauk Freeholders choose to pay their tax bill into an attorney's escrow. We can use that stand to build a movement that educates the community and establishes the Montauk town meeting, a force that will not be denied.

Please give me a call and stop by if you want to join this historic action. It will be especially helpful if you have a personal or business attorney that can join in conference.

### **The Issue, from p1**

Montauk is legally a commonwealth and there has been significant injury that has occurred due the conquest of Montauk freeholders' common lands and its sovereign franchise right to tax and to govern.

Using this document and a September 6th Assembly we are attempting to bring Montauk's Freeholders in.

We will present the following three resolves fo adoption:

- Resolve, to pay our property tax bills to the Township of Montauk for deposit in care of an attorney's escrow account with notice the town board government of East Hampton of such payment, and
- Resolve, to immediately begin recovery of Montauk's vast commonwealth with the Benson Reservations. The nominal title to the properties should be in the Montauk Friends of Olmsted Parks / Montauk Trustee Corporation for their protection (see: Schroeder v. Gurney, 73 N. Y. 430) and
- Resolve, to commence the process of town meeting set forth in the December 2000 Montauk Constitution.

Please call and come and visit with me. I will be at the Breakers Motel on the Old Highway through Labor Day and available to meet with all individuals or groups by appointment. Call me at 631-238-5445 (land line) or 360-485-2692 (verison cell), or send me an email at [bobfic@montauk.com](mailto:bobfic@montauk.com).

We are not a conquered people or the slaves of the state. After all of these years fighting in court for YOUR RIGHTS, for the first time I'm bringing a plan of action to you, Montauk's property owning freeholders.

I am confident that together we can assert our rights, take control of Montauk's Commonwealth and establish good government by town meeting.

## Conquest of New York

The state legislature's conquest of Montauk began about 1906 with an act enabling the Montauk tribe of Indians to bring a suit to recover their rights under deeded agreements with the freeholders of Montauk. The result was the closely watched matter of Pharaoh v. Benson, et. al and Montauk's juridical status appeared in the court papers. A series of events quickly unfolded.

In 1907 Arthur W. Benson's heir, Frank Sherman Benson, died suddenly of an "apoplexy" (stroke). Noticeably absent in the N.Y. Times obituary was his 15 year tenure as a director of the Long Island Historical Society which was undergoing close examination by the Tammany controlled state legislature at the time. Also absent was his ownership (with his sister Mary) of almost all of Montauk.

In 1909 the State legislature passed the Town Law of the State of New York with the design of imposing it on the towns of Suffolk County which to that point had mostly been governing themselves under the Dongan Patents.

In 1910 Pharaoh was summarily dismissed by declaring that the Montauk Tribe of Indians no longer existed to make a claim under the 1661, 1672, 1686 & 1702/3 deeded agreements. Earlier, in 1879, the court had held that the Montauk tribe existed but could claim no ownership of the lands only rights over them; that the fee ownership of the Indian lands remained with the owners of Montauk lands outside of the reservation areas and their heirs, successors and assigns.

Historical circumstance prevented Montauk's proprietors from defending these lands when faced with a State supported, and Al Capone-influenced, mobster named Carl Fisher. The proprietors' rights to these lands have never been extinguished, however, and with the state's liability for enabling the illegal taking of these lands, we believe the matter can be settled without injury to innocent parties, including the Town of

Montauk. In 1911 a fire destroyed the library of the legislature in Albany and all record of its historical understanding of the colonial charters and governments under them. The watchman's body was found dead on the first floor and it is hard to believe that the fire was an accident.

In 1912 the town of Southampton was the first to establish a government under the legislature's 1909 Town Law. After the conclusion of Pharaoh in 1910, the proprietors treated Montauk as a private estate with the Indian and the Olmsted/Benson reservations as common lands.

The 1918 Last Will and Testament of Mary Benson, however, left no protections. The Executors of the 1918 estate of Mary Benson either renounced or resigned and it was moved to the administration of the Brooklyn Trust Company. Brooklyn Trust sold the Mary Benson Montauk lands to a man associated with Al Capone (Carl Fisher) who chased the defending proprietors out of Montauk and began the subdivision and sale of the common lands.

It was a classic Capone-style operation but with little or none of his class. Carl Fisher brought the new second government of East Hampton into Montauk, organized under the still unfinished 1909 Town Law.

He created a hotel called "The Manor" at the rail-head in Montauk and held big parties for the state legislators. He carried a large mortgage from the Estate of Mary Benson and went bankrupt in 1930 after the stock market crash. He would die a penniless alcoholic in 1939.

When the Estate of Mary Benson was finally liquidated in 1957 all of the trust lands were sold to a development company. The Town of East Hampton almost immediately passed a zoning ordinance covering Montauk.

Please understand the above history. Montauk is the conquering state legislature's Achilles heal.

The Town Board of the Town of East Hampton has no incorporation papers, it has never been legally established.

Montauk, however, is an incorporated township by rights of succession through the Dongan Patent, chartered rights that run with the land forever. Conquest & Liberation

The full genesis of the conquest the rights of Montauk's freeholders and inhabitants and those of the towns of the State of New York is too lengthy to cover here. It can, however, be summarized by three words: *Sovereignty*, *Tammany* and *Fisher*.

**Sovereignty** is what was granted in the Dongan patents to the towns of Suffolk County and to New York City and Albany. The protection of such colonial charters would later be the central cause of the American Revolution. The sovereignty of the freeholders and inhabitants assembled in town meeting was extended statewide after the Revolution with Chapter 64 of the Laws of 1788.

It is understood in New York that your house is your castle. In a legal sense this is true because of your rights as a freeholder. Under our system of English Law all jurisdiction comes from the ownership or control over land. National and State borders, City limits, county and town lines, and the property lines on your home parcel are all lines drawn on maps.

After King Edward I enacted the statute of Quia Emptores in 1290, land conveyed in fee simple represented absolute ownership of real property limited by the Lord in Chief's four basic government powers of taxation, eminent domain, police power, and escheat and could also be limited by certain encumbrances or a condition in the deed.

In Montauk's case, as with all of the towns of the state of New York, the only lawful governments with the above four powers are the freeholders and inhabitants assembled in town meeting.

The 1909 Town Law must be repealed and the town meetings established according to the intent Chapter 64 of the laws of 1788.

**Tammany** was the corrupt organization that controlled the state legislature for decades after the turn of the last century. It passed the "General Municipal Law" and the "Town Law" in 1909 while the closely watched Montauk case of Pharoah v. Benson was in progress. That matter was summarily dismissed without determining the Indian/Proprietor rights in 1910 and the library of the legislature burned to the ground in 1911 while the matter was on appeal. The issue was knowledge that the state legislature does not have jurisdiction over the freeholders and inhabitants of the towns of the State of New York assembled in town meeting.

New governments operating under the above two 1909 laws began to be secretly established in violation of the charters and Chapter 64 of the laws of 1788. The Town of Easthampton has two governments today (1686 Trustees & a town board) and the 1788 towns of New York are now governed by Town Boards under the 1909 Town Law. No town is any longer governing by town meeting as required by the Dongan Patents and the 1788 law. The sovereignty of the people assembled in town meeting, therefore, has been conquered by the Empire State.

**Carl Fisher** was the Florida mobster that took Al Capone to court over a turf war in Florida and was later sold Montauk's extensive common lands out of the trust of the 1918 estate of Mary Benson. In 1924 he brought the new "town board government" of East Hampton into Montauk and threw big parties for the state legislators at his new Montauk Manor. He also brought in criminals, bums and alcohol, burned down the common kitchen at the Montauk Association, turned Lake Montauk to salt water, subdivided proprietor common lands at North Neck, Indian Field and Hither Woods, and built a Tower in a central open field while chasing the defending proprietors out.

The stage is now set for Montauk to assemble and take back what is rightfully yours.

***It doesn't matter where you are from or vote, if you own real property in Montauk you own a share in a franchise with rights to vast commonwealth and sovereign liberties of jurisdiction.***

It is a hidden gift that is now available to be recovered. I pray for at least ten property owners to meet with me before the September 6th Assembly. I've done my best for you, now it is up to you. — Bob Ficalora

**WHY?**

This notice is being sent to all Montauk freeholder property owners on our 2005 list, New York's Governor, Attorney General, judges of the Court of Appeals, Assemblymen, Senators, Suffolk County legislators, and the defendants in the now concluded matter of Town of Montauk, Inc. v. Hon. George E. Pataki, Esq., Governor of the State of New York, and the People of the State of New York met in Assembly, and the Town Board Government of the town of East Hampton, and the Trustees of the Freeholders and Commonalty of the town of Easthampton, and the County of Suffolk, and the Brooklyn Historical Society, and the Suffolk County Water Authority, and 511 Equities, Inc., and the Nature Conservancy, Inc.(Mo. No. 2009-51;Suffolk 27553/04; AD2nd 2005-10912).

While the Montauk Trustee Corporation was unsuccessful in getting a trial, and an unsupportable judgement was entered on appeal, we are left with an illegal and unconstitutional government.

The **Montauk Gazette** of June 2008 listed our options should the court fail us, and now we take the matter to Montauk's taxpayers:

**PAY YOUR TAXES TO THE TOWN OF MONTAUK.**

It is now up to Montauk's property owners to assert their rights, recover your extensive lands, and establish lawful government by town meeting.

**Wrongful Jurisdiction**

It is uncontested that the town board of the Town of Easthampton governs Montauk:

- In violation of the 1686 colonial charter of the town of Easthampton (covering Easthampton and Montauk);
- In violation of Chapter 2 of the laws of 1691 (First Assembly) according to which the liberties of governance granted in the 1686 charter for the township (Dongan Patent) are enforceable against the State of New York (as successor to the King);
- In violation of the Constitution of the State of New York;
- In violation of the Constitution of the United States of America;
- In violation of the September 6th, 1851 order of Hon. Nathan B. Morse, Justice of the Supreme Court of the State of New York, by which the Town of Easthampton was ordered to release all corporate claim to Montauk (see: liber 63 of deeds, p. 171, March 9th, 1852);
- In violation of Chapter 139 of the laws of 1852 of the State of New York that incorporated Montauk, established the Montauk Trustee Corporation and affirmed its power to govern Montauk (April 2nd, 1852);
- In violation of the common law requirement of a charter, either by the King of England or by the State of New York, to govern.

We can and should stand up to this! We must have faith in our state judiciary while firmly demanding the rule of law.

Pay your property taxes into attorney's escrow and let them sue us to get it!

# Declaration of Right

Served with Petition on June 18th, 2003 upon  
Hon. George E. Pataki, Governor &  
Hon. Eliot Spitzer, Esq., Attorney General of the  
State of New York

We the undersigned proprietors and residents of Montauk, first established as a body politic and corporate as a part of the town of Easthampton by the town patent entered under the royal authority of King James II on December 9<sup>th</sup>, 1686, and then, subsequent to the court-ordered release of all corporate right to Montauk by said town, incorporated by an Act of the Legislature of the State of New York on April 2<sup>nd</sup>, 1852, are now somehow returned to the town of East Hampton under a reorganized and unincorporated government operating under the pretense of a modern state law and have been denied our incorporated franchise to govern as established by the aforesaid instruments. In light of the foregoing usurpation we do grieve and find it necessary to declare that:

We do retain and possess, together with all other proprietors and residents of Montauk, all of the rights, liberties, privileges and powers of an independent Township as set forth in the colonial patent and charter of December 9<sup>th</sup>, 1686.

The township of Montauk has the right to extraordinary liberties in the making and administering of local law, protected within the Constitutions of the State of New York and of the United States of America from their inception from state and federal interference, which we claim to the fullest extent of their meaning and historic enjoyment by our forefathers.

The township of Montauk is endowed with the right to the possession and administration of, or jurisdiction over, substantial properties in Montauk including all beaches, bottom lands, shell fishing, groundwater resources, lands that escheat for lack of heirs, the Benson Reservations, lands set forth in trust by agreements with the Montauk tribe of Indians, and significant other resources and franchises.

The township of Montauk has the absolute right to levy, collect and disburse all taxes upon real property or its sale in Montauk.

Wherefore, insomuch as we have and do suffer from the illegitimate and often repugnant administering of law, the subdivision, sale and other injury of and to our common lands, the overburdening of our precious fresh water resource, and the usurpation of our franchise to tax and to govern, we do claim and assert our fundamental right to petition the government for a redress of our grievances through formal delivery of this document to Mr. George E. Pataki, Governor of the State of New York.

**Discussion** - The 1686 colonial patent and charter incorporating the Town of Easthampton, including Montauk, established the Trustees of the Freeholders and Commonalty of said town to govern it. The lands covered by the Town Patent were divided by the September 6<sup>th</sup>, 1851, order of Hon. Nathan B. Morse, Justice of the Supreme Court of the State of New York. Pursuant to the order of the court a deed of conveyance was entered by the Easthampton Trustees under their corporate seal on March 9<sup>th</sup>, 1852, stating that:

... the parties of the first part [Easthampton Trustee Corporation] do hereby grant, surrender, quit-claim and release to the parties of the second part [Montauk proprietors] their heirs and assigns all and singular the lands in the County of Suffolk called Montauk including the Ponds, Fort Pond, Great Pond, Oyster Pond, and other ponds within the limits of the aforesaid judgment of said Court together with all right, title, property, possession or claim therein or thereunto. (Suffolk County Liber 63 of deeds. p. 171ff.).

What was released by this document was all claim to Montauk whatsoever by the Town of Easthampton. Recognizing that a void of legally recognized governmental powers had been created, the Legislature incorporated the proprietors of Montauk on April 2<sup>nd</sup> 1852 establishing the Montauk Trustee Corporation and affirming its power to govern Montauk. Our claim today through the above deed and the 1686 patent are the powers of a Township.

The "town board" form of government was devised by the Legislature beginning in 1909 (the Town Law) at a time that Montauk proprietors' rights were under intense scrutiny. A law suit, *Pharoah v. Benson, et. al.*, had been brought pursuant to a legislative enabling act to determine the rights, if any, held in Montauk by the Montauk tribe of Indians. It is clear that the Legislature reacted to the discovery that, according to the N.Y.S. Constitution and the 1686 charter, they were without jurisdiction to make local law in Montauk (or Easthampton) or to determine how it is governed. The "town board government" was set up quietly around 1924 and began to operate under the guise of the 1909 law. Because any attempt to incorporate the town board would have violated both the state and federal constitutions, it has never been legally established.

The above has been presented to the courts together with a document entitled **The Articulated Rights and Constitution of the Township of Montauk** that was adopted after significant review by our acting Board of Trustees in December of 2000. **The Articulated Rights** establishes that Montauk is an incorporated township within the State of New York under the jurisdiction of the courts and further sets forth a constitutional model of effective good government for the enjoyment and benefit of ourselves and of our posterity.

97 signatures collected



# The Legal Foundation of Montauk Township

## The First Assembly - Chapter Two of Laws of 1691

The history of Long Island in the 1680s leading up to the historic First Assembly in 1691 is truly amazing.

In 1682 a petition initiated by the town meeting in Easthampton pleaded for democratic government. A new governor, Thomas Dongan, was named by the Duke of York and issued instructions to come to New York and to convene an assembly. The first legislature of New York under the Duke

of York convened on October 17th and the original Constitution of New York was enacted on October 30th, 1683.

Sessions of the legislature of the Duke's province of New York convened until June 10th, 1686 after the Duke had been crowned King James II. He issued new instructions to Governor Dongan (at right), and it is clear from the record that these instructions led to a general uprising of Long Island's formidable militia.

Governor Dongan had presided over the colonial legislature since 1683 and knew these men well. He had declared his instructions: the 1683 constitution was repealed, stopping further convening of the provincial legislature. On December 9th, 1686, the rebellious republican men of Easthampton would appear before him showing military rank and Gov. Dongan's settlement was to

grant them a new charter for their town (the "Dongan Patent").

Easthampton had been a member of the Connecticut legislature when that government received its powerful 1662 charter, and key language within the Dongan patent that these lands "Be holden of his said Majesty, his heirs and successors in free and comon soccage according to the Mannor of East Greenwich in the County of Kent" is contained in both.

The powerful Puritan Minister Thomas James, Captain Thomas Talmadge, Lieut. John Wheeler and Ensigne Samuell Mulford were before Governor Dongan to receive the patent. The rank of "ensigne" was a

"You are to declare our will and pleasure that ye said Bill or Charter of Franchises [1683 Constitution] bee forthwith repealed and disallowed, as ye same is hereby Repealed, determined and made void."

- King James II instructions to Governor Thomas Dongan of New York, June 10th, 1686

commissioned rank for the legal standard-bearer necessary for treaties.

The Dongan Patent granted the sovereign right to make laws in town meeting together with sweeping judicial, police and taxing powers. A Southampton attorney who reviewed the

charters wrote that what was granted were "the powers of a state within a state".

In 1688 the "Glorious Revolution" swept King James II from the throne and on January 22nd, 1689, Parliament enacted the English Bill of Rights placing William, the Dutch prince of Orange, and his wife Mary Stuart on the throne as King and Queen of England.

King William was slow to attend to New York affairs, however, and Governor Nicholson continued to

support Catholicism both in government and the New York military. Rioting and disorder swept New York City with Governor Nicholson once threatening to burn the town if the rioting did not end. After some turmoil in the ranks, a group of rebellious militia seized Fort James.

On June 2nd, 1689, a prominent citizen and captain of the militia, Jacob Leisler, entered Fort James with fort-nine men and took control. Despite initial opposition to Leisler's rule, after the February 9th, 1690, attack upon Schenectady by the French that burned it to the ground, New York unified under him.

Jacob Leisler would remain Lieutenant Governor of New York from June 1689 until March of 1691. During that time he would call and preside over two provincial assemblies outside of royal authority and command the only intercolonial army until the American Revolution. He also acquired the land for today's New Rochelle for the settlement of French Huguenots fleeing religious persecution.

On March 10, 1690 correspondence from Easthampton signed by "Samuell Mulforde, Samuell Person, and Thomas Chatfield (*"In the name of the rest"*)" was addressed to Jacob Leisler. In a very powerful grievance and petition they informed Leisler that:

"we have agreed to send over to his Majesty both a true Narraton of the Greivances we have suffered this many yeares under an arbeitrary power, and a Petition to their Majesties that we might be rejoyned with Connecticut Government as formerly; agreeably to that Act of Parliament, that all places (N: E.) being perticularly Mentioned Shall have the Same privileges they enjoyed in the yeare 1660 restored unto them ..."

Shortly thereafter, on April 24th, 1690, the first of two assemblies was convened under Jacob Leisler. It proceeded to make one law for the purpose of raising a revenue (tax) to aid in the defense against the French.

The second Leisler Assembly convened on September 15th, 1690 and passed two laws, one to further establish the revenue, and the other to strengthen the New York military under Leisler's command and to impose a fine for refusing military service in the war against the French.

The men of Easthampton and New York were solidly republican, and it would become very clear they did not want to surrender the colony to William and Mary without negotiations. There was precedent for such surrender established by the Virginia colony's surrender to Parliament in the 1650s. That was not allowable precedent however, and the Commonwealth of England was to prove more friendly to the colonies than King William.

A new governor for New York, Henry Sloughter, Esq., was named by King William and departed from London in December of 1690. In late January of 1691, however, the first to arrive were royal troops under the command of Major Richard Ingoldsby.

When Major Ingoldsby demanded that Leisler surrender the province to him, he refused, saying that the major did not have the authority to govern. Major Ingoldsby then attacked Fort James and was defeated losing two men in the battle.

A standoff ensued between the regimented and strong New York forces under Lieutenant Governor Jacob Leisler and Ingoldsby's royal troops until Governor Sloughter arrived on March 19th, 1691.

Upon the Governor's appearance Leisler sent out a team to negotiate terms of surrender. No discussion was allowed, however, and his negotiators were arrested. Leisler and his men then

surrendered and were thrown into prison and charged with rebellion and murder.

It was under these conditions - with Jacob Leisler and his men in jail and with their loyal New York militia agitated outside the gates - that on April 3rd, 1691, the "First Assembly" of the royal province of New York was convened.

One month later, on May 6th, 1691, the first laws were passed by the new Assembly. Chapter One of the laws of 1691 the province of New York was entitled

"An Act for the quieting and settling the Disorders that have lately happened within this province and for the Establishing and Securing their Majestyes present Government against the like Disorders for the Future".

This Act formally surrendered the colony to William and Mary, recognized them as the King and Queen of England, established provincial (now State) assembly, and submitted to royal authority. The final part of the Act goes on to state that:

"whatsoever person or persons shall by any manner of way or upon any pretence whatsoever Endavour by force of arms or otherwise disturbe the peace, good and quiet of this their Majestyes Government as is now Established shall be Deemed and Esteemed as Rebels and Traitors unto their Majestyes and incurr the pains, penalties and forfeitures as the Laws of England hath for such Offences made and provided."

Having surrendered the New York to the Governor of William and Mary with strong language to quiet the militia outside, Chapter Two was among the main laws received by the colonists in return. It was entitled

"An Act for the Settling, Quieting and Confirming unto the Cities, Towns, Mannors and freeholders within this Province their several Grants, Patents and Rights Respectively."

While Chapter One surrendered the colony to William and Mary, Chapter

Two surrendered significant royal power to the people by holding that

"all the Charters, Pattents, Grants made, given and granted and well and truley executed under the seal of this Province, Constituted and Authorized by their late and present Majtys the Kings of England and Registered in the Sectaryes office, unto the severall and respective Corporations of bodys politick of the Cittys, Towns and Mannors, and alsoe to the severall and respective ffreeholders within this Province, are and shall for ever be deemed, esteemed and reputed good and effectual Charters, Patents and grants Authentick in the Law against their Majesties heirs and Successors for ever..."

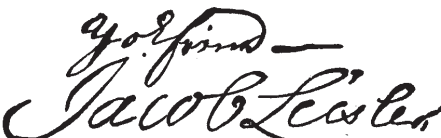
It is well settled in the law that the State of New York is successor to the King and that, therefore, the Dongan patents of the towns of Suffolk County are enforceable against the State of New York. This law also remains protected at by Article I sect. 14 of the Constitution of the State of New York.

Ten days after the above surrender and settlement was made, on May 16, 1691, Jacob Leisler and his son-in-law Jacob Milbourne were taken out of jail and hanged, cut down "half-dead" and their heads cut off.

Almost four years later, on May 3, 1695, King William signed an act issuing a general pardon clearing Leisler's name and restoring his estate.

Chapter 2 of the laws of 1691 established the enforceability of the Dongan patents of the towns of Suffolk County against the government of New York forever. Such powerful legal protection of sovereign right to govern is rarely attained.

It is our duty to recover and protect these sovereign liberties for ourselves and for those who come after us.



A handwritten signature in cursive script that reads "Jacob Leisler". Above the signature, the name "Ingoldsby" is faintly visible, crossed out with a horizontal line. Below the signature, the words "AUTOGRAPH OF LEISLER." are printed in a small, sans-serif font.

## Montauk's Incorporations

Montauk's lands were jurisdictionally incorporated in 1686 and 1852. The MFOP/Montauk Trustee Corporation assumed and consolidated the corporate rights for Montauk as the Incorporated Township of Montauk with ***The Articulated Rights and Constitution of the Township of Montauk in December of 2000.***

The first incorporation was with a colonial charter granted by Governor Thomas Dongan of the newly Royal Province of New York in December of 1686 known as the Dongan Patent.

On June 10th, 1686 King James II vacated and annulled the Constitution of 1683 eliminating the colonial legislature for the making of laws and imposing autocratic corporate rule. The record shows that Easthampton placed itself in a position of military readiness and most of the men receiving the patent from Governor Dongan showed military rank.

What Easthampton received, and was forced to pay a good sum of money for, were the same jurisdictional authorities received in its mother colony of Connecticut's historic 1662 charter, considered the most powerful ever granted to a colony.

All of the towns of Suffolk County received similar Charters until the 1689 patent for the town of Huntington. For this reason, the Dongan Patents have been referred to as granting "the rights of states within a state".

The 1852 second incorporation of Montauk was by the state legislature after the lands covered by the 1686 Dongan Patent for the Town of Easthampton were divided by court order in the matter of Henry P. Hedges, et. al. v. the Trustees of the Freeholders and Commonalty of the Town of Easthampton. It released all claim to Montauk pursuant to the court's order under its corporate seal by deed dated March 9th, 1852. Montauk was then incorporated by an act of the legislature on April 2nd 1852 establishing

the Montauk trustee corporation and affirming its power to govern.

The Dongan Patent covers the Towns of Easthampton and Montauk and the Trustee corporations claiming rights through it are the only corporations with the constitutional authority to govern.

The franchise right of the property owners and residents of Montauk, therefore, is to assemble in town meeting and to elect trustees and with the sovereign power to govern.

Today, however, Montauk is being governed by an unconstitutional and legally fictitious town board entity operating according to a 1909 legislative enactment, the Town Law of the State of New York.

The result of this century old and

Legal papers at  
[www.montauk.com](http://www.montauk.com)

ongoing fraud has been the usurpation and suppression of the freeholding property owners' franchise right to tax and to govern.

The recent papers submitted to the high court of Appeals attached a document entitled ***General Association***. It was adapted from a 1775 document signed by "all men capable of bearing arms" in the town of East-Hampton. It was initiated and circulated by the Freemen, Freeholders, and inhabitants of the city and county of New-York. (see: <http://longislandgenealogy.com/append3.html#general>)

The motion brief stated that:

**"...understanding the seriousness of the suppression of the sovereign liberties presented, your appellant is considering a number of options to lawfully attain the rights presented before you, including the distribution of the attached revised 1775 General Association that was a unifying preamble to the American Revolution in the State of New York. It is amazing that the complaints presented to this court today are very much the same as those presented in the original 1775**

**document. And so we, too, have resolved never to become slaves"**

The court received this and probably read it. Hopefully the Montauk freeholders in receipt of this mailing also have read it and are willing to take the action proposed of paying your property taxes to the Town of Montauk for deposit in the care of an attorney's escrow.

They don't own you!

You are not the slaves of the state!

The State of New York, Suffolk County and the town board entity in East Hampton have no right into or over Montauk. They have grabbed or permitted the development large parts of Montauk's commonwealth (undivided property of the Montauk freeholders, Town of Montauk property).

In the book entitled MONTAUK published in 1925 Board of Trustees of the Freeholders and Commonalty of the town of East Hampton, in the introduction, it says:

**About the year 1910 the then owners of Montauk lands forbid East Hampton men, descendants of Proprietors of Montauk, and freeholders of the town of East Hampton going on their private lands to hunt and fish. The decision of the Supreme Court, made sixty years before taking away all rights of the town in Montauk lands, appears to have been forgotten. There was dissension between private owners of Montauk and townsmen. This continued for a period of about fourteen years.**

The the defending "owners of Montauk lands" were then forced out and the Tammany supported government established. The rights of the property owners of Montauk through the 1686 Dongan Patent and chapter 139 of the Laws of 1852 remain on the books. The 14 year stand that was taken by our predecessors can - and should - be taken again.

Come to the September 6th Assembly, or meet with Bob Ficalora beforehand to chat, ask questions, and hopefully sign up to pay your taxes to the Town of Montauk.

Montauk Friends of Olmsted Parks  
/ Montauk Trustee Corporation  
P.O. Box 2612  
631-238-5445  
Montauk, NY 11954

Address Service Requested

*Your Sovereign  
liberties and  
commonwealth in  
Montauk are  
priceless...*

These editions of the Montauk Gazette and The Democratic Republican™ are being mailed to over 4,000 people: New York state judges and officials, the defendants in the matter of the Town of Montauk, Inc. v. Hon. Gov. Pataki, et al, Montauk property owners, Washington State friends, and assorted others.

Please understand that everything that I have done has been done with humility out of my duty to you and to our country.

The Montauk Constitution and the RDP Charter are intended to be foundational documents to establish ongoing organizations. It is hoped that the scheduled Assembly will be a successful kickoff for Montauk. The RDP can be started by volunteers simply coming forward to act as County chairs and commencing the process using the RDP Charter.



Montauk's Trustee Corporation  
Township of Montauk  
Est. 1686/1852/2000

The court refused to make the East Hampton Town Board show that it is a legal entity or has the right to collect Montauk's taxes or to control its land use, justice court or police. Fundamental legal and constitutional liberties have been suppressed by an imperial state legislature. Montauk's property owners can do what the courts did not by forcing the Town Board of the Town of East Hampton to show why Montauk's property owners should not pay their taxes to the Township of Montauk.

**PAY YOUR TAXES TO THE  
TOWNSHIP OF MONTAUK!**

If you hold your land in Montauk in fee simple, you are freeholder. You have sovereign rights and liberties of jurisdiction and commonwealth through a 1686 colonial charter. By law and by right, you are required to assemble in town meeting to assess taxes, assert eminent domain, exert police powers, and to claim escheat

Send a copy of your tax bill with a check made out to Incorporated Township of Montauk to an attorney's escrow account (to be established). Please contact Bob Ficalora at bobfic@montauk.com or attend the September 6th Assembly for more information.

**COURT DOCUMENTS  
AT  
WWW.MONTAUK.COM**