

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

THE SEAVIEW AT AMAGANSETT, LTD., DUNES  
AT NAPEAGUE PROPERTY OWNERS ASSOCIATION,  
INC., THE TIDES HOMEOWNERS ASSOCIATION, INC.,  
VHALERS LANE HOMEOWNERS ASSOCIATION, INC.,  
THE OCEAN ESTATES PROPERTY OWNERS  
ASSOCIATION, INC., ROBERT HIGGINS, MARC HELIE,  
ROBERT CRISTOFARO AND ROBERT COOPERMAN,  
Plaintiffs,  
-against-  
TOWN OF MONTAUK, Intervenor AND  
TRUSTEES OF THE FREEHOLDERS AND  
COMMONALTY OF THE TOWN OF EAST  
HAMPTON AND THE TOWN OF EAST HAMPTON,  
Defendants,  
-and-  
JAY H. BAKER, PATTY C. BAKER,  
DAVID STUART TYSON, STEPHANIE BITTERMAN,  
JUNE MERTON, NAPEAGUE ASSOCIATES,  
DAVID ROSS, GRACE ROSS, IRVING C. MARCUS  
AND HARRIET MARCUS,  
Additional Defendants.

NOTICE OF INTERVENTION  
(CPLR §1012(a)(3))

Index No. 09-34714

MELVIN TANENBAUM

FILED

SEP 29 2011

Judith A. Pascata  
CLERK OF SUFFOLK COUNTY

**To ALL PLAINTIFFS and Governor Andrew M. Cuomo: TAKE NOTICE**

The Montauk Friends of Olmsted Parks / Montauk Trustee Corporation does herewith notice intervention as a matter of right pursuant to CPLR §1012(a)(3) on behalf of the **TOWN OF MONTAUK** upon an historical claim of jurisdiction and rights into and over real property under the laws and Constitution of the State of New York (Chapter 2 of laws of 1691; NY Const. Art I, sect. XIV & XV). This Notice is timely: an intervention as of right is permitted in an action involving the disposition of property where that person may be adversely affected by the judgment (see CPLR §1012[a][3]; Velazquez v Decaudin, 49 AD3d 712, 717) and intervenor has a real and substantial interest in the outcome of the proceedings (see Berkoski v Board of Trustees of Incorporated Village of Southampton, 67 AD3d 840).

The attached **PETITION FOR AN EXECUTIVE ORDER**, draft **EXECUTIVE ORDER**

and **CERTIFICATE OF INCORPORATION OF THE TOWNSHIP OF MONTAUK** are currently before Governor Andrew M. Cuomo. The certificate was signed by thirty nine (39) Montauk freeholder/proprietors recognizing the conditions precedent of the two prior jurisdictional incorporations of Montauk: the 1686 Dongan Patent and Charter (attached p. 19) and the 1852 Act of the State legislature recorded at Chapter 139 of the laws of that year incorporating Montauk Proprietors affirming their power to govern (attached p. 52).

New York Business Corporations law §403 “Formation of Corporations” holds that:

*Upon the filing of the certificate of incorporation by the department of state, the corporate existence shall begin, and such certificate shall be conclusive evidence that all conditions precedent have been fulfilled and that the corporation has been formed under this chapter .*

The Certificate of Incorporation signed by thirty-nine (39) Montauk proprietor/freeholders with a copy tendered to each the originals of which remain at the office of Governor Cuomo reads:

*We, the undersigned taxpaying owners of land in Montauk, understand that by signing this certificate that we are the founding incorporators of the Township of Montauk. It will take effect immediately upon filing with the New York Department of State, Division of Corporations pursuant to N.Y. Business Corporation Law §403 and certifies our rights and liberties pursuant to the Articulated Rights and Constitution of the Township of Montauk (see [www.montauk.com](http://www.montauk.com)). We do further agree to be contacted about commencing the process of town meeting pursuant thereunto:... (copy attached)*

That the properly presented Certificate of Incorporation was rejected is curious because the equities are clear that Montauk is a Town and filing the document in the state’s records would only simplify the process of ejecting the Town of East Hampton from Montauk. Allowing the situation to continue escalates it from

injurious to shameful.

The 1686 Dongan Patent established the proprietary Town of Easthampton of the Freeholders and Inhabitants with defendant Easthampton Trustees of said town assembled in Town Meeting as its only government.

The 1851 New York Supreme Court order of Hon, Nathan B. Morse in the matter of Henry P. Hedges against defendant E.H. Trustees divided the lands within the Dongan Patent. It was effected by deed dated March 9th, 1852, with the E.H. Trustees and Montauk's proprietors retaining an equal claim to its provisions. Because Montauk was left without lawful government, however, on April 3rd, 1852, an Act of the State legislature remedied this defect by incorporating the freeholder/ proprietors of Montauk and establishing the corporation of the Trustees of Montauk affirming its power to govern. Because the rights granted in the Dongan Patent and Charter are attached to and run with the land Montauk is a Town with all the rights, liberties, privileges and powers therein conferred.

In 1879 Montauk was sold at auction pursuant to a court order to Arthur W. Benson together with its Trustee corporation making him the sole proprietor and Trustee of Montauk. After about two years of negotiation, in 1882, defendant Easthampton Trustee Corp. sold him two parcels at Napeague adjoining Montauk immediately to the west of Montauk. Because in 1882 Arthur W. Benson was the sole proprietor and trustee of Montauk the sale expanded the boundaries of the Town of Montauk under the 1686 Patent.

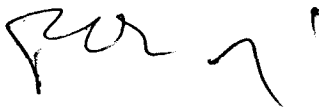
This intervention is timely because a petition for an executive order is before the honorable Governor Andrew M. Cuomo for relief including to compel Division of Corporations of the State of New York to file the Certificate of Incorporation of the Township of Montauk presented before him. The instant dispute will be quickly settled when Montauk's claim of jurisdiction over Napeague is recognized. The boilerplate "Benson Covenants" burdening Montauk, however, establish that:

*“A right of way is also reserved, in favor of pedestrians only, along the beach at the foot of the cliffs or bluffs, between foot of said cliffs or bluffs and the edge of Ocean or the Block Island Sound.” [liber 585 of deeds p.420]*

Filing the Certificate of incorporation of the Township of Montauk currently in the possession of Governor Cuomo “shall be conclusive evidence that all conditions precedent have been fulfilled and that the corporation has been formed under this chapter” (Business corporations law §403).

Although for now it is TRESPASSING, in the end decisions about regulating or allowing beach driving will be determined by resolution at the Montauk Town meeting. The issue of the legality and sufficiency of titles claimed by the parties herein, however, should be determined before the first Montauk Town meeting while they are still joined before this court. It should be noted that the Town of Montauk in its Constitution makes known its intention to take possession of the State Parks within its boundaries and that clearing the landscape of those without right of title is a good way to start.

September 28th, 2011



Robert A. Ficalora  
Acting Supervisor  
Township of Montauk