

Supreme Court of the State of New York
Appellate Division, Second Judicial Department

Town of Montauk, Inc.

Petitioner-Appellant

-against-

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 gov't of the Town of East Hampton, and The Trustees
of the Freeholders and Commonalty of the Town of Easthampton,
and The Suffolk County Water Authority, Inc., and The County of
Suffolk, and The Brooklyn Historical Society, Inc., and 511 Equities,
Inc., and The Nature Conservancy, Inc.

Respondents-Respondent

**Town of Montauk
Consolidated
Reply**

A.D. no. 05-10912
(Suffolk 04-27553)

"Moreover, the sd Richard Nicolls Esqr, Governor as aforesaid did thereby Ratifye confirme and grant unto the said Patentees and their associates their heires, successors and assignes all the Priviledges belonging to a town within this Government..." **March 13th, 1666 Nicolls Patent affirmed in the 1686 Dongan Patent (A351-2)**

"all Charters, Patents, Grants...made, given and granted... unto the several and respective ffreeholders within this Province are and for ever shall be deemed, esteemed and reputed good and effectual, Charters, Patents and grants Authentick in the Law against their Majesties their heires and successors for ever..." **Chapter 2 of the laws of the Colony of New York (First Assembly) May 6th, 1691 (A463)**

"For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments." - **Declaration of Independence in 1777 Constitution of the State of New York (A469)**

"We do beg the court to understand that we have lost no war, and we haven't done anything wrong that we know of, but the very special liberties and priviledges of our town - fundamental rights of sovereignty - have been suppressed and a new and despotic form of government has been imposed upon us." - **November 5, 2002 Petition by the acting Trustees of Montauk to the New York Supreme Court (in November 2003 Montauk Gazette) (A516)**

"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" -
"Bob's peace" in September 2005 Montauk Gazette, page 2, (att. A).

The Montauk Friends of Olmsted Parks / Montauk Trustee Corporation, on
behalf of the Incorporated Township of Montauk, does herewith reply to the

answering briefs by respondents Hon. George E. Pataki, Esq., Governor of the State of New York, the County of Suffolk, and The Town Board Government of the Town of East Hampton. The County of Suffolk's answer is supported, in part, by Point I in its Memorandum of Law and by a Motion to Dismiss. At Point II of the County of Suffolk's Memorandum of Law and its Motion to Dismiss and for costs and sanctions are answered separately by a Cross-Motion for Sanctions.

No answers or other papers have been received by the other respondents and the Attorney General's failure to answer on behalf of the State Assembly is refuted; this reply to the above received answers are consolidated in this one paper and presented below.

Preliminary Statement

NONE OF THE ANSWERING BRIEFS BY RESPONDENTS HON. GEORGE E. PATAKI, ESQ., GOVERNOR OF THE STATE OF NEW YORK, THE COUNTY OF SUFFOLK, OR THE TOWN BOARD OF THE TOWN OF EAST HAMPTON SHOW THAT THE TOWN BOARD IS INCORPORATED OR IS NOT A STATE IMPOSITION IN VIOLATION OF CHAPTER 2 OF THE LAWS OF 1691.

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Reply to Hon. Governor George E. Pataki

Standing and Legislative Sovereignty

All corporate right of the Town of Easthampton (Trustees) into and over Montauk deriving from the 1686 letters patent was released under it's corporate seal by deed dated March 9th, 1852 (A46). This deed, entered pursuant to the September 6th, 1851 order of this court, passed to Montauk freeholders the powers of a body corporate and politic of a township by reason of succession (A39, A288). The board of directors of the MFOP/Montauk Trustee Corporation are successor freeholders of Montauk and Appellant asserts that this right by privity of estate is vastly more powerful than the legislative enactment found at Chapter 139 of the Laws of 1852 for governing and regulating the Montauk Indian reservations and the cattle and resources operation on the unsettled lands at Montauk. The essay entitled "The Legal Foundation of Montauk Township" at page A523 gives the history. Limitations upon legislative power due to colonial charters were understood during the colonial era (see "Higher Law" at A329, A333).

Charters to bodies politic such as the Dongan Patents were protected at Section XXXVI of the 1777 Constitution of the State of New York (A340, A465, A477) until later allegedly repealed at Article I § 15 in 1962 while Montauk's rights were under intensive review (A532, A535, A803, A192-4). A rapid sequences by the New York State legislature occurred shortly after the above

purported repeal to replace the powerful home-rule powers granted by the colonial charters (Municipal Home Rule Law, Att. B).

The Municipal Home Rule law of the State of New York was enacted on April 30, 1963 and recorded at Chapter 843 of the laws of 1963. It took effect on January 1st, 1964, and a vote was then set for amendments to the Constitution of the State of New York. Its use by the town board entity to take and control Montauk lands is illustrative. Article 1 §43 "Beaches" of the East Hampton Town Code is attached hereto wherein the town board entity claims to "own" Montauk's beaches "pursuant to authority granted the board under the provisions of the Municipal Home Rule Law of the State of New York".

Assuming that it legally exists, there can be no privity of estate by the Town Board entity through the March 9th, 1851 deed by which the corporate body politic of the Trustees of the freeholders and commonalty of the Town of Easthampton released all claim to Montauk to Montauk Freeholders.

The legislative takings of Montauk lands and franchises by the State of New York and its enabling of a legally fictitious body to pose as a government under the 1909 Town Law and sell off Montauk's commonwealth is clear. The November 2001 Summary Memorandum of Robert A. Ficalora found in the record at A348 discusses this more fully.

Statement of Case, Incomprehensible, Plenary Action and claims for relief.

This court will NOT find that the Amended Petition is incomprehensible or only in the nature of a plenary action.

The Amended Petition does cite, in its caption, CPLR §7803(2) which holds that:

§ 7803. Questions raised. The only questions that may be raised in a proceeding under this article are: 2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction

Furthermore, paragraph 1 of the Amended Petition asks that why an order should not be entered "enjoining and restraining the town of East Hampton from all planning, permitting or use of lands in Montauk" because it was proceeding without any valid claim of jurisdiction - the purpose of bringing a proceeding under this article.

The balance of Paragraph 1 is also for relief under CPLR §7803(2):

Paragraph 1(a) seeks recognition of the Incorporated Township of Montauk precisely because the Town board entity is claiming municipal powers over Montauk without any basis or claim of jurisdiction.

Paragraph 1(b) seeks immediate delivery into court of Montauk's taxes precisely because the Town board entity has no basis or claim to jurisdiction to assess, tax or allocate Montauk's taxes.

Paragraph 1(c) raises the question of why Acts of Distant Legislatures (such as respondent State Assembly) are not made without or in excess of jurisdiction given the 1686 Dongan Patent and Chapter 2 of the Laws of 1691.

The above petitions for relief were initially sought through an unobtained order to show cause, and are in the nature of a special proceeding pursuant to CPLR §7803(2).

Much of the subsequent relief petitioned for in the Amended Petition may be in the nature of a plenary action, and at paragraph 9 Appellant does recognize this by petitioning that this court:

9.) compel, review and prohibit actions by bodies politic operating pursuant to statute using the courts prerogative powers consolidated under Article 78 of the CPLR, and then convert this special proceeding into an action for declaratory judgment.

It is well established that there is fluidity between a special proceeding and an action for declaratory judgment. CPLR §103(c) holds:

Improper form. If a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution. If the court finds it appropriate in the interests of justice, it may convert a motion into a special proceeding, or vice-versa, upon such terms as may be just, including the payment of fees and costs.

Judge Loughlin's dismissal must be reversed, the injunctive relief considered and granted, and this matter allowed to proceed to trial.

Limitations, Laches, Service on Attorney General sufficient to join State Legislature

The statute of limitations does not apply (A31) and the equitable doctrine of laches is similarly inapplicable.

To the extent that service was improperly made upon the Solicitor General for the State Assembly, the attorney general's office was also served and that service should suffice for service upon the Assembly, CPLR 307(1). To the extent that service was imperfect it may be corrected as the immediate injunctive relief petitioned for is against the Town Board entity of the Town of Easthampton.

In reply to the "Statement of the case"

The Court of Appeals transferred this matter to this court not on the ground that it lacked jurisdiction, but "upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statute are involved" (A12). Your Appellant believes that this order constrains the court to determining the other questions raised in the Amended Petition, the most important being:

Does the town board entity legally exist?

Is Montauk a suppressed incorporated township?

In reply to the Governor's Argument Point I

The issue of special proceeding versus plenary action was considered above. This matter was brought for relief under Article 78 of the CPLR. Appellant did

petition (at 9.) for conversion to an action for declaratory judgment after the urgent injunctive relief sought under Article 78 has been granted.

The restitution or damages sought by petitioner is incidental to the primary relief being sought, and not the primary purpose of the cause.

In reply to the Governor's Argument Point II

Your Appellant, with a board of directors with a majority of Montauk freeholders, strongly asserts its entitlement to bring this proceeding and the statements contained in the petition and supporting affidavit and documents contain the material elements of each cause of action.

The town board entity of Easthampton has not shown any incorporation or other papers to prove that it is a legal entity that has any right to collect Montauk's taxes or to control its land use and police, or that Montauk is not an incorporated township.

Appellant's reading of the Court of Appeals May 6th, 2004, decision is for the court's consideration. It is sufficient that Appellant believes that said decision recognized the Incorporated Township of Montauk on the record presented and that this court will arrive at the same conclusion.

In reply to the Governor's Argument Point III

In the Amended Petition Appellant asserts that in alleging the State of New York's violation of Chapter 2 of the Laws of 1691 which holds that the colonial

charters are enforceable against the State as successor to the King (A24) and does further seek a mandamus to compel the Governor to take action to enforce it.

Clearly, therefore, Governor Pataki or his successor are necessary parties.

In reply to the Governor's Argument Point IV

The four month statute of limitations of CPLR § 217(1) applies to review of a determination made not a current problem of a body or officer continuing to act without or in excess of jurisdiction.

Reliance on the twenty year statute of limitations set forth in CPLR § 11(d) is by a grantee of the state for real property, and similarly fails. In this matter there is no cause made by a grantee of the state for real property.

There has been no neglect or omission to assert a right after it became known (see: second affirmative defense at A831).

Appellant is fully aware of the issue of persons having purchased land and developed it in good faith and believes that with liability being determined in the parties joined herein, this matter can be settled amicably and without injury to innocent parties, including the Incorporated Township of Montauk.

CONCLUSORY REPLY in re: Governor Pataki

This clearly presented matter was properly filed as an Article 78 proceeding under CPLR 7803(2), establishes a right to relief in the corporate Appellant, the Attorney General's office should be ordered to appear on behalf of the state legislature, and Governor Pataki is a necessary party.

Reply to County of Suffolk

Respondent County of Suffolk's answer to the Amended Petition was to file a motion to dismiss on the ground that the brief and appendix herein do not comply with the CPLR and the rules of this court. It further does move the court for costs and sanctions for allegedly prosecuting a frivolous appeal.

Appellant followed CPLR §5528 ("Content of Briefs and Appendices") and worked closely with the clerks of the court to ensure that the appendix was properly prepared. A Cross-motion for Sanctions is filed by appellant against the County of Suffolk concurrent with this reply.

In summary, the court will find no fatal faults Appellant's papers and Appellant does pray that the cross-motion be granted.

Reply to the Town Board of the Town of Easthampton

Respondent Town Board again fails to show any incorporation papers or explain of when it appeared or the issues raised in Mr. Ficalora's 2001 Summary

Memorandum (A348). For a discussion of Chapter 64 of the laws of 1788 please see the article in the Montauk Gazette (att. A). The court should consider that Chapter 64 was passed on March 7th, 1788 only five months before the very contentious ratification of the Federal Constitution of the United States on July 26, 1788. It is an amazing historical circumstance that the centennials of the Dongan Patents to the newly liberated Towns of Suffolk County were being celebrated when the issue of states rights and powers were clearly foremost in the legislators minds (see Montauk Gazette, Att. A, p.4). Where are the town meetings?

Many of the issues raised by the Town Board of the town of East Hampton have been dealt with above, mostly pointing to appellant's reply at A831. Appellant's entitlement to sue and the standing of the Montauk Friends of Olmsted Parks/Montauk Trustee Corporation which was established for and is governed by successor freeholders of Montauk is clear (Brief, p.11-12).

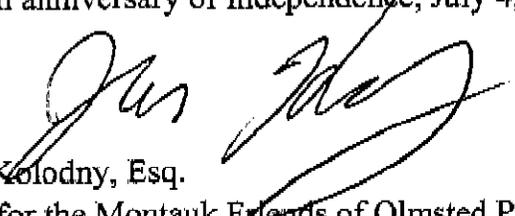
There is nothing frivolous or harrassing about Appellant's appearance before this court.

Conclusion

The town board entity of the Town of East Hampton is unable to show that it is a legal entity and nothing in its answer is compelling to dismiss the claims of the Appellant herein. An order should be entered to compel the Attorney General's

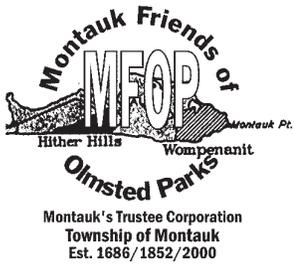
office to appear on behalf of respondent state legislature and the cross-motion for sanctions against the County of Suffolk should be granted together with such other and further relief as the court deems equitable and just.

This 230th anniversary of Independence, July 4, 2006



Jason B. Kolodny, Esq.

Attorney for the Montauk Friends of Olmsted Parks / Montauk Trustee Corporation



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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 republic an government in America, and of New York State government. We pray the high court will take jurisdiction and hear our honest plea.

see: 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 towne 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 undertood 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 claim 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 defence 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

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 its sovereign powers as successor to royal authority to restrain distant assemblies claiming 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.

Att. A

"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 entitled "An inquiry into the rights of the English Colonies", protests Parliaments' usurpation of the rights of freeholders and of 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.

Section 43 of the Town Code of the Town of East Hampton

§ 43-1

BEACHES AND PARKS

§ 43-2

GENERAL REFERENCES

Alcoholic beverages — See Ch. 37.
Animals — See Ch. 38.
Mass assemblages — See Ch. 39.
Docks — See Ch. 70.
Noise — See Ch. 106.
Open space preservation — See Ch. 110.
Shellfish — See Ch. 125.
Waterways and boats — See Ch. 149.

ARTICLE I

Beaches

[Adopted 9-24-1991 as L.L. No. 21-1991]

§ 43-1. Authority.

This local law is adopted by the Town Board of the Town of East Hampton pursuant to the authority granted the Board under the provisions of the Municipal Home Rule Law of the State of New York.

§ 43-2. Applicability.

- A. The Trustees and the Town Board each have ownership of and authority over certain beach areas within the boundaries of the Town of East Hampton. In an effort to provide uniform rules and regulations for all beach areas within the township, the Town Board and the Trustees have promulgated the following rules and regulations with respect to all beach areas within the boundaries of the township.
- B. The provisions of this local law shall apply to the following areas:
 - (1) The ocean beaches from the westerly boundary of the Town of East Hampton to the Montauk State Park, exclusive of those areas located within the boundaries of the incorporated Villages of East Hampton and Sag Harbor.

- (2) All other beaches within the boundaries of the township, exclusive of those areas located within the boundaries of any incorporated village.

§ 43-3. Definitions.

For the purpose of this local law, the following terms shall have the meanings indicated:

ACCESS — A means of entry to or exit from a beach.

(Cont'd on page 4303)

BEACH — All land lying between a body of fresh- or salt water and the base of a bluff or dune. In cases where there is no bluff or dune present, then the "beach" shall be all land lying between such body of water and the naturally occurring beach grass or the upland vegetation if no naturally occurring beach grass is present.

BLUFF — A formation of land which is landward of the natural beach and which rises sharply from its base to a bluff line where the natural land contours resume a gradual slope.

DUNE — A naturally occurring accumulation of sand in wind-formed ridges or mounds landward of the beach, often characterized by the natural growth of beach grass (*Ammophila breviligulata*). Included in this definition are deposits of fill placed for the purpose of dune construction.

OPERATE — The term "operate" shall have the same meaning as that given it in the Vehicle and Traffic Law. A person "operates" a vehicle when he begins to use the mechanism of the vehicle for the purpose of putting the vehicle in motion even though he does not move it. "Operate" is markedly broader than "drive" and includes, among other things, sitting behind the wheel with the keys in the ignition even if the vehicle is not running.

PROTECTED BIRDS — Birds now or hereafter listed on the New York State and/or federal threatened or endangered species list.

TOWN BEACHES — Beaches owned and/or managed by the East Hampton Town Board. Included within "town beaches" are all beaches within the boundaries of the Town of East Hampton, exclusive of those beaches located within the boundaries of the incorporated Villages of East Hampton and Sag Harbor and exclusive of Trustee beaches, as hereinafter defined.

TRUSTEE BEACHES — Beaches owned and managed by the Trustees of the Freeholders and Commonalty of the Town of East Hampton. Included within "Trustee beaches" are the following:

- A. The ocean beaches from the westerly boundary of the Town of East Hampton to the westerly boundary of Hither Hills State Park.
- B. The beaches adjacent to the following bodies of water: Wainscott Pond, Georgica Pond, Napeague Harbor, Gardiners Bay, Fresh Pond, Accabonac Creek and Harbor, Pussy's Pond, Hog Creek, Three Mile Harbor, Duck Creek, Hands Creek, Alewife Brook, Northwest Harbor, Northwest Creek, Little Northwest Creek and Sag Harbor.
- C. Specifically excluded from the definition of Trustee beaches are the following beaches: Sammys Beach above mean high water; Maidstone Park Beach from the westerly boundary of Flagg Hole Road to the inlet of Three Mile Harbor; the beach adjacent to Gardiners Bay lying between Alberts Landing Road and Barnes Hole Road; and all beaches lying east of the westerly boundary of Hither Hills State Park (Montauk).

UNREASONABLE NOISE — The presence of that amount of acoustic energy which causes temporary or permanent hearing loss in persons exposed; that which is otherwise injurious or tends to be injurious to the public health or welfare, causes a nuisance or interferes with the comfortable enjoyment of life and property of others; or that which exceeds the standards or restrictions set forth in Chapter 106, Noise, of the Town Code.

VEHICLE — Any transportation device which is propelled by other than muscular power.

§ 43-4. Prohibited conduct.

- A. No person shall damage, deface, injure, remove, tamper with or destroy any sign, snow fencing, flagging or other property located on the beach.
- B. No person shall throw, break, cast, lay or deposit a glass bottle or pieces of crockery or glass or glassware, fish, garbage or refuse or any injurious substance of any kind or nature on any

CHAPTER 843

AN ACT to provide a municipal home rule law, constituting chapter thirty-six-a of the consolidated laws

Became a law April 30, 1963, with the approval of the Governor.

Passed, on message of necessity, pursuant to article III, section 14 of the Constitution, by a majority vote, three-fifths being present The People of the State of New York, represented in Senate and Assembly, do enact as follows:

MUNICIPAL HOME RULE LAW

- Article
1. Short title; definitions. (§ § 1-2)
 2. General powers of local governments to adopt and amend local laws; restrictions. (§ § 10-11)
 3. Procedure for adoption of local laws; referenda; filing and publication. (§ § 20-28)
 4. Powers of counties and cities to adopt charters. (§ § 30-38)
 5. Requests of local governments for enactment of special laws relating to their property, affairs or government. (§ 40)
 6. Legislative intent; construction; effective date. (§ § 50-59)

MHR - Municipal Home Rule

Article 6 - LEGISLATIVE INTENT; CONSTRUCTION; EFFECTIVE DATE

- 50** - Legislative intent.
- 51** - Liberal construction.
- 52** - Judicial notice.
- 53** - No repeal by implication.
- 54** - Grants of specific powers not restrictive.
- 55** - Effect of unconstitutionality in part.
- 56** - Existing charters and other laws continued.
- 57** - Effectiveness of certain acts of the legislature.
- 58** - Laws repealed.
- 59** - Time of taking effect.

§ 59. Time of taking effect. This chapter shall take effect January first, nineteen hundred sixty-four, in the event that the amendment of the constitution of the state of New York proposing a new article nine, in relation to a bill of rights and home rule powers for local governments, shall have been approved and ratified by the people at the general election to be held in the year nineteen hundred sixty-three.

Source: <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>