

The Montauk Gazette®

The Quarterly Journal of the
Montauk Friends of Olmsted Parks, Inc.

vol. 1 no. 1, October 1995

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A Turning Point for Montauk

Welcome. This premiere issue of *The Montauk Gazette* contains exciting news for Montauk property owners. By order of the New York State Supreme Court dated February 18, 1994, our common private property rights to the Benson "Reservations" were upheld!

A not-for-profit corporation, the Montauk Friends of Olmsted Parks, Inc. (MFOP), has been established to recover the "reservation" properties into trust and act as trustee of them.

Federal not-for-profit status has been applied for, legal papers have been filed, and now, with this mailing, the first drive to welcome members is underway.

The basis of our rights is really quite simple. Montauk - in its entirety - was formerly the exclusive private property of one man, Arthur W. Benson. After he died, his heirs hired the firm of Frederick Law Olmsted, a world famous landscape architect and community planner with a reputation for working with large estates to preserve natural landscape, to draw two very large subdivision maps of their Montauk property.

Between 1904 and 1956 the Benson heirs used these maps, which were filed with the Suffolk County clerk, to sell numbered lots. Whenever they sold one of these lots the Benson heirs included "covenanted agreements" in the deed which reserved the rights to the roadways and "reservation"

parcels to themselves, the buyer, and everyone who had taken title to land through them or their estate in Montauk. These covenants were written to "attach to and run with the land," which means, essentially, forever.

Because the Benson estate initially owned all of Montauk, and legal title to all land in Montauk originates from them, all Montauk property owners are the legal beneficiaries of these covenants.

In this first edition of *The Montauk Gazette* you'll find the two large subdivision maps of Hither Hills and Wompenanit

and the wording of the covenanted agreements utilized to establish our rights. You will be introduced to the Montauk Friends of Olmsted Parks, Inc., a democratic Trustee corporation for Montauk. You will also learn about some of the major issues before us in Montauk today (such as protecting our water supply, the Benson "reservation" litigation, and more) and how we can now, through the MFOP, take action concerning them.

A Montauk-wide property owners' association can only be a positive force for Montauk. As a democratic corporation established to protect our real property interests, the MFOP will protect and enhance the quality of life in Montauk. Please consider becoming a member today.



Membership drive for a Montauk-wide Property Owners' Association

The Montauk Gazette and the MFOP World Wide Web site

The *Montauk Gazette* is published both as a quarterly journal (in paper format) and electronically as the world-wide web site of the Montauk Friends of Olmsted Parks, Inc.. In the pages of the *Gazette* you will find coverage of the major issues of importance to Montauk property owners and residents such as taxation, land use, property rights and water supply.

The quarterly *Gazette* will function something like *The Congressional Record* of the United States Congress. Proposed and adopted resolutions of the caucuses and the Montauk Assembly will be published here, as will ballots for positions within the corporation.

As a result, the record of our assemblies will be compiled in the *Gazette*, establishing the policies and direction of the corporation's activities.

World-Wide Web Page

A real-time complement to the *Gazette* is being set up on the World Wide Web of the Internet (<http://www.montauk.com>) and negotiations have been started about establishing a local access telephone number for Montauk. This popular multi-media resource is accessible via a computer modem and is capable of presenting information in audio, video and text formats.

The "Web Page" of the *Gazette* will have forums, archives of of legal documents, reviews and announcements of upcoming events, and more..

The "forums" on the web-site will allow members to browse or participate in dialogues on Montauk's many issues. Forums serve both to better inform the membership on the issues and activities of the corporation and to assist in developing, perfecting and locating

sponsors for resolutions. Excerpts from the forums will be published in the quarterly *Gazette*.

The MFOP web-site will also serve as a bulletin board for upcoming MFOP events such as picnics, concerts, guided tours, and caucus schedules and locations.

A Web Site is being set up for the MFOP at
<http://www.montauk.com>

Coming on the Web

The initial selection of documents which will be available on the Web are:

- ✓ The full copy of Justice Underwood's February 18th, 1995, decision upholding the Benson covenants;
- ✓ The Charter, Constitution and Bylaws of the Montauk Friends of Olmsted Parks, Inc.;
- ✓ A selection of the legal briefs filed in the case of *The Breakers Motel et al. vs. Sunbeach Montauk II and Nicola Biase*;
- ✓ The legal papers filed in the upcoming actions to protect our water supply and consolidate title to the "reservations";
- ✓ Updates on the organizing efforts of the corporation in preparation for our caucuses;
- ✓ Forums for discussion of the issues;
- ✓ Up to date information of concern to the membership;
- ✓ And much, much more!

About the Author

This premiere edition of the *Montauk Gazette* has been written by Robert A. Ficalora, the founder and acting president of the MFOP.

Mr. Ficalora was born in 1957 in San Jose, California, the son of an IBM manufacturing executive. His family moved throughout his childhood, living for varying periods of time in New York, Montevideo, Milan, Stamford, and London.

He received his high-school diploma from the American School in London in 1975, earned a bachelor of arts (BA) degree in economics from Drew University in 1979, and, while working for IBM, took a masters degree in business administration (MBA) in financial management from Pace University in 1982. Mr. Ficalora spent thirteen years with IBM in finance and planning and in technical marketing support. He considers himself an economist by avocation.

In 1991 he was advised to stop work because of continuing exacerbation and an increasingly chronic condition of multiple sclerosis. His condition remains chronic yet he feels that his retirement together with diet have allowed him to slow the progression of the disease.

Mr. Ficalora's effort in establishing the MFOP is the result of his feelings of personal responsibility for the matters which came by chance before him. At various times prior to retirement from IBM he had overseen the Benson "reservations" litigation for the Breakers Motel and has monitored it since. His experiences with the politics of the case convinced him that the properties would not be protected without establishing a democratic trustee corporation.

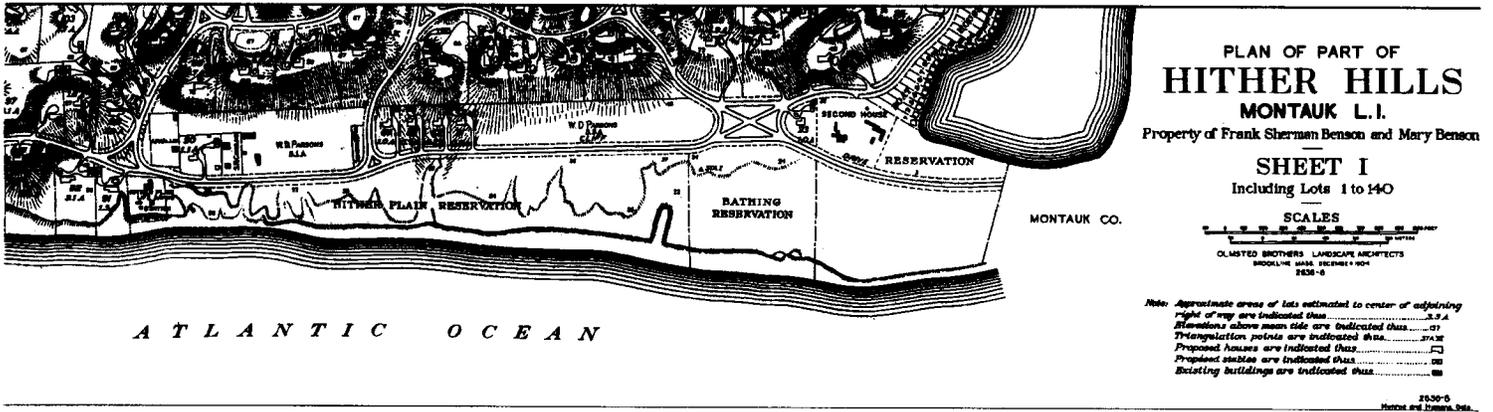
Mr. Ficalora's wife, Helen, is a co-owner of the Breakers Motel on the Old Montauk highway. They have two boys and make their primary residence in Olympia, Washington, where they spend their winters.

The Benson Covenants

"A general right of way is hereby reserved to the parties of the first part in common with all grantees from them or from the late Arthur W. Benson, deceased, of land at Montauk, over such of the roads laid down on said map [Hither Hills or Wompenanit] as may be opened from time to time to the nearest public road or highway; and also a right of way over such roads as may be opened from time to time to the various lots or parcels of land known and designated on said map as "Reservations", which said "Reservations" shall be for the common use of the said parties of the first part, their grantees, and the grantees of the late Arthur W. Benson, deceased, of land at Montauk. A right of way is also reserved, in favor of pedestrians only, along the beach at the foot of the cliffs or bluffs and the edge of the Atlantic Ocean or the Block Island Sound. And, it is expressly understood and agreed that the said several

covenants above specified, shall attach to and run with the land; and it shall be lawful not only for the said parties their heirs or assigns but also for any owner or owners of any lot deriving title from or through the said parties of the first part or through the late Arthur W. Benson, deceased, to institute and prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate same. it being understood, however, that these covenants are not enforceable personally for damages against the said parties, their heirs or assigns unless they may be the owner or owners of the said premises, or some part thereof, at the time of the violation of said covenants, or any of them."

- Liber 546 of deeds, pages 524ff.. February 1904 (Wompenanit); Liber 585 pages 416ff.. April 1906 (Hither Hills). Approx. 90 original deeds were conveyed by the Benson estate with these covenants between 1904 and 1956.



The Hither Plain and Bathing Reservations - the subject of the *Breakers* case. Courtesy: National Park Service, Frederick Law Olmsted National Historic Site, Brookline, Massachusetts.

The Decision of the Supreme Court of the State of New York

This court directs that judgment be entered in favor of the plaintiffs and against the defendants. Defendants' property is burdened with the covenant described herein and are without the right to erect fences, berms or other structures on the reservations described herein and are forever barred from making claim to erect such structures. Defendants are directed

to remove any and all fences and structures and restore said Reservations to their original open and natural state, forthwith. Defendants and their employees or agents are further directed to forebear from preventing plaintiffs from enjoying their common use of said Reservations... This memorandum constitutes the order and judgment of this Court.

The Breakers Motel, Inc., Louise H. Nielsen, Alfred F. Nielsen, William J. Bruder, Atlantic Bluffs Club, Ltd., George Potts and Margaret G. Potts. vs. Sunbeach Montauk II, Inc., and Nicola Biase, order of summary judgement dated February 18th, 1994. N.Y. Supreme Court, Suffolk County, Index no. 85-5656. By the Honorable William L. Underwood, Jr., J.S.C..

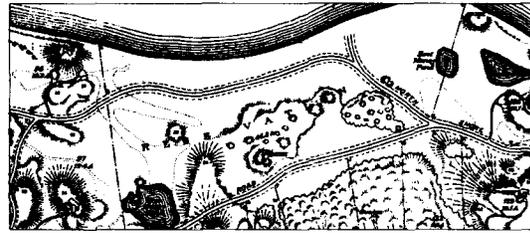
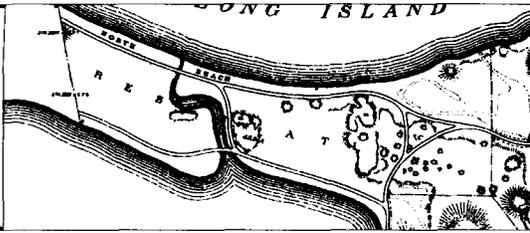
Certificate of Incorporation Montauk Friends of Olmsted Parks, Inc.

Established April 13th, 1994, under section 402 of the New York State Not-for-Profit Corporation Law.

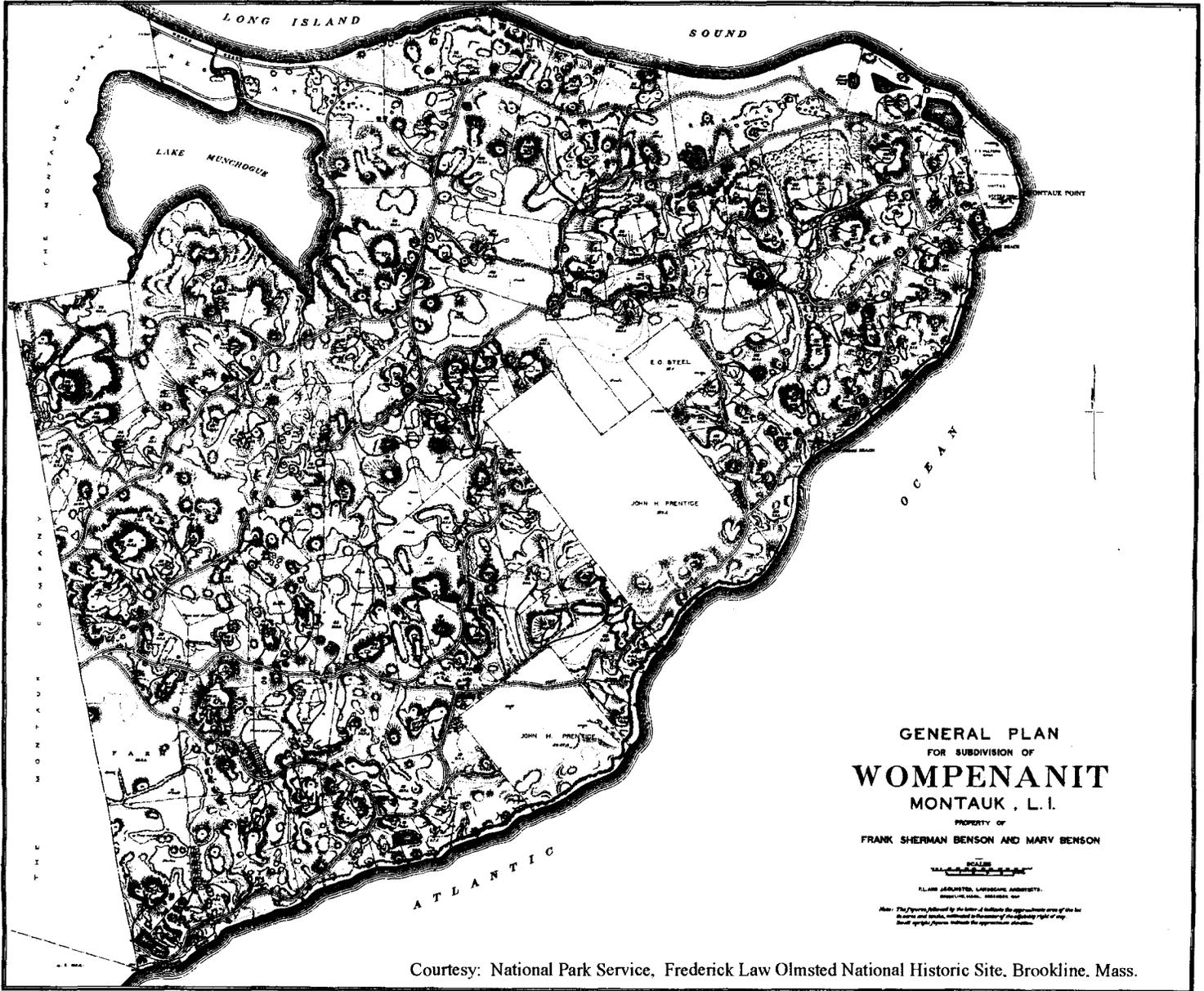
It is hereby certified that:

- (1) The name of the corporation is "Montauk Friends of Olmsted Parks, Inc."
- (2) The corporation is a corporation as defined in subparagraph (a) (5) of section 102 (Definitions) of the Not-for-Profit Law.
- (3) The purpose or purposes for which the corporation is formed are as follows:
 - 3(a) To protect, conserve, steward, and promote the parks, roadways, and other easements in Montauk shown on filed Olmsted subdivision maps of "Wompenanit" and "Hither Hills" and conveyed through covenanted agreements through the estate of Arthur W. Benson. Note: See "reservation" properties on filed maps #34 and #496 filed in Riverhead along with the covenanted agreements written "to run with the land" found in approximately 90 deeds between 1904 and 1956 beginning with Liber 546, cp. 524ff (Wompenanit) and Liber 585, cp 416ff (Hither Hills).
 - 3(b) To foster, encourage, and promote the fullest use and enjoyment of the Olmsted parks and other covenanted easements by the Montauk community and their guests.
 - 3(c) To maintain a non-partisan democratic caucus-process membership organization of Montauk residents to discuss and resolve issues, oversee and allocate funds, and build community as specified in the Bylaws of the organization. Voting membership will be limited to Montauk landowners or certified proxies as set forth in the Bylaws of the organization.
 - 3(d) To enter into and/or support any litigation which either (1) is explicitly to protect the rights of Montauk landowners to the use of the land-grant parkland and/or other easements arising from the Benson covenants; or, (2) is for the purposes of mutual conservation of Montauk scenic, recreational, and/or natural resources and is allowable under section 202 of the not-for-profit corporation laws of the State of New York.
 - 3(e) The MFOP will seek to consolidate title for the "reservation" lands under its name in order to facilitate conservation and stewardship. Where this is not possible, the MFOP will work closely with the fiducial title-holders of the "reservation" properties to ensure that the covenanted agreements are respected.
 - 3(f) To seek recognition for Montauk as a National Historic Site by the Federal government of the United States of America and coordinate and promote any programs which may benefit the Montauk community from such recognition.
 - 3(g) To seek financial assistance through grants, fund raising and private donations for the promotion and maintenance of the Olmsted park system in Montauk.
 - 3(h) To publish a newsletter and quarterly magazine and sponsor celebrations and events to enhance community awareness and to promote and celebrate the spectacular natural beauty of Montauk.
 - 3(i) It is not the intention or purpose of the MFOP to set itself up as an historical society, or to operate or function as a historical society.

Unnamed Reservation (State Park)



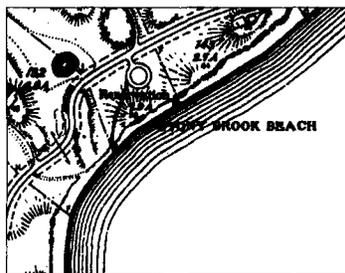
Unnamed Reservation (joint stewardship, State Park)



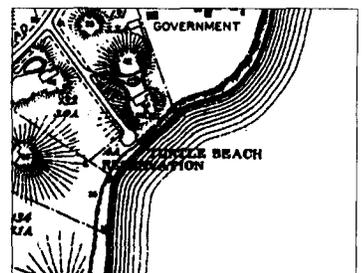
Courtesy: National Park Service, Frederick Law Olmsted National Historic Site, Brookline, Mass.



Amsterdam Beach Reservat'n Title holder t.b.d.



Stony Brook Beach Reservation (State Park)



Turtle Beach Reservation (Town of East Hampton)

Montauk's State Parks and the MFOP

We are very fortunate that our representatives in Albany have been excellent in protecting the parkland in Montauk. It happens in history that great plans may be lost forever with their creators. Fortunately, this does not have to be the case with Montauk.

When Mary Benson died she put her Montauk properties into trust to be managed for the financial benefit of Thyrsa Benson, Frank Sherman Benson's daughter. Shortly thereafter, however, the developer Carl Fisher began to negotiate the purchase of the Benson holdings with the newly reorganized Trustees of the Estate of Mary Benson.

While these much publicized negotiations were underway, an extraordinary Conservation Law was passed in 1924 by the State Assembly in Albany. The Conservation Law allowed the State to "appropriate" real property in the name of the people of the State of New York for public and State Park purposes. It was with this new law in hand that Robert Moses immediately acted in his official capacity as President of the Long Island State Parks commission to intervene in the negotiations between Carl Fisher and the Benson Estate and appropriate Hither Hills State Park and much of what is today Montauk Point State Park.

One of the properties which Robert Moses appropriated for parks purposes was a "reservation" at Montauk Point. This appropriation creates an interesting legal situation because New York State financially compensated the private owners of the properties appropriated. Montauk property owners, however, were not compensated.

As it turns out, the State Parks Commission "appropriated" our "reservation" property in a very interesting and appropriate way. In the official notice of appropriation legal language was sworn to under the official seal that the appropriation was

"subject to", and affirmative of, our rights.

The official Notice of Appropriation describes three parcels in Montauk appropriated for parkland followed by this language:

"Together with all right, title and interest in and to the lands under water and the waters and shores abutting the lands in the three parcels above described waiving and excepting however any and all right, title and interest and the common use of the parcels designated as Reservations on said map [Wompenanit] other than the plot marked "Reservation" in Parcel 1 hereof. Subject also in all three parcels above described to any and all rights of way or uses by way of reservation or otherwise and in whomsoever vested in any of the lands or property above described." Deed liber 1108 pg. 422 dated 8/25/1924.

This language effectively makes the MFOP a partner in the management of much of the State parkland in Montauk. It can also be safely asserted that the totality of this language provides the basis for the recovery into trust of title to the "reservation" properties which were not taken under the extraordinary Conservation Law.

Urgent Issues

Recent activities in two areas relating to Montauk's State Parks are of urgent concern to Montauk landowners and residents. A plan is being promoted by the Town of East Hampton to build a recreation area on the Montauk Point State Parkway easement at Fort Pond and a preliminary feasibility study is being made for a private concession golf-course at Camp Hero, in the heart of Wompenanit.

The Fort Pond Bypass

The Town of East Hampton has planned a recreation area on the Montauk Point State boulevard easement next to the Montauk Movie Theater on Fort Pond (where the boat launch is). Permission is being sought from the N.Y. State Department of Parks, Recreation and Historic Preservation to allow this construction which would consist of a soccer field, some basketball courts and a roller-blading track. It is felt that current facilities at Lions field are overburdened (which they are). Because it involves blocking a bypass route away from the Second House "reservation" area and the center of Town, the MFOP strongly objects to this plan.

The Fort Pond bypass would continue the main highway straight across Fort Pond and around the village to the north. The easement has long been condemned and is vacant and available for its intended use.

The benefits to Montauk would be enormous if the bypass were to be implemented. The roadway in front of Second House could be closed to traffic (in the summer, at least) and the area re-landscaped into a world-class beach promenade. The Olmsted interchange of Route 27 and the Old Montauk Highway could be leveled and used as the site for a spectacular community center facing our newly recovered Reservations and the Ocean. The downtown area would be considerably more vibrant (and commercially viable) with reduced vehicular traffic and these highly desirable appurtenances.

Because the planned recreation area would interfere with our ability to restore the historic Olmsted plan at Second House, the MFOP is on record with the attorneys office for the New York State Office of Parks, Recreation and Historic Preservation opposing construction on this easement.

Camp Hero Golf Course

The N.Y. State Office of Parks, Recreation and Historic Preservation has recently announced plans to engage in a feasibility study for golfing, camping and other uses of the 400 acre Camp Hero site in the heart of Wompenanit. Deputy parks commissioner Edward Wankel has indicated that he is looking seriously at putting in a private-concession 18 hole golf-course at the Camp Hero site.

Community opinion is strongly against a golf course. First, we already have a golf course in Montauk. Second, a golf course will bring no new money to our business community. And, a golf course would serve only a small percentage of the public, increase our already stifling traffic problem, and interfere with our interest in the proper restoration of the Olmsted plan for Wompenanit.

Mr. Wankel asserts that the State would receive a percentage of revenue

totaling several hundred thousand dollars a year from a private concession. This money may benefit the Parks office, but does it benefit Montauk? To a state government departmental budget this plan may seem like a lot of easy money, but to our community it is a Bad Idea with almost zero benefit. Probably the most important result of this proposal, if adopted, is that Montauk and the people of the State New York would lose the historic opportunity to establish another Great Park of Olmsted design.

As a pastoral setting for mountain biking, hiking, picnicking and camping, Wompenanit will be an Olmsted Park of the highest caliber. The Ward Pound Ridge Reservation in Pound Ridge, NY, is a model for the use of the interior landscape of the site which utilizes controlled access, beautiful lean-to rentals and tent camping. This would provide us with spectacular coast line, meadows, plantings and trails for our common use and enjoyment. It can also easily accommodate the recreational

facilities sought at the Fort Pond bypass.

A new Great Park at Wompenanit would also improve our business climate. Hither Hills State park is full to capacity every year and Wompenanit would be even more popular. Our oversight would ensure that the park's developed uses would emphasize a tight relationship with our village and our community in general.

With the MFOP in action, we are in a good position to assert ourselves both as Montauk property owners and as citizens of the State of New York. The MFOP position is that the roadways and landscape of Wompenanit should be, to the greatest possible extent, restored to the original plan, adapted to park use. Properly considered and implemented, Wompenanit will be one of the world's most beautiful and famous parks. With the MFOP and the state Office of Parks, Recreation and Historic Preservation working together, we can make it happen.

How the MFOP works for you

The MFOP is a democratic property owners' association established to be effective in promoting and stewarding our common real property interests in Montauk. It will be comprised of a Board of Trustees, an Executive, thirteen Associations, and a Montauk Assembly. The philosophy is that for the MFOP to be truly effective in working for the membership, it must be a participatory organization of the membership.

This first mailing is going out to approximately 4,400 property owners in Montauk. It is hoped that a solid majority will join the organization. We will need a large membership to provide the organization with the legitimacy and dynamism required to be successful in achieving the purposes of the corporation. Our strength will be a fully informed membership that can

participate democratically in achieving our common purposes.

As quickly as possible following



**Montauk's Trustee Corporation
Est. 1994**

this introductory mailing, a process of orderly review and voting on our issues will be established utilizing regular local caucuses and a Montauk Assembly. This democratic process will allow us to develop and

adopt conservative and well understood "resolves" of, by and for the membership to protect our common interests. (Please see page 15, *MFOP Rollout* for further information.)

So, how will the MFOP work for you? It will work to protect our water supply from overburdenment and depletion. Our caucuses and assemblies will give us a strong voice in improving the business and cultural climate in Montauk and monitoring taxation and public services. And the MFOP, as a Parks corporation, will be in place to administer and protect the Benson "reservations" and roadways for our most profitable and enjoyable use.

The bottom line is that the MFOP is intended to make sure that Montauk stays the very special place that we love by providing the stewardship which it deserves.

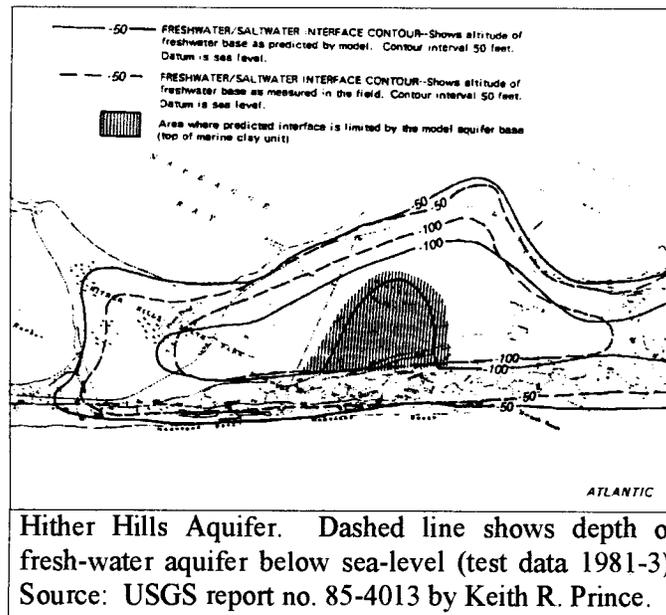
Montauk's Water Crisis

Montauk is an island with a very shallow and fragile groundwater supply. Our principle aquifer has a maximum depth of less than 150 feet below sea-level, is surrounded by salt water, and is our sole source of drinking water. Clay and other impermeable soils limit the aquifer's useable thickness to less than 100 feet in most places. Placing too much demand upon the aquifer causes saltwater to move into the freshwater bearing soils, effectively destroying them forever for drinking water purposes. Our ability to

recharge this shallow aquifer and offset demand is extremely limited and there is no other reasonable source of water should our aquifer be depleted.

Unfortunately, over the past decade the Town of East Hampton and the Suffolk County Water Authority, Inc., (SCWA, a not-for-profit corporation) have ignored the limitations of our water supply by recklessly expanding a public water system in support of new development. As a result, the public supply wells in the central region of Montauk have been experiencing elevating chloride levels. This is very bad news for the future.

On December 1st, 1994, an article was published in the *East Hampton Star* which described a large new SCWA water system to be built in the Hither Woods. The Hither Woods is the critical recharge area for a shallow and fragile aquifer upon which hundreds of surrounding landowners with private wells depend for their fresh water supply. The proposed new system not only threatens the integrity of this aquifer but would also temporarily and dangerously provide the illusion of



plentiful water available to new development.

When Mr. Ficalora saw the 12/1/94 article in the *Star* he went on the offensive through the New York State Department of Environmental Conservation (DEC). This took the form of a FAX to Mr. Robert Greene, Regional Permit Administrator of the DEC, dated December 9th, 1994,

This FAX reviewed the proposed well-system plan for the Hither Woods and the lateral intrusion which it would

important to understand is that this program is a short-term game as the aquifer will, over time, become wholly depleted by overburdenment.

This FAX produced almost immediate results. In a front page article of the *East Hampton Star* dated January 19th, 1995, Michael LoGrande, the Chief Executive officer of the SCWA, and a former Suffolk County Executive, called for a moratorium on all further development on the Montauk Peninsula.

Mr. Ficalora sent another FAX to the DEC on February 9th, 1995. This FAX documented Mr. LoGrande's declaration as well as the very poor responses from our Town officials. After providing further analysis, he concluded that:

"Meanwhile, these new wells will support recently created over-development and new development such as currently proposed at Culloden Point. This is inequitable and will most certainly be contested in court."

Since the January declaration a Water Alert was issued confirming our concerns and the well system in Hither Woods has been "postponed."

Meanwhile, however, development interests continue to hold sway over the SCWA and the Town. Amazingly, while the aquifer in central

Montauk remains under serious pressure, the development of 62 units at Culloden is scheduled to go forward.. When the central aquifer is totally depleted, a domino effect will take place when a new source of supply is sought under "emergency" conditions.. We must protect ourselves from this ominous eventuality.

Mr. Michael LoGrande, CEO of the Suffolk County Water Authority, Inc., and former County Executive has called for a moratorium on all further development on Montauk.

cause and concluded that:

"Of course, all of the well-owners surrounding the [public supply] wells will begin to fall outside the lens and lose their water while new development will take the water diverted from them. What is

Water Supply Analysis

The three charts which you see on pages eight and nine are sufficient to get a general understanding of our situation here with the addition of a few facts:

1.) The data shown is from 1983 and there has been significant development on Montauk since that time;

2.) The SCWA well system operates almost exclusively in the central aquifer region.

3.) The East Lake Drive, Wompananit and Hither Hills subdivisions are served by individual wells;

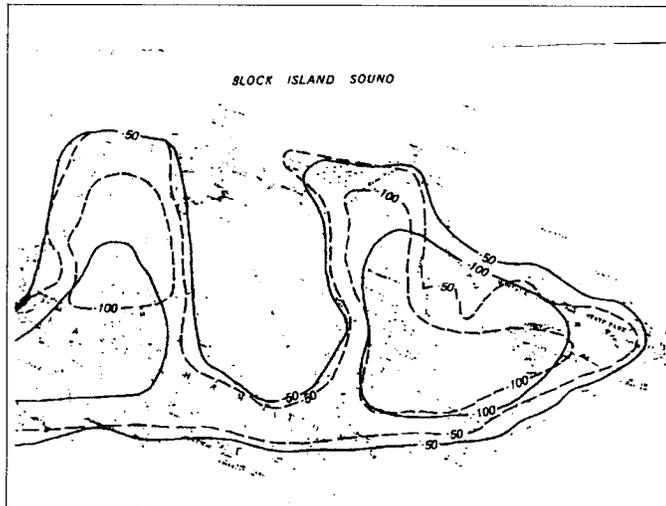
4.) There are three distinct water regions in Montauk. The MAXIMUM THICKNESS of the freshwater (between salt water and the top of water table) in each was approximately 100' in Hither Woods, 105' in central Montauk, and 100' in a small section of Montauk Point by Big Reed Pond:

5.) The supply wells envisioned in the Hither Woods would attempt to prevent salt-water "upconing" by pumping above the marine clay unit. This would cause lateral (sideways) movement of the saltwater interface in along the Old Montauk Highway.

It is not difficult to understand our water situation. The 1986 Prince report, however, was slanted to support proposed new development in the Hither Woods and Camp Hero areas. The analysis, prepared in association with the SCWA and the Suffolk County Department of Health Services, requires that we accept the premise that new development should be allowed to burden our shallow and fragile aquifer to its tortured

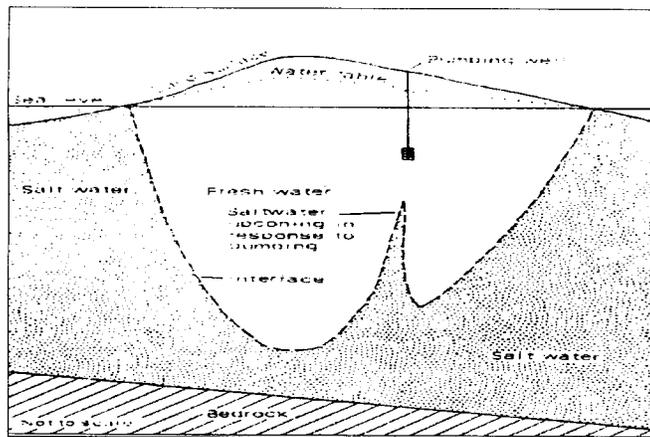
theoretically questionable limits and threaten it with exhaustion.

This is not only absurd but



Central & Easter Aquifers. Ignore solid line. Dashed line shows actual feet below sea-level (1981-3 data). Source: USGS report no. 85-4013 by Keith R. Prince.

dangerous. There is a "lag effect" between the time of the increase in "built demand" (i.e., kitchens, bathrooms, pools, etc.) and the drawdown on our aquifer. It has become clear that the huge increase in



Out of scale example of salt water upconing. If clay barrier is below well then intrusion will occur laterally (sideways). Source: USGS report no. 85-4013 by Keith R. Prince.

built demand in Central Montauk, coupled with the SCWA's selling off of land for development, has brought us to the current crisis point.

Understanding the lag effect of overburdenment, we are in serious

trouble. What happens when the SCWA well fields eventually give out? Where are people served by the SCWA going to get water? Forcing the demand to the Hither Woods aquifer will spread the problem there, and there is no water to the East. Any reliance upon a connection to the water main at Napeague is both costly and physically dangerous.

Legal Battle Looms

Clearly, the painful answer is that we have to act to immediately bring the demand for water back into balance with our renewable supply. Because the political environment is strongly pro-development our only recourse is to our well respected courts of equity.

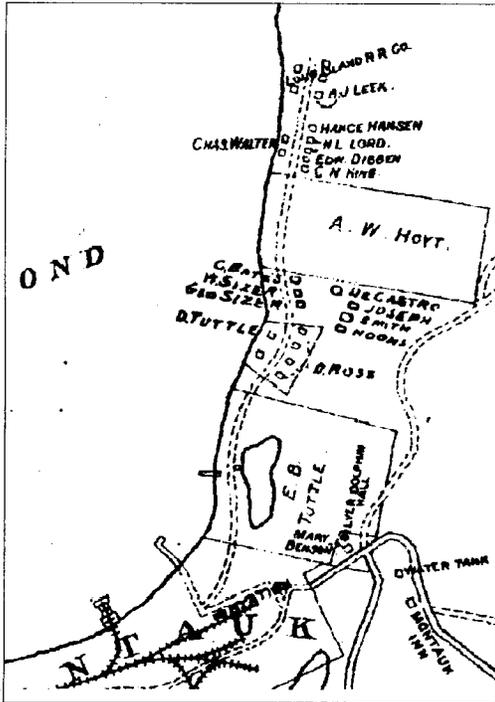
We must bring an immediate action against the Town of East Hampton and the Suffolk County Water Authority, Inc., seeking a temporary restraining order and permanent injunction against the issuance of any new certificates of occupancy or further connections to the SCWA system.

Studies will have to be performed under our supervision and a monitoring system maintained. If our water supply is already overburdened by development, we will need compensation and proper legal relief to correct the problem.

Utilizing the MFOP is the only viable way to succeed in obtaining this protection. *We need some good legal support to assist in this effort. Because time is of the essence, any support offered will be warmly considered.*

Support the MFOP legal fund.

Stop the Ferry!



The original Montauk Village, 1916.

Negotiations between the Duryea family and the Metropolitan Transit Authority (MTA) and Cross Sound Ferry Services, Inc., regarding a high-speed ferry service between New London, Conn., and Montauk's Fort Pond Bay have provoked incredible public opposition. The *ad hoc* "Stop the Ferry!" group has gathered over 1,650 signers of its petition calling for a complete moratorium on all ferries.

The ferry issue came to a head at a public hearing of the Town Board on October 20th. A proposed resolution was presented establishing a 15 month moratorium on proposals for new ferry services pending a comprehensive traffic study. Lawyers for the ferry company presented legal comments opposing the resolution. The Town Board, however, approved the resolution as local law no. 14.

Discussions with Town board member Catherine Lester, the sponsor of the resolution, made clear that the threat of a dramatic increase in our already bad traffic problem was sufficient cause to warrant the

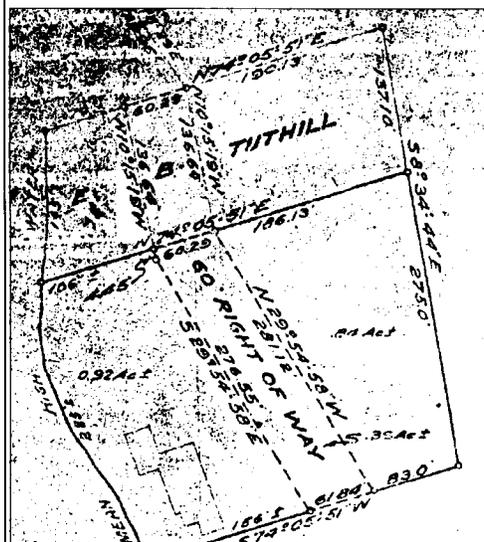
adoption of this law. It is viewed as the proper incremental step toward a permanent ban should one be enacted.

A consultant will complete the traffic study over the first twelve months of the moratorium. During the final three months (Oct. '96 to Jan. '97) the Town will decide what to do as a result. The membership of the MFOP will have an unprecedented ability to stay informed about the study and have strong input into this process.

Duryea's Dock

The Duryea plan has other problems, however, arising from the desire to use their property at Fort Pond Bay as a ferry dock site. The most prominent problem is the rights of others to the road which Mr. Duryea has closed off and claims to own.

There is clear language in Mr. Duryea's chain of title that grants the rights of easement across this road to others. The broadest easement granted to this road was as a part of the historic 1,500 acre "North Neck Purchase" between the estate of Arthur W. Benson (F.S., Mary, and Jane Ann



Montauk Beach Dev. Corp to E.B. Tuthill, 6/30/28 at liber 1472 p.28

Benson) and Austin Corbin and Charles Pratt dated 4/29/1895 found at liber 426 p. 523. (Austin Corbin was the President and owner of the LIRR.) This deed granted all successors to Arthur W. Benson the right to sue the parties attempting to obstruct the existing roads and was to attach to and run with the land. A review of the maps and land use of the period makes clear that Tuthill road was among the principle concerns of this wording.

Another deed grants the use of Tuthill road to successors to E.B. Tuthill. This deed (liber 1472 p28, see easement map) was issued by the Montauk development company to E.B.Tuthill when it purchased most of the Tuthill property shown in the 1916 Atlas map. Because the property owners on the Tuthill road extension take title through E. B. Tuthill, they are among the intended beneficiaries of these rights. Furthermore, since Mr. Duryea has blocked Tuthill road and Fleming road to the north is private, they no longer have legal access to a public road.

The MFOP Legal Fund

The MFOP will litigate on Montauk property owners' behalf in matters of common interest. The most urgent of these matters concern our water supply, recovering the "reservation" properties into trust, and keeping our deeded easements open and available for our use.

To keep costs down, the MFOP will hire a full-time lawyer to our staff. S/he will report to the Executive of the MFOP and work exclusively for us.

With our own full-time lawyer we will no longer have to worry about excessive legal fees. And, with the visibility of our actions to our membership and the public, we can expect expeditious treatment from the courts.

Support the MFOP Legal Fund!

The Fort Pond Bay Reservations

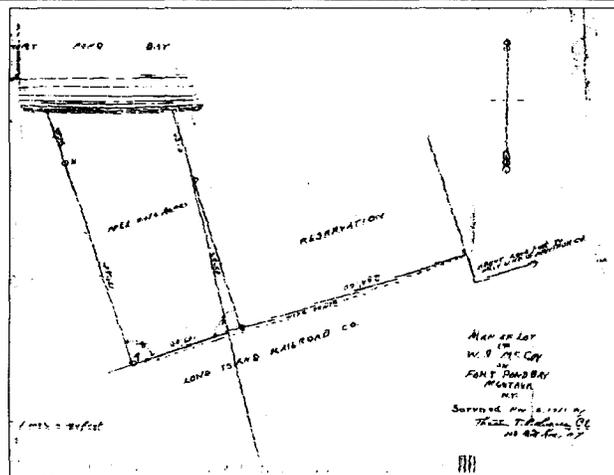
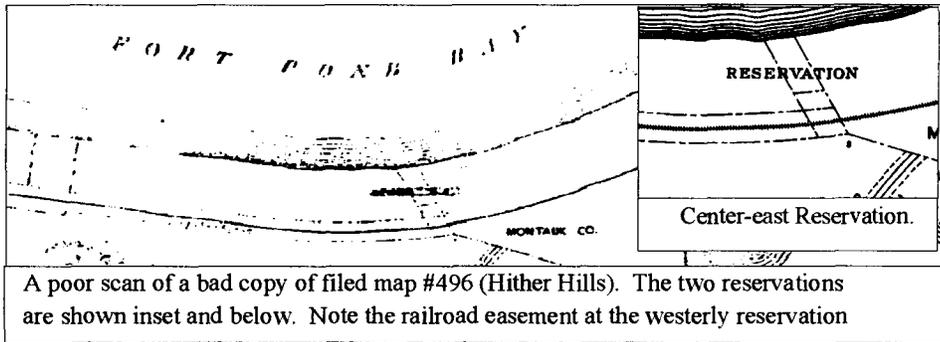
A complicating factor in addressing the ferry issue is that two of our "Reservation" properties connect Fort Pond Bay with the railroad.

These "reservations" (shown inset) were established by the Bensons in 1904 utilizing the same filed map of Hither Hills (No. 496) which created the Hither Plain and Bathing Reservations.

One of the Fort Pond Bay "reservation" properties is 100 feet wide and is toward the center of Fort Pond Bay along the former property line of the Montauk Company. It appears that the Town of East Hampton recently acquired title to this property, although this is not confirmed.

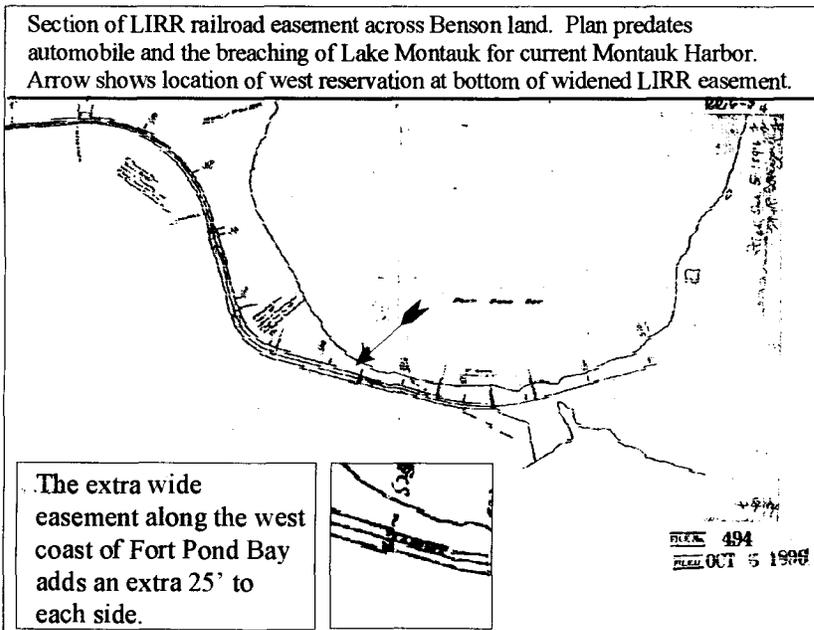
The second "reservation" is of great interest because of the way it connects Fort Pond Bay to the LIRR. When Frank Sherman Benson established the LIRR easement in 1896 with filed map no. 494 (at right), he widened the LIRR easement by 25' on each side along the western coast of Fort Pond Bay. It can only be assumed that this was to accommodate extra parallel tracks.

The westerly "reservation" is 200 feet wide and placed at the bottom of this widened LIRR easement at the closest and most useable point of connection between the railroad and the bay. This site was probably for cargo or resource loading and a



transshipment dock. The title to this "reservation" appears to be held by Chemcorp of Greenwich, CT.

be returned. On September 28th, 1994, a resolution prepared by the MFOP was filed with the Town Clerk signed by



Town Involvement

Because the filed maps of Hither Hills and Wompenanit served as the original tax maps, the "reservation" designation had

special legal meaning in that context. When the Town of East Hampton adopted zoning in 1957, the zoning maps (which are drawn as overlays to the tax maps) showed these "reservations" on them. This designation on the zoning maps was removed by the Town Board under pressure from Mr. Biase in 1984.

When the zoning maps were being completely redrawn in September, 1994, it was formally made known to the Town Board that the "reservations" had been improperly removed and should

110 Montauk residents requesting that the Town of East Hampton respect our legally upheld rights and restore the "reservation" designation to the zoning maps. No action has been taken or statement made on this issue by the Town board.

The presence of these properties - which we intend to return into trust and put under democratic stewardship - raises the question of the potential economic benefits to Montauk of a use which we determine and control.

The Benson Reservations Lawsuit

Justice Underwood's February 18th, 1994 ruling in the case of *The Breakers Motel et. al. vs. Sunbeach Montauk II and Nicola Biase* is currently on appeal with the 2nd department of the Appellate Division of the New York State Supreme Court in Brooklyn.

The Breakers case in summary:

1.) the prior owner of the two "reservation" properties (Curtis Wright, corp.) had repeatedly sought legal opinion on the covenants and found the properties burdened by the rights of Montauk's property owners.

As a result, Curtiss Wright included the property (over 40 acres of undeveloped ocean beach!) as a "no cost throw-in" in its 1982 sale to Mr. Biase;

2.) Mr. Biase also researched the legal issues pertaining to the covenants and was advised by attorneys that it would be necessary to bring a "bar claim" action against Montauk property owners to be able to use the "reservation" properties for his private purposes:

4.) In September, 1984, Mr. Biase disregarded the above legal opinion and proceeded to put up a fence and patrol the property with guard dogs forcing the adjacent property owners into court:

5.) In 1985, Mr. Biase filed a motion to dismiss claiming that plaintiffs must bring a "bar claim" action and join other parties in interest. Justice Underwood denied this motion by his order dated April 26th, 1988, which found that plaintiffs were not claiming rights adverse to the non-joined indispensable parties:

6.) On November 1st, 1991, Justice Underwood ordered that "no such bar-claim action commenced by any defendant may be joined for trial or consolidated upon motion of any

Defendant with this action unless commenced by January 24th, 1992."

7.) Mr. Biase declined to commence a "bar-claim" action and appealed the order. His appeal was denied (Docket No 92-01868, New

14.) The case has not been calendared for argument as of October 11, 1995.

The MFOP Motion as *Amicus Curiae*

In April of 1995, a motion for leave to submit a brief as *Amicus Curiae* was submitted to the Appellate Division *pro se* by Mr. Ficalora as acting President of the MFOP. Although the motion was not granted, its contents remain very important to Montauk's landowners.

New York State Courts of equity may not interfere with your rights as a private property owner when they know you are not a party to the action before them.

York Law Journal, Oct. 6 1992, p.26.).

8.) After the Appellate Division upheld his order, Justice Underwood heard a motion for summary judgment by the plaintiffs and issued his judgment and order on February 18th, 1994, finding the properties burdened by the rights of "common use" shared by the plaintiffs.

9.) Mr. Biase moved for re-argument, but Justice Underwood denied this motion and stood by his ruling:

10.) Mr. Biase appealed to the Appellate Division of the New York State Supreme court. An amazingly voluminous court record compiled. Mr. Biase's final appellant's brief was filed April 13th, 1995.

11.) A motion to file a brief as *Amicus Curiae* was filed by Robert A. Ficalora, *pro se*, as acting President of the Montauk Friends of Olmsted Parks.

12.) A cross-motion was filed by Mr. Biase for damages and sanctions against Mr. Ficalora. The lawyer for Breakers Motel files papers against the MFOP motion.

13.) A four judge Appellate Division bench concurs with order denying both motions.

The motion papers included a notice of motion, an affidavit by Mr. Ficalora (w/attachments), and a proposed very short brief with two pages of argument.

The notice of motion centered on the following assertion:

"This motion addresses the issue which was repeatedly raised in the court below and in prior appeals to this court that the parties before the court do not represent, or intend to represent, the interests of the vast majority of the parties in interest in this matter either now or into the future."

Mr. Ficalora's affidavit introduced himself as the founder and acting president of the MFOP, as well as being a former officer of the Breakers Motel responsible for moving the case through the courts. This affidavit included many attachments including maps, deeds, and the MFOP certificate of incorporation.

The proposed brief was very short and asserted two arguments:

Point 1. Failure to join indispensable parties makes relief impossible for the defendant appellant.

This point made a one paragraph review of CPLR 1001, "Necessary Joinder of Parties" showing that Mr. Biase could not be excused from joining the other "indispensable parties" before asking the court for relief.

The second paragraph referenced Mr. Biase's understanding of this law and his attempts to circumvent it and concluded that:

"Given the defendant-appellant's history of clear knowledge of and concern for this law, he can expect no relief from the court and his appeal must be dismissed."

The bottom line is that Mr. Biase is asking the courts to interfere with the property rights of unjoined "indispensable" parties in violation of the law (CPLR 1001). Even without accepting the MFOP brief as *Amicus Curiae*, the court will discover this by a review of prior appeals.

Point II. History of defendant-appellant's contempt for the rights of the parties in interest to the reservations demands that the court determine disposition of property under CPLR 2701.

This point asserted that the plaintiffs could not receive just and equitable relief unless the properties are taken from Mr. Biase. This point covered Mr. Biase's actions, the historical treatment of the properties, and the law regarding Trust properties.

The following covenant language was emphasized:

"...it being understood and agreed, however, that these covenants are not enforceable personally for damages against the said parties, their heirs or assigns unless they may be the owner or owners of the said premises, or some part thereof, at the time of the violation of said covenants, or any of them."

The brief argued that:

"this wording clearly establishes that although the Benson heirs continued to hold title to the "Reservation" properties, they did

so under legal obligation of trust to uphold the rights which they had covenanted to their grantees in Montauk."

CPLR 2701, entitled "When court may order disposition of property", states:

"The court, upon motion or on its own initiative, with such notice as it deems proper, may order personal property capable of delivery which is the subject of the action, paid into court, or delivered to such person as it may direct, with such security as the court shall direct, and subject to its further direction if:

- 1. a party has such property in his possession, custody or control as trustee for another party or where it belongs or is due another party"*

The brief noted the "on its own initiative" language and offered the MFOP as Trustee for the properties.

Conclusion

It must be stressed that the Appellate division bench did not deny these arguments: what was denied was Mr. Ficalora's *pro se* motion to submit them as *Amicus Curiae* on behalf of the MFOP as a part of the current suit.

Although the bench gave no explanation for its denial, the brief may have caused a burden upon the current plaintiffs in obtaining the relief which they are seeking by broadening the issues before the court.

Consolidation Action Planned

One of the central purposes of the MFOP is:

- 3(e) to seek to consolidate title to the "reservation" lands under its name in order to facilitate conservation and stewardship.*

For the MFOP to be successful in recovering the "reservation" properties

into trust it will need the legitimacy of a strong membership base.

In addition to joining the MFOP, if you feel strongly about your legal right to the "reservations" consider writing a letter of concern to:

Appellate Division,
N.Y. Supreme Court
Second Judicial Dept.
State of New York
45 Monroe Place
Brooklyn, NY 11201

Reference the case of the *Breakers Motel, et. al., vs. Sunbeach Montauk II, Inc., et ano*, case no. 94-02994. Copy the MFOP on your correspondence at P.O. Box 2612 for our archives.

When the Appellate decision affirms Justice Underwood's ruling, the MFOP will bring an action under CPLR 2701 to consolidate these properties into trust under MFOP title.

(Note: MBPOA members should not be concerned about this as your beach, the Ocean View Reservation, will be better protected and managed by you under the MFOP. You will get significant opportunities and benefits from the MFOP which the MBPOA cannot provide. Mr. Ficalora has presented to your board and was warmly received by them.)

What we are dealing with is, quite literally, the law of the land, and it is on our side. We have the ability to assert our rights in our courts of equity and we will prevail. With the plans created by the Olmsted firm and established by the Benson family, we have the basis for protecting our most spectacular beaches and the general natural beauty of Montauk.



Montauk's Trustee Corporation
Est. 1994

Our Right to Assemble

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people to peaceably assemble, and to petition the government for a redress of grievances.

- 1st Amendment to the Constitution of the United States of America.

We are currently entering the third centennial of government under the Constitution of the United States of America. Because the U.S. Constitution established our government reserving to the people the democratic liberties which we cherish and enjoy, it is important that we at times revisit the circumstances surrounding its framing.

The United States was established in 1776 utilizing a Declaration of Independence from the tyranny of unaccountable and distant monarchy. One of the principle complaints within this declaration was that King George was interfering with the colonial assemblies. In 1777 the representatives of the states, in congress assembled, agreed upon the Articles of Confederation as a plan of union. The Articles were formally adopted by Congress of the Confederation of the states in 1781.

The assemblies of the newly independent states maintained unity of resolve within the Confederation throughout what proved to be a bloody war between a people divided over English rule. When the revolutionary war ended with the Treaty of Paris in 1783, the country continued to undergo internal unrest. Riots among debtors, most of them farmers, broke out across the states causing political instability. These protests took on an organized character when, following protests in 1782-83, the right to hold conventions

was affirmed in Massachusetts (*Mass. Gazette* (Springfield) June 22, 1784). Massachusetts counties began to hold regular conventions to consider the pressing issues of taxation, indebtedness, and good government.

In 1786-87 the debtors' unrest exploded into armed insurrection with "Shay's rebellion" in Western Massachusetts. This rebellion gained significant support among the people and their conventions. The Articles of Confederation, however, provided the

The MFOP revitalizes the democratic ideal of our forefathers by adopting an assembly process.

Congress of the confederation no power to intervene in these matters internal to the states.

It was in this context that the Constitutional convention was held in 1787. The level of popular distrust in members of the governing elite was so great that the constitutional convention had to be held in strict secrecy for fear that mobs crying "conspiracy!" and "treason!" could result in lynchings. The convention did not go smoothly, and dissent was voiced by some of its participants: four members withdrew and three refused to sign.

As the first draft of the Constitution was being finished, there was an anxious rush to have it approved by a pro-federalist Pennsylvania House without full publicity or deliberation. Despite very careful pro-federalist treatment by the press, riots broke out against ratification in areas with good information (*Carlisle Gazette*, Jan. 9, 1788). In spite of significant protest over the manner in which the ratification process was being handled, the new constitution was hurriedly approved in the Philadelphia House.

Many of the states were satisfied to retain the Articles of Confederation. Some of the most prominent Americans such as Patrick Henry, Samuel Adams, and John Hancock were anti-federalist. When conventions were hurriedly held within the states to consider ratification, Rhode Island's towns voted against a convention. Of the twelve conventions held only seven voted to ratify, while four states - New York, Massachusetts, New Hampshire and North Carolina - voted it down and the state of Virginia had equal votes for and against.

It was only after the state of Massachusetts later attached amendments constituting a bill of rights and ratified that the anti-federalist movement lost its momentum and was gradually overcome. Five months later the State of New York voted to ratify in a 30-27 vote marked by abstentions and the anti-federalists who swung their votes still made strong statements of dissent. (The fear of the commercial consequences of seceding from the union had become an issue.)

What was at issue in adopting the new constitution was the ideal of pure democracy. This ideal was envisioned by the people as a confederation of governments close to the people in which the people were sovereign and governed themselves by assembling together. Those opposed to the new constitution felt that with every step away from this ideal the government becomes more likely to oppress: to create a strong national government, with power transferred from the people to the state, was to create tyranny (See *The Anti-Federalists*, Jackson Turner Main, W.W. Norton, 1961, page 129 for list of citations).

The MFOP revitalizes the democratic ideal of our forefathers by adopting an assembly process. We have urgent issues to deliberate and resolutions to adopt. We are within our rights and we have honorable and important purposes. Let us peaceably assemble.

MFOP Rollout

This mailing initiates the process of building the MFOP as a democratic trustee corporation. The Charter, Constitution and Bylaws of the corporation sets out the organization structure and the democratic process in detail (to be published and available through the *Gazette* Web page).

The MFOP will divide Montauk into thirteen "Associations", the intent being to provide each member with a comfortably sized group with which to assemble.

An Association coordinator, sergeant-at-arms, delegate, and two assemblypersons will be elected annually by the membership according to the rules contained in the Bylaws and will perform specific roles and duties.

The Association coordinator will act as host in welcoming new members, preparing the site of the caucuses, ensuring that proper refreshments are

served, and monitoring the process to ensure that the democratic liberties of the participants are protected.

The sergeant-at-arms will collect the voting and take direction from the coordinator in maintaining proper order and decorum.

The delegate will carry the voting and consensus of their Association to the Assembly and bring resolutions properly presented at the Montauk Assembly to the caucuses for voting.

Each Association will elect two assemblypersons, one man and one woman, who will facilitate the caucuses and join the general assembly of the Montauk Assembly.

Caucuses will be held by the Associations four times per year in April, July, October and January. Following the April, July and October caucuses, each Association will send their delegate and assemblypersons to

the Montauk Assembly. To protect the rights and interest of second homeowners, there will be no voting at the January caucuses nor will a Montauk Assembly be held thereafter.

Because the nature of the Benson covenants is that they are attached to the land, only landowners have the ability to vote. Non-land owning residents may participate as guests, however, in the assembly process and will be able to participate in the formulation of resolutions.

To get this process started we need volunteers to take on the positions within the corporation, especially the role of Association coordinator. It is hoped that friendly, good-hearted, community-oriented people will respond to this call. If you think that you fit the bill and want to give it a try, please send a letter and a short biography to the MFOP at P.O. Box 2612, Montauk, NY 11954.

Membership Form

Name _____
Address _____
City _____ State _____ ZIP _____
Tel. (____) _____

Please use the name on your property tax bill (If you received this in the mail, please include mailing label.)

Membership type:

- Corporate (\$ 200) \$ _____
- Regular (\$ 50) \$ _____
- Senior Citizen (\$ 30) \$ _____
- Non-landowner (\$ 50) \$ _____
- Condo/Coop (\$ 50) \$ _____
- Legal Fund \$ _____
- Angelic beneficence ♥ _____

Total enclosed \$ _____

In becoming a member of the Montauk Friends of Olmsted Parks, Inc., I will enjoy the privilege to participate in the caucus process of the organization. I understand that according to the Bylaws of the corporation this privilege may be revoked if it is determined that I have interfered with the rights of my peers to a peaceable, calm and deliberative process or engaged in activities alienating them therefrom.

Signature

Printed name

NYS not-for-profit status approved; Federal 501(c)3 application filed. Please, checks or money orders only.

A Positive Future for Montauk

A powerful new force for positive change has arrived in Montauk. This force will provide proactive protection of Montauk property owners' and residents' common interest in establishing secure, clean water supplies and opposing the threat of unwise development. This force will bring under its stewardship the properties reserved forever for our common use. This force will bring regular democratic practice to our community to develop unity of resolve in the planning and implementing of our visions for a better Montauk. This force is the Montauk Friends of Olmsted Parks, Inc. (MFOP).

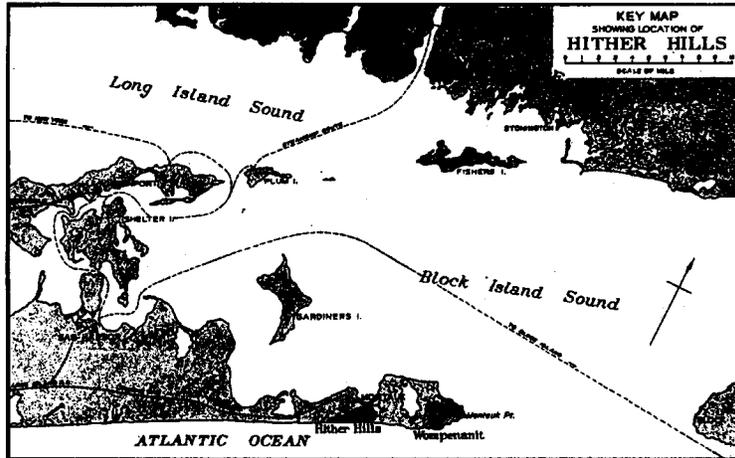
It is clear that the Montauk community must unify and assert its role as the proprietors and stewards of this land if we are to protect it. To "steward" a peninsula such as ours is to be responsive to the entire communities' needs while developing that special sense of belonging to - *and being responsible for* - this place.

This is the purpose of the MFOP. In this issue of the *Montauk Gazette*

you will read about the legal victory upholding Montauk property owners' rights to the "reservation" properties

bypass (which would allow the restoration of the Second House beach "reservation" area and remove the traffic from the downtown area). You will also learn of the MFOP plans for regular caucuses and assemblies to give everyone good information, a voice and a vote.

The preliminaries for the above have been taken care of. The MFOP has been incorporated as a not-for-profit corporation under New York State law and formally introduced to the Town board of the Town of East Hampton. A Charter, Constitution and Bylaws has been adopted.



Key Map to the Map of Hither Hills, Property of Frank Sherman Benson and Mary Benson, made by Olmsted Brothers, dated December, 1904.

and the plans to recover them into trust. You will find a summary of our water crisis and the MFOP plans to protect our fragile aquifer. You have before you a review of the moratorium on ferries and the deeded facts concerning Mr. Duryea's property. An exciting proposal for a Great Park at Wompenanit in the Olmsted tradition is presented in the context of opposing a golf course at Camp Hero and the blocking of the Fort Pond

The MFOP application for Federal recognition of exemption under section 501(c)3 of the IRS code was filed October 24th, 1995.

The MFOP is your trustee corporation. By becoming a member you will give it the strength it needs to be successful in creating a better, more secure Montauk. When all is said and done, bringing a positive future to Montauk is now really up to you. Send in your membership and become an active member of the MFOP today.

Montauk Friends of Olmsted Parks, Inc.
P.O. Box 2612, Montauk, NY 11954

Address Correction Requested

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