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April 29, 2005

Hon. Daniel J. Loughlin
Suffolk County Supreme Court
235 Griffing Avenue
Riverhead, NY 11901

Re: Matter of Town of Montauk Inc. v. Pataki, et. al.

Dear Judge Loughlin:

Enclosed please find Petitioner's Reply to Respondent Town Of East Hampton's Answer

Respectfully,


STEPHEN G. COURT

cc: All parties of Record

SUPREME COURT
COUNTY OF SUFFOLK

STATE OF NEW YORK

TOWN OF MONTAUK, INC.,

REPLY TO ANSWER

Petitioner,

-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 government 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.

Index No.: 04-27553

Hon. Daniel J. Loughlin

Respondents.

Petitioner herewith replies to the verified answer dated April 15, 2004 made by the Town Board Government of Easthampton as follows:

AS AND FOR A REPLY TO RESPONDENT'S

FIRST AFFIRMATIVE DEFENSE

1. The time period for the Statute of Limitations has not started because the Respondent continues its alleged illegal acts of government and development of land in Montauk.

AS AND FOR A REPLY TO RESPONDENT'S

SECOND AFFIRMATIVE DEFENSE

2. There has been no neglect in asserting the rights or claims of the Incorporated Township of Montauk once they became known, and the Petitioner herein has acted with all due diligence in bringing this proceeding as quickly as possible.

AS AND FOR A REPLY TO RESPONDENT'S

THIRD AFFIRMATIVE DEFENSE

3. Petitioner became incorporated on April 2, 1852 via an act of the Senate and New York State Assembly at Chapter 139. The Montauk Friends of Olmsted Parks / Montauk Trustee Corp. incorporated itself as a not-for-profit organization on April 13, 1994 under Section 402 of the Not-For-Profit Corporation Law. Both corporations were legally established under the Laws of the State of New York and there is no question as to whether they are legal cognizable entities. Additionally, the decision of the New York State Supreme Court, Court of Appeals on May 6th, 2004, in the matter in re: Stuart Bennett Vorpahl recognized the "Town of Montauk, Inc." as "the intervenor" (sic) in the matter of Stuart Bennett Vorpahl on May 6th, 2004, (2 N.Y.3rd 781; 812N.E.2d 1255; 780 N.Y.S.2d 306).

AS AND FOR A REPLY TO RESPONDENT'S

FOURTH AFFIRMATIVE DEFENSE

4. The Petitioner is recognized as a legal corporation which was established in 1852 pursuant to an act of the Senate and New York State Assembly. The Montauk Friends of Olmsted Parks (MFOP) was established as a not-for-profit organization on April 13, 1994 under 402 of the Not-For-Profit Corporation Law and was created to:

a. Protect, conserve, steward and promote the parks, roadways, and other easements in Montauk as described on Olmsted subdivision maps and conveyed through covenanted agreements through the estate of Arthur W. Benson.

b. Enter into and/or support any litigation to protect the rights of Montauk Landowners arising from the Benson Covenants.

5. Additionally, the Trustees and Directors of the Board of the MFOP are descendants, successors or transferees of the original proprietors of Montauk as set forth in the 1852 Incorporation of Montauk and 1851 Order and Judgment of Nathan B. Morse and either by privity of bequest, inheritance, assignment or devise have inherited or acquired the rights associated with the covenants running with the lands. Due to the alleged illegal acts of government and land development by Respondent, the Petitioner, is an aggrieved legal entity which has been injured and continues to be injured in fact and in law.

6. Each of the chartering documents of the Montauk Friends of Olmsted Parks / Montauk Trustee Corporation including the 1686 letters patent issued by Governor Thomas Dongan of New York, the 1852 act by the Assembly of the State of New York recorded at chapter 139 of the laws of 1852, and the 1994 charter incorporating the Montauk Friends of Olmsted Parks under the laws of the State of New York specifically establish the right and standing to sue.

AS AND FOR A REPLY TO RESPONDENT'S

FIFTH AFFIRMATIVE DEFENSE

7. The Petitioner is represented by an attorney admitted to the practice of law in the State of New York.

AS AND FOR A REPLY TO RESPONDENT'S

SIXTH AFFIRMATIVE DEFENSE

8. The legal merits and factual issues of this case were never litigated or adjudicated and there is nothing in law or equity that would bar litigation or consideration of the matters and issues set forth in this Petition.

AS AND FOR A REPLY TO RESPONDENT'S

SEVENTH AFFIRMATIVE DEFENSE

9. A root cause of this proceeding is that the Town Board Government of East Hampton is alleged to be an illegal and unconstitutional entity not recognized as a legal municipality under the General Municipal Law therefore a Notice of Claim would be inapplicable for this Respondent. Respondent Town Board Government fails to show both when it was legally established and how it exercises powers delegated to it "by the Constitution and Legislature of the State of New York".

10. Notwithstanding the aforementioned, the Respondent has had sufficient notice, both actual and constructive, of the claims set forth in the instant Petition, and as such, has had adequate time and opportunity to investigate and resolve these matters.

AS AND FOR A REPLY TO RESPONDENT'S


EIGHTH AFFIRMATIVE DEFENSE

11. The allegation that this proceeding is meritless and frivolous is itself baseless and without merit.

WHEREFORE the Petitioner prays that the relief set forth in the Amended Petition be granted and for such other and further relief as this Court deems just and proper.

DATED: April 29, 2005.

Respectfully,


STEPHEN G. COURT, ESQ.
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