

Montauk is a Town!

After the Montauk community starts governing by town meeting, it will never want to give it up.

Tax Protection and Benefits

There are two immediate responses to considering that Montauk is a township. The first response is to ask, "will it cost me money?" while the second is a simple dislike of change.

Montauk has a substantial but diminishing community of lower income people who bought their properties in the '70's and '80's when it was relatively inexpensive. Only a few might be able to afford to buy their property today, and there is significant concern about taxation.

So let's talk money.

Montauk proprietors currently pay taxes to Easthampton. The question raised is whether what is collected is enough to cover Montauk's current level of services.

The answer is clear: *we're going to find out.*

Continued on page 3

Sovereignty, Tammany and Fisher

The full history of the genesis of the current dilemma is too lengthy to cover here, but it can be summarized by three words: *Sovereignty, Tammany and Fisher.*

Sovereignty is what was granted in the Dongan patents to the towns of Suffolk County and to New York City and Albany. The protection of such colonial charters would later be the central cause of the American Revolution.

Tammany was the corrupt organization that controlled the state legislature at the turn of the last century. It reacted negatively to knowledge that

Continued on page 4

The Montauk Constitution

The board of acting Trustees of Montauk adopted a document entitled "**The Articulated Rights and Constitution of the Township of Montauk**" on December 5th, 2000. This five-page document ("the Montauk Constitution") is posted at www.montauk.com.

The 1686 charter establishes that these lands are to be

Continued on page 3

Proprietors' Fourth House?



Trustees' Petition for Fourth House

Montauk Trustees acted upon their claim of jurisdiction and condemned the above house at the interchange of route 27 and the Old Montauk Highway for being built upon Benson Reservation property claimed by the town of Montauk.

A "Notice" was filed with Suffolk County Clerk's office as a Miscellaneous Deed on May 27th, 2003 and recorded at Liber 12253 p. 87 as an encumbrance upon the title.

On June 18th, 2003, the "Notice" was served with a Petition upon Governor George Pataki and Attorney General Elliot Spitzer.

The petition pleads that: **"Given the clear and uncontested nature of the major part of our claim, we do petition that your offices begin the process of settlement by intervening**

Continued on page 4

One Hundredth Anniversary!

The Town of Montauk's Olmsted Park System

2004 is the Centennial of the first grant to the Benson Olmsted Reservations!

Montauk's spectacular Olmsted designed park system of private parklands and roadways led to the discovery that Montauk is a township.

Frank and Mary Benson inherited the vast majority of Montauk from their father Arthur W. Benson, who had purchased all of Montauk (except the lighthouse) in 1879 from the proprietors of Montauk together with their 1852 corporation of the Trustees of Montauk. The first settlement in Montauk was

Continued on page 5

Montauk's Cable Franchise

CABLE RATES ARE GOING UP! For many good reasons, the Town of Montauk must consider having the township take control of the cable franchise in Montauk.

At a meeting with representatives of Optimum

Continued on page 5

Acting Trustees: Carolyn Carlson, Helen Ficalora, Lisa Greci, Capt. Bill Grimm, Daniel Grimm, Constance Judson, John Kessler, Herbert McKay, Richard Monahan. *ex-officio:* Steve Corwin, Louise Nielsen, Dr. Alice Roos, Dr. John Jay Sayers.

Acting Supervisor: Bob Ficalora

MFOP/Montauk Trustee Corp
P. O. Box 2612
Montauk, NY 11954

Our Purpose

This Gazette is being sent to Governor Pataki, Attorney General Elliot Spitzer, Chief Justice Judith Kaye, the Suffolk County Executive and Clerk, Montauk's State and Federal representatives, members of the judiciary, to Mr. John Reali, Esq. for the title insurance company, and to all Montauk property owners on the tax-list obtained from the Suffolk County Treasurer's offices.

The intention is to fulfill a long overdue legal purpose: to notice Montauk proprietors of their sovereign franchise right to govern Montauk, and to recover, improve and protect Montauk township's real property and other resources.

The petition at right was delivered to the Courts in November of 2002 in an attempt to protect Montauk's shell fishing from a judicial decision.

The Montauk Trustee Corp. has been successful in fully informing the courts of Montauk's situation asserting that it can be fixed.

We were presented by a God-send in the form of construction upon a Benson Reservation property, property that we assert belongs to the township of Montauk.

What we did in response was to assert our jurisdictional claims by filing a condemnation notice as an encumbrance upon the title, and then petition Governor

Honorable Magistrates of the Court¹,

In these past several years the Montauk Friends of Olmsted Parks Corporation has acted according to its incorporated purposes, and its claim of assumption of the powers at law of the 1852 Montauk Trustee Corporation, for and on behalf of the proprietors of Montauk to present to the court issues regarding our extensive properties, our sovereign rights of a township and of our sufferings under unlawful government.

In consideration of this situation, and with an attentive eye to the needs of this court, in December of 2000 our board of acting trustees adopted a Constitution for Montauk entitled "The Articulated Rights and Constitution of the Township of Montauk" (Montauk Constitution). As set forth therein, we ARE RETURNING to government by town meeting in the same manner as our forebears and other towns of New England. What is set forth in the Montauk Constitution is the process of a "Representative Town Meeting" (RTM) such as currently enjoyed by forty two Massachusetts towns, seven Connecticut towns, one Maine town and one Vermont town.

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 privileges at law of our town - fundamental rights of sovereignty - have been suppressed and a new and despotic form of government has been imposed upon us. We do pray for the rule of law and your understanding that our complaint is a matter that can and must be equitably settled.

Acting trustees of Montauk:

[Handwritten signatures of acting trustees: Richard Monahan, Constance Judson, John Jay Sayers, Lisa Greci, John Kessler, Helen Ficalora]
Acting supervisor,
Incorporated Township of Montauk

November 5, 2002

¹ For delivery to the N.Y. Court of Appeals (Grucci), Appellate Term (Vorpahl) & others.

George Pataki and Attorney General Elliot Spitzer for intervention and relief.

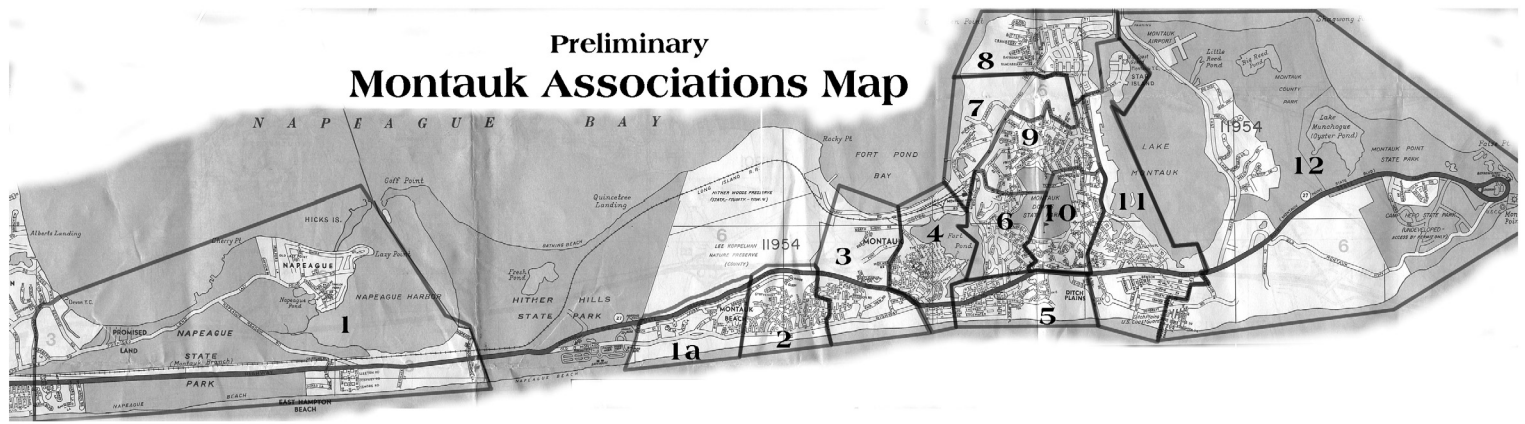
Bob has reviewed the current status of the property, is satisfied with the paperwork, and is especially thankful to Amedeo and Antonella Gabrielli for purchasing the property because it made everyone's life so much easier.

And so Governor Pataki and Attorney General Elliot Spitzer have been petitioned to intervene, the title insurance company and Suffolk County are in receipt of this mailing, the Stavolas

appear out of the picture, and the Gabriellis must be held harmless and fully compensated in the event of settlement: *the notice of condemnation filed by the MFOP/Montauk trustee corporation at Suffolk Liber 12253 of deeds p. 87 and the prior deed conditions (of an accurate survey and subject to existing covenants) are not recited in the Gabrielli's deed.*

And so to the Gabriellis and the others who worked the deal: *Grazie!* The ball is now in the Governor's court.

THE "CONETICUT COMBINACON" & THE MONTAUK CONSTITUTION



CONSTITUTION from page 1

governed as they were for centuries - by a New England-style town meeting. The Montauk Constitution makes it easy to organize and maintain the Montauk town meeting in a manner most appropriate to our history.

Where it came from -

In 1690 Easthampton pleaded for the government enjoyed in 1660, following the death of Oliver Cromwell but before the restoration of King Charles II.

East Hampton was purchased up to the Montauk line in 1648 by Connecticut. On October 3rd, 1654 the Easthampton town meeting resolved that:

"It is ordered that there shall be a copie of the coneticut combinacon shall be drawn forth as is convenient for us and yt all men shal set to their hands." Easthampton Town Records Vol. I p. 59

The "coneticut combinacon" was the 1639 "*Fundamental Orders of Connecticut*", considered the first constitution of democratic government in America. The

structure, function, principles and practice of these documents. Many towns in New England still use very similar forms of "Representative Town

later be designed with the same democratic intent.

In mirroring the structure and functioning of Connecticut, a committee of the acting Trustees devised the Associations that you see above. These arbitrary divisions were based upon apparent population using the zoning maps and will probably be adjusted by a committee at an early town meeting.

Each of the Associations will elect a trustee to a non-repeatable two year term, alternated so that six new trustees are elected each year.

Each Association will also elect four committee persons to a one year term to form committees to review town departments and set budgets.

The Montauk Constitution has been presented to Governor Pataki, Attorney General Elliot Spitzer, Chief Justice Judith Kaye, with notice of our intent to use it.

This mailing to all Montauk proprietors (taxpayers) by the Montauk Trustee Corporation notices claims to real property interests with the political rights of a township.

"combinacon" was a confederation of Connecticut townships.

The town meeting sent representatives twice a year to the "General Court" (legislature) at Hartford for the making of laws until at least the "conquest" of Long Island by the Duke of York in 1664.

The Montauk Constitution draws heavily from the

Meetings", although the population of Montauk's Associations are relatively small by comparison. (Interestingly, about the size of the original town meetings!)

It is useful to think of the "combinacon" as a lock that is difficult for arrogant people or outside groups to "pick" to control the town government. The 1686 charter itself would

TAX PROTECTION from page 1

Montauk will be reviewed by the proprietors (taxpayers) as the owners of a franchise. Under the Montauk Constitution every penny of tax dollars and municipal

revenue will be reviewed through the town meeting process.

It has been difficult getting good numbers from the town board government, but this

will change when we make a united demand for disclosure.

Once the town revenues and expenses are tallied we will have the liberty of enacting

any such tax-equity legislation as may be needed.

Our days of seeing women having anxiety attacks about school board votes will be over.

Wrongful Jurisdiction

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

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

SOVEREIGNTY, TAMMANY AND FISHER *from page 1*

the state legislature does not have jurisdiction over significant parts of the state. It passed the "General Municipal Law" and the "Town Law" in 1909 while the closely watched Montauk case of Pharoah v. Benson was in progress. That matter was summarily dismissed without determining the Indian/Proprietor rights in 1910 and the library of the legislature burned to the ground in 1911. New governments operating under the two laws began to be secretly established in violation of the charters, explaining why the Town of Easthampton has two governments today (Trustees & town board).

Carl Fisher was the Florida mobster associated with Al

Capone that brought the new "town board government" of East Hampton into Montauk. He also brought in criminals, bums and alcohol, burned down the common kitchen at the Montauk Association, turned Lake Montauk to salt water, subdivided proprietor lands at North Neck, Indian Field and Hither Hills, and built a Tower in a central open field and chased the defending proprietors out.

The plan used for the Gabrielli house used a map filed by Carl Fisher's "Montauk Beach Development Corp." to extend a property claim onto proprietors' land at the Benson/Olmsted interchange granted using the filed map of Hither Hills.

The reaction of at least the Hoyts and the Prentices was to

ensure that their properties would be left without heirs - i.e. that nobody could claim to own them. "Shadmoor" is the estate of Alfred M. Hoyt and "Camp Hero" is the estate of the heirs of John H. Prentice. Due to the manor rights established by the Dongan patent, all lands that escheat for lack of heirs can be claimed by the town of Montauk.

With the petition now pending before Governor Pataki, the Montauk Trustee Corporation is moving toward settlement on many issues.

Such settlement is best obtained by a representative body of Montauk proprietors assembled in town meeting. Indeed, it may be that only the Montauk town meeting has the legitimacy to do so.

FOURTH HOUSE, *from page 1*

with Mr. Stavola and his title insurers for the purpose of delivering the property to the Montauk trustee corporation for acceptance as the proprietors' Fourth House. (Our other claims may be settled either by negotiation or through the courts.) As a private residence, the current structure is an encroachment and massive aesthetic imposition upon an historic landscape. As Fourth House, however, it will be landscaped and used as an excellent accessory facility to the adjoining Reservation properties."

Quite frankly, the condemnation of the "spec" house built by Dan Stavola was an act of desperation. When the house next to it was being built the

MFOP/Montauk Trustee Corp. challenged it in court - and for a short period had a restraining order stopping construction -

**The Fourth House
Condemnation, Petition
and deeds can be reviewed
at
WWW.MONTAUK.COM**

but the court denied our corporation its common law right to appear without an attorney.

Using a simple survey it was determined that a significant part of the condemned property is on covenanted Benson property, and the papers received from East Hampton town show that they knew it when they granted the permit.

By attempting to burden the title it was hoped that the title insurance company would sue us, so that we could join all parties and have our day in court. Instead the property was sold to the Gabriellis on July 1st, 2003 by deed recorded at Suffolk Liber 12260 p. 425.

Their deed does not notice the buyer of the condemnation by the claimant Town of Montauk recorded at Liber 12253 p. 87, nor does it repeat the condition in a prior deed at liber 3725 p. 43 that conveyed the same land:

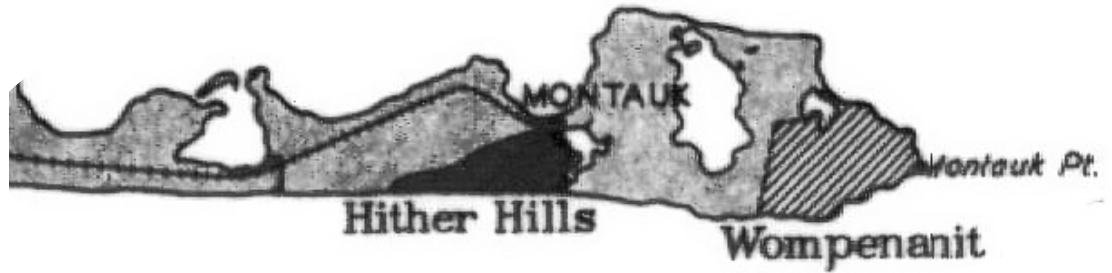
"Subject to: (1) Any state of facts which an accurate survey may show; (2) Restrictions, covenants and agreements of record, if any"

We expect that action in this matter by Governor Pataki will be honorable and truly historic.

ANNIVERSARY- from page 1

Montauk Association in 1880 (Suffolk map #6).

Within the map of Montauk inset at right you will notice two large shaded areas depicting the residential subdivision plans of "Wompenanit" and "Hither Hills" of property owned by Frank Sherman Benson and Mary Benson. The map of Wompenanit was completed by Frederick Law Olmsted and his son John Charles Olmsted in 1898 and the map of Hither Hills was completed by the firm of Olmsted Brothers in 1904. Both maps were filed with the Suffolk County Clerk for use in sales of the lots of land laid out in them. All Montauk property owners share the fully upheld right to the private common use of the Roadways and properties and beaches marked "Reservation" on these maps.



In April of 1904, with the first sale of a lot on the plan of Wompenanit, covenants that would be used in deeds of conveyance of over 90 lots, and as recently as 1956, were recorded at Suffolk liber 546 of deeds, page 524. The language established about 200 acres of waterfront

land marked as "Reservation" and tens of miles of roadways and beaches to be for the private "common use of the

Please print the Articulated Rights and Constitution of the Township of Montauk at www.montauk.com for reference with this Gazette.

parties of the first part, their grantees, and the grantees of the late Arthur W.

Benson, deceased, of land at Montauk." and "that the said

several covenants shall attach to and run with the land."

The Benson/Olmsted covenants have been fully upheld by Supreme Court of the State of New York in *Breakers Motel, et al. v. Sunbeach, et ano.* (Supreme Ct, Suffolk no. 85-5656, Underwood, J., 2/18/1994) modified, 224 A.D. 2d 473 (Appellate Division 2d Dept., 1996), leave dismissed, 88 N.Y.2d 1016 (Court of Appeals, 1996), leave denied, 90 N.Y.2d 810 (1997).

CABLE, from page 1

Online was held at the Montauk Chamber of Commerce.

During discussions it became very clear that Optimum Online is just a middleman for the content providers (CNN, CSPAN, etc.). Their reason for increasing the rates to the consumer was increases in charges from these providers.

It is also clear that they can't operate the cable franchise without a permit from the town, which means that they will need one from the Town of Montauk.

Substantial cost savings and benefits can be obtained by

maintaining the cable franchise within the township.

First, we cut out the middleman and negotiate directly with the content providers. This should translate into significantly lower charges to the end-user.

Second, keeping the franchise in-house means at least a few good local jobs.

Third, we will be able to provide truly incredible services that the cable company has no incentive to provide.

Fourth, we will be able to ensure that everyone has

access to the internet - almost as a matter of right (like a roadway).

Fifth, and most importantly, it will provide our town with an asset that will allow us to diversify and improve Montauk's economy in an ecologically harmonious way.

As we move forward toward settling our grievances for the injury to Montauk that has occurred from being governed illegally for over seventy-five years, we should look at the big picture of what we want and how to achieve it.

What we all want is security, prosperity, community and a

good quality of life. For this to happen in our new town we must review our town's assets and infrastructure.

Television and the Internet play a large role in today's society both personally and commercially as a township, and it is not unprecedented for the township to take over the cable franchise

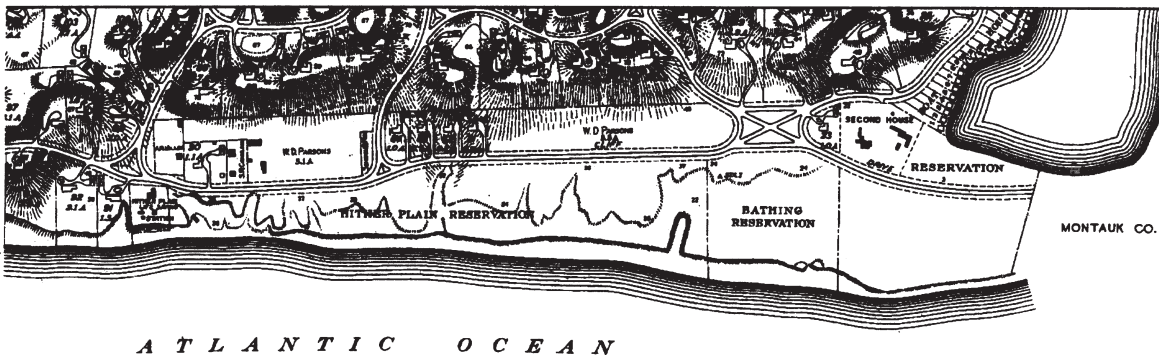
Having community control of the cable system can only be a blessing, and having a data center and small business incubator will go a long way toward improving local prosperity and our quality of life.

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.



PLAN OF PART OF
HITHER HILLS
 MONTAUK L.I.
 Property of Frank Sherman Benson and Mary Benson
SHEET I
 Including Lots 1 to 140
SCALES
 OLIMSTED BROTHERS LANDSCAPE ARCHITECTS
 BROOKLINE MASS. FEBRUARY 1904
 2530-6

*Note: Approximate areas of lots estimated to center of adjoining right of way are indicated thus.....3,3,4
 Elevations above mean tide are indicated thus.....01
 Triangulation points are indicated thus.....SP,32
 Proposed houses are indicated thus.....FC
 Proposed stables are indicated thus.....02
 Existing buildings are indicated thus.....08*

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

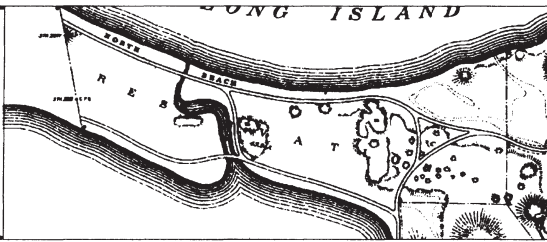
The Decision of the Supreme Court of the State of New York

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

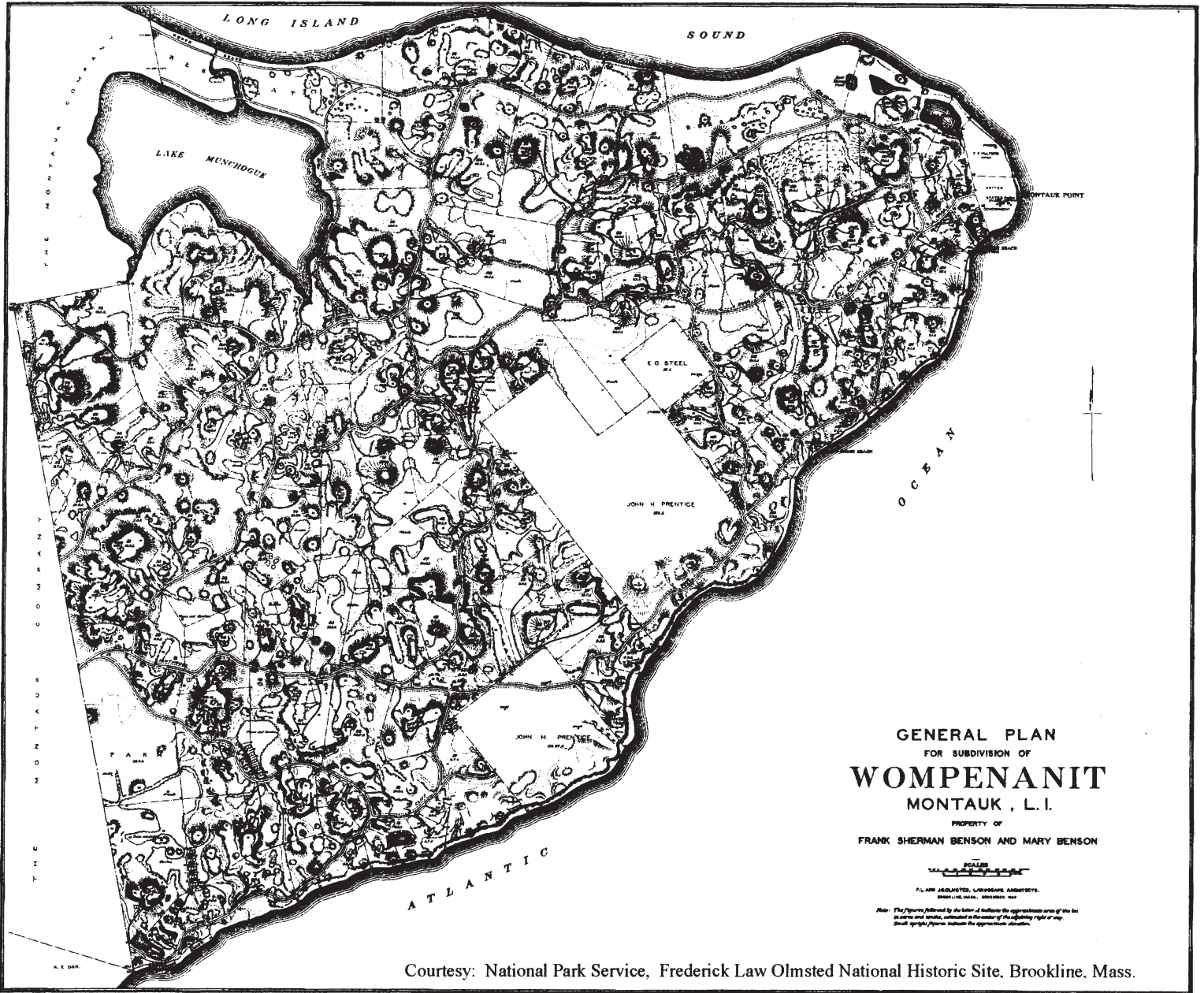
to remove any and all fences and structures and restore said Reservations to their original open and natural state, forthwith. Defendants and their employees or agents are further directed to forebear from preventing plaintiffs from enjoying their common use of said Reservations... This memorandum constitutes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

Unnamed
Reservation
(State Park)



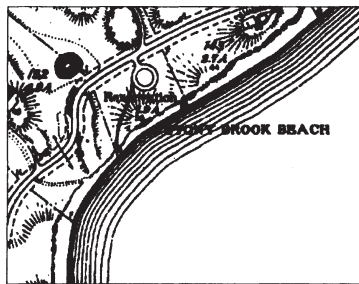
Unnamed
Reservation
(joint
stewardship,
State Park)



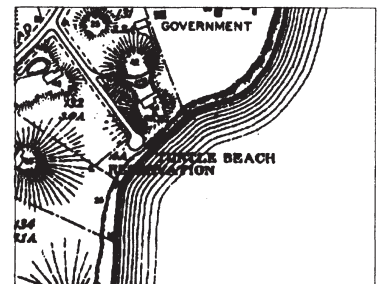
Courtesy: National Park Service, Frederick Law Olmsted National Historic Site, Brookline, Mass.



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



Stony Brook Beach
Reservation (State Park)



Turtle Beach Reservation
(Town of East Hampton)

Declaration of Right

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

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

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

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

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

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

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

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

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

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

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

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

97 signatures collected

The Legal Foundation of Montauk Township

The First Assembly - Chapter Two of Laws of 1691

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

In 1682 a petition initiated by the town meeting in Easthampton pleaded for democratic government. A new governor, Thomas Dongan, was named by the Duke of York and issued instructions to come to New York and to convene an assembly. The first legislature of New York under the Duke of York convened on October 17th and the original Constitution of New York was enacted on October 30th, 1683.

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

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

Easthampton had been a member of the Connecticut legislature when that government received its powerful 1662

charter, and key language within the Dongan patent that these lands "Be holden of his said Majesty, his heirs and successors in free and common socage according to the Manor of East Greenwich in the County of Kent" is contained in both.

The powerful Puritan Minister Thomas James, Captain Thomas Talmadge, Lieut. John Wheeler and Ensign Samuell Mulford were before Governor Dongan to receive the patent. The rank of "ensigne" was a commissioned rank for the legal standard-bearer necessary for treaties.

The Dongan Patent granted the sovereign right to make laws in town meeting together with sweeping

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

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

judicial, police and taxing powers. A Southampton attorney who reviewed the charters wrote that what was granted were "the powers of a state within a state".

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

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

On June 2nd, 1689, a prominent citizen and captain of the militia, Jacob

Leisler, entered Fort James with forty-nine men and took control. Despite initial opposition to Leisler's rule, after the February 9th, 1690, attack upon Schenectady by the French that burned it to the ground, New York unified under him.

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

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

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

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

The second Leisler Assembly convened on September 15th, 1690 and passed two laws, one to further establish the revenue, and the other to strengthen

the New York military under Leisler's command and to impose a fine for refusing military service in the war against the French.

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

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

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

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

Upon the Governor's appearance Leisler sent out a team to negotiate terms of surrender. No discussion was allowed, however, and his negotiators were arrested. Leisler and his men then surrendered and were thrown into prison and charged with rebellion and murder.

It was under these conditions - with Leisler and his men in jail - that on April 3rd, 1691, the "First Assembly"

of the royal province of New York was convened.

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

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

This Act formally surrendered the colony to William and Mary, recognized them as the King and Queen of England, and submitted to their authority. The final part of the Act goes on to state that:

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

Having surrendered the New York to the Governor and strong language to enforce it, Chapter Two was the first among the laws received by the colonists in return. It was entitled

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

While Chapter One surrendered the colony to William and Mary, Chapter Two surrendered significant royal power to the people by holding that

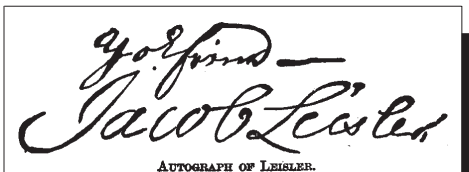
"all the Charters, Pattents, Grants made, given and granted and well and truley executed under the seal of this Province, Constituted and Authorized by their late and present Majtys the Kings of England and Registered in the Secrтарыes office, unto the severall and respective Corporations of bodys politick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

It is well settled in the law that the State of New York is successor to the King and that, therefore, the Dongan patents of the towns of Suffolk County are enforceable against the State of New York.

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

Almost four years later, on May 3, 1695, King William signed an act issuing a general pardon clearing Leisler's name and freeing his men still in jail.

Chapter 2 of the laws of 1691 established the enforceability of the Dongan patents of the towns of Suffolk County against the government of New York forever. Such powerful legal protection of sovereign right to govern is rarely attained, and it is our duty to recover and protect it for ourselves and for those who come after us.



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



Organizing Next Steps

We are in the final year of a ten year odyssey seeking the protection of Montauk's lands and resources.

When the Montauk Friends of Olmsted Parks (MFOP) was founded in 1994 it was not yet known that what we were attempting to protect was the property of a hidden township. When this became known, and the town board's claim of jurisdiction was questioned, we were forced into continuous reaction.

Over the years it was that reaction that caused the MFOP to: assume the powers of the 1852 corporation of the Trustees of Montauk (1996); to file papers and to bring actions before the courts (since 1996); to adopt the Articulated Rights and Constitution of the Township of Montauk (December, 2000), to notice the courts of our intent to convene a Town Meeting according to it (Nov. 2002), and, finally, to formally serve a petition upon Governor George E. Pataki and Attorney General Elliot Spitzer on June 18th of this year.

The beauty of this genesis is that we now have a Constitution to use for convening the Montauk Town Meeting, and this makes our work much easier in bringing it into existence. The convening a peaceable assembly is one of our most prized Constitutionally protected liberties.

Registration/Volunteer Form

Name

Mailing Address

Tel:

Zip

Property Street Addr:

Assoc#

Tel:

Email:

Volunteers Needed!

Please return to:

Would you like to be Acting Trustee of your Association? Y / N

MFOP/Montauk Trustee Corp.

Would you like to be an Acting Constable for your Association? Y / N

P.O. Box 2612

Montauk, NY 11954

Would you be willing to do door-to-door canvassing? Y / N

Would you like to contribute to carry costs? Y / N If yes \$

All volunteers will be contacted by an Acting Trustee.

Use the above form to register with the corporation and to volunteer. It doesn't take many people to get this going, an Association quorum is only seven

involved in convening the town meeting. Please help out and pitch in what you can. This Gazette has been paid for out of pocket by Bob Ficalora and we would like to

reimburse him and to provide for the future.

Please have a positive dream about Montauk's future. Being organized as a community can only be a good

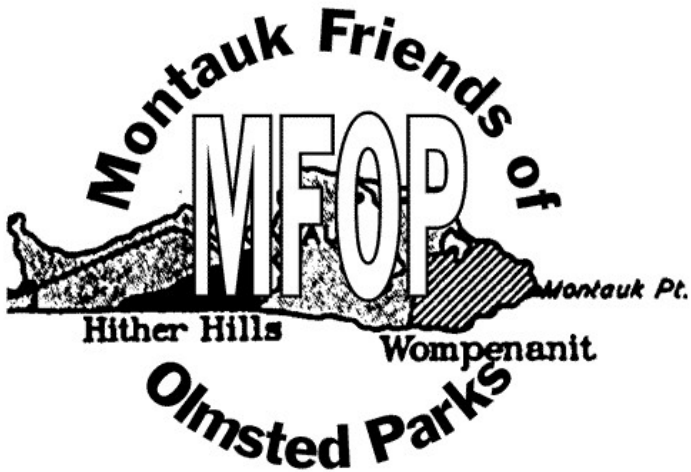
Copies of this Gazette are being formally served upon Governor George E. Pataki, Attorney General Elliot Spitzer, and Chief Justice Judith S. Kaye. The town meeting will be honored to invite them to appear in celebration of our unity.

property owners, but we want this to bring as many proprietors together as possible.

This mailing cost almost \$2,500 and there will be expenses

thing, and the facts, the law and history are clearly on our side.

THINK TOWN MEETING!



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

P. O. Box 2612
Montauk, Long Island, New York 11954

RETURN SERVICE REQUESTED

2004 Centennial of the Benson Covenants

*Includes petition to Governor Pataki, the
Legal Foundation of Montauk Township
and info on the Montauk Town Meeting.*