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Notice of re-submission

Order to Show Cause

REQUEST FOR PRELIMINARY INJUNCTION UPON FURTHER SUBDIVISION AND CONSTRUCTION UPON MONTAUK LANDS.

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Affirmation of Service

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

Robert A. Ficalora as assignee of Montauk Friends of
Olmsted Parks, inc., a not-for-profit corporation established
under the laws of the State of New York

Plaintiff,

- against -

The town board government of East Hampton
and
Sunbeach Montauk II, inc., as claimant fee title holder to the
Hither Plain Reservation and Bathing Reservation properties
in Montauk.

Defendants.

**Notice of
re-submission**

Case No.
99-02065

To all defendants and the court **PLEASE TAKE NOTICE** that attached hereto is a proposed order to show cause (OSC) previously submitted to this court but refused and returned by the presiding justice prior to calendaring for consideration by this court. The proposed order to show cause and supporting affidavit ask why a preliminary injunction upon new subdivision and construction upon lands in Montauk should not be entered by this court absent a showing of some legal or constitutional basis for East Hampton's claim of jurisdiction over Montauk and does state its belief that a massive run is currently being made upon Montauk Trustee properties.

It is appellants' understanding that should this court determine to grant reconsideration that any one of the judges in this matter may sign the OSC which was to be on the table before it. The proprietors of Montauk have done nothing wrong that I know of, nor has this state or our nation been conquered by a foreign power. Appellant does pray that this court will keep this proposed OSC on the table until such time as it will dispose of our motion for reconsideration and for such other and further relief which this court deems equitable and just.



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Order to Show Cause

Case No.
99-02065

Upon the affidavit of Robert A. Ficalora, sworn to on November 21st, 2000, and the supporting documents attached thereunto, it is hereby

ORDERED, that defendant town board government of the Town of East Hampton show cause before this court at the Courthouse at 45 Monroe Place, Brooklyn, New York, at 9:30 a.m. on _____, 200__ why an order should not be entered in this action enjoining and restraining it from approving or permitting any further subdivision of, or new construction upon , lands in Montauk, or construction or improvement upon Montauk lands by said Town, until trial, absent a showing of an incorporated or chartered basis for its claim of jurisdiction.

LET SERVICE of a copy of this order, and of the papers upon which is based, by service by United States express mail (overnight) to all defendants, attorney for the town board government of the Town of East Hampton on or before _____, 200__ be deemed sufficient service thereof.

This order is entered by this court this _____, 200__ and shall upon presentation be entered in the office of the clerk.

Enter:

In addition to my knowledge in this and related matters at law (set forth in the affidavit in support of the motion) I have good knowledge of three historic legal actions involving Montauk proprietors' rights. These are:

- Henry P. Hedges, et. al.(Proprietors of Montauk) v. The Trustees of the Freeholders and Commonalty of the Town of East Hampton (N.Y. Supreme, citation unknown, 1851), and,
- Robert M. Grinnell and Sophie, his wife against Edward M. Baker and others, (N.Y. Supreme, citation unknown, 1879), and
- Pharaoh v. Benson, et.al. 69 Misc. Rep. 241 [N.Y. Supreme, Suffolk Co., 1910], affirmed 164 App.Div 51, affirmed 222 N.Y. 665).

Although the records have been removed from the Suffolk County Clerk's office, the first two cases are extensively covered in the Trustee Records and also the book entitled "Montauk" published in 1925 by authority of the East Hampton Town Meeting, (a copy of which accompanies these papers as Exhibit A). The record on appeal in Pharaoh has been on limited availability to deponent in the East Hampton library and at the Brooklyn Historical Society.

Simple questions are asked of the defendant in the OSC :

- does the Town Board have a legal charter to substantiate its claim of jurisdiction?
- does either the State of New York or the Town of East Hampton have any claim of fee title to the lands beneath the state right-of-way upon which there is now substantial construction in progress (for a recreational park)?

If the orders requested are entered due to lack of good cause shown, this matter will be positively remanded to the trial court before Justice Robert Webster Oliver, J.S.C. in Riverhead, Suffolk County.

REQUEST FOR PRELIMINARY INJUNCTION UPON FURTHER SUBDIVISION AND CONSTRUCTION UPON MONTAUK LANDS.

*For taking away our charters, abolishing our most valuable laws, and
altering, fundamentally, the forms of our government*
- Declaration of Independence

The wording of the order requested in the OSC is why an order should not be entered against the Town of East Hampton:

“enjoining and restraining it from approving or permitting any further subdivision of, or new construction upon , lands in Montauk, or construction or improvement upon Montauk lands by said Town, until trial absent a showing of an incorporated or chartered basis for its claim of jurisdiction..”

On June 26th, 1851, a preliminary injunction was issued by this court upon defendant in the matter of Henry P. Hedges, et. al., (Proprietors of Montauk) v the Trustees of the Freeholders and Commonalty of the Town of East Hampton (att. B).

The Trustees, who remain the only incorporated government of East Hampton (as established by the 1686 patent and charter), were subsequently found guilty of the usurpation of the Montauk proprietors’ franchises for general Town purposes. *The court subsequently ordered the Trustees (ie. Town of East Hampton) to release all corporate claim to Montauk* (att. B). Montauk, left without government by this order, was incorporated the State Assembly on April 2nd, 1852 (Chapter 139).

In 1851 order, this court ordered the Town of East Hampton to pay back thirteen years worth of revenue taken from Montauk and to do so by taxing. From 1852 until at least 1911 the Town of East Hampton had no apparent involvement in Montauk affairs.

By reorganizing the Town government under the 1909 Town Law of the State of New York and by taking advantage of unfortunate circumstances within the Benson Estate after the death of Mary Benson, the Town of East Hampton unlawfully retook

control of Montauk. In effect, the town board government of East Hampton is a State and County supported racketeering operation established to unlawfully take Montauk's jurisdiction and to usurp the proprietors' franchise.

By the terms of the patent, of which the proprietors of Montauk are successors in interest, the Town of East Hampton does not have the power to assess or collect Montauk's taxes, to determine Montauk's land use or its allocation of fresh water resource, or to have any municipal role in Montauk whatsoever. The injury to the interests of the proprietors of Montauk has been substantial.

What brings urgency to the order to show cause, however, is the injury occurring to the Proprietors' interests at this time. At Point VI of the opening brief on appeal, deponent argues that there are significant properties that are burdened with proprietors' rights in Montauk which wholly encumber the them. I will focus on the clearest and most urgent of the proprietors' claims which is threatened in the Hither Woods/Hither End of Montauk.

Please find attached as attachment C a portion of the "Guide Map of Wompenanit, Hither Hills, and Hither Woods", dated 1905, prepared by the firm of Olmsted Brothers for the Benson Estate (Courtesy: National Park Service). Notice the "Division Line" between the Hither Woods and Hither Hills. The division line is given meaning by a 1661 deed and Wallace Tooker's 1912 book "Indian Place Names on Long Island (Tooker).

The Pond was the eastern limit of the grant, and the exact line was defined by a fence, which the Indians by the terms of the deed were "to secure on ye south side of ye aforesaid pond from all cattle, during the time that their corn is on the ground." *A fence still stands*, as it has done for the past two hundred years, on the same line" Tooker (1912), p. 85 (emphasis added)

The precision demonstrated by the Olmsted firm in its surveying and contouring of its maps of Montauk was exceptional and their placement of the division line, contemporaneous with Mr. Tooker's observation, is logical and beyond reproach.

According to the 1661 deed, also known as "ye deed of guift", all lands to the west of the line were to be held as "free commonage" by the proprietors and their heirs, successors and assigns forever. To wit:

"To have and to hould ye same as *free commonage* to bee ordered and disposed of for ye benefit of ye aforesaid Inhabitants of Easthampton themselves their heirs executors, adjnstrators and assigns for ever ("Montauk", p.27)... And yet ye Indians of Muntaucut shall have libertie if they see cause to set their houses upon Muntaucut land west ward of ye said pond, and to have firewood from time to time on ye foresaid land ("Montauk", p.28, emphasis added.) (att. D)

A subsequent agreement between the Indians and the proprietors of Montauk dated March 3rd, 1702-3, resettked the 1661 deed thus:

That the said Indians and their posterity after them shall have liberty to make use of so much of that timber of the town's on this side of Fort Pond as they shall need to fence in their general field, after they have used all the fencing stuff that is upon Northneck, if the English do not lay our that land into parcels or lotments and improve same. ("Montauk", p. 55-56) (att. E)

The division line is the northern boundary of the filed subdivision map of Hither Hills. Many successor proprietors of Montauk had purchased land prior to the Montauk tribe being declared extinct at trial in 1910. The Hither Woods, however, have never been allotted by the proprietors. The common use of the Hither Woods property is, like the reservations along the ocean, an appurtenance to Montauk proprietors' land. Hither Hills State Park is in the Nominick Hills section of the 1661 commonage.

A substantial portion of that Hither Woods acreage has remained undeveloped, especially west of Fort Pond Bay. That is changing rapidly, however, with a subdivision having been recently approved there. My title examiner, Daryl S. Lynch,

informs me that Riverhead is currently being “swamped” by new subdivision plans in Montauk and the lands adjoining Hither Hills State Park within the Hither End of Montauk are currently a bee hive of construction activity.

A right of way established for the Montauk State Parkway to bypass the Benson Reservation area and the commercial district to remove unnecessary traffic is currently under development by the Town of East Hampton as a recreational facility. Although parts of the right of way have already been somehow subdivided and sold, neither the Town nor the State of New York have claimed ownership of the land.

Also attached is a 1997 resolution attempting to protect Montauk’s fragile and threatened fresh water resource (att. F). Neither the Town of East Hampton nor the Suffolk County Water Authority, inc., can make any claim of jurisdiction over its use and allocation and they have greatly overburdened and inequitably allocated our very precious fresh water resource in order to support further development.

The current rush of activity is, in my opinion, clearly fed by deponent’s inability to be successful in his pleas to this court. Your deponent begs the court that the motion for reconsideration and this Order to Show Cause be granted together with such other and further relief as the court deems equitable and just.

Robert A. Ficalora

Sworn to before me this
_____ day of November, 2000

Notary Public

Affidavit

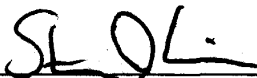
Montauk Friends of Olmsted Parks, Inc.
P.O. Box 2612
Montauk, NY 11954
(631) 668-3119
email: trustees@montauk.com



Resolution of Assignment
11/7/2000

On November 7th, 2000, we, the undersigned board of directors of the Montauk Friends of Olmsted Parks/Montauk Trustee corporation, having convened and considered the common law of the State of New York as established by in Kamp as assignee of AAA Stretch, inc., Appellant v. In Sportswear, inc., Respondent 39 A.D.2d 869, 332 N.Y.S.2d 983, *reversing on dissenting opinion of Mr. Justice Lupiano*, 70 Misc 2d 898, 899; 335 N.Y.S.2d 306, our past assignment of corporate causes before the Supreme Court of the State of New York to our acting president Robert A. Ficalora in attempted conformity with the law, and the decision and order of the Appellate Division of the Supreme Court of the State of New York entered on October 23rd, 2000, which dismissed our past assignments as invalid, do herewith attest our

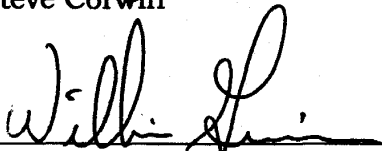
Resolve: that Mr. Ficalora is and for the present shall continue to be assigned the power and responsibility to represent this corporation in all of the corporation's matters before the court including and especially its pending cause in the matter of Robert A. Ficalora as Assignee of the Montauk Friends of Olmsted Parks corporation vs. the town board government of the Town of East Hampton, et. ano., filed with the Suffolk County Clerk as cause no. 98-14806, and that he shall do so in return for one dollar and other good and valuable consideration.




Steve Corwin



Helen Ficalora



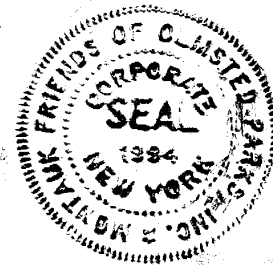
William Grimm



Daniel Grimm



Richard Monahan



FILED
NOV 11 2000
EDWARD P. ROMANO
COUNTY CLERK

At a special term of the Supreme Court held at the City Hall in the City of Brooklyn on the 26th day of June A. D. 1851

SUPREME COURT

Present Hon. Nathan B. Morse, Justice

Henry P. Hedges, Maltby G. Rose, Wilkes Hedges, Samuel B. Gardiner, David H. Huntting, John T. Dayton & John Baker against The Trustees of the Freeholders & Commonalty of the Town of East Hampton:

It appearing satisfactorily to me by the affidavits of the plaintiffs Henry P. Hedges, Samuel B. Gardiner, David H. Huntting and John T. Dayton, and the pleadings in this action duly verified, that sufficient grounds therefor exist and an undertaking pursuant to the statute having been filed, I do hereby order that the defendants The Trustees of the Freeholders and commonalty of the Town of East Hampton and each of them and their agents refrain from hiring or letting out the pasturage of the lands and premises in controversy in this action commonly called Montauk situate in the Town of East Hampton in the County of Suffolk and Bounded northerly by the sea or Long Island Sound, Easterly by the sea and land belonging to the United States, Southerly by the Atlantic Ocean, and westerly by Napeag Bay or Harbor and the East bounds of the first Town Purchase of East Hampton, made in 1648, and from turning or driving or permitting or suffering to be turned or driven on to the said lands and premises any cattle, horses or sheep other than those belonging to the plaintiffs in this action and their associates the proprietors of Montauk (so called) respectively, and those of persons who hire the right of pasturage from such proprietors, some or one of them. All such turning on of cattle horses and sheep to be in every

case only to the extent of the interest of the proprietor upon whose right they are turned on according to customs, rules and regulations by which the pasturage of Montauk has been heretofore for many years regulated and enjoyed, and from doing any other act or thing by which the said proprietors shall be interrupted hindered or prejudiced in the use and enjoyment of the pasturage of Montauk in the manner they have heretofore enjoyed the same for many years past; and also that the said defendants do not fail to do and perform any act or thing which the Trustees of the Freeholders and commonalty of the Town of East Hampton have for many years past been used and accustomed to do and perform and which is necessary and proper to be done in order to give the said proprietors the full use and enjoyment of the said pasturage in the manner they have heretofore enjoyed the same for many years past until the further order of this court and in case of disobedience to this order you will be liable to the punishment therefor prescribed by law.

Dated June 27, 1851.

N. B. MORSE.

At a Special Term of the Supreme Court of the state of New York and Circuit Court held in and for the County of Suffolk at the town of Riverhead in the said County at the Court House in the said town held before the Honourable Nathan B. Morse one of the Judges on the sixth day of September in the year Eighteen hundred and fifty-one.

Henry P. Hedges & others agst. The Trustees of the Freeholders of the town of E'Hampton.

The issues in this case having been tried by the court by the assent of the parties in open court waiving a trial by Jury duly entered in the minutes, and the pleading and evidence in this cause having been heard and Mr. George Miller and Daniel Lord for the plaintiffs and Mr. S. L. Gardiner and Ch. O. Conner for the defendants having been heard the court doth determine and find the issues of part joined in the said cause for the plaintiffs ; and doth thereupon adjudge and declare and it is now considered by the Court, that the plaintiffs and those having title as proprietors of Montauk are severally seized as tenants in common of the land of Montauk mentioned in the complaint including the Ponds, Fort Pond, Great Pond & Oyster Pond and other ponds within the limits aforesaid and are entitled :

To the possession thereof and are true and lawful owners thereof according to their several and respective proportions as tenants in common in fee simple and that the defendants are not entitled against the will of the said plaintiffs and others tenants in common as aforesaid to the possession or management of the said lands or any parts thereof.

And it is further ordered, that it be referred to John P. Rolfe, Esquire to ascertain who are severally and respectively entitled as proprietors of Montauk to the beneficial interest in the said lands and premises and that he give public notice for all the said proprietors and those who claim to be such to (show) their respective interests before him by such day and at such place within the said county as he shall appoint by advertisement for at least four weeks in one of the newspapers printed in the County of Suffolk and one newspaper printed in the City of New York; and that the said referee do report to this court the several and respective interests shares and proportions of those who shall appear before him in the said lands and their relative

interests compared with the interests of all the proprietors of the said lands.

And also draw up the form of a release and surrender of all and singular the said lands to the parties so showing title as aforesaid according to their several and respective interests so to be ascertained as aforesaid; and that the said defendants do on request execute such release and surrender under their corporate seal.

And it is further considered and ordered and adjudged that the Trustees of the Freeholders and inhabitants of Easthampton defendants do account to the said proprietors according to their several and respective interests for all moneys by them received as rents issues or profits in respect of the said lands of Montauk and premises aforesaid since the time in the year eighteen hundred and thirty eight in the Bill of Complaint mentioned in this behalf of the defendants claiming title and right to take to their own use and interest therein and of the benefits and profits of the said premises, and that the amount be taken by the said referee and the balance be stated by him and the amount due to the plaintiffs and those other proprietors who shall come in before him and prove their rights in this behalf for their shares and proportions thereof respectively be paid by the defendants with the cost of this suit to be taxed. And liberty is reserved to any of the parties to bring in exceptions to the reports of the said referee within twenty days after notice thereof provided the matter of such exceptions have been stated and made to the said referee at the hearings before him or before making of the said report.

And it is further ordered, the defendants the Trustees &c. do deliver up the possession of the said lands to the Plffs. & other beneficial proprietors and all deeds writings and muniments of title whatever relating to the lands of Montauk in the complaint mentioned and all books of

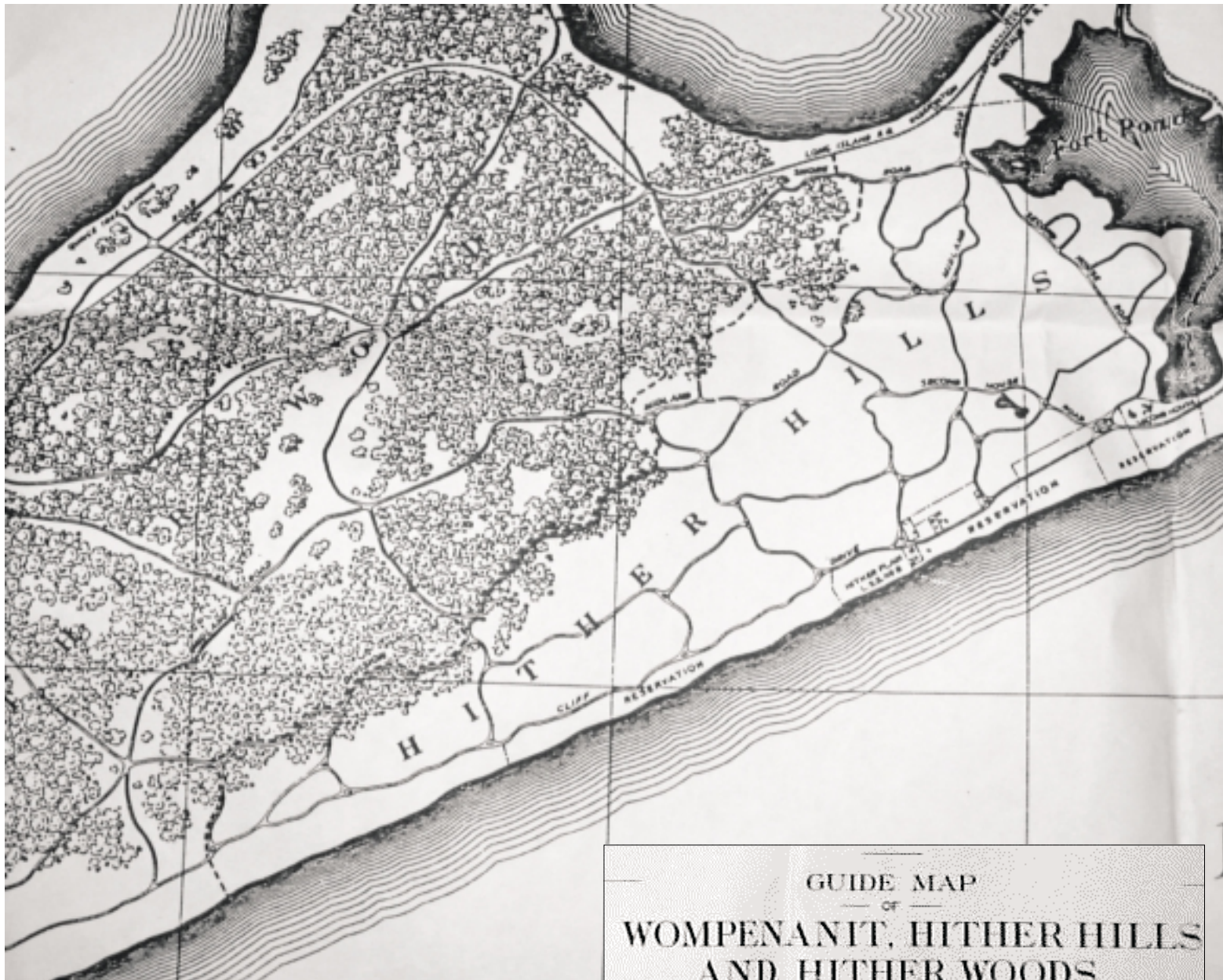
account vouchers and papers relating thereto are to be delivered to such person or persons as shall be named by the proprietors of Montauk or a majority thereof in interest or deposit the same for the benefit of such proprietors in the office of the clerk of the County of Suffolk, but the defts. are not required so to deposit deeds or papers not relating solely to the said lands of Montauk but shall retain the same deposited in the office of the Clerk of the said town for the benefit of all parties entitled.

N. B. Morse

Supreme Court: Henry P. Hedges and others against The Trustees of the Freeholders and Commonalty of the Town of Easthampton.

To the Supreme Court :

In pursuance of a Judgment in this Action made at a Special Term of the Supreme Court and Circuit Court held in and for the County of Suffolk at the Town of Riverhead at the Court House on the 6th day of September 1851 Whereby it was referred to the undersigned John P. Rolfe to ascertain who are severally and respectively entitled as proprietors of Montauk to the beneficial interest in the Lands and premises in said Judgment mentioned by which Judgment the said referee was directed to give public notice for all the said proprietors and those who claim to be such to show their respective interests before him by such day and at such place within said County as he the said referee should appoint by advertisement for at least four weeks in one of the newspapers printed in the County of Suffolk and in one newspaper printed in the City of New York, and further ordering the said referee to report to this Court the several and respective interests shares and proportions of those who should appear before him in the said lands compared with the interest of all the proprietors of



GUIDE MAP
— OF —
**WOMPENANT, HITHER HILLS
AND HITHER WOODS**
BELONGING TO
Frank Sherman Benson and Mary Benson
AT
MONTAUK, L.I.

SCALE

0 100 200 300 400 500 600 700 800 900 1000

Central Builders, Landscape Architects
Brooklyn, New York, 1947

annullity of Ye contract or contracts betwene Yem and us
about Ye sd Land but Yey shall still acknowledge Ye land
to be our by bargaine.

Tho: Barker (L. S.)

Robert Bond (L. S.)

Thomas James (L. S.)

Lion Gardener (L. S.)

John Mulford (L. S.)

John Hand (L. S.)

Ben: Price (L. S.)

Sealed and delivered in
prsence of us

Richard Shaw

The marke of John Wolle

1661

A COPY OF YE DEED OF GUIFT

Bee it knowne unto all men by these present yt ye sunk
squa of Muntaucut wife of Waindanch of late yeeres de-
ceased: & alsoe I wiancanbone sonn of ye foresaid deceased
partie sachem of Long Island Together with Pokkatoun
cheife Counsellor. & ye rest of or trustie counsellors &
associates send greeteing) know yee yt whereas there was
a full & firm Indenture made betwene Mr Thomas Baker
Mr Roberd Bond Mr. Thomas James Mr. Lion Gardener
Mr John Mullford John Hand Ben: Price). Together with
their associates ye Inhabitants of Easthampton uppon Long
Island ye one partie, and I sunk squa, & allsoe me wiankom-
bone with the full consent of my counsellors & saruants, as
alsoe of my Two Guardians left by my deceased father
viz Mr. Lion Gardiner of Easthampton and Dr. David
Gardiner of ye Ile of wight we other partie In ye yeere of

our Lord one Thousand six hundred sixtie upon ye sixth day of August whereby wee did fullie & firmlie sell unto ye said parties our neck of land called mantaucut from sea to sea from ye utmost end of yt neck eastward called wompenamet to our utmost bounds westward called Napeake, withall priveledes & appurtanences belonginge to ye same uppon conditions there & then specified in yt foresaid Indenture and a counter bond bearing ye same date, signed & sealed to us by ye foresaid parties, Inhabitants of Easthampton: By vertue of which counterbond wee had free libertie graunted if we see cause to sitt downe againe uppon ye said and This being ye full purpose, of us ye sunk sqa & of wionkonbone sachem, Together with or associates in convenient time to sitt down to live att ye said Muntaukut know yee alsoe yt whereas of late yeeres there haveinge bene sore distress & callamjtie befalln us by reson of ye cruell opposition & violence of our (most) deadly enemje Ninnecraft sachem of Narriganset whose cruelltie hath proceeded soe farr as to take away ye lives of many of our deare freinds & relations, soe yt wee were forced to flie from ye said Muntaucut for shelter to or beloved freinds & neighbors of Easthampton, whom wee found to be freindlie in or distress, And whome we must ever owne and acknowledge as Instruments under god for ye preservation of our lives & ye lives of or wives & children to this day: And of yt land of Muntaucut from ye hands of or enemjs and since our comjng amonst them, ye relieving of us in our extremjties from time to time and now at last wee find ye said Inhabitants of Easthampton our deliverers cordiall & faithfull in their former covenants Leaveing us freelie to our own libertie to goe or stay being readie to performe all conditions of ye aforesaid agreements, after searious debate & Deliberation, In Consideration of yt love which wee have & doe bare unto these our trustie & beloved freinds of East-

hampton, uppon our owne free & voluntarie motion have given & granted & by these presents doe give & grant & confirme unto these our freinds ye Inhabitants of Easthampton excepting such as have exempted themselives from ye former agreements & shall from this our graunt, all yt piece or neck of land belonging to Mantaucut land westward to a fresh pond in a beach on this side west ward to yt place where the old Indian fort stode on ye other side eastward to ye new fort yt is yet standing The name of yt pond being Quaunontowouk on ye north & konkhonganik on ye south, Together with all priviledges & appurtanences belonging to ye foresaid land from south to north, To have & to hould ye same as free commonage to bee ordered & disposed of for ye benefit of ye aforesaid Inhabitants of Easthampton themselves their heires executors adnjstrators & assignes for ever: To possess ye same freelie & quietlie without any matter of challenge claims or demand of us ye said sunk squa & wionkombone sachem or our associates or of any other person or persons whatsoever for us or in our name or for our cause meanes or procurement. And without any money or other thing therefore to bee yeilded paid or done onely for ye said land to us or our heires for ever, & shall justifie ye possession of this foresaid land by these said Inhabitants of Easthampton, against any shall question their propreitie in ye same, know yee allsoe yt this is not onely the Deede of me ye sunck squa & wionkombone sachem, But alsoe ye act & Deede of all or associates & subiects who have had formerlie any proprietie in ye aforesaid land They haveing manifested their consent freellie by a voute not one contradicting ye same, As allsoe with ye consent of Mr Lion Gardiner & Mr David Gardiner whom ye deceased father left as Overseers & Guardians of ye aforesaid wionkombone sachem, know yee allsoe yt for ye securing of ye Easterne part of Muntocut land which ye

Indians are to live uppon yt ye Inhabitants of ye aforesaid Easthampton shall from time to time keepe upp a sufficient fence uppon ye North side of ye foresaid pond & ye Indians are to secure ye south side of ye aforesaid pond from all cattell dureing ye time their corne is uppon ye ground; & then East hampton cattell shall have libertie Eastward according to former agrements: And yet ye Indians of Muntaucut shall have libertie if they see cause to set their houses uppon Muntaucut land west ward of ye said pond, and to have firewood from time to time on ye foresaid land, know alsoe yt whatever cannoe or Deere shall come ashore on ye North side of any part of Muntaucut land Easthampton Inhabitants shall not hinder ye sachem of them: And whereas ye Deceased sachem in his lifetime freelie gave to Mr Lion Gardiner & Mr Thomas James what whales should att any time bee cast uppon Muntaucut land is alsoe confirmed by me sunck squa & Wiankombone sachem since, ye rest of our associates, which not being minded when former agrements was made: I sunk squa & alsoe I wionkombone sachem together with our associates doe freelie give to ye said Lion Gardiner and Thomas James to bee equallie divided betwene them: The first whale shall be cast upon muntacut land to them & their heires or assignes for ever, wee give the one half of all such whales as shall be cast upon Muntaucut land & ye other half to bee devided by ye Inhabitants of Easthampton forever, know yee also yt as ye said Inhabitants of Easthampton stand Ingaged to us for pay for yt land Eastward of ye aforesaid pond so wee alsoe stand Engaged neither directly nor Indirectlye to let give or sell any part of yt land without consent of Easthampton know yee alsoe yt if att any time hereafter if either through sickness or warr on any other meanes it shall come to pass yt ye Indians belonging to Muntacut bee taken away soe yt it shall not bee safe

for them to continue there: yt then those yt survive shall have libertie to come to Easthampton for shellter, & bee there provided of land and to have the former agreements fulfilled & to remaine as firme & sure as (though) if there never had bene any such act & (or) deede as here is specified: and yt dureing ye time of ye Indians abode att Muntaucut they shall be carefull of doing any wrong to ye English either by their owne persons or doggs or any other way whatsoever: In witnes of ye premises wee doe here sett to our hands: Dated att Easthampton ffeb the: VI Anno Domi: 1661)

The sunck squa X her marke
wionkombone his X marke sachem
paquotouns mark X
powhy X his mark
missoquat X his mark
mokkatus his marke X
aukkonnu X his marke
kowwonk X his mark
syana: his X marke
soukinoush X his mark
aukcanit X his mark. These in ye
name & consent of ye rest of ye
Indians of Muntaucut.
Theise two Mr. gardiner & his
sonn fully confirming ye premises
being guardians of ye above said
sachem
Lion Gardiner David Gardiner
sealed signed & deliv-
ered in Presence of us:
Edward Codner
William Miller.

The above written being xtracted out of ye Originall Deede of which this is a true cobby by mee Thomas Tallmage Recordr. This above written as it is found entered in ye Town Records is a true cobby compared by me Thomas Talmage Recordr of ye Towne of Easthampton.

"RICHARD NICOLL'S PATENT."

Richard Nicolls, Esqr., Governor General under his Royall Highness, James, Duke of York, of all his territories in America.

To all to whom these prseents shall come sendeth greeting, whereas, there is a certain town in the East Riding of Yorkshire, upon Long Island, situate lying and being in the easternmost part of the said island commonly called and known by the name of East Hampton, now in the tenure or occupation of severall freeholders and inhabitants, who having heretofore made lawfull purchase of the lands thereunto belonging have likewise manured and improved a considerable part thereof, and settled a competent number of families thereupon. Now for a confirmation unto the said freeholders and inhabitants in their enjoyment and possession of the premises ; know ye, that by virtue of the commission and authority unto me given by his Royal Highness, I have ratified, confirmed and granted, and by these presents do ratify, confirm and grant unto Mr. John Mulford, Justice of the Peace, Mr. Thomas Backer, Thomas Chatfield, Jeremiah Conklyn, Stephen Hedges, Thomas Osborne, Senior, and John Osborne, as patenttees for on behalf of themselves and their associates, the freeholders and inhabitants of the said town, their heirs, successors and assigns. All that tract of land which already hath been or that hereafter shall be purchased for and on the behalf of the said town, whether from the native Indians, proprietors or others within the bounds, and limits

of the said money wholly to cease, as attest our hands and
seales, this thrid day of March 1702-3.

Thomas Chatfield,
Cornelos Conklin,
Richard Shaw,
Wm. Schellinx,
Dal Bushop,
John Hedges,
Enoch Fithian;

Trustees for Easthampton.

Signed, sealed and delivered in
the presence of
William Rose,
John Shaw.

AGREEMENT.

Whereas there hath been sundry differences between the
English inhabitants and proprietors of the town of East-
hampton and the Meantaukitt Indians concerning the
Indians improving a part of the said land as by a lease
from said proprietors they had liberty to do; and for the
ending and composing of all differences that are or have
been between the said parties is concluded and finally deter-
mined as followeth : The said Indians are to fence in as a
general field what land they see cause upon the Northneck
which lies between the Fort-pond to the westward and the
Greatpond to the eastward, for their planting field ; and
wholly to leave the land to the eastward of the Greatpond
unto the English ; and the said Indians shall from year to
year lay and keep open their field or fields for the said
town's cattel to feed upon (excepting only some small fields
which they may keep inclosed for winter wheat or grass

not exceeding thirty acres ;) and the time of the said field or fields shall be land open is to be upon the tenth or fifteenth of October, and so to continue open until the twenty fifth day of April after. The said Indians making and continually keeping and maintaining a good efficient fence about all their fields at their own expense, cost and charges.

That if the said Indians or their posterity as long as they live upon Meantauk shall cause to leave that field and remove to the eastward of the said Greatpond, then they shall wholly quit the Northneck, and shall have liberty to fence in a field from the southward-most part of the Greatpond running southward to a small round swamp near the ditch bars ; and so from thence to run in at the southeast part of the oyster pond ; and to plant and improve the land on the northward part of the said line of fence ; and they and their posterity after them shall have liberty, as often as they see cause to exchange their field from one side of the said Greatpond to the other ; still sufficiently fencing there fields at their own costs and charges, and observing the rules of laying them open as is before prescribed.

And the said Indians and their posterity shall have liberty to keep upon the said land two hundred and fifty swine, great and small ; the said Indians paying all such damage to the English as they shall sustain by the rooting of the said swine ; and to keep horse kind and neat cattle not exceeding the number of fifty in all, and to get hay to winter them ; but they are not to take any horse kind, cattle or swine to keep for any other person, nor to sell, give or any way dispose of any grass or hay to any person whatsoever ; nor shall they have liberty to permit or let out any land to any person, either to plant, sow, or any other way to improve.

And the said Indians and their posterity after them shall have liberty to make use of so much of that timber of the

towns on this side the Fort pond as they shall need to fence in their general field, after they have used all the fencing stuff that is upon the Northneck, if the English do not lay out that land into parcels or lotments and improve the same. In testimony hereof, we the parties to these presents have hereunto set to our hands and fixed our seals enterchangeably, this 3d day of March 1702-3.

(Here follows the marks and seals of Sachems and Indians, to the number of thirty-two.)

Signed, sealed and delivered

in the presence of

John Shaw,

William Rose,

Witness.

The 3rd day of March 1702-3 the Sachems and Indians whose hands and seals are set to the written instrument (from being all sober and made thoroughly to understand the whole purport of the same) came before us, Mathew Howell, Elnathan Topping, Esqrs., two of her Majestic justices of the peace, and did freely and voluntarily acknowledge the within instrument to be their act and deed and seals; the number which acknowledged as aforesaid was thirty and two.

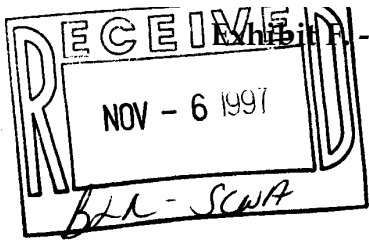
Attest,

MATHEW HOWELL,

ELNATHAN TOPPING.

INDIAN BOND TO PREVENT STRANGE INDIANS LIVING AT MONTAUK.

Know all men by these presents that we Muntoket Indians in the County of Suffolk Longisland and in the province of New York are holden and stand firmly bound and obliged to the proprietors of Muntokit in the County aforstd



Resolution

The Montauk Friends of Olmsted Parks Corporation (Corporation), having been established under the laws of the State of New York to administer rights held in common by and for the Proprietors of Montauk, and it having further been resolved by the Corporation to adopt any and all powers established by the East Hampton Patent of 1686 and by act of the Assembly of the State of New York at Chapter 139 of the Laws of 1852, and to hold elections in the Spring of 1998, in recognizing that the rights over Montauk's groundwater are within our jurisdiction, that its use and allocation has been inequitably administered by others in our absence, and that the immediate assertion of Montauk proprietors' rights is required for the protection of our fresh water resource and the provision of an equitable remedy for ourselves and our posterity, on this 25th day of October, 1997, does hereby

Resolve. that all claim to right by other corporations or municipal agencies to determine the allocation of Montauk's fresh water resource is hereby extinguished; and,

Resolve. that as of this date all further claim to a prescriptive right to water through the Suffolk County Water Authority, inc., (SCWA) pipeline system is hereby extinguished; and,

Resolve. that all letters or certificates of water availability issued but unserved by the SCWA, it having been long recognized that such availability does not exist, are hereby void and of no effect; and,

Resolve. that no new structure may be constructed in Montauk unless serviced by a well within the property upon which it is constructed; and,

Resolve. that emergency relief through the SCWA system may be made for existing properties with failing wells which had been serviced by private wells for a period of greater than fourteen (14) years.

Resolve. that this resolution is to be affixed with the corporate seal of the Corporation and filed with the County Clerk of the County of Suffolk, served upon the SCWA and the Town of East Hampton, distributed to the press, and posted in public places at the earliest possible opportunity.

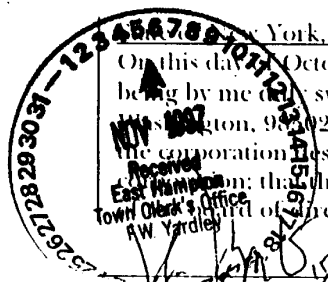
FILED

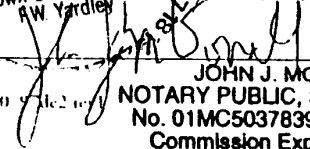
OCT 29 1997


Robert A. Ficalora
acting president, MFOP inc.

EDWARD P. ROMAINE
CLERK OF SUFFOLK COUNTY

On this day of October 28th, 1997, before me personally came Robert A. Ficalora to me known, who, being by me duly sworn, did depose and say that he resides at 6753 Bellevista Pl NW, Olympia, Washington, 98512, that he is the acting president of the Montauk Friends of Olmsted Parks corporation, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereunto by like order.




JOHN J. McDONALD
NOTARY PUBLIC, State of New York
No. 01MC5037839, Suffolk County
Commission Expires 1999

Unverified copy




JAMES EDWARD PELZER
CLERK OF THE COURT

ARNOLD EDMAN
MEL E. HARRIS
SUSAN H. HARKAVY
DEPUTY CLERKS

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

November 29, 2000

Mr. Robert A. Ficalora
P. O. Box 2616
Montauk, New York 11954

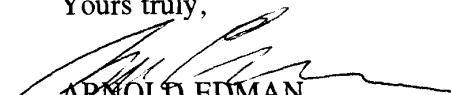
*Re: Ficalora v Town Board Government
of East Hampton
Docket No. 1999-02065*

Dear Sir:

Your motion for reconsideration or leave to appeal will be placed on the court's calendar on December 8, 2000.

Justice Bracken declined to sign your Order to Show Cause for a stay. It is herewith returned to you together with your supporting affidavit.

Yours truly,


ARNOLD EDMAN
Deputy Clerk

AE/jl

cc: Cahn Wishod & Lamb
Esseks Hefter & Angel

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

Robert A. Ficalora as assignee of Montauk Friends of
Olmsted Parks, inc., a not-for-profit corporation established
under the laws of the State of New York

Plaintiff,

- against -

The town board government of East Hampton
and
Sunbeach Montauk II, inc., as claimant fee title holder to the
Hither Plain Reservation and Bathing Reservation properties
in Montauk.

Defendants.

Order to Show Cause

Case No.
99-02065

Upon the affidavit of Robert A. Ficalora, sworn to on November 21st, 2000, and the supporting documents attached thereunto, it is hereby

ORDERED, that defendant town board government of the Town of East Hampton show cause before this court at the Courthouse at 45 Monroe Place, Brooklyn, New York, at 9:30 a.m. on _____, 200__ why an order should not be entered in this action enjoining and restraining it from approving or permitting any further subdivision of, or new construction upon, lands in Montauk, or construction or improvement upon Montauk lands by said Town, until trial, absent a showing of an incorporated or chartered basis for its claim of jurisdiction.

LET SERVICE of a copy of this order, and of the papers upon which is based, by service by United States express mail (overnight) to all defendants, attorney for the town board government of the Town of East Hampton on or before _____, 200__ be deemed sufficient service thereof.

This order is entered by this court this _____, 200__ and shall upon presentation be entered in the office of the clerk.

Enter:

*Decline to sign
the above order to show cause
this 29th day of November, 2000
Lawrence Becker
A.J.P.*

Supreme Court of the State of New York

Appellate Division : Second Judicial Department

Robert A. Ficalora as assignee of Montauk Friends of
Olmsted Parks, inc., a not-for-profit corporation established
under the laws of the State of New York

Plaintiff,

- against -

The town board government of East Hampton
and

Sunbeach Montauk II, inc., as claimant fee title holder to the
Hither Plain Reservation and Bathing Reservation properties
in Montauk.

Defendants.

Affirmation of Service

Case No.
99-02065

Robert A. Ficalora does swear under the penalty of perjury that I did send a copy of the Notice of Resubmission and the proposed Order to Show Cause and supporting affidavit by enclosing same in a sealed postpaid envelope and depositing them with the United States Postal Service on this twelfth day of December, 2000, addressed to:

ESSEKS, HEFTER & ANGEL,
ESQS.
Attorneys for
Sunbeach Montauk Two, inc.
108 East Main Street
P.O. Box 279
Riverhead, New York 11901

CAHN, WISHOD & KNAUER
Attorneys for the town board
government of East Hampton,
425 Broad Hollow Road - Suite
315
Melville, N.Y. 11747
(516) 752-1600

