



MEETING MINUTES OF AUGUST 9, 2021
OF THE TRUSTEES OF THE FREEHOLDERS AND COMMONALTY
OF THE TOWN OF EAST HAMPTON

Present: Francis Bock, Trustee Clerk
Jim Grimes, Deputy Clerk
Bill Taylor, Deputy Clerk
John Aldred
Ben Dollinger
Rick Drew
Tim Garneau
Susan McGraw-Keber

Absent: Mike Martinsen

Present: Arlene Tesar, Trustee Secretary
Alyson Follenius, Trustee Secretary via Zoom
Chris Carillo, Trustee General Counsel
Steven Boerner, via Zoom
Richard Whalen, Esq.

The meeting was opened with the Pledge of Allegiance at 6:30 p.m.

The Clerk requested roll call. All Trustees were present except for Mike Martinsen.

The Clerk transitioned to Public Comment:

Steve Boerner came before the Board to present findings from his historical research of the Northwest Harbor area. Boerner shared he has been identifying and indexing all of the holdings and allotments in the vicinity from Sag Harbor to Cedar Point and down towards Hands Creek. Boerner has pieced together the original allotments and divisions chronologically, along with who received them. The first allotment dated back to 1653 in Northwest Meadows. The allotments in the early 1700's were not as structured as in the 1600's and were sporadic which contributed to some of the confusion in the area. Boerner presented more of a summary of his report for the following twenty minutes. The Board had questions about conveyances and whether they went to the beaches and whether Boerner information about transfers pertaining to the current county owned parcel. Boerner answered the questions with examples from his findings.

After approximately thirty minutes of presenting, Richard Whalen, Esq., who has been working with Boerner on the project provided an additional and more detailed presentation. Whalen shared the Town of East Hampton, geographically looks very similar as it did in the 1600's except for Sag Harbor. Sag Harbor used to be a giant tidal marsh with additional interesting features. There once was a North-South ridge which ran along the East side of Sag Harbor to the foot of the bay near the present-day Long Warf. The hill was known as Turkey Hill. This ridge was excavated over the years and the fill was used to fill in Sag Harbor. Which points to why much of Sag Harbor is above sea level. There were wetlands until approximately the 1800's. The earliest conveyances in Sag Harbor were either not recorded or not well recorded. Thus, making it difficult to determine whether the Trustees were conveyed to the water or the beach or cliff. Most of the time, on the outer bays, the conveyance does not run to the water. They stopped at what was referred to as the "cliff," meaning the bluff or the bank. There are some known water lot conveyances in the Western portion of Sag Harbor. Moving East into the four "Sand Subdivisions" currently known as *Azurest*, *Sag Harbor Hills*, *Sag Harbor Beach Club* and *Ninevah*. These subdivisions were developed in the late 1940's and 1950's by the African American community from New York City as a summer retreat. All four subdivision maps show ownership to the mean high-water mark but there is no way to know if this is correct as Boerner was not able to find deeds prior to 1947. Boerner and Whalen do not have the deeds prior to the modern ownership. Whalen then provided a summary of land allotments by the Trustees. When East Hampton was first developed, we know the areas around lower Main St, near Town Pond, were the earliest allotments in the Town. The Trustees usually gave allotments in this area but also in the Eastern Plains, presently Egypt Lane area and in the Great Plain which would be in the Apaquogue area (area West of Main Street). These original allotments were not recorded. There were two recorders from 1670-1680 who did inventories of what everybody owned at that time. Most allotments were half acre allotments with the salt meadows being the most valuable at the time. While there were no records of these early allotments, from 1736 to 1747, the Trustees made a several major allotments, over 13,000 acres which are well recorded and would be able to determine where they are today. These are important to the Northwest area. In 1736 the Trustees did what is known as the "Ten Acre Division" of almost 7,000 acres of land. These allotments were mostly Northwest, Accabonac and in Town. They excluded Montauk and Napeague areas as they were not valuable at that time. The largest allotment was 65 acres allotted to Daniel Miller which was bounded by the beach. The major allotments were half of the land from the Town Line to the western boundary of Napeague. This is where the Trustees did most of their allotments at that time. In 1740 the Trustees had a one four (4) and one five (5) acre division; in 1747 there was a 3-acre division; and the last formal division was in 1740 which was the Pine Lots division around Swamp Road and the pine lots in Napeague, both in the center where we see the pine trees today and the pine forest near Lazy Point which we know today as the Promised Land portion of the New York State Park. The aforementioned 10-acre division was the most important of these divisions. In 1736 there was an allotment made to Daniel Miller in Sag Harbor. It was 65 Acres bounded by the beach. It is the only one Whalen has which was bounded by the beach but he cannot tell precisely where it was. It was presumably west of the Sands subdivisions. It is possible it is where Haven's Beach or Cormaria (retreat center) currently exists. The most recent conveyances in Little Northwest Creek were in 1979. The State bought both sides of the Creek from Ruben Real Estate Corp. These deeds do not give the Trustees any ownership of Little Northwest Creek, they just include the creek. Whalen believes this is incorrect. On July 22, 1911 there was a recorded map filed (Map #105) with the Suffolk County Clerk, which showed the property of the William Hunting Estate and Jay Clarence Hand. It includes all of Barcelona Neck and the meadow lands on both the East and West sides. What is interesting for the Trustee purposes is where the meadowland on the west side abutted Little Northwest Creek it ran to and shown as abutting the edge of the creek. This appears to show the conveyances at that time, in the early 1900's, were not to the center line of the creek but to the edge or boundary of the creek itself. Whalen suspects if deeds were found from the 1800 and early 1900's, the conveyances would likely go to the creek. Based on this information, Whalen believes the bottom of Little Northwest Creek should still be owned by the Trustees. The original conveyances of Barcelona Neck are pretty clear. This was used in the litigation between Ben Heller and the Trustees in the late 1980's. This area was allotted as part of the 10 -acre division in 1736 in two big parcels. These parcels were generally 100 and 150-acre parcels and not always given to one

person. Sometimes they were split among different grantees. Within that 10-acre subdivision, Barcelona Neck was lots 34 and 35. the time it was called Little Northwest or Little Northwest Neck. The northern lot, #34 was bounded northerly by the cliff. The trustees have never made a grant since that time that went beyond that. The parcel was bounded by the East Side and West Side Roads. These were the issues of dispute with Ben Heller. When one looks at how people received conveyances to the water it likely occurred when they go the deed in 1783 which went to the beach but when it was deeded forty years later or so, it was conveyed to the bay or the harbor. The principle of Real Property Law states an owner may not have more than their predecessor. If the predecessor was not granted more, current owner would not either. The same East and West side roads exist in Barcelona neck today. The west side road terminates at Pond Landing. The original conveyances state they were bounded north by the cliff and west and east by highway. Whalen believes the Trustees own the beach at the northern end of Barcelona because the original grant is very clear that it only went to the cliff. The individual house lot was not part of the Barcelona Neck deal. It was created about 1960. Whalen opined the beach in front of that house is not privately owned and should be owned by the Trustees. In 1961 the Trustees went to Suffolk County to request they dredge the inlet in Northwest Creek. When they did the dredging, they moved the inlet from where it was closer to the end of Northwest Landing Road. It was moved to the Western side of Stratton's Beach, adjoining it to the land on the East and separating it from Barcelona Neck. From the original allotment, there is no way to know where the Eastern Highway ended. It is clear that Stratton's Beach was privately allotted at some point in time. It is clear that in 1960 or 1961 the Trustees knowingly granted the underwater land at the northern end of the creek, north of the bulkhead approximately of 25 acres of land, to Suffolk County in exchange for the dredging. The rest of Northwest Creek is owned by the Trustees. With regard to Alewife Brook Pond, it is clear the Trustees knowingly granted part of the pond in 1736 to both Greg and John Parsons. Trustee Attorney Chris Carillo joined the conversation and asked "what is the practical application of this body of work?" The work seems to be forming the basis for Rick Whalen and Steve Boerner to be expert witnesses or for expert testimony if there is any future litigation. Whalen was of the opinion it is not likely this area will come under dispute in the future. With regard to the beach in front of the formally known Sands area, currently Azurest, and Ninevah, the Trustees do not have definite proof of ownership at the moment. If the Trustees went back to records before 1947, they may be able to locate this information. This is an area where there could be a dispute with a private owner. The other area where a dispute may arise is in Hedges Banks. But all other locations are County or State parkland and are unlikely to pose any issue.

Subsequently, Rick Drew raised the issue of the Eastern portion of Barcelona Neck. Activity in the area has increased and local law enforcement is hesitant to bring enforcement to the area because there is no clarification or demarcation as to what is Trustee property and what is not. This may be an issue in the future when Little Northwest Creek is dredged and the spoil will need to be placed on the beach. It raises the question of whether the spoil is paid for or put out for the public. Whalen clarified that the Trustees could trace the deeds for the Ninevah and Azurest Beach areas back from present day to determine ownership of the beach. The Suffolk County Clerk's office is now open again to the public after being shut down for COVID. Boerner thanked Whalen for his work on the matter and offered it was a pleasure working with the Board and Whalen. Boerner stated the Board has ability the trace titles back to the original title claims. Boerner will be providing the Board with a reconstructed map of the Northwest Meadows division with individual allotments. Rick Drew made a motion to approve the final payment to Rick Whalen and Steve Boerner for the historical research. Susan McGraw-Keber seconded the motion and it was unanimously approved.

Rick Whalen came back to the podium to address the Board as the representative of Cynthia Crain, owner of 864 Springs Fireplace Rd, SCTM #300-63-3-29.5 regarding the dimensions of her dock. Whalen gave a history of the matter including the research by his team prior to the Crain purchasing the property. The noted the dock had a dock permit and annual payments had been made to keep the dock permit current. The original permit approved in 1984 allowed for a 4'x10' floating dock parallel to shore and the current dock on the property is 8'x10' with a catwalk sitting perpendicular to the

shore. Whalen requested the Board allow a 40 square foot floating dock, not necessarily 4'x10' as was in the original permit. Additionally, Whalen asked to retain the catwalk, claiming it prevents damage to the edge of the marsh. His client utilized the catwalk to access the float where a dingy is kept. Whalen commented his client would be happy to make the dock transparent if the Board prefers. One board member asked how Whalen accounts for his client not owning the land the catwalk rest upon. Whalen believes the catwalk rests on Trustee owned land as sits seaward of mean high water. Additional statements included the conversation thus far has ignored the improvements which were made to the dock since Crain purchased the property and did so with out proper permits. According to Whalen, Crain put in new 4'x4' tropical hardwood pilings and Whalen stated they are willing to go back to the original narrow pipes to support the catwalk. One of the Board members asked whether modular dock options have been considered. These options include anchors attached to the catwalk for support but allow for it to be removed. Additional comments from the Board stated the original permit did not permit a catwalk. Whalen argued that original Trustee records are weak. His argument suggested a contemporaneous memo from Larry Penny suggested putting in a catwalk. Whalen pointed out his client's only concern is to be able to access the float without having to "slide down the edge of the marsh" and if there is a way to do so without damaging the marsh and "sliding down the marsh," she would be open to it. Additional discussion occurred around the ownership of the marsh land, mean high water and the original sub-division with which this property arose from. Some Board members commented that Whalen was asking the Board to grant permission for his client to utilize land with which East Hampton Town owns. To do so, the Board would have to challenge that ownership. Whalen argued he is not confident of the Town's claim. The Board also stated there is no application for a catwalk at present and what was agreed was permitted was a 4'x10' float. Whalen argued the matter is how his client can access her mooring in the least impactful way. One board member stated the least impactful method would be utilizing a pulley mooring. Whalen is agreeable to the Trustees' suggestions for other methodologies for accessing the water/mooring etc... Trustee attorney Chris Carillo joined the conversation to offer what he hears as the point the Trustees were making. Carillo added the aerial photographs from years prior to Crain' ownership of the property show a dock which was removable and not the fixed structure that now exists. The Board chose to table the matter for the committee to discuss further and to also allow for discussion with Whalen around alternative options.

Paul Roman addressed the Board and offered his services to make the clam chowder for this year's Largest Clam Contest. He has won the chowder contest several times. Roman had previously spoken with Susan McGraw-Keber about an idea to showcase clam pies at the event. Clam pies have historical significance to the area and the community could share their recipes. Roman called the Bonac Clam Pie a micro regional specialty. McGraw-Keber was more than happy to include it in this year's event. Roman and McGraw-Keber will discuss further in the coming days.

Susan McGraw-Keber provided a final update on new legislation for staggering the Trustee terms. The legislation was signed into by Governor Cuomo on August 3, 2021. The new staggered terms will begin with the 2023 election. The top five (5) vote getters will have four-year terms. The next four vote getters will each have two-year terms. This way the cycle after 2023 will have five board members up for election followed by four the following year and the cycle will rotate. This is to ensure continuity of projects, allow new board members time to complete projects and provide stability for the board as a whole. McGraw-Keber thanked her fellow committee members, Jim Grimes and Bill Taylor for their work on getting this legislation passed. Additionally, the Board acknowledged Assemblyman Fred Thiele for his contribution and support.

The Clerk transitioned to the New Business portion of the meeting:

Aquaculture:

The Board has received inquiries to grow kelp in Trustee waters. The committee met to have a preliminary discussion as to where the Board may want to go with this matter. John Barley Dunne was at the meeting but had to leave. The Board

authorized Dunne and the Hatchery to grow kelp in the lower part of Three Mile Harbor to see how it may grow, how much nitrogen it may remove from the water and to note any difficulties impacting growth. Dunne was approached by the Accabonac Protection Committee who would like to offer funds to see him extend the trial/test to grow kelp in Accabonac Harbor as well. Dunne was here to make that request and may return next meeting to make such a request. If the Board approves a second site, there will be more data to understand how the kelp grows. Currently, the Board does not have a comprehensive aquaculture policy. The committee understood that if one type of aquaculture was approved, other requests would follow. Therefore, policy is needed. The committee took time to evaluate the requests currently before the Board. The committee came up with two options for consideration. The first would be to hold off on any requests from private applicants to grow kelp until the Board receives information on the evaluation that Dunne will send. The second option would be to look at a Town sponsored kelp growing in one or two harbors and have private individuals test two other harbors with the private applicants having to secure all of their own permits. There was discussion around the potential conflicts of usage between multiple user groups. The Board recognized moving forward in either direction would require sensitivity to this fact. The Board continued the discussion around the benefits and potential risks of granting approval to such requests. The committee agrees more discussion is needed. Chris Carillo suggested the Board go back to Aldred's original point that a policy needs to be developed, even if it is a working product, prior to granting any approval. The Board will continue the discussion.

Roads:

The Board received a request from Thomas Osborne of Osborne and McGowan, P.C. on behalf of the owners of 141 Merchants Path, SCTM# 300-155-1-36.3 to be granted an access easement over a Trustee Road in order to access Merchants Path. Rick Drew shared his familiarity with the property and showed the other members of the Board survey maps detailing the property. There were concerns about where the end of the Trustee Road ends and whether the applicant would have to traverse another property. The conversation continued around the quit claim by Mr. Leanord. The Board decided to table the matter in an effort to look up the quit claim and be sure they would not be granting access over another's property.

Three Mile Harbor:

The Board received a ZBA notice of complete application from Joel Halsey of Lighthouse Land Planning, on behalf of George Schwarz, owner of 32 Hedges Bank Drive, SCTM #300-35-5-1. Schwarz has applied to the Town for permission to install a pool, pool house and deck. The matter was tabled for further review.

The Clerk transitioned to the Old Business portion of the meeting:

Susan McGraw-Keber updated the Board regarding the posted signs on the kayak racks. The current signs are made from foam core and many are cracked. McGraw-Keber spoke with the Highway Department and has received a recommendation for a company to purchase blank signs from. McGraw-Keber suggested making the signs yellow for increased visibility and provided an estimate for the cost of the blank signs. The Board agreed to purchase blank white signs to be printed with red lettering. Additionally, laminated signs were posted this season stating the racks were permitted with five (5) kayaks per row. It has created some crowding and McGraw-Keber asked if next season it should be limited to four (4) per row. Susan McGraw-Keber made a motion to purchase forty (40) blank signs to be used for the kayak racks. Bill Taylor seconded the motion and it was unanimously approved.

The Clerk transitioned to Committee Reports:

Aquaculture:

Susan McGraw-Keber updated the Board around the concentrations of larvae in Accabonac Harbor. There has been excess rain and more larvae were expected to be seen. John Aldred found most later stage Larvae in his polygon. There was a brief explanation about how the hot spots are treated from the aerial drops. The volunteers upload data via smartphones which is transmitted directly to Suffolk County. This way each application is specifically targeted to the location in need. There was conversation about working with the county to use this technology in other areas of our town as well.

John Aldred reported to the Board that John Nicholas of Sunset Cove Marina has an update from the DEC on the application to install an oyster nursery and grow out facility to be known as the East Hampton Oyster Company. John Aldred had planned to present to the Board but due technical glitches with the internet connection had to put off the presentation until the next meeting. The DEC is issuing four permits. Shell Fisheries has completed its review and also consulted with Region One, which does tidal wetland permitting to see if they need to weigh in, which they did. Both reviews are complete and Region One will be granting a Tidal Wetlands Permit. Shell Fisheries will be granting a Shellfish bed permit, a marine hatchery permit and an off-bottom culture permit. Aldred ran through a more detailed description of the how the site will function and the layout and logistics of the operation. The Board discussed the project and potential future impacts.

Education:

Susan McGraw-Keber initiated discussion around the Largest Clam Contest and asked the Board members who would like to assist her with the project. Ben Dollinger and Bill Taylor volunteered to assist. McGraw-Keber requested each member to solicit donations of prizes for the event. Discussion ensued around budget and McGraw-Keber made a motion to allow a budget of up to \$6,000 for the event. Tim Garneau seconded the motion and it was unanimously approved. The contest will be held on October 3rd and the committee will meet to discuss further details and logistics.

Georgica & Ponds:

The Board received a request from Scott Dobriner of Inter-Science to renew Trustee Permit GP #4-20 for shoreline restoration, with all the same terms and conditions issued to the owners of 24 West End Road, SCTM#301-15-3-5.1. There was a brief discussion about the delay in DEC permit process. Rick Drew made a motion to approve the request. Susan McGraw-Keber seconded the motion and it was unanimously approved.

Napeague/Lazy Point:

The Board received a request to transfer the lease held by Adam and Amy King, leaseholders of 176 Shore Rd, Lot #32N, SCTM# 300-85-01-14.1 in Lazy Point to Margaret A Schlitt, Town of East Hampton resident. Susan McGraw-Keber made a motion to approve the transfer from King to Schlitt. Tim Garneau seconded the motion and it was unanimously approved.

Attorney Chris Carillo put together a synopsis of the rules for Lazy Point Lot Leases for prospective tenants and it was posted to the Trustee website.

The Clerk transitioned to the administrative portion of the meeting:

The following bills need to be paid: East Hampton Marina - \$654.93 for gas; Optimum - \$152.02; Seacoast Enterprises - \$149.95 for VHF Radio for pump out boat; Nawrocki Smith CPA - \$8,000.00 financial auditor. The Clerk requested the Board table the bill from Nawrocki Smith CPA. Susan McGraw-Keber made a motion to pay the bills. Bill Taylor seconded the motion and it was unanimously approved.

The minutes from the June 26, 2021 and July 12, 2021 are completed and need to be approved. John Aldred made a motion to approve the minutes from June 26, 2021 and July 12, 2021. Susan McGraw-Keber seconded the motion and it was unanimously approved.

The financial report for the month ending July 31, 2021 were available for review. Rick Drew made a motion to accept the financial report for the month ending July 31, 2021. Susan McGraw-Keber seconded the motion and it was unanimously approved.

The Certificate of Deposit ending in 5679 is up for renewal. Rick Drew made a motion to renew the certificate of deposit ending in 5679. Susan McGraw-Keber seconded the motion and it was unanimously approved.

The Clerk transitioned to the Report of the Clerk:

The clerk shared the Board was notified by Dr. Gobler of a harmful algal bloom in Georgica Pond. Usually, the Trustees are notified by the county when this occurs but had not received any notification. Dr. Gobler recommended the Trustee post signs to inform and warn the public of the closure of the pond to shell fishing. The Board will post signs around the pond to advise the public of the pond closure to shell fishing and recreating due to the algal bloom.

Susan McGraw-Keber made a suggestion that the Turtle signs be offered to the public by donation with the funds going to the Captain Rysam Scholarship Fund.

Susan McGraw-Keber made a motion to close the meeting. Tim Garneau seconded it and it was unanimously approved.

The meeting closed at 9:37 pm.