

Transcript of Lecture Delivered by  
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The Persistent East Hampton Town Trustees

"Long Island Towns have a form of government, in part, peculiarly their own. It differs greatly from that of localities in other sections of the state and (5) nation. This has a bearing on titles and fee of the land. Much of the Trustee Journals have to do with titles and land conveyances. The land tenure in East Hampton is bewildering to new comers, often puzzling to natives. For nearly 150 years before New York State adopted its State Constitution, after the Revolutionary War East Hampton Town had been settled.....".

East Hampton's government was well established before Governor Dongan demanded his patent of Dec. 6th 1686, which renamed the "patentees", created by the Nicholls patent of March 13 1666, as the Trustees of The Freeholders Commonalty of the Town of East Hampton, one body corporate and politic.

I wish to map out how our Town Trustee form of municipal government evolved, being that its roots go back 350 years. (1) Within a year of the settlement of Maidstone in 1648, the 34 families had established a government partly democratic and partly representative in the most simple form..... "Being without the jurisdiction of any chartered colonies, it became necessary for them to establish regulations of their own formation or to adopt those of a system already devised." They now ordained a general court composed of the whole assembled people. Three men at first were selected at the general court and four to a special court. "All Laws were enacted and all the general affairs were regulated at a town meeting, at which every inhabitant was bound under penalty to be present. This was the whole machinery of their government and it appeared to have worked well. Their laws or orders were few and principally related to the distribution, possession and enjoyment of their lands. The Criminal Code was for the first year that general rule of not doing or suffering to be done unto others what they would not that others should do unto them. They sent to Connecticut for a copy of the laws of That Colony but they adopted few of them, and never carried into effect those of great severity.....". (1) ..... "No person was allowed to sell or buy lands without the permission of the Town;.....".

The Settlers had purchased Maidstone from Governor Eaton of New Haven and Governor Hopkins of Hartford Connecticut, without proper conveyance or any acquittance for the payment. The general court sent Ralph Dayton and Robert Bond several times to Connecticut over a period of years before they were furnished with evidence of their title and payment.

"The Town contained a government under their own voluntary unwritten compact

subject to the supervision of the general court, appointed by the assemblage of people, independent of the other settlements for eight or nine years. In 1655 they wrote a more formal social compact. In 1655 a committee of two persons and again in 1657 a committee of three persons was sent to Connecticut to treat with the magistracy concerning placing the Settlement under the protection of that Colony." "Because of the hostility of the Dutch and foreign Indians warring with the English, East Hampton in 1657 submitted themselves to her (Connecticut) jurisdiction so far as to be entitled to her protection . The union continued until 1662 when a charter was granted to Connecticut by the Second Charles." With Connecticut procuring a patent or charter from the King, East Hampton was encouraged to do the same. They sent a committee to Southampton upon the subject as both towns held their possessions by virtue only of Indian deeds and prior settlement. They became uneasy with regard to their title. The Earl of Sterling had relinquished his claim to the Island and it was then open to future grant from the crown. "They (1663) encouraged a construction of the patent of Connecticut embracing Long Island within her jurisdiction. The legal jurisdiction being now assumed and admitted, a code of civil government was received from the General Assembly, convened at Hartford. The inhabitants hesitated for some time between the separate government and a full union with Connecticut.....".

(1) In 1664 they did send another committee to Hartford "to debate about their mutual concernment but to conclude upon nothing, understanding that the governor would come over, encouragement was given to a construction of the Patent of Connecticut including Long Island in their jurisdiction, and in the month of June the governor and three others came upon the Island and proceeded to organize courts and establish rules relative to the management of their general affairs. At the same time a code of civil government was received from the general assembly convened at Hartford. Before these arrangement could be carried into effect, an expedition fitted out by the Duke of York to whom his brother Charles II had granted Long Island upon its surrender by the Earl of Sterling, together with the country occupied by the Dutch, arrived before New York. Upon a demand of Colonel Nicolls, the Dutch Governor after some preliminary arrangements surrendered the country. Governor Winthrop who was present after seeing the letters patent to the Duke of York, relinquished the intended jurisdiction of Connecticut and gave information to the English on the Island of what had been done.....".

Long Island being now after the conquest, incorporated with the Colony of New York under the Duke of York, the deputy governor Richard Nicolls in March 1665 convened a meeting at Hempstead of two deputies from each town on Long Island and two from Westchester for the purpose of organizing the government from this town. These towns were erected into a shire, by the name of Yorkshire, which was divided into three ridings. The Towns in Suffolk County formed the East riding.....". "A body of laws called the Duke's Laws were promulgated. They superseded those under which the Towns had previously acted and were continued until 1683. The several towns were recognized as established and were required to take out Patents from the governor for the lands within their acknowledged limits".

East Hampton purchased the Nicholls Patent on March 13th 1666, the (3) land bounds being from the Southampton Town Line to Fort Pond at Montauk on still east to the utmost extent of the Island. Seven were named as patentees, which constituted the complete government for East Hampton Town.

This is the reason that the Town Trustees official corporate seal is dated 1666. The Townspeople's feeling of security with the Nicholls Patent confirming their purchase and legally establishing their government was short lived.

"The increase in population and adherence to their worship Independent of (3) the established Church of England, now made them fit subject for the rapacity of governors, commissioned for the very purpose of subverting representative government and repairing their ruined fortunes by extortion from the colonists..... In swift succession, governor succeeded governor each in the main baffled by the sturdy resistance of the people, no where more persistent then in East Hampton Town".

"The three eastern towns of this county, Southampton, Southold and East Hampton were the back bone of the county, if not of the whole colony of New York in advocating representative government and resisting encroachment upon their liberties".

On June 19, 1682 at a Town meeting an address or petition was read to the inhabitants wherein was declared, "some agreivances yt did lie uppon ye spirits of ye people in respect of ye present government and it was by a major vote concluded and granted yt this foresaid peition should be signed yt it might be in areadines to be sent upp to to ye Honorble Governor when wee heare of His arrivall at York". It was signed on June 21st 1682. This was East Hamptons greeting to Governor Thomas Dongan when he arrived in the colonies.

In 1683 the newly appointed Gov. Dongan was instructed to call a general assembly of all the Freeholders. In October 1684 the assembly met and claimed in a Bill of Rights as Englishmen that, "Every Freeholder and Freeman should vote, trial by jury, no tax to be levied but by consent of the assembly" etc. (2) In 1685, less than a month after James the Second ascended the Throne he prepared to overturn the institutions he had conceded. By ordinance, a direct tax was decreed, titles to real estate were questioned, that larger fees and quit rents might be extorted and of the farmers of East Hampton who protested against the tyranny, six were arraigned before the council.

On October 1st 1685 the overseers (patentees) addressed Governor (9) Dongan about the Town's grievances. Its 3-1/2 pages long in Vol. II, Town Records. "This expression of 1685 would develop by the laws of growth into the declaration of 1776".

In May 1686 Governor Dongan was endeavoring to compel the people of East-Hampton to purchase a new patent at an exorbitant price, and they were resisting the attempt at extortion. In June 1686 the Townspeople voted two committees to defend the rights of those arrested and the Towns Rights. On July 29, 1686 ten persons complained to the governor that the Town would lay out no land to

them. Governor Dongan ordered the High Sheriff to lay out each 30 acres. The Townspeople objected by written protest on Oct. 6, 1686. It was deemed libel and the governors council arrested 12 East Hampton men, including their minister, Thomas James.

(2) "The arbitrary power of Dongan prevailed, a patent was procured dated (14) December 9, 1686 which secured individually to the Holder, all Lands then taken up, and appropriated to the purchasers all lands unappropriated in proportion to their severall and respective purchasers thereof and gave to the Trustees of the corporation the preemption or first purchase right as to the than unpurchased part of Montauk".

(3) The Dongan Patent changed the prior existing patentees to Trustees of (5) The Freeholders and Commonalty of the Town of East Hampton, body corporate and politic, increasing their numbers to twelve, to be elected annually. It gave the Town Trustees rights over the Towns area and made the Town a State in all but name.

(14) The Town Trustees levied a tax to pay the 200 pounds cost of the Patent. 120 pounds came from the purchasers and proprietors of the Home Town and 80 pounds charged at Montauk. An extra amount was assessed to pay the costs "arising about men's protest". On March 10th 1689-90, the Town Trustees directed a letter be sent to

Governor Jacob Leisler reciting that, "we have agreed to send over to his Majesty (10) both a true narration of ye grievance we have suffered this many years under an arbitrary power and petition to their majesties yt we might be rejoined with Connecticut government as formerly agreeably to the act of parliament yt all places"..... "shall have the same privileges they enjoyed in ye year 1660 restored unto them".

Obviously the Inhabitants of East Hampton were not pleased to be bound to the colony of New York by the Dongan Patent.

The close of the American Revolution had no impact upon the widespread authority of our Town Trustees and their patents, as the patents validity were fully recognized by both State and Federal constitutions. These constitutional (15) provisions remain to this day, in spite of a fraudulent attempt by the New York State Legislature to remove said provisions in 1962. The Town Trustees made the final land allotments in 1748 (three acre division). Almost all private title to lands in East Hampton originated with the overseers or Trustees by allotments or sale. The last major land sale of Commons by the Town Trustees was in the early 1950's.

Much of the Town Trustees business involved selling or exchanging of (13) land. They conducted all town affairs, they established the schools, they (4) regulated use of the commons, managed the great herds of cattle, sheep and horses annually turned out at Montauk, protected the Indians hired for the "whaling design". They passed many laws and ordinances and enforced the same by appointing trustee committees or directing the constables to carry out (7) their orders. Most penalties involved fines or impounding, "offending stock", yet in 1727

Recompence Squier was chosen common whipper, allowing three shillings for each person he shall whip.

Severe offenses would result in banishment from town, ordered by the Town Trustees.

(11) The Trustees levied three different Tax Rates - Town Rate, Montauk Rate (6) and Sheep Rate. They represented the proprietors, the Freeholders and (11) Commonalty and the Montauk proprietors. "They directed the assessors (14) how to proceed in their assessments and ordered the disbursement of Tax (16) money so raised for the use of the Town. The Clerk of the Trustees exercised practically all the duties and functions of the modern supervisor in town affairs. The Trustees really ran the town. They held all of the powers and even more than the present day Town Board".

As the Towns lands became more "Freeholder" than "Proprietary" ownership the Town Rates were decided at the annual Town meeting and funds were voted upon for Town Trustee use. This lasted until 1919 when the annual Town meetings ended, and the Town Board assumed many duties formally administered by the Town Trustees.

Of all the lawsuits the Trustees were involved with over a long period, the (18) most important was the Montauk case whereby the Town Trustees lost their (2) right to manage the Montauk commons in 1851. The Trustees in turn then claimed complete ownership and control of all the remaining common land and waters in East Hampton town.

Since the beginnings of the Town the Trustees, undertakers, townsmen, (13) etc. would charge fees for any usage of The Commons, be it cutting wood (even for a pump stick), harvesting cran berries, beachplums, seaweed, cutting of hay, grazing rights, fishing and hunting rights, any use whatsoever could only be done upon permission of the Town Trustees. Since 1852 the Town Trustees have sold several thousand acres of

(2) "Commons", mostly to pay for "lawyering", such as the long running sea weed suits and the Fort Pond Bay case.

Besides laying out of many roads, Merchants Path to Northwest Harbor (12-13) being one of importance, the Trustee created all of the Sag Harbor (18-19) waterfront properties by selling underwater lots in Northwest Harbor (24) starting with the permit to build Long Wharf in 1770. Each lot was required to be filled in as terms of sale. Northwest Harbor was the only harbor suitable for commerce and fishing ventures (codfishing and whaling) for all the east end Towns. The only underwater land New York State can claim in Northwest Harbor are the two parcels they brought from the Town Trustees in 1803/08 and 1821 for extensions of Long Wharf. Northwest has always been a harbor of The Town according to the language of The Patents. The Fort Pond Bay case, rightfully lost by the Trustees, confirms their ownership of Northwest Harbor. (27) They still administer the Rysam Fund for poor school children established by Captain Rysam's Will in 1809. (19) The Trustees controlled all hunting and fishing, both within the patented

bounds and in the adjoining bays and sea as one of the franchises and attachments to the land bounds of The Nicholls and Dongan Patents. Trustees (5) Reservations on common's sold would include the inhabitants continued right to hunt and shoot. Until recently the Bay Constables were under the jurisdiction of the Trustees, also at times a Game Constable served the Trustees. The Town Trustees historically have always taken a dim view of any attempts by New York State to infringe upon their patented rights.

(20) On June 21, 1882 they vowed to challenge the constitutionality of a State Act to prohibit animals running at large on public highways. East Hampton and Amagansett Main Streets were laid out very wide so as to "yardup" the livestock to be driven on or off Montauk. Cattle were still driven on Montauk roads in the 1950's.

(21) In November 1935 Baymen protested to the Trustees concerning attempts by New York State Conservation Officers to enforce a State Law on scalloping in Three Mile Harbor. The Town Trustees voted unanimously to control the products of the waters within the bounds of the Town of East Hampton by the set of ordinances adopted by the Trustees in 1932. (22) In March 1952 William Lester and Stuart Vorpahl requested to place eel pots in Hook Pond without paying license fees to New York State. The Trustees referred the matter to Counsel. (I know my Dad caught eels in Hook Pond

without State interference). (26) On April 10th 1945 the Town Trustees voted to defend any and all persons who were to be arrested by a State Conservation Officer for shellfishing in Town waters without the State shellfish license. (28) On November 11, 1980 - .....Motion by Jim McCourt, seconded and approved that the Trustees would fill out an Environmental Assessment Form for the starfish liming project but let it be known that as a separate organization preceding all other governments, we do not have to, but would like to cooperate with the Town Government.

As a courtesy, the Trustees invited New York State's Department of Environmental Conservation to observe the liming project if they wished. (3) The Town Trustees have never transferred or abandoned their patented authority to manage and control their holdings, free from the "lett or hinderance" of any person or persons whatsoever.

Our Town Trustees went from being the Government for East Hampton in all aspects, to literally "begging for their bread" because of a hostile Town Board in 1934.

No other form of government has any legal authority to interfere with Town Trustee matters. The Trustees, because of the "Iron Bound" language of the

(23) Patents cannot be legislated against.

The relationship today between the (25) Town Trustees and all other forms of Government is best described in the court documents pertaining to the "Hassan Case" in May 1980 - ..... "The Town Trustees are elected by the voters of the Town and regulations for the trusteed lands are established through formal legislation by the Town Board enacted only on request of the Trustees". Originally

the Town Trustees legislated the Town affairs, but, all too often, they have agreed to let someone else steer the boat, however, they never have relinquished ownership of the Vessel to anyone. The Trustees of the Freeholders and Commonalty of the Town of East Hampton are one of the oldest continually elected forms of government in this Country. The language of their Patents will insure that the Town Trustees will be an integral part of East Hampton Town Government far into the future.

THE END

## REFERENCE LIST

NOTE: From 1650 - 1725 Town and Trustees Records were the same.

1. Chronicles of Town of East Hampton, by David Gardiner, 1840, printed in 1871, pages 10 - 37.
2. Town Records, Vol. VI, Convey Common Land, pages 666 - 677.
3. Town Records, Vol. II, Account of Suffolk County, pages 2 - 12, & Dongan Patent, pages 194 - 203.
4. Town Trustee Record, 1807 - 1826, What Trustees did Introduction, pages 1 - 65.
5. Town Trustee Records, 1870 - 1897, Introduction Long Island Towns - State, also "Reservations", pages 1 & 11.
6. Town Records, Vol. VI, Trustees Threefold, pages 626 - 627.
7. Town Records, Vol. III, Tanner Warned, pages 155 & Common Whipper, page 429.
8. Town Records, Vol. II, June 1682 Petition, pages 6, 112 - 113.
9. Town Records, Vol. II, 1685 Petition to Gov. Dongan, pages 6, 7, 169 - 172.
10. Town Records, Vol. II, Petition of 1689-90 to Rejoin with Connecticut, pages 6 - 250.
11. Town Trustee Records, 1725 - 1772, Introduction & Town Rates, page 43.
12. Town Trustee Records, 1725 - 1772, Samuel Mulford, Northwest Harbor Dock Permit April 1702, page 224.
13. Trustee Records 1772 - 1807, State land office, no jurisdiction in patented Towns, what Trustees did & Sag Harbor, pages 30 - 37.

14. Town Records, Vol. IX, Osborne Shaw Brookhaven Town Historian, pages 13 - 16, and Vol. II, page 6.
15. N. Y. Senate Bill Introduction 1384, Senator Bronston, January 17, 1961.
16. Trustee Records, 1926 - 1939, Osborn/Shaw, page 9.
17. Town Records, Vol. IX, 1938 - 1943, Montauk Ownership, pages 18 & 19.
18. Trustee Records, 1807 - 1826, Sag Harbor, pages 31 - 37, and Town Records, Vol. VI, pages 357 - 358.
19. Samuel Mulford Papers, Long Island Collection, East Hampton Library; Trustee Records 1845 - 1870, Hunting, pages 53, 64, 70, 77, 78, 83, 113. 1822 - 1845, page 284, 161 - 162 Charles Mott.
20. Trustee Records, 1870 - 1897, One State Prohibits Cattle on Roads, page 131.
21. Trustee Records, 1926 - 1939, Escalloping Law, page 245; State Laws not Valid in Township, page 258.
22. Trustee Records, 1940 - 1955, Hook Pond, page 233.
23. Trustees' Current Records, Hassan Case, 78 C 1432, pages 4 - 5.
- 10-
24. Trustee Records, 1870 - 1897, Northwest Harbor, 1678 Letter Horses from Shelter island on Hogg Neck, pages 300 - 303.
25. Trustee Records, 1926 - 1939, Dredge Three Mile Harbor, page 261.
26. Trustee Records, 1940 - 1955, April 10, 1945 Trustee Vow to Defend, pages 141 - 142.
27. Trustee Records, 1940 - 1955, Rysam Fund, pages 27 - 29.
28. Trustee Records, Current Minutes November 11, 1980, page 2 & Starfish File.