

Beach Access a Puzzle

THE EAST HAMPTON STAR

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Where public sands meet private property

Among the puzzles posed by global warming and its accompanying sea level rise are the complex issues involving public access to the waterfront. Recently, a rising tide of complaints about and requests for access have been coming before the East Hampton Town Trustees with greater frequency.

Access issues tend to come in two forms that generally correspond to their bayside and oceanside locations. Owners of beachfront property on the bays and the trustees are currently debating the location of the public's "beach" if a bulkhead or revetment built to protect private, upland property has eliminated the sand in front of it.

As for the ocean beaches, the trustees claim the beach up to the toe, and in some cases, the crest of dunes, where privately erected snow fences and steep steps to the beach built by beachfront property owners have had a tendency to encroach on the public beaches that the trustees manage.

For over 300 years, the trustees have "owned," on behalf of the public, most of the beaches and bottomlands within the boundaries of East Hampton Town. Montauk lost trustee protection in the 1800s. Although the definition of "beach" has changed somewhat over time, in most places it refers to that which lies seaward of either the crest of the dune, the toe of the dune, or in a few cases at mean high water.

There are places, such as the beach in front of the Maidstone Club in East Hampton, where trustees either traded or sold public beaches in the past, but this is the exception, not the rule.

"We assume all the beaches are ours. Otherwise, there would have to be a title search on each and every property. If they think they own it, show us," said John Courtney, the trustees' attorney.

The question of the beach and title to it came up during a trustee work session on Aug. 25. After many months of debate, the application of Robin Wilder, a resident of Louse Point Road in Springs, is approaching its final stages of trustee approval.

The trustee board has already approved a scaled-down, 130-foot-long version of a stone revetment requested by Ms. Wilder. The wall will be 14 feet high and 24 feet wide when completed and, at the trustees' insistence, it is to be mated to a neighboring revetment and kept covered in sand and beach vegetation by Ms. Wilder, who is to maintain a beach in front of the structure by supplying the area with 200-cubic-yards worth of sand at intervals.

Ms. Wilder has agreed to put \$10,000 in an escrow account to guarantee that at least three years of sand replenishment was paid for in case she defaulted on the agreement to keep a beach in place.

The trustees wanted aerial photos taken of the completed revetment and beach at intervals. The final condition was that Ms. Wilder give the trustees a quitclaim deed to the beach in front of the revetment in order to put to rest any question of ownership.

On Aug. 25, Ms. Wilder presented the response of her lawyer, Richard Whalen, to the trustees' conditions. Mr. Whalen and the board had already exchanged angry words over the application during a July work session, and the lawyer's surprise quid pro quo on Tuesday — the trustees can

have their quitclaim deed if the applicant is granted permission to erect a staircase to the beach over the revetment — did not go over well. Mr. Whalen was not at the meeting.

Trustee Lynn Mendelman reminded the board that the stated purpose of the revetment was to stabilize the applicant's upland property. "The stairway will not stabilize the bluff."

Trustee Francis Bock was incensed. "To hold the stairway over our heads for a quitclaim deed is not right. I don't like being threatened over a stupid staircase."

"If there's any question about beach ownership after the revetment is built, then I wouldn't approve it. This cannot be a condition," said Diane McNally, the board's presiding officer.

"The purpose of the revetment was to control erosion. If the purpose was to give the applicant access to a public beach in front, those are two different things. It's why I voted no," Trustee Stephanie Talmage said, referring to her dissenting vote when the revetment won preliminary approval last month.

In response to several trustees' observations that the public access was just down the road at Louse Point, Ms. Wilder said the stairway down the face of the revetment was a safer way for grandchildren to get to the beach. She said every other property along Louse Point Road had a stairway to the beach, while no other property owner had agreed to supply the beach with 200 cubic yards of sand in perpetuity. She said she was a taxpayer who had bought her property "with a staircase."

Ms. McNally responded that the debate reminded her of similar "I-bought-it-because-it-had" arguments when trustees banned new dock construction in town harbors decades ago. "Docks, even remnants of docks, were taken as a right. It took a decade before people accepted that we meant it," Ms. McNally said.

Mr. Courtney told Ms. Wilder, her planner, Laurie Wiltshire, and her engineer, Drew Bennett, that perhaps Mr. Whalen's quid pro quo had not been the right approach. "The public's right to traverse the beach is overriding. It sounds like you're setting up for a lawsuit to claim the beach," Mr. Courtney told the applicant before advising the trustees to "do it the way you want it."

In the end, the board agreed to reconsider the stairway request and asked Mr. Bennett to come up with a plan. Ms. McNally sounded a conciliatory note. "We can think outside the box. When we are challenged and have time we come up with things."

The board agreed to consider a stairway, but separate from the quitclaim deed demand. The board also agreed to drop the aerial photo condition. A final decision is expected at the trustees' meeting on Tuesday at Town Hall.

In another beach ownership matter, the trustees were recently presented with a petition by residents of the Driftwood Shores subdivision in Springs. The residents are complaining that one of the bayfront property owners has removed the foot of a staircase that was their access to the public beach on the shore of Accabonac Harbor. The resident claimed that he owns what petitioners say is clearly trustee beach. The trustees agreed last week to take the petitioners' part.

On the ocean side, the trustees are fighting a lawsuit brought by Lloyd and Barbara Macklowe of West End Road in East Hampton Village who claim they own the beach down to the high tide line. Although Mr. Courtney has remained mum on the details because of pending litigation, he allowed that the Macklowes were in possession of a deed from 1900 that states their property extends to the southerly edge of the beach grass

However, the beach there has grown southward since a series of groins were built by the county in the 1960s. The Macklowes contend that as the vegetation changes the property line moves, in this case extending to the high water mark. The trustees disagree.

“I’m being overly cautious,” Ms. McNally said of protecting the trustees’ beach ownership on behalf of the public. Macklowe claims to high water. Marci Klein [of 126 Beach Lane] has come up with a deed that shows she owns to mean high water.”

In another case, involving the application of Ron Baron, owner of over 40 oceanfront acres on Further Lane in East Hampton, the trustees are being asked for permission to set the bottom step of a staircase onto trustee beach just beyond the toe of a dune. Mr. Baron was forced to make remediation when Don Sharkey, the town’s building inspector who died on July 6, found out he had built an 800-foot-long retaining wall without numerous necessary permits.

The head of the stairs is located on a section of dune within a Nature Conservancy preserve over which Mr. Baron has access. The toe of the dune is the boundary between private and public land that the trustees recognize. Therefore, Mr. Courtney said he did not see a problem with Mr. Baron’s request.

“Everything is about access to the water. We’re trying to balance the owner’s access to the water balanced with the rights of the public to use the beach,” Mr. Courtney said last week.