

## Cstaff1

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**From:** ellen kane <ellen.kane.kelly@gmail.com>  
**Sent:** Friday, July 5, 2024 9:12 PM  
**To:** cstaff1  
**Subject:** request for public hearing on Application 2024-04-008 - Watch Hill Fire District

Dear CRMC,

I am requesting that a public hearing be held on the above-referenced application, 2024-04-008, filed by the Watch Hill Fire District, seeking permission to "replace/repair split rail fencing".

The location of this replacement/repair would block a portion of the designated public Right of Way of Fort Road, Napatree Point. Fort Road/Napatree Point is currently in litigation between the Town of Westerly and and I am concerned that an assent by the CRMC would be premature. I am also persuaded by the concerns expressed by Anthony Palazzolo, who has requested a public hearing.

Thank you for your consideration. I would appreciate any notice about future actions by the CRMC.

Sincerely,

Ellen Kane

76 Winnapaug Road  
Westerly, RI 02891

**cstaff1@crmc.ri.gov**

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**From:** joe fiore <jfboss@hotmail.com>  
**Sent:** Wednesday, July 3, 2024 7:40 PM  
**To:** cstaff1@crmc.ri.gov  
**Subject:** assent application 2024-04-008

To CRMC staff,

Upon reviewing assent application 2024-04-008, I see no mention of the Fort Road right of way. It appears the proposed work will likely impact this area. I must therefore object to this application. Please include this objection in the file.

Respectfully,

Joseph Fiore  
119 East Avenue  
Westerly, RI

## Cstaff1

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**From:** James Tarbox <jimtarbox@verizon.net>  
**Sent:** Monday, July 1, 2024 1:21 PM  
**To:** cstaff1@crmc.ri.gov  
**Subject:** opposition to assent application 2024-04-008

To CRMC staff,

I am writing to oppose CRMC assent application 2024-04-008. The proposed fence will clearly obstruct a Town right-of-way. This ROW, adopted by the Town of Westerly 10/06/08, is also not acknowledged in the application. I request CRMC deny this application and bring this matter to a public hearing.

Sincerely,  
James Tarbox

## Cstaff1

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**From:** Ben Weber <bawbigdog@yahoo.com>  
**Sent:** Thursday, June 27, 2024 8:49 PM  
**To:** CStaff; Lisa Turner; Laura Dwyer; Jeff Willis  
**Subject:** 2024-04-008

To all it may concern,

I, Benjamin Weber, am writing to you in regards to the recent assent application (2024-04-008) filed by the Watch Hill FD and the Watch Hill Controversy. I have reviewed the file in detail. Yet again we have here another application submitted with no mention nor acknowledgement of the Fort Road Right-of-Way designated by the Town of Westerly by Resolution in 2008. The proposed repairs are to a split rail fence that in fact blocks the ROW in two locations. For this and all of Anthony Palazzola's six bullet points in his submission, I also formally OBJECT to this application and respectfully request a full public hearing on this matter. Thank you in advance.

Sincerely,  
Benjamin A. Weber  
(401) 932-2597

[Sent from Yahoo Mail for iPhone](#)

**ehall@crmc.ri.gov**

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**From:** Jeff Willis <jwillis@crmc.ri.gov>  
**Sent:** Thursday, June 27, 2024 1:55 PM  
**To:** Richard@langseth.com  
**Cc:** lturner@crmc.ri.gov; 'Laura Miguel'; Emily Hall; Jeff Willis  
**Subject:** RE: Watch Hill Fire District Maintenance App 2024-04-008

Thanks Richard – we'll place this in the file.

Thanks,  
Jeff

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*Jeffrey M. Willis, Executive Director  
RI Coastal Resources Management Council  
www.crmc.ri.gov*

**From:** Richard Langseth <richard@langseth.com>  
**Sent:** Thursday, June 27, 2024 1:46 PM  
**To:** jwillis@crmc.ri.gov  
**Subject:** Watch Hill Fire District Maintenance App 2024-04-008

Hi Jeff:

I am mystified about this application for Plat 185, Lot 31 filed by the Watch Hill Fire District on 3/26/2024.

The filed maps in this maintenance application when applied to tax records show that it is on 24 Fort Road in Westerly. Plat 185 31 Subs 2 B and A as shown on the Westerly Appraiser notations. Neither the Watch Hill Fire District nor the Watch Hill Conservancy has any interest in this property in the tax records for 24 Fort Road which includes a map of the property to be maintained.

These tax records include several references to the land evidence which I have not chased down. But, on the surface, it appears as if the wrong people were issued the original finding and the maintenance app needs to be explored in more detail.

The record is complicated by the GIS Map which includes a reference to the Fire District in a deed dated 8/29/1945 (63/247) for a 720 sq ft Gable/Hip roof building with wood/coal heat. Two other owners referenced in the GIS map are the Misquamicut Club and the Watch Hill Yacht Club.

However, the Assessor's database shows the owners of this land where the split rail fence is to be maintained are The Watch Hill Yacht Club and the Cabana Group LLC (185/31/2 and 185/31/A) and the Misquamicut Club (185/31/B). The Fire District is not listed as an owner of this property. There is another property under Plat 185 Lot 31 (Plat 185/lot31/sub 3) This is not the lot being addressed in the application. It is also owned by the Misquamicut Club.

So, I would like to join in on the request for a hearing on this matter. The applicant is not the owner as shown in the tax records. A complete land evidence record needs to be established to approve this maintenance request.

Richard Langseth  
170 Budlong Farm Rd  
Warwick, RI

## Cstaff1

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**From:** -t t <tnuocaymmud@hotmail.com>  
**Sent:** Monday, May 20, 2024 2:05 PM  
**To:** CRMC Staff; lfeldman@crmc.ri.gov; jwillis@crmc.ri.gov; Tony Palazzolo North Stonington, CT; skenyon@crmc.ri.gov; ehall@crmc.ri.gov  
**Subject:** ATTENTION Jeff Willis: Objection to CRMC Application 2024-04-008  
**Attachments:** 2008 FORT ROAD RESOLUTION & CERTIFIED ASSESSOR MAPS OF ROW.pdf; Oct 6, 2008 Town Council Meeting Minutes.pdf; 04-6-2023 Email to Leah Feldman.pdf; Napatree Point Composite Tax-Fence Map.jpg; Watch Hill Fire District Complaint WM-2023-0190.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Ms. Emily Hall,

I request that you reject CRMC assent application 2024-04-008 and, in the alternative, schedule a public hearing regarding same for the following reasons:

In my personal opinion:

1. The Town of Westerly adopted a 20 foot wide right of way through Napatree Point by Resolution 08/09-67 of October 6, 2008. See attached Resolution and associated (and certified) tax maps showing the right of way.
2. The minutes and audio recording of the October 6, 2008 Council meeting show that Watch Hill Fire District attorney Matthew Thomsen, Esq. was present when the 2008 Town right of way was adopted and unsuccessfully argued against it. See attached October 6, 2008 Town Council meeting minutes.
3. The fence to be repaired *via* this application stems from Watch Hill Fire District assent 2019-05-007. In my opinion, that assent was improperly granted for reasons detailed in my email to Leah Feldman dated April 6, 2023. See attached email to Leah Feldman. In fact, I cannot understand why the 2019 assent has not already been rescinded and the fence removed in its entirety.
4. As with the 2019 assent, I cannot find any mention of the 2008 Town right of way in this application (2024-04-008). I have prepared and attached a composite map with the applicant's fence map overlaid onto the (scaled by me) 2008 Town right of way tax maps. In my opinion, my composite map unequivocally shows that the subject fence to be repaired blocks the 2008 Town ROW. See attached composite map.
5. The Watch Hill Fire District is well aware of the 2008 Town right of way. Among other things, it sued the Town of Westerly, the RI DEM, et al. last year regarding the 2008 Town right of way. See attached Watch Hill Fire District Complaint WM-2023-0190. That lawsuit remains very active and the RI Attorney General is presently vigorously defending the RIDEM.
6. My understanding is that the CRMC has chosen not to advance Watch Hill Yacht Club application 2022-11-010 because the CRMC requires applications impacting Town/State designated rights of way to depict such rights of way (and no such depiction took place there). See CRMC application 2022-11-010

(handled by CRMC staffer Justin Skenyon) including Westerly's opposition to that application for failure to depict the 2008 Town right of way. In my opinion, the subject fencing impacts the 2008 Town right of way for the very obvious reasons noted above and I can find no depiction of that ROW in this application.

In light of the foregoing, I ask that you consult with CRMC Executive Director Jeff Willis, Justin Skenyon, and Leah Feldman and reject application 2024-04-008. Alternatively, I ask that you log my objection and schedule a public hearing for this application.

Thank you for your kind assistance.

Thank you for your kind assistance.

Anthony M. Palazzolo Jr.

**From:** Anthony Palazzolo <palazzolo@thepatentsource.com>  
**Sent:** Thursday, April 6, 2023 5:55 PM  
**Subject:** FW: Concerns with CRMC Assent 2019-05-007 - Napatree Point in Westerly  
**Attachments:** 2008 FORT ROAD RESOLUTION & CERTIFIED ASSESSOR MAPS OF ROW.pdf; GIS - 1980 Westerly Tax Map Showing Fort Road.pdf; Westerly's Response to Fort Road APRA Requests 3, 4, and 5.pdf; Highlighted - Town Council Minutes With Resolution Authorizing Placing Town Lot 178-007 In Trust - November 3 2008.pdf; 2019-05-007 Was the Fort Road ROW Fenced Off w-o Disclosing Same .pdf

Please see below and attached, including CRMC Assent 2019-05-007.

Sincerely,

Anthony M. Palazzolo Jr., Esq.



THE PATENT SOURCE

285 Pendleton Hill Road  
North Stonington, CT 06359  
phone: (860) 599-8507  
fax: (860) 599-8537  
[palazzolo@thepatentsource.com](mailto:palazzolo@thepatentsource.com)

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**From:** Anthony Palazzolo  
**Sent:** Thursday, April 6, 2023 2:11 PM  
**To:** [lfeldman@crmc.ri.gov](mailto:lfeldman@crmc.ri.gov)  
**Cc:** Anthony M. Palazzolo Jr. Esq. <palazzolo@thepatentsource.com>  
**Subject:** Concerns with CRMC Assent 2019-05-007 - Napatree Point in Westerly

Ms. Feldman,

Further to my telephone message today regarding the above-identified Assent, may I ask that you review this matter and take whatever action CRMC deems appropriate?

I am concerned that I could not find any discussion of this Town-designated right of way (Fort Road) in the complete Assent file (Assent 2019-05-007) and that the Assent might conflict with the right of way. It appears that ABSOLUTELY NO CONSIDERATION was given to the Town-designated right of way. In fact, it is possible that the foot traffic the applicant sought to



eliminate with the Assent (as discussed in the file) was actually lawful public use of the right of way.

Please find attached an **October 6, 2008 Resolution** of the Town of Westerly and associated mapping for this Town-designated ROW. Please also note that this ROW is included in Westerly's **2020-2040 Comp Plan (dated 2021)**, and Westerly's **2016 and 2019 Harbor Management Plans**.

It was also mentioned in another resolution ("WHEREAS, the Town of Westerly is the owner of a parcel of land on Napatree Point in the village of Watch Hill known as Assessors Plat 178, Lot 7; and WHEREAS, by virtue of the ownership of this parcel the Town has a deeded and unrestricted right to pass and repass over a twenty (20') foot rightofway known as "Fort Road"; ..." (see attached).

Recent APRA requests to the Town of Westerly confirm that there are no documents indicating that the ROW **resolution** has been repealed or invalidated (see attached).

Finally, may I ask you to please speak with Justin Skenyon about a Westerly Yacht Club dredging application he is **handling** and correspondence from the Town of Westerly regarding the Town's present **position on Fort Road** there?

Thank you.

Sincerely,

Anthony M. Palazzolo Jr.



THE PATENT SOURCE

285 Pendleton Hill Road  
North Stonington, CT 06359  
phone: (860) 599-8507  
fax: (860) 599-8537  
[palazzolo@thepatentsource.com](mailto:palazzolo@thepatentsource.com)

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RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTERLY  
DECLARING FORT ROAD ON NAPATREE POINT TO BE A  
PUBLIC RIGHT OF ACCESS IN PERPETUITY

WHEREAS, the Town commissioned a title opinion in December of 2007 to determine what rights the Town and the Public have to access Napatree Point via Fort Road, and

WHEREAS, that title opinion concluded that the owners of parcels along Napatree point are successors in interest to the access way commonly known as Fort Road and further that the land which constitutes Fort Road is in fact owned by those several owners of land on Napatree Point and along Fort Road, and

WHEREAS, the Town is an owner of a parcel of land on Napatree Point and along Fort Road known as Assessor's plat 178 lot 7 and that parcel being owned by the Town, the use of Fort Road as an access way to and across Napatree Point extends to the Public at large, and

WHEREAS, officials of the Watch Hill Fire District, which owns the majority of the land on Napatree Point and that land where Fort Road intersects with Bay Street have consistently said that the Public has an unrestricted right to access Napatree Point via Fort Road, and

WHEREAS, much of Napatree Point consists of 'Public Trust Land' or that area along the shore which is specifically protected for use by the Public in The Rhode Island State Constitution – Article 1, section 17, and

Whereas, historical photographs, town meeting and utility records and other reliable archival information indicates the historic use of Fort Road as a Public access way to Napatree Point, now therefore be it hereby

RESOLVED: That The Town Council of the Town of Westerly does hereby declare that Fort Road on Napatree Point as shown on the Town Assessor's plats # 177, 178, 184 and 185 as a twenty foot wide right of way has been, is and shall be a right of way for access by the Public to pass and re-pass to and from and across Napatree Point in perpetuity.

ADOPTED: October 6, 2008



RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WESTERLY  
DECLARING FORT ROAD ON NAPATREE POINT TO BE A  
PUBLIC RIGHT OF ACCESS IN PERPETUITY

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ADOPTED:



*Town of Westerly*  
*Rhode Island*

OFFICE OF THE TOWN ASSESSOR  
David B. Thompson, Town Assessor



Town Hall  
45 Broad Street  
Westerly, RI 02891  
TEL: (401) 348-2544  
FAX: (401) 348-2616

July 22, 2022

Attorney Anthony Palazzola  
285 Pendleton Hill Road #100  
North Stonington, CT 06359

Dear Attorney Palazzola,

Please be advised that the certified copies of Westerly Maps 178, 184, and 185 were in use during the entirety of 2008.

If you should need anything further please do not hesitate to contact this office at your convenience.

Sincerely,

David B. Thompson  
Westerly Town Assessor



RECEIVED

MAY 20 2024

COASTAL RESOURCES  
MANAGEMENT COUNCIL

STANDARD PLAN  
TOWN OF WESTERLY  
MAINE  
LARGE W. SEWELL COMPANY, OLD TOWN, MAINE



NOTE

THE ABOVE MAPS AND RECORDS ARE NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH THEY WERE PREPARED. THE TOWN OF WESTERLY, MAINE, IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS. THE TOWN OF WESTERLY, MAINE, IS NOT RESPONSIBLE FOR ANY DAMAGES OR LOSSES. THE TOWN OF WESTERLY, MAINE, IS NOT RESPONSIBLE FOR ANY INJURIES OR DEATHS. THE TOWN OF WESTERLY, MAINE, IS NOT RESPONSIBLE FOR ANY OTHER DAMAGES OR LOSSES. THE TOWN OF WESTERLY, MAINE, IS NOT RESPONSIBLE FOR ANY OTHER INJURIES OR DEATHS.

NOT FOR CONVEYANCE

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Coastal Resources Management Council  
100 Main Street  
Old Town, Maine 04468  
Tel: 207-842-1234  
Fax: 207-842-1235  
www.coastalresources.org



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MAY 20 2024

COASTAL RESOURCES  
MANAGEMENT COUNCIL

ASSEMBLING MAP  
TOWN OF WESTERLY  
WASHINGTON COUNTY, MAINE (BLAND)  
JAMES W. SEWELL COMPANY, OLD TOWN, MAINE

NOTE

THIS MAP, REVISIONS AND THEREAFTER SHALL BE VALID FOR  
THE PURPOSES OF THE MAINE COASTAL ZONING ACT  
AND THE MAINE COASTAL ZONING ACT  
ONLY AND NOT FOR CONVEYANCE

SCALE 1"=100' FEET

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COASTAL RESOURCES  
MANAGEMENT COUNCIL  
10/1/84

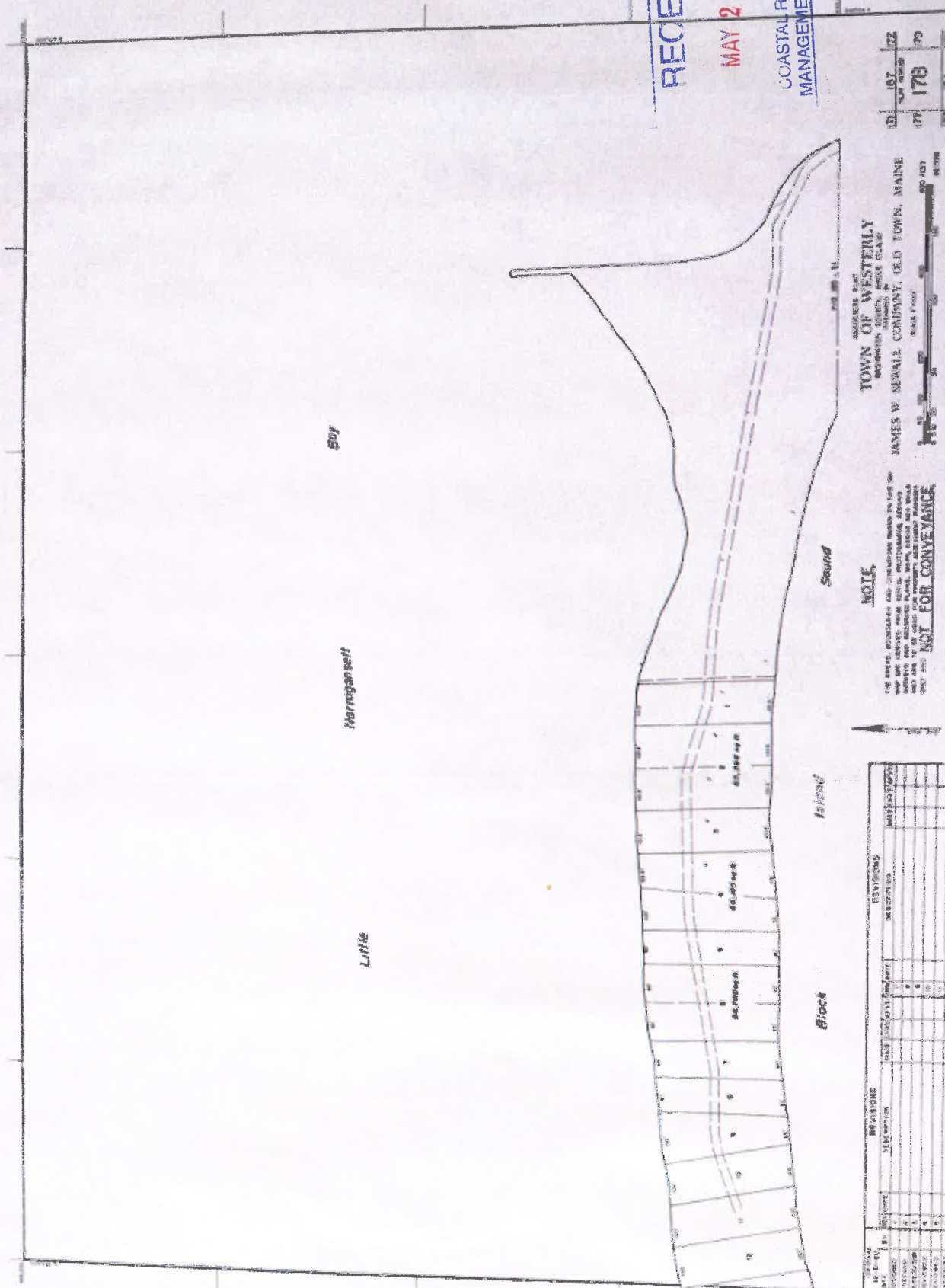
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MANAGEMENT COUNCIL  
10/1/84

COASTAL RESOURCES  
MANAGEMENT COUNCIL  
10/1/84

RECEIVED

MAY 20 2024

COASTAL RESOURCES  
MANAGEMENT COUNCIL



**ATHEISM AND NAUO**

James W. Nease, Secretary, 1810 Union Avenue  
St. Louis, Mo.

NOTE

1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786

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MAY 20 2024

COASTAL RESOURCES  
MANAGEMENT COUNCIL

184

TOWN OF WESTERLY  
JAMES W. SENEALL COMPANY, OLD TOWN, MAINE  
184

NOTE  
THE TOWN OF WESTERLY HAS REVIEWED THIS PROJECT AND HAS NO OBJECTION TO THE PROJECT BEING CONVEYED TO THE TOWN OF WESTERLY. THE TOWN OF WESTERLY HAS NO OBJECTION TO THE PROJECT BEING CONVEYED TO THE TOWN OF WESTERLY.

NO.	DATE	BY	REVISIONS	REMARKS
1	10/1/2023	W. SENEALL	1	10/1/2023
2	10/1/2023	W. SENEALL	2	10/1/2023
3	10/1/2023	W. SENEALL	3	10/1/2023
4	10/1/2023	W. SENEALL	4	10/1/2023
5	10/1/2023	W. SENEALL	5	10/1/2023
6	10/1/2023	W. SENEALL	6	10/1/2023
7	10/1/2023	W. SENEALL	7	10/1/2023
8	10/1/2023	W. SENEALL	8	10/1/2023
9	10/1/2023	W. SENEALL	9	10/1/2023
10	10/1/2023	W. SENEALL	10	10/1/2023
11	10/1/2023	W. SENEALL	11	10/1/2023
12	10/1/2023	W. SENEALL	12	10/1/2023
13	10/1/2023	W. SENEALL	13	10/1/2023
14	10/1/2023	W. SENEALL	14	10/1/2023
15	10/1/2023	W. SENEALL	15	10/1/2023
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19	10/1/2023	W. SENEALL	19	10/1/2023
20	10/1/2023	W. SENEALL	20	10/1/2023
21	10/1/2023	W. SENEALL	21	10/1/2023
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73	10/1/2023	W. SENEALL	73	10/1/2023
74	10/1/2023	W. SENEALL	74	10/1/2023
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81	10/1/2023	W. SENEALL	81	10/1/2023
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83	10/1/2023	W. SENEALL	83	10/1/2023
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90	10/1/2023	W. SENEALL	90	10/1/2023
91	10/1/2023	W. SENEALL	91	10/1/2023
92	10/1/2023	W. SENEALL	92	10/1/2023
93	10/1/2023	W. SENEALL	93	10/1/2023
94	10/1/2023	W. SENEALL	94	10/1/2023
95	10/1/2023	W. SENEALL	95	10/1/2023
96	10/1/2023	W. SENEALL	96	10/1/2023
97	10/1/2023	W. SENEALL	97	10/1/2023
98	10/1/2023	W. SENEALL	98	10/1/2023
99	10/1/2023	W. SENEALL	99	10/1/2023
100	10/1/2023	W. SENEALL	100	10/1/2023



APPROVED BY  
TOWN OF WESTERLY  
JAMES W. SENEALL COMPANY, OLD TOWN, MAINE  
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MAY 20 2024

COASTAL RESOURCES  
MANAGEMENT COUNCIL

## 1. 7:35 P.M. CALL TO ORDER

Present: President DiMaio, Vice Pres. Cooke  
Councilors Duhamel, Avedesian  
T. Mgr. Turo, T. Sol. Hartford, Chief of Staff Ahern  
Co. Clk. Giordano, T. Sgt. Abate

Absent: Councilor Azzinaro  
Councilor Buck

INVOCATION – Councilor Cooke

SALUTE TO THE FLAG – Council President DiMaio

## 2. RECOGNITIONS, AWARDS &amp; MEMORIALS

Motion made and duly Seconded to adopt the following resolution read aloud by Council Clerk: (Voted Unanimously)

- a. [Proclamation](#) – Fire Protection Week, October 5 through October 11, 2008
- b. [2008 Good Neighbor Award](#) – Pawcatuck Neighborhood Center

Christopher Koretski, a member of the Neighbor Day Committee, was present, read the award and presented it for the archives.

Motion was made and duly seconded that the aforesaid award be placed in the town's archives. (Voted Unanimously)

## RATIFY AND CONFIRM:

Motion made and duly Seconded to ratify and confirm the following resolution: (Voted Unanimously)

- c. [Acknowledgment](#) – WARM Shelter Campaign – “A Dollar Makes A Difference!”

Councilor Duhamel announced that he attended the kickoff campaign.

## 3. CITIZENS COMMENTS/COUNCILORS' RESPONSE

**When addressing the Council, please state your name and address; please conduct yourself in an orderly and respectful fashion. The comments of citizens accessing this portion of our meeting are neither adopted nor endorsed by this body, but heard as requested. Comments shall not include matters that are noted to be advertised for or that are scheduled for public hearing.**

- a. A. Barclay Robertson, 18 Urso Dr – re: **Annual Town Beach Cleanup**; participated in cleanup; many cigarette butts; ordinance prohibiting smoking on town beaches not being enforced; suggested the Council not pass ordinances with no means of enforcement
- b. Patricia A. Douglas, 39 Happy Valley Rd – re: **Napatree Point Resolution**; resolution should be an ordinance because it has more weight; public should be aware; people of Westerly deserve ordinance allowing access to Napatree Point; people of Westerly deserve same treatment as dogs of Westerly – re: **Bed and Breakfast Ordinance**; reared its ugly head again; intends to talk about it from now until October 27<sup>th</sup>; a bed and breakfast is not a restaurant; ordinance will be challenged in court because zoning ordinances will have to be changed; will hurt small restaurants; taxes are paid on a residence not on a business

## 4. NEW BUSINESS

- a. [Westerly Municipal Land Trust](#) – Discussion On Potential Ways To Fund Projects

Present: Richard Smith, Chair Finance Board  
Leslie Crandall, Chair Westerly Municipal Land Trust  
William Foster, member Westerly Municipal Land Trust

Discussion was held regarding the need for operating funds by the Land Trust, noting that the monies currently allocated are for capital purchases. It was also noted that the current budget includes funds in a restricted account as a protective measure so that the money would not be lost if it was not spent during the budget year and that the money was to be used for operating purposes

Council President DiMaio recommended that the Chair of the Municipal Land Trust speak to the Town Solicitor about the amount of money needed and he will prepare a resolution for Council consideration.

- b. [The Weekapaug Foundation for Conservation](#) – Request For Property Tax Exemption on AP133, Lot 88 (341 Shore Road) and AP155, Lot 148 (Atlantic Avenue)

Present: Stanley Kanter, Esq., representing The Weekapaug Foundation for Conservation  
Jennifer Sternick, Executive Director, The Weekapaug Foundation for Conservation  
Charles Vacca, Town Assessor

Mr. Vacca informed the Council that the aforesaid two parcels fit the description of open space; that six other parcels belonging to the Foundation were previously granted exempt status by the Council; and that he agrees with the request for a tax exemption.

Motion by Mrs. Avedesian, Seconded by Mr. Duhamel, that the aforesaid request be granted. (Voted Unanimously)

- c. [Resolution](#) Of The Town Council Of The Town Of Westerly Declaring Fort Road On Napatree Point To Be A Public Right Of Access In Perpetuity

Correspondence filed 10/2/08 from Gail Forbes, 62 Elm St  
Information filed 10/2/08 from U.S. Army Corps of Engineers

RESOURCES  
MANAGEMENT COUNCIL

Councilor Duhamel Chris stated that, at his suggestion, the aforesaid resolution memorializing access to Napatree Point was placed on this agenda. He further stated that he would be more than willing to review the matter in greater detail and have a public hearing to accept public comment.

Council President DiMaio felt that the aforesaid resolution should be in the form of an ordinance and as part of such, RIGL 24-2-1 should be added and that the ordinance should be ordered advertised for a public hearing.

Participants: Mathew Thomsen, Esq., representing Watch Hill Fire District and the Watch Hill Conservancy; no one contesting access to Napatree Point; small contingent of people complaining about access; no one has been denied access; complaints are baseless; resolution has no real significance; window dressing for a minority; addressed inaccuracies in resolution; Charles Koulbanis, 19 Bayberry Rd, M; took exception to remarks by Thomsen; read from sign created by Watch Hill Conservancy; pandering to self-appointed rulers of Watch Hill; Napatree for all people; questioned how Misquamicut Beach Club got permission to block right-of-way; Edward Russell, 5 Ninnigret Ave, WH; resolution redundant and unnecessary; Randall Saunders, Windward Dr; addressed inaccessibility to public rights-of-way; experiencing inch-by-inch destruction of public freedoms; Paula Ruisi, 3 Shepherds Run; addressed letter from Jack Spratt; concerns with conflict of interest between Watch Hill Fire District, Watch Hill Conservancy and the Watch Hill Parks Commission; conservation being used to further separate Watch Hill from Westerly; requested Council rescind vote taken on 9/22; support for ordinance protecting public access in perpetuity; Gail Forbes, 62 Elm St; if public access is assured by Fire District, what could be the objection to an ordinance protecting access in perpetuity

In response to Councilor Duhamel regarding whether an ordinance or a resolution is required, Town Solicitor Hartford stated that he tried to follow the directive of the Council to bring the issue to this point. He read from the charter as to requirements for an ordinance, which is to create, abolish, or reorganize an office, department, or agency or to establish a fine or other penalty. He stated that, in this case, a law is not being created; the council is just restating by resolution the opinion of title counsel that the right of access by the public is protected by virtue of the town owning land on Napatree Point. He further stated that the Council is seeking to declare that this is the official position of the town and that the resolution is the best vehicle to do this. He stated that he and Attorney Solveitzik have advised the town that it and members of the public have a legal right to access Napatree Point and that no law is going to make that right more substantial or give the town greater property rights. He was of the opinion that the Council does not have the right to declare property rights; that is the purview of the Superior Court in Rhode Island.

Council President DiMaio questioned, for the record, what would happen to public access if the town did not own the lot.

Town Solicitor Hartford responded that the town's ownership of property is the basis for the public's right to access Napatree Point besides the fact that the public has the right to access along the shore under the public trust doctrine pursuant to the State Constitution. He stated that, although not likely, it is possible that another Council could repeal an ordinance or could abandon the road.

Discussion was held regarding a suggestion that a resolution be adopted to permanently protect the town's ownership of its property on Napatree Point; that the aforesaid resolution be amended to say that access to Napatree Point is on or about Fort Road; and that RIGL 24-2-1 be added to the resolution.

Town Solicitor Hartford stated that RIGL 24-2-1 does not apply to Fort Road since it is not owned by the town and has not been used for vehicular traffic for over seventy years.

Motion by Mr. Duhamel, Seconded by Mr. Cooke, that the following resolution be adopted. A poll vote was taken and the motion carried. (So Voted 3 to 1)

YES

NO

Duhamel

Avedesian

Cooke

DiMaio – on the condition that something follows that will tie up the property forever

08/09-67

WHEREAS, the Town commissioned a title opinion in December of 2007 to determine what rights the Town and the Public have to access Napatree Point via Fort Road, and

WHEREAS, that title opinion concluded that the owners of parcels along Napatree point are successors in interest to the access way commonly known as Fort Road and further that the land which constitutes Fort Road is in fact owned by those several owners of land on Napatree Point and along Fort Road, and

WHEREAS, the Town is an owner of a parcel of land on Napatree Point and along Fort Road known as Assessor's plat 178 lot 7 and that parcel being owned by the Town, the use of Fort Road as an access way to and across Napatree Point extends to the Public at large, and

WHEREAS, officials of the Watch Hill Fire District, which owns the majority of the land on Napatree Point and that land where Fort Road intersects with Bay Street have consistently said that the Public has an unrestricted right to access Napatree Point via Fort Road, and

WHEREAS, much of Napatree Point consists of 'Public Trust Land' or that area along the shore which is specifically protected for use by the Public in The Rhode Island State Constitution – Article 1, section 17, and

WHEREAS, historical photographs, town meeting and utility records and other reliable archival information indicates the historic use of Fort Road as a Public access way to Napatree Point, now therefore be it hereby

RESOLVED: That The Town Council of the Town of Westerly does hereby declare that Fort Road on Napatree Point as shown on the Town Assessor's plats # 177, 178, 184 and 185 as a twenty foot wide right of way has been, is and shall be a right of way for access by the Public to pass and re-pass to and from and across Napatree Point in perpetuity.

Motion by Mr. Cooke, Seconded by Mrs. Avedesian that Caswell/Diana that the Town Solicitor look into the preparation of a document that would permanently protect the rights of the Town as they pertain to the use of Fort Road by virtue of the Town's ownership of said property. (Voted Unanimously)

d. Proposed Amendments – Park Commission and Board of Recreation:

1. Proposed Ordinance – “An Ordinance In Amendment Of Article I, ‘Park Commission,’ Of Chapter 5 Of The Westerly Code Of Ordinances Entitled ‘Boards, Committees And Commissions’”  
(Order Adv. for Public Hearing on 10/20/08)

Motion by Mr. Duhamel, Seconded by Mr. Cooke, that the aforesaid proposed ordinance be ordered advertised for public hearing on October 20, 2008. (Voted Unanimously)

2. Proposed Ordinance – “An Ordinance In Amendment Of Article II, ‘Board Of Recreation,’ Of Chapter 5 Of The Westerly Code Of Ordinances Entitled ‘Boards, Committees And Commissions’”  
(Order Adv. for Public Hearing on 10/20/08)

Motion by Mr. Cooke, Seconded by Mrs. Avedesian, that the aforesaid proposed ordinance be ordered advertised for public hearing on October 20, 2008. (Voted Unanimously)

- e. Proposed Ordinance – “An Ordinance In Amendment Of Chapter 1439 Of The General Ordinances Of The Town Of Westerly Entitled ‘Re-Enact And Re-Adopt Chapter 1242 Entitled ‘The Westerly, Rhode Island, Zoning Ordinance Of 1998, As Amended’” (§260-18. Standard Zoning District Use Tables – re: Farm, Forest and Open Space Program)  
(Order Adv. for Public Hearing on 11/3/08)

Motion by Mr. Duhamel, Seconded by Mrs. Avedesian, that the aforesaid proposed ordinance be ordered advertised for public hearing on November 3, 2008. (Voted Unanimously)

- f. Resolution Authorizing The Town Of Westerly To Enter Into A New Lease Agreement With Westerly Senior Citizens, Inc.

Motion by Mrs. Avedesian, Seconded by Mr. Cooke, that the following resolution be adopted: (Voted Unanimously)

08/09-68

WHEREAS, the Westerly Senior Citizens, Inc. lease with the Town of Westerly for use of the Westerly Senior Citizens Center located on State Street expired on June 30, 2008; now therefore, be it hereby

RESOLVED: That the Town of Westerly, acting through its Town Manager, is hereby authorized to enter into a new lease agreement with Westerly Senior Citizens, Inc. for premises located on State Street at Westminster Street, Town of Westerly, for a period of five (5) years in accordance with the terms and conditions presented by the Town Manager.

- g. Informational Booklets – re: November Ballot Questions

Town Solicitor Hartford informed the Council that he had received a quote of \$1,000 from “The Westerly Sun” to print and place inserts of the aforesaid booklets in the “Sun” and the “Pawcatuck Press” for distribution to all households. He sought direction from the Council on how to proceed.

Discussion was held regarding printing and distributing the pamphlets in house rather than having them done professionally

Motion by Mrs. Avedesian, Seconded by Mr. Cooke, that the pamphlets be printed and distributed through “The Westerly Sun” and that the funds for same be expended from the Board of Canvassers account. (Voted Unanimously)

- h. Special Meeting of October 14, 2008 - Discussion

Motion by Mr. Cooke, Seconded by Mr. Duhamel, that a Special Meeting of the Westerly Town Council be held on Tuesday, October 14, 2008, at 5:00 p.m. (Voted Unanimously)

5. PUBLIC HEARINGS (Adv. on 9/29/08 for this time)

- a. Proposed Ordinance – “An Ordinance In Amendment Of Article I ‘Dogs And Other Animals’ Of Chapter 76 Of The Westerly Code Of Ordinances Entitled ‘Animals’” (§76-8 – Animals on public property and in commercial establishments prohibited; violations and penalties)

Motion by Mrs. Avedesian, Seconded by Mr. Duhamel, that the public hearing be opened. (Voted Unanimously)

Participants: Lisa Konicki, Executive Director, Chamber of Commerce – many people would like to bring their dogs to their commercial establishments; questioned intent of ordinance; antiquated; make ordinance representative of modern times; Charles Koulbanis, 19 Bayberry Rd., M – beach is front yard for many people; consideration should be made for them; can understand prohibition on weekends and holidays, but not on weekdays; beach is a recreational area; should be allowed during the day on weekdays; Mathew Thomsen, Esq. – Watch Hill Fire District supports ordinance; concerned with term “public beach”; ordinance does not apply to privately-owned property such as Napatree Point; for town ordinance not to apply Napatree Point would jeopardize the public safety and welfare of the public and create problems for the town and the fire district; requested separate ordinance defining public beach to include privately owned property; Kerri Baird, 59 Oak St – representing local merchants who bring their pets to their commercial establishments; will consider the current fine a business expense because she will not leave dog at home; Randall Saunders, 122 Bay St, WH – questioned clarity, extent and scope of ordinance; if add language, will cause controversy and confusion; no enforcement; objects to any new language; addressed ordinances from other towns that state no dogs on town-owned beaches only; Paula Ruisi, 3 Shepherds Run – not until recently that dogs were prohibited on East Beach and Napatree Point; only town in state that crosses over to beaches other than town beaches

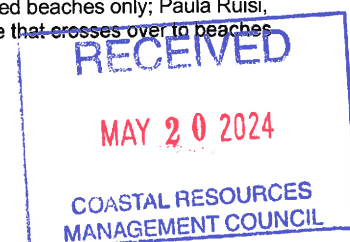
Motion by Mr. Cooke, Seconded by Mr. Duhamel, that the hearing be closed. (Voted Unanimously)

Motion by Mr. Duhamel, Seconded by Mr. Cooke, that the following ordinance be adopted: (Voted Unanimously)

TOWN OF WESTERLY

CHAPTER 1656

“AN ORDINANCE IN AMENDMENT OF ARTICLE I ‘DOGS AND OTHER ANIMALS’ OF CHAPTER 76 OF THE WESTERLY CODE OF ORDINANCES ENTITLED ‘ANIMALS’”





The Town of Westerly hereby ordains:

Section 1. Section 76-8 of the Animals Ordinances of the Town of Westerly entitled "Animals on public property and in commercial establishments prohibited; violations and penalties" is hereby amended as follows:

**§ 76-8. Animals on public property and in commercial establishments prohibited; violations and penalties.**

- A. Prohibited on certain property; exceptions. Unless otherwise expressly permitted, animals are not allowed on public beaches, which shall include for the purposes of this ordinance all of those lands within the Town of Westerly which are reserved to the public for lateral access along the shore and commonly known as the "public trust lands", school properties or recreation areas. Exceptions:
- (1) Registered dogs are allowed on public beaches, which shall include for the purposes of this ordinance all of those lands within the Town of Westerly which are reserved to the public for lateral access along the shore and commonly known as the "public trust lands", from the day after Labor Day to May 1 at any time and from May 2 to Labor Day from 6:00 p.m. until 8:00 a.m., but must be on a leash and all droppings must be picked up and removed from the beach by the individual walking or having control of the dog. Notwithstanding any other provision herein, dogs are prohibited from any area demarcated by the U.S. Fish and Wildlife Service or their partners, designees and agents as piping plover nesting areas.

\* \* \* \* \*

Section 2. This ordinance shall take effect upon passage.

6. UNFINISHED BUSINESS

None

7. CONSENT CALENDAR

a. Approval of Minutes

None

b. Fiscal Matters

Motion by Mr. Duhamel, Seconded by Mr. Cooke, that the following resolutions be adopted: (Voted Unanimously)

Resolution Authorizing The Town Manager To Extend The Contractual Agreement With C & E Engineering Partners, Inc. For The Construction Administration And Inspection For The New White Rock Transmission Main

08/09-69

WHEREAS, it has been determined by the Utility Division that there is a need to install a transmission water main from the Number 2 Pump Station to the Twin 12" water mains on Granite Street; and

WHEREAS, requests for proposals from Qualified Civil Engineers was advertised on March 13, 2006; and

WHEREAS, C & E Engineering Partners of 342 Park Avenue, Woonsocket, RI; Dufresne-Henry Engineers of 5 Lan Drive, Suite 300, Westford, MA, 01886-3538; and PARE Engineering Corp. of 8 Blackstone Valley Place, Lincoln, RI 02865 were three engineering consultants selected to be interviewed by the Public Works Subcommittee; and

WHEREAS, it was the choice of the Utilities Department and the Public Works Subcommittee to select C & E Engineering Partners based on the proposed scope of services, well operation, plan details, hydraulic model analysis runs and engineering service costs which has been completed in accordance with Resolution 06/07-2 adopted by the Westerly Town Council on July 3, 2006; and

WHEREAS, the Consultant is in the sixth month of the construction phase, which has exhausted the previous Town Council resolution 07/08-98 for \$58,400.00; which is based on hourly rates for Constructive Administration and Construction Inspection Services; and

WHEREAS, attached to this Resolution is a request form C & E Partners which outlines the projected time for construction oversight, Construction Administration services which is paid out at an hourly rate, said estimate will total \$30,000.00; and

WHEREAS, funds are available in the Account titled "White Rock Pipeline" #06031910-504375; and

BE IT RESOLVED: that the Town Manager be authorized to enter into a contract for Construction Administration and Inspection Services – Phase II – of the New White Rock Transmission main with C & E Engineering Partners for the amount of \$30,000.00.

Resolution Authorizing Deletion To Tax Roll (\$362.82)

08/09-70

WHEREAS, the TOWN ASSESSOR OF THE TOWN OF WESTERLY, requests the following deletions to the Tax Rolls per list submitted, and

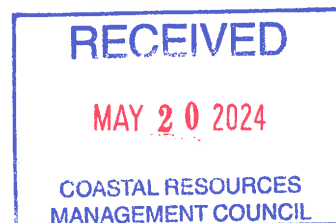
WHEREAS, the Tax Rolls are requested to be changed as follows:

2008 MV Tax Roll	292.67
2006 MV Tax Roll	21.92
2000 MV Tax Roll	48.23
TOTAL	\$ 362.82

NOW THEREFORE, be it

RESOLVED: That the tax rolls be revised as aforesaid, and be it

FURTHER RESOLVED: that the President of the Town Council be authorized to certify the same to the Tax Collector of the Town.



MAY 20 2024

TOWN OF WATCH HILL  
MANAGEMENT COUNCIL

- c. Appointments - None

## 8. COMMUNICATIONS & REPORTS

### a. Liaison Reports

1. **North End Crime Watch** – Councilor Avedesian reported that the breakfast held on Sunday was a success and she thanked Councilors Cooke and Duhamel for attending and volunteering there services.
2. **Jonnycake Center** – Councilor Avedesian announced that 150 non-perishable food items were generated for the food pantry.
3. **Senior Center** – Councilor Avedesian announced that the center will conduct a flu clinic on Friday, October 10, 2008, from 9 a.m. to 1 p.m. and that the cost is \$30 without Medicare, Blue Cross/Blue Chip and Blue Cross/Blue Shield. She also announced that a Pork Dinner will be held at the center on Friday, October 24, 2008, from 5 p.m. to 7 p.m. and that tickets are available at the Senior Center.
4. **Farm, Forest & Open Space Ordinance** – Councilor Duhamel stated that the Farm, Forest and Open Space Ordinance will be a great equalizer working with the Comprehensive Plan Committee that will allow people to keep their property from development and thanked the Town Solicitor for his efforts.
5. **Comprehensive Plan Committee** – Councilor Duhamel announced a committee meeting is scheduled for Thursday, October 9, 2008 and the following Thursday and will be discussing the defining of future land use of the growth of the town and how to preserve Westerly and urged all interested persons to attend the meetings.
6. **North End Crime Watch** – Councilor Duhamel reported that the Crime Watch has met with Assistant Planner Blanche Higgins to discuss issues that it believes are paramount to the North End.
7. **Affordable Housing** – Councilor Duhamel reported that he received a request from the North End Crime Watch regarding its concern for the creation of affordable elderly housing. He stated that Ann Lamb, a former member of the Planning Board and a current member of the Comprehensive Plan Study Committee has championed the issue of affordable housing, which the committee is looking forward to incorporating into the Comprehensive Plan.
8. **Misquamicut Drain** – Councilor Duhamel reported that he met with the Town Engineer regarding the relocation of the control panel to First Street; that the town is seeking a cost to move the control panel and remove the structure; and that a meeting with the contractor should take place this week to obtain a price.

### b. Town Council – 10/6/08

1. **Napatree Point** – Council President DiMaio announced that letters were received from the following regarding the aforesaid for filing:  
Karen Baker, Paula Ruisi, Jonathan Pratt (Town Engineer), Gail Forbes, U.S. Army Corps of Engineers

### c. Town Manager – 10/6/08

Town Manager Turo informed the Council that a new business will be locating at the site of the former Blue Sky Brands on Tom Harvey Road; that it will be a very large similar mail order business; and that it expects to be shipping in January 2009. He thanked the two state agencies that have been working successfully on the project, along with Senator Algieri, and stated that a formal announcement will be made in near future.

### d. Town Solicitor – 10/6/08

Town Solicitor Hartford informed the Council that he will be away the week of October 20, 2008 and that John Payne, Esq., Assistant Solicitor for Planning, will attend the Council meeting in his stead.

Town Solicitor Hartford informed the Council that the meeting that was scheduled with PBS for October 7, 2008, is to be rescheduled.

### e. Town Clerk – 10/6/08

### f. Agenda Referrals (Items to be assigned to future agendas)

1. **Dogs In Commercial Establishments** – Council President DiMaio referred the aforesaid matter to the October 20, 2008 Council meeting.
2. **Fort Road Tightening** – Council President DiMaio referred the aforesaid matter to the October 20, 2008 Council meeting.
3. **Council Action Items Report** – Council President DiMaio requested that each Councilor choose one item from the report that they would like to see completed for placement on a future agenda.

## 9. CITIZENS COMMENTS/COUNCILORS' RESPONSE

**When addressing the Council, please state your name and address; please conduct yourself in an orderly and respectful fashion. The comments of citizens accessing this portion of our meeting are neither adopted nor endorsed by this body, but heard as requested. Comments shall not include matters that are noted to be advertised for or that are scheduled for public hearing.**

- a. **A. Barclay Robertson, 18 Urso Dr – re: Dogs on Beach**; unless there is a firm plan for enforcement, it will be one more ordinance that no one pays attention to
- b. **Lisa Koniki, Executive Director, Chamber of Commerce – re: Citizens Comments** – if there is to be no comment on matters to be advertised for or that have been scheduled for a public hearing, it needs to be applied consistently; Mrs. Douglas allowed to speak on item that was scheduled for public hearing
- c. **Jamie Pimental, 119 Bay St – re: Napatree Point**; unfortunate that burden of proof had to be on the town to defend what it owns; a lot of problems in Watch Hill; ashamed of what took place tonight; feels sorry that Council has to waste time with these ordinances

10. ADJOURNMENT

9:55 P.M. Voted Unanimously to adjourn.

ATTEST:

Donna L. Giordano, MMC  
Council Clerk

Details of the aforesaid proceedings are available on the tape record of said meeting.

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MAY 20 2024

COASTAL RESOURCES  
MANAGEMENT COUNCIL

STATE OF RHODE ISLAND  
WASHINGTON, SC.

SUPERIOR COURT

WATCH HILL FIRE DISTRICT; and THE  
WATCH HILL CONSERVANCY

Plaintiffs

C.A. No. WC-2023-\_\_\_\_\_

v.

TOWN OF WESTERLY; CINDY  
KIRCHHOFF, in her capacity as the Interim  
Director of Finance for the Town of Westerly;  
WILLIAM CONLEY, ESQ., in his capacity  
as Town Solicitor for the Town of Westerly;  
SHAWN LACEY, in his capacity as Town  
Manager for the Town of Westerly; the  
WESTERLY TOWN COUNCIL and  
EDWARD P. MORRONE, KEVIN J.  
LOWTHER, II, PHILIP M. OVERTON, JR.,  
WILLIAM J. AIELLO, JOY L. CORDIO,  
DYLAN J. LAPIETRA, and MARY E.  
SCIALABBA, in their capacities as members  
of the Westerly Town Council; THE  
MISQUAMICUT CLUB; WATCH HILL  
YACHT CLUB CABANA GROUP LLC;  
WATCH HILL YACHT CLUB; MARSHA  
ANDERSON FISKE, TRUSTEE OF THE  
MARSHALL ANDERSON FAMILY  
TRUST; ESTATE OF OSCAR B.  
CHAPMAN; GERALD C. DEMARIA and  
TERESA DEMARIA; ESTATE OF  
ROBERT GLENDINNING; HARRIET M.  
KNIFFIN in her capacity as TRUSTEE OF  
THE HARRIET CHAPPELL MOORE  
FOUNDATION; LOUIS B. CAPPUCCIO,  
JR., as TRUSTEE OF THE LOUIS B.  
CAPPUCCIO, JR. LIVING TRUST and  
LAWRENCE J. CAPPUCCIO, TRUSTEE  
OF THE LAWRENCE J. CAPPUCCIO  
LIVING TRUST; and STATE OF RHODE  
ISLAND ACTING BY AND THROUGH  
ITS DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Defendants.

RECEIVED

MAY 20 2024

COASTAL RESOURCES  
MANAGEMENT COUNCIL

## **COMPLAINT**

Plaintiffs, Watch Hill Fire District and The Watch Hill Conservancy, bring this action pursuant to the provisions of Chapters 7 and 16 of Title 34 and Chapter 30 of Title 9 of the Rhode Island General Laws to enforce the terms of the Conservation Easement protecting land on Napatree Point and to quiet title to certain real property located in or adjacent to Napatree Point against actions taken and claims asserted by the Town of Westerly. Plaintiffs seek declaratory and other equitable relief and damages, and state as follows:

### **THE PARTIES**

1. Plaintiff Watch Hill Fire District (“WHFD”) is a Rhode Island quasi-municipality chartered in 1901 organized in 1941 through the Rhode Island General Assembly. For decades, the WHFD has committed itself to preserving and conserving the unique and historic nature of the community and the fragile shoreline, including the conservation of Napatree Point. The stewardship by WHFD dates back to WHFD’s initial purchase of a majority of the parcels constituting Napatree Point in 1945 and later acquisitions of additional parcels. WHFD developed the first Coordinated Management Plan for portions of Napatree Point in 1972 and in 2013 granted a conservation easement in favor of The Watch Hill Conservancy encumbering certain of the parcels owned by WHFD (the “Conservation Easement”).

2. Plaintiff The Watch Hill Conservancy (“WHC”) is a 501(c)(3) charitable organization and Rhode Island non-profit corporation dedicated to preserving and conserving property in historic Watch Hill, owning property on Napatree Point identified as Assessor’s Plat 177, Lot 5; Assessor’s Plat 177, Lot 6; Assessor’s Plat 177, Lot 7 (as tenants in common with WHFD); Assessor’s Plat 178, Lot 10; and Assessor’s Plat 178, Lot 12. WHC also owns the conservation easement interest granted by WHFD encumbering the Napatree Point parcels





identified as Assessor's Plat 177, Lot 2; Assessor's Plat 178, Lot 2; Assessor's Plat 178, Lot 3, Assessor's Plat 178, Lot 4; Assessor's Plat 178, Lot 5; Assessor's Plat 178, Lot 6; Assessor's Plat 178, Lot 9; Assessor's Plat 182, Lot 1; and Assessor's Plat 185, Lot 31 (being the Limited Common Element of WHFD Beach Condominium allocated to Unit 1 owned by WHFD).

3. Defendant Town of Westerly (the "Town") is a municipal corporation in the State of Rhode Island and an interested party as owner of property on Napatree Point identified as Assessor's Plat 178, Lot 7.

4. Defendant Cindy Kirchhoff is the Interim Director of Finance, and equivalent of Treasurer, for the Town of Westerly and named solely in her capacity as Interim Director of Finance.

5. Defendant William Conley, Esq. is the Town Solicitor for the Town of Westerly and named solely in his capacity as Town Solicitor.

6. Defendant Shawn Lacey is the Town Manager for the Town of Westerly and named solely in his capacity as Town Manager.

7. Defendant Westerly Town Council ("Council") is an elected government body in the Town of Westerly with the power to manage the affairs and interests of the Town, pursuant to R.I. Gen. Laws § 45-5-1.

8. Defendants Edward P. Morrone, Kevin J. Lowther, II, Philip M. Overton, Jr., William J. Aiello, Joy L. Cordio, Dylan J. Lapietra, and Mary E. Scialabba are named in this Complaint solely in their capacities as members of the Council.

9. Defendant The Misquamicut Club is named as an interested party owning property on Napatree Point identified as Assessor's Plat 185, Lot 31-3, being Unit 3 of the WHFD Beach Condominium.



10. Defendant Watch Hill Yacht Club Cabana Group LLC is named as an interested party owning property on Napatree Point identified as Assessor's Plat 185, Lot 31-2, being Unit 2 of the WHFD Condominium.

11. Defendant Watch Hill Yacht Club is named as an interested party with a leasehold interest in a portion of the condominium property constituting a portion of Assessor's Plat 185.

12. Defendant Marsha Anderson Fiske, Trustee of The Marshall Anderson Family Trust is named as an interested party who owns property on Napatree Point identified as Assessor's Plat 177, Lot 3.

13. Defendant The Estate of Oscar B. Chapman is named as an interested party who owns a tenancy in common interest with WHFD in property on Napatree Point identified as Assessor's Plat 177, Lot 4.

14. Defendants Gerald C. DeMaria and Teresa DeMaria are named as interested parties who own property on Napatree Point identified as Assessor's Plat 177, Lot 8.

15. Defendant The Estate of Robert Glendinning is named as an interested party who co-owns property on Napatree Point identified as Assessor's Plat 178, Lot 3.

16. Defendant Harriet M. Kniffin in her capacity as Trustee of The Harriet Chappell Moore Foundation is named as an interested party who owns property on Napatree Point identified as Assessor's Plat 178, Lot 1.

17. Defendants Louis B. Cappuccio, Jr., as Trustee of The Louis B. Cappuccio, Jr. Living Trust u/d/t dated May 15, 2012 and Lawrence J. Cappuccio, Trustee of The Lawrence J. Cappuccio Living Trust u/d/t dated October 9, 2012 are named as interested parties who own property on Napatree Point identified as Assessor's Plat 178, Lot 8.



18. Defendant The State of Rhode Island acting by and through its Department of Environmental Management is named as an interested party owning property on Napatree Point identified as Assessor's Plat 178, Lot 11 and owning a conservation easement interest in Assessor's Plat 177, Lot 6.

19. Upon information and belief, all known and unknown persons who may claim an interest in the property to which this quiet title action pertains have been named as defendants in this action. WHFD and WHC have reviewed pertinent land records and deeds to ascertain the identity of any claimants. WHFD and WHC know of no other persons who will or may assert any claims relating to the rights, title, and interests at issue here, and they name under R.I. Gen. Laws § 34-16-9 any unknown persons with such an interest.

#### **JURISDICTION AND VENUE**

20. Jurisdiction lies in this court pursuant to the common law equity powers of the Superior Court to confirm, ascertain and declare property rights. Jurisdiction to quiet title or some right or interest in real estate is also pursuant to the provisions of R.I. Gen. Laws §§ 8-2-13 and 8-2-14; Chapters 7 and 16 of Title 34; and the Rhode Island Uniform Declaratory Judgments Act, §§ 9-30-1 *et seq.* This Court also has jurisdiction of this action under the Administrative Procedures Act, § 42-35-7 to declare and determine the legal effect of a resolution passed by the Council.

21. Concurrently with this Complaint, WHFD and WHC have presented their claims, damages and demands to the Council by way of a notice letter, consistent with R.I. Gen. Laws § 45-15-5.

22. Venue is proper pursuant to R.I. Gen. Laws § 9-4-2.



## THE FACTS

### Historic Use of Napatree Point

23. The allegations in this subsection regarding the historic use of Napatree Point are advanced upon information and belief.

24. In 1898, the United States (the “Government”) purchased two large non-adjacent parcels on Napatree Point to build Fort Mansfield. At the time, there were only four other property owners on Napatree Point. In 1903, the Government secured from each of these owners a private easement over their property for a right of way that provided access to and from Fort Mansfield. The 1903 Easement is attached as **Exhibit A**.

25. This private easement created in 1903 was exclusively for the Government and the four owners to get to and from their respective properties. The Government did not create this easement for the public to access Fort Mansfield or to access any of the other lots on Napatree Point.

26. In 1909, the Government and the then property owners on Napatree Point redefined the private easement with more precise dimensions and measurements that corresponded with the then as-built roadway. The 1909 Easement is attached as **Exhibit B**. Similar to the 1903 private easement, the 1909 private easement remained for the exclusive use of the Government and the property owners for access to and from their respective properties. The deeds and land records establishing the easement granted no rights to the public. This private easement leading to Fort Mansfield eventually became known colloquially as “Fort Road.”

27. The Government’s use of the Fort Road private easement ended when the Government stopped using Fort Mansfield in 1926.



28. The 1938 Hurricane dramatically and tragically changed Napatree Point. It destroyed the existing houses on the point, killed some of the residents living there, and significantly altered the geography of the point itself. As a direct result of the storm, the most northerly end of the point (now Sandy Point Island), was severed and shifted northward.

29. The 1938 hurricane also destroyed the southern facing dune that previously protected much of Napatree Point.

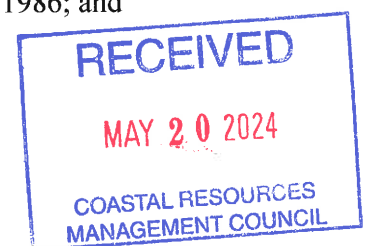
30. The loss of the dune accelerated the ocean overwash and washover fan migration over the next 40 years (a natural process for barrier spits) and gradually shifted Napatree Point to the north.

31. The owners of property on Napatree Point never relocated or replaced the Fort Road private easement. The owners largely abandoned Napatree Point after the 1938 hurricane. The 1938 hurricane ended development of property on Napatree Point. The property owners never replaced the residential structures wiped out in the 1938 hurricane. The chains of title for most lots from 1938 forward are largely tax foreclosure sales and probate conveyances.

32. As a result of these events, the former private easement referred to as Fort Road has neither existed nor been used for many decades, and part of the former Fort Road private easement is now under water.

33. In recent decades, almost all parcels on Napatree Point have either remained within the families that already owned them or been acquired by WHFD or WHC for conservation purposes.

34. The lots that neither remained within the families nor were acquired by WHFD or WHC are: (1) Assessor's Plat 178, Lot 7, acquired by the Town of Westerly from George L. Crow, Jr., Natalie S. Crow, Patricia Anne Crow and Robert Thomson Crow in 1986; and



(2) Assessor's Plat 178, Lot 11, donated by Kenneth W. Douglas, Jr., Jay Dwight Douglas and James N. Douglas, in their respective capacities as co-executors under the will of Kenneth W. Douglas to the State of Rhode Island acting by and through its Department of Environmental Management in 1983.

35. In sum, the land evidence records establish that the owners of land on Napatree Point did not replace the Fort Road private easement or establish a new private easement.

36. The Fort Road private easement also terminated for another reason. The original easement, recorded in 1903 and again in 1909, is not referenced with the statutorily required specificity in the deeds in the chains of title of properties on Napatree Point since 1926. Rhode Island's Marketable Record Title Act extinguishes easements or rights-of-way not referenced in a deed within the last 40 years. *See* R.I. Gen. Laws § 34-13.1-4.

The WHFD Property on and Adjacent to Napatree Point

37. WHFD owns property on Napatree Point and property abutting Napatree Point in Westerly, Rhode Island. More specifically, WHFD owns the following parcels (hereinafter sometimes collectively referred to as, the "WHFD Parcels"): (i) Assessor's Plat 182, Lot 1; (ii) Assessor's Plat 177, Lot 7 (as tenants in common with WHC); (iii) Assessor's Plat 177, Lot 4 (as tenants in common with the Estate of Oscar B. Chapman); (iv) Assessor's Plat 177, Lot 2; (v) Assessor's Plat 177, Lot 1; (vi) Assessor's Plat 178, Lot 9; (vii) Assessor's Plat 178, Lot 2; (viii) Assessor's Plat 178, Lot 3 (as tenants in common with the Estate of Robert Glendinning); (ix) Assessor's Plat 178, Lot 4; (x) Assessor's Plat 178, Lot 5; (xi) Assessor's Plat 178, Lot 6; (xii) Assessor's Plat 185, Lot 31, being the Limited Common Element allocated to Unit 1 of the WHFD Beach Condominium owned by WHFD; (xiii) Assessor's Plat 185, Lot 31-1; (xiv) Assessor's Plat 185, Lot 33; and (xv) Assessor's Plat 185, Lot 34.





38. WHFD acquired the WHFD Parcels, as evidenced by deeds recorded with the Land Evidence Records of the Town of Westerly, as follows:

- (i) Assessor's Plat 182, Lot 1: acquired by deed dated August 28, 1945 and recorded in Book 63 at Page 249;
- (ii) Assessor's Plat 177, Lot 7 (as tenants in common with Watch Hill Conservancy): acquired by deed dated February 23, 2000 and recorded in Book 816 at Page 24;
- (iii) Assessor's Plat 177, Lot 4 (as tenants in common with Estate of Oscar B. Chapman): acquired by deed dated September 23, 1999 and recorded in Book 796 at Page 195;
- (iv) Assessor's Plat 177, Lot 2: acquired by deed dated April 30, 1946 and recorded in Book 64 at Page 273;
- (v) Assessor's Plat 177, Lot 1: acquired by deed dated December 18, 1989 and recorded in Book 352 at Page 203;
- (vi) Assessor's Plat 178, Lot 9: acquired by deed dated July 18, 1961 and recorded in Book 81 at Page 322;
- (vii) Assessor's Plat 178, Lot 2: acquired by deed dated November 25, 1974 and recorded in Book 136 at Page 252 (easterly portion) and by deed dated September 30, 1942 and recorded in Book 61 at Page 156 (westerly portion);
- (viii) Assessor's Plat 178, Lot 3 (as tenants in common with Glendinning Robert Heirs): dated July 17, 1961 and recorded in Book 81 at Page 322;
- (ix) Assessor's Plat 178, Lot 4: acquired by deed dated June 10, 1948 and recorded in Book 66 at Page 445;
- (x) Assessor's Plat 178, Lot 5: acquired by deed dated January 3, 1986 and recorded in Book 284 at Page 580;
- (xi) Assessor's Plat 178, Lot 6: acquired by deed dated June 18, 1973 and recorded in Book 125 at Page 112 (westerly portion) and by deed dated September 10, 1945 and recorded in Book 63 at Page 319 (easterly portion);
- (xii) Assessor's Plat 185, Lot 31: being the Limited Common Element allocated to Unit 1 of the WHFD Beach Condominium owned by WHFD, acquired by deed dated August 29, 1945 and recorded in Book 63 at Page 247;



- (xiii) Assessor's Plat 185, Lot 31-1: acquired by deed dated August 29, 1945 and recorded in Book 63 at Page 247;
- (xiv) Assessor's Plat 185, Lot 33: acquired by deed dated January 12, 1910 and recorded in Book 39 at Page 591; and
- (xv) Assessor's Plat 185, Lot 34: believed to be acquired by: (a) deed dated January 26, 1910 and recorded in Book 39 at Page 606, (b) deed dated December 30, 1909 and recorded in Book 39 at Page 584, (c) deed dated January 6, 1910 and recorded in Book 39 at Page 594, (d) deed dated January 13, 1910 and recorded in Book 39 at Page 596, (e) deed dated February 2, 1910 and recorded in Book 39 at Page 628.

39. On October 31, 2013, WHFD granted to WHC a Conservation Easement recorded with the Land Evidence Records of the Town of Westerly in Book 2014 at Page 340 encumbering the following parcels of land (collectively, the "Protected Property"): (i) Assessor's Plat 182, Lot 1; (ii) Assessor's Plat 177, Lot 2; (iii) Assessor's Plat 178, Lot 9; (iv) Assessor's Plat 178, Lot 2; (v) Assessor's Plat 178, Lot 3; (vi) Assessor's Plat 178, Lot 4; (vii) Assessor's Plat 178, Lot 5; (viii) Assessor's Plat 178, Lot 6; and (ix) Assessor's Plat 185, Lot 31, being the Limited Common Element allocated to Unit 1 of the WHFD Beach Condominium owned by WHFD. WHFD conveyed the Conservation Easement as a charitable donation to continue to conserve the Protected Property in its natural state in light of WHC's 501(c)(3) status and mission to conserve the Protected Property in a manner consistent with the "conservation values" described in the Conservation Easement. WHFD designated the Protected Property as "The Chaplin B. Barnes Napatree Point Conservation Area." WHC and WHFD maintain the Protected Property and enforce the terms of the Conservation Easement. The Conservation Easement is attached as **Exhibit C** and includes a map identifying the Protected Properties as of October 31, 2013. **Exhibit D** is an updated map depicting property ownership on Napatree Point and reflects later acquisitions by WHC of additional properties on Napatree Point for the purpose of conservation.





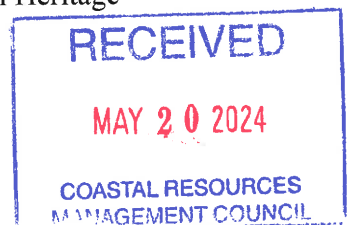
40. WHC owns property on Napatree Point, hereinafter sometimes collectively referred to as the “WHC Parcels,” identified as Assessor’s Plat 177, Lot 5; Assessor’s Plat 177, Lot 6; Assessor’s Plat 177, Lot 7 (as tenants-in-common with WHFD); Assessor’s Plat 178, Lot 10; and Assessor’s Plat 178, Lot 12.

41. WHC acquired the WHC Parcels, as evidenced by deeds recorded with the Land Evidence Records of the Town of Westerly, as follows:

- (i) Assessor’s Plat 177, Lot 5: acquired by deed dated May 19, 2004 and recorded in Book 1289 at Page 161;
- (ii) Assessor’s Plat 177, Lot 6: acquired by deed dated October 25, 2019 and recorded in Book 2019 at Page 18496;
- (iii) Assessor’s Plat 177, Lot 7: acquired by deed dated January 31, 2012 and recorded in Book 1913 at Page 415;
- (iv) Assessor’s Plat 178, Lot 10: acquired by deed dated August 22, 2017 and recorded in Book 2017 at Page 20446; and
- (v) Assessor’s Plat 178, Lot 12: acquired by: (a) deed dated May 4, 2004 and recorded in Book 1288 at Page 298, (b) deed dated May 6, 2004 and recorded in Book 1288 at Page 300, (c) deed dated May 10, 2004 and recorded in Book 1288 at Page 306, and (d) deed dated May 6, 2004 and recorded in Book 1288 at Page 308.

42. WHC granted a conservation easement on Assessor’s Plat 177, Lot 6 to the State of Rhode Island acting by and through its Department of Environmental Management. The Protected Property as used in this Complaint includes the land on Napatree Point owned by either WHFD or WHC and covered by a conservation easement. The WHC Parcels and the WHFD Parcels are hereinafter referred to in this Complaint as the “Parcels.” The Protected Property includes approximately 68 of the 74 acres that comprise Napatree Point.

43. The Protected Property is a significant natural area, a barrier spit, identified (as documented by the Easement Documentation Report) by the United States Fish and Wildlife Service as qualifying as a “significant coastal habitat,” by the Rhode Island Natural Heritage



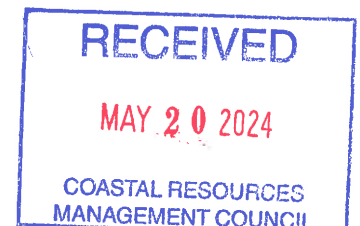
Foundation and the Audubon Society of Rhode Island as "a unique natural area" and as one of the most important migratory bird feeding and resting stopover points on the East Coast and by the Rhode Island Natural History Survey as "... a standout in its ecological value ...."

44. The Protected Property consists of varied natural barrier beach community types and is the habitat for a wide variety of plant and animal species, including, as noted by the Rhode Island Natural History Survey, some 154 species of birds.

45. The Protected Property constitutes a significant natural area which qualifies as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem" and therefore conservation and protection of the Protected Property meets the requirements of Section 170(h)(4)(A)(ii) of the Internal Revenue Code of 1986.

46. The preservation of the Protected Property is pursuant to federal, state and local governmental conservation policy and yields public benefits, including the management of the federally *threatened* piping plover, *Charadrius melodus*, and other species of concern.

47. The Conservation Easement permits travel by foot over the Protected Property over the marked paths, and prohibits vehicular travel except for limited vehicular passage for maintenance and emergencies. More specifically, the Conservation Easement expressly prohibits the "operation of mountain or other bicycles, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, or any other types of mechanized vehicles" over or within the Protected Property. The Town's declaration of a 20-foot wide right of way that extends through the Protected Property violates the express terms of the Conservation Easement. The Conservation Easement authorizes both WHFD and WHC to enforce the terms of the Conservation Easement against third parties, like the Town, to prevent activities that are inconsistent with the purpose of the Conservation Easement.



48. WHFD has permitted the public to access the Protected Property for over 50 years, beginning long before WHFD granted the Conservation Easement. WHFD permits the public to access the Protected Property by foot over a path across the parking lot it owns located on Lot 33 and Lot 34 on Plat 185. WHFD also permits the public to traverse on foot over a path on WHFD's condominium property [Lot 31-1 and Lot 31 on Plat 185] to access the Protected Property. Public visitation and enjoyment of the Napatree Conservation Area is a founding principal of the Conservation Easement, "WHEREAS, preservation of the Protected Property is for the scenic enjoyment of the general public and will yield a significant public benefit, specifically, for recreation not inconsistent with such preservation ...." WHFD and WHC remain committed to welcoming visitors to the Conservation Area. WHFD and WHC do not seek through this lawsuit to end or curtail the public's access to the Protected Property.

The Title Claims Asserted by the Town

49. For some years, the Town has discussed publicly allegations that a public road referred to as "Fort Road" leads to and runs through Napatree Point.

50. In 2007, the Town hired title attorney Charles Soloveitzik to review the land evidence records and other relevant materials to determine whether a public road traversed Napatree Point. After a diligent examination of the land records, Attorney Soloveitzik concluded that Fort Road is not a public road: "we found no evidence in the land records to support the conclusion that Fort Road is a town road." The 2007 Soloveitzik Opinion is attached as **Exhibit E**.

51. Notwithstanding, and immediately after receiving the Soloveitzik Opinion, the Council passed a resolution in 2008 (the "2008 Resolution") that purports to designate Fort Road as a public road or 20-foot wide right of way. The 2008 Resolution is attached as **Exhibit F**.



The 2008 Resolution is ineffective for many reasons. First, town councils do not have the authority to transform private land to public land by declaration or resolution. Second, the Town never exercised its condemnation authority. Third, the owners of land in question never dedicated, and the Town never accepted, Fort Road as a public road. Fourth, the 2008 Resolution contradicts the clear, reasoned opinion by the Town's title attorney.

52. Until recently, the Town never acted on the 2008 Resolution and took no actions that directly interfered with WHFD's or WHC's property rights or violated the terms of the Conservation Easement.

53. In March of 2023, the Town asked CRMC to require the Watch Hill Yacht Club to revise and resubmit a plan for a dredging project to include reference to the "Town of Westerly right-of-way known as Fort Road." The Town's request delayed the project and forced WHFD to spend significant sums to purchase sand for beach repair that the Yacht Club would otherwise have provided free, and exacerbated the flooding problem that occurs near the Yacht Club, thus hindering public access to the Protected Properties.

54. In the past few months, the Council has declared publicly at its meetings its intent to use the 2008 Resolution as pretext to interfere with WHFD's and WHC's property rights and to establish a 20-foot wide right of way through the Parcels and the Protected Property in violation of the express terms of the Conservation Easement.

55. WHFD has sent three detailed letters to the Town explaining why the land evidence records and other relevant facts demonstrate that no public road or public right of way exists to and across Napatree Point. *See Exhibit G-1, Exhibit G-2, and Exhibit G-3.*

56. In response, and despite the Town's possession of its own legal opinion and title report from Attorney Soloveitzik refuting the existence of any public road leading from Bay



Street to and across Napatree Point, the Town has publicly declared its intent to place signs stating that a public right of way exists across the Parcels and to somehow mark that alleged 20-foot wide right of way on the Parcels. It has directed the Town Manager to take these actions even though: (a) the Town remains unable to determine the path of the alleged right of way; and (b) the Town has refused publicly and openly to gather critical information regarding the legitimacy of the alleged right of way. To this end, the Council has:

- i. directed the Town Solicitor not to perform or oversee the legal work necessary to investigate the existence of the alleged 20-foot wide public right of way;
- ii. directed the Town Solicitor not to opine on the legal impact of the 2008 Resolution;
- iii. directed the Town Manager not to continue a review of the historical records to confirm or refute the allegation that a public right of way exists from Bay Street to and across Napatree Point; and
- iv. directed the Town Manager to engage a land surveyor to plot a 20-foot wide right of way across the Parcels and the Protected Property based solely on a reference in the 2008 Resolution to a tax assessor's map, and not on the surveyor's own research, including title research, and application of the principles that govern surveys. Surveyors and other land professionals in Rhode Island do not reasonably rely on tax assessor maps to confirm or locate easements or rights of way.

Instead and in the absence of due diligence, the Council has declared openly that it will rely on the 2008 Resolution, with no supporting legal opinions and in fact a contrary legal opinion, to



advance its claims of a public right of way over and through the Parcels and the Protected Property.

57. The Council's actions have slandered and interfered with WHFD's and WHC's title and peaceful enjoyment of its property.

**COUNT I**  
**(Quiet Title)**

58. WHFD owns and has valid title to a fee simple interest in the WHFD Parcels.

59. WHC owns and has valid title to a fee simple interest in the WHC Parcels.

60. The Town falsely claims that a public right of way crosses the Parcels beginning at Bay Street, crossing WHFD's parking lot properties, and continuing across Napatree Point and the Protected Property along some undetermined path.

61. The Town's alleged 20-foot wide right of way violates the terms of the Conservation Easement.

62. The Conservation Easement authorizes WHFD and WHC to enforce its terms and to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of the Conservation Easement.

63. WHFD and WHC wish to affirm their property rights, and quiet title to the WHFD Parcels and the WHC Parcels, respectively.

**COUNT II**  
**(Enforcement of the Conservation Easement)**

64. The Town's alleged 20-foot wide right of way violates the terms of the Conservation Easement and will irreparably damage the Protected Property.

65. The Conservation Easement authorizes WHFD and WHC to enforce its terms and to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of the Conservation Easement.





**COUNT III**  
**(Declaratory Judgment)**

66. WHFD owns and has valid title to a fee simple interest in the WHFD Parcels and WHC owns and has valid title to a fee simple interest in the WHC Parcels.

67. The Town falsely claims that a public right of way crosses the Parcels beginning at Bay Street, crossing WHFD's parking lot properties, and continuing across Napatree Point and the Protected Property along some undetermined path based on the 2008 Resolution.

68. The Court should declare that the 2008 Resolution does not confirm or create a public right of way across the Parcels.

69. The Court should also declare that no public right of way exists across the Parcels.

**COUNT IV**  
**(Slander of Title)**

70. WHFD owns and has valid title to a fee simple interest in the WHFD Parcels and WHC owns and has valid title to a fee simple interest in the WHC Parcels.

71. The Town, without basis, inaccurately claims that a public right of way leads to and crosses the Parcels beginning at Bay Street, crossing WHFD's parking lot properties, and continuing across Napatree Point and the Protected Property along some undetermined path.

72. The Town has no reasonable or probable cause to believe that a public right of way crosses the Parcels beginning at Bay Street, crossing WHFD's parking lot properties, and continuing across Napatree Point and the Protected Property.

73. By its actions, the Town has slandered WHFD's title to the WHFD Parcels and has slandered WHC's title to the WHC Parcels and thereby damaged WHFD and WHC.

WHEREFORE, WHFD and WHC request the Court to enter the following orders:

(a) An order quieting title to the Parcels and declaring that:



- (i) WHFD holds fee simple title to the WHFD Parcels and WHC holds fee simple title to the WHC Parcels free and clear from the Town's alleged 20-foot wide public right of way;
  - (ii) The Town possesses no interest at law or in equity in the Parcels;
  - (iii) No public road or 20-foot wide right of way referred to as Fort Road crosses the Parcels beginning at Bay Street, crossing WHFD's parking lot properties, and continuing across Napatree Point and the Protected Property;
  - (iv) The 2008 Resolution does not confirm or create a public road or public right of way across the Parcels;
  - (v) The Town's declared 20-foot wide public right of way violates the terms of the Conservation Easement and is invalid. The Conservation Easement created pursuant to and with the benefits of Title 34, Chapter 39 of the Rhode Island General Laws confers upon the Protected Property a "special legal status" as described in said statute, and prohibits and precludes the creation of a public right of way across the Protected Property; and
  - (vi) The Town is forever barred from calling into question (a) the validity of WHFD's title to the WHFD Parcels and (b) the validity of WHC's title to the WHC Parcels and from asserting a public right of way or easement across the Parcels.
- (b) Judgment in favor of WHFD and WHC against the Town for slander of title awarding damages;





- (c) Equitable and injunctive relief enjoining or restraining the Town from taking any action during the pendency of this proceeding to mark or build the alleged 20-foot wide right of way across the Parcels or directing the public to cross the Parcels; and
- (d) Such other and further relief as the Court deems just and proper.

WATCH HILL FIRE DISTRICT and  
THE WATCH HILL CONSERVANCY

By their Attorneys,

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DATED: May 4, 2023

