

To: The East Hampton Town Trustees
From: Rod Richardson
Date: Nov. 18, 2018
Subject: Preliminary Report on Cartwright & Gardiner's Islands Title & Foreshore Boundaries (but not Public Access Rights)

I ask that you hold off on any public release of Mr. Boerner's new preliminary report pending further discussion with myself and others concerned with this issue.

Serious problems exist with the focus and methodology of the report, which does not consider public access rights at all. With multiple errors, the not-fully-baked report could be damaging to actual existing public access rights under the Public Trust (or the public's perception of their rights) which the report ignores and does not consider at all. As Trustees of the Public Trust, you should not allow public access rights to be so damaged and ignored, and the public to be so misled by a supposed authority.

The report does not consider at all the key question of public access rights to the foreshore. That is a glaring omission, more so because I first raised this issue with you because public access rights are being ignored and violated. I asked you to examine this issue, and defend the public access rights to these shores. The report entirely ignores the public's rights to these shores. The most important question for any such report to answer is this:

(1) Does the public have a paramount right to travel along the foreshore, and the adjacent sands and waters, of all beaches in New York State, public or private, including the shores of Gardiner's and Cartwright I., no matter who owns what?

That is a pretty basic question with a well settled affirmative answer (The Public Trust Doctrine of New York) which the report entirely ignores.

The strongest aspect of the report is the gathering of facts, the research and digging up of rare historical documents. Steve is good at that part. But he should stick to the facts, instead of peppering the report with unsupported opinions contradicted by the facts presented.

A solid historical report on title and boundary questions would stick to the facts, and seek to answer simple yes/no factual questions like:

(2) Do the Goelet family have clear, explicit, unambiguous title, in the form of a royal grant or deed to:

(a) Gardiner's Island?

(b) Cartwright Island or Ram Island?

(c) Underwater land below the mean high tide line of Gardiner's Island?

(3) The Dongan Patent for the Trustees has similar language to the Dongan Patent to Gardiner. Both give control of underwater lands of interior bodies of water. The Trustee Dongan Patent language, by settled well-accepted understanding, gives the Trustees ownership only to the mean high tide line at the ocean and bay. Is there any language in the

Gardiner Dongan Patent that is different enough to give them clear, explicit, unambiguous title below the mean high tide line into the bay itself?

The answers to these above factual questions should be the main conclusions of the report. And I hope the Trustees will seek those specific answers, no matter how you proceed from here. But the report dodges these key questions, and substitutes a mix of unsupported opinion, bizarre omissions and coloring of the facts.

For instance, with respect to the royal grants, Steve omits to say that these royal grants do not even mention Ram Island or Cartwright Island or underwater lands or shoals or anything of that sort. Rather, in a roundabout way, he curiously says that none of the grants "recite language to Ram Island (then so-called) as separate from Gardiner's Island, the foreshore or littoral boundaries."

What he is actually saying is not immediately clear until we get to conclusion on page 3, where he states: "...I do not believe there is any language as to delineating the littoral boundaries to Gardiner's Island. As previously stated, I presently believe title to Cartwright/Ram Island is retained with Gardiner's Island."

In other words, because the grants DO NOT MENTION Ram Island or specifically say that it is separate, Steve is implying they are included in the grant.

This is absurd. It is like saying that since the littoral boundaries of the Gardiner Manor are not clearly delineated, and since Long Island is not mentioned in the grants, and not specifically mentioned as separate, then all of Long Island might just be included in the Gardiner Manor. I'm sorry but to make an extraordinary claim to land beyond the median high tide line, any underwater lands or islands would need to be EXPLICITLY named. The argument that "since it is not mentioned as excluded, it is therefore included" is obvious nonsense.

It is not even true, as Steve says, that the littoral boundaries are not delineated. For the Dongan Patent clearly grants "all that island formerly called the Isle of Wight now called Gardner's Island." The island itself delineates its own boundaries, as do all islands: the shore around the island. Under the New York Public Trust Doctrine, that foreshore boundary is understood to be the median high tide line, baring explicit, unambiguous language to the contrary.

Steve's opinions are contradicted by the very evidence he offers. For instance, he points out on p. 3 that the Ryder map of 1675 clearly shows Ram Island as a separate island. Then he bizarrely concludes "Irrespective of this cartographic evidence, at this time I believe it physical status as irrelevant as to title, as it was no doubt part of the island complex." No doubt? The Trustees know for a fact there is plenty of doubt, as dozens of individuals have spoken to the Trustees and Town Board, or written to the Star, expressing sharp doubt on this point, or outright concluding the opposite after close consideration of the evidence that Steve brushes aside.

Instead of concluding with hard answers to factual questions about explicit, unambiguous title, and taking notice of the Public Trust Doctrine, Steve is offering mere speculations that

Cartwright is somehow a part of Gardiner's, with no supporting evidence, and evidence in contradiction, which he colors and dismisses. He is spinning eccentric geological and legal theories, while ignoring physical facts and established legal doctrine.

I respectfully suggest you ask senior experts on local history, public trust and land conservation issues, like John Courtney, Karl Grossman, Tim Taylor, David Buda, Larry Penny and others, to take a hard look at this preliminary report before you waste any more money on half-baked theoretical speculations harmful to public access rights under the Public Trust.

I would appreciate your thoughts on the above.

Respectfully,

Rod Richardson