

SOUTHOLD TOWN CODE WETLANDS PROTECTION WEAKNESSES & CORRECTIONS REPORT North Fork Environmental Council, December 2006

Findings – Executive Summary: [Details are developed on the subsequent pages.]

The Board of Town Trustees has questionably stated regulatory authority over fresh and salt water wetland beyond those lands it owns.

- Assign and specify such authority to the Board of Town Trustees in Chapter 275.

The Board of Town Trustees has questionably stated authority to mitigate wetlands code requirements, and no mitigation criteria.

- Provide mitigation authority to the Board of Town Trustees in Chapter 275.
- Add criteria for mitigation of code requirements in Chapter 275.

Code requirements are insufficiently specified.

- Specify a 150 foot Board of Town Trustees jurisdiction.
- Specify distances between significant features in describing requirements.
- Replace subjective requirements with measurable requirements insofar as possible.

When acting in a nebulous regulatory mode, the Trustees claim to be unbridled in their authority.

- Put limits on how far the Trustees can go in mitigating code requirements.
- Trustees' are not unbridled in that decisions must be consistent with the LWRP.

Greater reliance must be placed upon science based information.

- Release LWRP consistency determinations to the public in a timely way.
- Continue professional environmental staff and consider a natural resources department.

The code needs more “black letter law” to stop capricious and arbitrary variances.

- Require the code enforcement officer and the bay constables to make written code change requests concerning shortcomings that frustrate the intent of the code and its enforcement.

The Board of Town Trustees must be protected from skilled applicants eroding Code intent.

- Additional black letter law will insulate the Board of Town Trustees and the Town from appeals and exploitive suits. Such actions are often based upon case law arising from unlimited power to mitigate and result in the whip-sawing of code requirements.

Southold Wetlands Protection is not as stringent as New York State Requirements.

- Attain the technical and administrative capacity to meet state standards.

Preface:

- The Town Code and the LWRP espouse protection of wetlands but interpretations by the empowered boards can erode the intent.
- Events during 2006 indicate that environmentally sensitive land may not be as well protected by government as we would like it to be -- particularly the protection afforded by decisions of the Southold Board of Town Trustees.
- This is not to say that the Trustees have not well served Southold over the years. Rather, to say that under the skills and pressures of today's exploitive society, weaknesses in the code can put the community in an unprotected position.

- A subcommittee of the Southold Land Use Committee is engaged in a review of the Town Code and the LWRP in this regard.
- This wetlands code review seeks to identify weaknesses in the code as well as correction of these weaknesses. It is designed to be constructive.
- The subcommittee presents its findings to the LWRP Council with the expectation being that steps will soon be taken by the Town Board to correct the weaknesses.

Twelve weaknesses and associated corrections were identified for action by the LWRP Council and the Town Board. The thirteen to be discussed are:

1. Ambiguity of the Trustees' Authority and Responsibilities:
 2. Inadequate Jurisdiction description of the Board of Town Trustees:
 3. Set-back limits too easily yield to variance:
 4. Vertical Set-Back Limits not in Town Code:
 5. Mitigation Criteria not in Town Code:
 6. Storm-water Road Run-off Monitoring System responsibility not defined:
 7. Southold Town Code Chapter 275 contains no provision for an appeals board:
 8. Requirements/Standards/Criteria/Format for Permit Applications to Trustees inadequate or inadequately met.
 9. Compounded Variances lead to Code destruction via Whip-Sawing:
 10. Code requirements can be "gamed" and thus circumvented:
 11. Public availability of LWRP Consistency Determinations is awkward.
 12. Southold Wetlands Code is less stringent than New York State Requirements.
- In addition; "mitigation", 'variance' and other terms are not well defined:

The report, of 16 pages, devotes one page to each weakness and correction described in the following format:

- Item Title...
- Weakness...
- Citation...
- Consequence...
- Correction...
- Reference...

A page devoted to **definition of terms** is included...

A short **essay** on understanding the basic perspectives of **Property Rights and Community Compromise** ends the report.

1. Ambiguity of the Trustee's Authority and Responsibilities.

Weakness: The Trustees have two separate roles: (1) as owners of lands held in trust for Southold residents and (2) as regulators of private lands within their jurisdiction. The code does not clearly describe these separate roles.

Citation: Chapter 275-12

Consequence: Actions of the Trustees sometimes mix their roles, sometimes exceed their authority and sometimes are not mindful of their authority.

Correction: Change the Town Code to recognize the two different roles and clearly delineate the authority and responsibility in each role of the Board of Town Trustees (BoTT):

1. As trustees of lands held in trust under the Andros Patent of 1688 – the Board of Town Trustees is the owner of such lands.
2. As regulators of wetlands (other than those owned by the BoTT) under articles 24 and 25 of the NYS Environmental Conservation Law (and perhaps Southold Town Code Chapters 275, 111 and 268 with the LWRP) with authority to extend requirements or to mitigate requirements to the extent yet to be specified in Chapter 275.
3. Require 10 hours of training per year in NYS law, case law and protocol.

Reference:

1) Permit #6365 cites Andros Patent based law, not Freshwater Wetlands Law

2) The Andros Patent established the Board of Town Trustees of the Freeholders and Commonalty of the Town of Southold in 1688. The Patent, a document which granted the "Commoners" access and rights of way to the water, marshland and common areas, also created the Board of Trustees to act as stewards for these title lands.

3) Although the code language is not clear, in 1983 the Town Board apparently added responsibility for the regulation of freshwater wetlands when it created Chapter 97 (now 275) Wetlands and Shorelines to the Town Code, The authority vested in the Trustees for saltwater related ownership stemming from the Andros Patent is quite different from the qualified authority to regulate wetlands stemming from Articles 24 and 25 of New York State Environmental Law. Southold Code (Chapter 275) does not differentiate.

2. Jurisdiction of the Town Board of Trustees insufficient and insufficiently stated.

Weakness: In general, current jurisdiction extends 100 (plan view?) feet inland from any water, wetlands or beach. Determination of the point from which to measure the 100 feet is frequently difficult. There have been differing interpretations of vegetative wetland indicators. Wetland boundaries are difficult to determine and the subterranean extent of wetland flow formations is often not apparent. As a result, wetland maps may not be accurate to fifty feet. Further, the code does not specify to whom the jurisdiction is authorized.

Citation: Chapter 275-3-C

Consequence: The effect of, and on, wetlands can easily extend beyond 100 feet from a wetlands boundary subjecting wetlands to upland regulations only. Frequently the objects of concern, wells, cesspools, etc. are in the 100 to 150 foot range.

Correction: Change jurisdictional distance in Chapter 275 to 150 feet and specify that such distance is within the jurisdiction of the Southold Board of Town Trustees.

Reference:

1. East Hampton (255-4-20) specifies 150 feet.
2. Shelter Island (129-8) specifies 100 feet, except [more] in Nearshore locations and the Peninsular Overlay District (133-12).
3. Riverhead (107-)
4. Southampton (325-6) specifies 200 feet.
5. New York State (Article 24 and 25 of Environmental Conservation Law) 100 feet [or more].

3. Setback Limits too easily yield to variance/mitigation.

Weakness: Setback limits are the heart of any environmental impact regulation yet they are not stated as "black letter law". The limits can be beaten down by variances/mitigations allegedly supported by case law. While some pragmatic mitigation may be desirable, there are currently no limits on what can be waived. The limits now stated as "minimums" are routinely mitigated without observable limit by the Trustees. The minimum distances are too small if they are subject to even limited mitigation permission.

Citation: Chapter 275-12-D

Consequence: Variances tend to build on one another. If the originally intended requirement was 10 and a variance permitted 9, all subsequent variance decisions are influenced by the 9. Each greater variance becomes the weak link established by case law. Ultimately the original requirement is ground down to zero since there is no mechanism to limit such degradation.

Correction: Change setback limits and limit the extent of possible mitigation.

Setback Limits						
	Southold		South- ampton	East Hampton	Shelter Island	River- head
	Existing	New				
With respect to wetlands line:						
to Structure		100'	100'		75'	
to Residence Structure	100'	150'	125'	150'	100'	
to Hard Surface Driveway		75'				
to Pervious Driveway	50'	50'				
to Leach Pool(s)	100	150'	150'	200'		
to Septic Tank	75'	150'	150'	200'		
to Swimming Pool	50'	100'				
Buffer Width	50' (typ.)	100'	100'			
With respect to bluff line:						
to Residence	100'			100-150'		
to Driveway	100'					
to Leach or Septic Pool(s)	100'					
to Swimming Pool	100'					

- a) Expanded jurisdiction is assumed.
- b) Trustees may extend the required setback distances, but may not reduce the required setback distances by more than 50%.
- c) The reasons for such intensification or mitigation shall be documented in the resolution supporting the permit.
- d) If limited mitigation does not allow improvement the lot is unbuildable for the applied for purpose.

Reference:

4. Vertical Setback Limits not in Town Code.

Weakness: Wetlands obviously have depth as well as length and width but while the Town Code regulates surface setback dimensions it does not regulate proximity limits vertically. If the distance to ground water is small the natural processes of filtration and decay have less opportunity to occur before the waste stream is inducted into flowing water pathways. Remediation of contaminants is sensitive to vertical distance, both in terms of filtering distance and auto-remediation energy levels.

Citation: Chapter 275-12-D

Consequence: Houses are permitted to be built on lots that do not support adequate mitigation of septic wastes before such wastes enter natural subterranean distribution systems or may even be directly released to surface waters. If low enough to periodically flood, the septic tank and the leaching pool will actually pump sewage to the surrounding area due to the pressure head created when the flood water subsides.

Correction: For new construction, add a vertical setback limit to the zoning code applicable to low lying areas with high ground water levels. In AE areas defined by the Town Wetlands Map or the FEMA FIRM Map, the bottom of a permeable waste vessel (cesspool) must be at least 4 feet from high ground water as measured by documented test boring. The top of such vessels are to be covered with one to two feet of soil and shall not be mounded, dammed or crypted above normal original grade.

- a) Trustees may extend or mitigate the required setback distances but may not vary from the required setback distances by more than 25%.
- b) The reasons for such mitigation shall be documented in the resolution supporting the permit.
- c) If limited mitigation does not satisfy, the lot is unbuildable for the applied for purpose.

Reference:

- 1) For new construction, Suffolk County Department of Health Services requires 3 feet of vertical setback and 2 feet for alternative shore applications.
- 2) Town of East Hampton requires four feet of vertical setback in their Harbor Management District.
- 3) NYS (6NYCRR 661 & 663) requires a minimum of 2 feet of vertical setback between the bottom of the leach pool, tank, field or pit and the seasonal high ground water level, rock, hardpan or other impermeable materials.

Note that waste is most readily naturalized near the surface where more energy and reductants/oxidants are available to aid the process, so mounding in shore applications is to be restricted for functional as well as aesthetic reasons. Also, a septic facility should be set as high as possible to maximize the depth of filtering percolate.

(Also consider an intensified inspection/maintenance requirement in 100 year flood hazard zone applications)

5. Criteria for Mitigation of Setback Limits and other Requirements are Absent

Weakness: While Chapter 275 contains environmental standards for issuance of a permit [275-28] the chapter contains no criteria for the mitigation of code requirements for setbacks, buffers and the like. Under what circumstances may the towns normal expectations be mitigated and to what extent? While some pragmatic mitigation may be desirable, the limits now stated as “minimums” are routinely mitigated without observable limit by the Trustees.

Citation: Chapter 275-12-D, 275-28

Consequence: Variances tend to build on one another. If the originally intended requirement was 10 and a variance permitted 9, all subsequent variance decisions are influenced by the 9. Each greater variance becomes the weak link in case law. Ultimately the original requirement is ground down to zero since there is no mechanism to limit such degradation.

Correction: Amend Chapter 275 -12-D by adding variance criteria.

Criteria for Issuance of a Wetlands Permit with Mitigated Code Requirements:

(a) The Board of Town Trustees, charged with the primary enforcement of wetlands code and related local law, shall have the power of requirements mitigation, as defined and limited herein. Each case shall be decided on its own circumstances according to science based information/standards and not according to past competence or mistake.

(b) No such mitigation shall be granted by the Board of Town Trustees without the applicant proving that applicable wetland regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Town Trustees that for each and every permitted use under the zoning regulations for the particular district in which the property is located;

1. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
2. that the alleged hardship has not been self-created;
3. that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood. In this regard the applicant must show that the mitigation sought is of its own particular kind [*sui generis*] and does not arise out of mitigation provided to others;
4. that the requested mitigation, if granted, will not alter the essential character of the wetland area and its environs.

(c) The Board of Town Trustees, in granting requirement mitigation, shall grant the minimum that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the wetlands, neighborhood and the health, safety and welfare of the community. The Board shall reflect the proof it accepts in the resolution supporting the permit.

Reference:

6. Storm water Runoff Monitoring Responsibility Not Defined

Weakness: There is no current town map or comprehensive list identifying storm water runoff sites, nor is there a list of current and needed drain locations to aid in remediation. There is no specific data on exactly what harmful substances may be in the runoff. Several years ago the town did a survey of storm water runoff sites and found 20 to 30 areas. Of these, a dozen were judged to be serious problems, but this information has not been updated. In addition, some property owners and farmers have declined to cooperate in the town's efforts to mitigate storm water runoff emanating from their property. The code does not assign responsibility for Storm Water Runoff Analysis and Planning.

Citation: Not in code.

Consequence: Parts of the town may have storm water runoff that can harm our creeks, bays and wetlands. According to the EPA, polluted storm water is the greatest threat to our nation's water systems yet no one knows what is in our runoff. We commit public works tax dollars to mitigate the run-off while not understanding the risk. If the enemy is not defined the solution may not work or may even exacerbate any problem.

Correction: Establish a sampling and test protocol with which to generate specific threat data and information. Assign this responsibility to a Natural Resources Department or the Board of Town Trustees within Chapter 275 and provide funding for consultant support. Currently the town engineer and town attorney are researching storm water runoff and drainage codes to determine what code might be appropriate to address Southold's runoff issues.

Any proposed code should include practical cooperation from property owners and appropriate enforcement and fines. For example, under Chapter 215-25 of the Southold Town Code, owners of all septic systems are required to pump systems at least once every three years. This code provision is never enforced, because a practical inspection system was not employed. Septic overflow is a known danger to our waterways.

Reference:

- 1) Southold Department of Public Works.
- 2) U.S. Environmental Protection Agency – Whole Effluent Toxicity (WET) Methods
- 3) Suffolk County Department of Health Services...
- 4) Southold Highway Department...
- 5) Southold Town Engineer...
- 6) NYS DEC...

7. Southold Town Code Chapter 275 Lacks Provision for an Appeals Board

Weakness:

While Chapter 111 (Coastal Erosion) provides that the Town Board will hear appeals, no such provision is made in Chapter 275 (Wetlands and Shoreline). There are over 50 times more permit applications under the latter chapter. Under state law the Town Board remains responsible for wetland protection even if it delegates authority to the Trustees. The Town Board has designated the Zoning Board of Appeals to hear applications for variances in response to building department rejections and the Board of Town Trustees has assumed authority to mitigate requirements for the purpose of issuance of a wetlands permits.

Citation: None specific in Chapter 275

Consequence: Grievances must be pursued thru Article 78 of Municipal Law, which is significantly more expensive for both the Town and the applicant. For example, the trustees recently granted a permit to build a residence on the Tsai property in the Kenny's Beach *area*. A lawsuit has been filed in this matter against the trustees and the town.

Correction: In Chapter 275, make a clear distinction between mitigation and variance. Clarify the extent of Board of Town Trustees authority to mitigate wetlands requirements (separately, on those lands they own and those they do not own) and the Zoning Board of Appeals authority to grant variances to certain actions or requirements specified by the Town Code for building permits or interpretations within the code and the LWRP. Such clarity will reduce the need for appeal.

Reference:

1) 268-5. A: Whenever a proposed action is located within the Town's coastal area, each agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards summarized in § 268-1 herein. (No action in the coastal area shall be approved, funded or undertaken by an agency without such a determination.)
Management and Coordination of LWRP, Review of actions:

F: The Zoning Board of Appeals is the designated agency for the determination of consistency for variance applications subject to this chapter. The Zoning Board of Appeals shall consider the written consistency recommendation of the LWRP Coordinator in the event and at the time it makes a decision to grant such a variance and shall impose appropriate conditions on the variance to make the activity consistent with the objectives of this chapter.

8. Requirements/Standards/Criteria/Format for Wetland Permit Applications to Trustees Inadequate, or Inadequately Met

Weakness: While Chapter 275 makes 17 application requirements, inspection of the files suggests that applicants, either by ignorance or design, do not fully or accurately complete the application package. Further, the Trustees, trying to solicit more information, are often less than successful and apparently excuse some omissions without explanation. Documents are sometimes not dated or properly attributed.

Chapter 275-21-B says that the Trustees may waive in whole or in part, certain specified application requirements and goes on to say that the resolution providing for the waiver [permit] shall clearly indicate why the waiver was granted. Yet permits are issued with little or no explanation of waiver or mitigation.

Citation: 275-21-A & B

Consequence: From the applicant's perspective, the complexities of the code and the vagueness of interpretation discourage voluntary compliance and generate a market for expeditors, lawyers and engineers that is against the spirit and intent of the Code.

Correction: Simplify the application format and protocol to de-mystify determination of compliance with the Code and the LWRP. This may require substantive changes to the Code such as removal of the 275-6A-8,11,14 and 275-11A-2 waiver permissions. A first page check-list is suggested. By logically routing the applicant to significant questions and statements, appropriate and necessary parts of the Code can be identified and the rationale for rejection or waiver better identified for all. Adverse environmental impacts can be mitigated only when consistent with the LWRP.

Reference:

9. Whip-Sawing of Permit Requirements Gradually Erode Code

Weakness: The code contains too many soft requirements – non-objective desires that are difficult to measure and objective requirements that have unbridled waiver clauses.

Citation: Throughout

Consequence: Talented and well financed engineers and attorneys design ways to get around soft code requirements. Given enough time and money it would appear that a permit for anything can be obtained. If a previous application was granted a variance, that sets a precedent for subsequent variances *in* similar situations, thus generating a new weak link in the chain. This progression further erodes the code. Case law provides precedence that progresses from small relief to ultimate code destruction.

Correction: Use more “black letter law” in the code. That is, use language that is measurable and eliminates or reduces judgmental revisionism. Put limits on how far a board can go in mitigating a measurable requirement.

Reference:

NFEC continues efforts to clarify and quantify requirements.

10. Code Requirements can be “gamed” and thus circumvented

Weakness: The town has a reputation for lax or nonexistent code enforcement, and the town’s enforcement staffing efforts have not kept up with its rapid growth. This is a weakness of practice more than weakness of code but since it is persistent it may be necessary to legislate action.

Citation: Both the LWRP and Chapter 275 enforcement parts.

Consequence: People “game” the requirements by not applying for a permit, by underperforming on the information required for the application and by illegally changing the circumstances before applying. For example, if a floating dock cannot be placed where it cannot float (or where it would shade vegetation) some “moonlight dredging” could remedy the problem before permit application. In another well-known example, a beach shack on the Sound in East Marion was completely rebuilt, with the addition of a sink and air conditioning in 2004, before a permit application was submitted to the town.

Correction: Under the (LWRP) Chapter 268-6 the Town Building Inspectors, Town Attorney, Code Enforcement Officers and Police Department/Bay Constables are responsible for enforcing the LWRP and issuing stop-work orders. Do it.

All construction underway in the town, especially on beaches and near wetlands, should be checked periodically for appropriate permits. Staff for enforcement and fines should be increased.

Reference: (LWRP) Chapter 268-6; Chapter 275-15 Coordination and Enforcement:

“No action within the Southold coastal area which is subject to review under this chapter shall proceed until a written determination has been issued from the designated agency that the action is consistent with the Town's LWRP policy standards. In the event that an activity is being performed in violation of this chapter or any conditions imposed thereunder, the Building Inspector or any other authorized official of the Town shall issue a stop-work order and all work shall immediately cease. No further work or activity shall be undertaken on the project so long as a stop work order is in effect.”

11. Public Availability of LWRP Consistency Determinations is awkward

Weakness: Science-based information is not readily available to the public prior to permit decisions. While the professional work of the LWRP Coordinator, Environmental Technicians and consultants is paid for with public funds, it is not generally available to the public until **after** a wetlands permit is issued.

Citation: No part of the Town Code or LWRP deals with this communication weakness.

Consequence: The issues at public hearings are clouded at best. The Board of Trustees properly hears public comment but the public, not being privy to the background information, is in a disadvantaged position. Public input is inhibited and rationale behind decisions is often not understood.

Correction: The Board of Town Trustees must post the title, author, SCTM# and date of receipt of professional environmental information pertinent to permit applications the day it is received on a list linked to the Town website. This link to be accessible via direct internet access for routine monitoring as well. When one knows that a document of interest is available, it can be obtained by FOIL.

Reference:

Note: This "weakness/correction" is advanced after consideration of the foregoing and may be redundant, overlapping or contradictory with respect to some of the foregoing. It is an alternative with benefits and liabilities.

12. Southold Wetlands Protection not as Stringent as New York State Requirements

Weakness: NYS expectations of local protection of freshwater wetlands are not that of casual co-existence with local government. All regulatory authority in the towns comes from the state and is circumscribed by state law. Southold Code fails to recognize the Town's obligations under ECL Article 24, delineated by 6NYCRR Part 665. Apparently, Southold has never formally provided a wetlands map nor met the procedural requirements for the local assumption of State regulatory authority; or, defined the relationship between Southold and other law and jurisdictions. Chapter 275 appears to attempt to stand alone and is not "at least as protective" as the New York State Environmental Law and its Code.

Citation: Chapter 275-12-B, 6NYCRR Part 665

Consequence: Southold has failed to recognize standards for technical and administrative capacity with respect to training and experience. There have been lapses in decisions due to lack of reliable process and technical information. There is insufficient rigor in addressing the protection of wetlands in the context of modern times, the LWRP and New York State Law. There has been a shift in basic perspective to one that expects the purpose of the Trustees to be to mitigate the requirements -- when in fact a rigorous stance would generate permit application resolutions that would range from outright rejection to complete acceptance.

Correction:

1. Promulgate an official wetlands map and execute the Article 24-0501 (6NYCRR Part 665-4) protocol establishing Town regulation of freshwater wetlands.
2. State the governmental relationships in Chapter 275.
3. All permit application reviews to include at least one environmental professional reviewer. Require a three person review for approval of administrative permits.
4. Since election of Trustees does not assure administrative or technical capacity, employ staff meeting the State requirements and arrange for overload outsourcing.
5. Consider the establishment of a small Natural Resources Department (NRD) as a home department resource for various town functions. Establish a matrix organization that would assign NDR staff to Town functional departments on an as-budgeted basis.
6. The Trustees hold a trust for all the people of Southold. That particular trust is conservation and assured access to the water resources that make our town the place in which we want to live. There are "wet" parcels in town that should not be built upon. The Town Code so and the Trustees need to uphold that code. By aligning with the more rigorous New York State Law, and performing the necessary work, we can better uphold that trust.

Reference:

13. Terms Defined:

Mitigate/ vt/ (1) to cause to become less harsh or hostile: mollify, (2) To make less severe or painful: alleviate.

In Southold mitigation can occur during consideration of a permit application if proposed by the applicant.

Variance/ n/ (1) the fact , quality or state of being variable or variant, (2) the fact or state of being in disagreement: dissension, dispute, (3) a disagreement between two parts of the same legal proceeding that must be consonant, **(4) a license to do some act contrary to the usual rule**, (5) the square of the standard deviation.

In Southold the precursor of a variance is an administrative rejection of a permit application.

Practicable/adj/ (1) possible to practice or perform: feasible, (2) capable of being used: useable. (Practicable applies to what has been proposed and seems feasible but has not been actually tested in use; Practical implies success in meeting the demands by actual living or use.) [note that neither are economically dependant]

The “**consistent to the maximum extent practicable**” standard is not mentioned in the Southold Code, but the notion is practiced. NYS stresses⁽¹⁾ that the intention is to cause substantive changes in [government] decision making so that multiple policy objectives are [best] met. No economic aspect is included in the standard, but wildly unreasonable expense is not expected of an applicant while increased cost is anticipated and is to be accepted.

Southold Board of Town Trustees /n/ An elected board [now of five members] created by the New York State Legislature in 1893 to manage certain common lands arising from the Andros Patent of 1676. Sometimes known as the “Trustees of the Town of Southold”, “the Trustees”, “Town of Southold Trustees”, with the members being called Trustees and earlier being called Associates, Commoners or Freeholders.

Southold Town Board /n/ An elected board of six members called council members who act as a board to manage the affairs of the Town of Southold.

Personal property rights are a corner stone of our democracy. Since the earliest settlers, the concept of private ownership and control of homestead and farm and field has been vigorously protected. As the country developed and the population has grown and people settled ever more closely together in towns and cities the meaning of property rights has slowly and necessarily changed.

The need to build public infrastructure for the benefit of the country as a whole caused dilution of personal rights as it enlarged communal rights. A railroad right of way through a citizen's north forty was approved and the track laid when the need was demonstrated.

It became obvious that a pig farm or slaughterhouse does not coexist with residential housing or retail business and that many common and necessary property uses do not comfortably coexist with others. Thus the zoning that we are familiar with today came into being. This zoning concept is a rethinking and broadening of property rights to create an obvious societal, communal benefit.

Today we are constantly learning more and more about the interconnection of marshes and swamps and watercourses to the health of the bays and oceans, our potable water supply and finally our precarious and threatened world food supply. We are learning the damaging effects of road run off, the poisonous effect of unmanaged human and animal waste and the imprudent use of fertilizers and pesticides.

As we amass this knowledge, changes in how we use the land that borders swamps, marshes, creeks and bays is inevitable. Where older houses may sit on desirable waterfront locations boasting bright green lawns to the water and less obviously cesspools in the beach, new construction is prevented and modification to these older houses is ever more closely controlled.

Here again the personal property rights of the waterfront owner are being modified to mesh with the property rights of all the other citizens. For some this is a difficult realization. But it is inevitable and the American way that advances in knowledge and scientific understanding as exemplified by the recent adoption of the Local Waterfront Revitalization Plan and its continued modification of policy.

The community agreement that is the Town Code seeks to define behavior that is a blend of property rights and community rights. Its clarity determines its success. By design it is not the extreme of either, lest that hubris diminish the quality of life we all desire.

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North Fork Environmental Council, December 2006

We welcome your feedback on this report. By clicking on the [Contact Us](#) item on the main menu of this website you will find our location, phone and fax numbers, mailing address and the capability to send us an email.