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MICHAEL D. FORD
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MEMORANDUM

To: Michael Solitro
From: Michael D. Ford Town Counsel
CC: John Jannell ✓
Re: Kent's Point Update

You have forwarded to me questions from an Orleans resident pertaining to my presentation to the Conservation Commission regarding Kent's Point. The questions center around a case I referenced from Connecticut (Leyden v. Greenwich, 257 Conn. 318) and whether it prohibits the Conservation Commission from restricting access to Kent's Point to residents only.

My opinion does not conclude that Kent's Point is a public park in the traditional public forum sense. My purpose in citing the Greenwich case was not to advise the Conservation Commission that a residents only sticker program was unconstitutional, but rather to make sure the Conservation Commission understood the need to make specific findings that such a program is necessary to further an important government interest. In this case the protection of the wetland resources the Conservation Commission is charged with protecting. There needs to be a rational basis for a resident sticker requirement related to the management and control of the conservation land. Making those findings would benefit the Town in the event of a discrimination challenge based on residency.

John Jannell

From: Michael Solitro
Sent: Tuesday, April 1, 2025 2:32 PM
To: Devon Puglia
Cc: John Jannell
Subject: Re: Touching base with Town Counsel
Attachments: 2025.04.01 - Kent's Point Memo.pdf

Hi Devon,

Thank you again for your patience. Attached is a memo from Town Counsel in response to the questions below.

Please note I have copied the Orleans Conservation Administrator, John Jannell here as well.

Best,

Mike



MIKE SOLITRO

Special Projects Coordinator

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From: Devon Puglia
Sent: Monday, March 31, 2025 10:57 AM
To: Michael Solitro
Subject: Re: Touching base with Town Counsel

Cool — many thanks!
Sent from my iPhone

On Mar 31, 2025, at 10:53 AM, Michael Solitro <msolitro@town.orleans.ma.us> wrote:

Hi Devon,

Thank you for the note, I am meeting with Town Counsel again this week and will have response to you shortly

Thank you again.

Mike

From: Devon Puglia
Sent: Friday, March 28, 2025 11:46 AM
To: Michael Solitro
Subject: Re: Touching base with Town Counsel

Hey Mike --

Hope you're great! I know this is low priority, just wanted to follow up and just curious if you or Town Counsel had any specific thoughts on the questions I raised. Thanks so much!

On Mon, Mar 17, 2025 at 9:13 AM Devon Puglia <devon.puglia@gmail.com> wrote:
Appreciate you!

Sent from my iPhone

On Mar 17, 2025, at 9:09 AM, Michael Solitro
<msolitro@town.orleans.ma.us> wrote:

Thank you Devon, all questions have been provided to counsel and he'll have a response shortly.

From: Devon Puglia <devon.puglia@gmail.com>
Sent: Sunday, March 16, 2025 12:46 PM
To: Michael Solitro <msolitro@town.orleans.ma.us>
Subject: Re: Touching base with Town Counsel

Hey Mike —

Hope you're well. One other question for you — I noticed that Brewster's first light beach off 6A, the former Sea Camps site, has a big fat residents only sign on the front. It also lists out the residents only parameters on the website pretty explicitly and clearly. So my one additional question is: how would this be any different than requiring stickers or residency for the Kent's point parking lot? Many thanks!

Sent from my iPhone

On Mar 10, 2025, at 4:11 PM, Michael Solitro
<msolitro@town.orleans.ma.us> wrote:

Thank you, I'll email you tomorrow with dates/times to reschedule

From: Devon Puglia <devon.puglia@gmail.com>
Sent: Monday, March 10, 2025 12:18 PM
To: Michael Solitro <msolitro@town.orleans.ma.us>
Subject: Re: Touching base with Town Counsel

Mike --

Here are my questions.

CT CASE QUESTIONS/OTHER

So the reasons for a residents-only requirement in the CT case and in this one are very different. And one question I had was, how much does the motivation for a policy matter? In Greenwich and Fairfield County, every policy — zoning, etc. — is designed to keep people out, quite frankly. Here, this isn't the motivation per se, though it might have the same outcome. So, the question is really, from a legal challenge or perspective, how much does the intent behind the policy matter, if at all, even if the outcomes might be the same?

The CT case mentioned a common law right to a public park/space. Does that apply to Kent's Point, even though it's not a traditional park? It would seem to me to be a very different space than the one in CT, and does that matter and does Kent's Point check the box of being a traditional public park?

In the same vein, if there is a common law benefit to a park, why can I not use the Harwich rec center or the Chatham rec center? What is different about those areas/facilities and my freedom to associate and congregate, and why can those publicly funded facilities be restricted to residents only...but

not a publicly funded park?

KENT'S POINT SPECIFIC QUESTIONS

On page 8 of the opinion, it notes that “government may...enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a government interest, and leave open ample alternative channels of communication.”

At Kent's Point, can you restrict permit holding by hours or by time of year? So that it is not, from a legal standpoint, an overly broad policy but restricted specifically to when use is overwhelming and there is the greatest government interest? In short, can you restrict “congregation” from a legal standpoint during times of year in which environmental damage is at it's highest? So, can you, in short, restrict the policy only to beach stickers in the summer — it would seem to meet that test above?

Why can a landing be limited to town only parking? I was unclear on the answer from the presentation?

Can the town restrict access to and use of the parking lot at Kent's Point, without restricting access to land itself? What would seem to be different about this than a CT case is, no one is saying you must be a town resident to use the land...but why couldn't there be a regulation to use the parking lot, you need a town sticker...as a means of controlling volume?

Those were really the core of my questions. Many thanks.

On Mon, Mar 10, 2025 at 10:10 AM Michael Solitro

<msolitro@town.orleans.ma.us> wrote:

Hi Devon,

I'm going to go ahead and postpone tomorrow's Zoom. I think it makes sense to share the questions with Town Counsel ahead of time, so he has a chance to provide thorough responses.

As we discussed, please send me the questions you'd like to cover, and we can find a time to reschedule from there.

Best,

Mike

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From: Michael Solitro <msolitro@town.orleans.ma.us>
Sent: Thursday, March 6, 2025 4:03 PM
To: Devon Puglia <devon.puglia@gmail.com>
Subject: Re: Touching base with Town Counsel

Perfect, I'll try you around 12:30 - talk then

From: Devon Puglia <devon.puglia@gmail.com>
Sent: Thursday, March 6, 2025 4:00 PM
To: Michael Solitro <msolitro@town.orleans.ma.us>
Subject: Re: Touching base with Town Counsel

Many thanks! Yep — I'm good from 12-3 if that works?

Sent from my iPhone

On Mar 6, 2025, at 3:59 PM, Michael Solitro
<msolitro@town.orleans.ma.us> wrote:

Case is Leydon v. Town of Greenwich, 257 Conn.
318 (2001) - decision is attached

Do you have time for a brief phone call tomorrow? I
am fairly open in the afternoon

From: Devon Puglia <devon.puglia@gmail.com>
Sent: Wednesday, March 5, 2025 10:05 AM
To: Michael Solitro <msolitro@town.orleans.ma.us>
Subject: Re: Touching base with Town Counsel

You don't often get email from devon.puglia@gmail.com. [Learn why this is](#)

Thanks! I'm at 914-391-4691. I had just a few
quick questions that I was hoping to get clarity
on from a legal standpoint. (And I guess what
I'm signaling is, I'm not a yahoo that is going to
follow up with dissertations in response and I

have no objective other than to quickly pick someone's brain on a few issues that weren't covered in the meeting...There are ~1,000 things I'd frankly actually rather be doing).

Thank you!!

On Wed, Mar 5, 2025 at 9:54 AM Michael Solitro <msolitro@town.orleans.ma.us> wrote:

Hi Devon,

Thank you for the note I will get the case information to you

What is the best phone number to reach you?

Mike

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From: Devon Puglia <devon.puglia@gmail.com>

Sent: Wednesday, March 5, 2025 9:03 AM

To: Michael Solitro <msolitro@town.orleans.ma.us>

Subject: Touching base with Town Counsel

You don't often get email from devon.puglia@gmail.com. [Learn why this is](#)

Hi Mike --

I'm an Orleans resident and called over this morning because I wanted to touch base with the Town's Counsel -- and I was directed to you about it. The gentleman did a really thoughtful presentation yesterday at the Conservation Commission. During that presentation, he referenced case law in Greenwich, CT, and I was hoping to get the name of the case from him, as well as see if he'd be open to doing a super quick informal

meeting with me (as someone who is active around Kent's Point) so I could ask a few straightforward questions about legal parameters, etc.

Is that something he would be open to + how would I get in touch?

Thanks so much!!

Devon Puglia
<Leydon v. Greenwich, 257 Conn. 318.pdf>