

# An Eroding Authority?

## Court ruling challenges Town Trustees' oversight in villages

BY MICHAEL WRIGHT

A State Supreme Court justice has cast a cloud of uncertainty over the future of regulation along the South Fork's beachfront by abruptly dismissing

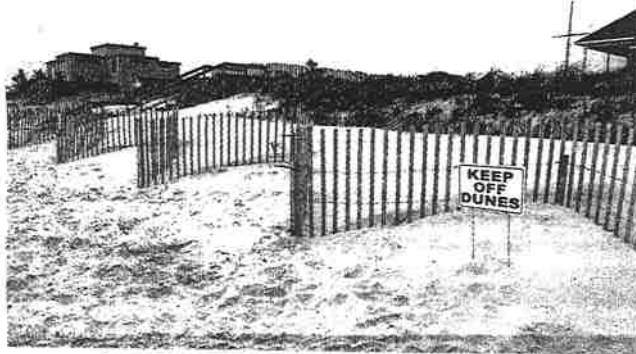
a pair of lawsuits filed by the Southampton Town Trustees against Quogue Village and a pair of Dune Road homeowners over the use of sandbags to defend against erosion.

If the decision stands—the

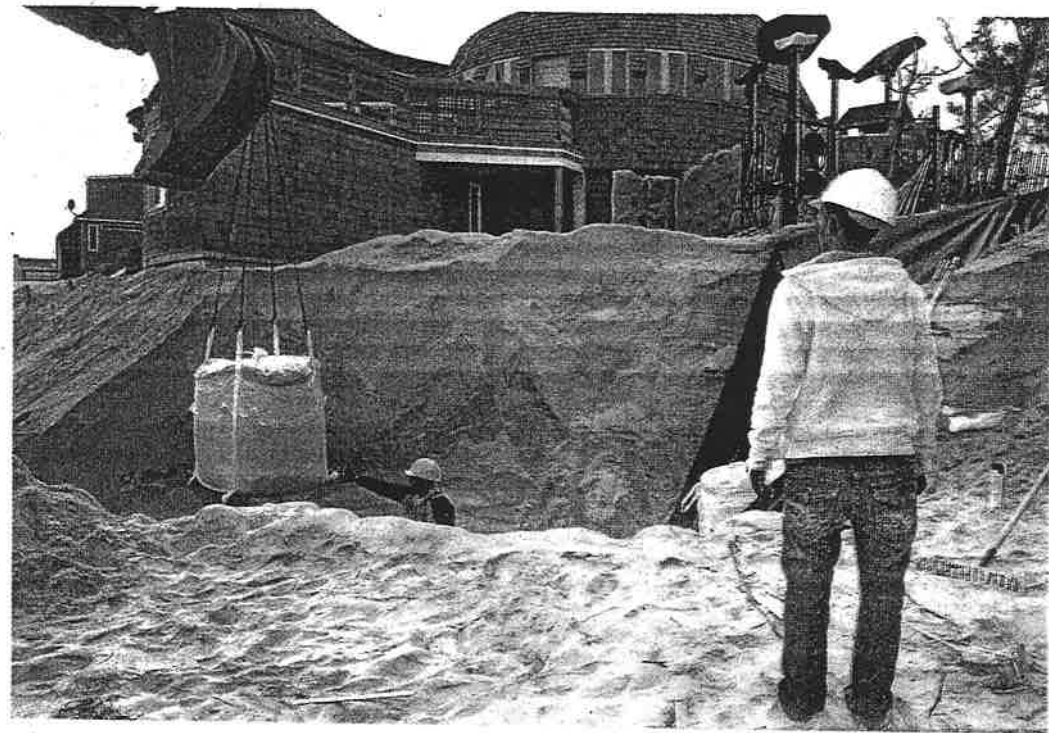
Trustees have said they will appeal immediately—it could have far-reaching implications, as it appears, on its face, to strip the Town Trustees of their authority to regulate the placement of any kind of protective structures along the ocean beaches, at least within the borders of incorporated villages.

"It's a big deal," Town Trustees President Eric Shultz said of Justice Peter H. Mayer's ruling. "In two paragraphs, he erased three centuries of legal history. He completely fails to acknowledge the fact that the Trustees have an easement and the right to protect it."

In the decision dated May 9, Judge Mayer granted a re-



The Quogue Village beach on Monday afternoon. DANA SHAW PHOTOS



Geocubes—the use of which the Town Trustees discourage—were installed at the beach in 2010 to combat erosion.

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# COURT:

## *Ruling Deals A Blow To Town Trustees*

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quest for summary judgment by the attorneys for Quogue Village and two oceanfront homeowners who buried giant sandbags under trucked-in sand dunes along the ocean beach. He ruled that the Town Trustees' authority does not give them jurisdiction over the beaches landward of the mean high tide mark, rather than to the crest of the dunes, as the Trustees have long claimed.

"The Trustees, who retain the title to the lands under water and have the power to grant rights to erect structures on those submerged lands and to take shellfish from them, do not have control of the shores and beaches," Justice Mayer wrote in his three-page decisions on each of the cases. "The court declares that plaintiffs do not possess the right to regulate the subject beaches to protect their easement over them."

The Trustees own title to all of the town's underwater lands, in the name of all residents, and hold an easement over ocean and bay beaches that stretch from the dunes to the high tide line, ensuring that all residents may freely travel along the beaches, unimpeded by any private landowner or structures. In recent decades, based on their presumed authority to regulate any activity within the boundaries of that easement, they have banned the installation of "hard" protective structures—including seawalls, bulkheads, rock revetments and, most recently, the temporary sand-filled tubes or blocks of mesh netting known as Geotubes and Geocubes—on the basis that their placement could accelerate erosion of other areas of the beach, which could effectively erase the public's easement.

The Trustees' refusal to allow new protective measures has been the subject of numerous lawsuits over the last several decades filed by homeowners who wanted to build walls to protect their homes from storms. Last



Geocubes were installed at the Quogue Village Beach in 2010.

DANA SHAW

year, the Trustees contracted a North Carolina coastal geologist to draft a scientific defense of their stance against hardened shoreline protections.

Mr. Shultz said Justice Mayer appears to have ignored reams of evidence and legal precedent that does, in fact, give the Trustees the authority to regulate the beaches, with the goal of protecting the easement.

Nica Strunk, the attorney who represented both the Village of Quogue and homeowners Paul J. Napoli and Jeffrey and Randi Levine, said Justice Mayer was merely the first to recognize a very clear legislative history that stripped the Trustees of their authority over the ocean beaches nearly two centuries ago. The New York State Legislature actually stripped the Trustees of their oversight of the beaches in 1818, she said, giving it, at the time, to a group of private property owners, known as the Board of Proprietors. That control was then passed to the town's modern government when the Proprietors sold off all their claims to the beachfront property.

"What we showed in our papers is that the concept that the Trustees have the right to regulate the ocean beach and dunes is based on mythology that had no legal basis," said Ms. Strunk, an attorney with Esseks, Heft & Angel in Riverhead. "I don't think anyone had looked closely at this before. The texts are difficult—they're old, and they're confusing—but there's no question that those powers were removed from

the Trustees."

Ms. Strunk noted that, in light of the recent court decision, the power to regulate protective measures on the ocean beaches would lie solely with the respective villages and the State Department of Environmental Conservation. The state agency granted permits for the installation of Geocubes to Quogue Village and the homeowners in the particular instances that led to the Trustees' lawsuit.

The Trustees argued in their legal filings that the 1818 law did not strip them of their authority, stating that it merely gave the Proprietors a shared authority, and when that group dissolved itself in 1882, the Trustees were again left as the only ones with management authority over the beaches.

"I think he misinterpreted the 1818 law and did not take into account later legislation and a long history of ocean regulation by the Town Trustees after 1882," Trustees attorney Richard Cahn said of the judge's decision. "There is no basis in the 1818 law to say that the Trustees lost the right to protect their easement."

The Trustees' appeal of the decision will put an immediate stay on the ruling, and Mr. Shultz said the Trustees will continue to assert their authority to regulate any protective structures along the oceanfront.

Ms. Strunk noted that Justice Mayer's decision does not seem to challenge the Trustees' easement or the public's right to access the beaches. Rather, she said

it simply states that their case presented no evidence that the Geocubes employed by the village and the homeowners posed any threat or hindrance to the public's access to the beach.

The Trustees filed the lawsuit in 2010 after Quogue Village placed the giant sandbags along the front of its beach pavilion, following a winter storm that eroded the dunes and scoured the beach out from under the facility. The Trustees said the village had to seek an emergency permit from them before doing the work, which the Trustees had previously denied. Mr. Napoli and the Levines, whose houses sit immediately adjacent the village beach, also put in Geocubes, despite having been told previously by the Trustees that they could not.