

**WELCOME
TO
LAKE ERIE
BEACH PARK**

**Lake Erie
Beach Park
Windsurfing &
Picnic Area**



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WHAT IS PARKLANDS?

WHAT IS PRIVATE PROPERTY?

**POINT BREEZE DRIVE IS A PUBLIC ROAD.
WHY DOES THE TOWN BOARD ALLOW
THIS PROPERTY OWNER TO CHASE
RESIDENTS OUT OF PARK PROPERTY
AND OFF A PUBLIC BEACH?**

**LAKE ERIE BEACH PARK
IN THE TOWN OF EVANS**

• Is there a Statute of Limitations on Municipal Parkland Alienations?

If a municipality improperly alienates parkland, a challenge to that action is often brought in the New York State Supreme Court in the form of a “declaratory judgment” proceeding.⁷⁷ Such proceedings are often restricted by what is called a “statute of limitations” which requires that an action must be commenced within a certain period of time. However, a recent Appellate Division case has held there is *no* statute of limitations on actions asserting violations of the public trust doctrine. “A municipality’s current and ongoing use of dedicated parkland for non-park purposes without the approval of the State Legislature in violation of the public trust doctrine is a continuing wrong that the municipality has the ability to control and abate.”⁷⁸

<http://nysparks.com/publications/documents/AlienationHandbook.pdf>

4. What if parkland has received State funding?

When a municipality accepts State funding for the acquisition or improvement of parkland or recreational facilities, certain other restrictions on alienation are created. The restrictions depend largely upon the source of the funding that was provided to the municipality. The restrictions vary, but include a restriction on alienation requiring legislative approval at minimum, and in some cases, a requirement to provide substitute lands. It is imperative that a municipality that wishes to alienate parkland find out *early in the process* whether funding was used for the acquisition or the development of the park.

Over the years, there have been many different grant programs administered by the Office of Parks, Recreation and Historic Preservation for park and recreation purposes from both State and Federal sources. Below is a list of State programs through which a municipality may have obtained funding and the restrictions imposed by those programs. Remember, the *Federal* funding restrictions are discussed in Chapter 3.

• Leases of public facilities to private operators

In a case where a municipality intends to lease a public recreational facility to a private operator, the bill and the lease should contain the following provisions:

- The facility will be operated for public recreational purposes.⁹⁷
- The lease will terminate should the public recreational purpose cease.⁹⁸
- The net proceeds from the lease shall be used by the municipality for the acquisition of park facilities, or for capital improvements to other municipal parks, but should not be allocated into the municipality’s general fund.⁹⁹
- The lands will be available to the general public on an equitable basis. In addition, there should be language that sets forth a requirement that if the facilities are heavily used, an equitable system will be put in place to insure fair access by the general

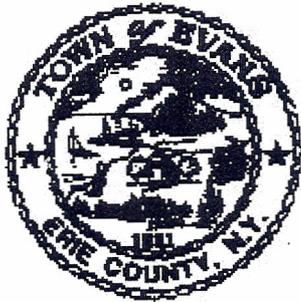
right to each of said lots and a strong inducing cause of purchase. In addition to this, the platting and the sales under and according to said map constituted an offer of dedication to public use, in furtherance of the implied covenants of the respective grants. *The public acquired no rights in the 'Park' so offered for public use until there was a public acceptance of the offer * * **

The law on dedication has consistently distinguished between the *private easements* which arise when there has been an offer to dedicate and *public easements* which arise only after acceptance. *Smith vs. Smythe*, 197 N. Y. 457, 461; *Story v. N. Y. Elevated R. R. Co.*, 90 N. Y. 122, 164; *Lord v. Atkins*, 138 N. Y. 184, 191; *Niagara Falls Suspension Bridge Co. v. Bachman*, 66 N. Y. 261, 267; *Halloway v. Southmayd*, 139 N. Y. 390, 400, 402. (Private easement surviving destruction of the public easement.)

Consequently, since there has been no acceptance, Respondents Nowak and the other lot owners have only private easements in said beaches and parks.

C. The easement which each lot owner acquired was common and mutual to all lot owners. No single lot owner had the right to exclusively appropriate the easement or to unreasonably burden the easement so as to deprive the other residents of their right to the use of the beaches and parks.

This proposition seems so fundamental that it scarcely requires discussion. The record can be searched in vain for any clause in any deed to any of the lot owners which gives any of them any easement in the beaches or parks. The only



CAROL A. FRANEY, Town Clerk
Telephone (716) 549-8787

TOWN OF EVANS

8787 Erie Road • Angola, NY 14006-9600

ROBERT R. CATALINO II, SUPERVISOR

COUNCILMAN

THOMAS A. CSATT	Angola, NY
KAREN C. ERICKSON	Angola, NY
JOSÉPH F. GOVENETTIO	Derby, NY
GIFFORD M. SWYERS	Angola, NY

July 25, 2002

Mr. and Mrs. Richard P. Mauer
9590 Point Breeze Drive
Angola, NY 14006

Re: Lake Erie Beach Park

Dear Mr. and Mrs. Mauer:

It has come to my attention that you may have in the past, and recently, invested some time and effort in an attempt to beautify and improve the area of the park in proximity to your home.

While such efforts are appreciated I write to remind you that such land is yet town property and as such not a portion of your premises and to insist that your efforts be restricted to your own property and not involve that of the town.

The Parks and Recreation Department of the town is charged with the duty of maintaining property such as this and is capable of doing so.

If you have any concerns kindly feel free to contact my office (549-5150) or the Parks and Recreation Department (549-0970).

Thank you for your anticipated cooperation and your understanding.

Yours truly,

J. Grant Zajas
Town Attorney
XC:
Town Board
Parks and Recreation Department

DOES THE WORD "YET" IMPLY THE
TOWN HAS ALWAYS INTENDED TO
SELL ANOTHER PARCEL OF LAKE
ERIE BEACH PARK?

POLICY 19

PROTECT, MAINTAIN, AND INCREASE THE LEVEL AND TYPES OF ACCESS TO PUBLIC WATER-RELATED RECREATION RESOURCES AND FACILITIES.

Explanation of Policy

This policy calls for achieving balance among the following factors: the level of access to a resource or facility, the capacity of a resource or facility, and the protection of natural resources. The imbalance among these factors is the most significant in the State's urban areas. Because this is often due to access-related problems, priority will be given to improving physical access to existing and potential coastal recreation sites within the heavily populated urban coastal areas of the State and to increasing the ability of urban residents to get to coastal recreation areas by improved public transportation. The particular water-related recreation resources and facilities which will receive priority for improved access are public beaches, boating facilities, fishing areas and waterfront parks. In addition, because of the greater competition for waterfront locations within urban areas, the Coastal Management Program will encourage mixed use areas and multiple use of facilities to improve access. Specific sites requiring access improvements and the relative priority the program will accord to each will be identified in the Public Access Planning Process.

The following guidelines will be used in determining the consistency of a proposed action with this policy:

1. The existing access from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities shall not be reduced, nor shall the possibility of increasing access in the future from adjacent or proximate public lands or facilities to public water-related recreation resources and facilities be eliminated, unless in the latter case, estimates of future use of these resources and facilities are too low to justify maintaining or providing increased public access, or unless such actions are found to be necessary by the public body having jurisdiction over such access as the result of a reasonable justification of the need to meet system wide objectives.

The following is an explanation of the terms used in the above guidelines:

- a) Access -the ability and right of the public to reach and use public coastal lands and waters.

TOWN OF EVANS *Office of the Supervisor* **ROBERT R. CATALINO II**

8787 ERIE ROAD - ANGOLA, NEW YORK 14006-9600

(716)549-5787

November 6, 1996

Dear Ed,

I would like to take a moment to thank you for letting us know about the basketball - polls & hoops that Erie Community College was willing to donate. The youths of our town will enjoy them at the Lake Erie Beach Park next summer.

Again I appreciate your effort and interest in our town.

Sincerely,



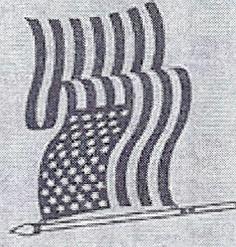
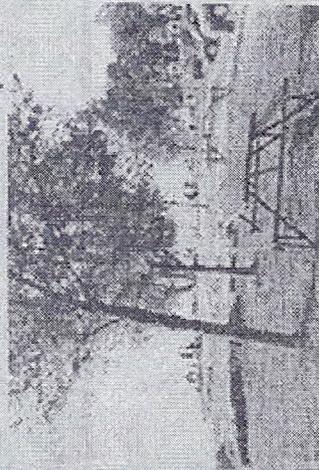
Robert R. Catalino II
Town of Evans, Supervisor

Ed,
Thanks for your help!

ATTENTION: TOWN OF EVANS RESIDENTS!!

You Are Missing Information!!

- 1) In 1998, the Evans Town Board DID SELL .8 ACRES OF LAKE ERIE BEACH PARK!!
- 2) The residents are not aware that Point Breeze Drive is the entrance to Lake Erie Beach Park and access to the small boat launch
- 3) The recent survey shows: in addition to the .07 acres, the property owner is also on 25' of Point Breeze Drive which is ENTRANCE TO LAKE ERIE BEACH PARK AND ACCESS TO THE SMALL BOAT LAUNCH!!
- 4) The Town Board solution could be for the handicap turnaround to be located on the west portion of the property owners land which is not Park Property.



Your questions can be answered at the
Town Board Meeting
Wednesday July 20 7:30pm
PLEASE ATTEND!!

The Friends of Evans wishes to maintain OUR
 Lake Erie Beach Park for ALL RESIDENTS!

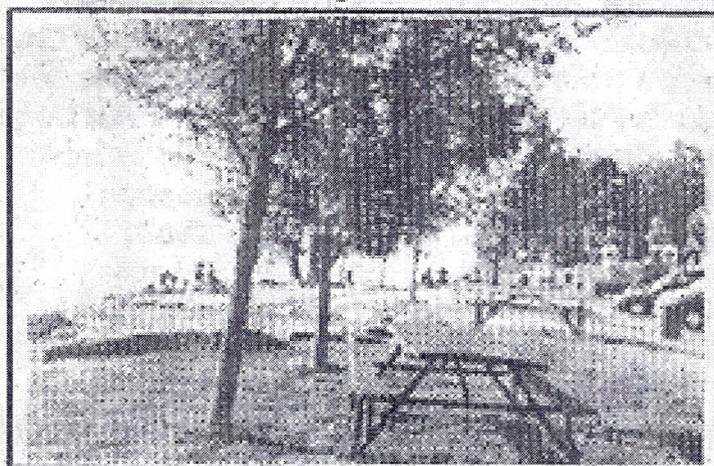
Barbara Guest Markiewicz

Robert Palmer, 549-5608

Barbara Guest Markiewicz, 549-1977

Bud Hanna, 549-2746

paid for by Friends of Evans

NO SALE**Preserve & Protect our Gem***Lake Erie Beach Park**Our FEE-FREE beach/park**Home of our 4th of JULY FIREWORKS*

Past sale & proposed sale of our parkland
EFFECTS ALL EVANS RESIDENTS

Csati & Erickson need to hear
OUR VOICES

Attend the Town Board Meeting
June 15 7:30pm Evans Town Hall

address issues including (but not limited to):

- *improve & update our boat launch & access*
- *better handicap accessibility*
- *enhance youth recreation opportunities*
- *improve picnic areas*
- *enhance our hike & bike-path by regaining*
previously sold .08 acre parkland parcel

more information contact

Barbara Guest Markiewicz 549-1977

Eud Harvia 549-2746

Robert Palmer 549-5608

paid for by Friends of Evans

Evans resident speaks out on horrific 'public policy'

Editor, *The Sun*:

It is my understanding that you intend to once again discuss the matter of Lake Erie Beach in the Town of Evans in an upcoming issue of *The Sun*.

There are a number of things which concern me about this matter. In general, the whole thing amounts to horrific "public policy."

What concerns me is the matter of allowing Richard Mauer to pave into the "park property" without having obtained a lawful easement to do so. Mauer was granted an easement to pave and install utilities only within the clearly defined 25-foot width of Point Breeze Drive.

Contrary to the easement agreement, Mauer subsequently submitted a building survey/plan that clearly showed his intention to pave parkland well outside the boundary of Point Breeze Drive for his turnaround, land for which an easement had never been officially discussed. This plan was approved on Aug. 2, 1999.

How can this happen? The ZBA has no authority to grant easement rights. Mauer did not attend the hearing and there

are no minutes for the meeting. My guess would be that the ZBA members knew that an easement for "something" had been granted and assumed that the plan Mauer placed before them was within those easement rights.

From what I've been able to determine, Mauer at least misrepresented his lawful easement rights in his survey/plan submission and may well have committed out and out fraud against the people of this town.

What would happen if a property owner on Boston State Road near the Town of Hamburg Golf Course submitted a plan to build a driveway that showed him to be using an adjoining piece of the golf course?

Even if he managed to sneak it by the Planning Board, "all holy hell" — not unlike what's happened in Evans — would erupt as soon as he moved the first shovelful of dirt.

I believe you'd agree that the Hamburg Town Board would correct the matter in short order, but that didn't happen in Evans! Why not?

Ken Williams
Derby

By DAVE DAHL

Town of Evans officials plan to address a longstanding dispute at Lake Erie Beach Park by establishing signs specifying which areas are town park property.

Councilman Gifford Swyers hopes the new signs, which officials plan to erect soon, will ease tensions among town residents about the Point Breeze Drive side of the park.

"We're trying to let people know this is a park they can use and it's not private land," he said. "Hopefully, that will resolve it."

The signs will point to the beach and picnic area to help visitors see where they can walk on public land near the road, Swyers said.

Point Breeze Drive, a town road, can be used as a path to walk to the beach. Swyers added that officials plan to improve the signs there.

"We want people to know Point Breeze Drive is a town road," he said.

Some residents have complained that Richard Mauer, who owns the property next to Point Breeze Drive, has landscaped the land around the road to make it look like his driveway.

They have also said Mauer and his wife, Marge, tell people to leave the picnic area and sometimes refuse to let people walk down the road or through the grassy park area on their way to the beach.

Mauer disputes those claims, saying he and his wife have never forced anyone from the park and that the town granted him permission to plant bushes and flowers alongside the road on park land.

"I never stopped anybody from walking through the park," he said.

Ed Schneider, one of the most vocal critics of Mauer and the Town Board, maintains that Mauer tells people to leave the park land near his house.

"Since '98, he's been chasing people out of park property, saying it's his property," he said.

Point Breeze Drive connects

runs toward Lake Erie to Mauer's driveway. After building the house in 1998, Mauer paved the road, formerly a dirt path, with the town's permission to allow a bus to pick up and drop off his son, who uses a wheelchair.

Mauer also has an agreement with the town in which he plows the road in the winter and mows the grass on park land on both sides of the road.

Schneider believes there should be a fence or signs showing the park's boundaries.

"No one knows which is park property and which is private," he said.

Mauer contended that most people know they can walk down

Town officials in Evans hope the new signs which they plan to erect soon, will ease tensions among town residents about Point Breeze Drive side of the park

the road to the beach but most take the gravel path along the creek because that is the most direct route.

He also argued that Schneider has encouraged other area residents to write letters complaining about him to the Town Board.

Schneider said other residents have had problems getting to the park and have complained without his prompting.

Two such residents, Ray and Barb Markiewicz, said Mauer tells people to leave when they walk down Point Breeze Drive.

The Markiewiczes, who live on Point Breeze Drive on the other side of Old Lake Shore Road, accused Mauer of trying to restrict access to the park.

"Mr. Mauer has privatized that section," Ray Markiewicz said. "That's our property. That's not his."

Although he criticized Mauer, Ray Markiewicz, better known to most Western New Yorkers by his radio name, Ray Marks, insisted that most of his anger is directed at the town officials for letting Mauer pave the road and plant

PRESENT:	Karen E. Erickson	Councilman
	Thomas A. Csati	Councilman
	Joseph F. Govenettio	Councilman
	Gifford M. Swyers	Councilman
	Robert R. Catalino, II	Supervisor

ALSO PRESENT:	Lynn R. Stoessel	Deputy Town Clerk
	J. Grant Zajas	Town Attorney

Supervisor Catalino presented a plaque to Jay DeVoy, IV of Boy Scout Troop #591 of North Evans for his achievement of becoming an Eagle Scout.

RESOLUTION 304 Approve minutes

Supervisor Catalino moved and Councilman Csati seconded that the reading of the minutes of the meeting of July 11, 2001 be dispensed with and approved as submitted by the Town Clerk.

Carried.

Edward Schneider, 9575 Redwing asked for a progress report on questions asked at two prior Town Board meetings.

- questioned the sale of property to Todd Nowak

- questioned the Town Attorney on an easement for the use of Point Breeze Drive by Mr. Mauer as to whether Mr. Mauer was given the right to pave and cross Point Breeze Drive with utilities into Lake Erie Beach Park proper. Town Attorney Zajas replied "No." Ed questioned "Do the fishermen have the right to use the ramp on that side of the park?" Town Attorney Zajas replied "We haven't

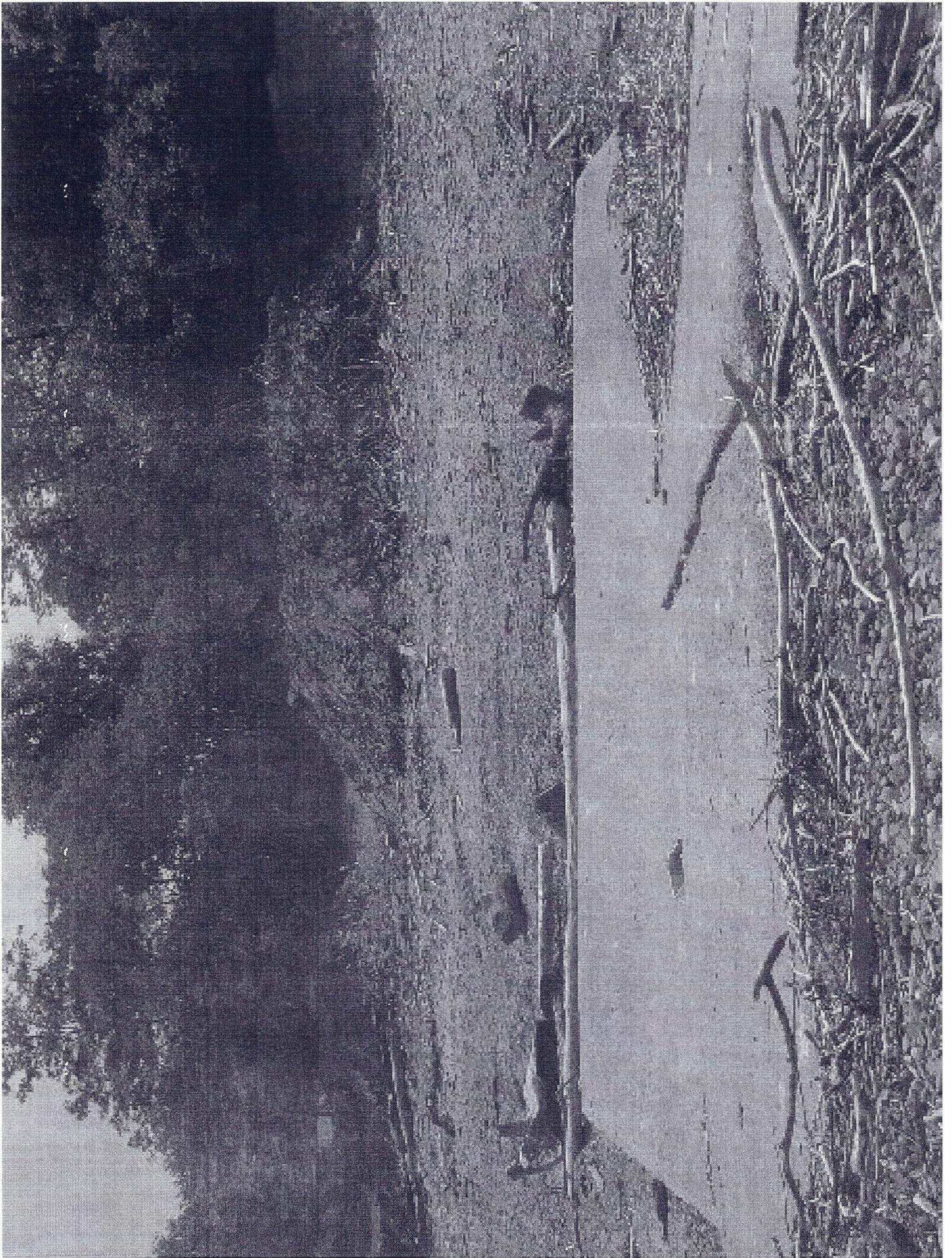
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changed anything relative to what rights they had in the past." Ed questioned "So your answer to the questions is that they have a right to use the ramp?" Town Attorney Zajas replied "No, my answer to the question is we haven't changed anything as to what rights they had before." Ed questioned "So given that was the boat lane from since the 1940's that the fishermen still have a right to use that?" Town Attorney Zajas replied, "If they had a right then we didn't do anything to change that."

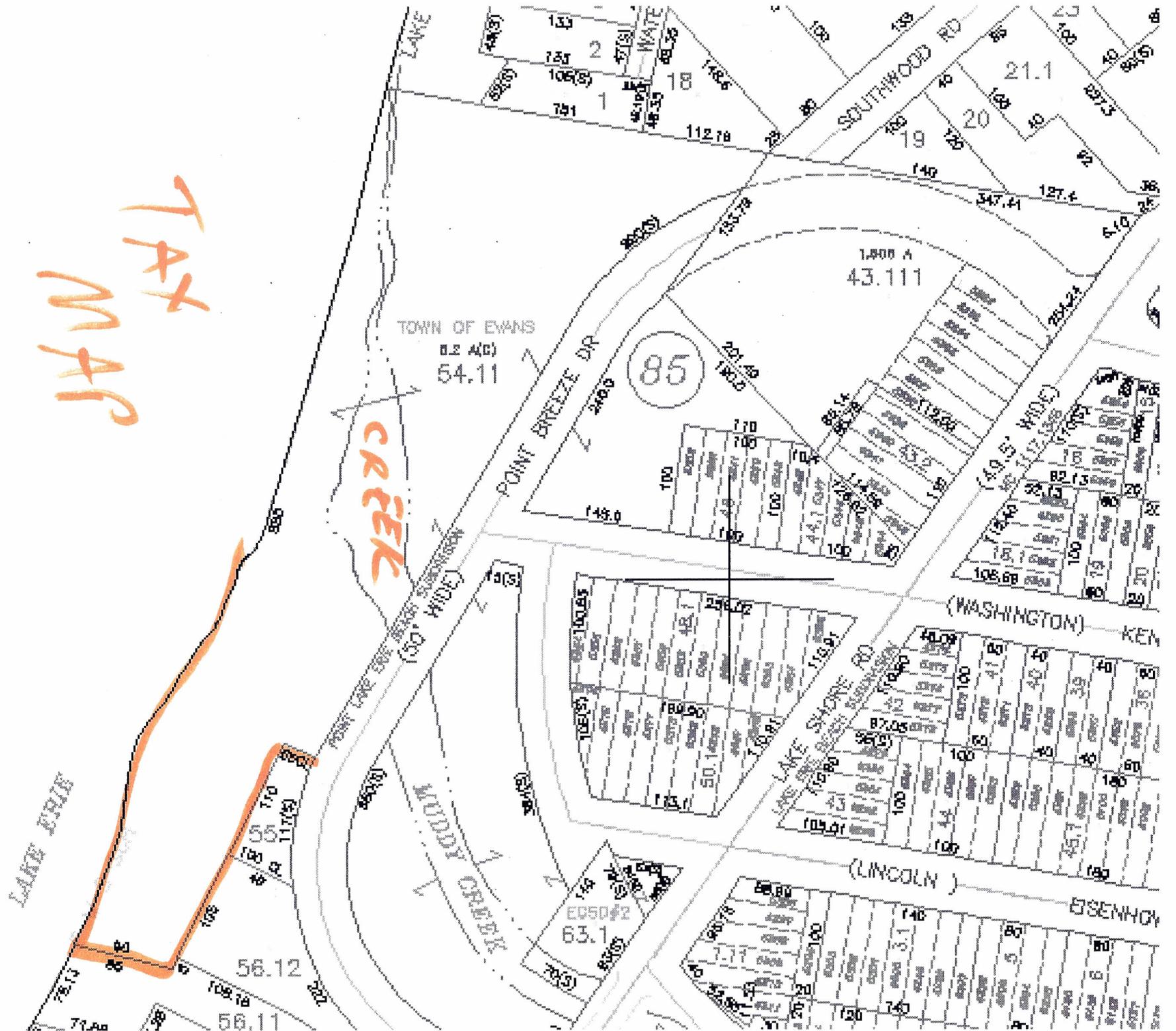
Louann Snow, Smith Road questioned if Smith Road was being considered for waterlines.

Tracy Thomas, Ryther Road questioned how far will the water study go. Requested help as she has severe water problems and complained that she needs to go to Lawton Fire Company for water for her well and pool.

Richard Mauer, 9590 Point Breeze Drive requested an explanation of what Edward Schneider, III spoke about tonight regarding the easement. Questioned if his driveway would be used as access to the boat launch. Stated that before he built his home that there was a gate blocking access and that the road was full of ruts. Also questioned if there will be another survey.



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(LINCOLN)

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POINT BREEZE DR

POINT LAKE ERIE DR

SOUTHWOOD RD

LAKE SHORE RD