

Melbourne Road at Lots 130 and 73

Table of Contents

1. Area Photographs
2. Current Area Plat Map with Right of Way noted.
3. Excerpts from the 1911 platting of Cedar Tree Point amendments explicitly dedicating a 10 foot Right of Way between Melbourne Road and Beach Tree Drive (now Tree Point Drive) and onto the shore on the west boundary of Lots 54 and 6 (now lot130) to Cowesett Bay.
4. Photocopy of photographic enlargement of a post card showing artist rendition of the early Cedar Tree Point Plat with the west boundary of Lots 54 and 6 noted.
5. July 16, 1984 Kent County Superior Court Decision identifying this passage as a Right of Way to Narragansett Bay.
6. Photographic evidence of erosion showing Tree Point Drive to terminate in Greenwich Bay and Lot A to cease west of this right of way.
7. May 6, 1988 Cedar Tree Point Association memo identifying this passage as a Right of Way.
8. September 1998 City of Warwick Fall Yard Waste Collection Schedule noting Tree Point Drive as a city street. (2006 City of Warwick calendars also continue to note Tree Point Drive as a city supported street.)





1 INCH = 200 FEET

Plot 367

WHEREAS, thereafter in about the year 1911 the said owners of said plat recognizing the need of a way for travel for the lot owners on said plat, laid out and opened a way from Melbourne Road to Beach Drive both being streets laid out and designated on said plat across the westerly ten (10) feet in width and the full depth of lots numbered 54 and 6 as

laid out and designated on said plat and laid out and opened a way for similar use from Grand View Drive a street laid out and designated on said plat to Cowesett Bay aforesaid, across the northerly ten (10) feet in width and the full depth of lot numbered 41 (forty-one) on said plat, which two ways have since been used by the lot owners on said plat, their heirs and assigns for ways for travel on foot, and

WHEREAS, Daniel Fitzpatrick aforesaid and Eva J. Colwell wife of said Louis A. Colwell are now the owners of the lots on said plat remaining unsold and of the fee in said two strips of land laid out as ways aforesaid, subject to said rights of way, and

WHEREAS, there has been no formal written declaration of said ways or any plat of the same made by the said owners of said land.

NOW THEREFORE, We Daniel Fitzpatrick, Louis A. Colwell and Eva J. Colwell all aforesaid do hereby lay out, open, plat and establish a way for the owners of lots on said plat and their heirs and assigns forever to travel on foot to and from said Melbourne Road to said Beach Drive over and across,



CEDAR TREE POINT
& PLANT
WARWICK, R.I.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

DONALD E. McDONALD, IRENE
J. McDONALD, GARY KNOBLE,
DONNA KNOBLE, JOHN HARRIS,
HETTY WOODS and DOROTHY
SABETTA

:
:
:
:
:

v.

C.A.No. 84-0670

CEDAR TREE POINT ASSOCIATION,
ROBERT ZARELLA, WILBERT FRITZ
and JOHN J. MacLIVER

:
:
:

D E C I S I O N

PEDERZANI, J... This matter is before the court pursuant to G.L. 1956 § 9-30-1 on the plaintiffs' request for a declaratory judgment, preliminary and permanent injunction and money damages in connection with a right-of-way deeded to the plaintiffs and defendants as tenants in common.

Some of the defendants are abutting property owners to the right-of-way and all of the plaintiffs and defendants are resident property owners of Cedar Tree Point in Warwick. A deed dated 1911 grants to them, as lot owners, "on foot" passage through a ten-foot way which leads from

Melbourne Road to Beach Drive. This strip of land is to provide access to the property owners of Cedar Tree Point to the shoreline of Narragansett Bay. Therefore, this is not a case of an easement over a servient estate, but one where both of the parties to the litigation are grantees and each have a right to use the right-of-way for its intended "on foot" purpose, and a duty not to interfere with that purpose.

In August 1983, defendants placed five large poles at the entrance to the passageway thereby impeding vehicular traffic and restricting access to "on foot" travel only. Defendants acted on behalf of the Cedar Tree Point Association pursuant to a majority vote of the members taken at a meeting on June 8, 1983.

The plaintiffs' contention is that by placing the poles at the entrance to the right-of-way, the defendants have restricted their use and enjoyment of the right-of-way by limiting it strictly to pedestrian traffic. Plaintiffs also contend that the poles deny access to the shoreline to wheelchairs, baby strollers and carriages and to those residents who formerly used the right-of-way to launch small boats. The defendants' contention is that the poles are consistent with the intended use in that they restrict passage through the right-of-way to "on foot" passage only, thereby precluding motor vehicles from obtaining access to the beach through the right-of-way.

The issue for this Court's determination is whether the presence of the poles at the entrance to the right-of-way have thwarted its intended "on foot" use. A formal hearing on this issue was held on May 6,

1985. Defendants contend, and this Court agrees, that the poles merely restrict vehicular access to the shore. Pedestrian traffic has in no way been impeded by the presence of the poles, therefore the right-of-way's intended "on foot" use is not being thwarted.

Plaintiffs claim that the poles prohibit passage of baby carriages, strollers and small boats. However, each of these articles are such that they can be lifted over the poles with a minimal amount of effort and carried or pushed down the remainder of the passageway free from further obstructions. In addition, should the residents of Cedar Tree Point desire to launch a boat not capable of being lifted over the poles and through the passageway, they may use the Preston Road access to Beach Drive which was explicitly intended for such use. Furthermore, the close proximity of Preston Road to the right-of-way would allow it to be conveniently used by those wheelchairs which cannot fit through the poles.

The deed granting the right-of-way to the residents of Cedar Tree Point allows passage for "on foot" travel. Plaintiffs claim that this definition should be expanded to include baby carriages, strollers and wheelchairs. However, if the court is satisfied that the language of the grant is clear and free from ambiguities, no further interpretation need be had. Matteodo v. Capaldi, 48 R.I. 312 (1927). Therefore, since the deed clearly and unambiguously grants "on foot" passage to the residents of Cedar Tree Point, there is no need for this Court to engage in any further speculation regarding the intentions of the grantors.

In addition, this Court must take into consideration the rights and duties of the litigants as tenants in common of the right-of-way. One tenant may exercise control only to the extent that it does not interfere with the other tenants' rights. "One having an easement in another's land must exercise his right in a reasonable manner" Beckwith v. Rossi, 175 A.2d 732, 157 Me. 532 (1961). Therefore, an injunction can be issued only if one of the tenants in common is denying the other tenant reasonable use of the passageway. Since the deed clearly states that its use is for "on foot" passage only, plaintiffs are not precluded from using the right-of-way in that manner. Prior to the erection of the poles, defendants were constantly harrassed by the flow of motorcycles through the right-of-way. By placing the poles at the entrance to the passageway, defendants have restricted plaintiffs' use only to the extent that the original grantors intended, which was "on foot" passage.

For the reasons cited previously, plaintiffs' request for a declaratory judgment, preliminary and permanent injunction and money damages sought in connection with a right-of-way deeded to plaintiffs and defendants as tenants in common is denied.



CEDAR TREE POINT ASSOC., INC.

May 6, 1988

TO: CEDAR TREE POINT RESIDENTS
FROM: CEDAR TREE POINT INTERIOR COMMITTEE

The purpose of this letter is to inform all residents of Cedar Tree Point of the upcoming actions of the Cedar Tree Point Interior Committee.

The Interior Committee was formed last year to oversee any improvements made to our neighborhood. The first order of business was to add new signs along the right of ways to the beach. Two new signs will be added near the right of ways to the beach and will read:

NO TRESPASSING - PRIVATE PROPERTY
POLICE TAKE NOTICE
CEDAR TREE POINT RESIDENTS

One sign will be put below the existing Cedar Tree Point sign near the creek. The second sign will be located on the corner of Melbourne Road and Preston Drive (main beach entrance) .

The signs will be installed approximately one month from now. If there are any concerns regarding the above, please address them in writing to:

Interior Committee
c/o 284 Grand View Drive

before Friday, May 20, 1988.

It should be made clear that ALL residents of Cedar Tree Point do indeed have access to the beach via these right of ways. The intention is NOT to restrict the right of ways to Cedar Tree Point residents but to restrict non-residents of Cedar Tree Point.

City of Warwick
1 Yard Waste Collection
WEDNESDAY

On Tuesday, October 13, 1998, Warwick's Yard Waste Collections will switch to every other week, through mid-December. We are changing to a bi-weekly schedule due to the over-abundance of leaves generated in the city.

On the back of this sheet is a list of streets, separated into two sections: ROUTE A and ROUTE B. To determine your collection days, first locate your street in either ROUTE A or B. Once you have found your street, turn to the calendar. The dates listed in your route (A or B) will be your collection days.

For example: If you live on Massasoit Dr., you are in ROUTE B. Your collections days are, Oct. 21, Nov. 4 & 18 and Dec. 2 & 16. If for some reason your street is not listed, locate a crossing or neighboring street, and use that route, whether it be A or B.

Where can I buy my paper Yard Waste Bags?

Yard Waste bags are on sale for 30¢ each at the following locations:

Ann & Hope1689 Post Rd.
Benny's2436 Warwick Ave.
.....5600 Post Rd. (E.G.)
Dave's Market Place2687 West Shore Rd.
.....18 Airport Rd.
Eagle Lumber3356 Post Rd.
Home Depot80 Universal Blvd.
Oxnard Pharmacy198 Buttonwoods Ave.
Parkway Convenience1154 Narragansett Pkwy.
Salk's Hardware2524 West Shore Rd.
Shaw's Supermarket.....1500 Bald Hill Rd.
.....320 Warwick Ave.
Stop & Shop.....300 Quaker Lane
.....2485 Warwick Ave.
Suburban Pharmacy242 Pawtuxet Ave.
Vineyard Rd. Landscaping..303 Vineyard Rd.
W. Shore Rd. Garden 1084 W. Shore Rd.

REMEMBER: Grass clippings, leaves, and garden debris (NO sand, rock or dirt please!) must be placed in biodegradable 30 gallon paper bags, or in barrels marked with an official "YARD DEBRIS ONLY" sticker. The stickers are available at the Public Works Department.

Absolutely NO yard waste will be collected in plastic bags at curbside. Brush must be bundled and tied in 4 foot lengths and set along side of your bags or barrels.

Yard waste **MUST** be placed at curbside prior to 7:00 am on your collection day. If you miss your regular collection day, you can bring your yard waste to the Normand Flamand Municipal Recycling Facility off Sandy Lane: Monday — Saturday, 7:00 am to 3:00 pm.

OCTOBER 1998						
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
11	12 X	13	14	A 15	16	17
18	19	20	B 21	22	23	24
25	26	27	A 28	29	30	31
NOVEMBER 1998						
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	B 4	5	6	7
8	9	10	X 11	A 12	13	14
15	16	17	B 18	19	20	21
22	23	24	A 25	26	27	28
29	30					
DECEMBER 1998						
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	B 2	3	4	5
6	7	8	A 9	10	11	12
13	14	15	B 16	17	18	19
20	21	22	23	24	25	26

Please Save this Sheet for Future Reference.
Questions? Call the Warwick Highway Department. 738-2000, ext. 6518.

LINCOLN CHAFEE, MAYOR. • CHARLES T. SHEAHAN, PUBLIC WORKS DIRECTOR.

A

ABBOT AVE.
ALBANY RD.
ALICE AVE.
ALTO ST.
ALVIN ST.
ANTHONY ST.
ASHWOOD CR.
ATKINS ST.
BAILEY ST.
BAKERS CREEK RD.
BARREN HILL DR.
BAY STATE AVE.
BIGNALL ST.
BIRCH GLEN AVE.
BLACKBURN ST.
BOWEN BRIGGS AVE.
BRIGHTON AVE.
BRIGHTON WAY
BROWNELL ST.
BRYANTVILLE CT.
BURNSIDE ST.
BURT ST.
BUTTONWOODS AVE.
(odd #'s 259 through 363)
BYFIELD ST.
CADORA AVE.
CAPRI RD.
CAPRON FARM DR.
CHAPMANS AVE.
CHATHAM CR.
CHATWORTH AVE.
CLAYPOOL DR.
CLAYTON RD.

CLINTON AVE.
COLFAX ST.
COLONY AVE.
COLORADO AVE.
CORIN ST.
CORONA CT.
CORONA ST.
COSETT RD.
COTTAGE ST.
COVINGTON DR.
CREEKWOOD DR.
CYPRESS ST.
DARROW DR.
DAVIDSON RD.
DAY ST.
DODGE ST.
DORRANCE ST.
DORY RD.
DOVER RD.
DRUMNSA CT.
DUNBAR CT.
DUXBURY CT.
ECHO DR.
EDAVILLE CT.
EDGEWATER DR.
EDMAN ST.
ELDRIDGE AVE.
ELLSWORTH ST.
ENTERPRISE RD.
ETHEL ST.
EVA ST.
FASHION DR.
FERNCLIFF AVE.

FIR GLADE DR.
FLORENCE ST.
FOX RIDGE CRESCENT
FRANKLIN ST.
FREEMAN ST.
FREY ST.
GILLAN AVE.
GILLMORE AVE.
GLOUCESTER ST.
GORTON LAKE BLVD.
GRAND VIEW DR.
GRAYSON AVE.
GRAYSTONE ST.
GREAT HILL DR.
GREENWICH AVE.
GREENWOOD AVE.
HALIFAX DR.
HAVERHILL AVE.
HELEN AVE.
HICKORY ST.
HILLARD AVE.
HORNET RD.
HOUSTON DR.
HUDSON LN.
HUTCHINSON ST.
ILLINOIS AVE.
IMPERIAL DR.
JAMES ST.
JANET CT.
JANET DR.
JEFFERSON BLVD.
JEFFERSON PARK RD.
JERILYNN CR.

JEWETT ST.
JOANNA DR.
JUNIPER AVE.
KALMER RD.
KAREN DR.
KENYON AVE.
KILVERT ST.
(# 157 and lower)
LARKSPUR RD.
LARSON DR.
LAVAN ST.
LEONARD AVE.
LEWIS ST.
LILLIAN CT.
LISTER ST.
LODI CT.
LONG ST.
LONGVIEW DR.
MAIN AVE.
(from 765 and higher)
MALBONE ST.
MANOMET CT.
MAPLE ST.
(# 's 124 and lower)
MARJORIE LN.
MARVIN ST.
MELBOURN RD.
MESSENGER DR.
MIDGET AVE.
MIDWAY DR.
MISSOURI DR.
MYRTLE AVE.
NAPLES AVE.

NATICK AVE.
NAUGHTON AVE.
NAUSAUKEET RD.
NICHOL AVE.
NOYES ST.
OAK HILL AVE.
OAK TREE AVE.
OHIO AVE.
ONSET ST.
ORLEANS CT.
PAISLEY ST.
PAMELA CR.
PENNSYLVANIA AVE.
PEVEAR AVE.
PLUM ST.
POCASSET ST.
POST RD.
(#'s 2700 and higher)
POTTERS AVE.
PRESTON DR.
QUIMBY ST.
QUISSET CT.
RED OAK CR.
ROME AVE.
ROSALIND CT.
ROUNTHILL CT.
RUSTIC WAY
SARATOGA RD.
SCENIC DR.
SHALOM DR.
SHARON ST.
SOLAR DR.
SPOONER AVE.

STATE PARK AVE.
STRATFORD LN.
SUMMERLAND RD.
SYCAMORE AVE.
SYLVIA DR.
TEAKWOOD DR.
TEXAS AVE.
THAMES AVE.
THEODORE AVE
THRUSH RD.
THURBER ST.
TIERNAN AVE.
TREE POINT DR.
TRINITY ST.
TROPICAL CT
UTICA CT.
UTICA DR.
VAUGHN AVE.
VERMONT AVE.
VIEWESTA RD.
WALNUT ST.
WALTON AVE
WEIR RD.
WEST SHORE RD.
(even #'s)
WHITE ACORN CR.
WILLIAMSBURG CR.
WILLIAMSBURG DR.
WINSTON AVE.
WINSTON CT.

B

ACORN AVE.
AIRWAY RD.
ALABAMA AVE.
ALHAMBRA RD.
AMBER ST.
ARIZONA AVE.
ARROW AVE.
ASH ST.
ASPEN WAY
BARBER AVE.
BARDEN AVE.
BARRE CT.
BAYWOOD ST.
BEDFORD AVE.
BIGELOW CR.
BINGHAM ST.
BLY ST.
BOCCIA CT.
BRANCH RD.
BRETT CT.
BROAD ST.
BRUNSWICK DR.
BUCKLIN AVE.
BUDLONG AVE.
BUNKER ST.
BUTTONWOODS AVE.
(even and odd #'s 20
through 126)
CALDERWOOD DR.
CALIFORNIA AVE.
CAPEWAY RD.
CARMELL RD.
CARPENTER ST.
CASE ST.
CHERRY ST.
CHESTNUT ST.

CHILD LN.
CHRISTIE RD.
CLARKE ST.
COLE AVE.
COLLINGWOOD DR.
CONNECTICUT AVE.
COSMO ST.
COVEL CR.
DEACON AVE.
DEFRANCE CT.
DELAINE ST.
DELAWARE AVE.
DIANE DR.
DORINE AVE.
EARL ST.
EARLHAM WAY
EASTON AVE.
EDGEMONT ST.
ELKLAND RD.
ELM ST.
ELMWOOD AVE.
ETHAN ST.
EVERGREEN AVE.
FARNUM RD.
FIELD VIEW DR.
FISHER AVE.
FOUNTAIN AVE.
FREDERICK ST.
FRESNO RD.
FULLERTON RD.
GALANT DR.
GARY ST.
GEORGE ARDEN AVE.
GERTRUDE AVE.
GLADYS CT.
GLENHAM AVE.

GLORIA DR.
GOODRICH AVE.
GORHAM AVE.
GOULD AVE.
GRANT ST.
GRAYBAR ST.
GRAYMORE AVE.
GREELEY AVE.
GREENE ST.
GREENFIELD AVE.
GREENLAWN AVE.
GROTTO AVE.
GROVELAND AVE.
GUILFORD DR.
HARRINGTON AVE.
HARVEST RD.
HASBROUCK AVE.
HAVERFORD RD.
HAYES ST.
HIAWATHA ST.
HILLSDALE RD.
HOLLYWOOD AVE.
HOYLE AVE.
HUNT AVE.
IDAHO AVE.
IMERA AVE.
IRIS AVE.
JOHNSON AVE.
JONATHAN CT.
JULIET ST.
KAY ST.
KENTUCKY AVE.
KERNICK ST.
KILVERT ST.
(#'s 86 and lower)
LARKIN AVE.

LINCOLN AVE.
LINDA CIRCLE
LINK ST.
LOUISIANA AVE.
LUCILE ST.
LUFKIN CT.
LYMAN AVE.
MAIN AVE.
(even #'s 680 and lower)
(odd #'s from 541 to 665)
MAJESTIC AVE.
MANN ST.
MANOLLA AVE.
MANSON AVE.
MAPLE ST.
(#'s 256 and higher)
MAPLEDALE RD.
MARQUETTE DR.
MARY BETH DR.
MARYLAND AVE.
MASSACHUSETTS AVE.
MASSASOIT DR.
MCKINLEY ST.
MICHIGAN AVE.
MIDDLE ST.
MINNESOTA AVE.
MODENA DR.
MONTANA AVE.
MONTEBELLO RD.
MORSE AVE.
MURRAY ST.
NEW YORK AVE.
NOLBETH DR.
NORMANDY DR.
NORWOOD AVE.
OAKRIDGE CT.

OBSERVATORY RD.
OLSON CT.
OUTLET AVE.
PALACE AVE.
PAVILION AVE.
PAWTUXET AVE.
PELL AVE.
PERRY AVE.
PETANSETT CT.
PETER ST.
PETTACONSETT AVE.
PETTIGREW DR.
PHILLIPS AVE.
PIERCE AVE.
PILGRIM CR.
PILGRIM DR.
PINE ST.
PLAIN ST.
POST RD.
(#'s 2570 and lower)
POTOMAC CR.
POWELL ST.
PULLMAN RD.
PURITAN DR.
RICHFIELD ST.
ROSELAND AVE.
ROSEWOOD AVE.
RUTLAND ST.
SACKETT ST.
SAND POND RD.
SANDLEWOOD AVE.
SANTA MARIA DR.
SARGENT ST.
SECOND AVE.
SENATOR ST.
SENECA ST.

SMITH CT.
SMITH ST.
SNOW RD.
STEPHENS AVE.
STRAWBERRY FIELD RD
TAFT AVE.
TENNESSEE AVE.
THIRD AVE.
THOMAS ST.
TOURTELOTT AVE.
TRASK ST.
VALLEY AVE.
VANDERBILT RD.
VEGA DR.
VERA ST.
VETO ST.
VIEW AVE.
VILLA AVE.
VILLAGE CR.
WALNUT GLEN DR.
WAY AVE.
WAY CROSS DR.
WELFARE AVE.
WESLEYAN AVE.
WEST GREELEY CR.
WEST SHORE RD.
(odd #'s)
WICKS CT.
WILMAR ST.
WOODWIND CT.
WYOMING AVE.
YELLOWSTONE AVE.