



The Commonwealth of Massachusetts
Office of the Inspector General

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August 23, 2006

Mr. Jon Fuller
Chairperson
Board of Selectmen
Town of Orleans
Town Hall
19 School Road
Orleans, MA 02653

Dear Mr. Fuller:

On June 1, 2006, this Office received a complaint that there are private cottages located on the south end of Nauset Beach, Orleans, Massachusetts (Town) that are not being assessed property taxes by the Town. On the same date, this Office contacted an employee of the Town Assessing Department who confirmed that there are several cottages located at the south end of Nauset Beach in Orleans which she believed to be privately owned. The employee informed us that she believed that the land that the cottages are located on is owned by the Town. She stated that the Town does not require that taxes be paid on these cottages.

On June 7, 2006, the Town Parks and Beach Superintendent advised that there are twelve cottages located on Nauset Beach, Orleans, Massachusetts.¹ He stated that the land the cottages are located on is owned by the Town but he believes that the cottages belong to private individuals. He explained that the Town took the land by eminent domain sometime between 1956 and

¹ During a subsequent telephonic conversation on 8/4/06 a Deputy Inspector General asked the Town Parks and Beach Superintendent whether the structures on the Nauset Beach land taken by eminent domain could fairly be described as cottages. He responded by stating that a better description would be "old hunting shacks" or "gunning shacks." He described them as "wooden structures" with a roof that can be used for sleeping.

1959. He advised that the cottages are seasonal and have no electricity or running water. He advised that to the best of his knowledge, the cottage owners are not assessed property taxes by the Town and that they have occupied the cottages tax free since 1956. He advised that there are 25 to 30 cottages located on the Chatham side of Nauset Beach which are privately owned and the Town of Chatham does collect taxes on those properties. He advised that if there was an emergency at any of the cottages, police and fire units from Orleans would respond.

On June 7, 2006, the Orleans Town Assessor confirmed that there are twelve cottages located in Nauset Beach, Orleans and that the land they are located on is owned by the Town. He advised that the Town does not assess property taxes on the cottages and he believes that the cottages are owned by the Town. He also believes that the Town collects no rents from the people who occupy the cottages. He advised that he has no knowledge of who occupies the cottages.

On June 19, 2006, the Town Administrator advised that he intended to meet with the Town Counsel to discuss the legal status of the twelve Nauset beach properties. He advised that he intended to authorize the Town Counsel to conduct a full title search regarding the properties in question. On July 12, 2006 the Town Administrator provided this Office with a copy of the Town Counsel's report concerning his research pertaining to the twelve camps located on Nauset Beach in Orleans.

The report of the Town Counsel has been reviewed by this Office and it disclosed that the Town acquired title to the land upon which "ten camps"² were located on Nauset beach in Orleans in 1957. This was accomplished by means of an Eminent Domain Order of Taking, pursuant to M.G.L. c. 79. The 1957 Order "specifically stated that the fixtures, structures, and buildings were not included in the Taking and permitted the owners a reasonable time for their removal, i.e. on or before July 1, 1958." The report reveals that none of the ten camps were removed by the above date.

The report reflects that there was a second Eminent Domain Order of Taking issued in 1959 that resulted in the Town acquiring Title to additional land located on Nauset Beach in Orleans. There were two camps located on the

² The Town Counsel's report repeatedly characterizes the structures located on the Nauset Beach land taken by the Town by eminent domain in 1957 and 1959 as "camps."

land acquired by the Town in the 1959 Taking. The 1959 Taking “did not state whether the structures were included in the Taking and did not include a time period for the removal of the [two] camps.” The report reflects that there are twelve camps in total that are connected to the land takings by the Town in 1957 and 1959.

The Town Counsel’s report further states that in 1959, five owners of five camps located on land related to the 1957 Order of Taking, conveyed land and the five camps located thereon to the Town by deeds.³ These owners reserved rights to use the five camps for the grantors’ lifetime and two of the five purported to extend rights of use in two of the camps to the life of a child as well. With respect to these five camps, the Town Counsel concluded by stating, “assuming that the [five] grantors had title to the camp structures, the above referenced deeds conveyed title to the Town ... subject to the reservations, to the extent that such reservations were legally effective.”

The Town Counsel did not find any deeds purporting to convey land and ownership rights in cottages to the Town concerning the other seven camps.⁴ The report indicates that the Town has permitted continued use of these seven camps by individuals up to the present time. It is likewise apparent that the Town has continued to allow occupation and use of all 12 camps by persons since the 1957 and 1959 eminent domain takings without collecting taxes or rent from those using the camps. The Town Counsel’s report comments on this issue and states, “Accordingly, going forward, if the Town continues to permit the camps on the land to be occupied for non-public purposes, then it would appear that the camp users would be liable to assessment under the provisions of G. L.c. 59, § 2(b) for their use of the land.

The Town Counsel also recommends that the Town make inquiry to determine whether any person still has any lawful rights regarding any of the twelve camps located on the Town beach property. If that inquiry fails to uncover existing reserved rights in the camps, the report recommends that

³ The report indicates that although the deeds purport to convey the land to the Town, the land was already owned by the Town because of the 1957 Order of Taking.

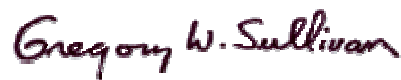
⁴ The report clearly states that there are no deeds of record from the additional five camp owners affected by the 1957 Order of Taking to the Town conveying ownership rights to the Town and reserving any rights to occupy the camps for any period of time. The report is silent on this point regarding the two camps affected by the 1959 Order of Taking. Nonetheless, one can infer the same conclusion from a fair reading of the text.

the Town notify the occupants and users that the camps must be vacated by a date certain, after which the Town will take possession of the camps.

The Town Administrator informed this Office by letter dated 7/27/06 that the Town Counsel's report has been brought to the attention of the Board of Selectmen. The Board of Selectmen voted to approve the Town Administrator's decision to move forward with the Town Counsel's recommendations as outlined in the report. The Town Administrator's letter also informed this Office that thirteen letters had been sent from the Town to the camp owners as recommended by the Town Counsel.

The Inspector General believes that public property must be available for use by all of the public. Beach property along Nauset Beach in Orleans is no exception. To the extent that the property at issue belongs to the Town, the Inspector General recommends that the Town heed the advice of its Legal Counsel and take possession of the camps as soon as possible. In the event that any person/persons retain any legally binding rights to possess the property, steps should be expeditiously taken to collect appropriate taxes on the affected properties. Please inform this Office of future action taken by the Town in connection with this matter. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads "Gregory W. Sullivan". The signature is written in a cursive style with a prominent initial 'G'.

Gregory W. Sullivan
Inspector General