

SPONSOR: Sen. Huxtable & Rep. Schwartzkopf & Rep. Parker Selby
& Rep. Harris & Rep. Hilovsky
Sens. Hansen, Hocker, Hoffner, Lawson, Sokola,
Townsend; Reps. Baumbach, Heffernan, Phillips, Romer

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 6

AS AMENDED BY

SENATE AMENDMENT NO. 1

AND

HOUSE AMENDMENT NO. 1

AS AMENDED BY

HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE AND CHAPTER 108, VOLUME 62 OF THE LAWS OF DELAWARE, AS AMENDED BY CHAPTER 99, VOLUME 72 OF THE LAWS OF DELAWARE, RELATING TO CLARIFYING THE WARNER GRANT TRUST AND THE JURISDICTION OF THE COURT OF CHANCERY AS ARBITER OF DISPUTES REGARDING THE WARNER GRANT TRUST LAND.

Section 1. Amend Chapter 108, Volume 62 of the Laws of Delaware, as amended by Chapter 99, Volume 72 of the Laws of Delaware, by making deletions as shown by strike through and insertions as shown by underline as follows:

WHEREAS, in 1682/3 the Court established by the Penn family in Lewes, Delaware, made a grant to Edmund Warner (recorded in the Office of the Recorder of Deeds for Sussex County in Deed Record Book A-1, page 14 et seq.) of the land described as follows:

"the land of the Cap Commonly called "Cape Henlopen, Lying on the North East side of the Creek formerly called the Whorekill to make a Coney Warrin on and Liberty to Build a House and seat a Warriner upon..."; and

WHEREAS, the purpose for the use of the land set forth in the grant was as follows:

“the Timber and feed of said land, and marshes thereunto Belonging be and forever hereafter Lye in Common for the use of the Inhabitants of the Town of Lewes and County of Sussex, as also free liberty for any and all of the Inhabitants of the said County to fish get and take of their oyster & cockel shells and gather plums, crambereys and Huckleburyes on the said land as they shall think fitt always..."; and

WHEREAS, the City of Lewes had been made the Trustee of this trust by an act of the General Assembly in 1857, found at 11 Del. Laws, C. 486, and continued through 57 Del. Laws, C. 170.

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WHEREAS, in 1972, the Attorney General sought instructions as to the proper uses of the Warner Grant lands; and

WHEREAS, the City of Lewes and numerous individuals have been made parties to extensive litigation as to the Warner Grant lands; and

WHEREAS, there is no agreement among the parties as to the exact boundaries of the Warner Grant lands in 1682; and

WHEREAS, natural monuments have moved and been redirected over the past three hundred years; and

WHEREAS, it is advantageous to the State and all parties concerned to once and for all time establish the boundaries of the Warner Grant lands and the uses to which they can be ~~put.~~ put; and

WHEREAS, the contingency in Section 9 of this Act was fulfilled on September 8, 1982, when the Court of Chancery dismissed the Warner Grant litigation, see *In the Matter of Certain Lands in the Vicinity of Cape Henlopen Etc v. Stango*, 1982 Del. Ch. LEXIS *546 (Del. Ch. 1982); and

WHEREAS, the 152nd General Assembly desires for the Department of Natural Resources and Environmental Control ("DNREC") and the public to have a clear understanding of the intent behind the Warner Grant Trust and DNREC's role in preserving the Warner Grant lands for the public benefit; and

WHEREAS, it is advantageous to clarify the permitted uses of land now remaining in the State's control within the boundaries of the Warner Grant, known as the "Warner Grant Trust Lands", and to establish that DNREC has a duty to act as Trustee on behalf of the public interest in preserving and protecting the Warner Grant Trust Lands with the Court of Chancery having exclusive original jurisdiction over any disputes regarding such uses; and

WHEREAS, the 152nd General Assembly declares that as to the Warner Grant Trust Lands, the first priority and concern of all those holding the Warner Grant Trust Lands in trust must be, now and in perpetuity, the preservation and protection of the natural and historical resources encompassed by the Warner Grant Trust Lands, which are a most precious resource of this State and its citizens.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. There is hereby created the Warner Grant Trust Lands.

Section 2. The Warner Grant Trust Lands include property located in two parcels generally described as follows:

PARCEL NO. 1 All that certain tract, piece or parcel of land situate partly within the Corporate limits of the City of Lewes and partly without the Corporate limits of the City of Lewes, and also being situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, and being bounded as follows:

On the North by Cape Henlopen Drive (County Road No. 19), the Barcroft Company, the Delaware Bay and the Delaware, Maryland and Virginia Railroad Co., on the East by the Atlantic Ocean, on the South by North Shores, on the Southwest in part by the Lewes and Rehoboth Canal, on the West by the Freeman Highway (County Road No. 23), and being more particularly described as follows:

Beginning at a point at the intersection of County Road No. 23, known as Freeman Highway and County Road No. 19, known as Cape Henlopen Drive, thence along County Road No. 19 in an Easterly direction, 2700 feet more or less to a point, thence in a Southerly direction 1000 feet more or less to a point, thence in an Easterly direction 3500 feet more or less to a point, thence in a Northerly direction 2,648 feet more or less to a point at the low water mark of the Delaware Bay, thence along and with the low water mark of the Delaware Bay in a Northerly direction and continuing Easterly and Southerly around the Point known as Cape Henlopen and continuing along the low water mark of the Atlantic Ocean to a point at the northeast corner of a 15.44 acre tract of land now or formerly of the United States of America, for use by the Department of Navy, thence continuing along the low water mark of the Atlantic Ocean in a Southerly direction 18,750 feet more or less to a point, thence leaving the low water mark of the Atlantic Ocean in a Southwesterly direction 1100 feet more or less to a point, thence in a Northwesterly direction 264 feet more or less to a point, thence in a Southwesterly direction 165 feet more or less to a point, thence in a Northwesterly direction 1171 feet more or less to a point, thence in a Southwesterly direction 616 feet more or less to a point at the low water mark of the Lewes and Rehoboth Canal, thence with same in a Northwesterly direction 2222 feet more or less to a point, thence in a Northwesterly direction 664 feet more or less to a point, thence leaving the Lewes and Rehoboth Canal in a Northwesterly direction 1253 feet more or less to a point, thence along the original Course of the Lewes Creek in a Northwesterly direction 6000 feet more or less to a point at the low water mark of the Lewes and Rehoboth Canal, thence with same in a Northwesterly direction 9500 feet more or less to a point at County Road No. 23, thence with same in a Northwesterly direction 3000 feet more or less to the point of Beginning.

Containing 3200 acres more or less of land (by scale);

EXCLUDING THEREFROM those certain parcels of real property, depicted upon Sussex County Tax Map 3-35-9, Parcels 13 and 13.01 (owned by and assessed to Hazell M. Smith) and that certain parcel of real property depicted upon Sussex County Tax Map 3-35-9, Parcel 13.02 (owned by and assessed to Gills Neck Realty Co.), the said parcels also being depicted upon a certain plat entitled "Plat of the Lands of Fish Products Co." dated November 20, 1948 and recorded in the Office of Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware in

Plot Book 1, Page 63, said lands being depicted thereon on the South side of Old Lewes Creek, and on the North side of the Lewes-Rehoboth Canal.

and

PARCEL NO. 2 All that certain tract, piece or parcel of land situate in the Corporate limits of the City of Lewes, and also being situate in Lewes and Rehoboth Hundred, Sussex County, and State of Delaware, and being bounded on the North by the low water mark of the Delaware Bay, on the East by Roosevelt Inlet, on the South by the low water mark, on the Northerly side of the Broadkill River, on the West by the line of the Corporate limits of the City of Lewes.

Containing 190 acres more or less of land (by scale).

The above parcels are to be surveyed to determine the bearings and distances of the above parcels and permanent markers are to be placed at the corners.

The above description is based on a compilation of various deeds and plots as well as general preliminary surveys.

The deeds and plots are as follows:

1. Lease to Barcroft Company, of record in the Office for Recording of Deeds of Sussex County at Deed Book 630, Pages 620, et sequi, and a plot found at Deed Book 630, Page 625.

2. Agreement between the City of Lewes and the State of Delaware, of record in the Office for the Recording of Deeds of Sussex County at Deed Book 774, Page 61.

3. Agreement between the Commissioners of Lewes and the State of Delaware, of record in the Office for the Recording of Deeds of Sussex County at Deed Book 586, Page 286.

4. Quitclaim Deed between the United States of America and the State of Delaware, of record in the Office for the Recording of Deeds of Sussex County at Deed Book 581, Page 426.

5. A plot title "Perimeter Survey, U. S. Naval Facility, Fort Miles, prepared by Edward H. Richardson Associates, Inc. of record in the Office for the Recording of Deeds of Sussex County at Deed Book 698, Page 612.

6. A plot of the Cordons Pond area prepared by the Delaware State Highway Department. (Ruyter survey of 1955)

Section 3. The Warner Grant Trust Lands further shall include any land, parcel or piece of lands now within the boundaries described in Section 2, supra, which is now owned by the Government of the United States of America, its agencies or departments, which lands are hereafter reverted to, escheated to or in any other way conveyed to the State of Delaware.

Section 4. All other lands not included within the description contained in Section 2 hereof presently owned by the State of Delaware, which it has been claimed, argued, contested, alleged or implied to be within the so-called Warner Grant,

are specifically excluded from the Warner Grant Trust Lands as delineated herein and are not subject to the Warner Grant Trust as established herein but shall hereafter and forever be lands of the State of Delaware; and those said lands lying in the area of the City of Lewes or adjacent thereto shall be administered by the City of Lewes according to the terms of its charter, 57 Del. Laws, Ch. 170. Title to lands which has previously been established to be held in fee shall remain undisturbed and held as heretofore.

Section 5.

(1) The Warner Grant Trust Lands shall be forever administered by the Department of Natural Resources and Environmental Control for the benefit of the people of Lewes, Sussex County and State of Delaware.

(2) ~~Said lands~~ Subject to paragraph (4) of this Section, the Warner Grant Trust Lands must be administered for the public benefit ~~as areas of public recreation, conservation and/or nature education and may not be used for private benefit to the detriment of such public benefit, subject, however, to use for railroad purposes existing at the time of this Act.~~ and in accordance with the following 3 governing priorities:

a. Conservation. The Department of Natural Resources and Environmental Control shall plan, develop, and maintain the Warner Grant Trust Lands to preserve in every reasonable degree the scenic, historic, scientific, prehistoric, and wildlife values of the Warner Grant Trust Lands.

b. Nature education. The Department of Natural Resources and Environmental Control shall provide displays, tours, and interpretive programs that focus on the unique flora, fauna, and ecosystems found in the Warner Grant Trust Lands, to increase the public's knowledge and awareness of the environment and environmental challenges.

c. Public recreation.

1. Except as provided under paragraph (2)c.2. of this Section, the Department of Natural Resources and Environmental Control shall provide for outdoor, nature-based recreational activities, including athletic or other outdoor recreational activities, fishing, including drive-on surf fishing, birding, camping, housing provided in facilities dedicated to educational programs, and services offered by vendors supporting outdoor, nature-based recreational activities.

2. The Department of Natural Resources and Environmental Control may not develop hospitality amenities such as a restaurant, hotel, hostelry, or entertainment center.

(3) The Department of Natural Resources and Environmental Control shall administer the Warner Grant Trust Lands so that a private benefit or financial gain to a for-profit enterprise or a public-private partnership is not detrimental to the public benefit set forth in this Act.

(4) A use or activity in existence on the Warner Grant Trust Lands as of January 1, 2023, including a concession stand, the rental of facilities by organizations, or a public-private partnership that supports the governing priorities under paragraph (2) of this Section, does not violate paragraph (2) or (3) of this Section.

Section 6. Any modification of the laws governing the Warner Grant Trust Lands shall require action by the General ~~Assembly of the State of Delaware and approval of the Court of Chancery of the State of Delaware. Any such modification shall be without prejudice to any parties affected by the same to litigate any issues pertinent to such modification.~~ Assembly. The Court of Chancery has original jurisdiction over disputes regarding the Warner Grant Trust Lands. With prior consultation with the Department of Natural Resources and Environmental Control and the Attorney General, a private right of action is retained for any resident of Sussex County, who are the original beneficiaries of the Trust.

Section 7. The Department of Transportation shall commence within three months of the effective date of this action a survey which shall develop a metes and bounds description of the lands generally defined in Section 2, supra, which description shall be recorded by the Attorney General in the Office for the Recording of Deeds in and for Sussex County upon its completion and its approval by the Court of Chancery of the State of Delaware. The Department of Transportation shall place suitable monuments to memorialize the boundaries of the Warner Grant Trust Lands.

Section 8. A sum of $15,000 is appropriated to the Department of Transportation from funds not otherwise appropriated for the purpose of conducting this survey. Any funds not spent by June 30,1981, shall revert to the General Fund of the State of Delaware.

Section 9. This Act shall take effect ten days after the Court of Chancery of the State of Delaware enters orders dismissing the Warner Grant litigation, being case numbers C.A. No. 439, 1972, and C.A. No. 518, 1974, Sussex County.

Section 10. This Act is intended to completely define, delineate and interpret the Warner Grant recorded in the Office of the Recorder of Deeds of Sussex County and State of Delaware in Deed Record Book A-1, Page 14, et sequi.

Section 2. Amend Chapter 45, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4523. Warner Grant Trust Lands.

(a) For purposes of this section, "Warner Grant Trust Lands" means as established under Chapter 108 of Volume 62 of the Laws of Delaware, as amended by Chapter 99 of Volume 72 of the Laws of Delaware and [the Chapter and Volume number of the Laws of Delaware for this Act].

(b) The Department of Natural Resources and Environmental Control shall administer the Warner Grant Trust Lands as required under Chapter 108 of Volume 62 of the Laws of Delaware, as amended by Chapter 99 of Volume 72 of the Laws of Delaware and [the Chapter and Volume number of the Laws of Delaware for this Act].

(c) Section 4517(a) of this title does not apply to this section.

SYNOPSIS

In 1682 or 1683, the Sussex County Court, created by William Penn, created the land grant that is the subject of this Act ("Warner Grant"). As this Act describes, the Warner Grant consists of land in and adjacent to the City of Lewes largely consisting of what is now Cape Henlopen State Park. As the United States District Court for Delaware would later find, the Warner Grant created a "right of common" held in trust for the benefit the people of Lewes and Sussex County. See United States v. 1,010.8 Acres Situate in Sussex County, 56 F. Supp. 120 (D. Del. 1944).

In the early 1970s, nearly 300 years after the Warner Grant was created, a dispute arose over the meaning of the Warner Grant and who had authority to enforce the right of common under the Warner Grant when the City of Lewes leased land in the Warner Grant to a real estate company for the purpose of constructing a housing development. Lawsuits were filed by members of the public and the Attorney General. Eventually, the 130th General Assembly settled that dispute by enacting Chapter 108 of Volume 62 of the Laws of Delaware to establish the Warner Grant Trust ("Trust") and set the boundaries of the lands in the Trust, known as the Warner Grant Trust Lands ("Lands").

In light of recent proposals for the use of the Lands, the 152nd General Assembly finds that clarification is necessary as to the permitted uses of the Lands and as to how future disputes are to be litigated. To that end, this Act does all of the following:

(1) Makes clear that the Department of Natural Resources and Environmental Control ("Department"), as trustee of the Warner Grant Trust Lands, must administer the Lands for the public benefit and adhering to 3 governing priorities: (1) conservation, (2) nature education, and (3) public recreation.

(2) Makes clear that the Department must administer the Lands so that a private benefit or financial gain to a for-profit enterprise or public-private partnership is not detrimental to the public benefit.

(3) Provides that the Court of Chancery has original jurisdiction over disputes regarding the Lands.

(4) Provides that the Attorney General must represent Delawareans in the enforcement of the Trust and, if the Attorney General declines to do so, any resident of Sussex County may sue to enforce the Trust and the Court of Chancery must award attorney's fees to the plaintiffs who prevail in enforcing the Trust.

(5) Includes a provision in the Delaware Code, § 4523 of Title 7, referencing the Department's duties under this Act to preserve memory of this Act for future generations.

Section 1 of this Act amends Chapter 108, Volume 62 of the Laws of Delaware, as amended by Chapter 99, Volume 72 of the Laws of Delaware, which contains 10 sections labelled Section 1 through Section 10. Section 2 of this Act amends the Delaware Code to create a new § 4523 of Title 7.

Author: Senator Huxtable