

# Court rules for open access to Nun's Beach

By Kris DiLorenzo

**DOBBS FERRY** — The Village of Dobbs Ferry and the Friends of the Wickers Creek Archaeological Site (FOWCAS) scored a victory in their lawsuits against the Homeowners Association (HOA) of The Landing townhome complex last month, when the state Supreme Court ruled in favor of unrestricted daytime access — for Dobbs Ferry residents — from The Landing to Nun's Beach, on the east bank of the Hudson River.

The Village had sued the HOA in April 2016, and FOWCAS launched its suit in November 2017.

Both lawsuits challenged the HOA over its closure of the footbridge that crosses over the Metro-North railroad tracks and leads to Nun's Beach. The small public beach is archeologically significant because of its use by the original inhabitants of the Hudson Valley, the Lenape tribe of the Delaware Nation.

According to the Dec. 8 court order in the FOWCAS case, "...the HOA shall not lock the gate on the footbridge during daylight hours or otherwise unreasonably block the village residents from traversing the footbridge during daylight hours."

The HOA filed an appeal within

days of the opinion.

Todd D. Ommen, managing attorney at the Pace University Environmental Litigation Clinic and adjunct professor of law at Pace's Elisabeth Haub School of Law, handled the FOWCAS case pro bono. He told the Enterprise, "I think their [the HOA's] chances of success on appeal are very slim. They can't raise new arguments on appeal. They missed their chance."

The decision cited a 2000 court order that "Summit [the original developer] shall take all necessary steps to support the creation of a walking ease-

CONTINUED ON PAGE 6

## Landing gate

CONTINUED FROM PAGE 1

ment for the pleasure and benefit of the general public... In furtherance thereof, Summit shall maintain the footbridge over the railroad tracks." In addition, the upkeep of the easement property was declared the responsibility of the developer and any successors.

Before Summit Residential of Valhalla purchased the 35.5-acre property in the late 1990s, the land was owned by Resolution Trust Corp., a government-owned asset management company that took it over from Mount Mercy Associates, when that developer went bankrupt in 1989. The first homeowners arrived in the winter of 2000-2001.

The easement consists of five parcels of land located on either side of the tracks, including a waterfront parcel. Wickers Creek, another archaeological site, runs through a portion of the easement.

A third site, a shell midden on The Landing property, was buried during construction of the complex; a plaque marks its location.

Though a 1998 deed establishing the easement accommodated the general public, a superseding 1999 deed granted access only for Dobbs Ferry residents.

The new decision also confirmed that a 2001 court order granted the right to walk "on, over, and upon" the easement property, but only during daylight hours.

"We won the right to a walking easement," Ommen stated. "Our whole case is based on the 2000 document."

"These decisions are a big deal," FOWCAS president Miriam Sivak

wrote in an e-mail to the Enterprise. "I see it as precedent-setting for any other situation where perhaps another group tries to restrict access to the Hudson."

The FOWCAS complaint alleged that the HOA breached the 2000 agreement by restricting access from one portion of the easement to another, and that the only question for the court to rule on was the meaning of "in furtherance thereof" and "shall maintain."

The legal wrangle began in 2015, when the HOA locked the gate to the footbridge, preventing access to the beach. The HOA stated that people crossed the bridge at night to hold parties at the beach, causing noise and littering the site. FOWCAS agreed that locking the gate at night was reasonable. However, the HOA kept it locked during the day.

The Village gave the HOA notice that locking the gate during daylight hours was a violation of the 2000 agreement, but the gate remained locked, and in April 2016, then Village Attorney Darius Chafizadeh filed suit in state Supreme Court against the HOA.

The recent order noted that in the Village's case, the court had previously decided that the amended easement guaranteed village residents access to the beach via the footbridge, and that "the footbridge is to be used in furtherance of the Conservation and Scenic Easement."

Since then, despite the HOA's attempt to have the FOWCAS suit dismissed, the court decided in favor of FOWCAS and the Village, and also denied the HOA's attempt to recoup legal expenses from FOWCAS.

Sivak and FOWCAS board member Peggie Blizzard have brought up the

issue of taxpayer money, which the Village had to use in pursuit of its case.

"Now that the judge has rendered an opinion, why are they appealing the verdict and seeking to spend their own tax money and that of the entire village to keep this going?" Sivak asked.

"The residents of The Landing are also residents of Dobbs Ferry," Blizzard noted in an e-mail. "The Landing pays taxes to Dobbs Ferry, the same as we do, and their money is being wasted on these frivolous, prolonged court fights."

Two other benefits will be realized as a result of the court decision. "Every walker and runner on the Aqueduct Trail who wants to detour down to the river will be thrilled," Mavis Cain offered. Cain is president of the Friends of the Old Croton Aqueduct and a FOWCAS board member.

Randy Klipstein, a FOWCAS board member and resident of The Landing since 2001, called the court decision "a fabulous victory... access to the easement opens the possibility of a trail from The Landing to Waterfront Park and the train station. This would extend RiverWalk, the dream of a pathway paralleling the Hudson River for the entire length of Westchester County."

The Westchester RiverWalk is a planned 51.5-mile pathway that would link village centers, historic sites, parks, and river access points via a connection of trails, esplanades, and boardwalks. RiverWalk would span 14 municipalities, with 32.9 miles of its route publicly accessible using newly constructed sections, existing sidewalks, paths within parks and facilities, including Scenic Hudson Park in Irvington, and trails, including the Old Croton Aqueduct Trail.



# Points of View

## FROM THE EDITOR



## Let it end

Following four years of legal wrangling, the gate to the footbridge connecting The Landing to Nun's Beach in Dobbs Ferry is open during daylight hours. The sign on the gate (pictured above) lists the times the gate automatically locks and unlocks, which vary by month.

The legal dispute has pitted the Landing Homeowners Association against the Village of Dobbs Ferry and the Friends of Wickers Creek Archaeological Site. The Homeowners Association has appealed the latest decision, which was issued last month.

The story about that decision, which starts on this week's front page, delves into the details about the situation. There is, however, one detail not mentioned.

Locked or unlocked, getting to the gate requires a bit of a schlep for the general public. Public parking is not permitted on the streets inside The Landing. Nor is it permitted in the parking spaces next to the gate, alongside the townhouse complex's clubhouse.

Before the road that leads to the gate, there is a sign that reads "Private Property/No Trespassing/Area Closed/11:00 p.m. to 6 a.m./ Violators Will Be Prosecuted." Next to the gate, signs for the spaces warn "Authorized Parking Only/All Unauthorized Vehicles Will Be/Towed or Immobilized."

To reach the gate, the general public must bike or run or walk from the Old Croton Aqueduct Trail or from Broadway. From Broadway, the distance is about half a mile. From the aqueduct, it's less.

Based on those logistics, Nun's Beach will never attract busloads of visitors. Even carloads seem unlikely. Restricting access to daylight hours is a fair compromise that all involved should agree to maintain. Let the legal wrangling end.