

# Shoreline-access panel settles on 10-foot buffer zone; won't address question of beach chairs



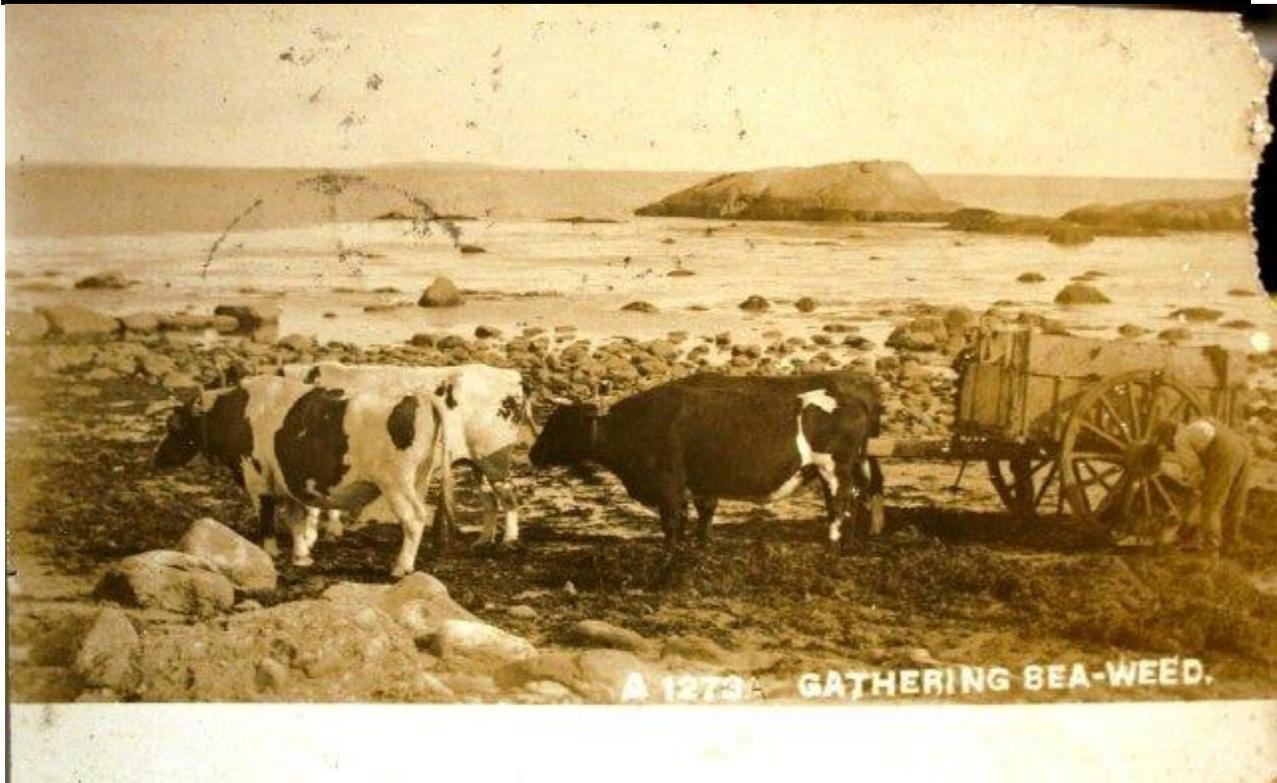
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They didn't manage to find an oxcart, but the special House commission on shoreline access did reach a consensus on Thursday: There should be a 10-foot buffer zone above the high-tide line where the public can exercise their constitutional rights.

And the commission signaled that it doesn't intend to take up the question of what those rights entail —such as whether they include laying down a towel or setting up a beach chair.

"I think our charge is limited to the area in which the substantive rights are exercised, rather than what those rights are," said the commission's vice chair, House Minority Leader Blake A. Filippi, R-Block Island.

That amounts to a victory for shoreline access advocates who had worried that the commission was on track to propose legislation that would reclaim a portion of the beach for public use, but with the caveat that beachgoers had to keep moving.

Instead, the bill that will soon be finalized and sent to the General Assembly for consideration will be intended to resolve just one key issue: What portion of the shoreline is open to everybody, and what portion is private property?

Dennis Nixon, professor emeritus of marine affairs at the University of Rhode Island, characterized the goal as "restoring what was taken from the public" in 1982, when the Rhode Island Supreme Court sided with a homeowner who claimed that his property extended to the mean high tide line.

That case, *State v. Ibbison*, set a precedent that's proven to be problematic: Finding the mean high tide line requires specialized surveying equipment and knowledge of tidal datums, so the average beachgoer has no way of identifying where it is.

Plus, as scientists from the University of Rhode Island's Coastal Institute discovered when they surveyed South Kingstown Town Beach, the line is underwater for most of the day.

In their previous meetings, commission members agreed that the "recognizable high tide line" — commonly known as the wrack line, seaweed line, or swash line — would be a more logical boundary. But that

prompted another question: Since people typically avoid walking through piles of washed-up seaweed, how far above the swash line they can go?

On Thursday, most commission members agreed that 10 feet made sense. Nixon said that there was a "strong precedent": Ox carts that would have been about eight to 10 feet wide traditionally travelled above the wrack line to gather seaweed.

While no one actually managed to track down an ox cart before the meeting, commission chair Rep. Terri Cortvriend, D-Middletown, and clerk Michael Hogan did manage to locate some historic photographs with help from the State Archives.



Filippi offered a more modern — and romantic — formula. The buffer "should allow enough room for two couples walking hand in hand to pass each other on the beach," he said. By his calculations, that meant roughly nine to 10 feet.

"My girlfriend and I, we held hands this weekend, and we measured how much space that we took up while we were walking, and it was just over four and a half feet," Filippi said.

Cortvriend, Coastal Resources Management Council executive director Jeff Willis, Save the Bay attorney Kendra Beaver, Julia Wyman of the Roger Williams University's Marine Affairs Institute and Rhode Island Sea Grant, and former Rhode Island assistant attorney general Michael Rubin were also among the members of the commission who expressed support for a 10-foot buffer.

Land surveyor Mark Boyer and former Rhode Island Supreme Court Judge Francis X. Flaherty were initially skeptical. "I don't think people have the right to spread out," Flaherty said, arguing that four to six feet would be better.

After it became clear that 10 feet was the consensus, both Boyer and Flaherty said that they would go along with it.

The lone dissenter was David Splaine of the Rhode Island Association of Realtors, who had taken a walk down to Warwick City Park Beach that morning with a tape measure. At the 8:22 a.m. high tide, the wrack line was about nine feet above the water's edge, he told the committee.

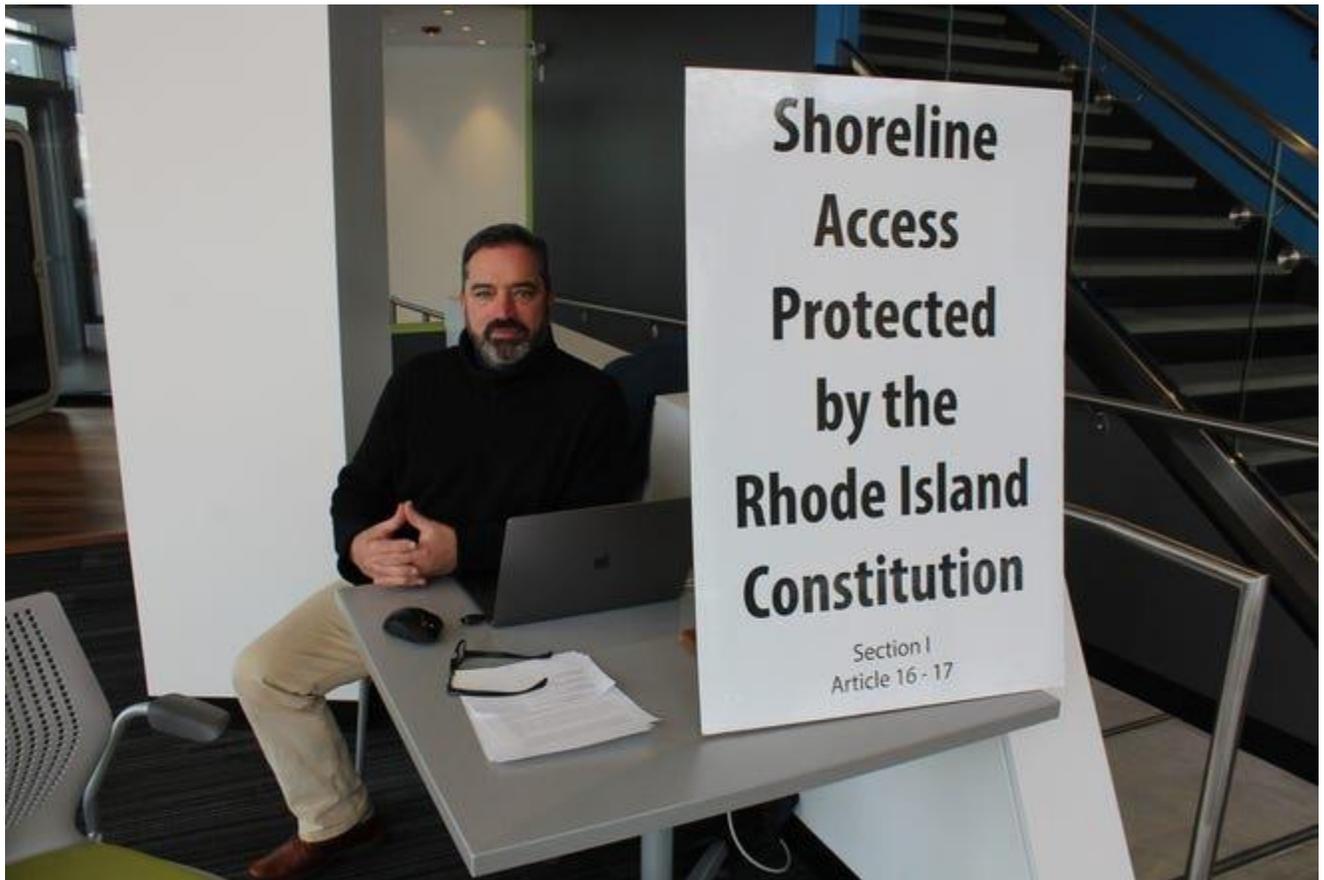
That would suggest that people could walk below the wrack line without getting their feet wet "a large percentage of the time," Splaine said.

Nixon pushed back, arguing that conditions are very different on oceanfront beaches that get more wind and wave action than upper Narragansett Bay. And the ocean beaches tend to be where most disputes over property boundaries have occurred, he said.

"We've been fighting over these same beaches for 50 years," he said. "We need to get this straightened out."

The next step will be for Cortvriend and Filippi to finalize the wording of a bill that reflects the commission's consensus, and introduce it in the General Assembly.

"This isn't the beginning of the end, but the end of the beginning," Filippi said, urging members of the public to remain involved in the process. "There's a lot of hard work over the next four or five months to get this thing across the finish line."



In the last few minutes of Thursday's meeting, Flaherty raised the question that had been on activists' minds: Would the bill say anything about whether people are required to keep moving while they're on the 10 feet of dry sand above the swash line?

The answer was no. But it's a potentially thorny legal question that could reemerge in the future.

The Rhode Island constitution states that the public "shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore."

To advocates, the key words are "including but not limited to" — which would appear to indicate that the public's right to use the shoreline isn't exclusively restricted to fishing, gathering seaweed, swimming or passing along the shore.

But Nixon, who helped draft the amendment that codified those four rights at the 1986 constitutional convention, told the commission last fall that the idea that you have a right to throw down a beach blanket and spend the afternoon is a widespread misconception.

Broadly speaking, only activities that were taking place along the shoreline in Colonial times — like fishing and gathering seaweed — are protected "privileges of the shore." Besides the four specific examples that already are codified in the constitution, it's hard to think of many others that "have strong historical support," Nixon said.

Launching a boat would likely qualify, he added, and you could potentially make the case that someone who is swimming would need to take breaks to sit on the shoreline and rest.

"But we can't just throw something into the constitution right now without another convention," he warned.

Activists remain skeptical. And concerns boiled over after the commission's last meeting, when former Warwick state Sen. Mark P.

McKenney proposed legislation stating that "no rights to the shore are conferred for setting up tents, chairs, umbrellas, grills, nor implements for loud music or noise." (McKenney did not attend Thursday's meeting.)

Scott Keeley, the Charlestown resident who was arrested while sitting on the beach and collecting seaweed in 2019, warned that any law that's designed to ensure that people keep moving would just lead to more security guards along the coast.

"Certainly, we shouldn't be letting the perfect get in the way of the good," he told *The Providence Journal* in late February. "But this is far worse than that. This is losing your head to save your heart."

Keeley's arrest, which sparked an uproar, is largely the reason that the House commission on shoreline access exists. But if scrapping the mean high tide line as a boundary comes with the trade-off that you're not allowed to bring a beach chair and sit down, "then we're better off with nothing," he said.

In the weeks leading up to Thursday's meeting, Keeley held a series of letter-writing parties in Providence and South County and urged people to make their views known to commission members.

"I don't think I'm the only person that wants to sit along the beach," he said. "If that's the case, I'll shut up."

He wasn't: Dozens of letters flowed in.

"We have a once in a lifetime opportunity to get this right, for our residents now and for generations to come," added Cynthia Zerquera-Martin, who serves as chairman of the Town of Narragansett's Coastal Access Improvement Committee.

"I can't always just walk along the water's edge," added Thomas Micele of Westerly. "I'm old; sometimes I just want to bring my chair and just watch the waves. This is therapy."