



# The Avalon Home and Land Owners Association

JOSEPH CLAYTON ON TIDELANDS/RIPARIAN RIGHTS

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Tidelands refer to land now or at one time below tidal waters. He took as an example a riparian right application for a waterfront property in which 25% was affected by tidelands. In order to develop the property and to build a dock, a Waterfront Development Permit is required. If a dock is present, a permit might not have been obtained in the past so the dock would not be legal. The State can charge rent for a dock to exist and can charge back rent if the appropriate permits had not been received for the dock originally.

New Jersey is the owner of lands now, or formerly subject to tidal flow. The waterways do not have to be navigable. In the past developers may have illegally filled tidal areas. In the 1960's in a court case (*State v O'Neill*) over Hackensack Meadows, it was ruled that squatter's rights and the statute of limitations do not apply. The State was ordered to catalog its tideland holdings. There were exceptions to the tidelands requirements:

Prior to 1851 riparian owners could reclaim land to the low watermark so the State had no claim. Between 1851 and 1891 land could be reclaimed if a freeholder license was obtained. (Warf Act). After the repeal of the Warf Act land could be granted by the State. Under the Waterfront Development Statute a permit would be required for land adjacent to water.

In 1981 a constitutional amendment was passed that if the State did not define its claims by 1982 and the lands mapped, any land that had not been tide flowed for 40 years would be exempt. Artificial canals and dunes are not owned by the State unless there was a natural creek bed there. The maps did not have to prove State ownership, merely the assertion of a claim. The maps cover all the tidal areas in New Jersey.

The first maps appeared in 1982. The maps were prepared from data from various sources going back to the mid 19th century. There is a base photomap - to national map accuracy standards. Each map covers 900± acres. An overlay has been created for each map that shows the State assertion of a claim. Aerial photos used in map preparation are available going back to 1932. Revised photos are taken every few years.

In preparing its assertion of a claim the State used the most recent source that showed the presence of tidelands. Maps are available in the County Clerk's Office.

An application for claim is made to the State by completing the required forms, and may take two years or more to settle. The State starts claim settlement at the present fair market value. [The money obtained goes into a fund for free public schools.] It is very difficult to address real equitable issues. An appraisal is needed, and the State may ask for more appraisals as the process drags out. Eventually the Tidelands Council fixes the value of the settlement.

The Tidelands Council used to give good faith discounts (for example, if you purchased your land without knowing that tidelands were present) if you purchased the land before the maps were filed with the county clerk. Under certain circumstances the State has said it will negotiate instead of litigating - if the claim came from data that pre-dated the 1932 photos, a reduction could occur. The State recently found some photos from 1920-1922 that show most of the coast; as a result a risk discount will not be given. The claim would be denied if you have proof that the map is wrong.

A recordable form expressing a "Statement of No Interest" would be issued and filed with the appropriate authorities. If you have an old riparian grant read it carefully - there may be some issues that have to be taken care of, e.g., the old grant documents must show a break in the high water line that would indicate a creek entering through your property. This would result in there being no interest.



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The Avalon lagoons are a very interesting case. Two waterfront development permits were issued by the state in the 1960's. State practice at that time gave the permit before the grant was completed. Lagoons were dug, sand pumped and the lots leveled in the meantime. The riparian grant was not completed. Houses were built but no grant fees were paid. Eventually the State devised a program of payments between \$500 and \$5000, which the Governor denied. Some properties on 4th and 5th Avenues and 42nd Street were not part of the original agreement.

Initially the State gave a discount based on 1984 values. This was changed in the 1990's to present market values. There may be liability on the part of the Title Company. This would be included on the settlement papers. In which case a claim should be made to the Title Company, however, there can be a lot of variables, such as the liability being limited to the value of the mortgage. Some title companies have paid. The State has not tried to enforce claims until a property comes up for sale. To find out if there is a potential problem go to the County Clerk's Office: Look at the map index to get a seven-digit number. Using that number look at the Mylar and overlays to see if there is a problem. At that point a survey should be obtained, at which time steps can be taken to deal with the situation.