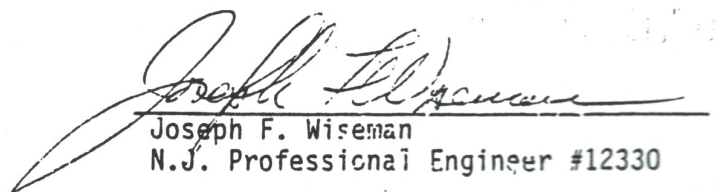


HISTORICAL BACKGROUND OF  
COLONY LAKES DEVELOPMENT

STAFFORD TOWNSHIP  
OCEAN COUNTY, NEW JERSEY

TAYLOR, WISEMAN AND TAYLOR  
Consulting Engineers  
306 Fellowship Road  
Mount Laurel, NJ 08054



Joseph F. Wiseman  
N.J. Professional Engineer #12330

#15236  
December 6, 1985

## HISTORICAL BACKGROUND OF COLONY LAKES DEVELOPMENT

Taylor, Wiseman & Taylor has been involved in the development of Beach Haven West since 1950. They have participated in securing all of the riparian grants and federal, state, county and municipal approvals for the entire project. They were responsible for the surveying, planning and design of roads, utilities and lot layouts and for stake out of improvements during construction. Up until 1972 the client for this work was Jerome and Herbert Shapiro. In 1972, Lincoln Property Company became interested in the property and Taylor, Wiseman & Taylor did feasibility studies and then took over the surveying, planning and design function for them when they acquired the project. The following is a brief history of the Beach Haven West Development.

Prior to 1973 the development was known as Beach Haven West. In 1973 the name was changed to Shelter Bay and in 1974 the name was again changed to Village Harbour. The area around the lakes was known as Section 12 B and later as Section 12 A of Village Harbour and is now known as Colony Lakes.

Prior to 1967 almost all of the construction was restricted to a lagoon type of development. In anticipation of extending the lagoon development upstream along Mill Creek (See Figure 1) to a property line commonly known as the Ann West Line, all of the trees and undergrowth were cleared from the northern bank of Mill Creek for a width of between 1000 to 1800 feet from the eastern tree line to the Ann West Line. The extent of the tree clearing as of September 25, 1967 can be seen in Figure 2. This can also be seen on numerous aerial photographs.

In 1967, after most of area now encompassing the lower lake had been cleared, the Shapiros were approached by the Contractor for the Route 72 construction project about the creation of a borrow pit to provide fill for the highway project. As a result of this contact, Taylor, Wiseman & Taylor was instructed to prepare a plan for a borrow pit that could be used as a source of material for the highway construction and would ultimately result in aesthetically pleasing lakes for future development by the Shapiros.

One of the main reasons for converting from lagoon development to a lake development in this area was the growing concern over the possibility of salt water intrusion into the ground water that could result from deeping of the Mill Creek invert and extending it into upland areas. By creating the lakes and maintaining them at levels above the mean high water in the bay and it's estuaries, it would be insured that the flow of ground water would be maintained from the upland areas to the surrounding streams and ultimately to the bay.

The lakes were excavated and Jennings Road and the cul-de-sac on the lower lakes were rough graded during 1967 and 1968. As can be seen from aerial photographs and topographic maps. The intermittent stream parallel to Mill Creek was cut off from Mill Creek by the "humus" pile located at the upper end of the lower lake. Between 1968 and 1973 the only activity on the lake sites was the installation of sluice boxes and outlet structures for the lakes.

In 1973 it was decided that the previously approved crossing of Mill Creek should be moved from William Cook Boulevard to an extension of Jennings Road. This newly proposed location had several advantages.

First it would not restrict the size of boats that could navigate the existing lagoons above William Cook Boulevard (Section 11A) and secondly it would require a much smaller structure since it would only have to be designed to carry the stream flood flow and not provide for navigational clearances. In addition this site was above the head of tide as determined by the State of New Jersey and this would not be subject to riparian claims, licenses or permits. Being above the head of tide, (mean high water line) the site was also outside of the area of concern regulated by the Corps of Engineers.

After receiving local and County approval to realign Jennings Road and move the stream crossing from William Cook Boulevard, application was made to the New Jersey Department of Environmental Protection for a stream encroachment permit. This permit was issued on July 5, 1973 with no conditions for additional permits other than the Division of Marine Services. On July 17, 1973 the Division of Marine Services reaffirmed their position that the project was above the head of tide and declined any jurisdiction. Since the location was above the mean high water line, no Corps of Engineers permit was required. Shortly after the issuance of the permit the fill was placed and culvert was constructed. The lower end of the intermittent stream was cut off from Mill Creek by Jennings Road fill.

In 1973 a permit was sought from the Corps of Engineers to do maintenance dredging at three locations in the existing lagoons. Two of the locations were acceptable but the third location was objected to by the Department of the Interior. After numerous meetings and conferences a permit was issued for all three sites.



Also during 1973 an application was made to N.J.D.E.P. to fill tidal wetlands along Newell Avenue in Sections 12 and 14, on the south side of Mill Creek. These wetlands were regulated by the New Jersey Wetlands Act but since they were above the mean high water line they were not subject to the jurisdiction of the Corps of Engineers. This permit was granted after the plans were modified to include the construction of a mosquito ditch as requested by County Mosquito Commission.

As a result of this permit the fill for Newell Avenue and Jeanne Drive was placed and the ditch was constructed. The placing of this fill was necessary to provide access to all of lots created by the dredging of Lagoons in Section 12 and 14.

From 1974 to the present time numerous applications for permits involving construction in Beach Haven West, had been applied for and issued by the Corps of Engineers. These include: Bulkhead Permits for Manmade Waterways, Bulkhead Permits for Natural Waterways, Dock Permits for Bulkheads, Permits for Submarine Crossings of Lagoons with Water Mains, Gravity Sewer Mains and Force Mains, Maintenance Dredging Permits, and Dredging Permits. All of these permits had been issued by the Corps of Engineers after review by them and other federal agencies. Many of these permits have also been renewed and sometimes modified after their original expiration date.

In addition to federal permits numerous permits or exemptions were obtained from the New Jersey Department of Environmental Protection including Wetlands Permits, Coastal Area Facilities Review Act Permits, Bulkhead Permits, and Riparian Licenses.

During 1977 preliminary plans were developed for Section 12 A of Village Harbour (Colony Lakes). As these plans were finalized it was apparent that fill would have to be placed within the flood plain of Mill Creek. As a result, an application was made to the Bureau of Flood Plain Management of the Division of Water Resources of the New Jersey Department of Environmental Protection for a Stream Encroachment Permit. After many meetings and conferences and revisions to the application plans, a permit was issued on December 19, 1977 by N.J.D.E.P. to fill along Mill Creek in accordance with revised plans. Condition Number 8 of this permit required the applicant, among other things, to obtain permits and approvals from the Division of Marine Services and the Army Corps of Engineers (Philadelphia District).

On January 23, 1978 a complete set of plans along with colored aerial photographs of the project area was sent to the N.J.D.E.P. Division of Marine Services and the Corps of Engineers.

On February 2, 1978 we received a letter from the Office of Riparian Lands Management, Division of Marine Services stating that they would "interpose no objections to the proposed work."

At about the same time an application was made to the Office of Coastal Zone Management, Division of Marine Services for a C.A.F.R.A. Permit for the Colony Lakes Development. This application included, among other things, a complete Environmental Impact Statement, a Lake Management Study, and complete Development Plans. This application was declared complete on May 2, 1978.

On September 22, 1978, C.A.F.R.A. notified the applicant of its intention to issue a permit and listed the conditions of the permit and the appeal process. Condition 3 of the permit stated:

"The applicant shall not disturb existing vegetation within 75' of the southern boundary of the property line along Mill Creek. Within the remaining portions of the lots, the applicant shall retain, to the maximum extent possible, scattered White Cedar stands located along Mill Creek, specifically Lots 46-66."

The applicant argued that this condition left them no flexibility to vary the position of the house on the lot since the 75 foot restriction on the rear of the lot plus the front yard setback left barely enough room to fit the house on the lot. Therefore no attempt could be made to retain the scattered white cedar stands as required.

As a result of further discussions the final C.A.F.R.A. permit was issued with Condition 3 modified to read as follows:

"The applicant shall not disturb existing vegetation within 50' of the southern of the property line along Mill Creek. In addition, development shall be precluded on Lots 50-57, 62-66 along Mill Creek due to the existence of significant stands of white cedars and an Ephemeral Stream Corridor."

While no specific mention is made of fresh water wetlands the area precluded from development is described in the C.A.F.R.A. documents as being important in "retarding runoff, purifying water, and serving as a rich habitat for many rare and endangered plant and animal species." One could argue that this constituted a delineation of fresh water wetlands although that term was not in common use in February, 1979. The determination to preclude Lots 50-57 and 62-66 from development was made after two on-site inspections and a review of oblique aerial photographs by Division of Marine Services personnel.

On March 2, 1981 the applicant was notified that all conditions of the C.A.F.R.A. permit had been complied with except Number 2 which was for an ongoing water quality monitoring for the lakes which was underway. It should be noted that in over two years of discussion with N.J.D.E.P. the term "fresh water wetlands" was never used.



As a result of the January 23, 1978 submission of plans and photographs to the Corps of Engineers a reply was received on May 1, 1978 stating that their review indicated that the project consisted of three items of interest to them: (1) place a storm drain into a lagoon, (2) place storm drains into two lakes and (3) fill an area adjacent to Mill Creek.

It was determined that a permit would be required for the installation of a storm drain into the lagoon. Also a permit would be required for any fill placed at or below the ordinary high water line in the lakes, "AND for any proposed work that is performed below the mean high water line, on wetlands or marsh areas."

As a result of this letter numerous phone conversations were held with Mr. Robert B. Eckhardt of Corps of Engineers, Permits Branch.

It was pointed out to Mr. Eckhardt that the entire project was located above the head of tide as determined by the State of New Jersey and that there were no mapped wetlands within the project area. He agreed with this determination but insisted that permits would be required for the storm drains to be constructed within the lakes and lagoon. He pointed out the various parts of the regulations on which he based his decision.

After reviewing these parts of the regulations Mr. Eckhardt was again contacted and a discussion of the regulations ensued. Mr. Eckhardt agreed that the sections he had cited earlier did not apply to this particular case. He then cited other sections that he maintained did apply.



After a review of these additional sections, and related sections, Mr. Eckhardt was again contacted. During this conversation Mr. Eckhardt agreed that the Corps had no jurisdiction except possibly for the storm drain into the lagoon. He further stated that the matters discussed on the phone should be set down in writing and forwarded to his superior for a final determination. This was done by letter of May 4, 1978.

The second to last paragraph of that letter states:

"The third paragraph of your letter further states that permits will be required for "any proposed work that is performed below mean high water line, on wetlands or marsh areas." We think that the information supplied to date, makes it apparent that no work is anticipated in these areas."

Apparently the Corps agreed with assertion since in its reply dated June 13, 1978 it did not voice any objection. Unfortunately their reply only addressed the work in the lakes. At the time this did not seem important since "work that is performed below the mean high water line, on wetlands or marsh areas" had not been an issue since the first phone conversation with Mr. Eckhardt.

In a letter to the Stafford Township discussing the status of the project, dated May 4, 1978 (the same day that the response to the Corps was prepared) the developer's engineer stated "The Department of the Army is currently reviewing its jurisdictional authority and has indicated, verbally, that they will not require a permit for construction around the lakes but may require a minor modification to the existing bulkhead permit for the extension of an existing storm drain."

Thus, relying on the phone conversations with Corps personnel, the Corps letter of June 13, 1978 and feeling that the environmental concerns of the projects had been adequately addressed by the Environmental impact

statement and lake management report that was submitted to and approved by the Office of Coastal Zone Management, the developer proceeded with the construction of the project essentially in accordance with the plans submitted to the Corps of Engineers on January 23, 1978. The only revision to the plans was the elimination of fill on Lots 50-57 and 62-66 along Mill Creek and the moving of the toe of slope 50 feet landward from Mill Creek on the remaining lots.

It should be borne in mind that the Corps of Engineers was fully aware of the filling along Mill Creek since it was the Corps who determined, in their letter of May 1, 1978, that the project consisted of three elements: "place a storm drain into a lagoon, place storm drains into two lakes and fill an area adjacent to Mill Creek." The applicant never described the project in these terms; it merely submitted a set of plans and photographs and asked if any permits were required.

The Corps then determined that a permit would be required in one location: the installation of a storm drain into a lagoon.

They also stated that a permit would be required for any fill which is placed at or below the ordinary high water line in the two lakes and for any proposed work that is performed below the mean high water line, on wetlands or marsh areas. The applicant argued successfully that the Corps did not have jurisdiction in the lakes. The applicant also stated that the information presented (plans and photographs) made it apparent that no work was anticipated "below the mean high water line, on wetlands or marsh areas." The Corps never disputed this statement. Thus the developer proceeded in good faith, relying on the actions of the Corps which indicated to him that no permits were required.