

## Belle Harbor Yacht Club – Water Rights

Report by Franklin Taylor Esq. on the settlement with the City of title to upland and of land under water at the Belle Harbor Yacht Club., Rockaway Beach, N.Y.

dated: November 24<sup>th</sup>, 1915

To the Belle Harbor Yacht Club,

Gentlemen,

I render the following report on the work which has just resulted in clearing the title to the club's property and in comprising and settling its claim of title to land adjoining on the north, including land under water and rights of wharfage and dockage.

The property was purchased by the club in 1905. Its northerly boundary was stated as Jamaica Bay. The deed also stated, "Together with all the right, title and interest" of the grantor, "in and to the lands under water in Jamaica Bay, lying in front of said premises", etc.

The city, however, filed a remonstrance against the grant, insofar as it purported to convey land under water. A contemporaneous agreement was accordingly entered into between the West Rockaway Land Co. and the Belle Harbor Yacht Club, stating that the grant was intended to convey 20 lots of upland, and that to such extent the West Rockaway Land Company guaranteed.

As a matter of fact there had never been any grant of under water, or of riparian rights, to any of the club's predecessors in title; and it later developed that even the title to the twenty lots of upland was in question, for the reason that the high water line cut across the northwesterly corner thereof, causing the City to claim ownership to a substantial portion of the same. Even the bulkhead in front of the club house was built, and has been maintained, simply under a temporary permit from the City, and without any concession of title in the club.

During his term of office and during the several years which have since passed, ex-Commodore Masters has labored to straighten out the disputed title and to bring about an adjustment with the City. In 1912, he was advised by counsel that there had never been any grant of riparian rights. But his efforts still persisted; and in the summer of 1914, when my services were for the first time employed, I investigated the previous physical conditions of the property, in order

to establish a basis of claim irrespective of any affirmative grants by the City or State.

### **<<What are riparian rights?**

*Riparian rights are the rights of owners adjacent to tidelands to be the first person to request to use those areas. The people of the State own these lands. You must first get permission from the State to use these lands, in the form of a tidelands license, lease or grant, and you must pay for this use.>*

In that work I have examined every known map and survey from the time of the original charter and purchase from the Indians several hundred years ago, and particularly the surveys from 1835 on.

These surveys showed a shifting high water mark, the earliest being indicated as about 500 feet north of the club house; but the earliest authentic being those of 1878 and 1885, which showed the mark about 200 feet north of the club house. These clearly showed that our distant predecessors in title had own well out into what is now under the waters of the bay; but it was necessary for us to prove that title to the submerged portion had not been lost by reason of the encroachment of the waters.

The law in this state, on that point, is in a somewhat mixed and unsatisfactory state, but I interpret the rule to be as follows. When upland is destroyed by gradual erosion, the owner loses title to the submerged portion, but it is carried away by sudden and violent action of the elements, so that the loss is immediately discernable to the naked eye, title is retained. The task therefore developed, of showing that the loss of land under water north of the club house, and within the several survey lines, had come about in the latter manner.

It was difficult, if not impossible, to so establish prior to the high water mark of 1878 and 1885, those being the earliest authentic surveys, and so we took that as the proposed basis of compromise, laying the line along the United States Bulkhead Line of 1911, which runs between the lines of those two surveys.

Our ability to establish the nature of the sea's encroachment within that line, and thereby establish our title, depending upon two things; namely, the testimony of observers whose memory of condition went back to 1885, and the previous physical conditions attending the building up of Rockaway Point, and probable relation to the wearing away of the shore front adjoining the club property.

The last mentioned conditions were to a certain extent indicated by the map of 1835, which shows the club property to have been almost at the point of beach. The inlet then almost directly opposite Ruffle Bar, Barren Island, then known as Pelican Beach, extended out a considerable distance and formed the other side of the inlet. The inlet was somewhat blocked by a long bar, known as Duck Bar. The channel ran between the bar and the point, but cut closely along the point, rounding it and running easterly, directly along the shore, past the club property. The close proximity of the channel indicated the manner in which the shore was later carried away to help build up the point, and created a fair inference that sudden action of storms, rather than a gradual erosion, was responsible. Also the later building of the east Rockaway Land Company's bulkhead, deflecting a strong current of deep water directly against the northerly shore of the club property, would naturally cause similar changes during easterly and northeasterly storms. With this question fairly well based in point of presumption, it was still necessary to figure out a basis of claim to pier and bulkhead rights, and that was done in the following matter.

The surveys prior to 1878, although hardly susceptible of authentication, nevertheless created a question meriting compromise by the City. Also, the City had prepared a map of a proposed marginal street, 100 feet wide, running south of the bulkhead line; which gave us a basis to ask something in return. We therefore applied for pier rights extending to pierhead line of 1911, which is practically along the line of the 1835 survey.

The procedure employed was by application to the Dock Department, to compromise and adjust our claim under a statute authorizing the Dock Commissioner to fix a line of high water. The proposition was submitted to the Corporation Counsel for opinion as to the law, after which a preliminary contract was approved by the Corporation Counsel and signed by the Dock Commissioner and this (BHYC) club. Said contract was then submitted to the Sinking Fund Commission and duly approved, and certificate executed by said Commission fixing the line of high water. The deeds were there upon prepared by the Corporation Counsel, and duly executed by the club and the City, the City's expenses for maps and papers, etc. being paid by the club. All of this has been done. The deed, together with the contract and the certificate are about to be recorded in the Queens County Clerk's office, and the club retains duplicate originals.

Briefly, what we have obtained is as follows:

The (BHYC) club receives absolute title to all land between the club house and the bulkhead line of 1911, in all twenty building lots, which when the bulkhead is built and the intervening space filled in, will constitute upland. In

addition, the club gets all bulkhead and wharf rights, and the right to extent its pier to the pier-line line of 1911, which is 500 feet north of the club house, and 200 feet longer than the pier as now constructed.



Also, the pier may be widened to fifty feet, and pile jetties or bulkheads constructed from the foot of Orienta (Beach 126<sup>th</sup> St.) and Pelham (Beach 127<sup>th</sup> St.) Avenues down to the pier-head line, so to create a marine basin. When the bulkhead and marine basin are built, the latter will be all deep water, 200 feet wide by an average of 300 feet long, with the pier running down the center. The side jetties or bulkheads are subject to the right of the City to build public docks at the foot of the streets, but that is merely in accordance with established requirements, as the (public) docks will probably never be built. **Our (BHYC) pier, wharf-age and bulkhead rights are perpetual.** The City retains an easement for the purposes of the proposed marginal street (Beach Channel Drive), but that too, will likely never be built.

We have already filed and procured the approval of plans for the bulkhead, which we will be entitled to work under should we ever decide to build the same, but there is no direct covenant in the contract obliging us to construct a bulkhead, and we can therefore take our time about it, and not build it at all unless we so wish.

I want to call attention to the map attached to the contract, as it is susceptible of being misunderstood. Said map is simply to show the proposed high water line, and does not even purport to show our pier rights. For those we have to consult the contract itself, and the deed. The two red side-lines shown on the map running from the bulkhead to the pierline, are simply to show the intervening distance, (300 feet). That is the reason they are drawn right angles to the bulkhead and pierlines, and are vertical to the lines of our (BHYC) property and pier rights, etc.

At the beginning of this report I stated that our title had been clouded by reason of the lines of high water passing across the northeast end of the property

prior to the construction of the present bulkhead. I will go even further, and say that the title to our entire property was clouded for the reason that another survey that of 1902, shows the high water line entirely to the south of the club property. All of this has now been fully cleared up, and our title is absolutely free and clear.

I do not pretend to appraise the added value to our property, but whatever the increase in present value, the added potential value is enormous, on account of the water rights. There, as well as in the ownership of the bulkhead and of the land in the marginal street, we have an advantage that others have failed wholly to obtain.

My work has covered considerably more than a year, and involves much more time and labor than anyone else in the club has the least idea of. It has been necessary to keep everlastingly at it in order to bring things to a head, and not the least difficult has been the research work, both as to the law, the title, and the old maps and surveys. The abstract, which required careful study, consisted of 169 pages. A very modest charge for the professional services rendered is represented by the accompanying bill for \$2,000.00, which I take great pleasure in presenting, receipted, to the club.

In closing, I wish again to mention the splendid work done by ex-commodore Masters. His efforts have been persistent, and his representations to various officials before whom the matter has (been ignored).

Report ends.

Oct. 30, 1916 - Belle Harbor Yacht Club's AGM

The Annual General Meeting minutes stated that Franklin Taylor donated his services to the (BHYP) club. The minutes also stated, "by his splendid work he has placed the club in everlasting gratitude to him and became one of the club's greatest benefactors."

Could this be him?

**Taylor, Frank J. (b. 1884)** — of Brooklyn, Kings County, N.Y. Born in New York, New York County, N.Y., March 15, 1884. Democrat. Member of New York state assembly from Kings County 3rd District, 1913-25; delegate to Democratic National Convention from New York, 1928 (alternate), 1932 (alternate), 1940, 1944 (alternate), 1948 (alternate), 1952 (alternate), 1956 (alternate). Burial location unknown.