

## **Resolution for Council Consideration – 12/1/10**

### **Policy for Tidelands Conveyances for Homes over Water**

#### **Background**

Before the 1970's it was common practice for the Tidelands Resource Council to grant presently tide-flowed lands including homes built on pilings over naturally tide flowed land. These structures are commonly referred to as homes over water.

Beginning in the early 1970s, however, it has been a policy of the TRC to lease homes over water along natural waterways. The one exception to this policy is within a portion of Inside Thorofare in Ventnor, Atlantic County. Along this watercourse the Council has approved numerous grants. The reason - this watercourse was artificially widened in the early part of the twentieth century with the approval of the Board of Riparian Commissioners which is the predecessor to the Tidelands Resource Council.

#### **Proposed Policy**

The Tidelands Resource Council shall continue to lease and not grant all homes and associated decking constructed over natural tide-flowed lands. However, the Council may at its discretion, approve grants for homes and decking that are constructed over artificially widened watercourses. This approval shall not be granted unless it can be unequivocally proven by the applicant that the natural bed of a watercourse on which the home over water is located was legally **and** artificially widened.

*This policy is in accord with the landmark tidelands New Jersey Supreme Court decision O'Neill v. State Highway Department, 50 N.J. at 327 that states the burden of persuasion is upon whoever asserts a tidelands status different from present appearances. That burden is to satisfy a trier of facts that the tidelands status of the property was changed by artificial measures. Simply put, "he who challenges the existing scene bears the burden of proof".*

The Tidelands Resource Council would have the discretion to fix the price for a grant with a litigation risk discount if the precise boundary between the natural and artificial boundary of the watercourse is uncertain. Furthermore, if the boundary line traverses the home over water, the State could grant the entire property, but apply a litigation risk discount to only the landward side of the boundary line.