

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
50 Wolf Road
Albany, New York 12233-1550

In the Matter of the Application

- of -

JOHN ZACCARO

For a Tidal Wetlands Permit and a Freshwater Wetlands Permit to construct a 20' x 40' above ground swimming pool with a deck around the perimeter of the pool on property located in the Village of Saltaire on Fire Island, in the Town of Islip, Suffolk County, New York.

Application No. 10-88-2258

DECISION

March 28, 1990

DECISION OF THE COMMISSIONER

The attached Hearing Report of Chief Administrative Law Judge Robert S. Drew, including its Findings of Fact, Conclusions, and Recommendations, in the matter of the application of John Zaccaro (the "Applicant"), 22 Deep Dean Road, Forest Hills, New York, for permits pursuant to Environmental Conservation Law ("ECL") Article 24 (Freshwater Wetlands) and Article 25 (Tidal Wetlands) to construct a 20' x 40' above ground pool with a deck on a vacant parcel of land in the Village of Saltaire, Town of Islip, Suffolk County, is adopted as the Decision in this matter, subject to my comments below.

At issue is the question of whether or not the application for a Freshwater Wetlands Interim Permit should be approved, modified or denied. Upon a review of the entire record, I concur with the recommendations of Chief ALJ Drew and I find that the Applicant has demonstrated that his proposed Project will be in compliance with the Freshwater Wetlands Act and the permit criteria of 6 NYCRR Part 662. Accordingly a permit should be issued subject to the requirement that a satisfactory mitigating plan for new planting on the Site be approved by the Department Staff and thereafter be implemented. There being no issue concerning the Applicant's entitlement to a Tidal Wetland's permit, that permit should be issued as well.

My Decision to approve this application is based on the ALJ's findings that the environmental impacts of the Project will be quite limited and that the plantings required as a condition of approval will provide an overall net improvement with respect to the wildlife benefits provided by the site. The Applicant has not made a strong case supporting the need for the Project, but in the context of the very limited environmental impact which the Project will have, and the net improvement in wildlife benefits, I find the showing to be minimally sufficient.

IN WITNESS WHEREOF, the Department of Environmental Conservation has caused this Decision to be signed and issued and has filed the same with all maps, plans, reports, and other papers relating thereto in its office in the County of Albany, New York this 28 day of March, 1990

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
THOMAS C. JORLING, COMMISSIONER



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HEARING REPORT

- by -



Robert S. Drew
Chief Administrative Law Judge

PROCEEDINGS

On April 3, 1989, the Region 1 Staff of the New York State Department of Environmental Conservation (the "Department Staff") determined the application of John Zaccaro, 22 Deep Dean Road, Forest Hills, New York (the "Applicant") to be complete for both a tidal and a freshwater wetlands permit (one combined permit) to construct a 20' x 40' above ground swimming pool with a deck around the perimeter of the pool (the "Project") on a site located at Pacific Walk and Harbor Promenade (the "Site") in the Village of Saltaire (Fire Island), Town of Islip, Suffolk County, New York.

The application was filed and processed pursuant to Environmental Conservation Law of the State of New York ("ECL") Article 3, Title 3 (General Functions), Article 24 (Freshwater Wetlands), Article 25 (Tidal Wetlands), and Article 70 (Uniform Procedures); and pursuant to Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") Part 621 (Uniform Procedures), Part 662 (Freshwater Wetlands - Interim Permits), and Part 661 (Tidal Wetlands - Land Use Regulations).

Pursuant to ECL Article 8, the State Environmental Quality Review Act ("SEQRA"), and the companion regulations in 6 NYCRR Part 617, State Environmental Quality Review, the Department Staff determined that the Project is a Type II action, and therefore that it would not have a significant effect on the environment, and would not require preparation of a Draft Environmental Impact Statement. The Department Staff determined that a tidal wetlands permit was necessary because it found that the Project Site was within an area adjacent to a tidal wetland, such area being within 300 feet landward of the tidal wetland's most landward boundary. The Staff acknowledged that it was a "close call" whether the Project Site was within the adjacent area, but in any event the Staff did not oppose issuance of a tidal wetlands permit for construction in the adjacent area. The Staff did indicate, however, that it was opposed to the issuance of a freshwater wetlands interim permit since the Site was located within the presently mapped boundaries of a freshwater wetland larger than 12.4 acres in an area on the tentative freshwater wetlands maps for Suffolk County, and since the Staff contended the Project would result in a direct loss of the wetland and its associated benefits, including the loss of wildlife habitat, flood storage capacity and open space.

Attached to this Report as Appendix A is a map depicting the Project Site within the perimeter of a freshwater wetland, marked as BE-18, which extends from Saltaire west toward Kismet. The eastern edge of this freshwater wetland borders on a tidal wetland connected to Clam Pond. The exact boundary between the tidal and freshwater wetlands is not an issue in this proceeding however because the Staff's opposition to the Project is not based on its proximity of this Site to the tidal wetland boundary but rather

the opposition of the Staff is to the removal of freshwater wetlands vegetation on this Site.

The Notice of Complete Application and the Department's negative SEQRA determination were initially published in the Department's Environmental Notice Bulletin ("ENB") on April 12, 1989. The Notice was then republished in the ENB on July 26, 1989.

Notice of Public Hearing was published in the Environmental Notice Bulletin on November 1, 1989, and in the Islip Bulletin on November 2, 1989.

A public hearing on this Project was held pursuant to the provisions of Article 3 of the State Administrative Procedure Act and 6 NYCRR Part 624 (Permit Hearing Procedures) in the Islip Town Hall, 655 Main Street, Islip, New York on November 29, 1989 before Robert S. Drew, Chief Administrative Law Judge ("ALJ").

The Applicant was represented at the hearing by the law firm of Reilly, Like and Schneider, 200 West Main Street, Babylon, New York 11702 (Irving Like, Esq., of Counsel).

The Department Staff ("DEC Staff") was represented by David Rubinton, Esq., and John Byrne, Esq., both Assistant Regional Attorneys from Region 1, SUNY, Building 40, Stony Brook, New York 11794.

No filings for party status were received prior to or at the hearing and no members of the public appeared at the hearing to comment on the Applicant's Project. Accordingly, the hearing proceeded with only the Applicant and Department Staff as parties. No issues were raised regarding the tidal wetlands permit application, although two issues were raised regarding the application for a freshwater wetlands permit, as follows:

(1) whether a freshwater wetlands permit was required for the Applicant's Project; and

(2) assuming such a permit was required, whether an interim permit should issue under the regulatory standards of 6 NYCRR Part 662.

More specifically, Chief ALJ Drew ruled that the following were issues for adjudication:

(1) whether the Site is part of a freshwater wetland that is 12.4 acres or more in size and therefore subject to regulation; and, assuming it is;

(2) what effect the Applicant's Project would have on the wetland, and also whether any adverse effect could be ameliorated by reasonable alternatives or mitigating measures.

The Applicant and the Department Staff waived any right to appeal to the Commissioner on the issues to be heard, and the adjudicatory phase of the hearing was immediately held on the same date.

The Applicant (John Zaccaro) testified on his own behalf and also called John Tanacredi, Ph.D., Enviro-Qual Associates, Inc., Valley Stream, New York who testified regarding the freshwater wetlands on the Site.

Two witnesses testified on behalf of the Department Staff, both of whom are Staff employees in the Department's Region 1 Office in Stony Brook: (1) Paul Carella, Conservation Biologist II; and (2) Steven J. Sanford, Regional Manager of the Department's Bureau of Environmental Protection. Messrs. Carella and Sanford collectively presented testimony on the freshwater wetlands on the Site and near the Site.

The stenographic transcript of the hearing was received on January 5, 1990, and the hearing record was closed on that date.

SUMMARY POSITIONS OF THE PARTIES

The Applicant

The Applicant maintained that the Site was a Class III wetland [as defined by 6 NYCRR 664.5(c)] and it could be fairly characterized as an emergent marsh in which the common reed Phragmites constitute more than two thirds of the vegetative cover. The Applicant also maintained that this wetland is outside the Department's jurisdiction because it is less than 12.4 acres in size, and has not been designated by the Department as a wetland of unusual local importance with regard to any of the wetland benefits specified in ECL 24-0105(7). The Applicant asserted that before he should have to prove that permit criteria are met, the Department Staff must first prove that the wetland is within its jurisdiction. Assuming arguendo that the wetland were found to be within the Department's jurisdiction, the Applicant further contended that a permit should be issued since the proposed alteration met the standards for interim permit issuance [6 NYCRR §662.6(b)]. More particularly, the Applicant argued that the Project was "reasonable and necessary" because of his need for a pool to exercise his leg for physical therapy purposes and the need of him and his wife, Geraldine Ferraro Zaccaro, for privacy, and to enjoy swimming in a private pool rather than contend with "well wishers" on the public beach on the ocean. The Applicant expressed a willingness to plant bushes and scrubs around the pool to mitigate the loss of wetlands caused by the installation of this pool and to enhance the overall wetland values of the Project Site.

The Department Staff

The Department Staff asserted jurisdiction over the freshwater wetland on the Project Site, contending the Site was

part of a larger freshwater wetland of more than 12.4 acres. The Department had not as of the hearing date (i.e. November 29, 1989) designated the wetland on the Project Site as a wetland of unusual local significance, but the Staff argued that it could make such a showing were it found that the wetland on the Project Site was not part of a larger freshwater wetland of more than 12.4 acres.

The Department Staff indicated that it opposed the issuance of a freshwater wetlands interim permit on the ground that the Project did not meet the standards of 6 NYCRR §662.6. More particularly, the Department Staff argued that construction of a swimming pool would have an undue impact upon present and potential values of the freshwater wetlands on the Project Site. Additionally the Staff argued that the proposed wetlands alteration was neither reasonable nor necessary, and that mitigation measures proposed by the Applicant would not make up for the loss of wetland area caused by construction of a swimming pool and the human activity associated with its use.

The Department Staff asserted that the burden of proof was wholly with the Applicant to demonstrate either that the Project Site was not properly subject to its wetlands regulations or that, if it was so subject, that all permit issuance standards would be met.

DISCUSSION

As of the hearing date the freshwater wetlands maps for Suffolk County had not been finalized and promulgated by the Department. As a result the Department Staff utilizes tentative maps which do not give precise wetland boundaries, and which have in some cases been subject to frequent changes by the Region 1 Staff based on their findings following site visits. Public hearings on the tentative maps were held by the Department in late July, 1989, and the Department Staff is now responding to the comments and challenges made at those hearings regarding the inclusion on the maps of specific wetlands and/or specific wetland boundaries.

The Project Site was not denoted as within the boundaries of the freshwater wetlands included on the tentative maps printed in the spring of 1989 and used at last summer's hearings. Because of public comments concerning the mapping process and because of the Applicant's proposed construction of this swimming pool, a visit to the Project Site was made on November 16, 1989, by Steven J. Sanford, Manager of the Department's Bureau of Environmental Protection in the Stony Brook Office, who is responsible for the Staff finalizing the freshwater wetlands maps for Suffolk County. On a map drawn up after this site visit (Appendix A) the Project Site is determined to be included within a freshwater wetland No. BE-18, which wetland is between 20 and 30 acres in area, and sufficient in size to be within the Department's jurisdiction.

The Applicant has the opportunity to comment to the Department on this change in Department mapping prior to the filing of a final freshwater wetlands map for Suffolk County. After final maps are filed, the Applicant, in a similar manner to any other aggrieved property owner, would have the opportunity to challenge the final maps in an action pursuant to Article 78 of the Civil Practice Law and Rules, or to take an appeal to the Freshwater Wetlands Appeals Board. Since on the hearing date no final maps had been promulgated for Suffolk County, Chief ALJ Drew ruled that the Applicant could either proceed with the hearing or withdraw his application to await the filing of final maps, and then at its option to challenge the final maps if the Project Site were to be included within the maps as a freshwater wetland.

The Applicant indicated that he wanted to proceed with the subject hearing. Accordingly, the hearing was not concerned with the final boundaries for the freshwater wetland in question since the interim maps when finalized by Staff will be submitted to Commissioner Jorling for promulgation. The Applicant was allowed however to and did offer testimony that the wetland on the Project Site is isolated from other freshwater wetlands, and does not function with them as a unit in providing wetland benefits. Testimony presented at the subject hearing was also presented with regard to whether or not the standards will be met for the issuance of a freshwater wetlands interim permit, recognizing that the Applicant has the burden of demonstrating that his proposed activity will be in compliance with all applicable laws [6 NYCRR §624.11(f)].

FINDINGS OF FACT

1. John Zaccaro (the "Applicant") proposes to construct an above ground 20' x 40' swimming pool with a wooden deck around its perimeter (the "Project") on an 80' x 85' parcel of land owned by his wife, Geraldine Ferraro Zaccaro, at Harbor Promenade and Pacific Walk (the "Site") in the Village of Saltaire, Town of Islip, Suffolk County, New York. A map depicting the general site location is attached to this Report as Appendix B. The pool would be built above grade and no excavation would be required. A dry well to take overflow water from the filter was proposed as part of the original application to be built at the northwest corner of the pool and deck. This dry well is apparently no longer part of this Project, however, according to representations by the Applicant at the hearing.

2. Saltaire is primarily a residential summer community located on Fire Island, which extends along the southern shore of Long Island in Suffolk County. Motor vehicle use within the Village of Saltaire is limited to emergency and municipal use, and its houses are connected primarily by a grid of raised wooden walks and promenades which are used by pedestrians and small vehicles.

3. The Applicant's total property in the Village of Saltaire is indicated on a map (attached to this Report as Appendix C) as five plots (Block 47, Plots No. 1410-1414) owned by him and his wife, Ms. Ferraro, on which they have built a one-story frame house, with a deck; and another four plots (Block 47, Plots No. 1415-1418) immediately to the north of the house which are owned separately by an entity controlled by the Applicant, and which currently stand vacant. The Project Site on which the proposed swimming pool would be located is situated immediately to the east of the plots controlled by the Applicant's entity, and consists of four plots (Block 47, Plots Nos. 1419-1422) with an overall dimension of 80' x 85'. This currently undeveloped property was deeded to Ms. Ferraro in 1977, and title remains with her.

4. The Project Site can fairly be described as a Class III freshwater wetland [6 NYCRR Part 664.5(c)(1)] consisting of emergent marsh in which Phragmites reeds constitute two-thirds or more of the cover type. According to the Applicant's consultant, John Tanacredi, Phragmites cover above 95 percent of the Site, with the remaining 5 percent covered primarily by high bush blueberry, chokeberry and several pitch pines. Similar observations were made by the Department's witness, Paul Carella, who also found Phragmites to be the dominant vegetation, although he estimated that they covered only 80 percent of the Site. It was generally agreed that near the center of the Site, where the pool would be built, the ground is covered almost entirely by Phragmites, and that the other vegetation tends to be closer to the perimeter of the Project Site.

5. Phragmites are prolific plants that grow in moist soils. They have some pollution abatement value in that they take up nitrogen and phosphorus from groundwater. They are used as habitat by bird species, including the red-winged blackbird, and are valuable to the production of insects that would be fed upon by any reptiles and amphibians residing on the Project Site.

6. Soils at the Project Site can be characterized as moist with no standing or ponding water of measurable depth. Because of this condition, pollution abatement value of the Site's Phragmites reeds is negligible.

7. Freshwater wetlands in general provide flood control benefits by storing water along the borders of rivers and streams, thereby slowing runoff to downstream areas. These benefits do not accrue from the wetland on the Project Site however due to the fact that there are no streams or rivers near the Site, and because flooding on Fire Island, unlike in most other parts of the State, is usually the direct result of storms causing short-term sea level fluctuations.

8. A mid-day visit by Mr. Tanacredi on November 21, 1989, found no indication of wildlife use on or near the Project Site although this visit was only three hours long, and the day was

very cold, with a brisk wind, and was not conducive to wildlife observations. Visits on March 29 and July 31, 1989, by Paul Carella, a Department conservation biologist, noted several bird species at and near the Project Site, and on March 29, 1989 he observed one deer. The deer population on Fire Island is abundant and the Department recently approved a deer kill to reduce their numbers. If the Site were to be developed as proposed by the Applicant, its value as deer habitat would be diminished but not necessarily lost. Red-winged blackbirds would be unlikely to nest in areas where Phragmites were removed, but wrens and other species might still use those areas.

9. Visits to the Project Site by representatives of the Applicant and Department Staff did not locate any functioning or abandoned bird nests, nor was there evidence of tracks or burrows indicative of any significant wildlife use of the Site.

10. The Applicant proposes that his pool, with dimensions of 20' x 40', would cover 800 square feet of the Project Site, which is 6,800 square feet in its entirety. The deck would cover an additional 950 square feet of the Site, leaving 5,050 square feet of space, predominantly covered by Phragmites, largely unaffected and subject to measures the Applicant might take to ameliorate the loss of wetland space and to promote the overall wetland values of the Site.

11. The Applicant stated that, if a permit were to be granted, he would be willing after the pool is built to replace the Phragmites in that part of the Site area unaffected by the pool with suitable plant species such as American holly, red cedar and bayberry, which would, if planted, provide food, cover, and nesting and breeding sites for birds that reside on Fire Island, and in general increase the diversity of vegetation, thereby attracting more wildlife. In effect, the Applicant's proposal would replace the Phragmites on the Site with a more densely vegetated thicket, with most or all of the Phragmites removed except at a small buffer zone on the Site. Vegetation within the area occupied by the pool and deck would of course be eliminated and greater human activity during the times the pool was being used would more likely result in fewer birds using the vegetated areas around the pool.

12. The Applicant proposes to build a pool because of a leg problem which he indicated requires exercise and additionally he plans to have an operation on his leg. Mr. Zaccaro expects that a pool at the Site would be heated and used generally during the summer season of Memorial Day to Labor Day, and perhaps on some weekends during the Fall and Spring. Although the Zaccaros have another vacation home with a pool on the Caribbean Island of St. Croix, the Applicant desires a pool near their Saltaire property. Due to the public office previously held by his wife, a former Congresswoman, and due to her being the 1984 Democratic candidate for Vice President of the United States, Mr. Zaccaro indicated

that use by him and his wife of the beach on Fire Island's southern shore is impeded by people who approach them to take pictures or start conversations.

13. No excavation would be required for construction of the pool since it would be entirely above ground. If allowed, the pool could be assembled in three or four days at the Site itself. The Applicant would like to complete construction before the end of May, 1990, since, according to the Applicant, the Village of Saltaire prohibits all construction within the Village between Memorial Day and Labor Day.

14. At the time of the hearing there were only two existing swimming pools in the Village of Saltaire.

15. Counsel for the Applicant indicated that the Project would comply with Village requirements for a dry well should one be necessary. The Applicant further indicated at the hearing that he was unaware of any provision in his plans for a dry well, adding that he did not expect to have the pool drained.

16. A walkway 20 feet long and 4 feet wide, from Pacific Walk to the pool site, would displace only 80 of the 5,050 square feet of the Project Site remaining after the pool and deck construction. Furthermore, were this walkway elevated on posts or piles, like many of the existing walkways in Saltaire, the walkway would not be constructed directly on the ground surface.

17. The Project Site is part of a larger freshwater wetland area that extends primarily east and west of the Project Site. As delineated on Appendix A, this wetland extends westward to the Village of Kismet and eastward to the border of a tidal wetland connected with Clam Pond. This freshwater wetland (noted on Appendix A as BE-18) is approximately 20 to 30 acres in size, and includes within it the entirety of the Project Site.

CONCLUSIONS

1. 6 NYCRR Section 662.2(b) provides that: "No person may alter any freshwater wetland...without having first...obtained an interim permit for the alteration from the Department."

2. For the purposes of Part 662, "alteration" includes the erecting of any structures [6 NYCRR 662.1(c)]. Also, "freshwater wetlands" are "lands and waters of the State that are subject to regulation under [Part 662] because they have an area of 12.4 acres or more, or have a smaller area but have been determined by the Commissioner to have unusual local importance because they provide one or more of the benefits of wetlands described in [ECL 24-0105.7] and are listed as such in the office of the appropriate regional permit administrator" [6 NYCRR 662.1(k)].

3. The Applicant's Project Site contains a freshwater wetlands which are part of other wetlands located to the east, which wetlands in their entirety are more than 12.4 acres in size.

Testimony presented by the Applicant's research ecologist, John Tancicredi, was not convincing in light of other evidence from the Department Staff witnesses that the Project Site is part of a larger freshwater wetland extending to the east and west of the Site.

4. Since the Applicant's Project Site is part of a freshwater wetland of at least 12.4 acres in size, alteration of that wetland (which would include construction of a pool with a deck) requires an interim permit under Part 662.

5. 6 NYCRR Section 662.6(b) provides that: "No interim permit can be issued pursuant to this Part unless the [C]ommissioner determines that the proposed alteration:

(1) is consistent with the policy of the act to preserve, protect and conserve freshwater wetlands and the benefits derived from them, to prevent the despoliation and destruction of freshwater wetlands, and to regulate the use and development of such wetlands in order to secure the natural benefits of freshwater wetlands, consistent with the general welfare and beneficial economic, social and agricultural development of the State;

(2) is compatible with the public health and welfare;

(3) is reasonable and necessary; and

(4) has no reasonable alternative on a site which is not a freshwater wetland or adjacent area."

6. The Applicant's Project Site fits the description of a Class III freshwater wetland, at least four fifths of which is covered by Phragmites reeds. These reeds provide relatively minor wetland benefits when compared to the benefits that would be derived from a dense thicket of more diverse vegetation, or from an area of prime wetland grasses or shrubs.

7. Any pollution abatement value of Phragmites at the Project Site is mitigated by the lack of surface waters of any measurable depth. The Site's flood control value is minimal given the lack of nearby rivers and streams from which the wetland would absorb flood waters. Apart from general concepts, the Department Staff could not cite specific data on how the Project Site acts to control pollution or to trap sediments. As private property, the Site serves no recreational benefit to the public and the Department Staff acknowledge it has no educational benefit sufficient to warrant a denial of the permit now requested. The value of the Site for wildlife habitat is minimal in view of the predominance of the Phragmites reeds and due to the lack of evidence of significant wildlife use of the Project Site during visits made by representatives of the Applicant and the Department Staff. The Project Site is located within a residential area developed for the most part with summer houses (without lawns), with access to these houses by a series of pedestrian walkways located throughout the Village. A concentration of human activity near the Project Site, and particularly in summer, has already

diminished what benefit the Site would otherwise have as wildlife habitat. Of the remaining benefits derived from freshwater wetlands cited in ECL 24-0105(7), the main benefit of the Project Site is for open space. Construction at this Site of a pool with a deck would have less effect on wetland benefits than if the Site were a higher class wetland, or if the Site provided more of the benefits of freshwater wetlands listed in ECL Article 24.

8. The Applicant's Project is consistent with the policy of the Freshwater Wetlands Act because, with mitigating measures proposed by the Applicant, it would enhance the Site's overall wetland benefits to some limited degree. The pool and deck together would eliminate only about 1,750 square feet of wetland and since the Site is 6,800 square feet in area, 5,050 square feet would remain, and this remaining area would (were the pool built) be available for measures to mitigate the wetland's alteration. As proposed by the Applicant, replacement of Phragmites in this 5,050 square foot area with a dense thicket of American holly, red cedar, and bayberry, among others, would make the site somewhat more attractive to birds that already use it, providing a better and wider array of cover, nesting and breeding sites, and sources of wildlife food production. Accompanied by a range of mitigating plantings, the Applicant's Project would at least maintain existing wetland benefits and would at best enhance them to some extent.

9. The Applicant's Project is compatible with the public health and welfare given that no incompatibility has been alleged or demonstrated by the Department Staff, and given the consistency of the Project with relevant environmental concerns.

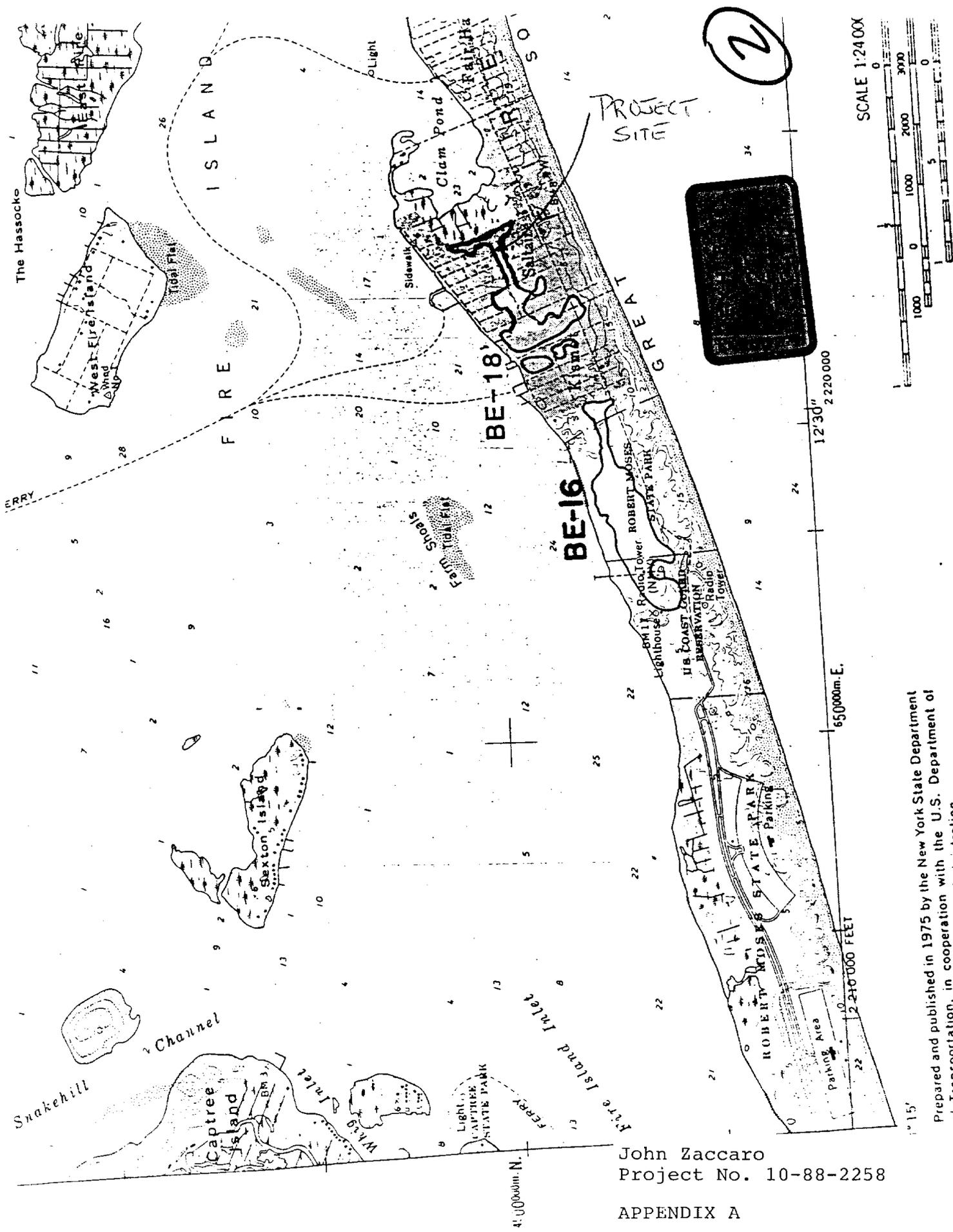
10. The Applicant's Project is reasonable and necessary in the sense that construction of a pool is essential for his health purposes. The Applicant's need for leg exercise can better be achieved by use of a pool constructed adjacent to his existing home, than by swimming in the surf of the Atlantic Ocean. The pool would also be constructed within what is basically a summer vacation home community. Additionally, the Applicant's wife (Geraldine Ferraro Zaccaro) has remained a "public figure" since her nomination as the Democratic candidate as Vice-President in 1984 and accordingly the Zaccaros have a legitimate concern for their privacy when swimming, which they are not able to obtain on the public beach along the ocean.

11. The Applicant does not have a reasonable alternative to his Project (assuming of course that a pool were to be built) on a site which is not a freshwater wetland or adjacent area. In that regard the record indicates that all property owned or controlled by the Applicant, and available for pool construction, is located within a freshwater wetland, and that no alternative to pool construction will satisfy the Applicant's demonstrated needs.

RECOMMENDATIONS

1. Because the Project meets standards for issuance of both a Tidal Wetlands Permit (for construction in an adjacent area) and a Freshwater Wetlands Interim Permit, it is recommended that the applications be approved and that a combined permit be issued provided that the permit is conditioned to require the Applicant to plant sufficient trees and/or shrubs etc. after the pool is constructed to replace the Phragmites on the Project Site. Such planting should ensure that a dense thicket of vegetation will be in place to include but not be limited to such species as American holly, red cedar and bayberry. More specifically, it is recommended that the Applicant be allowed to construct an above ground pool, with dimensions of 20' x 40' and a deck surrounding the pool of no more than 950 square feet total area. No specific width or length is recommended for the deck but rather it is recommended that the deck's configuration be left to the Applicant's discretion with the total area not to exceed 950 square feet. This provision should allow the Applicant some flexibility for the location of the deck so that the deck is compatible with his overall plan for the Project Site.

2. It is recommended that granting of the freshwater wetland permit be further conditioned with a requirement that, before pool construction begins, the Applicant must have Department Staff approval its planting plan to replace the Phragmites on the Project Site with other species of vegetation appropriate to the creation of a dense thicket for freshwater wetland wildlife habitat. It is recommended that this plan be developed by the Applicant, and that it include: (1) the number, type and height of all species to be planted, and (2) a map indicating the precise areas from which the Phragmites would be removed, and locations of each alternative planting.



John Zaccaro
Project No. 10-88-2258

APPENDIX A

Prepared and published in 1975 by the New York State Department of Transportation, in cooperation with the U.S. Department of Transportation, Federal Highway Administration.
Map base from 1967 U.S. Geological Survey 7.5-minute quadrangle.
1974 aerial photography construction.

Polyconic projection. 1927 North

GREAT SOUTH BAY

NORTH



BAY PROMENADE

L a g u e b o f S a n t a r e

HARBOR PROMENADE

PROJECT SITE

NEPTUNE WALK

PACIFIC WALK

John Zaccaro
Project No. 10-88-2258

APPENDIX B

WATERHOUSE PROMENADE

SITE IS OVER 1340' FROM SALTHIRE HARBOR!



≈ 170'

HARBOR PROMENADE

N. 70° 22' 00" E.

85.00

#1418

#1417

#1416

#1415

#1414

#1413

#1412

#1411

#1410

DECK

1 STORY FRAME
HOUSE

#1419

#1420

#1421

#1422

#1423

80.00'

15.0'

85.00'

S. 70° 22' 00" W

NEPTUNE

KEY:



= pool & deck area



= Phragmites Reed dominant



= other vegetative cover
types plus Phragmites

John Zaccaro
Project No. 10-88-2258

APPENDIX C

85.00'

S. 70° 22' 00" W

#1409