

where called for. In the present case, trial by judge affords an ideal climate for relative weighing of conflicting methods and it seems somewhat unnecessary to completely dismiss one method. A better solution might be to accord diminished weight to the square-foot method and then examine the record to see if the results are in conflict with the relative weight to be given the two methods of valuation. The most obvious point to recommend this approach is the situation, identical to the instant case, except that there is no second method offered for valuation. Under the ruling in this case it would seem that all valuation evidence would be unacceptable and a remand in order to obtain valuations under a more acceptable method. The difficulties with such an approach are obvious and suggest that the issue can better be resolved by varying the weight to be given to methods of valuation.

199-2 OWNER OF RIPARIAN RIGHTS IS ENTITLED TO USE LAND UNDER WATER FOR A COMMERCE-CONNECTED PURPOSE WHERE IT DOES NOT INTERFERE WITH THE NAVIGABILITY OF THE CHANNEL. Moyer v. State, 289 N.Y.S.2d 114 (Ct. Cl. 1968).

Tuscarora Bay is a navigable tributary adjacent to Lake Ontario. Claimants had purchased property on the bay and had instituted dredging operations to deepen the channel. The fill obtained from this dredging was deposited on underwater land adjacent to and beyond the lot line of the claimants. The land thus reclaimed was used to construct a marina and boathouse for the pleasure craft using the bay. Before instituting this construction, the claimants had inquired of the United States Government whether Federal control was exercised over that portion of Tuscarora Bay. When a negative response was received from the Federal officials, the work proceeded without any express permission being obtained from the State of New York.

After the boathouse and piers had been constructed and the business had been operating for some time, the State served an appropriation map on the claimants taking all of their waterfront property including the reclaimed area containing the boathouse and marina. In the litigation of the appropriation award, neither the State nor the claimant raised any serious arguments as to the claimants' ownership of the reclaimed land. Nonetheless, the court expressed concern that this might later become a critical issue and consequently resolved to dispose of it in the present opinion. To this extent, the opinion has the earmarks of an advisory opinion rather than the ordinary declaratory judgement action.

Where the Federal government disclaims any jurisdiction over bodies of water which are admittedly navigable, control will vest in the appropriate State. Thus, the waters of Tuscarora Bay were under the control and ownership of the State of New York. The Court of Claims found that the claimants had acquired the rights to the under underland in spite of their failure to obtain permission from the State.

The first basis supporting the claimants' title to the reclaimed land is the general rule that an owner of riparian rights may use adjacent underwater land where the use aids navigation and commerce. Such use may be without State grant.

Here, the Tuscarora Bay area was greatly in need of the type of marine facilities provided by claimants. The fact that claimants profited from the activities of the marina did not negate the fact that their activities also aided navigation.

Further, depositing the fill in the manner done was the most convenient and practical method of carrying out the dredging operations. Since the dredging itself was a substantial aid to navigation and commerce, claimants were entitled to any collateral benefits which might result from their dredging, so long as those benefits were not excessive. On the record, even the benefits served a community need by providing marina facilities which had been seriously lacking in the area. Given this dual advantage of the entire operation, the claimants' enjoyment of business benefits from the dredging and reclamation could not be deemed excessive.

The Court of Claims also noted that the entire operation was conducted with the approval of the United States Government which still had some residual interest in the navigability of the bay since it adjoined an international boundary. Furthermore, the very nature of the operations conducted were such as to reasonably apprise the State of claimants' activities and the State's continued silence can be interpreted as acquiescence in claimants' conduct and implied permission to make the land and construct the facilities.

The findings of the court leave somewhat unclear the exact nature of claimants' interest in the reclaimed land for compensation purposes. Clearly, claimants are entitled to an award for the buildings and piers taken in the appropriation, and such an award was given in a separate decision of the court. The opinion does not state, however, the nature of the interest in the land. It would seem inconsistent to give claimant a fee interest in the land since this would be tantamount to an abbreviated adverse possession law. What the land does seem to represent is some sort of physical manifestation of claimants' riparian rights and it would seem appropriate to compensate them for the loss of the riparian right as well as the cost of enhancing that riparian right through the depositing of the fill and the subsequent reclamation was nothing more than the most economical thing to do with the product of the dredging operation.

The case cannot readily be classified as a condemnation case since it actually involves rights acquired through a private taking. It does provide an excellent example of the diverse forms which riparian rights can take and the broad bounds to which such rights can be extended. Insofar as the riparian right in question warranted compensation, it necessitated consideration of all of the above factors which, in a purely land-locked situation, would clearly constitute an adverse possession which would fail under existing statutes of limitations. The unique and somewhat contradictory rights created by abutment to a body or stream of water serve to magnify the uniqueness of riparian rights.