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## Beach-access ruling may generate wave of change

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LOWER TOWNSHIP - Linda Kent was not going to pay \$700 to go to the beach.

So the East Raleigh Avenue resident joined others here in the township's Diamond Beach section in a lawsuit claiming an ancient Roman doctrine gave them certain rights to the sandy strand in front of this summer community of condos and single-family homes.

On Tuesday, five New Jersey Supreme Court judges agreed in a ruling that could open up private beaches all over the state to the public.

In a 5-2 decision, the justices affirmed an Appellate Division ruling that gives the public, including Kent and other members of the Raleigh Avenue Beach Association, or RABA, sweeping rights to use the privately owned Atlantis Beach Club and at a reasonable price.

What does the ruling mean to Kent? In dollars and cents, it means \$590 per year for two tags at \$55 apiece. The Atlantis Beach Club wanted to charge her \$700 per family per season to use the beach, while the state set the fee at \$55 per person per season.

"I am just thrilled beyond belief. We were never looking to have this be a free beach. We wanted reasonable fees," Kent said Tuesday.

As the case wound its way through the lower courts, the Atlantis Beach Club, which holds both the title and riparian rights to the beach, conceded access to the water and the wet sand below the mean high water line. The club agreed that the ancient Public Trust Doctrine ensured public access to this land.

The Appellate Court decision went far beyond this, giving the public the right to use the dry sand as well. It ruled in July 2004 that the state Department of Environmental Protection could help set this fee since it regulated the beachfront through the Coastal Area Facilities Review Act, or CAFRA. The state set the seasonal beach pass at \$55 and established a daily fee of \$3. Atlantis Beach Club did not even have a daily beach badge, although it did offer a lifetime pass for a one-time fee of \$10,000.

Although two judges dissented, the Supreme Court upheld the Appellate decision. Barring an appeal to the U.S. Supreme Court, the case could rewrite use of the Public Trust Doctrine as it relates to coastal areas. The doctrine has been used in cases with municipally owned beaches and quasi-public associations that ran beaches, but it has never been applied like this to a privately owned beach.

There are numerous beach clubs in New Jersey. By one estimate, 26 percent of the state's coastline is in private hands.

"This is an important decision that will have long and wide-ranging effects. It's fair to assume the court had many of these beach clubs in mind when it wrote this decision," RABA's attorney Stuart Lieberman said.

Atlantis Beach Club attorney Robert Gilson said the decision goes too far and will affect beach clubs and the many shorefront homes where the owner still holds title to the sands in front of the

house.

"You've taken a doctrine that used to apply to the mean high tide line and moved it back to all the dry sand areas that used to be private property. New Jersey has now extended the doctrine beyond any other state I'm aware of," Gilson said.

Atlantis could appeal to the U.S. Supreme Court, and Gilson said he believes he could argue what is known as a "takings claim," in which the government must pay when regulations reduce use of a property. He said a possible appeal would be evaluated.

Some are arguing the case could have even further-reaching effects. Tim Dillingham, of the American Littoral Society, which filed a brief in the case, said it even sends a message to shore towns not to have excessive beach fees that could limit public access.

"Today, the public has far greater rights to access and use of the shoreline," Dillingham said.

Kent gives a lot of credit to the state, which joined the case in a push for more beach access but used CAFRA, which only applied because Atlantis needed approval for a wooden walkway over a dune, to set lower fees. Assistant Attorney General Stefanie Brand, who argued the case for the state, said the DEP would make sure badge prices only cover what it costs private clubs to operate. Brand said the ruling also lets beachfront property owners know their strand is subject to the Public Trust Doctrine.

But the ruling is not an absolute guarantee of the same rights at other beaches. The justices used four criteria, which is called for in case law, in making their decision, and these could vary at other locations. They took into account the location of the dry sand in relation to the water, finding there was no other way to get to the ocean except crossing it.

They also looked at public demand for beaches in the area and found it to be very strong as thousands of condominium units line the shore. It could be a smaller factor at other locations. The beach owner's historic use of the strand is another criteria, and this worked in RABA's favor since it is used as a business enterprise.

The availability of other beaches in the area was the final factor. In this case they found a strong public demand and a lack of public beaches in the township.

The dissenting judges argued that there are other beaches nearby. They said the best balance for the public and the private beach owner would be to require Atlantis Beach Club to provide a 10-foot-wide access path to other beaches.

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