

**A** 2194-03T5

**FILED**  
APPELLATE DIVISION  
MAY 20 2004

*Jon Flynn*  
CLERK

ORDER ON MOTION

RALEIGH AVENUE BEACH  
ASSOCIATION  
VS  
ATLANTIS BEACH CLUB

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-002194-03T5  
MOTION NO. M-004853-03  
BEFORE PART: B  
JUDGES(S): KING  
LINTNER  
LISA

MOTION FILED: MAY 12, 2004 BY: ATLANTIS BEACH CLUB  
ANSWER(S) FILED: MAY 14, 2004 BY: DEPT. OF ENV. PROTECTION  
MAY 18, 2004 BY: RALEIGH AVE BEACH ASSOC  
SUBMITTED TO COURT: MAY 14, 2004

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 20th DAY OF MAY, 2004 HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT/RESPONDENT GRANTED DENIED OTHER  
- FOR CLARIFICATION (XXX) ( ) (XXX)

SUPPLEMENTAL:

The respondent's motion for clarification is granted. Pending filing of a formal, full opinion on this appeal, the panel makes this interim order:

1. The public shall enjoy vertical access to the beach, without any interference by respondent's agents, upon the boardwalk pathway which currently exists through the dunes on the subject property as an extension of Raleigh Avenue.

2. The public shall enjoy the right to use all of the dry sand and complete horizontal access to the subject property, including the ocean.

3. The respondent may charge for use of the subject beach pursuant to approval of fees by the DEP, which must approve a fee schedule by June 10. The schedule shall cover daily, weekly, monthly and seasonal beach tags.

4. The amount charged shall be reasonable and comparable to other beach tag charges in the region, recognizing that the respondent is a private

corporation; the fees established shall reflect an amount sufficient to cover costs of operation, which may include a reasonable amount for administrative services.

5. If respondent decides to charge fees it must at a minimum (1) provide customary life guard services comparable to municipal services; (2) clean the beach and pick up trash regularly; (3) provide a shower facility.

6. We relinquish jurisdiction, in part, to the DEP for purposes of issuing a fee schedule consistent with this order and for the processing of any regulatory application necessary to confirm the public's use of the beach with open access, consistent with the public trust doctrine.

7. If the respondent does not or chooses not to issue beach tags and charge fees for services, it shall not interfere to any extent with public access to the beach and ocean. In any event, the beach and ocean shall be open to the public.

8. The order of the Chancery Division of November 3, 2003 is so modified, pending our final opinion.

CPM C-57-02

FOR THE COURT:

  
MICHAEL PATRICK KING, P.J.A.D.

JUSLD2

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



ACTING CLERK OF THE APPELLATE DIVISION