

IN THE MATTER OF P.T. JIBSAIL
LIMITED PARTNERSHIP
TIDELANDS LICENSE NUMBER
1515-06-0012.1 TDI 190001

SUPREME COURT OF NEW
JERSEY
DOCKET NO.: 089547

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO.: A-699-22

Appellate Division Judges:
Hon. Jessica R. Mayer, J.A.D.
Hon. Lorraine M. Augostini, J.A.D.
Hon. Mary Gibbons Whipple, J.A.D.

Civil Action

On Appeal from a Final Agency
Decision of the New Jersey
Department of Environmental
Protection

REPLY BRIEF IN FURTHER SUPPORT OF THE PETITION FOR
CERTIFICATION ON BEHALF OF APPELLANT-PETITIONER
JANINE MORRIS TRUST

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PRELIMINARY STATEMENT

In its petition for certification, Appellant-Petitioner, Janine Morris Trust (“Appellant”), questions whether the Tidelands Resource Council (“TRC”) has the legislative authority to establish pierhead lines through individual conveyances. Pierhead lines set the outward extent in the tidewaters of the State beyond which no permanent obstruction of any kind can be made or maintained. The statutory framework clearly states that the establishment or modification of these exterior lines must be done in a uniform and global manner for an area rather than through individual conveyances. However, the TRC’s current practice, which occurred in the instant matter, is to reset the pierhead line through individual conveyances.

Without a uniform system applying to all riparian lands, the result is an ad hoc fixing of the line for each tidelands grant, lease, or license that could impede an adjacent riparian owner’s fundamental right to navigation. The lack of a uniform system also creates significant safety issues whereby boaters and others that recreate within the waters of the State may encounter docks of varying lengths and orientations without warning. Another result is the uncertain expectations of property owners that have no guarantee that the pierhead line outward of their property would be the same as the line for others in the area. These impacts are realized by all tidally flowed waterfront property owners in

New Jersey. As such, the question presented in this petition is of general public importance that needs to be settled by the Supreme Court.

LEGAL ARGUMENT

I. THE PETITION FOR CERTIFICATION PRESENTS A QUESTION OF GENERAL PUBLIC IMPORTANCE THAT SHOULD BE SETTLED BY THE SUPREME COURT.

In opposition to Appellant’s petition for certification, P.T. Jibsail Family Limited Partnership (“Jibsail”) argues that the dispute is only between neighbors and does not affect other persons. [Jb11].¹ However, the question posed in this petition is whether the TRC has the legislative authority to establish pierhead lines through individual conveyances. Not only will such a determination affect all waterfront properties on West Point Island, and not just the individual parties to this appeal, but it has ramifications statewide. It may not affect every single person in the State of New Jersey, but it will certainly impact every property owner with tidally flowed waterfront property.

The TRC similarly opposes the petition for certification on the basis that the issue in the question presented is well-settled law by interpreting the Appellate Court’s decision to rely upon N.J.S.A. 12:3-13. [TRCb9].² First, this

¹ “Jb” refers to the pages of Jibsail’s brief in opposition to the petition for certification.

² “TRCb” refers to the pages of the TRC’s brief in opposition to the petition for certification.

statute was never cited by the Appellate Division in its opinion in any manner or form. Rather, the Appellate Division's holding cited N.J.S.A. 12:3-19 and the prior opinion of the Appellate Division in Schultz v. Wilson, 44 N.J. Super. 591, 607 (App. Div. 1957). [SCa80-81].

Second, N.J.S.A. 12:3-13 is similar to N.J.S.A. 12:3-19 in that “when [the pier lines or lines for solid filling are] fixed and established, the council shall file a map and surveys in the office of the secretary of state, showing what lines have been fixed and established by it for the exterior lines for solid filling and pier lines...” N.J.S.A. 12:3-13. Again, the plain language of the statute does not support an interpretation that the TRC may change the pierhead and bulkhead lines in an ad-hoc manner through individual conveyances. Rather, it supports Appellant's argument that the establishment of the pierhead lines must be done on a more global and uniform basis. The fact that the map and surveys must be filed in the Office of the Secretary of State again supports Appellant's argument that the entire purpose is to provide all waterfront property owners with reasonable expectations and notice as to the established pierhead and bulkhead lines.

Third, while the TRC argues that N.J.S.A. 12:3-13 was amended to expand the scope from just the waters of the bay of New York or the Hudson River into “tidewaters of the State,” the TRC ignores the legislative statement which stated

“[t]his bill would explicitly extend the jurisdiction of the Natural Resources Council from the ‘bulkhead’ line to the 3 mile seaward jurisdiction of the State, thereby establishing a single mechanism for the granting of riparian grants, leases or licenses.” L. 1979, c. 311, §2. Noteworthy is that this legislative act at the same time repealed N.J.S.A. 12:3-17.

By (1) repealing N.J.S.A. 12:3-17, which had permitted the TRC to extend its surveys at the request of shore owners to establish the exterior lines, (2) adopting the expansion of N.J.S.A. 12:3-13, which required the filing of the map and survey establishing the exterior lines with the Office of the Secretary of State, and (3) in conjunction with the legislative statement explaining that the bill would “thereby establishing a single mechanism for the granting of riparian grants, leases, or licenses,” clearly shows that the Legislature was removing the ability to establish or amend the exterior lines through individual conveyances.

Contrary to Respondents’ assertions, Appellant is not contesting the TRC’s authority to establish or modify the pierhead lines and bulkhead lines. [TRCb10]. Appellant is simply stating that the pierhead lines and bulkhead lines were meant to be established and modified in a uniform and global manner rather than through individual conveyances, as evidenced by the fact that property owners would be able to refer to the filed maps and surveys at the Office of the Secretary of State. Without a uniform and global approach, there is risk of

inconsistent exterior lines and uncertain expectations for waterfront property owners.

Finally, Jibsail argues that there is no statute that prohibits the TRC from establishing bulkhead lines and pierhead lines through individual conveyances. [Jb17]. However, government agencies are only permitted to act as authorized by statute. Acts which are utterly beyond the jurisdiction of a governmental entity are *ultra vires* in the primary sense and *void ab initio*. Summer Cottagers' Assoc. v. Cape May, 19 N.J. 493, 504 (1955); Heyert v. Taddese, 431 N.J. Super. 388, 429 (App. Div. 2013); see also City Council of City of Orange Tp. v. Edwards, 455 N.J. Super. 261, 274 (App. Div. 2018) (holding that a void act results from where a public officer has no authority to act at all). The question is not whether a statute exists that prohibits the act; the question is whether a statute exists that authorizes the act. Here, there is no statutory authority remaining that would allow for the establishment of the exterior lines through individual conveyances, and any such actions are *void ab initio*.

For these reasons, the question presented is of general public importance which has not been but should be settled by the Supreme Court. See R. 2:12-4.

II. JIBSAIL’S ARGUMENTS DO NOT CHANGE THE FACT THAT THERE IS A SIGNIFICANT QUESTION OF GENERAL PUBLIC IMPORTANCE THAT SHOULD BE SETTLED BY THE SUPREME COURT.

Jibsail argues that the fact that N.J.S.A. 12:3-17 was repealed has no bearing on the question presented. [Jb15]. However, Schultz relied upon N.J.S.A. 12:3-17 to provide the “express statutory authority” that could be reasonably interpreted by the TRC as permitting the establishment of exterior lines through individual conveyances. Schultz, 44 N.J. Super. at 606. The fact that the statute was repealed is in fact wholly relevant, as it removed the only statutory authority that the TRC had to establish exterior lines through individual conveyances.

Furthermore, Jibsail’s interpretation of Appellant’s argument in this matter is overly broad. [Jb16]. Appellant is not arguing that the TRC is required to establish uniform permanent exterior lines. Appellant is arguing that pursuant to the express and plain language of the authorizing statutes, any establishment or modification of exterior lines must be done in a uniform and global manner for an area rather than through individual conveyances.

In addition, Jibsail’s argument that “a reversal of [the practice of establishing pierhead lines through individual conveyances] would require TRC to revoke thousands of tidelands licenses forcing the removal of the dock structures approved therein” is further misplaced. [Jb16]. The remedy does not

have to be retroactively applied and could be applied to the current matter and those in the future. This application would avoid the potential negative impact to “thousands” of tidelands licenses, which may or may not have been properly issued.

Finally, Appellant’s reliance upon the Borough of Lavallette tax maps is also being mischaracterized by Jibsail. [Jb17]. Appellant’s argument is not that the Borough of Lavallette established a pierhead line. Appellant’s argument is that the tax map reflects the survey and map filed by the TRC with the Office of the Secretary of State as required pursuant to N.J.S.A. 12:3-19. A tax map is approved by the Director, Division of Taxation. N.J.A.C. 18:23A-1.2. Tax maps are generally prepared by using existing maps, surveys, and aerial photographs. N.J.A.C. 18:23A-1.1. Furthermore, a tax map is required to show riparian grants, leases, and licenses. N.J.A.C. 18:23A-1.18. Here, the exterior lines were established, and the TRC went beyond the pierhead lines in granting the current application.

As set forth in Appellant’s petition for certification, the interpretation that the TRC may establish or amend exterior lines through individual conveyances would make entire sections of the statutes inoperative, superfluous, void, or insignificant. Sanchez v. Fitness Factory Edgewater, LLC, 242 N.J. 252, 261 (2020) (quoting G.S. v. Dep’t of Human Servs., 157 N.J. 161, 172 (1999)). There would be no purpose for N.J.S.A. 12:3-1 to -3, -14, and -19 to -20.

In summary, there is simply no statutory authority for the establishment or amendment of exterior lines through individual conveyances and the TRC's actions here are *ultra vires* in the primary sense and *void ab initio*. To allow the establishment of exterior lines through individual conveyances would make entire sections of the Tidelands Act inoperative, superfluous, void, or insignificant. Simply stated, there would be no point in establishing exterior lines if they could simply be amended on an ad hoc basis.

For these reasons, the question presented is of general public importance which has not been but should be settled by the Supreme Court. See R. 2:12-4.

CONCLUSION

For the reasons stated above, and for the reasons more fully stated in the petition for certification, the Janine Morris Trust respectfully requests the Court grant its petition for certification.

Respectfully submitted,

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Dated: August 22, 2024 /s/ Michael G. Sinkevich
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