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Tidal Flats Case Leaves Appellants High and Dry

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The owners of waterfront property, Richard and Christine Spillane, did not appreciate seeing two boats moored on the tidal flats near their house in [Manchester-by-the Sea](#). Exercising self-help, they removed the moorings from the boats. The Spillanes then filed suit in [Land Court](#) seeking a declaration they owned the tidal flats and were entitled to the exclusive control of the flats to the low water mark. They named as defendants the boat owners and the Town itself. The boat owners, Samuel Adams and James Welch, disputed the Spillanes' ownership rights in the flats. Adams also filed a counterclaim seeking to have his mooring replaced. The Land Court ruled against the Spillanes who then appealed to the [Appeals Court](#). The case, [Spillane v. Adams, 76 Mass. App. 378 \(2010\)](#), establishes a definitive standard for determining tidal marks for property ownership purposes.

The Spillanes claimed their ownership of the flats by virtue of a 2003 deed. They also traced their chain of title back to 1902. The Town countered by presenting even older documents to rebut the Spillanes' ownership claims. The Town offered into evidence a 1640 grant of land from the [City of Salem](#), which established the Town, which was then a settlement named Jeffryes Creek, and is now known as Manchester-by-the-Sea. The Town also presented the [Colonial Ordinances](#), enacted in 1641 to 1647 by the [Massachusetts Bay Colony](#). The purpose of the Colonial Ordinances was to encourage productive use of waterfront property through the building of piers and wharves. For this reason the Colonial Ordinances had assigned rights in the tidal flats to the owners of the uplands. The Ordinances extended the Town's interest in shore-front property to the tidal flats up to the low water mark or 100 rods below high water, whichever was higher.

Since there was no evidence that the tidal flats were transferred by Salem before the 1640 land grant and because there was no proof that Manchester-by-the Sea sold or lost title to the flats before the 1902 deed, which was in the plaintiffs' chain of title, the Appeals Court reasoned there was a presumption that title to the flats continued in the Town. The Court also took into consideration a 1919 Land Court title examiner's report that had been prepared for a registration case originally intended to quiet title to land including the subject parcel. For some unexplained reason, the land in dispute in Spillane had been subsequently severed from the 1919 registration case. Nevertheless, the Appeals Court believed that this 1919 Land Court report strengthened the Town's claim of ownership to the tidal flats. Consequently, the Appeals Court held that the Spillanes did not establish title to the tidal flats and that title resided in the Town.

Having established that the Town owned the flats, the Appeals Court then addressed the issue of the boundaries of the tidelands. Specifically, the Appeals Court believed it was appropriate to define what was meant by the low water mark. For centuries the term "[low water mark](#)" had been an imprecise phrase. The Appeals Court observed that this dispute would serve as a good opportunity to establish a definitive standard for tidal marks. At trial in the Land Court, the Spillanes had suggested that the judge rely on the usual causes and conditions and use a measurement of the low water mark taken at one moment in time. The Land Court judge rejected this method and determined that the mean low water mark should be more precisely defined. The Land Court judge held that the low water mark should be "mean low water" as established by the [National Geodetic Vertical Datum \(NGVD\)](#). The Appeals Court agreed with the Land Court and applied the NGVD standards (which are the same standards employed by federal surveyors) to locate the two moorings of the boats owned by the defendants. Employing this standard, the Appeals Court found that the two moorings were seaward of the low water mark and, consequently, outside the control of the owner of the tidelands.

In conclusion, the Appeals Court held that the Town owned the flats; the moorings were seaward of the flats and the Spillanes had improperly removed Adams' mooring from the water. For this reason, the Court held that the Spillanes were liable to Adams for damages in the amount of \$145 for the mooring. The Spillanes decided to appeal, but the [Supreme Judicial Court](#) denied further appellate review. 456 Mass. 1108 (2010).

The ownership of tidelands has been the subject of several inquiries we have received from local assessors over the years. See, for example, [Opinion 2006-353](#). In this case, the Appeals Court, provided a definitive standard for determining tideland boundaries.