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Another Party in Tribal Case

Martha's Vineyard Commission Votes to Join Town of Aquinnah, Others in Requesting Judge to Reconsider Ruling

By JULIA WELLS
Gazette Senior Writer

The Martha's Vineyard Commission announced yesterday that it will join the town of Aquinnah and ask a superior court judge to reconsider his recent ruling in favor of the Wampanoag Tribe of Gay Head (Aquinnah).

Two months ago the Hon. Richard F. Connon found that the tribe cannot be sued because of sovereign immunity.

"If allowed to stand this would be in place for generations to come," said MVC executive director Mark London yesterday.

The town, the Gay Head Taxpayer's Association and the Benton Family Trust have filed motions asking the judge to reconsider the decision.

Although the Aquinnah selectmen have agreed to join the move to reconsider, if that is turned down they have not yet decided whether to take the next step and appeal.

Mr. London said the commission voted unanimously in executive session at its last regular meeting to request that the commission be allowed to join the case on the side of the town. A motion to intervene was filed in Dukes County Superior Court July 31. A press release about the decision was put out by the commission yesterday.

"The commission will intervene in this proceeding because of the potential scope of the superior court decision, which appears to be applicable to the tribe wherever it might purchase land on the Island," the statement says.

It also states: "The commission does not perceive that the tribe wishes to exploit its claimed immunity from judicial process to undertake inappropriate development and notes that it has worked successfully with the tribe in the past. However, the commission believes that it is important to maintain a unified system of land use planning and regulation in light of the Vineyard's unique and limited resources. For similar reasons, the commission has defended its ability to regulate Chapter 40B affordable housing projects."

Created by an act of the state legislature in 1974, the commission is a regional land use agency with unique regulatory powers. Language in the commission's enabling legislation states that commission jurisdiction does not include the Indian common lands, the clay cliffs and the Herring Creek.

The ruling by Judge Connon has the power to turn a landmark 1983 Gay Head Indian land claims settlement on its head. The judge found that the doctrine of sovereign immunity trumps the 1983 Wampanoag settlement agreement, as well as subsequent state and federal legislation that led to federal recognition of the tribe in 1987.

The Wampanoag Tribe is the only federally recognized tribe in Massachusetts.

The 1983 settlement agreement and the state and federal acts all contain explicit language noting that the land conveyed to the tribe is subject to state and local laws.

The case centers on a simple zoning dispute that began when the tribe built a small shed and pier at the tribal shellfish hatchery in March of 2001 without obtaining a building permit. The hatchery is located on the Cook Lands fronting Menemsha Pond in Aquinnah, one of four land areas conveyed from the town to the tribe under the terms of the 1983 settlement agreement.

In May of 2001 the town went to court to compel the tribe to comply with zoning rules.

"The 1983 settlement agreement specifically provides that the Cook lands conveyed to the tribe . . . shall be subject to all federal, state and local laws, including . . . the regulations of the Martha's Vineyard Commission. Similarly, the 1983 land plan stated that the Cook lands will be subject to the regulations of the Martha's Vineyard Commission. The land in dispute in this litigation is located within the Coastal District DCPC," the MVC press release states.

The motion to intervene was filed as an emergency motion, which means the court will be asked to waive the court rule that requires a motion to be served on the opposing parties for ten days before it is filed.

"We just wanted to save ten days, because the judge has taken this under advisement and we don't know when he might consider it," said Eric Wodlinger, a partner with Choate Hall & Stewart in Boston, who represents the commission. Mr. Wodlinger had no other comment on the motion to intervene.

"[T]he MVC has a direct interest in the enforceability of its DCPC regulations, both as to the Cook Lands and as to Aquinnah and the other towns on Martha's Vineyard," Mr. Wodlinger wrote in part in the motion to intervene.

Yesterday Mr. London said the commission strongly endorses some kind of settlement in the case between the town and the tribe, but meanwhile he said the commission believes it is prudent to join the case.

"It's not clear exactly what the impact and scope of all this is - and it was felt better to be an intervener than not to be an intervener," he said.

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