



Tribe seeks review of zoning case

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AQUINNAH - In a dispute that has ramifications for the tribe's sovereignty, the Aquinnah Wampanoag have filed a petition asking the state's high court to reconsider whether they should be subject to local zoning regulations.

Douglas J. Luckerman, an attorney for the tribe, is asking the Supreme Judicial Court to revisit the case because the Aquinnah Wampanoag believe the court relied too heavily on a 1983 agreement among the state, the town of Aquinnah and the tribe. He argues the case should be based on the merit of federal law, since the tribe has been granted federal recognition by the Interior Department.

"If the SJC turns down the request, the clock would begin ticking on an appeal to the U.S. Supreme Court," Luckerman said.

A decision by the SJC could come this month, according to the court's public information office.

The petition is the latest in an ongoing struggle among the tribe, the state and local civic groups regarding the tribe's assertion that it is not subject to local enforcement of zoning regulations.

In December, the SJC reversed an earlier ruling by a Superior Court judge that the tribe was exempt from local and state land-use laws because it was granted sovereignty through federal recognition in 1987.

The case stems from a dispute over the construction of a small wooden shed by the tribe on tribal lands without a town building permit. The dispute began in March 2001, when tribal members built an unpermitted shed and pier at the tribe's shellfish hatchery.

The hatchery is on the Cook Lands fronting Menemsha Pond in Aquinnah, one of four areas transferred from the town to the tribe under the terms of a 1983 settlement agreement that preceded federal recognition of the tribe.

In December, the SJC concluded that the tribe waived its sovereign immunity as part of the 1983 agreement, thus subjecting the tribe and the hatchery to local zoning enforcement action.

AT ISSUE

■ The lawsuit stems from construction of a shed and pier at the tribe's shellfish hatchery without town permits.

■ A Superior Court judge ruled in 2003 that as a federally recognized tribe, the Aquinnah Wampanoag are protected against civil lawsuits.

■ Last month the state Supreme Judicial Court overruled that decision, saying that in a 1983 agreement preceding recognition the tribe waived its claim to sovereign immunity.

■ The appeal asks the SJC to reconsider.

However, tribe attorneys argue the Aquinnah Wampanoag never explicitly waived their right to tribal sovereignty under federal law in the settlement and want the SJC to rely less on the settlement agreement and more on existing federal law.

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