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### **Wampanoags Seek High Court Delay**

*Attorneys for Tribe Request and Receive More Time From U.S. Supreme Court to Decide Whether to Appeal Case*

By CHRIS BURRELL

Leaders of the Wampanoag Tribe of Gay Head (Aquinnah) now have until July 2 to decide whether they will try to convince the United States Supreme Court to hear their appeal of the much-watched case over tribal sovereignty.

Attorneys for the tribe last month requested a 60-day extension of the May 2 deadline for filing a request with the U.S. Supreme Court.

Tribal chairman Donald Widdiss, elected last fall after defeating longtime chairman Beverly Wright, said yesterday that the Wampanoag tribal council is still considering whether to appeal last winter's ruling by the Massachusetts Supreme Judicial Court which declared the tribe must abide by state and local zoning regulations.

"The intent of the extension is for us to evaluate our opportunities, to draft an appeal and see whether it's going to put us in a better position," said Mr. Widdiss. "It's all conjecture once you go to the Supreme Court, the possibility of being heard, the possibility of you prevailing."

Mr. Widdiss said the tribe has more than one attorney working on the next step. "We'll consolidate opinions," he said.

While the case has humble origins, the legal implications have always been viewed as far-reaching. The dispute began in March 2001 when the tribe built a small shed and platform on tribal land without obtaining a building permit from the town. The construction took place on the Cook Lands along Menemsha Pond, land transferred to the Wampanoags under the terms of a settlement agreement reached in 1983.



The tribe, the only federally recognized Indian tribe in the commonwealth, argued that because of its sovereign status, they were not subject to town zoning bylaws and were immune from any lawsuits.

In the legal battle that ensued, there have been victories and setbacks for both sides. The town of Aquinnah was the original plaintiff, filing a lawsuit in Dukes County Superior Court, seeking enforcement of town bylaws over the Wampanoags on tribal lands.

In that round, the superior court ruled in favor of the tribe, declaring that the tribe could not be sued because of sovereign immunity.

The town did not participate in the appeal of that case to the state supreme court after a controversial decision by selectmen to step out of the legal fight. The appeal was left to a group of

taxpayers and the Benton Family Trust, a coalition of abutters to the Cook lands. Massachusetts Attorney General Thomas Reilly later intervened in the case on behalf of the commonwealth. Friend of the court briefs were filed by the Martha's Vineyard Commission and the towns of West Tisbury and Chilmark

Last December, the Massachusetts Supreme Judicial Court overturned the superior court ruling. Justices pointed to the 1983 Indian land claims settlement which was signed by the town, the tribe and the taxpayers' association. In that document, the tribe agreed to abide by state and local zoning laws.

The supreme court ruled that the Wampanoags had in fact waived sovereign immunity, at least on the subject of land use, when they signed the settlement agreement, an agreement which later led to federal recognition for the Wampanoags in Aquinnah.



James Quarles 3rd, a partner at Hale and Dorr in Washington, D.C. who represents the taxpayers, the Aquinnah/Gay Head Community Association, was out of the country and could not be reached for comment this week.

The tribe's principal attorney, Douglas J. Luckerman of Lexington, was also traveling this week and unavailable for comment. But his application last month to the United State Supreme Court asking for a deadline extension shows that the Wampanoag tribe has adopted a holding pattern as it weighs options.

"On Jan. 8, 2005, the Wampanoag tribe installed its first new tribal chairman since 1991," Mr. Luckerman wrote. "The petitioner requests additional time to explore alternatives . . . that will provide a satisfactory long term resolution to the matter without further litigation including entering into an agreement with the town of Aquinnah over the handling of future tribe-town zoning disputes."

This week Mr. Widdiss sounded doubtful about making headway with town leaders. "I don't think the town has been open to these negotiations until this litigation is settled," he said.

Selectman and board chairman Jim Newman said yesterday that he would welcome talks with the tribe. "I can't speak for the rest of the selectmen, but I personally would be open to negotiations," he said.

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