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Wampanoag Tribe Drops Appeal in Federal Court; State High Ruling Prevails

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The Wampanoag Tribe of Gay Head (Aquinnah) announced this week that it will not appeal the landmark sovereignty case to the United State Supreme Court.

The decision means that the Massachusetts Supreme Judicial Court (SJC) decision from late last year will be allowed to stand, and the case will now return to the superior court for a remedy.

The state's highest court ruled that the tribe must abide by state and town zoning rules, reversing the lower court decision that found the Wampanoags cannot be sued because of sovereign immunity - and preserving the integrity of a historic 1983 Indian land claims settlement agreement that was the crux of the case.

The state's highest court found that the Wampanoags waived sovereign immunity when they signed the settlement agreement, which led to federal recognition for the tribe in 1987.

The Wampanoags are the only federally recognized tribe in the commonwealth.

"We now have a definitive resolution of the relationship between the tribe and the town in relation to land use," said James Quarles 3rd, who represented the Aquinnah/Gay Head Community Association, a group of taxpayers and one of the plaintiffs in the case.

"At least as to the issues decided, the Supreme Judicial Court has spoken and that is now the final word," Mr. Quarles added.

"This is important to the town and important to the Island," said Aquinnah town counsel Ronald H. Rappaport yesterday. "It means the same rules apply to the tribe as the town. The town itself has to abide by zoning. What are the rules? That's important," Mr. Rappaport said, adding:

"I am pleased for both the town and the tribe that this matter is not going to push farther."

Tribal chairman Donald Widdiss said yesterday that the council decided that government-to-government discussions with the town were a more fruitful avenue than continuing to fight the issue in court. Mr. Widdiss said informal discussions with town officials revealed that they would welcome the conversations.

"Don stressed he wants to work with the town and we want to work with the tribe, within the framework of the court decision. Hopefully, we can mend any fences that have been broken," said Aquinnah selectman and board chairman James Newman yesterday.

Mr. Widdiss was elected tribal chairman last November, defeating longtime chairman Beverly Wright.

The court dispute dates back to March of 2001, when the tribe built a small shed and a pier at its shellfish hatchery without obtaining a building permit. The hatchery sits on the tribally owned Cook Lands fronting Menemsha Pond. The town took the tribe to court over the infraction, and in June of 2003 the Hon. Richard F. Connon, an associate justice of the superior court, found that the Wampanoags cannot be sued because of sovereign immunity.

The SJC overturned the ruling.

"We conclude that, with respect to its land use on the Cook Lands, the only land in dispute in this case, the tribe waived its sovereign immunity, thus subjecting the tribe and the hatchery to the zoning enforcement action," wrote Justice John M. Greaney in the Dec. 2004 decision.

The tribe announced its decision to not pursue a federal appeal in a press release issued on Wednesday afternoon.

"The tribal council of the Wampanoag Tribe of Gay Head (Aquinnah) has decided by unanimous consent not to file a Petition for Certiorari to the U.S. Supreme Court We will instead ask the Aquinnah selectmen to resume negotiations suspended when the original action was filed. Our goal is to provide mutually acceptable solutions to land use issues while respecting the need to set the tone for future cooperation between the tribe and town in matters of mutual benefit," the press release said. It also said:

"This decision recognizes that matters of law still remain unresolved."

The town was the original plaintiff in the case, but when the case moved to the state supreme court, the town decided not to pursue the appeal, leaving it to the taxpayer group and the Benton Family Trust, an abutters group, to seek judicial guidance from the state's highest court.

Later Massachusetts Attorney General Thomas Reilly intervened in the case.

"We stepped in [on] this case for a reason. There is more going on here than just a shed in Aquinnah. We believe it is important that the tribe live up to its agreement and comply with state law in current and future tribal projects," Mr. Reilly said in a statement at the time.

Friend of the court briefs were also filed by the Martha's Vineyard Commission and the towns of West Tisbury and Chilmark.

The case now returns to Dukes County superior court, and Mr. Rappaport said the town will again become an active party. "We are going to re-enter the case," he said.

But Mr. Newman said he would want to learn the potential remedy before deciding with his fellow selectmen whether to pursue it.

The Supreme Judicial Court decision specifically addressed with whether town and state zoning laws were applicable on the Cook Lands, which the tribe had received in the 1983 land

claims settlement agreement. The agreement was signed by the town and the tribe and also ratified by the state legislature and an act of Congress.

A possible question remains whether the tribe must abide by zoning laws on other land.

Mr. Quarles and Mr. Rappaport said the answer is clear.

"What's applicable on the Cook Lands is applicable on any land, anywhere," Mr. Quarles said.

Mr. Rappaport agreed. "The case has implications for other lands," he said.

In the SJC decision Justice Greaney wrote: "Because we have concluded that the tribe waived its sovereign immunity as to land use on the Cook Lands, we need not discuss in detail the additional argument . . . [but] the tribe knowingly bargained for, and fully understood, its obligations under the settlement agreement to submit to local zoning enforcement, and judicial action, where necessary."

Mr. Widdiss said yesterday that the court battle between the tribe and the town "was being driven by ego." The tribe, he said, wanted to work out the matter outside of the court process.

Douglas Luckerman, the Lexington attorney who represented the tribe in the case, said the council was handling all tribal comment on the case.

Mr. Widdiss said the tribe plans to continue to retain Mr. Luckerman, who represents the tribe on environmental issues.

Yesterday, Mr. Quarles said, "It's now time for this issue to get resolved somewhere other than a courtroom, for the parties to talk directly to each other rather in front of a judge."

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