

Vineyard Gazette Online

http://www.mvgazette.com/news/2005/09/23/moshup_trail_project.php?&format=print

Moshup Trail Project Argued

Building Application for Wetland Sparks Emotional Discussion in Complicated Legal Fight Over Access to Heathlands

By IAN FEIN

A longstanding land use battle off Moshup Trail in Aquinnah resurfaced on another front this week, when the town conservation commission took up the application of a landowner who wants to build in and around a wetland.

More than two dozen Aquinnah residents turned out for the standing-room-only commission meeting on Tuesday to oppose the plan by James J. Decoulos to build a home, driveway, bridge and septic system on his three-acre lot that is roughly 60 per cent wetlands.

The development plan has been the subject of numerous lawsuits over the last five years between Mr. Decoulos, the commission, individual town residents and other town boards. Mr. Decoulos is also spearheading a separate, ongoing eight-year legal effort to open access to an area of landlocked lots off Moshup Trail just east of his three-acre property.

The commission meeting this week saw emotional testimony from town residents - some of whom are named as defendants in the other lawsuit - as well as angry exchanges between Mr. Decoulos and individual commission members. Conservation commission chairman Sarah Thulin said at the outset that she had received more calls and concerns from residents about this week's hearing than she ever has before.

In a pointed reference to the other lawsuit, Moshup Trail resident Walter Verdick asked Mr. Decoulos on Tuesday whether the proposed bridge and driveway to his three-acre parcel would allow access to any other landlocked lots off Moshup Trail. Mr. Decoulos replied that it was not intended to do so, but other residents at the meeting said it remained a possibility.

"Love your neighbors," Mr. Verdick told Mr. Decoulos. "Because I don't know if they're going to love you."

The other lawsuit specifically seeks access to 25 acres and seven landlocked lots near the southeastern bend in Moshup Trail, but has the potential to open more than 100 acres to development.

The enormously complex case involves an arcane piece of land law known as easement by necessity. In order to establish an easement by necessity, a landowner must bring into court every abutting landowner affected by the implied easement.

The town, the state, individual landowners and the Vineyard Conservation Society became involved in a costly and sometimes controversial conservation effort in the area during the late 1990s, spending some \$2.7 million to save almost 50 acres of land along Moshup Trail. The

pending lawsuit threatens some of the previously protected rare coastal heathland habitat that is home to orchid bogs, northern harriers and spotted turtles.

The conservation society is a key defendant in the case.

Attorneys for the town, conservation society and Mr. Decoulos all petitioned the Massachusetts Supreme Judicial Court to take the case two weeks ago, after the Massachusetts Court of Appeals last month overturned a land court decision that had the potential to block future development. The densely worded appeals court decision issued by the Hon. Frederick L. Brown did not favor one side in the case over the other.

If the state supreme court does not take up the case, it will be remanded back to the land court for further litigation.

Meanwhile, Mr. Decoulos and the conservation commission continue their battle over the three-acre piece of land to the west.

Mr. Decoulos holds an easement to the property, but the easement lies directly in a wetland - thus the proposal for an 800-foot driveway and bridge. Mr. Decoulos owns a Cambridge-based environmental engineering and land planning firm that has done work for the town and the Wampanoag Tribe of Gay Head (Aquinnah).

The application currently before the commission is identical to one first filed by Mr. Decoulos in March 2000. The commission either denied or did not act on the application that year, but Mr. Decoulos appealed to the state and after some internal wrangling the Department of Environmental Protection issued a superseding approval in July 2001. The project then became entangled in an appeal by neighbors and a number of ensuing lawsuits. In December 2002 the town and conservation commission reached a settlement agreement with Mr. Decoulos approving the project retroactive to July 2001. The neighbors filed another lawsuit, and the state division of administrative law appeals issued a recommended final decision last month that favored Mr. Decoulos.

Mr. Decoulos is now back before the commission because the town's retroactive July 2001 approval had a three-year expiration date.

It was clear from the start of the hearing on Tuesday that Mr. Decoulos and commission members did not see eye-to-eye about some of the legal ramifications from previous decisions, nor about some of the facts in the application. It is not clear, for example, exactly how many square feet of wetlands would be disturbed by the project.

Mr. Decoulos cited findings from the previous state reviews and noted that the town conservation commission previously approved the exact same application. But Mrs. Thulin told Mr. Decoulos that the commission - which includes three new members - will consider the project as a new application under the Aquinnah town wetlands bylaw, and would therefore require another full review.

"I want to set some ground rules," Mrs. Thulin told Mr. Decoulos. "We're starting this process now, and you need a permit from us. You may feel that you've done this before, but we're probably going to ask you tonight to do a number of things." She continued:

"You always seem to have your day in court. But maybe we can arrive at responsible development without that."

Mrs. Thulin asked Mr. Decoulos if he would be willing to grant an extension to the 21-day time limit to act on the application so the commission could obtain more information. Mr. Decoulos said he would not.

"Are these your wishes: that we deny you right now?" commission member and former selectman Walter Delaney asked Mr. Decoulos.

"There's clearly a lot of opposition about this. Clearly people don't want us to build on this lot," Mr. Decoulos replied. "I don't see what another two or four or six more weeks are going to do."

Mrs. Thulin said she wanted more information.

"You personally don't think you've gotten enough information over the last five years?" Mr. Decoulos asked.

"I guess I'd like to give you the benefit of the doubt," Mrs. Thulin replied. "I'd be willing to look at it again - even though you've sued me personally and we've been in court together for a long time," she added.

"What's that going to do? I don't understand what the benefit is," Mr. Decoulos said. "There is not one single-family lot in this town that's been analyzed to death like this one."

Selectman Camille Rose, who attended the meeting, later responded to the applicant's comment.

"I think he brought up a very good point accidentally," Ms. Rose said. "I don't think we've ever dealt with a property that's 60 per cent wetlands. We've never dealt with a situation like this - ever. This piece of land is unique. Because nobody's ever come to us with an unbuildable lot and tried to build on it."

The commission continued the public hearing until Oct. 4. Mr. Decoulos said he would likely not attend the meeting.

Also this week a number of town residents called on the Martha's Vineyard Land Bank to end the battle over Moshup Trail by purchasing landlocked lots from Mr. Decoulos.

At least five Moshup Trail residents and Mrs. Thulin approached the land bank commission about the Decoulos lots during a public comment session on Monday, and two residents at the commission meeting on Tuesday - including commission member Carlos Montoya - asked Mr. Decoulos why he does not abandon his development plans and sell to the land bank.

The land bank currently owns roughly 125 acres in Aquinnah, including more than 20 acres further west on Moshup's Trail.

Land bank officials this week refused to comment, saying they never discuss land acquisition prospects publicly.

Mr. Decoulos said in an e-mail exchange from his Cambridge office on Wednesday that he has not yet had any conversations with the land bank, though he would be willing to sit down with them.

Conservation society executive director Brendan O'Neill this week expressed hope that the land bank could help.

"Having worked for so many years - with both private and public dollars - to protect this globally rare place, that [land bank assistance] would be welcome," Mr. O'Neill said.

[Home](#) | [Usage Rules](#) | [Privacy Policy](#) | [FAQ](#) | [Contact Us](#) | [Syndication/RSS](#) | [Site Index](#)

MVGAZETTE.COM - Copyright © 2005 Vineyard Gazette, Inc. - All Rights Reserved
Site Design and Development by [Metaface](#)