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- ▶ Real Estate
- ▶ Travel to M.V.
- ▶ Calendar
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Top Stories
News Archive

Features

Feature Article
Photo Galleries
Health and Fitness
Sports
Nature & Conservation
Bird News
Fishing
Tides
Obituaries
Wedding Planner
Travel Guide

Weather

Current Conditions
Five-Day Forecast

Commentary

Editorials
Gazette Chronicle

Calendar

This Week
This Month
Music
Theatre
Movies
Submit an Event

Classifieds

Real Estate
Help Wanted
Place an Ad

Travel Guide

Getting Here
Maps and More

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NEWS

Townwide DCPC in Aquinnah Held Valid by Superior Court

By IAN FEIN

A Middlesex Superior Court judge last week upheld the validity of a unique townwide planning and zoning district in Aquinnah.

The decision, which was entered on Friday by the Hon. Julian T. Houston, found in favor of the town and the Martha's Vineyard Commission against a developer who is seeking to open access to and subdivide parcels of vacant land off Moshup Trail. The developer, James J. Decoulos, has filed more than 10 different legal challenges against the town, a number of which are still ongoing.

Although the Middlesex ruling came in a case that was decided mostly on procedural grounds, the summary judgment is significant because it addressed the first direct legal challenge to the Aquinnah townwide district of critical planning concern (DCPC). The Aquinnah DCPC, an overlay planning district accompanied by special zoning regulations, was enacted by town voters in 1999 through the Martha's Vineyard Commission enabling legislation.

"This was the first court to look at it, to be directly confronted with the issue, and it ruled that the Aquinnah townwide DCPC is legal, valid and enforceable," town counsel Ronald H. Rappaport said this week. "The court found that the town of Aquinnah - because of its character, history and fragile resources - in and of itself has regional, and statewide, significance."

Judge Houston in his 12-page decision also cited a May 2004 Massachusetts Supreme Judicial Court ruling that overturned a lower court and upheld the validity of a townwide DCPC in Barnstable that was enacted through the Cape Cod Commission. Boston attorney Eric Wodlinger, who represented the Cape commission in that case and the Vineyard commission in the Middlesex case, said the decisions show that courts are granting proper deference to the regional planning agencies.

"For both the Cape and the Vineyard, the courts did not have a great deal of difficulty upholding townwide DCPCs or, as far as I

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know, any other DCPC," Mr. Wodlinger said. "The Vineyard commission is acting as a legislative body when it enacts a DCPC, and as such is given a lot of scope."

The unique power of the Martha's Vineyard Commission, as granted by the state legislature, allows towns through DCPCs to enact zoning regulations that would otherwise be prohibited by law. DCPCs are intended to protect areas of particular regional importance and can cover a wide range of places, from coastal areas to rural roads. While other towns - such as Barnstable - have adopted townwide DCPCs to enact building caps, Aquinnah is the only town that has used it to create substantive zoning regulations.

The plaintiffs in the case - Mr. Decoulos and Maria A. Kitras, who are both trustees of the land in question and represented themselves before the Middlesex court - argued that the Aquinnah DCPC was null and void because it failed to provide a regional benefit. Judge Houston found that the plaintiffs offered no evidence to support their claim, and deferred to the local knowledge of Aquinnah voters and the Martha's Vineyard Commission.

"The validity of DCPCs . . . cannot be second guessed unless it is shown, with relative certainty, that the decision to designate them is contrary to the Constitution, enabling act, or statute," Judge Houston wrote. "The local legislative body is deemed to understand the local conditions and can exercise its police powers to the widest possible extent consistent with the law."

Mr. Decoulos in the Middlesex case also sought relief from other Aquinnah zoning and health regulations adopted after he filed subdivision plans for two parcels off Moshup Trail, but Judge Houston found that Mr. Decoulos was not entitled to a freezing of the regulations because his plans were never approved. Mr. Decoulos in an earlier superior court case sought to compel the town clerk to issue approval certificates because the town planning board did not act on his definitive subdivision plan filed in January 2000. But the Massachusetts Court of Appeals in August 2004 dismissed that mandamus action case because Mr. Decoulos waited more than a year to bring his suit.

Judge Houston relied heavily on the appeals court decision last week.

"Because this declaratory judgment action essentially seeks the same result as the failed mandamus action, it logically follows that plaintiffs' delay in bringing this action is also unreasonable," Judge Houston wrote. "In both cases plaintiffs waited in excess of one year after the town denied their request before resorting to court action to revive their denied subdivision plans."

Mr. Decoulos, meanwhile, has three other court cases still



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pending for his lots off Moshup Trail, including one petition before the U.S. Supreme Court. He did not return calls for comment this week.

The most substantial case, a nine-year legal effort that seeks to open access to his landlocked parcels, was remanded back to the Land Court last year for further fact finding. If found in favor of Mr. Decoulos, the access would threaten globally rare coastal heathland habitat and could open more than 100 acres of vacant land to development.

Aquinnah selectman Camille Rose this week said the town has been nearly unanimous in its commitment to fend off the many challenges by Mr. Decoulos.

"All the years we've been fighting him, I have been constantly amazed at the loyalty that taxpayers, lawyers and town officials have shown in upholding the regulation we have in that area," Ms. Rose said. "And he has tested them thoroughly."

Also the longtime planning board chairman, Ms. Rose said she was particularly pleased with the DCPC decision out of Middlesex last week.

"It's very comforting to know that the commission makes our bylaws valid," she said. "I think it shows the power of regional planning, and we're thrilled that the courts recognized that will help us protect our character."

Martha's Vineyard Commission chairman Linda Sibley this week praised Aquinnah voters for their progressive attitude toward town planning, and suggested that the recent decision might inspire other towns to use the powers of the commission's enabling legislation to further reinforce their own regulations.

"Essentially the town of Aquinnah did something very bold, declaring that their whole town as a district of critical planning concern and using the DCPC process to develop comprehensive regulations," Mrs. Sibley said. "This case certainly does point out that the DCPC is a tool that the other towns can use. It is a way to use the commission to strengthen the home rule of the town."

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