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Court Ruling Favors Aquinnah, Upholding Townwide DCPC

By JULIA WELLS

Marking a key win for the town of Aquinnah in its long-running legal battle with James J. Decoulos and Maria Kitris, who want to open up Moshup Trail for development, the Massachusetts Appeals Court ruled yesterday on two separate fronts, finding:

- Mr. Decoulos has not won the right to subdivide two lots he owns off Moshup trail.
- The Aquinnah townwide district of critical planning concern is valid.

“The plaintiffs have not achieved, nor can they ever achieve, the final approval required . . . for subdivision plans,” wrote the Hon. Barbara A. Lenk, an associate justice of the appeals court.

The decision upholds a June 2006 ruling from Middlesex superior court. The case involved both a direct legal challenge to the townwide DCPC and a request for relief from town zoning regulations over subdivision plans on two Moshup Trail parcels.

Mr. Decoulos claimed the subdivision plans were entitled to what is termed constructive approval because the town planning board failed to act on the plans within the statutory time frame.

But the town clerk never issued a certificate for constructive approval, and by the time he challenged the matter the state land court said he was too late. If constructive approval had been allowed, the subdivisions would have been protected by an eight-year zoning freeze.

The appeals court ruling yesterday marks the third time that a court has said without question that there is no zoning freeze on the Decoulos property.

“There is . . . no opportunity for the plaintiffs to secure final approval of their subdivision plans and it is time to bring this matter to a close,” the judge concluded.

Mr. Decoulos’s challenge to the townwide DCPC was dismissed in a single sentence in a terse footnote. “There is no merit to the plaintiffs’ contentions concerning the designation of certain districts of critical planning concern,” Judge Lenk wrote.

The ruling is significant because it marks another piece of case law upholding a townwide district of critical planning concern.

“I am just so pleased because this confirms the legality of the town DCPC,” said Aquinnah selectman Camille Rose yesterday.

Aquinnah town counsel Ronald H. Rappaport agreed. “This court has upheld the townwide DCPC and to me that is extremely far-reaching. It says that those rules are valid, reasonable and enforceable,” he said.

Arthur Kreiger, a partner at Anderson and Kreiger in Boston who represents Mr. DeCoulous in the case, declined to comment in detail on the appeals court ruling yesterday.

“We’re reviewing it and discussing it with my client and figuring out the next step,” he said.

Mr. Decoulos and the town have been locked in a legal standoff for 12 years, principally over access to a swath of landlocked parcels along Moshup Trail, a globally rare, salt-blasted coastal heathland. Aided by the Vineyard Conservation Society, the town has been working to keep the area open and forever wild.

Mr. Decoulos at one point had filed more than 10 different legal challenges against the town. Several are still pending, including a pivotal case that is before the Massachusetts Land Court.

Ms. Rose said the appeals court ruling is a boost for the battle-weary town.

“I am very, very proud of the people in this town — that they are willing to stand up to this kind of intimidation. Nobody backed down,” she said.

Mr. Rappaport also said the portion of the appeals court decision that relates to the zoning freeze means any new subdivision plan for the two Decoulos lots will now be subject to stricter road frontage requirements for subdivisions, adopted since the case began.

“He would have been protected from that if he had won this case,” Mr. Rappaport said, adding: “These properties will now and continue to be treated the same as all other properties in the town, subject to the same rules and regulations as everyone else.”

He concluded:

“Ultimately what this case is about is a property owner bringing challenges to and seeking protection from rules and regulations — including the DCPC — which they obviously must believe in some way inhibits their ability to develop their property. For the town, it’s about their continuing effort to establish thoughtful and far-reaching land use regulations which protect and preserve a very significant piece of the town and the Island’s heritage.

“DCPCs are designed not just for the benefit of the town, but they are created because state and regional interests are being protected.”