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## Aquinnah wins costly lawsuit, begun in 1977

By Steve Myrick - November 1, 2007

The town of Aquinnah has prevailed in the latest round of the long-running legal battle known as the Kitras/Decoulos case.

The Massachusetts Appeals Court has upheld a lower court ruling on a narrow concept of law called constructive approval, and on the broader question of whether the Martha's Vineyard Commission acted legally when it declared the entire town a district of critical planning concern (DCPC).

"We're overjoyed," said Camille Rose, chairman of both the board of selectmen and the planning board. "It affirms the legitimacy of the all-town DCPC. That's wonderful to hear. I forget how many years it is we've been playing this game with Decoulos. His plan was to establish value by harassing us and intimidating us. I don't think he believed we would stand firm."

In a ruling worded in unusually strong language, Associate Justice Barbara Lenk writes that James Decoulos and his wife, Maria Kitras, have "no further opportunity... to secure final approval of their subdivision plans, and it is time to bring this matter to a close."

The couple wants to develop two separate parcels of land in Aquinnah. The largest parcel is off Moshup's Trail.

In the civil lawsuit, Mr. Decoulos claimed constructive approval of his application to subdivide the land. Essentially this meant that the town's inaction on necessary permits entitled him to approval by default. He also claimed that he was entitled to the protection of an eight-year moratorium on zoning bylaw changes. After the case began, the town approved more stringent zoning regulations.

The Appeals court ruled that the lower court judge was correct in denying both claims.

Associate Justice Lenk wrote in the ruling, "[Mr. Decoulos and Ms. Kitras] have not achieved, nor can they ever achieve, the final approval required to trigger the eight-year freeze."

Mr. Decoulos also challenged the legality of declaring Aquinnah a DCPC. He argued that such a designation should be based on characteristics of the land, not geographical boundaries. The appeals court also upheld the lower court on this issue.

"There is no merit to the plaintiffs' contention," wrote Associate Justice Lenk.

"The ruling from the appeals court is significant in two respects," said attorney Ronald Rappaport, counsel for the town of Aquinnah. "First, the decision upholds the town-wide DCPC. So this is now a ruling from the Superior Court and the Appeals Court that say DCPC rules are legal and enforceable.

"In the second part of the case, the applicants' efforts to be exempted from certain provisions of town zoning were rejected. This party is on the same footing and subject to the same regulations as everybody else."

### The never-ending story

Despite last week's ruling, several other lawsuits involving development of the properties are still pending, and litigation continues.

This case is an example of how long, complex, and expensive litigation can become. It began as a permit seeking access to landlocked property off Moshup's Trail in Aquinnah. It grew into a tangle of related lawsuits involving individual landowners, several town boards, individual board members and town officers, the state government, the federal government, the Vineyard Conservation Society (VCS), and the Martha's Vineyard Commission (MVC). The case is still not resolved.

Mr. Decoulos, representing several Aquinnah landowners, first took the dispute to land court in 1977, after the town denied his request for access to the landlocked property.

In addition to the land court, the various lawsuits have traversed a tortuous route involving county courts, appellate



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courts, and the state Supreme Judicial Court.

The issue became more complex when the VCS began buying land in the area for conservation, and still more complicated when the MVC declared the entire town of Aquinnah a district of critical planning concern.

In 2005, a state appellate court sent the case back to the land court, where it is still being litigated.

A legal dispute over a separate parcel of land began in 2000. Mr. Decoulos applied for permission to subdivide a parcel of land he owns, much of which classified as wetlands. That case spawned numerous lawsuits, and was finally decided mostly in Mr. Decoulos' favor by the state division of administrative law appeals. Currently, the Conservation Commission is reviewing an amended version of that application. Mr. Decoulos is back before town boards, because some of the permits he was granted as part of an agreement in 2001 have now expired.



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