

VINEYARD GAZETTE

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Town, MVC Prevail in Moshup Trail Case

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The Massachusetts Supreme Judicial Court last week upheld the town of Aquinnah and the Martha's Vineyard Commission in a key leg of a complicated and long-running property rights case that will ultimately decide whether a large swath of rare coastal heathland along Moshup Trail remains forever wild or is opened up to private development.

The stakes are high in the legal battles between James J. Decoulos and the town, which have been ongoing for more than a decade. On one side stand the town, the commission, the Vineyard Conservation Society, the Martha's Vineyard Land Bank and the Massachusetts Attorney General, among others, all working to protect Moshup Trail from unchecked development. On the other side is Mr. Decoulos, an engineer who wants to secure access to his landlocked Moshup Trail property. If he does obtain access, it will open up more than 100 acres of unspoiled coastal heathland to development.

To date Mr. Decoulos has been unsuccessful; another key leg of the case which centers on the access question remains pending before the Massachusetts Land Court.

Issued last Friday, the ruling by the state supreme court was pivotal on two fronts. Upholding decisions by two lower courts, supreme court justices found that Mr. Decoulos ultimately failed to obtain the approval needed to record a subdivision plan he filed in 1999, and therefore was not entitled to the protection of an eight-year zoning freeze on his property of about 18 acres.

This means that Mr. Decoulos's land no longer meets the frontage requirements for subdivision, which have since been changed.

Additionally, the case challenged the validity of Aquinnah's townwide districts of critical planning concern (DCPCs), created under the enabling act of the Martha's Vineyard Commission. In clear language, the state's highest court not only upheld two townwide DCPC's, the only ones of their kind, but also expressly recognized and underlined the unique powers of the regional land use

commission as distinct from ordinary zoning. Citing *Island Properties*, the 1977 landmark supreme court challenge to the commission's powers, justices wrote in part:

"We stated in *Island Properties* . . . that the MVC act is a polar opposite of the [state zoning and enabling act] . . . the reason of its being is to import regional — Islandwide and statewide — considerations into the protection of the land and water of Martha's Vineyard, considerations which, the legislature could believe, the towns themselves had not and would not severally bring to bear."

The decision involves two cases that date back to 1999. The cases are complicated, and full of arcane twists.

In short, they involve subdivision plans that Mr. Decoulous and his wife Maria Kitris filed for their property at the same time that the townwide DCPC was under consideration and a moratorium on all building permits was in effect. After the moratorium had expired, Mr. Decoulos and Ms. Kitris claimed constructive approval of their plans (constructive — or automatic — approval is allowed under law when a planning board does not act on a subdivision plan within the required statutory time frame). There were procedural errors on the part of the town: the planning board denied the preliminary plans but did not act on the definitive plans, opening the door for constructive approval. The town clerk (who has since died) later refused to issue a certificate of approval for the plans and mistakenly called the denial of preliminary plans a denial of the definitive plans. But the fatal procedural error was on the part of Mr. Decoulous, who failed to bring the matter into court for 15 months.

Two lower courts found that he had waited too long. So although he was entitled to constructive approval, by ultimately failing to record his plan, Mr. Decoulous also failed to win protection under the eight-year zoning freeze, a question that turned on the lack of a certificate from the town clerk.

On all these points the state supreme court agreed.

"The plaintiffs are now bound by the final judgment of the Appeals Court, and, in the absence of certificates, the eight-year zoning freeze . . . is not triggered . . . We conclude that the plaintiffs are not entitled to a declaration that they may use and enjoy their property under the zoning bylaws that were in effect at the time they filed their preliminary subdivision plans for the land," justices wrote.

Moshup Trail has been the subject of a wide-ranging conservation acquisition project that began in 1994 with a \$500,000 self-help grant from the state that was used to buy 30 acres. The salt-blasted heathlands are considered globally rare; there is evidence that 90 per cent of these heathlands have disappeared worldwide, largely because of development. To date some \$3 million has been

spent to buy up land around the trail.

All told, Mr. Decoulos has more than 10 legal actions pending against the town.

“The town of Aquinnah has been defending itself from a series of lawsuits and legal challenges [from Mr. Decoulos] over the past decade. I am gratified that the town’s efforts to establish the townwide DCPCs and to ensure equal treatment for all property owners have been upheld by the SJC,” said town counsel Ronald H. Rappaport yesterday. He continued:

“The SJC also spoke in clear language about the role of the Martha’s Vineyard Commission in protecting the fragile resources of the Vineyard . . . this is a very powerful decision in terms of underscoring both the role and the powers of the commission.”

Mr. Decoulos is represented by Arthur Kreiger, a partner at Kreiger & Anderson in Cambridge. Mr. Kreiger could not be reached at press time yesterday. Eric Wodlinger, the attorney who represents the commission, was away and unavailable for comment.

Mr. Rappaport said the focus now turns to the access case in the land court. Involving intricate questions of law and facts which date back to the 1800’s, the case is every bit as complicated as the case decided last week.

Mr. Rappaport said there is no dispute about the importance of the matter.

“This area off Moshup Trail is one of the most beautiful landscapes on the Vineyard. And the town has plainly recognized this, as has the commonwealth,” he said, concluding: “If you want to know why the Martha’s Vineyard Commission is important, just read this decision.”

Vineyard Conservation Society executive director Brendan O’Neill added his own words of praise for the court decision yesterday.

“This is a big one, and stands as a great credit to the town leadership and citizenry for hanging tough over the years,” he said, adding:

“And we welcome the court affirming that the DCPCs serve a regional purpose in protecting the Island of Martha’s Vineyard. This area clearly contains resources of regional — and global — significance that are worth preserving. Anyone who walks or bikes or drives along Moshup Trail understands that intuitively.”