



Tribal lands overlooking Moshup trail. *Jeanna Shepard*

Attorneys for Tribe, Town Square off in Federal Court about Aquinnah Casino

John H. Kennedy *Thursday, August 13, 2015 - 7:48pm*

A proposed Aquinnah casino reached legal and political crossroads this week, as the Wampanoag Tribe of Gay Head (Aquinnah) asked a federal judge to validate its gambling project just days before its members are to vote on a bid to scrap it.

Lawyers for the tribe and for the state, the town and a community association made their final arguments Wednesday to U.S. District Judge F. Dennis Saylor 4th in Boston before he rules on a key question — does federal law allow the tribe to operate a class II gambling venue in Aquinnah.

At the end of an 80-minute hearing, the judge took the case under advisement, but promised to render a decision on cross motions for summary judgment “as quickly as I can.”

This Sunday, tribe members will gather for their quarterly general membership meeting in Aquinnah, where a ballot initiative asks them to stop the gambling project, planned for the tribe's unfinished and vacant community center.

Members who oppose the casino gathered enough signatures last month to force a vote on whether to repeal all resolutions by the tribal council — the tribe's elected leadership — to convert the 6,500-square-foot building into a gambling hall.

In Boston, legal arguments before Judge Saylor focused on two federal laws passed by Congress within 14 months of each other. The 1987 Massachusetts Indian Land Claims Settlement Act essentially codified a settlement between the tribe and the town, the state and the community association in which about 485 acres were deeded to the federal government, to be held in trust for the tribe. In exchange, the tribe waived its claims to other land and subjected itself to state and town civil and criminal laws, including those related to gambling.

The town, the state and the Aquinnah/Gay Head Community Association point to that law as key to their position that the tribe is barred from offering gambling on Aquinnah land.

But the tribe says a sweeping law Congress passed the next year, called the Indian Gaming Regulatory Act (IGRA), which provided a national regulatory system for Indian gaming, trumps the 1987 law and allows the tribe to operate a Class II casino, essentially electronic bingo.

The judge told both parties that they must address how a federal appeals court decision involving the Narragansett tribe and the state of Rhode Island applies to the Aquinnah case. The decision provided a framework for determining whether a tribe should qualify to conduct gaming under IGRA.

Among other things, the town says the tribe fails to satisfy the Narragansett case guidelines, and the 1987 settlement act provides language which allows the town and state to regulate or prohibit gambling, unlike Rhode Island's version of a similar law.

Aquinnah town counsel Ronald Rappaport said it was the same Congress that first enacted the law governing the Aquinnah tribe and then enacted IGRA.

"It makes absolutely no sense that Congress would enact a law . . . and then a year later say, 'Never mind,'" Mr. Rappaport told the judge.

Moments later, Scott Crowell, an attorney representing the tribe, argued that the judge should take the opposite view: Congress knew what it was doing when it passed IGRA, and it provided gaming rights to the Aquinnah tribe, as well as others across the country.

"What makes no sense is Congress would pass a bill [saying], 'We're going to forever surrender our plenary power over tribes' to state and local governments, he said. The Narragansett case also says that a tribe must assert jurisdiction over its lands. The town, state and community association argue that the tribe provides no substantial services on its own, including police, fire,

ambulance and schools, and must rely on Aquinnah and other towns. Mr. Crowell said the tribe does assert some jurisdiction over its lands, arguing that “it far exceeds” the requirement set out in the case.

Two weeks ago, Judge Saylor allowed an order that blocks the tribe from continuing any work on the community center until further notice.

Meanwhile, with the tribal vote pending on Sunday, chairman Tobias Vanderhoop said after the hearing that he would honor the results of the vote. But he also said the legal fight to assert gaming rights and the balloting initiative involve separate issues.

“They are different questions,” Mr. Vanderhoop said. “The question before the court here is whether or not IGRA actually applies to our tribe. Do we have that federal right? The question that is ultimately before our people is once our rights are affirmed [in court], how do we assert those rights?”

“And so there is a question about the way we are asserting [them] right now,” he said. “That will be decided by our people on Sunday. It does not say that we will not move forward with any other gaming initiative; it just will redefine what that gaming initiative looks like.”

Opponents say the casino project is essentially fool’s gold, an initiative that would overwhelm area infrastructure and disrupt the tribe’s culture and lands.

Julianne Vanderhoop, an Aquinnah selectman and tribe member who opposes the casino, said there was no way of predicting how the vote would come out, but both sides have been sending letters and making phone calls to tribe members about the issue.

“They [casino opponents] were close the last time,” she said of a tribal vote in early 2014 to turn back the casino.

Cheryl Andrews-Maltais, a former tribe chairwoman and current head of its gaming corporation, said the casino is important to help the tribe become more self sufficient. In a court document, the tribe cited a consultant’s report that estimated up to \$5 million in revenue per year.

Many tribe members, about 75 percent of whom live off-Island, have to make sacrifices to come to the Vineyard to cast their vote, she said. In addition to August traffic snarls on the Cape and scarce ferry reservations, some will have to take time off from jobs to vote.

Members have from 10 a.m. until 2 p.m. to physically cast ballots at the tribal office in Aquinnah.



Vineyard Notebook

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