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Mass. Tribe Says Nixing Casino Will Permanently Hurt It

By **Vidya Kauri**

Law360, New York (July 27, 2015, 9:23 PM ET) -- A Massachusetts tribe urged a federal judge Monday to deny a town's bid to prevent it from building a casino on Martha's Vineyard claiming that a delay would result in permanent revenue loss for its government.

The Wampanoag Tribe of Gay Head said in a memorandum that its members will be irreparably harmed by roadblocks from the Town of Aquinnah because revenue from the proposed casino is meant to provide essential tribal government services that are "desperately underfunded." Under federal law, the tribe is required to use funds from such projects on its trust lands for the economic benefit and welfare of tribe members.

"It is important to note that this is not lost profit to a private venture; this is lost governmental revenue," the tribe said. "Every day of delay is a delay in funding essential health services, housing, social services, cultural protection, police and fire protection, judiciary, infrastructure development and a multitude of other governmental services."

The town filed its motion for a **temporary restraining order** on the proposed Class II gaming facility on the western edge of the island two weeks ago after issuing a July 7 cease-and-desist letter citing building code requirements and licensed inspections that the tribe must adhere to.

The tribe lashed out at the town, accusing it of using safety regulations as an excuse to further delay them since the motion for a restraining order was not made until more than a year since the case went to court in December 2013. In any case, the point is moot, the tribe says, because it has adopted an international building code that is more restrictive than local codes and because the Tribal Gaming Commission requires it to be code-compliant before the gaming facility can be opened to the public.

The town is **contesting** the tribe's conversion of an unfinished community center sitting on 400 acres of trust land into an electronic bingo facility, saying that the tribe is subject to local zoning laws and regulations.

However, the tribe says it should be allowed to forge ahead with construction, arguing that the federal Indian Gaming Regulatory Act gives it the go-ahead to do so without needing permission from local or state governments.

"The town's rhetoric about a status quo of the tribe's gaming operation being subject to town law demonstrates a lack of understanding or blatant disregard of Congress' plenary authority over Indian affairs," the tribe said in its memorandum.

The town's motion for a temporary restraining order against the tribe has been supported by the state, Gov. Charlie Baker, Attorney General Maura Healey and Massachusetts Gaming Commission Chairman Stephen Crosby.

Representatives for the parties involved could not be reached for comment.

The Wampanoag Tribe and defendants are represented by Scott Crowell of Tribal Advocacy Group LLP, Bruce Singal and Elizabeth McEvoy of Donoghue Barrett & Singal PC and Lael R. Echo-Hawk of Garvey Shubert Barer.

Massachusetts is represented by Attorney General Maura Healey and Assistant Attorneys General Juliana deHaan Rice, Carrie Benedon and Bryan Bertram.

Intervenor Aquinnah/Gay Head Community Association is represented by Felicia H. Ellsworth, Oramel H. Skinner and James L. Quarles III of WilmerHale.

The case is Commonwealth of Massachusetts v. The Wampanoag Tribe of Gay Head (Aquinnah) et al., case number 1:13-cv-13286, filed in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Jessica Corso. Editing by Erica Teichert and Ben Guilfoy.

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