

Mashpee Wampanoag tribe hearing for Taunton Casino scheduled for Wednesday

By Colin A. Young of **State House News Service**

The Mashpee Wampanoag tribe will get a hearing before a federal judge this week to appeal a 2016 ruling that 321 acres of reservation land in Mashpee and Taunton could not be held in trust for the tribe, which had broken ground on a \$1 billion casino in Taunton.

Tribal Council Chairman Cedric Cromwell said in a tribal newsletter last week that the U.S. Court of Appeals for the First Circuit will take up the tribe's appeal at 9:30 a.m. on Wednesday at the federal courthouse in Boston.

"Through this appeal, the Tribe hopes to uphold the original Record of Decision accepting the Tribe's land into trust. This appeal concerns the question of whether the Department of the Interior was [authorized to] take the Tribe's land into trust," Cromwell said in the notice.

In early 2016, the Obama administration took 321 acres of reservation land in Taunton and Mashpee into trust for the Wampanoag tribe, which was federally-recognized in 2007. The tribe planned to construct its \$1 billion First Light Resort and Casino on the land in Taunton.

After a citizen group challenged the land in trust designation, a federal judge's ruling later in 2016 nullified the Obama administration's decision and President Donald Trump's administration last year officially reversed the Obama-era declaration. The tribe appealed the case, Littlefield et al. v. U.S. Department of the Interior, to the U.S. Court of Appeals for the First Circuit.

At issue is whether the tribe qualifies as “Indian” under the second definition included in the 1934 federal Indian Reorganization Act. That definition applies the term “Indian” for the purposes of the law to “all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation.”

The plaintiffs challenging the land in trust decision argue that the Mashpee Wampanoag tribe cannot qualify as “Indian” under the IRA, and therefore would not qualify for land in trust status, because the tribe was not under federal jurisdiction in 1934. The tribe argues that saying its members do not qualify for protections under the IRA is ridiculous.

“Appellant is part of the Indian tribe that met with the Pilgrims at the first Thanksgiving and thereafter suffered hundreds of years of persecution and land theft. It has maintained its tribal identity, community, and culture,” lawyers for the tribe wrote in a recent brief. “A conclusion that Appellant is not ‘Indian’ is too absurd and darkly ironic even for Franz Kafka and antithetical to the IRA’s ambitious mission. Such a ruling would place yet another black mark in the long ledger of the United States’ history of failing to treat this Indian Tribe fairly and honorably.”

Cromwell said the court is not expected to make a decision at Wednesday’s hearing, which will consist of 15 minutes of arguments from each side, but “will likely do so within the next several months.”

A further ruling in the case could help break up a bit of a logjam in the state’s gaming policy. The Massachusetts Gaming Commission has been considering whether to solicit proposals for the state’s third resort casino license, which would be required to go to a project in either Bristol, Plymouth, Barnstable, Dukes or Nantucket county, and has kept a close eye on the status of the tribe’s effort.

In 2016, when it appeared a tribal casino in Taunton was likely, regulators rejected a proposal for a commercial casino in Brockton. Since then, the commission has fended off repeated requests from gambling giant Rush Street Gaming to reconsider its rejected 2016 proposal.

The possibility of a tribal casino in Taunton – the \$1 billion First Light Resort and Casino the Mashpee Wampanoag tribe hopes to build would have a significant impact on the state's commercial casino industry – is a major consideration for regulators as they seek public and industry comments on what the commission should take into account if it moves forward with a southeastern Massachusetts casino bid.

One concern, as expressed by local officials and others, is that commercial casino operators might not be willing to invest the minimum \$500 million in a project that could have to compete with a nearby tribal casino. If the Gaming Commission opts to go ahead with licensing a commercial casino in Region C and the tribe is allowed to open its own casino under federal law, Massachusetts would receive no tax revenue from the tribal casino.

Though the hearing before the U.S. Court of Appeals for the First Circuit could be a meaningful step forward in the tribe's quest, it will not necessarily end the legal wrangling over the tribe's land. There's also a case in U.S. District Court for the District of Columbia – Mashpee Wampanoag Tribe v. Interior Secretary David Bernhardt – in which the tribe argues that the interior secretary failed to properly consider extensive factual evidence it submitted to make the case that it should be eligible for land in trust.

As the tribe works to secure its land in trust through the courts, U.S. Rep. William Keating, who represents Taunton and Mashpee, has pushed legislation that would use the power of Congress to reaffirm the 2015 decision by the Interior Department to take land into trust for the tribe, though Trump

has opposed it.

The U.S. House of Representatives voted 275-146 in May to approve that bill, titled the Mashpee Wampanoag Tribe Reservation Reaffirmation Act, and it has not moved since being referred to the U.S. Senate that same month.