

Written by Administrator  
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WAYLAND TOWNSHIP — The sun failed to break through the clouds Friday outside the [Gun Lake casino](#)

where more than 100 people gathered in freezing temperatures to celebrate the

announcement of the gaming complex's opening date.

The overcast skies underscored the dismal news casino officials received earlier that day, when [a federal appellate court reinstated a 2008 lawsuit](#) that could potentially lead to the \$157 million facility being forced to shut down shortly after it opens.

"The battle's not over," said John Bursch, an attorney with WarnerNorcross & Judd LLP, representing former Wayland Township Trustee David Patchak in a lawsuit against the Gun Lake Band of Pottawatomi and the federal Interior Department.

Patchak alleges the government's decision to take the land near U.S. 131 where the casino is being built into trust was illegal under the federal statute governing land-in-trust decisions.

It is the latest development in the Gun Lake Band's decade-long slog through the U.S. legal system and comes at the 11th hour, as casino owners and management ready the nearly-complete facility for the expected influx of gamblers.

On Friday, casino officials announced it is [set to open Feb. 11.](#)

"It could be a huge impediment," Cooley Law School professor Curt Benson said of the lawsuit's reinstatement.

If Patchak is victorious in court, the land under the casino could become ineligible for Class III

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gaming.

“That would mean no slot machines, no blackjack, no craps, no roulette and things of that nature,” said Bursch. “They could have the world’s most expensive bingo hall.”

But few, if any, of those gathered for Friday’s grand-opening announcement were aware of the news. Even some casino management staff were in the dark. And there was no mention of it at the ceremony.

The tribe released a statement calling the appellate decision merely a “procedural matter” in a “frivolous” lawsuit that would not affect the casino opening.

“I’m not one bit concerned about the outcome,” said D.K. Sprague, tribal chairman.

Sprague led the crowd outside the casino in jumping jacks and chants of “YMCA” until about 4:20 p.m., when the casino’s enormous digital sign next to U.S 131 flashed on and a 30-second countdown began.

Fist-pumping and cheers erupted as the Feb. 11 date appeared on the sign.

“It’s been a long, hard struggle,” said John Shagonaby, chief executive of the Gun Lake Tribal Gaming Authority, framing the legal and financial challenges the tribe has faced as a matter of perseverance.

“It’s been my life’s work,” he said. “It means a lot to the local economy and all the jobs we will provide.”

The casino will employ about 700 people when it opens. Job creation is one of the points casino backers have consistently highlighted in support of a facility that faced plenty of opposition.

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Mike Jandernoa, chairman of the 23 Is Enough opposition group, released a statement calling for casino officials to halt construction on the building until the matter is fully resolved.

“Our fight all along has been that these venues do not increase economic activity and are given a competitive advantage over the many entertainment venues in Grand Rapids who adhere to all regulations and pay their fair share of taxes,” Jandernoa wrote.

The casino is managed by Las Vegas-based Station Casinos Inc, a company known for operating casinos in Las Vegas that cater to locals.

It is owned by the Gun Lake Tribe, or Match-E-Be-Nash-She-Wish Band of Pottawatomi.

The tribe announced plans for a casino shortly after being formally recognized by the federal government in 1999. The Michigan Gambling Opposition sued the Interior Department in 2005 and lost at every turn, successful only in delaying the project.

Patchak filed his lawsuit in 2008, alleging the government’s decision to take the land into trust was illegal. Federal District Judge Richard Leon in Washington, D.C., dismissed the lawsuit in 2009 on the grounds Patchak did not have legal standing to bring the case and was barred by the Quiet Title Act.

On Friday morning, the D.C. Circuit Court of Appeals issued an opinion that disagreed with both of those conclusions, reversing Leon’s decision and remanding the case for further proceedings.

One of the judges wrote that Patchak’s appeal presents two jurisdictional issues — whether, as the district court held, he lacks standing; and whether, if he has standing, sovereign immunity bars his suit.

The 147 acres the Secretary of the Interior took into trust for the tribe was known as the Bradley

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Tract. Patchak lives nearby and claimed standing on the basis of being negatively impacted by the estimated 3.1 million visitors each year, who he claimed would lower his property value and destroy the peace and quiet of the area with pollution, crime and diversion of municipal resources.

“These sorts of injuries have long been considered sufficient for purposes of standing,” the opinion reads.

Bursch said the appellate court felt a determination was needed on how the 2009 *Carcieri v. Salazar* decision by the U.S. Supreme Court affects the Gun Lake case. The court held that only tribes who were “under federal jurisdiction” in 1934 are eligible to have land taken in trust on their behalf.

Bursch said the timing was entirely coincidental with Friday’s ceremonies. He expects the federal government and tribe to ask the entire D.C. Circuit or the Supreme Court to review the decision.

Benson said, statistically, it’s very difficult to get a case heard by the Supreme Court. But, since there is conflicting opinion among the federal appellate circuits as to whether the Quiet Title Act applies, it has a chance.

“The type of cases they hear are exactly this type of case,” he said.

The tribe and federal government have 14 days to file an appeal to be heard by the entire D.C. Circuit.

If they choose not to do that, “We could be back in front of Judge Leon and asking him the merit question in a very short time,” said Bursch.

*E-mail the author of this story: [localnews@grpress.com](mailto:localnews@grpress.com)*

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