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Its Up-Island Neighbors Urge Aquinnah to Appeal on Judge's Wampanoag Decision

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The Aquinnah selectmen heard a distinct plea from their up-Island neighbors this week to formally appeal the recent superior court decision that found the Wampanoag Tribe of Gay Head (Aquinnah) cannot be sued because of sovereign immunity.

"We feel this has pretty far-reaching consequences, and we think it should be appealed. Let's see if there is a way to improve the decision," West Tisbury selectman Glenn Hearn told the Aquinnah selectmen on Tuesday afternoon.

"I feel that, as selectmen, we are obligated to act in the best interest of our towns and that we are confronted with a case in which that interest may be severely compromised. I encourage you to take the necessary steps in this matter," wrote West Tisbury selectman and board chairman John Early in a letter submitted on the same day.

"We do not make this request lightly, but to protect local zoning in all the Island towns. An issue of this magnitude should not be decided by one man sitting at the superior court. A panel of justices sitting at the Massachusetts Supreme Court are more suited to this situation," wrote all three Chilmark selectmen in their own letter.

The comment and correspondence began during a meeting in the Aquinnah town hall late Tuesday afternoon and continued with the letter from the Chilmark selectmen later in the week.

Planned previously as an annual meeting between the Aquinnah and Chilmark selectmen to discuss issues of mutual concern between the two small up-Island towns, the meeting began with an open discussion on the central topic of the day: the superior court ruling by the Hon. Richard F. Connon last month that the Wampanoag tribe cannot be sued because of sovereign immunity.

There is now growing concern about the implications of the case for every Vineyard town, especially when it comes to land use.

At the outset on Tuesday, Aquinnah selectman and board chairman Michael Hebert invited everyone to express an opinion.

"We have a fairly important decision to make soon. And we would like to hear your valuable insight about the decisions that lie ahead of us," Mr. Hebert said.

Mr. Hebert also explained that the town decision on whether to appeal has been delayed because the selectmen have agreed to join the recent move to ask Judge Connon to reconsider

the decision.

The Gay Head Taxpayers Association and the Benton Family Trust, two interveners in the case, are also parties in the motion to reconsider.

Some who attended the meeting on Tuesday urged the Aquinnah selectmen to go beyond the motion to reconsider.

"I think the selectmen have an obligation to go forward on behalf of all the citizens of Aquinnah. The town is the lead player in the case and has a strong obligation to go forward," said Dick Russell, who is an officer of the Menemsha Pond Preservation Trust and is also a member of the Benton Family Trust, a group of landowners who are abutters to the tribally owned Cook Lands.

The court case began two years ago when the tribe built a small shed on the Cook Lands with no building permit. Later the town went to court to compel the tribe to comply with the local zoning laws.

Under the terms of a 1983 settlement agreement adopted by the town and the tribe and later ratified by state and federal legislation, the tribe agreed to comply with local zoning laws. The settlement agreement later led to federal recognition for the tribe, which is today the only federally recognized tribe in Massachusetts.

In the recent court decision Judge Cannon recognized that the tribe had agreed to comply with zoning, but he also found that the agreement does not waive sovereign immunity, and therefore the tribe cannot be sued.

Attorneys for the town, the taxpayers association and the Benton Trust say the decision is fraught with contradictions, in part because "judicial remedy," i.e. litigation, is a stated element of state and local zoning laws.

"Does this include all land or just tribal land?" asked Aquinnah resident Peter Ochs on Tuesday.

"The tribe has diplomatic immunity, so to speak. It cannot be sued," Mr. Hebert replied.

"The impact of this decision is self-explanatory across the Island and for that matter across the state," said West Tisbury selectman Jeffrey W. (Skipper) Manter. "For a decision of such large importance to fall on a town of such a small size is unfortunate," he added.

The West Tisbury selectmen also said they had discussed offering financial assistance to the town for legal bills, but Mr. Hebert politely declined the offer.

"I don't think that we will be looking to other towns for financial help," he said.

Mr. Hebert is believed to be the swing vote when it comes to a decision on appealing the superior court decision. Selectman Carl Widdiss, who is a member of the tribe, is known to be against an appeal, while newly elected selectman Jim Newman has said he favors an appeal.

Mr. Hebert has not taken a public position on the issue.

On Tuesday there was one opposing view.

"I would urge the board to resist an appeal on the grounds that the tribe is a nation and it is a sovereign entity," said Jackie Grey, a seasonal resident of Aquinnah.

"There are other avenues to use instead of protracted litigation that could destroy the relations between the tribe and the town. There is an opportunity here to demonstrate model behavior instead of various forms of legal oppression. And I don't think the tribe has demonstrated any support for a campaign of fear, which I see on the faces and in the hearts of the people in this town," she added.

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