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Public Hearing Set for Monday on Appeal of Sovereignty Case

By JULIA WELLS
Gazette Senior Writer

Under pressure from a growing group of townspeople to appeal the controversial superior court decision on sovereign immunity, this week the Aquinnah selectmen agreed to call a public hearing and take a new vote on whether to appeal the ruling.

The hearing will be held on Monday at 5 p.m. in the Aquinnah town hall.

"I'll give you my full attention and I will listen to what people have to say. But the ultimate decision rests with the board of selectmen," Aquinnah selectman and board chairman Michael Hebert told an overflow crowd at the regular selectmen's meeting on Tuesday afternoon.

Mr. Hebert, who opposes a town appeal of the pivotal court case, went on the defensive amid blunt questions about his relationship to the Wampanoag Tribe of Gay Head (Aquinnah). Mr. Hebert's wife is secretary to the tribal council.

"You all know me and you know I have never voted one way on tribal issues over the years. It [my wife's relationship to the tribe] has not affected me and it's not the reason I voted

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the way I voted," Mr. Hebert said.

Six months ago the Hon. Richard Connon found that the tribe cannot be sued because of sovereign immunity. If the ruling is allowed to stand, it has far-reaching implications for every town on the Vineyard, and will effectively torpedo a historic 1983 Indian land claims settlement that later led to federal recognition for the tribe. Under the terms of the agreement, the tribe agreed to abide by state and local zoning laws.

The 20-year-old agreement is now being tested in a case that began when the tribe built a small shed at its shellfish hatchery on Menemsha Pond without obtaining a building permit.

Two weeks ago the three selectmen deadlocked 1-1-1 over whether to appeal the court ruling. Mr. Hebert voted no, selectman James Newman voted yes, and selectman Carl Widdiss abstained.

The deadline for filing an appeal is Dec. 12.

The Aquinnah/Gay Head Community Association Inc. (formerly the Gay Head Taxpayers Association) and the Benton Family Trust will appeal the case, which is ultimately expected to be decided by the state Supreme Judicial Court.

The court ruling on tribal sovereignty has become the subtext for nearly every discussion in recent weeks in this tiny town that lies in the westernmost reaches of the Vineyard. Aquinnah is home to the only federally recognized Native American tribe in Massachusetts.

"This has gone well beyond the shed," Aquinnah resident Russell Smith told the selectmen on Tuesday.

At the outset Mr. Hebert explained that the board was required to take a new vote on the appeal, because when the first vote was taken, the two selectmen who have relationships with the tribe did not make the necessary disclosures, as required by the state ethics law. Mr. Hebert



also explained the rule of necessity, which says that if a quorum of an elected board has a conflict, the entire board may participate.

Michael Stutz, a town resident who is the elected representative to the Martha's Vineyard Land Bank, peppered Mr. Hebert with questions, among other things asking him if his wife receives income from the tribe.

"If she receives income you need to disclose that," Mr. Stutz said.

"It's already done," replied Mr. Hebert, who said he had filed his disclosure with the town clerk.

"How much money does your family take in from the tribe?" Mr. Stutz said.

"I don't know," Mr. Hebert said.

"Are you saying there is none?" Mr. Stutz pressed.

"No, I'm not saying there is none," Mr. Hebert said. He said his wife receives payment for preparing minutes and he said she also receives travel expenses.

Mr. Stutz then turned to Mr. Widdiss. "You do contract work for the tribe. Are you going to tell us about that?" he said.

"No," said Mr. Widdiss.

Mr. Widdiss said he intended to abstain from the vote on the court appeal, and he said he had not yet filed his disclosure with the town clerk. The disclosure was filed yesterday.

Mr. Stutz asked the selectmen to allow discussion about the court appeal at a special town meeting slated for the same night.

"There is a town meeting tonight - let's take a vote," Mr. Stutz said.

"I don't think that is right because it hasn't been properly noticed. But I would be willing to hold a public hearing on this next week," Mr. Hebert said.

Town moderator Walter Delaney agreed with Mr. Hebert that a separate public hearing would be the best way to handle the matter.

"At this point I am simply trying to correct a technicality [with the vote], but we can bring it back to a public hearing - no problem," Mr. Hebert said.

Mr. Hebert continued in his own defense.

"Everybody in this town knows what my connection to the tribe is. I have always made my decisions based on the residents of the town of Aquinnah," he said.

"Why can't the voters make the decision in the first place?" said Elise LeBovit.

"It's the selectmen's decision to make, it just is," Mr. Hebert replied. "It doesn't mean that we wouldn't do what the majority of the town wants us to do," he added.

On the subject of compensation, Mr. Hebert said: "I get paid by the town, too - am I on the town's side because the town paid me money?"

Mr. Stutz had a ready reply.

"I hope so - we hope you are going to represent the town," he said.

The selectmen were presented with a petition urging them to appeal the court ruling. The petition had 49 signatures - a sizable number for Aquinnah, where there are only about 370 registered voters.

Mr. Hebert received the petition with a grain of salt.

"I don't disregard this petition and the people whose names are on it, and I'm not saying I don't care about their

feelings. I just say that this is not everyone, that's all," he said.

"Our civil rights have been limited because of this court decision. They stop because we have no recourse in court," said Camille Rose, who is a longtime member of the town planning board. "It seems to me that the selectmen have an obligation to protect the civil rights of the people in town," she added.

"I don't know what makes you think I haven't answered that because I have," Mr. Hebert said.

The meeting was also attended by tribal members, who had another view.

"I don't know how it got beyond the shed, but I think it was paranoia, prejudice and small-mindedness that has made this rear its head again. I am a town resident and taxpayer and I do not want to spend any more money on this," said Adriana Ignacio, who is a member of the tribe.

In the end the two selectmen voted to rescind their vote from two weeks ago, with Mr. Widdiss still abstaining. Then Mr. Hebert moved to not appeal the case, but the motion failed when Mr. Newman did not second it.

"I think that the people who are here tonight would like to see us wait to vote until we have the public hearing," Mr. Newman said.

"I think that's fair," Mr. Hebert replied.

Responding to a question from one town resident, Mr. Hebert said he will accept comments that are faxed or emailed to the town hall before the public hearing on Monday afternoon.

The town hall fax number is 508-645-2310. The email address is selctmen@gis.net (the missing e is correct).

Ms. LeBovit had one more question.

"Can we request that town counsel [Ronald H. Rappaport] be present?" she asked

"I'm sure Ron will want to be there," Mr. Hebert replied.

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