

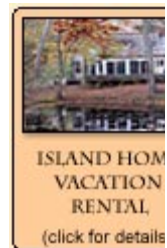
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# Martha's Vineyard **TIMES**

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## Aquinnah Will Not Appeal

By Nelson Sigelman

There were heartfelt statements about the need to foster trust between Wampanoag and non-Wampanoag town residents, about the importance of the legal appeal process, about the need to defend the rights of town residents, and about the importance of tribal sovereignty.

Speakers questioned past and present Aquinnah history, along with the motives of residents, town officials, and tribal leaders.

And for more than two hours Monday evening, emotion mixed with reason and logic in the intimate confines of the Aquinnah town hall.

But when it was over, the newest member of the three-member Aquinnah board of selectmen said he had changed his mind and now opposed town participation in an appeal of a ruling by a state Superior Court judge which effectively guts the Settlement Agreement concluded by tribe members, non-resident property owners, the town, and state 20 years ago.

But it was not the change of heart many voters had hoped to see after presenting selectmen with a petition with 48 signatures asking the town leaders to appeal.

Jim Newman, who voted in favor of an appeal on Nov. 18, said he no longer favored a legal course that puts in play the question of the tribe's sovereignty. It was a turnabout for Mr. Newman that brought him to a position which contradicts the legal arguments for pursuing an appeal outlined during the public hearing by Ron Rappaport, long-time Aquinnah town counsel.

In a brief meeting convened after the public hearing, on Mr. Newman's motion, Mike Hebert, who earlier had voted against an appeal, and Carl Widdiss, who abstained in the previous vote, the Aquinnah board of selectmen voted unanimously not to file an appeal before tomorrow's deadline.

An appeal of a ruling by Justice Richard F. Connon on June 11 that the town has no legal means to enforce town zoning regulations on the Cook Lands by virtue of the Wampanoag Tribe of Aquinnah's (Gay Head) sovereign immunity from suit will now be left to the representatives of the Benton family, abutters to the property at the heart of the lawsuit, and the Aquinnah/Gay Head Community



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Association, Inc., formerly named the Gay Head Taxpayers Association, party to the original Settlement Agreement which led to Federal recognition for the tribe.

The Settlement Agreement specifically states that the settlement lands shall be subject to all Federal, State and local laws, including town zoning laws, State and Federal conservation laws and the regulations of the Martha's Vineyard Commission...."



Yesterday, Larry Hohlt, president of the Aquinnah/Gay Head Community Association, Inc., said his group has filed its notice of appeal. Commenting on the meeting, he said, "A number of people have mentioned that this decision by the Selectmen doesn't really matter because 'the appeal will still go on.' Some have even suggested that having someone else or some other group do the 'heavy lifting' makes it much easier for the Town not to. Nevertheless, we are very disappointed that the Selectmen of Aquinnah have chosen not to have the Town be a party to the appeal, because such a decision represents the failure of government to take the appropriate measures to uphold its interests and rights (generally and in particular those it bargained for and procured in the 1983 Settlement Agreement) and thus the interests of all of those whom it serves."



Mr. Hohlt said it was unfortunate that some people have confused an appeal with an attack on the tribe's sovereignty. He said that view reflects a lack of understanding of what is involved.



Mr. Hohlt said the core issues in the appeal relate to whether the terms, conditions, and agreements struck among the Town, the Tribal Council, the Commonwealth, and the Gay Head Taxpayers Association in 1983 are going to be enforced. He said each of the parties to the Agreement "derived great benefits from it and made the compromises and agreed to the terms and conditions they each deemed appropriate to obtain those benefits."



"This case and the appeal have nothing to do with the Tribe's sovereignty per se," Mr. Hohlt added. "They have everything to do with whether the Tribe's agreements as set forth in the 1983 Settlement Agreement as reflected in the resulting Federal and Commonwealth laws are enforceable or whether, to use the term many are now using, we should all just consider that Agreement and those laws to be gutted."

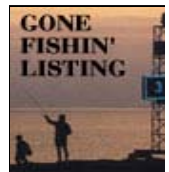


"A lower court decision by a sole judge on whether there was or was not a waiver of sovereign immunity to suit is one that 'begs' for an appeal. We have said all along that whichever party won or lost, the loser appropriately would be appealing the decision upwards for a determination on the appropriate appellate level. This is the way the American legal system is designed to work and the way it works best."

**Camera Raises Ruckus**

Walter Delaney, town moderator, began by asking if anyone objected to a person in the corner of the room video taping the public meeting for the Benton Trust.

"Absolutely not," said one tribal member.



Mr. Delaney conferred with Ron Rappaport, town counsel and the selectmen. It was decided to put it to a vote.

Mr. Delaney called for a voice vote, he declared too close to call. By a standing vote of 31 to 26, Aquinnah residents upheld the rights of the lone man in the corner to record their public meeting.

With that out of the way, Mr. Delaney said he would proceed row by row. Bypassing Dick Russell, a seasonal visitor and Benton Family spokesperson, he said he would provide an opportunity for nonresidents to speak after residents had spoken, a promise he did not keep.

One by one, the residents of the Island's smallest town made their case. Richard Skidmore said he was not as concerned about the legal issues as he was about the tribe-town relationship. He suggested representatives of both parties be appointed to act in the capacity of ambassadors to bridge the gap.

Russell Smith, a former selectman and legislative liaison, said he was also in favor of everyone getting along and asked people to stay focused on the issue at stake. He said it was not about trust but about the zoning bylaws that have protected the town, and which should protect and apply to all residents equally.

Referring to the tribe's long-standing interest in gaming, Mr. Smith said the lawsuit was "not about a little shed on the beach."

Michael Stutz, Aquinnah land bank commissioner, said he had participated in the negotiations that led to the settlement act. He said the question was not tribal sovereignty but the limits placed on sovereignty by language agreed to by tribal members 30 years ago.

He said the selectmen were "duty bound" to protect that agreement and not leave the decision to the lowest possible court.

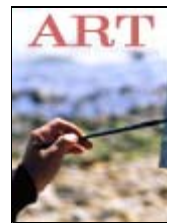
Barbara Bassett said "the agreement was made and the agreement was broken." She asked what guaranteed future agreements would be upheld.

Donald Widdiss, vice chairman of the tribe and the brother of selectman Carl Widdiss, said he had also been a party to the Settlement agreement negotiations. Reviewing the history of the negotiations, he said the agreement must be viewed in the context of the times.

Mr. Widdiss said Mr. Smith was wrong to assume that a casino was the motivation for the tribe's actions and criticized people who would question the tribe's motives. He said if the town were to appeal it would be a "messy situation," adding, "those of you who think you have problems now just wait."

Adriana Giles Ignacio said tribal members care about the town and care about the land. She said, "We have the right to say what we do with our land."

Speaking in defense of the appeal process and not one side or the other, Elliot Dacher urged the selectmen to let the legal system run its course. He said the appeal process was designed to protect the rights of the minority not the majority and was the foundation for



tribal rights, women's rights, and the rights of minorities.

### **Attorney's Advice Spurned**

Following Monday's meeting, Ron Rappaport had nothing to say. But after more than 20 years as Aquinnah town counsel, the disappointment showed on his face.

Throughout the evening Mr. Rappaport made his best case. When concerns were raised about the legal costs to the town, Mr. Rappaport said most of the legal work had been done.

He estimated an appeal up to the state Supreme Court would cost less than \$10,000. He said he was willing to bill the town separately and ask voters at a later date to vote to pay the bill. If people want to pay it "so be it," he said.

Asked by one speaker what he had told the selectmen, Mr. Rappaport outlined the core issues in the context of recent tribal-town history and laid out his case for urging an appeal.

Mr. Rappaport said the settlement agreement acknowledged the tribe's sovereignty. The question was the limits imposed by the language making the tribe subject to local and state laws.

"That is a question which has significance, which is going to be with us for a long, long time and is going to go beyond the people in this room," he said.

Speaking of the town's sharp divisions, Mr. Rappaport said a decision by the state Supreme Court was far more likely to be accepted by all parties than the opinion of a single judge.

Speaking at the end of the evening, Douglas Luckerman of Lexington, the Wampanoags' lead trial attorney, reviewed his take on the case. He said that communities across the country had found ways to negotiate agreements with sovereign tribes.

He said the fact is that communities have limited rights over Indian tribes, whether they think it is fair or not fair.

### **Selectmen Make Case**

Despite the advice of their town counsel, Aquinnah selectmen saw it another way. Mr. Hebert said he was not a lawyer and did not understand the law very well. He said Judge Connon's decision provided him with the unbiased legal opinion he wanted and he was satisfied.

Mr. Hebert maintained his view that tribal-town agreements could be reached that would remove the need to go forward with the legal process. "I am very optimistic we can reach agreement," he said.

Mr. Hebert said he had been advised by Mr. Rappaport to appeal the decision. "I've listened to Ron closely for five and a half years and this is the first time I've ever gone against his instructions," he said.

Mr. Widdiss said he wanted to dispel the notion that he was against the law suit and an appeal because he was a tribal member. He

said he had always thought that any court decision would not be good for the community and the issue needed to be decided by the people of the town.

Mr. Newman, who became a full-time resident 3 years ago and was elected selectman in May, said that unlike the other two selectmen he had changed his earlier position.

Mr. Newman's position differed from the position he took in an election interview with The Times last May. Then, Mr. Newman said he thought the lawsuit needed to go forward until it was settled. "There is going to be a decision, and it will go to appeal, but when we get to the end of that road we have to learn to live with it," he said.

But in a letter to the editor, Mr. Newman wrote: "What made last night's decision so difficult was that I am a man of my word, and I do try to listen."

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