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## **In Passionate Session, Aquinnah Makes It Official: Not Appealing**

By JULIA WELLS

A passionate and sharply drawn discussion in the village of Aquinnah fell silent this week when the town selectmen voted without dissent to abandon a court appeal of the sovereign immunity case - and along with it a 20-year-old landmark Indian land claims agreement.

"This community is the tribe and sovereignty is something I must uphold," declared selectman James Newman, who changed his vote in a surprise move at the close of a public hearing on Monday night.

Mr. Newman had previously supported an appeal of the controversial court case which has far-reaching implications for every town on the Vineyard.

Six months ago the Hon. Richard Connon found that the tribe cannot be sued because of sovereign immunity.

Three weeks ago the three selectmen deadlocked 1-1-1 over whether to appeal the ruling.

Two other town groups will appeal the case - the Aquinnah/Gay Head Community Association Inc. (formerly the Gay Head Taxpayers Association) and the Benton Family Trust (abutters to the tribally owned Cook lands). The case is expected to go to the state Supreme Judicial Court for a decision.

On Monday afternoon for the second week in a row the Aquinnah town hall was packed with an overflow crowd, as town residents debated the emotionally charged topic of whether the selectmen should pursue an appeal of the court decision.

One week earlier the selectmen had wiped the slate clean, under pressure from a growing group of town residents who wanted the town to appeal the ruling. The selectmen rescinded their earlier vote, pledging to keep an open mind and take a new vote after a full public airing.

The airing went on for two and a half hours among some 75 town residents on Monday night. Town moderator Walter Delaney presided, and the three selectmen sat in front alongside their longtime town counsel, Ronald H. Rappaport.

Tribal attorney Douglas Luckerman was also present.

The hearing was marked by two distinct camps - those who favored an appeal and those who did not - but beyond that the discussion strayed into many layers in this tiny town, home to the only federally recognized tribe in Massachusetts.

The historic 1983 Indian land claims settlement was the first step in a complicated train of events that eventually led to federal recognition for the Wampanoag Tribe of Gay Head

(Aquinnah). The settlement agreement was ratified by the state in 1985 and by the federal government in 1987. The tribe won federal recognition in 1987, before the act of Congress ratified the settlement agreement.

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 permit.

On Monday night, Michael Stutz recalled the long years of negotiations that eventually concluded with the 1983 settlement agreement.

"The selectmen and the tribe all agreed that the tribe would be subject to state and local law . . . so now 30 years later we're getting our first test of whether town and state law will apply. We're not saying that you're not sovereign. The question is whether that sovereignty is limited by the language in the settlement acts," Mr. Stutz said.

Many agreed with Mr. Stutz.

"This is a legal issue and what's at stake are the zoning bylaws that have protected this town. This is not a matter of trust - it's about whether everybody lives by the same rules," said Russell Smith.

"Agreements and memorandums of understanding - in this town they become dust in the wind. It's the selectmen's job to protect everybody in this town," said Deborah Webb.

"I was around in the 1970s when this agreement was made. For hundreds of years we have accused the federal government of backing out on its agreements, and that is what the tribe is doing at this point," said Barbara Bassett. "The agreement to abide by town zoning rules was a good agreement, and we should abide by it," she added.

Many who favored an appeal said the case deserves to be decided by the state's highest court.

"To freeze the issue at this point would not be helpful to closure. The town needs closure, and there is a process - it's not second guessing anything, it's where it should go," said Carlos Montoya.

"Where would we be in this country if women's rights or civil rights had been left in a lower court?" said Eliot Dasher.

Others - including many members of the tribe - were no less passionate in expressing an opposite view.

"For us to cede our authority to the town lessens our responsibility. We have not only upheld our promises, but we have exceeded them. Nobody here is more disappointed than I am about getting to this point," said Donald Widdiss, who is vice chairman of the tribe. "If this goes to an appeal it will be messy, and I'll tell you who I think will prevail - nobody," he added.

Berta Welch, today a leading member of the tribe, issued a blunt indictment of the settlement

agreement. "It was a bad agreement, two wrongs do not make a right and we are always going to come back to this point. That is why we are here today - this is about our sovereignty," she said.

"Sovereignty is just a word and that word has no meaning unless you put it into action, and this is what the Wampanoag people feel they have to do. We feel that we have to use sovereignty," said tribal member Adriana Ignacio. She referred to a poem her daughter wrote some time back titled They Love Us When We're Dancing. "You only want us on your terms. We care about our people, we care about our land and nothing has changed, we just want to rule ourselves. This is what I believe in; we have the right to say what we do with our land," Ms. Ignacio said.

"The real issues that stand as divisive in this community can't be decided in court," said Jackie Grey.

"So many of us are newcomers here in terms of the land. We're not paying attention to what the story of this land issue is about," said Katharine Newman, who is not a tribal member and is married to Mr. Newman, the selectman.

Her remarks foreshadowed the end of the meeting, when Mr. Newman abruptly announced his change of heart.

Midway through the meeting Mr. Newman also tipped his hand lightly, inviting Mr. Luckerman to speak.

The tribe's attorney spoke in lofty tones about the meaning of sovereignty.

"This is about not just pride but a coming of age - it is a feeling of wanting to step up and do the job they always wanted to do," he said.

Sara Thulin had a simple question for Mr. Rappaport. "Give us your rationale," she said.

Mr. Rappaport, who has been the town counsel to Aquinnah for 20 years, said he believes the language in the settlement agreement needs some interpretation from the court.

" 'The lands shall be subject to the laws of the town and the state,' " Mr. Rappaport said, quoting from the agreement. "What does that mean? That is a question which has significant impact and is going to be with us for a long, long time. It is going to go beyond the people in this room. And it should be decided by the supreme judicial court."

Mr. Rappaport said the path to the state's highest court is straightforward and would cost the town little money since most of the legwork has already been done. The entire matter could be decided inside of six months or so, he said.

But in the end the selectmen veered away from their town counsel, deciding to take a leap of faith in a whole new direction.

"In spite of Ron's assurances and his wisdom, I am not convinced that this case will be overturned in court, and it doesn't make sense to me to spend town time and energy and

money to fight something if I am not convinced that it will be overturned. I am 99 per cent sure that we can start from scratch with a feeling of brotherhood and camaraderie and work this out the way it should be worked out," Mr. Hebert concluded.

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