

## **Vineyard Gazette Online**

[http://www.mvgazette.com/commentary/editorials/?doc=20050712\\_editorials&format=print](http://www.mvgazette.com/commentary/editorials/?doc=20050712_editorials&format=print)

### **The Question of Remedy**

The Wampanoag Tribe of Gay Head (Aquinnah) made a prudent decision in abandoning its uncertain quest for an appeal to the United States Supreme Court with the sovereignty case. And so now the dispute between the town and the tribe returns home, where it began in March of 2001 when the Wampanoags built a small shed and a pier on the Cook Lands without obtaining a building permit.

The next stop for the sovereignty case is Dukes County Superior Court, where the Hon. Richard F. Connon will decide on a remedy.

The Massachusetts Supreme Judicial Court has spoken in unambiguous terms: the tribe waived sovereign immunity, at least on the subject of land use, when it signed the landmark 1983 Indian land claims settlement agreement with the town. The December 2004 decision upholds the original position of the town and overturns the superior court decision by Judge Connon.

And now the town of Aquinnah is again a party in the case.

The selectmen went down the wrong path two years ago when they went against the advice of their town counsel, Ronald H. Rappaport, and decided not to pursue the appeal to the state's highest court, leaving the job to the group of taxpayers and abutters and later also to Massachusetts Attorney General Thomas Reilly, who intervened in the case. It was clear at the time that the town fathers had allowed their thinking and judgment to be swayed by the tribe and its attorney.

As the sovereignty case comes home again, the selectmen should be careful to remember that they are the chief executive officers for Aquinnah and they represent the interests of the entire town, not just the tribe.

Hopefully this time around the selectmen will listen to the advice of their trusted and respected town counsel, who has ably represented this unusual community - which is the second smallest town in the state and home to the only federally recognized tribe in the commonwealth - for more than 20 years.

Talks have begun lately to improve town-tribe relations, and that is a good thing. But the sovereignty case is about the law, not town-tribe relations.

And enforcement of the laws of the town and the commonwealth should not be left to citizen groups.