

## Aquinnah selectmen agree to rejoin lawsuit

### July 14, 2005

By Nelson Sigelman

Meeting in executive session, the Aquinnah selectmen voted unanimously Monday night to rejoin a lawsuit against the Wampanoag Tribe of Gay Head (Aquinnah) filed to enforce town zoning regulations and permitting requirements over the construction of a small shed on tribal land on Menemsha Pond.

Selectmen Jim Newman, Camille Rose, and Michael Hebert made the decision following a meeting with Ron Rappaport, Aquinnah town attorney, to discuss the town's status with respect to the case.

"We are very pleased," said Larry Hohlt, president of the Aquinnah/Gay Head Community Association, Inc. "It is the correct thing to do and a very positive development."

The meeting followed a decision last week by the tribe not to file an appeal with the US Supreme Court of a ruling by the state Supreme Judicial Court (SJC) that the tribe waived its sovereign immunity and is subject to suit by the town of Aquinnah.

In a 5-1 ruling issued on Dec. 9, 2004, the SJC vacated a ruling by Superior Court Justice Richard F. Connon on June 11, 2003 that the town has no legal means to enforce town zoning regulations on the Cook Lands because the tribe had not explicitly waived its sovereign immunity when it signed the 1983 settlement agreement that is at the heart of the case.

The case will now return to state Superior Court.

Essentially the legal clock will be turned back, and the town, represented by Mr. Rappaport, who had been relegated to the sidelines as the case went forward, will once again ask the Superior Court for a remedy to enforce the town's zoning regulations.

Following Judge Connon's decision, Mr. Rappaport urged the selectmen to appeal to the SJC. He said the questions of law were far too important to be left standing on the opinion of a single judge.

On Dec. 8, 2003, selectmen Jim Newman, Carl Widdiss, and Mike Hebert voted unanimously not to appeal Judge Connon's ruling. What would ultimately become a successful challenge was left to the representatives of the Benton family, abutters to the property at the heart of the lawsuit, the Aquinnah/Gay Head Community Association, Inc., and Attorney General Tom Reilly, who joined the lawsuit before the SJC.

The 1983 settlement agreement was signed by the tribe, the Gay Head Taxpayers Association (since renamed the Aquinnah/Gay Head Community Association Inc.), the town, and the state. It was embodied in legislation approved by Congress known as the Indian Claims Settlement Act of 1987. The agreement, which eventually led to federal recognition of the Wampanoag Tribe of Gay Head — Massachusetts's only federally recognized tribe — specifically provides 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 (MVC)...."

The construction by the tribe of a small wooden shed and pier on tribal lands on the shore of Menemsha Pond without town permits in the winter of 2001 triggered the lawsuit by Jerry Wiener, Aquinnah building inspector and zoning officer, against the Wampanoag Aquinnah Shellfish Hatchery Corporation and the Wampanoag Tribal Council of Gay Head (Aquinnah). **Send this page to a friend:**

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