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Town-Tribe Pact Aired in Public

Government Leaders Discuss Origins of Proposed Agreement for Land Use Review Process, Schedule Comment Sessions

By IAN FEIN

Days after news surfaced about an untested regulatory venture proposed between the town of Aquinnah and the Wampanoag Tribe of Gay Head (Aquinnah), town and tribal leaders this week shed light on its origins and scheduled a series of public meetings to review the draft agreement.

Last week it was revealed that town and tribal officials had drafted an 11-page memorandum of understanding that outlined a collaborative land use review process between the two governments. The proposed agreement would resolve some of the regulatory issues raised in the pending lawsuit over tribal sovereignty.

Speaking Tuesday at a meeting of the Aquinnah board of selectmen, tribal council chairman Donald Widdiss assured that the proposal now circulating among town officials is not intended as a final draft. He said the tribal council endorsed the document as a starting point, but that it likely will be revised as it undergoes public scrutiny in the weeks and months ahead.

"This gives us a point in time to begin the public process," Mr. Widdiss said. "And I welcome the opportunity to do this in a forum that gets us to an agreement which respects the authority of the town, tribe and state. So we're going to have some in depth discussion, I'm sure - between the public, the tribespeople, selectmen and attorneys."

The meeting this week marked the first time that the draft agreement was mentioned in a public setting. Neither selectmen nor Mr. Widdiss on Tuesday discussed the details of the document, though they did address its purpose and origins. They also said the agreement will require a town meeting vote and approval by the state legislature before it can be enacted.

Mr. Widdiss and selectman Michael Hebert, two of the primary authors of the agreement, said this week that the lengthy mediation process set out in the document would help avoid litigation over land use disputes in the future.

"It reflects a willingness on the part of the tribe and the selectmen to work out a process which will stand public scrutiny. That's what folks have been asking for all along," Mr. Widdiss said. "I want to thank the selectmen for getting here, because the whole process with the court has been odious to the relationship between the town and the tribe - and I want to change that."

In a landmark decision one year ago, the Massachusetts Supreme Judicial Court ruled the tribe must abide by state and town zoning rules, reversing a lower court decision that found the tribe could not be sued because of sovereign immunity. The state's highest court found that the Wampanoags waived their right to sovereign immunity over land use issues when they signed the historic 1983 Indian land claims settlement agreement, which led to federal recognition for the tribe in 1987. The Wampanoags are the only federally recognized tribe in the commonwealth.

The origins of the proposed agreement tie directly to the case, which began in 2001 when the tribe

built a small shed near its shellfish hatchery on the Cook Lands without obtaining a building permit.

Mr. Widdiss said Tuesday the suit might have been avoided if the town and tribe developed a joint land use agreement at that time. "We probably could have worked it out among ourselves if we had clearer heads prevailing," he said.

Mr. Hebert said this week that the draft document is the result of a multi-year cooperative effort between himself, Mr. Widdiss, their respective attorneys and other tribal council representatives.

The board of selectmen almost two years ago appointed Mr. Hebert, whose wife is a tribal member and secretary to the tribal council, to serve as the town representative in negotiations for a potential resolution to the case. The board appointed him after deciding not to appeal the lower court's decision to the Supreme Judicial Court. A group of taxpayers and abutters carried the ball in court instead, and eventually prevailed.

Mr. Hebert said the board made a conscious decision to appoint him as a lone representative to the negotiations because if more than one board member attended, the half-dozen meetings would have been subject to open meeting law. Mr. Widdiss said it was important that the preliminary discussions be held in private so they could advance the proposal to a point where it could be made public.

Mr. Widdiss said the negotiations progressed slowly over the last two years, but gained momentum after a watershed moment last summer when the tribe decided not to appeal the state decision to the United States Supreme Court.

"We had the option to make some attorneys very rich, or to take the onus on ourselves and work something out," he said on Tuesday. "And that's the nature of this thing."

Town regulatory boards met last night to gather questions and concerns for town council Ronald H. Rappaport, who helped draft the proposed agreement. Selectmen plan to discuss the agreement in a public session Jan. 18 with Mr. Rappaport, tribal representatives and attorneys, and will then hold a public hearing to generate greater community feedback sometime in mid-February.

Mr. Hebert and Mr. Widdiss suggested on Tuesday that the agreement could influence the final superior court decision on the pending case. Mr. Hebert said the document is time sensitive and wanted the town to act on it as soon as possible.

Selectman Camille Rose disagreed. Ms. Rose, who replaced tribal member and former selectman Carl Widdiss on the board last spring, said that she only learned of the document's existence last month, and will need more time to review it before she can form an opinion.

"This is much too important to rush through without due consideration," she said. "I think it has to be considered carefully and judiciously."

Mr. Widdiss, who noted he had been working on land use issues between the town and the tribe since 1976, sided with Ms. Rose.

"We'll take as long as we need to. If anything, this is a time to be patient," he said. "From the tribe's perspective this will be a major intergovernmental agreement that must withstand the test of time. So it will take a lot of time."

Ms. Rose, who is also chairman of the town planning board, said the draft document raised a number of administrative and procedural questions. "On the surface there are a number of flaws,"

she said.

Conservation commission chairman Sarah Thulin said this week that she was pleased the document had been made public, and that she hopes the town and tribe now hold as many open meetings about it as possible. But she also noted that she had some concerns about the proposed agreement, which she first saw last week.

"It is confusing and ambiguous at best," Mrs. Thulin said. "So we will need a lot of answers from whoever drafted this on how they foresee this working."

Tribal land use commission chairman Kristina Hook-Leslie, who also sits on the tribal council, chose not to comment about the proposed agreement this week. She deferred all questions about the document to Mr. Widdiss.

The selectmen and Mr. Widdiss on Tuesday acknowledged that they too have questions about the agreement. It is unclear, for example, whether it will require a simple majority or two-thirds approval at town meeting. Mr. Hebert said he thought it would only need a majority, but Ms. Rose said that as a zoning bylaw amendment it would almost certainly require two-thirds. Mr. Widdiss said it was an important distinction that must be resolved.

"These are the types of questions we need answered," added board of selectmen chairman James Newman. "What are we really looking at?"

Despite the acknowledged confusion, Mr. Widdiss took an optimistic outlook. "It's going to get complicated before it gets simpler, just by its nature," he said. "But the fact that we're all talking about it I think is significant."

Mr. Hebert agreed: "It is a step in the right direction, for sure."

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