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## NEWS

### Abandoning Draft Pact, Town, Tribe Call Summit

By IAN FEIN

Town and tribal officials in Aquinnah this week agreed to set aside a preliminary but controversial document that had outlined an unusual joint land use regulatory venture. The two governments will instead start anew and work together in an open forum to set out mutual goals for their small town at the western edge of the Island.

An informal summit meeting is now set between the town and the Wampanoag tribe of Gay Head (Aquinnah) for Feb. 22. The purpose of the meeting is to begin an open-ended dialogue and improve town-tribe communications. The idea for a summit meeting grew out of a special meeting of the town board of selectmen this week that was marked by a distinct tone of cooperation and optimism.

"I think once we begin to get to the essence of this talking relationship, whatever comes out of it will be more amenable to both sides," tribal council chairman Donald Widdiss said. "People here tonight have a goal to reach a mutually agreeable situation," he added.



"We're all neighbors," said conservation commission chairman Sarah Thulin. "And basically we all want the same thing - the best thing for the small town of Aquinnah."

Selectmen called the special meeting this week - attended by Mr. Widdiss, town and tribal regulatory board members, residents and town counsel Ronald H. Rappaport - to discuss the draft document, which was recently made public.

At the outset of the meeting Mr. Rappaport offered a brief history of the document, which he said he helped draft along with Mr. Widdiss and selectman Michael Hebert over the course of the last two years. Other town officials did not see or learn about the

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document until late last month.

Mr. Rappaport confirmed that the origins of the document are tied directly to the landmark lawsuit over tribal sovereignty, which began in 2001 when the tribe built a small shed on the Cook Lands near its shellfish hatchery without a building permit. Along with Mr. Hebert and selectman James Newman, Mr. Rappaport said the general purpose of the proposed agreement is to avoid future litigation between the town and tribe over land use disputes. Mr. Rappaport noted the existence of another building - the Wampanoag Community Center - which was recently built without a town permit.

The goal, he said, is to find a practical way for the town and the tribe to co-exist as separate governments without having to resort to the courts for remedies.

"The last three years have been extremely difficult for a lot of us involved in the litigation," the longtime town counsel said. "If there is a way to avoid that, I think we have an obligation [to pursue it]."

Mr. Rappaport noted that the proposed agreement would not take away the rights of any individuals, and he outlined four main concepts he believed the document tried to address: Should there be a committee consisting of town and tribal

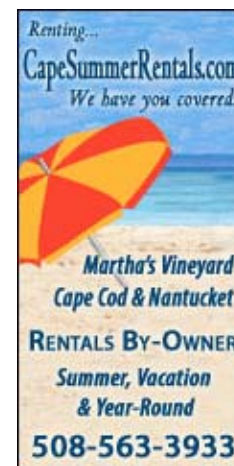


members? Should there be joint inspections of buildings? Should there be an effort to coordinate hearings? And if there is disagreement between tribal and town land use boards, should there be an effort to mediate before it goes to court?

Mr. Rappaport said he had discussed the proposed agreement with Massachusetts Assistant Attorney General Robert Ritchie, who intervened in the tribal sovereignty case on the side of the town and the taxpayers before it went to the Supreme Judicial Court. Mr. Rappaport said that while Mr. Ritchie did not address the details of the document, he agreed that improved communication and mediation between the town and the tribe were positive concepts to explore.

Town board members told Mr. Rappaport on Wednesday that while they too agreed with the goals he described, they did not believe the document as written adequately captured the concepts. Aquinnah planning board member Berta Welch, who is also a tribal member, said she did not feel satisfied with the document from either perspective. "I think it's not a great document that anyone can understand," she said.

Richard Russell, a spokesman for the Benton family trust, a



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group of abutters to the Cook Lands that joined the town and the taxpayers in the sovereignty case, took issue with the document because it was silent on the subject of the 1983 Indian land claims settlement agreement. The state supreme court found last year that the settlement agreement, signed by the town and the tribe, trumped sovereign immunity, at least on the subject of land use, and that the tribe was therefore bound to follow state and local zoning laws.



In the end on Wednesday town board members and Mr. Rappaport agreed that the best way to proceed would be to take the draft document off the table and discuss the concepts behind it in open meetings with everyone involved.

"Right now the document has some baggage with it. So let's start new and discuss what the land use issues are from the town and tribe's perspectives," said Mrs. Thulin. "For me personally, I'd be thrilled and honored to go with the conservation commission to the tribal offices. As long as we follow all open meeting laws, I'm all for it."

Mr. Widdiss said the tribe is open to such discussions. He reiterated that tribal members endorsed the document as a preliminary draft, and that they expected its contents to change once it was made public.

Mr. Rappaport openly criticized the public release of the document. News of the document was first reported in the Gazette late last month. "It was released as a very preliminary document, and it took on a life of its own," Mr. Rappaport said. "Which is very unfortunate," he added.

But Mr. Widdiss suggested that public exposure may have been the best thing to happen. "The release of the document took pressure off folks," he said. "Ron, I understand your concern. But whoever made the attempt to turn it into a divisive issue did just the opposite. We're dealing with the positive now."

Although the one-hour meeting on Wednesday was mostly cordial, there were slight undertones of tension.

Tribal members contradicted statements by both Mr. Rappaport and selectman Camille Rose that for the most part there has been very little dispute about projects that went forward on tribal lands over the years.

"Any conversation has to take into account the last 25-odd years," Mr. Widdiss said. "To say there hasn't been conflict or tension does not reflect reality."


Striking a conciliatory tone throughout, however, Mr. Rappaport praised the tribe for not appealing the state supreme court decision to the U.S. Supreme Court this summer. He also praised Mr. Hebert and Mr. Widdiss for their attempts at mediating a difficult issue.


"Mike and Donald - you are attempting to bring town and the tribe together, and any time you do that you open yourself to criticism," Mr. Rappaport said. "I personally appreciate that you're both willing to try."

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