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Town, Wampanoag Tribe Find Hopeful Consensus On Land Use Permitting

By IAN FEIN

Resurrecting hopes for a peaceful accord in the small town of Aquinnah, town and tribal officials this week embraced a revised intergovernmental land use agreement and pledged to bring it before their respective constituencies for a vote.

The consensus came at a summit meeting held in tribal headquarters on Wednesday, where attorneys for both governments earned high praise for their recent revisions to the document. Town selectmen said they will call a special town meeting on the proposed agreement by June 30, and chairman Donald Widdiss of the Wampanoag Tribe of Gay Head (Aquinnah) said he would schedule a tribal council meeting for a coinciding vote.

Mr. Widdiss said that while the fate of the agreement ultimately rests with the voters, he hopes the Aquinnah community will take advantage of this point in time when both the town and tribal governments are willing to work together.

"If this is a practical solution, then it will outlive us. If not, then somebody else gets to go through this process again," Mr. Widdiss said. "But I've been involved in this discussion since 1976, and this is as close as I've seen it."

Selectman Camille Rose, a vocal critic of an earlier version of the intergovernmental agreement, struck a similarly optimistic tone. "I've just read this document, and I think it's about perfect," Ms. Rose said of the revised agreement on Wednesday.

The meeting marked the fourth summit held over the last two months, and the first that included the attorneys. The first summit meeting was called in response to the earlier version of the document, which met with criticism when made public.

Town counsel Ronald H. Rappaport on Wednesday acknowledged that the earlier draft had defects, and said he worked with tribal attorney Douglas J. Luckerman over the last two weeks to improve it. Their collaboration resulted in a thinner document, with some specific provisions added, but the overriding concepts behind the agreement remained the same.

Mr. Rappaport and Mr. Luckerman described the document's central purpose as an attempt to avoid future land use disputes between the two governments. Town and tribe officials both agreed that they need a new document to resolve their differences of opinion about the historic 1983 Indian land claims settlement agreement.

"Because it's been codified by a federal and state act, whether we like it or not, whether it was a good thing to do or not, that agreement is now beyond us," Mr. Rappaport said. "So our job is to take what happened in that 1983 settlement agreement and make it practical today," he added.

"The point of having a new document is to acknowledge that there are differences of opinion and get past the argument of what you think the settlement act says," Mr. Luckerman said. "The question here is how do we want to be today, as two governments who share this space and have a legitimate interest in what the other one is doing."

A previous dispute about the 1983 agreement led to a lawsuit over a small shed and pier that the tribe built on Menemsha Pond in 2001. The two governments spent four years in court battling over whether the tribe needed town permits for the structures, causing much ill will on both sides. The Massachusetts Supreme Judicial Court ruled in December 2004 that on the subject of land use the tribe waived sovereign immunity when it signed the 1983 agreement - and so must abide by town and state zoning rules.

The landmark case is nearing resolution after the tribe filed permit applications for the shed and pier in town hall last Friday. Mr. Rappaport is scheduled to appear at a status conference in Dukes County Superior Court on Monday, where he will request that the court maintain jurisdiction over the case until the permitting process has run its course. Public hearings at the town conservation commission and planning board are scheduled for mid-May.

Mr. Rappaport said he hopes the two governments, through the process set out in the proposed agreement, can avoid a lawsuit over the Wampanoag Community Center, which the tribe is building with no town permit. Mr. Rappaport told tribal members on Wednesday that even though the tribal land use commission approved the community center in April 2004, a town permit is required under the 1983 agreement.

"We can't be having round two, round three, round four. It's not healthy for the community," Mr. Rappaport said. "Aquinnah is too small a town to have these types of lawsuits over land use. We should be able to do better than that, and we should be able to resolve these issues without going to court."

On Wednesday the two attorneys explained that the proposed agreement lays out a parallel permitting process that respects the rights of both governments. It also creates an Aquinnah planning advisory board - made up of both town and tribal members - to serve as a bridge between the two governments.

The proposed agreement would apply to any project on tribal land or town project on land that abuts tribal property. The town and tribal regulatory boards with jurisdiction over the project would attempt to coordinate joint hearings and inspections, and, if it appears that two regulatory boards are headed toward differing decisions, the agreement would trigger a lengthy dispute resolution process and mandatory mediation before the case goes to court.

According to the agreement, no regulatory board would be required to change its decision, and no individual tribal member of town resident would lose their rights to appeal. The agreement would also preserve the authority of the Martha's Vineyard Commission, and the rights of either government to withdraw from the pact after five years.

Town conservation commission chairman Sarah Thulin praised the dispute resolution process.

"All those steps along the way take time, bring people together face-to-face, and get them to talk about things," Mrs. Thulin said. "There haven't been that many disputes in town when it comes down to it. So for us to get together and talk would be the logical thing to do," she said.

"What you're doing is inserting a steam valve into the normal process of events," Mr. Luckerman said. "It gets everybody to take a deep breath and try to work it out before they head to superior court."

He said the only right specifically waived in the agreement is the tribe's defense of sovereign immunity to any matter covered in the document. Some tribal members at the meeting questioned the provision, but Mr. Luckerman said tribes must often waive that right when entering into

agreements with other entities.

Tribal council member Kristina Hook-Leslie said the time was ripe for the two governments in Aquinnah to draft a new agreement.

"The 1983 settlement agreement was written in another time and place," Mrs. Hook-Leslie said. "That Gay Head versus this Aquinnah - that tribal group versus this sovereign nation - are in fact worlds apart. This new agreement I believe will give us our own root, our own chance to talk about it over again - with a different perspective, with different people."

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