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Tribe, town weigh redraft of land use accord

By Nelson Sigelman - May 4, 2006

Aquinnah selectmen and leaders of the Wampanoag Tribe of Gay Head (Aquinnah) moved closer to agreement on a memorandum of understanding (MOU) that would set up a joint land use permitting process.

At a joint meeting of tribal and town leaders last week, attorneys for both sides unveiled a redraft of a memorandum that when it was first presented almost four months ago landed with a resounding public thud. At the time, Camille Rose, selectman and chairman of the planning board, described it as cumbersome and unworkable.

The new version generated considerably more support. "I am personally very pleased with it," Ms. Rose told The Times this week. "It is a very workable plan without all of the administrative problems that the original MOU presented us with."

A special town meeting is expected to be scheduled next month for a vote on the memorandum of understanding, officially known as the "Intergovernmental agreement on cooperative land use and planning between the Wampanoag Indian tribe and the town of Aquinnah."

Donald Widdiss, tribal council chairman, also endorsed the agreement and said he would present it to the tribal council for a vote.

[\[A copy of the MOU is available here\]](#)

The agreement outlines a parallel permitting process overseen by a newly created seven-member Aquinnah planning advisory board made up of tribe and town members.

Although disputes may be referred to a mediator, any decision or recommendation of the mediator would not be binding. Court would still be an option, in which case the tribe agrees to waive the defense of sovereign immunity.

The latest redraft is the product of a series of monthly meetings that ensued between tribal and town officials following the reaction to the earlier version.

At a meeting on Jan. 18, Aquinnah town attorney Ron Rappaport described the principal concepts the MOU attempted to address. And he suggested that both sides abandon the specific language and instead focus on finding common ground on which to build a new agreement.

The new agreement was presented Wednesday at a meeting in the tribal administration building attended by its two principal architects, Mr. Rappaport and tribal attorney Douglas Luckerman of Lexington.

The MOU is designed to set up a process to resolve conflicts over land use issues similar to the long legal battle that began in the winter of 2001 when the tribe constructed a small shed and pier on tribal land (called the Cook Lands) beside Menemsha Pond without town permits.

The 1983 settlement agreement that led to federal recognition 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 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.

The tribe's insistence that it did not need a town permit to build the shed led to a lawsuit in Superior Court and an appeal of that decision to the state Supreme Judicial Court.

Last week the tribe filed the necessary town permits for the shed and dock.

The Aquinnah/Gay Head Community Association, Inc., the taxpayers group that carried the shed case forward to a legal victory, offered qualified support for the MOU.

In a prepared statement e-mailed to The Times, Larry Hohlt, association president, said of the MOU, "It is very encouraging to note that both the Town and Tribe specifically acknowledge in the new draft of the proposed Intergovernmental Agreement on Cooperative Land Use and Planning that the Agreement is intended to assist in implementing the 1983 Settlement Agreement and the subsequent Federal and Commonwealth implementing laws. The heart of that Agreement and of those laws is that Federal, Commonwealth and Town laws, regulations and permitting or other applicable processes and procedures will apply to land use matters. Cooperative efforts between the relevant Town and Tribe officials, boards and commissions that foster that objective and that are consistent with those underlying principles should be applauded. We want to acknowledge the strenuous efforts that we know have been underway to bring this to fruition and to thank all those involved in those efforts."

According to the introduction, the Intergovernmental Agreement "represents good faith commitments which are being made by each of the parties in a spirit of cooperation, and is based on the belief that these commitments will be of mutual benefit to the parties."

According to the draft MOU, the tribe agrees to adopt and enforce the laws and regulations that are, at a minimum, substantially equivalent to the town zoning bylaws that existed on the date of the 1983 Settlement Agreement, and any subsequent amendments.

The Tribe agrees to provide the town with reasonable access to its property so that the Town can monitor land use activities that fall under the agreement.

The tribe agrees to provide the town with notice of land use permitting activities on tribal lands and the town will inform the tribe of activity on land abutting its property.

Land use activity that constitutes a development of regional impact will be referred to the Martha's Vineyard Commission.

Both sides will "use their best efforts" to coordinate land use permitting so that meetings and hearings take place at the same time and at the same place, in which cases the open meeting law would apply.

In the event of a dispute, the first try at finding a mutually agreeable solution falls to the advisory board. In the event the advisory board is unsuccessful, the Tribal Council and the board of selectmen would be notified and have the option to confer on the issues by calling a special joint meeting for that purpose.

If there is no consensus, the dispute goes to a mediator selected by the advisory board. The cost would be split evenly between the tribe and the town.

Should the matter go to court, "The Tribe agrees to waive the defense of sovereign immunity to any action seeking judicial review or enforcement of matters covered by this agreement and both parties recognize, and agree, that said limited waiver is not intended for, and may not be used for, any other purpose in any other action or proceeding."

The agreement calls for a joint review of the cooperative planning process after two years. The agreement may be amended only by parallel resolutions of the Tribal Council and the Town Meeting. The agreement cannot be terminated for five years from its effective date without the approval of both the Tribal Council and Town Meeting, but may be terminated at any time after by a vote of one or the other governmental bodies.



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