

The Martha's Vineyard Times

Aquinnah voters consider tribe-town pact

By Nelson Sigelman - August 17, 2006

In addition to the normal mix of routine business reserved for special town meetings, Aquinnah voters who gather for a special town meeting Tuesday will be asked to formalize an agreement between the town and the Wampanoag Tribe of Gay Head (Aquinnah).

The memorandum of understanding (MOU), officially known as the "Intergovernmental agreement on cooperative land use and planning between the Wampanoag Indian tribe and the town of Aquinnah," outlines a parallel permitting process overseen by a newly created seven-member Aquinnah planning advisory board including tribe and town members.

[\(The special town meeting warrant is available here\)](#)

The document is an outgrowth of a long legal battle over the limits of tribal sovereignty and the extent to which the tribe must comply with town permitting. The legal warfare reached the state Supreme Judicial Court (SJC) and left both sides battered and weary.

Voters will be asked to ratify the agreement that was expected to be voted on by the Wampanoag Tribal council last night.

Kristina Hook, a member of the tribal council and a resident of Aquinnah, said she is in full support of the MOU. Ms. Hook, who helped draw up the document, said the agreement represents a positive step in the relationship of the town and the tribe.

Larry Hohlt, president of the Aquinnah/Gay Head Community Association, which brought the case to the SJC, offered support for the MOU. In a statement e-mailed to The Times, Mr. Hohlt said, "This Agreement represents and reflects the result of a lot of thought and just plain hard work by both Town and Tribe officials and the boards and commissions that will be affected. The cooperative processes and advisory review procedures it establishes could prove very helpful in terms of resolving potential land use issues. At its core, however, the Agreement does not impair the Town's ultimate sovereignty and rights regarding such matters and thus, as was essential, it is consistent with the 1983 Settlement Agreement and the enabling Federal and Commonwealth laws."

The MOU establishes a process to resolve conflicts over land use issues similar to the conflict 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 tribe has since filed the necessary town permits for the shed and dock. Camille Rose, Aquinnah selectman, said she is very pleased with the language of the agreement and expects that voters will support it.

The tribe has yet to apply for permits for a community center constructed on tribal property while the case that began with the shed was before the court. Ms. Rose said the tribe has assured town leaders that once the MOU is ratified, it will begin the permitting process for the center.

She described the rest of the 15-article warrant for the Tuesday special town meeting, which begins at 7 pm in Aquinnah Town Hall, as fairly routine business.

But as experienced Aquinnah watchers know, town meetings are seldom routine.

Parallel process

The MOU creates a seven-member Aquinnah planning advisory board including 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 1983 settlement agreement that led to federal recognition of the Wampanoag tribe 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 regulation 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.

According to the 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 may 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 selectmen would be notified. They would 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 the five years have passed, by a vote of one or the other governmental bodies.

Housekeeping

In other business, voters will be asked to attend to the town's personnel bylaws and pay for improvements. Voters will be asked to take \$3,000 from the stabilization fund to purchase a 30-foot replacement flagpole at the Aquinnah Circle.

They will be asked to take another \$13,500 from the stabilization fund to pay for a 2006 fiscal year general financial audit.

Voters will also be asked to take money from the stabilization fund for a new five-horsepower air compressor (\$1,175), a new network server for town financial offices (\$4,290), and to pay for the installation of a new indirect-fired water heater system at police headquarters (\$1,900). A two-thirds vote is required to take money from the stabilization fund.

It will be up to the voters to instruct the selectmen to take the necessary steps to accept the East Side of Old South Road as a town owned road. The finance advisory committee does not recommended passage.

Acting on a recommendation contained in a report by the Department of Revenue, Division of Local Services, town leaders will ask voters to change a job title. If approved the "town administrator to the board of selectmen" would become the "town coordinator."

The warrant includes an article asking voters to appropriate \$10,000 from Community Preservation Act revenues for expenses required for the restoration of the Edwin Vanderhoop Homestead and another \$10,000 for expenses required for the payment of mortgage principal and/or interest on the homestead.

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