

The Martha's Vineyard Times

Tribe balks at Aquinnah land use deal

By Nelson Sigelman - August 24, 2006

Aquinnah selectmen got the wind knocked out of them at a special town meeting Tuesday night. They had thought an agreement between the town and the Wampanoag Tribe of Gay Head (Aquinnah) they presented to voters had the support of tribal leaders, but it did not.

Ironed out over months of meetings that involved lawyers for both sides, the agreement is known as the "Intergovernmental agreement on cooperative land use and planning between the Wampanoag Indian tribe and the town of Aquinnah." It is expected to help avoid future lawsuits and foster tribal-town cooperation and joint land use planning.

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 case reached the state Supreme Judicial Court (SJC), which ruled against the tribe.

The memorandum of understanding (MOU) outlines a parallel permitting process overseen by a newly created seven-member Aquinnah planning advisory board, which would include tribe and town members.

But while future cooperation may have been the overriding sentiment of those involved in bringing the agreement to fruition, at the special meeting town voters who are also tribal members said they were not satisfied the agreement as written was ready to be acted on before the tribe had had an opportunity to fully discuss it. Several members expressed outright opposition.

With a reference to Wounded Knee, the scene of a massacre of Native Americans by U.S. Calvary more than a century ago, Robert MacDiarmid, a former tribal council member and husband of former tribal chairman Beverly Wright, said the agreement "destroys any semblance of sovereignty."

The opposition of tribal members was enough to sway some non-tribal voters, many of whom had thought all of the issues had been resolved. Explaining his vote in favor of tabling the article, Richard Skidmore said, "It just seemed too unsettled."

On a motion by Durwood "Woody" Vanderhoop, a tribal council member and one of those involved with the process that led to the agreement, town voters voted 36 to 18 to table the article that asked the town to accept and adopt the agreement negotiated between the tribe and the town.

The vote was a bitter disappointment for Mike Hebert, chairman of the Aquinnah board of selectmen, who had worked long and hard for a memorandum of understanding that would avoid the sorts of disputes that had landed both sides in court and provide a blueprint for future cooperation.

Mr. Hebert, as had others, expected that the tribal council would vote to accept the agreement prior to the town vote. When that did not happen he and other town officials were undeterred.

At the very least, Mr. Hebert, who had participated in meetings with tribal representatives and lawyers representing the town and the tribe over the course of four months, thought the town was prepared to

accept the agreement and "someone had to go first."

Following the conclusion of the meeting, Mr. Hebert said he was very disappointed. "I thought that we had a document that met everyone's expectations," he said.

Mr. Hebert said he was still hopeful the document would be approved and signed once tribal members had had an opportunity to discuss it further with their attorney.

Standing in the parking lot outside the town hall, Camille Rose, selectman and chairman of the planning board, said she was disappointed that the tribe was not ready to accept the agreement. She said the alternative was to comply with the existing regulatory process, beginning with the tribe's as yet unpermitted community center.

In the aftermath of the vote tribal leaders said that the agreement was significant in scope and more time was needed to allow tribal members to fully understand its language and ramifications.

Wampanoag Tribal chairman Donald Widdiss said town officials had made assumptions about the tribe's readiness to act on the draft agreement that were not entirely accurate. He said the tribe must be given time to follow its own process and tribal members planned to meet with Douglas Luckerman, the tribe's lawyer, to discuss the agreement on Sept. 9.

Just politics

Identifying the ingredients in the political stews created in the Island's smallest town, home to the state's only federally recognized tribe, is rarely easy. Aquinnah politics is often an intimate mix of personal relationships, personalities, and town and tribal policy making.

One of the only tribal members present who voted against the motion to table was June Manning, co-chairman of the tribal committee that helped to negotiate the agreement. Ms. Manning, a respected Native American genealogist, said that if there was an issue tribal members had ample opportunity to voice their concerns or ask questions over the past four months. "They never said anything," Ms. Manning said. "They had eight meetings to voice their concerns."

Ms. Manning characterized the issue as "just politics."

Yesterday, Mr. Vanderhoop said that although he had been involved in the process he was not prepared to vote on a document that was not in its final form. He said there was little doubt that town leaders did not fully understand where the issue stood.

"I think there may have been some assumptions that things were where they had to be but I don't think the way to conduct business is on assumptions," he said. Mr. Vanderhoop said tribal members had not had enough time to digest the issues and the agreement required a lot of thought.

Although tribal leaders said town leaders had assumed too much, there appears to have been poor communication of that point prior to Tuesday's meeting. On Tuesday morning Mr. Widdiss told The Times that at both the council meeting and a general membership meeting tribal members had raised many questions. As a result the general meeting on Sept. 9 was scheduled.

Mr. Widdiss said he had asked the town to consider delaying any vote because he did not want the town to go through a process that would produce a definitive document. "There was some misunderstanding as to whether there was acceptance of it and I made it clear that we still had to go through our process,"

he said. "Ultimately tribal council will makes its recommendations and make a resolution."

Mr. Widdiss said he had no idea why the town was under the impression that that the tribe supported the MOU as written and that it could move forward. "You would have to speak with the town," he said, "but I was pretty clear that we still had to go through our process, so I think part of this is having the town understand that we have quite a thorough process by which we have to consider things like this."

Many of the questions raised by tribal members had to do with language. He added, "It's an agreement that is going to be with us for quite awhile, so it is important that no matter how inconsequential a question is it gets answered."

The MOU was unveiled after months of work. It outlined 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 principal architects were Aquinnah town attorney Ron Rappaport and tribal attorney Douglas Luckerman of Lexington.

Yesterday, Mr. Rappaport said that while no issue involving tribal-town relationships is ever a straight line it was obvious that the tribe was not ready to move forward on the agreement and needed more time to consider the issues.

"But everyone has to realize that there is a building, namely the community center, sitting there without a permit," said Mr. Rappaport. "And the town can simply not let that stand."

The conflict that led to the MOU 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 has since filed the necessary town permits for the shed and dock but has yet to file for the community center that was built while the lawsuit was making its way through court.

Yesterday, Mr. Rappaport said the purpose of the MOU is to create a vehicle so that there is mediation prior to litigation. "The document was negotiated very publicly with equal representatives from the town and the tribe, counsel from the town and the tribe, and it had been my understanding that all language issues had been worked through among the participants and among counsel," said Mr. Rappaport.

Yesterday, Larry Hohlt, president of the Aquinnah/Gay Head Community Association, Inc., the taxpayers group that carried the shed case forward to a legal victory, said,

"Our understanding is that town and tribe officials at all levels were deeply involved in this process which understandably took a long time," he said, "therefore it is really surprising to have what happened last night occur."

Housekeeping

In other business, voters tabled a request to take \$3,000 from the stabilization fund to purchase a 30-foot replacement flagpole at the Aquinnah Circle but approved all other articles on the warrant. Voters agreed to take \$13,500 from the stabilization fund to pay for a 2006 fiscal year general financial audit; and instructed the selectmen to take the necessary steps to accept the East Side of Old South Road as a town owned road.

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