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Town, Tribe Agreement Stalls at Special Meeting; Future Remains in Doubt

By IAN FEIN

A land use agreement negotiated by town and tribal leaders this spring is now in a state of limbo, after Aquinnah voters at a special town meeting on Tuesday decided to put the untested venture on hold.

Reacting to the vote, which they called a shocking betrayal by members of the Wampanoag Tribe of Gay Head (Aquinnah), two town selectmen, as well as their attorney, vowed this week to press the tribe to secure town permits for the Wampanoag Community Center, a 6,500 square-foot building which is nearing completion on tribal lands.

Unless the tribe moves forward with the proposed land use agreement or community center permits, the two governments which share the small town of Aquinnah may soon find themselves back in court.

Tribal council chairman Donald Widdiss said on Wednesday that he hopes an agreement will still be reached, but acknowledged that its fate at this point appears uncertain.

"We're talking at least, which is an important sign of respect for each other's authority," Mr. Widdiss said. "But if we can't get both sides together, then the scenario which nobody wants is to let the courts decide. And that means a continuing process of litigation."

At issue is whether the federally recognized tribe must obtain town permits for development projects on tribal lands. The two governments waged a costly four-year court case over a small shed and pier that the tribe built on Menemsha Pond, and, after the Massachusetts Supreme Judicial Court ruled against the tribe, it applied for and received the necessary town permits this spring.

Designed as a way to prevent future litigation over such projects, the document titled Intergovernmental Agreement on Cooperative Land Use and Planning proposed a parallel regulatory process that respected the rights of both governments and laid out a lengthy path of mediation to resolve disputes. Negotiated over the course of four public summit meetings this spring, the 11-page document had the strong support of town leaders, Mr. Widdiss, and attorneys for both governments.

But after a half-hour discussion at the town meeting this week, it was evident that many tribal members, who are also town voters, had lingering concerns about the document.

Tribal council member Durwood (Woody) Vanderhoop on Tuesday suggested that the tribe might seek to alter parts of the document in the weeks ahead, and that the town should wait to adopt the agreement until it is in a final form. On a motion by Mr. Vanderhoop, voters decided

36-18 to table the issue - receiving exactly the two-thirds approval needed to carry the motion. The vote was split largely, though not entirely, along tribal and non-tribal lines.

Assuming it was a joint document drafted by both governments, selectmen reacted with surprise, and said they did not realize the extent of dissent within the tribe. But strong feelings of opposition were apparent among tribal residents at the meeting who spoke of their inherent right and ability to govern themselves.

"As a town resident and tribal member, it makes as much sense for the Wampanoag tribe to accept [this document] as going to Wounded Knee and saying 'Please shoot us,' because this destroys any semblance of sovereignty," said former tribal council member Robert MacDiarmid, referring to perhaps the most infamous instance of violence between Native Americans and the United States military - the Wounded Knee massacre. "My personal vote: I object," Mr. MacDiarmid said.

The tribal council originally planned to take up the document at its next meeting, on Sept. 9, but Mr. Widdiss on Wednesday said the tribe's attorney, Douglas Luckerman, cannot make the meeting, so it will be rescheduled.

And though the tribal council this winter endorsed an earlier version of the proposed agreement as a starting point for discussion, there is now serious question about whether the document will be approved. It is understood that eight of 11 tribal council members must agree to sign it, and that the council may choose to present the proposed agreement to the general tribal membership for a referendum vote.

A number of tribal members said they are hesitant to sign the document because it would explicitly waive their sovereignty with respect to land use issues. Many members of the tribe are still unhappy with the historic 1983 settlement agreement, signed by town and tribal leaders and codified by state and federal government, which included a similar provision. The state's highest court in its landmark December 2004 decision relied on the 1983 agreement in ruling that the tribe had waived its sovereignty, at least with respect to land use, when it agreed to abide by state and local zoning laws. But some believe the ruling was narrowly confined to the Cook Lands.

Mr. Vanderhoop on Wednesday confirmed that the sovereignty issue was at the heart of the matter, and that the 1983 agreement is at the forefront of tribal minds.

"The tribe worked hard and gave up a lot in 1983 when we had the first agreement," he said, "and we want to make sure that now we don't erode our rights any more than is necessary in order to reach a good understanding with the town."

Tribal member Berta Welch said yesterday that some tribal members, like herself, who were opposed to the 1983 document at the time, are feeling similar pressure now to sign the new land use agreement.

"Some of us back then knew that we were always going to have problems with the settlement, and I think history has shown that it was a poor document," said Mrs. Welch, who is also a member of the town planning board. "If townspeople today say they want to get along and live side-by-side and make sure everybody's rights are protected, then we should take the 1983

settlement agreement back to the government and start all over again."

Town officials, meanwhile, will turn their attention back to the community center, which is located near tribal headquarters off Black Brook Road. The tribal land use commission approved the building in April 2004, while the sovereignty case was working its way through the courts; the tribe has so far declined to apply for town permits.

The building is set for discussion at the next meeting of the board of selectmen, scheduled for Sept. 5, and two of the three members are in favor of pressing the issue. Town counsel Ronald H. Rappaport on Wednesday also said it must be addressed. "There is another building - namely the community center, which does not have town permits, And that is something that the town cannot allow," Mr. Rappaport said.

Selectman Michael Hebert, one of the framers of the latest land use agreement, said he was shocked and surprised by the town meeting vote on Tuesday. But yesterday he said he remained optimistic, and was not ready to discard the document. He said he wanted to give the tribal council some more time to discuss the agreement before pushing too hard on the community center permits.

"I will not encourage further action until they have had time to look at the document and have their questions answered," said Mr. Hebert, whose wife Eleanor is on the tribal council.

Selectman James Newman, who did not attend the special town meeting because of personal reasons this week, disagreed with his colleague and said it was time to enforce the town bylaws.

Selectman and planning board member Camille Rose said the town had already waited too long to address the unpermitted building, and that the town meeting vote eroded her recently built trust in the tribe.

"Most of us who worked on this latest document cannot possibly have faith in any future negotiations," Ms. Rose said yesterday. "Honestly I think this [vote] was a fatal mistake on the part of the tribe. Where we had the impetus going for goodwill and good faith, it's been a betrayal."

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