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Town, Tribe Pact on Land Use Nears Decision; Attorneys Press for Accord

By IAN FEIN

After a three-month stalemate, a proposed land use agreement between town and tribal officials in Aquinnah is approaching a tipping point, but leaders on both sides remain unsure which way it will fall.

Town selectmen last week voted to press the Wampanoag Tribe of Gay Head (Aquinnah) to secure town permits for its 6,500-square-foot community center on tribal lands, and tribal members are set to gather on Sunday for their first general membership meeting since the special town meeting in August when the land use proposal was put on hold. If the tribe does not endorse a version of the land use agreement within the next few weeks, the town is expected begin legal action on the community center building.

Attorneys for the two governments yesterday expressed hope that the groups can resolve their differences but acknowledged the possibility that the two parties could end up back in court.

"I still remain hopeful that something can be resolved, but I simply don't know," said town counsel Ronald H. Rappaport.

Tribal attorney Douglas J. Luckerman agreed. "The alternative is that people who live very close to each other and live in the same community are going to end up spending enormous resources to resolve 99 per cent of what they can resolve simply by sitting at a table together," he said. "I have to believe that in the end rationality will win out over mistrust."

At issue is to what extent the federally recognized tribe must comply with local zoning laws for development projects on its roughly 500 acres of tribal lands. Over the last five years, the two governments have spent hundreds of thousands of dollars arguing over that aspect of their relationship in court, and the Massachusetts Supreme Judicial Court in December 2004 ruled that the tribe must secure town permits for a small shed and pier it built near its shellfish hatchery on Menemsha Pond.

Hoping to prevent future litigation over such projects, town and tribal officials last winter proposed a parallel permitting process that respected the rights of both governments and laid out a lengthy path of mediation to resolve potential disputes. Negotiated over the course of four public summit meetings last spring, the proposed agreement had the strong support of town leaders, tribal council chairman Donald Widdiss, and attorneys for both sides.

But when the 11-page document came up for a vote at the August town meeting, some tribal members said they needed more time to consider its consequences, and Aquinnah voters - split largely, though not entirely, along tribal and non-tribal lines - decided to table the issue.

Town selectmen at their regular meeting last week expressed frustration with the lack of progress and communication from the tribe over the last three months regarding the proposed agreement. Selectman James Newman suggested that the board had an obligation to enforce town zoning laws for the tribal community center, which the tribe started building on Black Brook Road in 2004 without town permits. Mr. Widdiss in August said the tribe would apply for those permits once the

land use agreement was in place, but Mr. Newman last week said the town could not wait forever.

"At what point are we going to address this issue?" Mr. Newman asked. "Nothing has been done about it. As the court has decided [for the shed and pier case], I think we need to pursue it."

The tribal land use commission - which serves as the primary regulatory body for the tribe - approved the community center in spring 2004, while the shed and pier case worked its way through the courts. Extensive interior work on the building remains incomplete.

Despite the objections of selectman Michael Hebert, who wanted to hold off on any combative action until the tribe has had more time to consider the agreement, the board voted two-to-one to send the tribe a letter demanding that it apply for a community center building permit. The letter, which has yet to be written by Mr. Rappaport, would be the first formal step in what could lead to an enforcement action and possible court case.

Mr. Luckerman yesterday said the tribe was making progress on the land use document, and expressed optimism that they could reach an agreement with the town before enforcement on the community center was necessary. He said he attended a tribal council meeting last month where members went through the land use agreement line-by-line and proposed a few changes, but he said all of the changes were relatively minor and would not affect the overall purpose or framework of the parallel permitting process.

He acknowledged that the last three months have likely been frustrating for the town, but said the delay was simply to ensure that the tribe thoroughly addressed all of its internal concerns.

"I think we're only a matter of weeks away from having a final vote, from the tribe's perspective," Mr. Luckerman said. "I feel we're getting very close to the end of their process."

The land use agreement is on the agenda Sunday for the large quarterly meeting of tribal membership. The general membership gathers every three months, includes all 1,100 enrolled tribal members, and can override any tribal council action by referendum or tribal vote.

Also on Sunday is the annual tribal election, where two tribal employees are expected to gain seats on the 11-member tribal council. Richard Randolph and Cheryl Vanderhoop-Sellitti are set to replace Matthew Vanderhoop and Kritina Hook-Leslie, neither of whom are seeking reelection. The next tribal council meeting is scheduled for Dec. 2.

Mr. Widdiss would not offer a timeline for approval of the land use agreement, and he said the tribe still has not determined whether the document will require approval in the form of a tribal resolution, vote of the general membership or endorsement by the tribal council. He said the tribe is committed to working toward a land use agreement that meets the needs of both governments, but that the tribe works by a process of consensus - which often can take a long time to achieve.

"Just because of the nature of how we do business, it takes a little while longer," Mr. Widdiss said yesterday. "We're diligently doing what we set out to do - and that's to make sure that we have a thorough hearing of the pros and cons of the document itself. We have to make sure we're not compromising our principles."

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