

Vineyard Gazette Online

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Town, Tribe Sign Historic Land Use Pact

By IAN FEIN

At a characteristically informal event that was more potluck dinner than Yalta Conference, town and tribe officials in Aquinnah this week signed the intergovernmental land use agreement approved by town meeting voters earlier this month.

About a dozen members of the Wampanoag Tribe of Gay Head (Aquinnah) and a half-dozen town officials attended the signing ceremony at the tribal headquarters on Tuesday evening.

Tribal council chairman Donald Widdiss and town board of selectmen chairman Michael Hebert offered brief remarks before putting their pens to paper, noting the event was somewhat anticlimactic considering the significance of the document and the long process of negotiation that led to it.

Both leaders also acknowledged that pockets of dissent still existed within their constituencies that did not believe in the agreement, but asked for cooperation and support as they move forward to carry out the terms of the document, which is an attempt to resolve a long-standing jurisdictional dispute over tribal development projects on its roughly 500 acres of land.

The origins of the dispute date back more than 20 years, when the Wampanoags signed the earlier 1983 land claims settlement agreement, which led to federal recognition for the tribe in 1987. The Massachusetts Supreme Judicial Court ruled in December 2004 that the tribe waived its right to sovereign immunity over land use issues when it agreed in 1983 to abide by state and local zoning.

"This agreement, like most others, is a compromise," Mr. Hebert said on Tuesday, adding later that the document represented a culmination of his nine years as a selectman.

"There are people on both sides of the agreement that feel compromise shouldn't have been necessary, and that we shouldn't have had to go through all this trouble," he said. "But for those of you who may feel this isn't necessary, the majority of people have spoken and said this is the way to go. So I ask that you please give it a chance."

The 12-page intergovernmental agreement calls for a parallel regulatory process for land use projects on tribal lands, and lays out a lengthy path of mediation to resolve potential disputes. Town and tribal officials hope the agreement will help them avoid lawsuits like the one over a shed and pier on Menemsha Pond that plagued the two governments over the last five years and was ultimately found in favor of the town.

"This is - I hope - a civilized attempt to solve our problems," Mr. Widdiss said on Tuesday.

"At no time since I've been here do I remember an instance of the tribe having a project that didn't pass muster with town zoning," he added. "But should there be a dispute, this document has put in place a way to discuss the issue and avoid going to court. And with all that's happening with development in Aquinnah and on the Vineyard, this is probably the best possibility with respect to litigation. We're all tired of the courts."

Selectman Camille Rose on Tuesday praised town attorney Ronald H. Rappaport and tribe attorney Douglas J. Luckerman for their sensitivity and persistence in helping broker the accord. Mr. Rappaport could not attend the signing this week, but Mr. Luckerman, who traveled to the Island from Lexington for the occasion, said he was optimistic that the agreement would help heal wounds of mistrust in the tiny town at the western edge of the Vineyard.

"As an attorney who has a bird's eye view of disputes between tribal governments and local communities, it's personally rewarding to have worked on a project where at the end there's a possibility of hope and of a better relationship," Mr. Luckerman said. "The process of getting to this point, I believe, was harder than what's to come."

Now that the document has been signed, both governments will appoint a seven-member Aquinnah planning advisory board - made up of town and tribal members - to monitor the cooperative permitting processes and facilitate negotiations between the governments.

One of the first orders of business will be consideration of the tribal community center building, which is under construction without town permits near the tribal headquarters off Black Brook Road.

The tribe in recent years resisted seeking town approval for the 6,500-square-foot building, but agreed last fall that it would apply for any necessary town permits once the land use agreement was in place.

Mr. Luckerman on Tuesday said he expected the community center and any future projects to proceed relatively smoothly.

"To me, the signing - it's a paradigm shift," he said. "This agreement was a trust-building exercise where both governments had to set aside who was right and who had authority in order to recognize and respect each other's legitimate interests."

"Now it's going to be up to the people of both governments from here on out to fulfill whatever potential there is," he said.

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