

VINEYARD GAZETTE

Current Edition: Friday, August 8, 2008

Aquinnah Building Inspector Cites Tribe on Building Permits

By SAM BUNGEY

Nearly four years after the landmark sovereignty case was decided by the Massachusetts Supreme Judicial Court, the Wampanoag Tribe of Gay Head (Aquinnah) has yet to secure a town building permit for the small shed and pier that were at the center of the dispute.

Aquinnah building inspector Jerry A. Weiner sent a letter to tribal chairman Cheryl Andrews-Maltais late last month formally notifying her that the tribe is in violation of town zoning laws and the state building code on three projects, including the shed and pier. The tribe has not responded to the letter.

The projects without permits are the shed and pier, located on the Cook lands which front Menemsha Pond, the tribal community center and a meteorological tower that went up this year in preparation for a possible wind turbine.

The projects have already cleared a number of town and regional permitting authorities, including the Martha's Vineyard Commission. Building permits are the final step in the town process. Applications go before the building inspector and from there to a planning board plan review committee for final approval.

The July 25 letter from Mr. Weiner states that several requests have been made on behalf of the town for the necessary paperwork, with no response from the tribe.

“We expect to receive complete and original applications . . . for all three permits immediately, or [the town] will be forced to take legal action to insure compliance,” Mr. Weiner wrote. “Please contact me with the necessary documents without delay.”

This week Mr. Weiner said he sent the letter because too much time has gone by with no proper application from the tribe. “I’d waited long enough,” he said.

He said he had received one or two applications from the tribe sometime within

the past year, but the paperwork was illegible.

“I just want to do my job and act on legible, well-written applications,” he said.

“I don’t know why they’re not replying, they know it will be granted,” he added.

Coming in 1987, the Gay Head Wampanoags were the first Indian tribe in Massachusetts to receive federal recognition. The tribe is a sovereign nation with its own separate government, which includes a land use commission. Four years ago the state’s highest court ruled that the Wampanoags are bound to follow state and local zoning laws for land use projects because of a settlement agreement signed between the town and the tribe in 1986. The court case tested the agreement against the doctrine of sovereign immunity, and the supreme court ruled that the agreement trumped the tribe’s sovereign immunity, at least on the subject of land use. The tribe did not try to appeal the case to the United States Supreme Court, and the issue is now a matter of law.

Subsequently, in March of 2007, the town and the tribe signed a memorandum of understanding that was intended to respect the existence of two parallel governments in Aquinnah, which is one of the smallest towns in the commonwealth. The 13-page memorandum lays out a process for reviewing tribal land use projects, including resolving disputes. The stated purpose of the agreement is to coordinate land use issues and establish better communication and relations between the town and the tribe.

Under the memorandum, tribal land use projects are still subject to state and local rules, including review by the Martha’s Vineyard Commission where appropriate, and the requirement to obtain town building permits.

Built in 2004, the community center is intended for multi-purpose use including sports and recreation, social functions and a day-care center.

The meteorological tower is gathering data for a wind turbine feasibility study and requires a temporary building permit.

Ms. Andrew-Maltais did not return telephone calls from the Gazette this week. Tribal administrator Tobias Vanderhoop and tribal planner Durwood (Woody) Vanderhoop are both away. Associate planner and tribal vice-chairman Richard Randolph declined to comment.

Aquinnah selectman Spencer Booker, who is also a member of the tribe and is chairman of tribal shellfish hatchery board, had no comment on the significance, if any, of the delay. But speaking as a selectman, he said he trusts the building inspector to resolve the permit matter.

“We have nothing on file currently for any of the three building permits,” he said.

“We’re waiting for a response.”

© 2008 Vineyard Gazette