

EXHIBIT F

**Response of Tribe to July 6, 2015 Cease and
Desist Order**

CROWELL LAW OFFICES
Tribal Advocacy Group



July 10, 2015

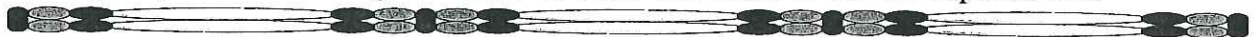
By email: rrappaport@rrklaw.net
Town of Aquinnah
c/o Ronald H. Rappaport, Esquire
REYNOLDS RAPPAPORT & KAPLAN LLP
106 Cooke Street
P.O. Box 2540
Edgartown, MA 02539

Re: Letter dated July 6, 2015 on Town of Aquinnah letterhead from Assistant
Building Inspector Leonard Jason Jr.

Mr. Rappaport,

On behalf of the Wampanoag Tribe of Gay Head (Aquinnah), I am writing in response to the July 6, 2015 correspondence (copy attached), signed by Leonard Jason Jr., instructing the Tribe to cease and desist from construction activities on the Tribe's gaming facility. Although the July 6, 2015 letter is from the Town's Assistant Building Inspector and addressed to the Tribe, this matter clearly involves the pending federal court litigation, *Commonwealth of Massachusetts et. al. vs. Wampanoag Tribe of Gay Head (Aquinnah) et al.* Dk # 13-13286 FDS (D. Mass.), therefore, communications are more appropriately conveyed between respective legal counsel. I look to you to forward this response to the Board of Selectmen and Assistant Building Inspector Leonard Jason, Jr. I have copied the letter to other counsel for the other parties in the pending litigation.

The Office of the Solicitor of the United States Department of the Interior issued an opinion on August 23, 2013 that the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq. ("IGRA"), and not the Massachusetts Indian Land Claims Settlement Act, 25 USC §§ 1771(a) et seq. ("Settlement Act"), governs the Tribe's gaming activities. The Office of General Counsel for the National Indian Gaming Commission issued an opinion on October 25, 2013 that the Tribe's trust lands on Martha's Vineyard are eligible for gaming under IGRA. The Tribe publicly announced in October of 2013 that it secured the federal approvals required to proceed with a gaming facility on its trust lands and that it intends to proceed with the development of a gaming facility. The Town intervened in pending federal court litigation in July of 2014, submitting a Complaint specifically alleging that the Tribe is proceeding with the development of a gaming facility. Now in July of 2015, a mere month before the scheduled hearing on pending cross-motions for summary judgment in the pending litigation, the Tribe receives a letter from an Assistant Building Inspector "instructing" the Tribe to cease and desist in the development of a



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gaming facility. The July 6, 2015 letter makes reference to Chairman Vanderhoop's July 1, 2015 deposition testimony confirming the Tribe's actions as if it is news, despite the Town's lawsuit against the Tribe and otherwise makes no reference to the pending litigation. It is in this context that the Tribe responds to the July 6, 2015 letter.

First, I repeat the message that the Tribe conveyed to you last Wednesday, July 1, 2015, when Chairman Vanderhoop, my co-counsel Lael Echo-Hawk and I met with you during a break of the deposition noticed by co-plaintiff/intervenor AGCHA. The Tribe stands willing and able to meet with Town officials in the immediate future and discuss on a government-to-government basis (with legal counsel for both governments present) specifics regarding those steps the Tribe is taking to ensure that the building improvements are in compliance with appropriate building codes and that the improvements are being properly inspected for such compliance. Although the Tribe is unwilling to divest its jurisdiction over matters integral to the operation of the gaming facility, including jurisdiction over the improvements to the gaming facility, the Tribe is willing to meet to allay concerns the Town may have. When we met last Wednesday, you indicated that you would pass this message on to the Board of Selectmen. Nothing in the July 6, 2015 letter acknowledges our message and willingness to meet, so we repeat the message here.

Second, the Town has already filed an action in federal court against the Tribe alleging the Tribe's expressed intention to conduct gaming on its trust lands "as soon as possible." The Town's Complaint also incorporates the allegations set forth in the Commonwealth's Complaint, which also alleges that the Tribe intends to proceed to offering gaming activities on its trust lands. By filing that action, the Town has affirmatively chosen a forum to resolve the dispute.

Third, although the Town intervened a full year ago in July of 2014, and has been on notice of the Tribe's actions since at least October of 2013, it has not sought preliminary injunctive relief under the Federal Rules of Civil Procedure. That would be the proper manner in which to attempt to cause the Tribe to cease and desist activities related to the gaming facility. We ask that the Town clarify the context of the July 6, 2015 letter as it appears to be an attempt to engage in a dispute resolution process separate and apart from the federal litigation, and/or an attempt to bypass the standards for securing preliminary injunctive relief pursuant to the Federal Rules of Civil Procedure and applicable case law. If the Town intends to seek a TRO or preliminary injunctive relief at this juncture, we respectfully request as much advance notice as possible. As you know, I live in Sedona, Arizona and Lael Echo-Hawk lives in Seattle, Washington, but we are prepared to appear in Judge Saylor's Court with 48 hours notice. I have copied legal counsel for the Commonwealth and AGCHA on this letter and make the same request to them for reasonable notice of seeking a TRO and/or preliminary injunctive relief.

Fourth, as you are well aware, the Tribe has all the approvals required by federal law to proceed. The United States has expressly endorsed the position maintained by the Tribe that any jurisdiction regarding gaming the Commonwealth or the Town may have possessed prior to the passage of IGRA was superseded by IGRA and expressly rejected the position maintained by the Commonwealth and the Town that the Settlement Act,

rather than IGRA, governs gaming on the Tribe's trust lands. This is likely another reason the Town intervened in the federal litigation more than a year ago. Accordingly, well before now, the Town has been aware that the Tribe does not recognize or acknowledge any jurisdiction of the Town to "instruct" the Tribe to cease and desist any gaming-related activities. The July 6, 2015 letter does not in any way change the Tribe's position.

Fifth, the July 6, 2015 letter makes clear that the Town's motivation for issuing the letter is its intent to stop the Tribe from conducting gaming activities in the gaming facility. The letter alleges that "commercial gaming is not a permitted use under the Zoning By-laws of the Town of Aquinnah as were in effect in 1983 (and which are in effect today)." (emphasis and parenthetical in original). Although the Tribe disputes the characterization of the Zoning By-laws, it is clear from the statement made in the July 6, 2015 letter that the Tribe's pursuit of a Town-issued permit would be futile. The July 6, 2015 letter also makes clear that the Tribe's jurisdiction over permitting and building code compliance of the gaming facility is integral to gaming conducted by the Tribe.

Please do not hesitate to contact me with questions, concerns or comments.

Respectfully,

/s/

Scott Crowell,

On behalf of the Wampanoag Tribe of Gay Head (Aquinnah)

cc: legal counsel appearing in *Commonwealth of Massachusetts et. al. vs. Wampanoag Tribe of Gay Head (Aquinnah) et al.* Dk # 13-13286 FDS (D. Mass.).

Attachment, as stated.



TOWN OF AQUINNAH
65 STATE RD.
AQUINNAH, MASSACHUSETTS 02535

TEL. 508 645-2300
FAX 508 645-2310

July 6, 2015

Wampanoag Tribe of Gay Head, Aquinnah
The Aquinnah Wampanoag Gaming Corporation
20 Black Rock Road
Aquinnah, MA 02535

RE: Community Center Building

To Whom It May Concern:

Please be advised that I am the Assistant Building Inspector for the Town of Aquinnah. On or about April 27, 2007, the Wampanoag Tribe of Gay Head, Aquinnah (the "Tribe") submitted a permit application to the Town to build an approximately 6,500-square-foot community center, which has been commonly referred to as the Wampanoag Community Center ("WCC"). The Tribe's plan for the WCC was a building for community use, with a gymnasium, stage, locker rooms, and a kitchen.

The Building Inspector, Jerry Weiner, referred the matter to the Martha's Vineyard Commission ("MVC") as a development of regional impact ("DRI") on or about June 12, 2007. The MVC conducted a series of public hearings and, on December 13, 2007, issued a decision approving the WCC as a DRI, with conditions. Among the conditions, the MVC required that the Tribe, "consistent with the decision, apply to the appropriate Aquinnah Officers and Boards, for any local development permits which may be required by law." The MVC also conditioned the project as follows:

"Should the [Tribe] substantially alter the use of the premises from the proposed uses, it shall return to the Martha's Vineyard Commission to request approval of said alterations."

**TOWN CLERK
and
ASSESSORS
645-2306**

**ACCOUNTANT
645-2305
BUILDING INSPECTOR
645-2307**

**TAX COLLECTOR
and
TREASURER
645-2303**

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The Aquinnah Wompanoag Gaming Corporation
July 6, 2015
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Thereafter, in 2011 and 2012, I issued a building permit and an amended building permit for the repair, alteration, and building of the WCC. The purpose of the WCC building, as stated on the application and on the building permits, was for a community center. Both the Town permits and the MVC limited the use of the building to a "community center."

On July 1, 2015, Tobias Vanderhoop, the Tribe's Chairman, stated, under oath, that the prior building permits issued by the Town are no longer valid because the Tribe has transferred control of the WCC building to the Tribal Gaming Corporation for use as a casino, and has the authority to proceed under the Indian Gaming Regulatory Act (IGRA). Mr. Vanderhoop acknowledged that the Tribe did not notify the Town about this change of use, nor did the Tribe seek new or amended permits to reflect its proposed change of use. He further stated that the Tribe would not permit Town inspections, and that the type of commercial gaming which would be conducted on the premises was "electronic bingo, or, as it's referred to, Class 2 gaming activities" Mr. Vanderhoop stated that the Tribe has retained a contractor and an architect, although architectural plans have not been made available to the Town. He also acknowledged that, at this point, the Tribe does not have its own building inspector.

Please be advised that the Tribe cannot proceed with its renovation plans for a casino in the absence of a revised building permit. Further, commercial gaming is not a permitted use under the Zoning By-laws of the Town of Aquinnah as were in effect in 1983 (and which are in effect today). Also, I do not have in my possession any information about the licensing status of any builders, general contractors, or electricians who may undertake work at the "casino."

Mr. Vanderhoop testified that work was to commence beginning today. Please be advised that no work can be undertaken in the absence of a building permit issued by the

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The Aquinnah Wompanoag Gaming Corporation
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Town. Accordingly, I must instruct you to cease and desist from all construction activities at this time.

Very truly yours,


Leonard Jason, Jr.

Cc: Board of Selectmen
Jerry Weiner
Town Counsel

4607-009\Revised Wampanoag Tribe ltr.doc