

Summary of Public Document Requests (4/4/10)

Re: Camp Hi-Rock/Town of Mt. Washington Mediation Agreement

DATE: April 4, 2010

TO: Town of Mt. Washington Selectboard, Building Inspector, Board of Health, Zoning Board of Appeals, Planning Board, Conservation Commission and interested citizens and taxpayers.

FROM: Mackenzie Waggaman

RE: Summary of information obtained under Massachusetts Public Records Law pertaining to the YMCA Camp Hi Rock/Town of Mt. Washington Final Mediation Agreement.

ATTACHMENTS:

1. Citizen comments submitted to Selectboard regarding Final Mediation Agreement, January and February 2010.
2. Citizen comments recorded in February 8, 2010 Selectboard minutes.

EXECUTIVE SUMMARY

Purpose: This memorandum summarizes the information obtained from ten (10) Public Record Requests by Mackenzie Waggaman to the Town of Mt. Washington regarding the Camp Hi-Rock/Town of Mt. Washington Mediation Agreement under the provisions of the Massachusetts Public Records Law (M.G.L. Chapter 66, Section 10).

The purpose of the Public Records Requests, and subsequent examination of the available documents, was to understand the role and decision-making process of the Town's elected and appointed officials and the Town's employee(s) in the negotiation of the Final Mediation Agreement.

Background: Currently, the citizen's and taxpayers of the Town of Mt. Washington, through their Selectboard, Building Inspector, Board of Health, Zoning Board of Appeals, Planning Board, and Conservation Commission, are being pressured by the Town legal council to agree to the terms and conditions of the Final Mediation Agreement with Camp Hi-Rock. This document was received by the Selectboard from the Town's legal council in late December 2009 after a four-year negotiation with YMCA Camp Hi-Rock. It is implied that the Town will now take sole responsibility for delaying the completion of the settlement with the Camp if it does not agree, immediately, to the terms of the Agreement; and that any delay will somehow prejudice the Land Court against the Town.

A side-by-side comparison of the Final Mediation Agreement with the initial Preliminary Mediation Agreement, dated December 13, 2005, reveals that there has been little or no progress made in four years of negotiations to protect the Town's interests. The Final

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Agreement does not reflect the recommendations of the citizen's Ad Hoc Committee¹ and the subsequent judgments of numerous informed Town citizens who have provided comments to the Selectboard. Surprisingly, the Final Mediation Agreement does not even reflect many of the agreements, suggestions and requirements of the Selectboard itself, which are recorded in their own Executive Session minutes. It is notable that the Selectboard disagreed with the Ad Hoc Committee's opinion that the Camp's \$5,000 PILOT contribution was inadequate.²

Summary of Public Record Requests: There were ten (10) Public Record Requests. Seven (7) of these requests were denied by the Town of Mt. Washington on the grounds that the documents were exempt from Public Records Laws or could not be provided because the documents were (1) not in the Town's custody, (2) subject to pending litigation, (3) unavailable, or (4) no explanation given.³ Three Public Record Requests provided the following documents: (1) Selectboard meeting minutes for the years 2005-2010 to date, (2) three Selectboard Executive Session minutes,⁴ (3) Ad Hoc Committee reports to the Selectboard, and (4) incomplete Ad Hoc Committee minutes, notes and agendas.

Highlights: An examination of the available documents reveals the following:

Selectboard Minutes:

- Initially The Nature Conservancy (TNC) offered to help resolve the conflict between the camp and the town if the Town would provide a formal complaint. There is no documented follow-up of the Town following through with TNC's offer to help.
- The relationship between the Selectboard and the Town's legal council, Kopelman & Paige (K&P) appears to be dysfunctional. The Selectboard considers K&P's "poor timeliness and inadequate attention" so serious that they are considering terminating the relationship.⁵
- K&P has been responsible for lengthy delays in completing the Final Mediation Agreement. During one period of time K&P appears to have

¹ A citizen's Ad Hoc Committee was assigned by the Selectboard to "assist the Board and other town boards in evaluating the role and activities of the YMCA Camp Hi Rock insofar as those related to federal, state, and town bylaws, and regulations." *Selectboard Minutes*, 3/13/2006.

² *Selectboard Executive Session Minutes*, 7/17/2006

³ On March 12, 2010 a complaint against the Town of Mt. Washington was filed with the State Division of Public Records asking for a determination of the Town's compliance with Public Record Laws. It is notable that the complaint involved missing Selectboard minutes which were subsequently found. However, Ad Hoc Committee minutes remain missing. The retention and accessibility of public meeting minutes is enforced by the District Attorney under the provisions of the Massachusetts Open Meeting Law. Violation of this law is considered a serious breach of Public Trust with penalties that include stiff fines and prison time.

⁴ The Public Records Request for Selectboard Executive Session minutes was denied without explanation. However, these three minutes were found on the Town's Website.

⁵ *Selectboard minutes*, 7/13/2009.

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not responded to Selectboard inquires for nearly six (6) consecutive months.⁶

- YMCA Camp Hi Rock has been responsible for numerous delays through their posturing and efforts to seek every advantage during the mediation process. The Camp's lack of good faith has continually caught the Selectboard "off-guard". The most recent example is a 13th hour "amendment" submitted by the Camp to the Selectboard in January 2010, after the Selectboard was led to believe that YMCA Camp Hi Rock had approved the Final Mediation Agreement in its entirety.
- Meetings between the Selectboard and Town Officials and Boards, responsible for enforcing the terms and conditions of the Final Mediation Agreement are cited twice during the entire negotiation period.⁷ It appears that there was a lack of communication between the Selectboard and Town Officials and Boards. For example, Ben Granskog (Town Building Inspector) recently surprised the Selectboard when he informed them that the Final Mediation Agreement requires certification of all existing Camp structures under 780 CMR 106, which is the State building code for motel inspections. Town approval under this statute would effectively be a "change of use" that is outside of the terms and conditions of the Final Mediation Agreement.⁸
- The Selectboard minutes reveal two instances of potential conflicts of interest involving Town officials and employees. The first instance involved the circumstances of the Town's "expedited" approval of the permits necessary for the Camp to proceed with the purchase of Garrett property for the Camp's driveway cut.⁹ The second instance has occurred recently with Lesliann Furcht's acceptance of a job working for YMCA Camp Hi Rock.¹⁰ In both instances, there is no documentation of any attempt by the Selectboard to investigate the details of these situations or to make a determination about whether or not Ethics Laws were, or have been, violated.

Selectboard Executive Session Minutes (incomplete):

- The Selectboard encouraged the Ad Hoc Committee work with the intention of seriously considering the Committee's recommendations.
- The Selectboard decided to ignore the Ad Hoc Committee's strong objection to the Camp's offer of a \$5,000 PILOT contribution. There is no documentation that provides any reason for the Selectboard's decision.
- The Selectboard concerned itself with restricting and defining the Camp's population density, the interpretation of Building and Board of Health Codes and the development of a traffic mitigation plan. These goals

⁶ Between 12/29/2008 and 6/15/2009 the Selectboard minutes reveal that K&P had not responded to inquires regarding the status of the Final Mediation Agreement; see summaries of *Selectboard minutes*.

⁷ *Selectboard minutes*, Sept. 10 & 24, 2007.

⁸ *Selectboard minutes*, 1/25/2010

⁹ *Selectboard minutes*, 11/6/2006

¹⁰ *Selectboard minutes*, 3/8/2010

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appear to have been at least partially addressed in the Final Mediation Agreement though it is clear, from a reading of the Final Agreement, that YMCA Camp Hi Rock has plans for an extensive reconstruction project. The Final Agreement gives the Camp considerable leeway to expand the scope of their operations and ensures that continued conflicts with the Town will be inevitable.

Ad Hoc Committee Reports (possibly incomplete):

- Members of the Ad Hoc Committee were asked to submit separate reports to the Selectboard. Of the six members, only three reports are currently available.
- The compiled reports provide thirteen (13) recommendations and three (3) “cautionary concerns”.¹¹
- Only three of the recommendations are included in the Final Mediation Agreement: (1) the Camp must operate lawfully, (2) the Camp needs to indemnify the Town from all liability, and (3) Camp vendors must obtain Town licenses.
- None of the cautionary concerns have been addressed in the Final Agreement.

Ad Hoc Committee minutes, notes and agendas (incomplete):

- The Committee immediately attempted to bolster the Town’s relationship with TNC.
- The Committee concluded that YMCA Camp Hi Rock’s numerous lawsuits against the Town probably had little or no merit.
- The Committee approved a list of thirteen (13) questions to be sent to K&P pertaining to the specific details of the Mediation Agreement and the Town’s legal standing. There is no documentation recording K&P’s response.
- The Committee approved a list of eleven (11) talking points that they intended to explore and the Committee made three (3) “strategic recommendations” to the Selectboard regarding the enforcement of the Mediation Agreement.¹²

Conclusion: A side-by-side comparison of the Final Mediation Agreement with the initial Preliminary Mediation Agreement, dated December 13, 2005, reveals that there has been little or no progress made in four years of negotiations to protect the Town’s interests. The Public Document Requests and subsequent examination of available documents reveals a pervasive lack of transparency about the roles of various Town officials and employee(s), and their decision-making process, during the negotiation of the Final Mediation Agreement. There is currently no way to know if, or to what extent, the Town’s negotiating position may have been compromised because of the actions or

¹¹ See memo item #3 for the both lists.

¹² See memo item #4 for list of “strategic recommendations”.

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inactions of Town officials and employees. The Selectboard minutes reveal a lack of attention from the Town's legal council that may have also compromised the Town's negotiation position with the Camp. Additionally, there is reason to be concerned that State Public Record Laws, Open Meeting Laws and Ethics Laws may have been violated throughout the negotiation process. The very fact that these questions exist undermines the legitimacy of the Town's agreement to any settlement with the Camp, and is a persuasive argument for the Town of Mt. Washington to delay agreeing to the Final Mediation Agreement. Until these questions are properly investigated and, if required, corrective measures implemented, no further actions should be taken regarding the YMCA Camp Hi Rock Settlement.

DOCUMENT SUMMARY:

The summary of documents is organized as follows:

1. Document requests are numbered and labeled in bold as “**REQUEST:**” followed by a description of the document(s).
2. The Town's response is labeled in italics as “*RESPONSE*”. By law the Town's response must be provided within 10 days of the request. The Town is obligated to provide the requested documents, provide a cost for providing the documents, or provide a reason for why the documents cannot be provided.
3. For those documents that I have obtained, I provide summary details that pertain to the Camp Hi Rock/Town Mediation Agreement. My summaries are strictly factual; based on quotes from minutes or other documents, or on actual language in the documents.

1. REQUEST: Selectboard meeting minutes 2005 – 2010 (to date):

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RESPONSE: I was directed by the town office to the Town web site to obtain Selectboard minutes.

April 11, 2005 – Tim Abbott, former TNC representative, explains that Camp Hi-Rock's lease with TNC specifies maximum population: 700 persons at any time during summer months; 500 persons during fall and spring; 250 during winter. Maximum number of full-time residents cannot exceed 30 persons and must be employees of the Camp or their family members. Furthermore, Tim Abbott explains that TNC's intention is to ensure that Camp Hi-Rock operate within their lease restrictions and within town by-laws. He states that under the terms of the lease the Camp has one year from notification to rectify infractions and offered to allow any citizen the opportunity to review the lease agreement.

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June 20, 2005 - Frank Lowenstein, former director of TNC's local operations, explains that TNC is available to meet with town officials to discuss the Camp Hi Rock affair. He states that the Land Court mandated that Camp Hi Rock operate "status quo" and the Camp must comply with town by-laws and regulations, as is stated in the lease between TNC and Camp Hi Rock. Frank emphasized that TNC must rely on the Town to inform TNC of Camp infractions before it can act and asked that the town counsel provide TNC with a "pleading list" and a formal letter regarding regulatory action.

November 7, 2005 - In preparation for a "screening" meeting with Camp Hi Rock Tom Furcht states that "the opinions of the Town should be stated at SB before entering screening. This gives residents opportunity to agree/disagree with the position that the Town takes at the screening. Jim Lovejoy supported this and will discuss it at the next SB meeting."

November 21, 2005 - "Y Camp Screening: Discussed points of interest for screening."

March 13, 2006 - "Jim Lovejoy moved to approve a new ad hoc committee (see description below), Barnett Goldstein seconded. Motion passed. Barnett Goldstein moved to appoint the following people to the ad hoc committee: Bob Bott, Eleanor Tillinghast, Mackenzie Waggaman, Ellie Lovejoy, Gerry Allen, John Verones; alternate: Elizabeth Kasevich. Jack Koczera seconded. Motion passed."

The Assignment of Responsibilities to the Ad Hoc Committee:

"The Mount Washington Select Board ("Board") hereby appoints an ad-hoc committee ("committee") of town residents to assist the Board and other town boards in evaluating the role and activities of the YMCA Camp Hi Rock ("Camp"), insofar as those relate to federal, state, and town bylaws, laws, and regulations.

The Committee shall not sign agreements or vote on any matter on behalf of the Board or any other town board. It shall serve in an advisory capacity only.

The Committee's responsibility shall include such tasks as gathering information; reviewing documents and draft agreements; attending meetings on behalf of the Board; reporting regularly to the Board on its activities; making recommendations to town boards; assisting with bylaw revisions and any other activities approved by the Board.

The Committee's members shall be appointed by the Board, and shall serve at the pleasure of the Board. The Committee's meeting shall be held

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in accordance with the state's Open Meeting Law, and its materials shall be subject to the state's Public Records Law.

The Board may dissolve the Committee at any time.”

May 22, 2006 – “Project Status Report – SB wants to write to K&P re: need more timely follow-up on outstanding issues and questions.”

June 19, 2006 – Status of Camp Hi Rick mediation: Ellie Lovejoy and Lesliann Furcht have contacted K&P to determine status. We have not heard from our lawyers. Jim Lovejoy will contact Lenny Kopelman on Monday, June 26th.”

July 3, 2006 – “Mediation with Camp Hi Rock: Selectboard would like the Ad Hoc Committee's recommendations regarding mediation no later than Monday, July 17th. Selectboard will review the Ad Hoc Committee's recommendations and then contact Town Counsel.”

July 17, 2006 – Under Old Buisness: Garret Property sale to Camp Hi Rock to facilitate the construction of a new road to the Camp's facilitites.

August 14, 2006 – “Y Camp Mediation: Bob Bott letter: posted at Town Hall; Confirmation of response to Gavin Cockfield by Jonathan Silverstein. Town has responded and set forth conditions for mediation.”

August 28, 2006 – “Y Camp Mediation: Ellie will call Jonathan Silverstein to clarify Town's position on use.”

September 11, 2006 – “Y Camp Mediation Status report: Ellie hasn't heard from K&P. She will call again.”

November 6, 2006 – “Garrett Property sale to Camp Hi Rock: (1) Garrett's have a deadline of December 31st for the property to be sold to Camp Hi Rock to construct a new driveway, (2) Camp is working on a plan to present to Town Boards, once the driveway application is made, Selectboard will do everything in their power to encourage PB and Con Comm to expedite the process without circumventing bylaws, regulations, etc.

December 18, 2006 – “Camp Hi Rock Driveway Cut Permit Application: The Selectboard sent Kopelman & Paige the draft driveway regulation over 10 months ago and will not adopt the regulation until K&P provides counsel on the wording of the regulation.” Driveway cut approved even though there were many objections to the scope of the project and its impact on the environment. Approval based on an interpretation of current driveway by-laws that mandate that the Selectboard take into consideration only sight lines and drainage, and no other parameters such as: width, length, clearing of trees (other than shade trees).

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January 3, 2007 – “Camp Hi Rock: response from Gavin Cockfield.”

January 17, 2007 – “Next Steps for Camp Hi rock mediation. Set up meeting with Joel Bard and Jonathan Silverstein.”

February 12, 2007 – “Meeting with K&P on Thursday, February 15 at 11:30 a.m.”

February 26, 2007 – “Mediation with Camp Hi Rock – waiting to hear from K&P summary of Boston meeting.”

March 12, 2007 – “Mediation with Camp Hi Rock (executive session – separate minutes).”

March 26, 2007 – “Camp Hi Rock mediation: Jim Lovejoy made a motion to send final edited version of mediation agreement to Camp Hi Rock. Barnett Goldstein seconded. Motion passed.”

April 9, 2007 – “Camp Hi Rock mediation agreement faxed to G. Cockfield on Wednesday, March 28, 2007.”

May 21, 2007 – “FYI: status of Planning Board meeting with Camp Hi Rock.”

June 18, 2007 – “Mediation: follow up with K&P to determine status.”

July 3, 2007 – “Mediation: Jonathan stated that Gavin Cockfield is waiting to hear from his client regarding licensing timing and requirements agreed upon with the Town.”

July 16, 2007 – “Camp Hi Rock Mediation: Lesliann will contact Jonathan Silverstein to express SB’s concern over Camp Hi Rock’s upper level involvement with licensing and population density issues.”

July 30, 2007 – “Driveway Regulation update: Town Counsel is not returning phone calls and/or emails, Jim Lovejoy will call Town Counsel to state that SB is unhappy with lack of response from Town Counsel regarding bonding language, driveway regulation and mediation issues with Camp Hi Rock.”

August 27, 2007 – “Camp Hi Rock mediation: draft settlement doc: SB will review and go over with Town Counsel.”

September 10, 2007 – “Camp Hi Rock mediation: draft settlement doc: SB would like to meet with Planning Board and Zoning Board chair; Building Inspector and Health Agent to go over the draft settlement.”

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September 24, 2007 – “Camp Hi Rock mediation: draft settlement doc: status of meetings and progress. SB would like to schedule another meeting next week with Planning chair, Zoning Enforcement Officer, Building Inspector, Health Agent and Zoning Board of Appeals member. LAF will schedule.”

October 10, 2007 – “Executive Session: purpose discuss Camp Hi Rock mediation.”

January 14, 2008 – The Camp driveway project was verified as compliant with all permits.

January 28, 2008 – Motion approved to allow the Camp to proceed with its driveway cut providing the camp defines the project as either a 400 ft. subdivision section or the complete driveway.

January 25, 2008 – Acted on complaint that Camp supply trucks have been using the Falls Road.

July 28, 2008 – “Still going over points with Camp Hi-Rock Executive Director, Jessica will get the addendums to town as soon as possible. Jim Lovejoy made a motion to allow Ellie Lovejoy to contact Town Counsel, Jack Koczera seconded. Motion passed.

September 22, 2008 – “Jim Lovejoy made a motion to send a letter re: Camp Hi Rock mediation to Town Counsel and Camp Hi Rock Counsel to move forward with the final draft of mediation”

October 20, 2008 – “Camp Hi Rock: final draft of mediation agreement (changes implemented) ready for SB to review. SB will review and contact Lesliann regarding any final edits.”

November 17, 2008 – “Camp Hi Rock mediation status – need to hear from attorneys about latest verbiage and ensure changes are correct.”

December 1, 2008 – “Camp Hi Rock mediation status – touch base with Ellie Lovejoy.”

December 15, 2008 – “Camp Hi Rock mediation status – Ellie emailed Jonathan the most updated changes and is waiting to hear back from Town Counsel.”

December 29, 2008 – “Camp Hi Rock mediation status – Ellie is waiting to hear from Jonathan Silverstein.”

January 12, 2009 – “Camp Hi Rock mediation status – waiting to hear from Jonathan Silverstein.”

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February 2, 2009 – “Camp Hi Rock mediation status – waiting to hear from K&P.”

February 9, 2009 – “Camp Hi Rock mediation status: still need to hear from Jonathan Silverstein.”

February 23, 2009 – “Camp Hi Rock mediation status: waiting to hear from Kopelman & Paige.”

March 9, 2009 – “Camp Hi Rock mediation status: Still waiting to hear from Town Counsel.”

March 23, 2009 – “Camp Hi Rock mediation status: no new progress.”

April 6, 2009 – “Camp Hi Rock mediation status: no new information.”

April 22, 2009 – “Camp Hi Rock mediation status – no updates.”

June 1, 2009 – “Camp Hi Rock mediation status: Jim Lovejoy will ask Ellie to have a status update by our next SB meeting.”

June 15, 2009 – “Camp Hi Rock mediation status – still waiting to hear from Jonathan Silverstein. Jim Lovejoy will continue to follow up with K&P until we hear an answer.”

July 13, 2009 – “Camp Hi Rock mediation status – Bob Bott shared an email he received from Jessica and from counsel with an attachment of the latest version of the mediation agreement. SB will discuss these emails and latest version of mediation agreement in executive session on Wednesday, July 15th....Bob Bott wants to visit the quality of service provided by Kopelman & Paige. Selectboard will communicate their dissatisfaction with the town counsel’s service (poor timeliness; inadequate attention) and evaluate the quality of service to determine whether K&P will be appointed as town’s legal counsel in FY11.”

July 27, 2009 – Camp Hi Rock mediation status – need to schedule an executive session with Jessica to go over documents and move forward.”

August 10, 2009 – “Mary-King Austin was asked to follow up with Ellie Lovejoy re: the status of the Hi-Rock Mediation Agreement.”

August 24, 2009 – “Camp Hi-Rock – The town is waiting for the camp to sign the mediation agreement.”

October 5, 2009 – “Camp Hi Rock Gravel Pit: The town needs access to the Camp Gravel pit. Tom Furcht and Jim Lovejoy will arrange to meet with Jason

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Minor or The Nature Conservancy, and with representatives of state and federal government to discuss.”

October 19, 2009 – “Tom Furcht – follow up re meeting with Jason Minor of Nature Conservancy re town’s access to camp gravel pit.”

November 16, 2009 – “Bob Bott stressed that the Planning Board needs to work on by-laws re: camps in the town. Bob Bott will shepard the writing of a petition for which 10 signatures are needed to get the process underway.”

November 30, 2009 – “Jim Lovejoy reported that Camp Hi-Rock has agreed to the language of the mediation settlement.”

December 14, 2009 – “Bob Bott brought the fact that the town has not yet received the mediation agreement from Camp Hi-Rock, to the attention of the other selectboard members. Discussion ensued.

December 28, 2009 – “Jim Lovejoy said that the Settlement Agreement from Camp Hi-rock has been received. MK Austin was asked to make four copies of the agreement and have it available at the Town Hall for interested residents to read. People who wish to make any comments may do so in writing. The written comments will be given to the members of the Selectboard for their consideration. Residents who wish to speak to a particular point may do so at the appropriate scheduled Selectboard Meeting. Three minute verbal comments will be heard at the meeting.”

January 11, 2010 – “Proposed Settlement Agreement between Town of Mt. Washington and Camp Hi-Rock: The proposed settlement agreement between the Town of Mt. Washington and Camp Hi-Rock has been copied and is now available at the Town Hall for townspeople to read if they wish. A notice to that effect will be posted at The Town Hall and The Transfer Station as well as being posted on the web site. The town boards (the Assessors, the Finance Committee, the Planning Board, the Zoning Board of Appeals and the Conservation Commission) will also be notified. Any comments should be written and brought to the Town Hall before the January 25th, 2010 Selectboard Meeting. There will be a meeting at which the document will be discussed. At that point anyone who wishes to comment verbally may do so. There will be a three minute limit on comments.”

January 25, 2009 - “Proposed Settlement Agreement between Town of Mt. Washington and Camp Hi-Rock: Jim Lovejoy informed the group that Camp Hi-Rock has submitted an amendment to the agreement that the town understood to be the final draft.

Orville Garrett’s written comments were read by the Select Board members. He is concerned about the traffic on East St. He asked, “What happened to the

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bussing of campers up the mountain from a meeting place at Catamount?” He thinks the attorney representing the Town has failed the town. He wished to go on record as saying he considers the proposed settlement agreement to be unacceptable.

Ben Granskog asked for clarification as to “106 inspections” and a “423 inspection”. 423 is a camp inspection. 106 is a motel inspection. If the camp were using the camp for purposes other than being a camp then the buildings would have to be brought up to the appropriate code and the correct inspection procedure followed. It is, he said, “an issue of change of use”. Both inspections are referred to in the proposed agreement and therein lies the confusion and the need for clarification.

Jim Lovejoy asked why this was coming to light at this point in the process. After some discussion, Jim Lovejoy said he and Ben Granskog would pursue the issue. In addition Jim Lovejoy and Ellie Lovejoy will speak with the attorney representing the town.”

February 8, 2010 – “Proposed Settlement Agreement between Town of Mt. Washington and Camp Hi-Rock: see attached pdf. for comments from meeting participants.

February 22, 2010 – “Progress on Mediation Agreement between Camp Hi-Rock and the Town of Mt. Washington: Jim Lovejoy reported that Town Counsel (Kopelman and Paige) suggested that an executive session with The Planning Board and The Select Board and the Town Counsel from Kopelman & Paige be held. Motion approved to schedule the meeting. MK Austin was asked to set up a meeting.

March 8, 2010 – “The amendment clarified that an executive session had been suggested by Town Counsel not by Jim Lovejoy who relayed the suggestion to the Select Board. The purpose of the Executive Session is to discuss the proposed mediation agreement between the Town and Camp Hi-Rock with the attorneys, the Select Board, the Planning Board and people who had written in comments about the proposed mediation agreement. There was discussion about who should be included in the meeting. MK Austin was asked to email town Counsel and ask for their opinion and why they held that opinion. It also was determined that Elizabeth Goodman, attorney, will not be involved in the meeting on April 6th as it would be a conflict of interest for her.

Lesliann Furcht, former Select Board Secretary, told the Select Board she had accepted a job working at Camp Hi-Rock. She wished to tell them herself and also to stress that anything she had heard in confidence at previous executive sessions or in conversation with town officials would stay in confidence.”

2. REQUEST: All minutes from Executive sessions convened to discuss the Camp Hi-Rock Mediation Agreement.

RESPONSE: Denied on the grounds that these documents are exempt from public record request laws. No further explanation was provided.

The Selectboard minutes document at least twelve (12) instances between February 21, 2006 and July 15, 2009 when the Selectboard voted to go into Executive Session to discuss the Camp Hi Rock Mediation Agreement. Despite the Town's denial to provide Executive Session minutes regarding the Camp Hi Rock Mediation Agreement, three (3) Executive Session minutes are available for public review on the Town website:

July 17, 2006 – The SB discussed the Ad Hoc Committee comments and asked for more feedback. The SB agreed with the Ad Hoc Committees's recommendation that more specific word definitions were needed in the Mediation Agreement; specifically defining types of groups that may attend the Camp, that these groups fit within 430 CMR regulations and other Board of Health State rules and Town By-Laws. A transportation plan was discussed and it was determined that the plan needed to be "solidified". The SB agreed that the \$5,000 PILOT was OK, but asked Lesliann to research PILOT contributions from non-profits in other towns. The SB agreed that the Camp population must match the current carrying capacity of the Camp and not exceed this capacity.

January 29, 2007 – The SB agreed to send a letter to Town Counsel regarding the SB's reponse to Gavin Cockfield's (Camp attorney) letter re: building use, code issues, etc: "(1) Point out that capacity of preliminary agreement meets current building capacity at Camp Hi Rock. Why the need for expansion when the limit is set? (2) "Tents and Camper": make sure it's clear that "campers" is "recreational vehicle" not people. (3) Payment in lieu of taxes changed to Annual Contribution. The annual contribution will be due on July 1 every year as agreed upon in the preliminary agreement."

March 12, 2007 – Purpose: Discuss Jonathan Silverstein's summary of point gone over at K&P on February 15th meeting with Jonathan, Joel Bard, Ellie Lovejoy, Jack Koczera and Lesliann Furcht.

Add to Programming: Camp Hi Rock must maintain the current children's recreation camp level during the children's recreational camp season. Children must comprise 80% of camp population during camp season. Family groups may comprise 20% of the resident camp capacity.

"SB wants to ensure that Camp Hi Rock does not significantly reduce their children's camp groups in order to book more non-children educational, religious and/or "other" groups during the traditional children's camp season."

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“The SB’s intent is to clearly define a children’s recreational camp and its season. Some of the Building Code laws and BOH regs are left up to interpretation, so SB wants to clearly define the above to remove any room for interpretation.”

“SB would like a mechanism included to revisit Traffic Mitigation Plan to ensure that it’s working and meeting both parties’ needs. (Large groups: define as 50 or more).”

3. REQUEST: Report submitted to the Selectboard by the Camp Hi-Rock/Town Mediation Agreement Ad Hoc Committee.

RESPONSE: My request was denied on the grounds that the Ad Hoc Committee was disbanded without providing a report. However, individual members of the committee were instructed to provide their personal comments. At the time of my request these documents were not in the custody of the Town office. Eventually I did received copies of comments submitted by three of the Ad Hoc committee members: Bob Bott, Ellie Lovejoy and Eleanor Tillinghast.

Ad Hoc Committee comments submitted to the Select Board:

Between November 17, 2005 and August 14, 2006 from Bob Bott, Ellie Lovejoy and Eleanor Tillinghast sent memos to the Select Board in which they stated their specific concerns regarding the viability of the proposed mediation agreement, dated December 13, 2005. Other members of the Ad Hoc Committee may also have sent comments but their statements are not available or lost. Everyone expressed similar concerns and questions:

Recommendations:

1. The Agreement must be legally binding, and adhere to all State laws and local bylaws.
2. The definitions of the words camp, family groups, commercial operation, etc. must be clearly understood by both parties.
3. The population of Camp Hi Rock should not exceed it current levels (300 persons total).
4. Camp Hi Rock should not be available for use by “outside” organizations. It cannot contract out its facilities to other organizations or individuals.
5. Camp Hi Rock needs to indemnify the Town from all liability pertaining to its own operations.
6. Town traffic regulations must be enforced. This includes limiting GVW to no more than 11,000 lbs and limiting the carrying capacity of vehicles to no more than 30 persons.
7. All building and health permits must be in place prior to allowing occupancy and must be renewed each year. Similarly, the Camp should be required to submit to the Planning Board each year an application for a special permit.

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8. The \$5,000 PILOT places the town at significant financial risk and is unacceptable.
9. An Ombudsman position needs to be appointed to act as a liaison between the Town and Camp Hi Rock and his/her salary paid by the Camp.
10. TNC needs to be involved as a party in any agreement between the Town and the Camp.
11. All Camp lawsuits against the Town must be dropped as a condition of any settlement.
12. The agreement must be enforceable through: (a) regular reporting of population, activity and event data to the town, (b) the Town having on-site access to verify compliance, and (3) severe financial penalties for non-compliance.
13. Camp vendors must be licensed by the town.

Cautionary Concerns:

1. The proposed (12/13/06) Agreement is unenforceable because the Town lacks the resources to monitor the Camp's activities and to enforce the provisions of the Agreement in the event of non-compliance.
2. The critical language is too vague to meaningfully protect the Town's interests.
3. The language will probably lead to more litigation because the Agreement gives the Camp the right to operate in non-conforming ways, and at the same time allows the Town to deny permit approvals for by-law violations.

4. REQUEST: All Camp Hi-Rock/Town Mediation Agreement Ad Hoc Committee minutes.

RESPONSE: I received copies of agendas, notes and minutes for five meetings. (3/19/06, 3/26/06, 4/2/06, 4/9/06 and 4/17/06). Additional information, referred to in the minutes, was not available. There appears to be missing minutes for meetings that took place after 4/17/06. Specifically there are no extant minutes for a meeting that was scheduled for 4/23/06.

Summary of 3/19/06 notes:

The committee wanted access to all extant documentation regarding the legal status of Camp Hi-Rock and the TNC relationship. It was aware that it was under pressure to respond to the proposed settlement agreement dated 12/13/05. It discussed the merits of the Camp's numerous lawsuits against the town and appears to have concluded that the lawsuits had little or no merit. Ellie Lovejoy apparently stressed that the mediation agreement was needed by mid-April (2006).

Summary of Public Document Requests (4/4/10)

Re: Camp Hi-Rock/Town of Mt. Washington Mediation Agreement

Summary of 3/26/06 minutes:

A list of fifteen (15) questions was presented for the Town attorney to respond to. A motion was approved to allow the Ad Hoc Committee to speak directly with the Town's attorney. A schedule was made for delivering questions to the attorney and for meeting with the attorney. Questions would be emailed to the attorney by April 3, answers would be discussed on April 9 and a meeting was scheduled with the attorney for the week of April 10-14. A motion was also passed to bolster Town/TNC relations.

Summary of 4/2/06 minutes:

Motions approved to compile email correspondence between Kopelman & Paige and various Town Boards and authorities for the review of the Committee. A list of thirteen (13) questions was approved to be sent to the Town attorney pertaining to the specific details of the Mediation Agreement and the Town's legal standing.

Summary of 4/9/06 minutes:

The minutes acknowledge that Kopelman & Paige were sent the Committee's questions and that the attorney responded that he would answer the questions "as soon as possible". Jim Lovejoy asked the Committee to compile another list of questions specifically related to the existing (12/13/05) proposed Mediation Agreement. The Committee did so.

Summary of 4/17/06 minutes:

There is no mention of the Ad Hoc Committee being unable to reach a consensus or of it being disbanded because of an inability to fulfill its purpose. The last extant minutes, for the 4/17/06 meeting, lists eleven (11) talking points to be covered that include the role of the committee, seeking common ground with the Camp, defining the meaning of the words "camp, family, commercial lodging, etc.", seeking a better understanding of the Camp Hi Rock finances, looking more carefully at the camp's methods of operation, and recommending a "term of review" for the Mediation Agreement. The Committee agreed to schedule its next meeting on 4/23/06.

The Committee made three (3) "strategic recommendations" :

1. "The Town needs to engage in better management of money. If we are going to adopt this mediation agreement either in whole or in part, we do so with the commitment to providing the resources to monitor and enforce the resulting agreement."
2. "Bylaws are "living documents" and need to be reviewed and/or reevaluated periodically. The town should make this a priority, beginning with the sections on camp (and special consideration to the definitions stated in the bylaws) with the aim of further enhancing and preserving the town's unique rural character. Traffic impacts need to be another priority."
3. "The town should encourage the camp to develop project goals that are mutually beneficial to the camp and the town".

- 5. REQUEST: All correspondence and minutes from meeting between the Select Board and the Planning Board regarding the Mediation Agreement.**

RESPONSE: Denied on the grounds that the Town needs to determine if these documents are available.

- 6. REQUEST: Camp Hi-Rock financials.**

RESPONSE: Denied on the grounds that these documents are exempt from public record law on the grounds that they are not in the custody of the town office.

- 7. REQUEST: All communication between the Town and Kopelman & Paige**

RESPONSE: Denied on the grounds that these documents are exempt from public record request laws on the grounds that they are subject to attorney/client privilege in pending litigation.

- 8. REQUEST: Kopelmen & Paige invoices to the Town.**

RESPONSE: The Town is willing to provide these documents but any reference to specific legal services will be redacted. This defeats the purpose of the request.

- 9. REQUEST: All correspondence and minutes of meetings between the Select Board and the town officials responsible for enforcing the State Laws and Town By-Laws at the Camp.**

RESPONSE: Denied on the grounds that the Town needs to determine if these documents are available.

- 10. REQUEST: All minutes of meeting of the Planning Board, Zoning Board of Appeals, Board of Health, Conservation Commission and any communication to or from the Building Inspector, regarding the terms and conditions of the Mediation Agreement.**

RESPONSE: Denied on the grounds that the Town needs to determine if these documents are available.