

Citizen Comments Regarding Final Camp Hi Rock Mediation Agreement

Mediation Agreement between Town of Mt. Washington and Camp-Hi Rock

Planning Board Meeting

January 28, 2010

1. Can the Camp be used for Retreats? Yes! (Page 2, Paragraph a.). Can the Camp be used for Conferences? No!)Page 5, paragraph j.). What's the difference between Retreats and Conferences?
2. The Agreement cannot be executed between the Town and the Camp before the Building Inspector has executed an inspection certificate for all Camp buildings. Have all buildings been inspected? Have all the certificates been prepared and are they ready to be issued? Are all Camp buildings covered under 780 CMR 106 of the State Building Code? What's the difference between 780 CMR 106 and 780CMR 423? (Page 5, State Building Code, paragraph a. and b.).
3. The Town's Board of Health will be responsible for regulating all Non-YMCA groups who will be using Camp facilities for their activities (Page 6 State Licenses for all Uses, paragraphs a. and b.). Who will provide these services? Will the Town have to be absorbed the costs? Could the Camp reimburse the Town for the cost of these services?
4. The Camp cannot operate any other activities during the 8 weeks the Camp operates as a traditional children's camp. Does the Camp plan on operating Bear Rock Lodge as a separate Camp? (Pages 7 and 8, including footnote 7. on page 7.). Would this require a host of other certificates (Building, Health, etc.) including a Special Permit (Planning Board)? Is Bear Rock Lodge protected as a non-conforming use under G.L. c. 40A?
5. Does the Town plan on creating a new By-Law which would allow it to charge fees for Licenses issued to vendors selling items on Camp property (Page 9, Miscellaneous Licenses, paragraph a.).
6. Will the Town's Building Inspector have to provide a certificate before any Tent is erected on Camp property? (Page 10, Tents and Campers). Would this be a new fee?
7. The Camp does not pay real estate taxes to the Town but the Camp has agreed to pay the sum of \$5,000.00 annually to the Town for administrative and infrastructure expenses (Page 11, Miscellaneous, paragraph b.). Should/can the Town be creating a new By-Law which would allow it to charge user fees for licenses, permits, inspections, regulations, etc.?
8. Who will be responsible from the Town to monitor compliance with the Mediation agreement? What will be the cost of doing so and will the Camp pay for this expense?
9. Have all the law suits against the Town by the Camp been dropped?

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Hello Mary King,

I also have some very strong concerns regarding some aspects of the mediation agreement, the Planning Board has not been able to meet to deliberate officially as a group on the agreement. Since the PB is required to sign off on the agreement I think it necessary and prudent for the Planning Board to deliberate officially on the agreement before signing off on it.

The Planning Board has not been given an opportunity to discuss the plan and parts of it that we are not in agreement with, with Town Counsel. Since the Planning Board's signature is required to execute this agreement, I respectfully request the signing of the agreement to be postponed until such time as the PB has deliberated.

respectfully submitted

Mary Cane

Comments Re: Camp Hi-Rock Mediation Agreement

February 2, 2010 from Bobbie Hallig

Perhaps we need a more concrete definition of what a "camp" is or can be on Mount Washington? Define differences between retreats and conferences and once established, don't permit grandfathering of this. No exceptions to the rule.

The donation of \$5,000 to the Town is totally inadequate considering all that is required of the township.

Yes, I believe we need to begin charging user fees for licenses, permits, etc., as Bob mentions in #7 of his comments. Therefore, let's establish a fee schedule. Do we need a by law to cover this?

Re: MacKenzie's excellent comments: I agree that the town is currently not up to the tasks of monitoring the Mediation Agreement with the Camp. Once we sign off on this as outlined we have eliminated recourse to challenge anything which comes up. The Camp will determine our future with them, not us. Being bought off for a measly \$5,000 is pathetic.

The sacred cow of Mount Washington has traditionally been our low tax rate. Communities far less wealthy than ours (ex: Adams with average house values of \$141,576 - 2008 value has a residential rate of \$15.36 whereas Mt. Washington's

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average house value is \$360,892 with a residential rate of \$5.72) and perhaps it is time to look at this and bring ourselves up to a more sustainable rate to finance the town.

Furthermore, I feel our volunteer leadership is being hamstrung by lack of funds to pursue effective protection of the town from ever increasing threats. Our shoestring budget is looking very frayed and vulnerable at this point.

I would endorse the annual review mentioned in MacKenzie's comments of the costs incurred on behalf of the Camp and we should be allowed to adjust the amounts to reflect reality if they exceed the \$5,000 donation. In other words, consider the town and its needs as the priority, not accommodating the Camp. This agreement is loaded on the Camp side .

TO: Mount Washington Select Board
FROM: Eleanor Tillinghast
DATE: February 8, 2010
RE: Final version of Settlement Agreement with Plantain Pond Y.M.C.A. Camp, Inc.

I have read the final version of the Settlement Agreement between the town and the YMCA camp, and would like to offer some comments and suggestions.

I.a.) The phrase "as well as other groups for the purpose of on-site camping and retreats regardless of age or make-up of the group" is too general and open-ended. This means that any type of group can use the camp.

I.c.) It's unclear whether this means 700 people at any one time during the 8-week children's camp session, or 700 total over that time period.

I.j.) This phrase seems like a semantic sleight of hand: "The Camp cannot be used or marketed for commercial lodging as a hotel, motel, dormitory or events/conference center." If a lawyers' group comes up during the off-season for a company retreat, is that a commercial purpose? What is non-commercial lodging?

I.j.) Does this mean that groups can use the Camp for overnight accommodations while visiting or making use of facilities located off of Camp property?

III.c.) When read in conjunction with I.c., I interpret this to mean that a maximum of 560 children and Camp adults are allowed (at any one time or throughout the summer; it's not clear) and 140 people in family groups. That is a lot of adults in proximity to children. What are the safeguards for the Camp children?

VI.b.) There are three problems with the \$5,000 annual contribution:

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- 1.) There is no evidence that it is based on the calculated impacts of annual Camp traffic on the roads or on public safety. If the allowable size is 700 people per day during the 8-week season (even with carpooling and busing) and 250 per day on the off-season, what will be the impacts on the condition of the roads? What about the truck traffic to service the Camp? Will the \$5,000 cover the cost of maintaining the roads under those use conditions?
- 2.) Depending on the rate of inflation, \$5,000 could represent a very small payment in 10 or 20 years; there should be an escalator clause tied to the consumer price index.
- 3.) The \$5,000 does not take into account the fiscal impact of education and transportation for children of Camp employees. If, as a hypothetical example, this year, the town taxpayers must pay \$10,000 plus transportation per child, and there are four children of Camp employees, the \$5,000 to be paid this year will represent less than 1/8 of the Camp's fiscal impact on the town. In 10 years, factoring in inflation, that ratio could be even worse.

I do not think a \$5,000 annual contribution represents a fair arrangement. The Camp, in my view, is running a commercial operation masquerading as a children's camp. The Camp built its driveway for its conference center possibilities; a million-dollar driveway for 8 weeks of a children's camp makes no sense. A conference center or a lodging center, regardless of nomenclature, is a commercial enterprise.

The Camp provides absolutely no benefit to the town. It uses the town roads, its trucks damage the town roads, its traffic negatively affects people living along and using East Street. It has all the earmarks of a commercial operation yet it is not paying any taxes. If there are four children of Camp employees in the school system, at, say, a \$40,000 cost to the town taxpayers, within five years, we will have spent more than what we would have spent to pursue our court case. In my opinion, we ought to be making the case to the judge about the true nature of this enterprise. We ought to return to court for a much more equitable agreement.

I recognize that a tremendous amount of effort has gone into this agreement, and there are many impressive elements of the agreement, but I do not believe the financial terms serve the interest of the town, and locking all the town boards into this agreement means that there will be no opportunity for the town to come back at a later date to challenge the agreement. As far as I can tell, this locks the town into an irrevocable agreement on very bad financial terms.

In closing, I would like to add that I don't see any enforcement clause to the agreement, nor are there any conditions for termination.

Thank you for considering my comments and suggestions.

Eleanor Tillinghast
72 East Street
Mount Washington, MA 01258

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From: Mackenzie Waggaman [mailto:MackW@americaninvestment.com]
Sent: Tuesday, January 26, 2010 12:15 PM
To: Town of Mount Washington Ma; BOB BOTT
Subject: Comments Re: Camp Hi-Rock Mediation Agreement
Importance: High

Dear Select Board:

I understand that the deadline for submitting comments was January 25 but, according to Bob Bott you may be willing to accept comments until the end of this week. I was not aware of the initial deadline (though I had inquired I got no response) and I hope that you will now accept my comments.

I respect and appreciate the hard work that has gone into crafting the current Mediation Agreement. I understand, and I am grateful, that the Select Board has significantly improved the terms of the Mediation Agreement over what the Camp initially proposed. My comments follow:

- The Agreement is probably unenforceable: The Agreement puts the responsibility for the enforcement of health, safety and zoning laws on the town, which has extremely limited resources. Given that the camp population is roughly 3X the population of the town's tax base, and that our town officials are all underpaid, part-time help, it is likely that the camp will not be properly monitored to comply with the terms of the Mediation Agreement. A lack of follow through exposes our Town to financial liability, regardless of the Camp's indemnification.
- The Agreement does not resolve the conflict: The Agreement only postpones the "day of reckoning" between the Town's civic interests and the Camp's corporate interests. The Camp is still able to sue the Town in an effort to override the Town's zoning ordinances or use its financial strength to win concessions on virtually anything it wants.
- The Agreement Codifies the Camp's right to be financially supported by the Town: The Agreement sets a precedence that will be difficult to change regarding the financial relationship between the Camp and the Town. Essentially, the Town will be obligated to provide road maintenance, school tuitions, governmental services and emergency medical and fire protection for a flat \$5,000 a year, never to be adjusted for inflation or any other factor that typically would be considered fair in the determining fees for service. This is an unprecedented arrangement in Berkshire County, where non-profits typically pay their fair share in-lieu of taxes. It is particularly galling when we know that the Central Connecticut Coast YMCA has a net worth of nearly \$17 million and revenues of over \$25 million (as reported on its Form 990 in 2008).

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The Town's hope to recoup its costs by making a separate deal with the Nature Conservancy to use the gravel pit is "fuzzy thinking". The Town would want to pursue a deal to use the gravel pit regardless of its relationship with the Camp. The gravel pit is a completely separate issue and certainly worth pursuing but should not be linked to the Camp relationship in any way. The Camp's financial arrangement with the Town must be a stand alone agreement and the Town has every right to insist that the Camp reimburse the Town fairly and that there be on-going inflation adjustments. There should also be an annual review of the costs that the Town incurs on-behalf of the Camp and if the costs exceed the agreed in-lieu of tax payments, adjustments should be made. Essentially, the Town should not be materially harmed by the Camp's activities. It is not the Town's responsibility to underwrite Phil Dwyer's business or contribute to his \$218,000 salary and benefit and his \$100,000 YMCA home loan (as report in 2008).

At the very least, the Town should be requiring that the Camp provide a \$1 million bond to cover the Town's costs in the event of any problems arising as a result of the Agreement.

- The Town lacks resources necessary to protect itself: The root of the Town's weak negotiatiing position with the Camp is the Town's inability to muster the resources necessary to protect itself. The Mediation Agreement is just the latest in a string of increasing ominous indicators that demonstrate that our Town government is ineffective at serving the ilong term interests of the majority of the citizen's of Mt. Washington. The root of our governmental ineffectiveness is that our tax base is too low to afford full-time town governance. A part-time, under-paid staff simply cannot do the people's business in today's complicated world. The Town of Mt. Washington is coming under increasing pressure from predatory businesses like the Camp, and other persons/entities who want to usurp Town resources for private profit. In 2008 the YMCA spent \$103,000 on legal fees (as of 2008). According to Town financial data, Mt. Washington had \$5,400 of income earmarked for legal defense in 2007-2008, and since 1998 - a period of 11 years - the town appears to have spent a total of \$45,476 on legal matters, including the Camp-Hi Rock litigation. There is no town in the Commonwealth, except apparently ours, that expects to do business without a robust legal defense fund.

The Mediation Agreement will make the Town of Mt. Washington a "pimple on the ass" of YMCA Camp Hi-Rock. While it may be impractical to reopen mediation negotiations, I would hope that the Select Board would take a long, hard look at the reality of our Town's situation and see the Camp affair as a watershed event that must lead to significant changes in the way that the Town conducts future business. In this spirit I support the following initiatives: (1) the approval of a Town Master Plan, (2) a tax rate hike that would allow for a full-time, professional town manager and the creation of a \$200K legal defense fund, (3) a mandatory annual financial audit, (4) a review of how the town manages the accuracy and archiving public documents and financial data; and how this information is made accessbile to the citizens and for policy-making, and (5) use of town email to post the times of all town meetings to the citizens.

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Respectfully,

Mackenzie Waggaman