



Town of Natick

Town Administrator's Office

TO: BOARD OF SELECTMEN

FROM: MARTHA WHITE, TOWN ADMINISTRATOR

SUBJECT: CAMP ARROWHEAD UPDATE

DATE: 9/13/2017

CC: DEPUTY T.A. FOR OPERATIONS PROCUREMENT OFFICER
COMMUNITY SERVICES DIRECTOR RECREATION DIRECTOR
TOWN COUNSEL VETERANS' SERVICES DIRECTOR
JOHN CICCARIELLO

As noted in a previous update, we received authorization from DCR to "re-build" the fire-damaged building (as opposed to demolish and completely reconstruct); DCR has also approved our Request for Qualifications (RFQ) document for solicitation of proposals for architectural design services. Note that such approvals by DCR are subject to the Town obtaining a Construction and Access Permit associated with the design contract, as well as DCR's review and approval of renovation plans, including exterior work such as the ADA accessible path to the rail trail.

Pursuant to DCR's authorization, the Town issued the RFQ for architectural design services and received only one response, that being from local architect Randy Johnson. The Deputy T.A. for Operations, Procurement Officer, Community Services Director and John Ciccariello interviewed Mr. Johnson and were impressed with his pragmatic approach to the project and his past experience dealing with the complexities associated with building projects involving state agencies.

BOS members will note that award of this contract is not included on your 9/18 agenda. Two factors contributed to this decision:

1. Given that Mr. Johnson is a member of the Affordable Housing Trust Fund Board (AHTF), pursuant to the State Conflict of Interest Law, and prior to awarding a contract to Mr. Johnson in which he has a financial interest, all members of the AHTC must be

designated as "Special Municipal Employees."* This request is included on your 9/18 agenda and your approval is requested.

2. We have not yet finalized a Memorandum of Agreement (MOA) with DCR regarding access to and use of the Camp Arrowhead property by the Town and the AmVets. While much of the design work does not require site access ("existing conditions" drawings have already been prepared), we would much prefer to have reached agreement with DCR before contracting for design services. However, conversely, we must proceed expeditiously if we have any hope of completing construction in time for next summer's Camp Arrowhead season. We hope to present a request for award of a contract for architectural design services at the Board's October 2nd meeting.

While we have made good (albeit slow) progress on the MOA, we are stuck on two key points:

1. DCR is accepting no liability except for claims that arise "solely from the willful or intentional misconduct of DCR, its employees or agents." This language would be problematic under any circumstances, but is especially troubling given the constraints that the MOA imposes on the Town with respect to maintenance of the site. For example, per the MOA, the Town "shall not cut, prune or otherwise remove trees ... without written pre-approval..." We specifically asked if we could remove a tree branch if we judged that it created a hazard and were told we could not do so without prior permission. We find these two provisions, when considered together, to be completely unacceptable.

2. The current MOA language provides that "DCR as represented by the Attorney General's office shall each have the right to review and approve how any Claims against the Co-Permittees and DCR in relation are defended, including any settlement thereof." This effectively means that DCR could dictate how the Town would defend itself against any claims in which DCR is a co-defendant. This is completely unacceptable, as we have a fiduciary responsibility to act in the Town's best interest, and such interests may be at cross purposes to DCR's.

Further, such provision is contrary to the Town Charter (Article 10, Section 3) which provides that "The Board of Selectmen shall have the authority to prosecute, defend and compromise ... all litigations to which the Town is a party."

In a September 13 email to Attorney Flynn, I identified what I considered to be legal counsel's most urgent priorities and, despite this issue's importance, it was third on the list. In that email, I noted that, regarding the MOA, our objective was to quickly resolve these remaining issues with DCR or, absent such resolution, that we request a face-to-face meeting with the Commissioner and DCR Counsel, and that we would seek to include the BOS Chairman and Representative Linsky in that meeting.

* With respect to the requirement that all members of the AHTC be designated as "Specials" - not just Mr. Johnson - see first highlighted paragraph of the attached State Ethics Commission summary regarding Special Municipal Employees. Further, per the second highlighted paragraph, Mr. Johnson must file a disclosure with the Town Clerk regarding his interest in the design contract.