



ALEXANDRA S. COTE
Direct Dial: 603.628.1255
Email: alexandra.cote@mcclane.com
Admitted in NH
11 South Main Street, Suite 500
Concord, NH 03301
T 603.226.0400
F 603.230.4448

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VIA FIRST CLASS AND ELECTRONIC MAIL

Mary Ann Dempsey, Director Charitable Trusts
NH Department of Justice
1 Granite Place South
Concord, NH 03301
maryann.dempsey@doj.nh.gov

**Re: "Camp Menotomy Trust," Book 420/Page 531 Belknap County Registry of Deeds;
386 Meredith Neck Road, Meredith, Belknap County, Blk S07, Lot 1, 95.38 acres**

Dear Director Dempsey:

I submit this letter on behalf of the Meredith Neck and Islands Alliance ("MerNIA") in support of the continued use of the property located at 386 Meredith Neck Road, Meredith, New Hampshire ("Camp Menotomy Property") as a summer camp. MerNIA is an organization of concerned residents and visitors to the Meredith Neck neighborhood. It has been in contact with a potential purchaser/lessor of the Camp Menotomy Property, Eric Carlson, who seeks to operate a children's camp on the Camp Menotomy Property consistent with the plain and unambiguous terms of the Camp Menotomy Trust (the "Trust"). If, as reported in the Laconia Daily Sun, the trustees of the Trust seek to apply the cy pres doctrine to defeat the purpose of the Trust, MerNIA hopes that the State of New Hampshire and the Commonwealth of Massachusetts will reject that effort. Mr. Carlson's interest in the Camp Menotomy Property demonstrates that the express charitable purpose of the Trust is neither impossible, nor impracticable, and in any event, the cy pres doctrine should not be applied merely to maximize potential profits when the express terms of the Trust can, and should be, fulfilled.

MerNIA is a domestic nonprofit corporation and is a registered charity with the Charitable Trust Unit of the Attorney General's Office of the State of New Hampshire. It has a business address of PO Box 462, Meredith, NH 03253, and it is organized for the purpose of protecting "the rural and residential character of the Meredith Neck and Islands neighborhood and [to] safeguard its environment." MerNIA is recognized by the Internal Revenue Service as a 501(c)(3) entity, and it has over 200 supporters. MerNIA's supporters include owners of properties abutting the Camp Menotomy Property and neighbors who live and/or own property adjacent to, across from, or within the vicinity of the Camp Menotomy Property on Meredith Neck and on islands in Meredith, New Hampshire on Lake Winnepesaukee.

MerNIA has not been provided with all of the information and/or documents submitted to the State of New Hampshire or to the Commonwealth of Massachusetts, and consequently, MerNIA does not have knowledge of all relevant facts. Based upon available information, however, MerNIA understands that the trustees entered into an agreement to sell the Camp Menotomy Property for development without first having explored whether the Camp Menotomy Property could continue to be used as a summer camp. MerNIA contacted the leadership of five different camp associations in the northeast, all of which denied having been informed of the availability of the Camp Menotomy Property for camping purposes. From these discussions, MerNIA understands that those camps support, along with numerous additional New Hampshire camps, the continued operation of a summer camp on the Camp Menotomy Property.

A public real estate listing by Coldwell, Banker Realty, Gilford, NH appeared late on February 9, 2024, and was removed on February 10, 2024. Mr. Carlson, who operates Camp Quinebargue in Moultonborough, NH, advised MerNIA that as soon as the listing was made public, he contacted the real estate listing agent to state his desire to use the property for camping purposes. His proposal was apparently ignored, and subsequently, a marketing piece was circulated by Lakes Region Design suggesting a housing development was to be built on this land. Those marketing materials set forth terms for a transaction for the purchase and sale of the Camp Menotomy Property that was allegedly entered into between the trustees and a potential developer prior to the public listing of the Camp Menotomy Property for sale. Prior to entering into any alleged agreement, the trustees should have first conducted due diligence to fulfill their fiduciary duty to determine whether the Camp Menotomy Property could continue to be used for camping purposes to fulfill the intent of the Trust. Their failure to fulfill their fiduciary duty should be addressed by the State.

The express charitable purpose of the Camp Menotomy Trust is to maintain the Camp Menotomy Property for camping purposes and to raise money to maintain “a camp for girls ranging in age from seven to eighteen.” (Camp Menotomy Trust, dated January 3, 1962, Belknap County Registry of Deeds, Book 420, Page 531 (“Deed” or “Trust”) at ¶¶ 1–2.) Significantly, the Trust was created to maintain the Camp Menotomy Property as a place for girls to camp and was not created to generate profits for beneficiaries or to generate funding for any other purpose. The Trust’s terms specifically contemplate the possibility that the Arlington Girl Scouts, or even an “organization of like nature ... desir[ing] to occupy the camp site as a camp for girls,” would no longer exist. (Deed at ¶ 6.) In such circumstances, the Trust expressly authorizes the trustees to “rent the facilities to any person or group of persons who may wish to utilize the site as a camping place” and to “retain all income from such rental not needed for maintenance of said camp as a fund from which the trustees may draw funds for campership grants” to the Arlington Girl Scouts, any successor organization to the Arlington Girl Scouts, or to certain residents of Arlington, Massachusetts. (Deed at ¶ 6.)

Consistent with the intent of the Trust to use the property for camping purposes, the plain and unambiguous language of the Trust prevents the trustees from selling the Camp Menotomy Property unless there is “no organization known as the Arlington Girl Scouts or the same organization under a different name, or any successor organization of like purposes in Arlington which shall desire to hire the camp grounds for camping purposes, *and if no other organization*

can be found to utilize the site for camping purposes.” (Deed at ¶ 10 (emphasis added).) Any eventual sale also requires a unanimous vote of the trustees. (*Id.* (authorizing sale “by unanimous consent” if requisite conditions met).) On information and belief, none of these conditions are satisfied.

First, a simple website search demonstrates that the Arlington Girl Scouts are operating as a unit of the Girl Scouts of Eastern Massachusetts. See <https://www.arlingtongirlscouts.org/>. Second, there is at least one organization, presented by Mr. Carlson, who would like to use the property for “camping purposes” for children, and MerNIA is aware of other camping organizations who would be similarly interested. Third, based upon information and belief, there was at least one trustee who was uncomfortable with selling the Camp Menotomy Property for development such that it may not have been a unanimous decision. In any event, Mr. Carlson’s proposal to lease the Camp Menotomy Property pursuant to Paragraph 6 of the deed, or to purchase the Camp Menotomy Property for “camping purposes” pursuant to Paragraph 10 of the Trust, would fulfill the plain and unambiguous terms of the Trust. See, e.g., *Harvey v. Town of Barrington*, 2024 N.H. 10 at ¶10 (2024); *Heartz v. City of Concord*, 148 N.H. 325, 331 (2002).

Based upon available information, there is no basis to deviate from the plain and unambiguous intent of the Trust. See *Harvey*, 2024 N.H. at ¶10 (“If the language of the deed is clear and unambiguous, we will interpret the intended meaning from the deed itself without resort to extrinsic evidence.”); *Heartz*, 148 N.H. at 331 (“When the language of the deed is clear and unambiguous, we need not consider extrinsic evidence.”). Specifically, MerNIA understands that Mr. Carlson seeks to operate a children’s camp on the Camp Menotomy Property and that he is willing to do so either by leasing or purchasing the Camp Menotomy Property.

Whether Mr. Carlson leases or purchases the Camp Menotomy Property for camping purposes, Arlington Girl Scouts and/or Arlington girls would also benefit from the transaction. Pursuant to Paragraph 6 of the Trust document, the rental income generated from leasing the property for camping purposes would be distributed to the Girl Scouts of Eastern Massachusetts, and if that chapter of the Girl Scouts ceases to exist, the rental income would be distributed to “girl residents of Arlington between the ages of seven and eighteen.” (Deed at ¶6.) If, alternatively, Mr. Carlson purchases the Camp Menotomy Property for camping purposes, the sale proceeds would still be distributed to the Girl Scouts of Eastern Massachusetts or to girls of Arlington, Massachusetts. Further, based upon available information, grants could be established to support camp attendance of girls from Arlington, Massachusetts. Thus, Arlington Girl Scouts and/or girls of Arlington, Massachusetts would continue to benefit from the Trust if the plain and unambiguous terms of the Trust are fulfilled, as they should be. The intended beneficiaries, summer camps, and the greater Meredith Neck Community would continue to benefit from the leasing or sale of the Camp Menotomy Property for camping purposes such that there is no reason to deviate from the express terms of the Trust.

A recent article in the Laconia Daily Sun suggests that the trustees may seek application of the cy pres doctrine to defeat the plain and unambiguous language of the trust to sell the Camp Menotomy Property for development purposes. If that is true, MerNIA requests that the effort be rejected because the doctrine is inapplicable and is contrary to the express terms of the Trust.

Pursuant to RSA 564-B:4-413, a charitable trust may not be modified or terminated unless the “particular charitable purpose becomes impossible, impracticable, illegal, obsolete, ineffective or prejudicial to the public interest to achieve.” RSA 564-B:4-413(a). Here, the intent of the Trust has not become impossible, impracticable, illegal, obsolete, ineffective, or prejudicial to the public interest. To the contrary, there is at least one camp (and possibly others) who desires to use the Camp Menotomy Property for camping purposes for children. As discussed above, rental fees or sale proceeds would continue to be used to support Arlington girls to further implement the intent of the Trust.

New Hampshire has historically set a high bar for what constitutes “impracticable” to allow the intent of a charitable trust to be defeated. *See, e.g., In re Certain Scholarship Funds*, 133 N.H. 227 (1990) (where court reformed educational trusts via cy pres where terms of trusts discriminated on basis of gender and religion and were thus unlawful); *Town of Boscaawen v. Acting Atty. Gen.*, 93 N.H. 444, 446 (1945) (denying petition of plaintiffs to use accumulated income from a trust intended to maintain grave of donor’s husband and family to pay for cemetery maintenance generally as same did not show impossibility or impracticability); *North Hampton School District v. North Hampton Congregational Society*, 97 N.H. 219, 221 (1951) (the “defendant obtained a determinable fee which terminated when the plaintiff decided not to use said lot as a school house lot.”); *Adams Female Academy et al v. Adams*, 65 N.H. 225 (1889) (there was “no room for cy pres construction [because] [a] transfer of the educational use to another locality would be a perversion of the fund.”). Here, the charitable purpose is not only not “impracticable,” but it is entirely feasible because there is a camp that is ready and willing to use the property for camping purposes, and more particularly, to support girls from Arlington, Massachusetts.

The trustees’ suggestion that cy pres could be applied to enable the trustees to sell the property to maximize profits is fundamentally at odds with the doctrine. The Trust expressly states that it is intended to provide a place for girls to camp—not to generate profits. If a charitable purpose that continues to be possible and practicable could be set aside merely so as to allow the trustees of the charitable trust to maximize profits, most charitable trusts would be in jeopardy.

Moreover, the trustees’ claim that it is not “feasible” to rent or to sell the property to a camp turns the application of cy pres on its head and is not supported by the facts. The trustees’ claim that it must generate \$800,000 of annual income is based upon a potential sale for development which is contrary to the plain and unambiguous terms of the Trust. Pursuant to the express terms of the Trust, the trustees were first obligated to determine the existence of available camps to use the property for camping purposes (which they seem to admit they did not do) and then to determine the potential rental fees that could be generated from using the property for camping purposes. The trustees, as a matter of law, cannot sidestep the plain and unambiguous terms of the Trust to pursue a different purpose and then claim the intended purpose is not feasible based upon that other, unintended purpose of the Trust that they wish to pursue.

Further, there has been no showing of whether Mr. Carlson’s proposed camp (and/or other camps) could generate the annual income sought or whether it would be necessary for his proposed camp (and/or other camps) to pay the alleged annual property taxes. Even if the Camp

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Menotomy Property recently lost its tax-exempt status, the change in tax status is not a basis to defeat the purpose of the Trust. For example, Mr. Carlson could establish a nonprofit to operate the camp to eliminate the potential issue of property taxes. His camp or a different camp would likely be able to restore the tax exemption, to place large portions of the land into current use, and/or to seek an appropriate tax abatement.

Regardless of whether the property is sold or leased to Mr. Carlson or to a different camp operator, there would be no harm to the intended beneficiaries. There is no “harm” to the beneficiaries from the potential loss of profits that were never intended to be realized based upon the expressly stated intent of the Trust. Rather, the Arlington Girl Scouts would continue to benefit from the use of the Camp Menotomy Property for camping purposes and/or from the use of rental income or sales proceeds to support them in engaging in camping in activities as members of the Girls Scouts or in connection with organizations serving a similar purpose.

MerNIA supports any and all efforts to enforce the fiduciary responsibilities of the trustees of the “Camp Menotomy Trust” and the Trust’s intention that this property remain as a girls’ or children’s camp. MerNIA hopes that the Charitable Trust division will enforce the Deed’s restrictions and require that the trustees explore interest from persons or organizations *wishing to use the site for camping purposes*.

In today’s day and age, when Winnepesaukee suffers from environmental pressures and battles water quality issues including cyanobacteria as addressed by former Governor Sununu in repeated media coverage last summer, it has become even more important to keep properties like this preserved for camping. MerNIA applauds the vision of Florence O’Brien, who in 1939, deeded the property to the Arlington Girl Scouts. MerNIA further applauds the foresight of Arlington Girl Scouts, Inc. in having established the Trust to ensure that girls have the opportunity to build a connection with nature through a camping experience in such a majestic and still unspoiled environment along Lake Winnepesaukee in the Camp Menotomy Property.

Thank you for your consideration.

Sincerely,



Alexandra S. Cote

cc: Emily Gabrault, Deputy Division Chief (*via* First Class and Electronic Mail: Emily.gabrault@mass.gov)
Mr. Eric Carlson (*via* First Class and Electronic Mail: Eric@campquinebargo.com)
Scott Powell, Chairman, Meredith Conservation Commission (*via* First Class and Electronic Mail: conservation@meredithnh.gov and ScottPowellnh1@gmail.com)
Rachel A. Hampe, Esq.