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May 15, 2023

VIA ELECTRONIC MAIL:
Jforrester@tiltonnh.org

Jeanie Forrester, Chair
Select Board
Town of Meredith
41 Main Street
Meredith, NH 03253

Re: Goodhue/Meredith Boundary Line Adjustment and Consent Agreements

Dear Chair Forrester:

I write on behalf of Meredith Neck And Islands Alliance ("MerNIA") regarding the Select Board's potential vote on a revised "Boundary Line Adjustment Agreement" ("Agreement") at its meeting later today. From the materials provided to me on Friday afternoon in response to MerNIA's "Right-to-Know" request, it appears that the Board is continuing to make important changes to the proposed Agreement. The current draft, however, still includes provisions that are unnecessary, unreasonable, highly irregular, and unlawful. If these terms remain in the Agreement, the Town dock project will likely be delayed by litigation, even though the problematic terms could simply be removed. MerNIA strongly urges the Board to reject the proposed Agreement and to demand further revisions.

First, the updated materials provided on Friday contain proposed redline changes to the "Consent Letter," which is intended to be executed with the Agreement. MerNIA supports the Board's thoughtful reconsideration of that language. Should Goodhue insist that the language remain in the "Consent Letter," the Board should reject the proposed Agreement. Goodhue should not place the Board and/or the Town Manager in the untenable and unreasonable position of agreeing to proposed development that has not been made public, that has not been publicly vetted, and that has not yet satisfied zoning and planning regulations along with other applicable law.

Second, the Agreement itself continues to place the Town in the unreasonable, highly irregular, and unlawful position of having to submit applications on behalf of a *private* property owner to develop commercial property in the Shoreline District for *private* commercial use. When your counsel and I spoke on April 21, 2023, she suggested that this provision is nonetheless permissible because the Town acts like any other private property owner. Yet unlike a private property owner, the Town, of course, has a duty to manage property in the best interest of the Town—Entering into an agreement to submit applications to aid a commercial property owner to further expand and intensify a commercial use of property in the Shoreline District is not acting in the Town's best interest. This is especially problematic given that the proposed parking lot has not been publicly vetted, was deliberately negotiated in secret meetings, and would provide little utility (if any) to tax payers (as currently proposed on paper – let alone in actuality) due to its limited seasonal availability for their use.

Documents MerNIA received in response to its "Right-to-Know" request also suggest that the Board is being advised that MerNIA's concerns over this term are unfounded because the Town is not subject to its own zoning laws. Although a Town is "not bound by its own zoning ordinance in the performance of its governmental functions absent [a] statutory provision to the contrary," that is *not* what is being proposed here. *McGrath v. City of Manchester*, 113 N.H. 355, 356 (1973) (citations omitted).

For example, in *McGrath v. City* of Manchester, the Supreme Court of New Hampshire held that Manchester could build a truck and tractor storage facility *on City-owned property* located in a single-family-home district to be used for *governmental purposes*. *Id.* Here, in contrast, the Town would be violating its own Zoning Ordinance to use *private property* to further a *private purpose*. The Agreement therefore fails to satisfy the essential elements of the "governmental use" exemption to zoning.

As a New Hampshire treatise advises:

> Although there are certainly times when a municipality is forced to take actions that might technically violate its zoning scheme (i.e, construction of sewerage pumping stations or water towers in residential districts), only as a matter of last resort should it engage in a use not permitted by its own zoning. If respect is to be generated for a zoning ordinance, a municipality should follow it unless there is absolutely no alternative. The municipality should not, for example, put an industrial use, such as a public works garage, in a residential district unless there is no alternative site available.

15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 2.18, at 425 (2000). Here, there is an alternative. The Town could demand an agreement that is narrowly tailored to

achieve the proposed land exchange. Accordingly, MerNIA continues to question why the Town would allow itself to be drawn into a dispute over the legality of the creation of additional commercial boat storage, when it is entirely unnecessary for the proposed land exchange for the proposed Town dock extension.

Third, the proposed Agreement continues to grant Goodhue a right to place a "walkway" along a portion of Lovejoy Sands Road. In correspondence your counsel sent me shortly after the above-referenced phone discussion, she noted that a road "discontinuance occurs when the public is not able to use a portion of the public right of way for viatic purposes," but then stated, "There is no suggestion in the Boundary Line Adjustment Agreement that there will be any such interference as a result of the walkway." Setting aside for the moment that we have different interpretations of the law on what constitutes an interference in the viatic use of a road so as to require a Town vote, the Agreement creates a strong likelihood that Goodhue can, and will, interfere with the Town's viatic use of the Road. Because this term in the proposed Agreement circumvents normal land use procedure through Planning Board and Zoning Board of Adjustment review, Goodhue would be free to encroach the Road in its creation and use of an undefined "walkway."

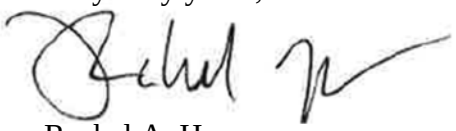
Moreover, any encroachment in a road constitutes an interference with the viatic use, even if that encroachment is to narrow, rather than block, the road. A select board and/or a town manager does not have the authority to "barter away" portions of a street to allow an abutter to place permanent obstructions, or even to plant shrubs or make other "improvements" in a road without a town vote. *Marrone v. Town of Hampton*, 123 N.H. 729, 735 (1983).

Fourth, the Agreement binds the Town to record proposed deeds, within 30 days of Planning Board approval of the boundary line adjustment. Those deeds have yet to be made public. The language in those deeds is very important to abutters and other stakeholders. The Select Board should not sign the proposed Agreement without first making the deeds available for public vetting.

MerNIA reiterates that there is no need for the Town to be drawn into litigation over the legality of disputed terms that are not necessary to adjust the boundary line. MerNIA strongly urges the Board to reject the proposed Agreement and to instead insist on the preparation of a simple boundary line adjustment agreement that does not contain such highly irregular, unlawful, and unreasonable terms. The revised agreement, of course, should then be made available for public vetting, along with the proposed deeds, at Select Board and Planning Board meetings. It would be unfortunate for the Town to incur unnecessary legal fees, and for the Town dock project to be delayed by litigation, where there is such a simple, straight-forward solution.

Thank you for your consideration.

Very truly yours,



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