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April 20, 2023

VIA ELECTRONIC AND FIRST CLASS MAIL:

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:

As you know from my April 17, 2023 letter to the Select Board (“Board”), we represent Meredith Neck And Islands Alliance (“MerNIA”), which is an organization of concerned residents and visitors to the Meredith Neck neighborhood. After the Select Board meeting on April 17, 2023, MerNIA received copies of a proposed “Boundary Line Adjustment Agreement” (“Agreement”) between the Town of Meredith (“Town”) and Goodhue Meredith Realty Property, LLC (“Goodhue”), along with two supporting “Consent Letters.” We understand that the Board may hold an “emergency” meeting on Monday, April 24, 2023, to review and approve the proposed Agreement. MerNIA strongly urges the Board to withhold approval of that Agreement and to cancel the proposed “emergency” meeting because allowing the Town Manager to execute the proposed Agreement will unnecessarily draw the Town into a long-standing dispute regarding the potential development of the Goodhue property. Moreover, the Agreement attempts to grant Goodhue various rights that the Board (through the Town Manager) does not have authority to grant.

Contrary to comments made at the Board’s April 17, 2023 meeting, and despite numerous contacts with Town employees for requests for information, MerNIA was not aware of the proposed Agreement until it was discussed at that meeting and until MerNIA obtained a copy of it the next day. To date, MerNIA has not been provided with copies of the proposed deeds which are intended to be attachments to the Agreement. MerNIA will be seeking a copy of those deeds in connection with a formal request for additional documents under the “Right-to-Know Act,” RSA ch. 91-A.

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Based upon comments made by Select Board members at the April 17, 2023 meeting, the Board may have also been unaware of all of the terms of the Agreement and may not be fully apprised of its potential consequences. To the extent the Board has been led to believe that the Agreement is mere “paperwork” to effectuate a simple swap of land, the Board has been unfortunately misled.

As an initial matter, it is not clear why any “land swap” would be required for an agreement to adjust over-water property line extensions. The Town and Goodhue could agree to adjust the over-water extension lines without making any further concessions. In the proposed Agreement, however, the Town goes beyond an alleged mere “land swap” and endorses proposed land and off-shore development—development which at this time is currently unknown and for which there is no known plan. This is unreasonable, highly irregular, and violative of Town regulations, proper procedure, and State statutes.

In particular, the Agreement would require *the Town* to submit applications to the Planning Board and Zoning Board of Adjustment to seek approval to clear-cut *Goodhue property* located in the Shoreland District so that *Goodhue* could expand the so-called “Upper Lot” to use in connection with its commercial business. Agreement at ¶4. Setting aside for the moment whether the Board’s “ratification” of the use of the “Upper Lot” makes the use of the “Upper Lot” in its current configuration lawful, which is denied, it would be improper for the Town to submit applications for the development of private property. MerNIA is not aware of the Town ever having done so. Here, it is especially troublesome because the Town would be seeking approval to violate its own zoning regulations and Master Plan by seeking approval to expand and to intensify a commercial use in the Shoreland District. Further, it would create ethical conflicts by causing the Board to request approvals from boards consisting of members it appoints.

The Agreement further states that the Town will deem the proposed expansion of the “Upper Lot” as counting toward the parking that Goodhue would need “for its renovation.” Agreement at ¶4. The Board, of course, does not have that authority, which falls in the province of the Planning Board (to consider such issues such as safety) and the Zoning Board of Adjustment (to determine, for example, whether to grant a variance for the proposed use). *See PMC Realty Trust v. Town of Derry*, 125 N.H. 126, 131 (1984) (“[T]he town had no authority to give Cataldo either a variance or any form of immunity from future zoning changes in exchange for the land for the water tank”). The Board and/or the Town Manager cannot usurp the authority of the Planning Board and Zoning Board of Adjustment, both of which could only consider such a request in connection with a properly submitted application for an actual development. This is an obvious attempt by Goodhue to circumvent properly noticed procedure to deny abutters due process, and it is surprising and disappointing that the Town would support Goodhue in attempting to do so, especially where the Town is well-aware of the intense opposition to Goodhue’s proposed development. Further, if the Board and/or Town Manager were to sign the

Agreement and thereby suggest that it could grant the requested relief from parking space regulations, which it cannot, the Town would be setting a dangerous precedent to encourage future businesses to try to make trades to exempt themselves from parking or other regulatory requirements.

The Agreement would also allow “the Goodhue Marina renovation project” to “utilize the Town’s right of way for Lovejoy Sands Road for a walkway. . . as needed.” Agreement at ¶6. In other words, the Agreement would likely enable Goodhue to take over part of the existing Lovejoy Sands Road for a walkway or right-of-way for Goodhue’s use. Here, again, the Board would be acting outside of its authority because 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,” without a town vote. *Marrone v. Town of Hampton*, 123 N.H. 729, 735 (1983). The proposed right-of-way use would likely narrow the street, and worse, Goodhue’s proposed use of it would most likely result in an unreasonable interference with the public’s use of it and would therefore be a nuisance to the public and abutters. *See id.* at 734.

The proposed “land swap” itself is similarly outside of the Board’s authority. It is well-established New Hampshire law that a select board (nor a town manager) cannot convey Town property without a Town vote. *See* RSA 31:3; *De Rochement v. Holden*, 99 N.H. 80, 82 (1954) (“The sale of the town’s real estate is not to be classified as its ordinary business, nor does it fall within the class of ‘pecuniary matters’ embraced in ‘prudential affairs.’”) (quotations omitted); *Palmer v. Town of Farmington*, 101 N.H. 131, 132-133 (1957) (authority to convey municipal real estate “resides in the inhabitants of the town, and does not fall within the authority of the selectmen in managing the prudential affairs of the town, or performing any other statutory duties of their office.”).

A conveyance to a private party of public land is a conveyance which requires a Town vote regardless of whether there is a “swap” involved. Here, the proposed “swap” involves a portion of an existing road. As for the proposed right-of-way along Lovejoy Sands Road, a formal Town vote would be required to discontinue that portion of the road. *Glick v. Town of Ossipee*, 130 N.H. 643, 646, 647 (1988) (“Only a formal discontinuance can legally terminate the public’s right to travel on any public way.”); *Marrone*, 123 N.H. at 735.

Even if the Town has adopted RSA 41:14-a, which is not conceded here, and thereby granted the Board greater authority to acquire and convey municipal property, the Town has nonetheless failed to follow the Statute’s specific requirements. Namely, the Select Board is required to *first* seek a recommendation from the Planning Board, where in contrast here, the Board is being asked to have the Town Manager sign first and seek Planning Board approval later. Given that the property at issue is within the Shoreland District, at a minimum, the spirit and intent of RSA

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41:14-a would also require the Board to seek a recommendation from the Conservation Commission. That too, has not occurred.

In connection with the proposed Agreement, the Board is being asked to approve a “Consent Letter,” which would be attached and incorporated into the Agreement. The “Consent Letter” improperly, unreasonably, and unlawfully provides Goodhue a blanket endorsement of its proposed off-shore and on land development. As stated in my April 17, 2023 letter to the Board, MerNIA opposes the “off-shore” development depicted in the proposed “Survey.” The Board should not be promoting the interest of a single, private entity, by endorsing the proposed off-shore development depicted in the Survey, which is unnecessary for the proposed adjustment of the lot-line extensions.

Yet the Board is being asked to take a step further to “consent on behalf of the Town to the Project work that is being proposed on the Goodhue property.” The “Project” is defined as “the overall redevelopment of [the] Marina.” There is no known application to redevelop Goodhue’s property. It is troubling that the Board would take such an unusual step to promote the interest of a single, private entity, but it is especially troubling and unreasonable for the Board to do so where it does not even have a specific plan for it to endorse.

To the extent the Board would be “consenting” to Goodhue’s previously submitted plan, that plan was denied by the Zoning Board of Adjustment due to an easement issue. The Zoning Board of Adjustment’s decision was validated by the Belknap County Superior Court’s ruling. *See* Order dated January 9, 2023. The Town cannot circumvent the decision of the Zoning Board of Adjustment. *Neville v. Highfields Farm, Inc.*, 144 N.H. 419, 423 (1999) (“Where a town duly appoints an entity to handle specified matters and later attempts to overturn a decision of that entity by town vote, we have found a circumvention, rendering the town’s decision invalid.”); *Buxton v. Town of Exeter*, 117 N.H. 27, 29 (1977) (selectmen’s attempt to circumvent board of adjustment’s denial invalid because board had sole jurisdiction to grant special exceptions and variances).

Indeed, the proposed Agreement and “Consent Letters” appear to be drawing the Town into potential litigation over a backdoor attempt to move forward with proposed development without following proper land use procedure, regulations, and statutes. If the Board approves the Town Manager’s execution of the Agreement and “Consent Letter,” MerNIA will be compelled to litigate to enjoin the *ultra vires* actions of the Board and void the Agreement. *See, e.g., Marrone*, 123 N.H. at 735 (1983); *Professional Fire Fighters of Wolfeboro, IAFF Local 3708 v. Town of Wolfeboro*, 164 N.H. 18, 23 (2012) (Board acted outside of its authority rendering the agreement an *ultra vires* contract and void).

MerNIA respectfully requests that the Board avoid incurring unnecessary legal fees by being drawn into the dispute over the development of the Goodhue property and compelling MerNIA

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to litigate. MerNIA requests that the Board instead cancel the “emergency” meeting and reject the proposed Agreement and “Consent Letters.”

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel A. Hampe", with a stylized flourish at the end.

Rachel A. Hampe

cc: MerNIA
Alexandra C. Cote, Esq.
Troy Brown, Town Manager (Email only: tbrown@meredithnh.org)
Meredith Conservation Commission (Email: conservation@meredithnh.org)
Meredith Planning Board (Email: smaltais@meredithnh.org)