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TO: Hanover Board of Selectmen
RE: FOHC proposal for dock at Wilson's Landing
DT: September 22, 2009

Dear Board Members,

Your decision will shape the future of Hanover. Your job is to uphold and support the land use regulations of the town. I know you understand that agreeing to allow the FOHC dock to be placed on town land for private use would constitute an endorsement of the project. It would be contrary to principles of the Master Plan and to the regulations contained in the Zoning Ordinance that you are bound to uphold and enforce. I offer the enclosed document as evidence.

It was unusual for Brian to cut off debate at what had been posted as a public hearing Monday, October 19.. I understand that you need time and opportunity to discuss this matter among yourselves. However, it is vitally important for you to have all the information that pertains to the proposal, not only that which is provided to you by the FOHC and its supporters. Therefore, let me point out some of the misleading statements and erroneous assertions that have been presented to you by town staff and FOHC, and correct them. I would be pleased to discuss this material in person with you individually or together.

I have not addressed the environmental concerns that have been raised by others, which should be of concern to you in determining the use of Hanover's land.. Nor have I included reference to the value of the rowing program for high school students, which is not in dispute and should not be a determining factor in your decision, despite the many emotional pleas. I have pointed to the legal issues that shape this case. In most instances I have identified the source material I used. You may want to read the original texts as well. The primary texts are the Town's zoning ordinance, the ZBA's decision in the Dartmouth/Fullington subdivision case, and the town's Master Plan.

Thank you for your patience during what has been a long and perhaps tedious task for you. I stand by to respond to any questions you may have, and wish you good judgment as you make your determination.

Cordially,

Martha Solow
Enclosure sent separately by email

To Hanover Board of Selectmen
From Martha Solow
October 21, 2009

**Subject: Responsibility of Board of Selectmen --Additional Information
Re Proposal by FOHC to use Hanover's land for a private dock**

After reviewing the corrections and additional facts below I believe you will agree that the FOHC proposal does not meet the requirements of Hanover's land use regulations. Therefore, you should not become an applicant for the plan.

Correction of erroneous information:

False statements have put into doubt the credibility of FOHC. You were told that the rowing program for high school students would come to a prompt end if you did not support FOHC's request. We recently learned that this is not so, and has not been so at any time. Dartmouth's representative testified at your meeting October 19, 2009, that the College is willing to host the student program from year to year. You also learned the same evening that the Chieftain Motel is willing and able to host the student rowing program on a longer term basis. FOHC's and students' and parents' earlier statements to the contrary may have been intended to pressure the Board into action favorable to their plan. Wilson's Landing is not the only place that the rowing program can continue; suitable alternatives are available.

You were led by town staff and others to believe that the use of Wilson's Landing in conjunction with FOHC's Fullington Farm house lot is compatible with the town's land use regulations. A closer look at Hanover's land use ordinances reveals that it is not. The details of the regulations presented below indicate that the FOHC's land use needs, as they have been presented to the community, are in conflict with many of the regulations of the zoning ordinance.

The principles and purpose of zoning:

To determine the appropriateness of the FOHC plan to meet the requirements of Hanover's zoning ordinance, one doesn't need to ask a lawyer; one needs to look at the Ordinance. The primary purpose of zoning is to separate incompatible uses. The RR zone is for rural residences and uses compatible with that purpose. FOHC's intensive and extensive rowing program is not compatible in size or purpose.

Justice requires that all property owners be treated equally; there can be no "special interest" favorites, whether the particular interest is worthy or not. Atty. Bernie Waugh wrote to you about this in an email memorandum dated September 13, 2009. He cautions about setting a precedent with one applicant that cannot be denied to others, but must then be allowed to each similarly situated property owner. He adds, "...it is precisely the fact that this resource [i.e., riverfront property] is so limited and scarce which makes it so important to conserve". Permitting FOHC's plan could eventually lead to the alteration of the character of the entire shoreline of Hanover.

Hanover's Zoning Requirements: The FOHC plan does not fit the zone, whether by permitted use or by special exception.

The zoning ordinance states that the purpose of the Rural Residential zone is to allow residences in a rural area, typically those beyond the reach of town water and sewer service. With respect to the FOHC property, the permitted uses are many, but they do not include group or club rowing, and group rowing is the primary purpose of FOHC . The plan does not fit the zone.

All uses allowed by special exception have to meet the "general and specific standards" contained in the ordinance. Any special exception in the RR zone must be appropriate for a rural residential area. Any special exception "shall not adversely affect the character of the area". The area now is characterized by single family residences. The FOHC plan is a non-residential use, and not in keeping with this character.

The ZBA's decision in the subdivision case has a strong bearing on the uses acceptable on FOHC's homestead lot.

The September 30, 2009, document titled "Legal Questions Regarding Friends of Hanover Crew Proposal" appears to contain a response to paragraph #4 of my September 14, 2009, memorandum to the Board citing "legal and proprietary issues of concern to the Board of Selectmen and to the Town". The writer attempts to dismiss the ZBA's decision as having no bearing on the homestead property. He or she quotes paragraph #18 of the ZBA's document relating to the subdivision of Dartmouth's conserved parcel into two smaller ones - the 7 acre parcel that remains under conservation easement, and the 2.4 acre lot homestead property now owned by FOHC.

The writer quotes only a portion of the paragraph, emphasizing the wrong words, and giving a misleading impression. Below is the entire paragraph, with a very different interpretation of its meaning. (The document uses the words "Reserved Parcel" to refer to the homestead 2.4 acre parcel now owned by FOHC. The underlined emphasis is mine.)

The cited section of the ZBA's decision reads in its entirety as follows: "The remaining criteria for a variance must also be addressed in this decision. The Reserved Parcel if subdivided could continue to be used as a single-family residence, or used as otherwise permitted by the Ordinance, without altering the essential character of the area, particularly since the subdivided parcel abuts a perpetually conserved 7-acre parcel in a unique setting along the Connecticut River, with a public trail along the riverbank. Given this unique setting, the size of the proposed subdivided parcel (while less than the minimum) would be in keeping with the rural character that the Town of Hanover seeks to preserve. We think this is the central point in this case. Granting the variance will be consistent with the purpose of the Ordinance and consistent with the public interest. We are satisfied that the purpose of the three acre zoning restriction will be achieved in this particular case. We also believe that granting the variance will result in substantial justice and will not diminish the value of surrounding properties. Our decision is confined to the unique facts relating to this application and this property."

Please note the ZBA's reference to "the central point in this case". It is NOT, as implied by the September 30 memo, that permitted uses may continue (which goes without saying), but that this is a unique setting along the river, and that confining uses to those allowed by the zoning ordinance

(whether permitted or by special exception) "would be in keeping with the rural character that the Town of Hanover seeks to preserve". Other uses would be contrary to the rural character of the area.

For more particulars, I refer you to Dartmouth College's testimony to the ZBA in letter dated July 27, 2006, from Larry Kelly to Judy Brotman for additional facts upon which the ZBA made its decision. The testimony stressed that dividing the land would not change the use of the land as single family residence, as permitted by the zoning ordinance. The ZBA relied on this testimony in making its decision. This would weigh heavily in a court decision regarding future use of the land. In judging a case, Courts go not only to the text of a law or a decision, but also to the debate which preceded it.

Except for the trail, the conservation land has no direct bearing on the Fullington homestead lot or Wilson's Landing.

The September 30th "Legal Questions..." memorandum provides details of the conservation easement on the original Fullington Farm owned by Dartmouth. This information is not in dispute. We agree that the conservation easement does not apply to the 2.4 acre homestead property now owned by FOHC, which was created by subdividing Dartmouth's original ten acre parcel into two lots. The only conserved land on FOHC's homestead portion is the walking trail, the easement for which is held by the Town of Hanover. Furthermore, the conservation easement on the original undivided land has no direct bearing on restrictions on the town-owned property at Wilson's Landing.

FOHC's proposal does not fit any other uses on the homestead lot.

It was suggested that FOHC might apply for other uses of the Fullington Farm property. Reading the zoning ordinance one sees that, while "outdoor recreation" is a permitted use, "rowing club" is neither a permitted use nor a use allowed by special exception. And, if one reads the ordinance definition of "outdoor recreation" (listed alphabetically in the definitions section under "Recreation, outdoor"), one sees reference to "swimming pool, golf course, play fields, and similar uses". These uses are associated with family residential use in the RR zone, not with club use.

The zoning ordinance identifies "private club" as a use allowed by special exception in the RR zone. If one reads the ordinance definition of "private club", (listed alphabetically in the definitions section as "Club, private") one sees "building or use catering exclusively to club members and their guests for recreational purposes". Please note the term "exclusively". Who is being excluded? The non-member general public.

Moreover, " private club" is a use permitted by special exception on private property. "Private club" cannot be construed as "government use", which in the RR district is limited to public safety, service, cemetery, parking, and garbage disposal. Allowing private club use on public land is not only a violation of the zoning ordinance, but contrary to the principle of public access to public land, most especially land that has been given to the town specifically for that purpose.

Requirements for Variance are inappropriate for FOHC.

Every landowner is entitled to apply for a variance from the requirements of the zoning ordinance. However, the applicant must prove a "hardship" of the land that prevents him or her from being able to conduct any of the uses permitted in the zone. There is no hardship on FOHC's land; it can be used according to the requirements of the ordinance.

The organization of FOHC is not suitable to the plan they propose.

In requesting permission to install a dock from Wilson's Landing, FOHC is asking you to cede to that group rights that the Town now has for use of its property, and cede also a degree of control over activities that would take place on the property. FOHC declares that it "is solely responsible for the project". Yet, FOHC is not an entity that is capable of conducting the supervision, monitoring, maintenance or enforcement of regulations or restrictions that pertain to the use of Wilson's Landing.

In its own statement to the Selectmen dated October 9, 2009, titled "Organization of and Relationship Between Friends of Hanover Crew and Upper Valley Rowing Foundation", FOHC describes itself as an organization loosely comprised of parents, coaches and supporters of the crew team. "In reality, [FOHC] consists solely of its all-volunteer, eight-member Board of Directors... [It does not] organize or run any rowing

programs....its sole purpose is to raise money". Under whose auspices are they incorporated? How are they accountable to the people they serve? How would they be accountable to the Town? The liability question for the town raised by such a transfer of authority to a private non-governmental group is worrisome, to say the least.

The policy question for the Selectmen: Where is the public interest?

If encouraged to continue its application, although FOHC plans would be subject to review by other governing agencies with respect to the particulars of the plan, Selectmen's approval would be understood as endorsement. You have been inundated with details of the proposal.... times of operation, sizes of boats, length of dock, number of vehicles, numbers of rowers, etc.. These details distract you from the primary policy question: Is this proposal in the public interest?

The September 30th memorandum (last page under "Statutory Issues") states that a public agency, "recognized and sanctioned by the Dresden School District", cannot be construed as a private use. Perhaps so. However, the applicant is NOT the Dresden School District, nor the Hanover Recreation Department, nor any public agency. It is a private, non-profit organization with a single purpose established to benefit one small group.. By its own testimony FOHC has no program, no members, no accountability mechanism, simply eight directors, some of whom are not even Hanover residents. FOHC represents no public interest.

Examples of private/public cooperation have been misleading; they represent false analogies (otherwise known as "apples and oranges").

The September 30th memorandum lists several instances of the Town's partnering with local civic, non-profit and youth sports fundraising groups. As I scan the list I see that most, if not all, of those listed were offering to give something to the Town of Hanover. (A most recent example is the Dartmouth Class of '58 that wants to give the town a street clock.) The FOHC, on the other hand, wants to take something from the Town; they want certain rights and privileges for their use of public property. Unlike others on the list, the FOHC project is not being proposed or sponsored or supported by a town or school entity. Unlike the Hanover Improvement Society or the Lions Club, they are not a philanthropic organization. They

are not incorporated to help the community, but to raise money for their very specific, narrow and exclusive purpose.

Conclusion

The Town is the owner of the small piece of waterfront property that is Wilson's Landing. The landing is the only town-owned recreation area that is not a playing field. It was a gift to the people of the Town to be used for public access to the river. It has been preserved as such for decades. There is nothing to justify the Town's giving it, or the use of it, or any part of it to a private group, endangering its unique character, and putting into jeopardy the riverbank and the wetland that make it a treasured special place for the people of the town.

Postscript

It is regrettable that the FOHC request was not denied at the outset. A lot of time and energy and money have been used in a futile attempt to jam the stepsister's foot into Cinderella's shoe. It simply doesn't fit.