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MEMORANDUM

TO: Board of Selectmen

FROM: Town Staff
Walter Mitchell, Esq.
Erika Alders, Esq.

DATE: October 29, 2009

SUBJECT: Response to Martha Solow's Memo

The following is a response to a memorandum by Martha Solow, dated October 21, 2009, entitled "Responsibility of Board of Selectmen—Additional Information re Proposal by FOHC to use Hanover's Land for a Private Dock." In this memorandum, Ms. Solow outlines her belief that the Friends of Hanover Crew's proposal for both their Fullington Farm property and the Town-owned Wilson's Landing property "does not meet the requirements of Hanover's land use regulations."

Only some of Ms. Solow's discussion points are relevant to the FOHC proposal for Wilson's Landing, which is the issue before the Board of Selectmen. The Planning and Zoning Boards will be addressing many of the issues raised by Ms. Solow in the context of the hearings they will hold on the proposed project.

It should also be pointed out that none of the Board's discussions on the FOHC request have been posted or noticed as "public hearings". They have been listed as "request" and "continued discussion" on the Board's agenda and on the Town website. Nothing about the request the Friends have made legally requires that the Board conduct a public hearing, although you have taken significant testimony on this matter, both verbal and written, and clearly conducted your second meeting on this subject in September using a public hearing format.

The responses outlined below are organized to correspond with the topical headings Ms. Solow utilized in her memo prepared for the Board.

1. “Correction of erroneous information”

The items in the first paragraph do not pertain to legal questions or land use regulations, but rather to factual matters and to policy issues subject to the Board of Selectmen’s judgment. Substantial information has been provided that alternative sites have been assiduously pursued and evaluated; based on this, the FOHC has determined that Wilson’s Landing is the best site available.

As previously outlined in the September 30th memorandum to you, entitled “Legal Questions Regarding Friends of Hanover Crew” and as further elaborated below, Ms. Solow’s contention 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” is inaccurate.

2. “The principles and purpose of zoning”, and “Hanover’s zoning requirements...”

The Zoning Ordinance itself defines what mutually compatible land uses are in the various zoning districts of Hanover and it does so by listing all allowed uses, either by right or by Special Exception, in each district, to the exclusion of all uses not so listed. The ordinance lists both Governmental Uses—Recreation, and Recreation, Outdoor, as permitted uses in the Rural Residence (RR) zoning district. These are the uses to which the Wilson’s Landing site has been put since it came into Town ownership. By definition these uses are legally compatible with single-family residences in the RR zoning district, and experience has borne this out.

In the case of both the Wilson’s Landing and Fullington Farm properties, a Special Exception would be needed for proposed specific outdoor-recreational buildings but not for the Outdoor Recreation use itself, and it is the sole judgment of the Zoning Board of Adjustment (ZBA), not of Town staff, any other board or commission, or citizen, that determines whether such structures are appropriate to the area.

The requirements of the Zoning Ordinance, as of all other regulations, apply equally to all. The Town of Hanover has traditionally practiced this precept, as illustrated by its consistent adherence to regulatory standards and procedures in all projects on Town-owned properties.

In fact, public riverfront property is not scarce: more than 3.8 miles of Hanover shoreline is public or semi-public (Pine Park); of this 3.1 miles are subject to conservation or other legal restrictions which do not allow improvements for river access. Instead, what is scarce is **Town-owned shore that can be used for public access to the river**: only about 350 feet, at Wilson’s Landing and at the Water Reclamation Facility, is legally and topographically suited for boat launch river access. The allegation that “permitting FOHC’s plan could eventually lead to the alteration of the character of the entire shoreline of Hanover” is incorrect.

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

FOHC has been quite clear in its representations to the Board of Selectmen and other Town agencies that it is a fiduciary organization whose purpose is to finance boats and equipment needed for a capital-intensive sport; and now as a continuation of these purposes FOHC seeks to provide a permanent facility for this sport and appropriate river access for it. These needs have not been fully funded by the Dresden School District. FOHC is sufficiently viable and substantial that it has purchased an expensive piece of real-estate, namely the Fullington Farm property, and has assumed long-term responsibility for amortizing its purchase and for maintaining the property. FOHC has been equally clear that as an organization it does not manage the Hanover High School Crew activities; rather this is done by coaches sanctioned and paid by the Dresden School District, assisted by parents of the student rowers and other interested citizens.

4. “The policy Question for the Selectmen: Where is the public interest?”

As both a legal and a governance matter, the Board of Selectmen has the right, indeed the responsibility to the citizens it represents, to advocate, endorse, and sponsor any proposal which in the Board’s judgment is in the public interest of the entire Hanover community. The FOHC is not a public agency, but does exist to promote and support a public function—a recognized athletic activity of the Hanover High School, which is a public institution. Both this and the fact that the proposal calls for the proposed dock at Wilson’s Landing to be made available to the public on an unrestricted basis, or indeed to be donated to the Town, confirm that the proposal constitutes a public improvement for public use on public property.

5. “Examples of private/public cooperation have been misleading...”

The FOHC is proposing to act exactly parallel with how other private organizations that support public-school and Hanover Recreation Department teams have acted, as is demonstrated by the examples already cited in the September 30th memorandum to you. They share the same attributes of philanthropy—gathering private funds and in-kind services to devote to a community endeavor.

6. Conclusion

It is not accurate that Wilson’s Landing is “the only town-owned recreation area that is not a playfield”; instead, the town has almost 40 miles of trails on Class-VI roads and on more than 1,100 Town-owned conservation acres, many of them with river frontage. Similar additional trail miles in Hanover available to the public are on Conservation Council, Dartmouth College, and US government properties.

Ms. Solow is correct that Wilson’s Landing was a gift to the people of the Town to be used for public access to the river, and has been so preserved for decades. The FOHC proposal is consistent with this purpose. However, she is incorrect in repeating the

assertion that the FOHC's proposal is to insert a private use by a private group onto public property that would exclude others and despoil a treasured special place and its environment.

The remaining topics are relevant only to FOHC's proposed use of the Fullington Farm, not to Wilson's Landing:

7. "The ZBA's decision in the subdivision case has a strong bearing..."

The ZBA's decision in the subdivision case actually states that the Reserved Parcel (the 2.4 acre Fullington Farm property created by variance) can be used as a single-family residence or **any use otherwise permitted**. The central point of the case is not the single-family residential use, but rather the fact that creating a 2.4-acre parcel (vs. a 3-acre parcel, which is the minimum required in the RR zoning district) is in keeping with the purpose of the Zoning Ordinance, especially given that it abuts other conserved land (i.e. the 7-acre parcel to the south and the riverfront trail).

It is true that the application and the testimony to the ZBA revolved around the Dartmouth College's representative stating their intention that the property would continue in single-family residential use. However, despite that testimony, the ZBA did not limit the property to that one use, but rather stated that "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...**"

8. "Except for the trail, the conservation land has no direct bearing..."

Agreed.

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

See response to Item 4 above.

As described above, a "rowing club" is not the FOHC's proposal. The sport of rowing is an outdoor recreational use (indeed, unlike many other sports, it cannot also be performed indoors). It bears repeating that Outdoor Recreation is a use permitted by right in the RR zoning district.

If the FOHC should wish to categorize their proposal as some other use than outdoor recreation, it is free to propose that, but it still must meet the requirements of the Zoning Ordinance; and if such other proposed use is allowed only by Special Exception, then the FOHC must satisfy the Zoning Board that it is consistent with zoning requirements and standards and would be compatible with the character of the area.

10. "Requirements for variance are inappropriate for FOHC"

As currently proposed, the only variance FOHC's plan would need is for a second driveway entrance into the Fullington Farm parcel from Route 10; the Zoning Ordinance allows only one driveway per property in the RR zoning district. This is being proposed for safety purposes and to minimize adverse impacts on the land, and the New Hampshire Department of Transportation has issued a permit for this second access. It is desirable because by deed restriction the Fullington Farm parcel cannot be accessed by vehicles from the adjacent driveway that leads to Wilson's Landing. The requirements for a variance are specifically detailed in the Zoning Ordinance and are also enumerated in Supreme Court decisions. In order to be granted a variance, applicants need to prove their case to the satisfaction of the Zoning Board. The second driveway entrance is not essential to the proposal, and therefore the FOHC proposal for Fullington Farm could still proceed without such a variance.