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Planning Board
Town of Dalton
756 Dalton Road
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Re: Suggestions on proposed zoning ordinance (draft 11/19/2020)

Dear Planning Board Members:

Thank you for all of your work to prepare the new zoning proposal for the town. This is an important project and we're grateful for your efforts!

Thank you also for providing the opportunity for public input. Our suggestions are set out below. For ease of reference, we have highlighted the major points in **blue**.

As you'll see, we've taken a step back with a fresh look at the big picture of land use planning in Dalton. Our suggestions are based on our experience serving on planning boards, our prior work drafting various land use regulations, participation during the early stages of preparation of Dalton's Master Plan and speaking with Dalton residents about the town's zoning initiative.

While we do have a number of fundamental suggestions, we want to emphasize that we support a zoning initiative that will produce a clear, fair, effective and practical set of land use rules that benefit our town and our residents.

We also want to be clear that none of our suggestions are intended or should be perceived as being in any way critical. To the contrary, we applaud your work! The Planning Board has prepared this new permanent zoning proposal under immense time pressure which was outside of your control and you've done a terrific job. Our suggestions are simply meant to give ideas for some improvements and, as you'll see, more time! Thank you again for your efforts!

1. To encourage public discussion, we hope the Planning Board will have a chance to collect and post on the town website all the written comments that are submitted before the December 9 public hearing.

Giving Dalton residents easy access to all comments would help share the different views on the zoning questions. And having all comments that are available posted in advance of the December 9 hearing will add to the information base and hopefully focus the discussion at the hearing.

2. The 2011 Master Plan, although almost a decade old, is used as the basis for the new zoning proposal. The old Master Plan may not accurately reflect the evolution of the town's land use over the last 10 years or town residents' current views. It should be updated by a town-wide public process BEFORE a new comprehensive zoning ordinance is put up for town vote. To avoid any "gap" in zoning, the emergency temporary zoning ordinance now in effect can be extended for one year by voters to give time for the Master Plan to be updated.

The proposed zoning ordinance is anchored in Dalton's 2011 Master Plan. The Master Plan is nearly a decade old, and as we understand it much of the work that went into it dates even further back.

The Master Plan is meant to provide the community's vision (and the basis and data) for effective land use regulation. It should reflect what the people currently want and the current land use patterns and land use outlook in town.

We believe the Master Plan should be up to date when a new zoning initiative is launched, particularly the first comprehensive zoning proposal like the one now proposed for Dalton. State law gives guidance here -- Master Plan updates should be made every 5 to 10 years (RSA 674:3,II). Under this guideline, Dalton's Master Plan is already approaching its "sell by" date.

As we see it, the old 2011 Master Plan has at least three key problems as the anchor for the new zoning proposal.

First, land use in town has evolved in a meaningful way over the last 10 years. There are significant new or expanded commercial activities in Dalton, including the rally car business and shooting business on Miller Road, the auto recycling/auto parts business on Route 142; the motorcycle repair and storage unit operations at the intersection of Dalton Road and Bridge Hill Road; the hospitality and events center at Ridge Road and Faraway Road; the newly-relicensed hydroelectric plant on the Connecticut River; new gravel pits in town; and various others. The character and balance of land uses have changed, more Dalton residents are involved with the business activities in town, the old Master Plan doesn't capture this, and this undercuts the usefulness of the plan as a guide for land use regulation.

Second, community views have almost surely changed on the key “tax base” question that’s so important to land use planning. The 2011 Master Plan is written from the perspective of then-prevalent fears about future development pressure with waves of new residents and new homes coming to Dalton. New home construction could potentially have lessened tax base pressures but the development wave did not come to pass.

Instead, land values went down, home values were largely flat and the town’s population actually decreased by more than 10%. (There has been a recent uptick due to the virus and people moving out of cities, but this may prove temporary.) The property tax burden on homeowners continued to grow, with spending increases at the school, county and town levels not offset by significant additions to Dalton’s tax base.

While the 2011 Master Plan briefly mentions the tax base, we believe many of today’s Dalton residents would, if asked in a new community survey, highlight the benefits of increasing the town’s tax base to reduce the tax burden on our families. These evolving views on how to build the town’s tax base and achieve more tax fairness are different from the emphasis of the 2011 Master Plan and should be taken into account in shaping Dalton’s future land use regulation.

Third, many residents’ views have certainly changed on the vision for future land use in Dalton and the role of zoning. The 2011 Master Plan paints the picture of a town-wide consensus on the vision for the town’s future land use (rural residential) and repeatedly asserts the need for and benefits of zoning. But that consensus has dissolved.

As the recent vote on the emergency temporary zoning ordinance showed, the town is split almost down the middle on whether to support a major new industrial development (the proposed Casella landfill) and the related question of whether to have town zoning. With such a sharp division in current town views, we believe it’s no longer appropriate to base a proposed new comprehensive zoning ordinance on an outdated Master Plan that puts forth a consensus that no longer exists. Via a fresh, new Master Plan visioning process, we should update the “sense of the town” on the critical land use issues.

To the extent that the 2011 Master Plan may remain relevant to the design of a new zoning proposal, we would also encourage a fresh read of the document and an effort to reflect more of its content in the new zoning ordinance. The 2011 Master Plan is a thoughtful, impressive piece of work and sets out many ideas worthy of consideration.

For example, the 2011 Master Plan clearly states the benefits of new commercial and industrial development in Dalton and even proposes the specific area for an industrial zone.

From the Master Plan:

“Commercial and industrial development may be good for the town, in order to diversify the tax base and reduce taxes on homeowners. However, to protect Dalton’s character, the town

should identify specific, limited areas for future commercial or industrial development, so that the vast majority of the town remains rural.” (Emphasis added.)

“Industrial uses – for example, factories, plants, quarrying and aggregates businesses – are generally inconsistent with Dalton’s rural environment, and for that reason it is the consensus of our community to limit industrial uses to a specific, appropriate area of Dalton. The town could define the area accessed off Route 116 in Bethlehem as the "industrial" land use area. This area should be the only area where new industrial uses are allowed. Existing industrial uses would be "grand-fathered," however any changes to the existing facilities must meet current codes and restrictions. The town should also adopt appropriate lot size and operational guidelines so as to allow effective industrial development in this area while at the same time protecting the town.” (Emphasis added.)

As detailed below, we believe this and other concepts from the 2011 Master Plan should be reflected in the proposed new zoning ordinance.

Based on these considerations, **we suggest that the Planning Board: (a) withdraw the proposed draft zoning ordinance because a Master Plan update is needed first; (b) start the Master Plan update process immediately with a view to finishing it within one year; and (c) to preserve the status quo and avoid a gap in zoning, propose to town voters a one-year extension of the emergency temporary zoning ordinance that’s now in effect (this one-year extension is specifically provided for in state law).**

3. The proposed new zoning ordinance, while impressive, is incomplete and makes only partial progress to what the town should expect in a permanent zoning ordinance. First, the proposal completely or largely fails to set out rules and standards for several important areas of land use regulation identified in the 2011 Master Plan and in the proposal’s own preamble and purposes sections. Second, many parts of a typical permanent land use regulation are not, as of yet, included in the proposal. Third, instead of a comprehensive and clear set of practical, workable rules for the land use issues facing the town, the proposed new zoning ordinance tosses large swathes of land use regulation into the difficult, time-consuming, discretionary and often inconsistent “variance” process. The Planning Board should have another year to work on permanent zoning to further develop the proposal. As noted above, this can be accomplished with no zoning “gap” by giving voters the option of extending the existing emergency temporary zoning ordinance for an additional year.

The 2011 Master Plan and the preamble and purposes sections of the proposed new zoning ordinance set out a specific list of important focus areas for Dalton’s land use regulations. These include:

- **Encouraging forestry and agriculture**
- **Encouraging recreation and tourist-related activities and businesses**

- **Commercial and industrial development to help the tax base**
- **Development that enhances Dalton’s town center**
- **Conserve open space and agricultural resources**
- **Protect natural and scenic resources from degradation**
- **Provide for recreational needs**
- **Preserve historic sites and structures**
- **Limit accumulation of junk and other eyesores**

While the proposed new zoning ordinance is an excellent start, it does not address any of these important focus areas, either at all or in any comprehensive way.

A permanent zoning ordinance should be expected to cover all of these topics with specific overlay districts, tailored regulations or other customary regulatory tools.

In our suggestions below we highlight potential approaches to three of these topics that may be most pressing in Dalton’s unique context: forestry and agriculture, commercial and industrial development, and junk and other eyesores. We respectfully suggest, however, that the necessary time be taken to address all of these topics in the new zoning proposal.

A customary permanent land use regulation would also usually contain a broader set of specific provisions such as:

- **A building code (incorporated by reference) and provisions for actual building permits**
- **Site plan regulations setting out clear standards on appearance, screening, access, parking and other matters for commercial and industrial developments**
- **Sign ordinance**
- **Rules for telecommunications towers**
- **Provisions on location and operations of gravel pits**

Again, none of this is included in the proposed permanent zoning ordinance, leaving unusually large areas of uncertainty for Dalton residents, landowners and potential new businesses.

We would highlight the difference between actual building permits and the “zoning permits” provided for in the proposed new ordinance. Building permits are based on a detailed building code and have the substantive purpose and effect of ensuring that new construction is safe and follows current building standards. In contrast, a “zoning permit” is merely a simple conclusion that a proposed building -- such as a new single family home -- is allowed under the zoning ordinance. It has nothing to do with safety or standards.

We question whether zoning permits have any real benefit. Indeed, in most towns with well-developed permanent land use regulation, there is no such thing as a zoning permit. If you

want to build a new house, you make sure this is allowed by applicable zoning and then you get a building permit for the actual construction.

“Zoning permits” may also have the unintended effect of confusing Dalton residents into thinking they’re getting an actual building permit. We address this in a separate section below.

The incomplete structure of the proposed new zoning ordinance could be summarized in this way. There is a very limited set of things Dalton property owners can build or do on their land “as a matter of right”. There is an additional, but still small, set of uses that are permitted by one-off “special exceptions. But large swathes of land use -- see above -- remain completely unaddressed by the proposed zoning ordinance and are thus presumptively not allowed. This means the only way a landowner can get permission is through difficult, time-consuming, one-off, discretionary and often inconsistent case-by-case “variance” rulings from the Zoning Board of Adjustment. And the deck is stacked against the landowner, particularly for business activities, because the preamble and purposes sections of the ordinance emphasize the town’s rural residential values and character.

We respectfully suggest that more work be put into the proposed new permanent zoning ordinance so that, like most permanent land use systems, it sets out simple, clear rules and standards for most land uses that may practically arise in Dalton. A rules-based approach is much more fair and predictable than tossing so much into the “variance” bucket.

A good example may be found in the town of Alstead’s zoning ordinance. There is a simple, clear “table of uses” drafted in an easily understandable way. We suggest a similar approach for Dalton.

https://632b4d2a-289a-4bfd-a518-d62759e2a69c.filesusr.com/ugd/4ec2c0_5ef867684774426badc3062ef8b92029.pdf

4. To lay the groundwork for building Dalton’s tax base to help residents manage the real financial burden of their growing property tax bills, the proposed new zoning ordinance should establish “industrial” and “commercial” zones. These zones should have clear development standards and appropriate limitations to protect the town’s character and the quality of life of town residents and at the same time encourage businesses to locate here.

Dalton is not a rich town. In fact, we are a poor town, with many residents who struggle financially and face real challenges in trying to keep up with constantly increasing property tax bills.

The town’s population shrunk by 10% from 2010 to 2018. Residential land and buildings (family homes) account for roughly 90% of the town’s tax base. All the open land doesn’t help much,

with about 87% of the town's land falling into the low-tax current use or permanent conservation categories.

What's the result? An ever smaller number of Dalton families pays more and more in property taxes each year as school, county and town spending rises.

The burden is particularly sharp because our families make less money than average. Dalton's median household income is only about two-thirds of the state average and the town's poverty rate is 9% (far above the state average).

The situation is serious and unsustainable, with ordinary Dalton families being financially squeezed and taxes increasingly becoming affordable only for wealthier segments of the population.

Data sources:

<https://fred.stlouisfed.org/series/MEHOINUSNHA646N>

<https://www.nhes.nh.gov/elmi/products/cp/profiles-htm/dalton.htm>

<https://www.revenue.nh.gov/mun-prop/property/equalization-2019/documents/current-use-alpha.pdf>

This property tax challenge can't be solved by careful expense management by our town elected officials because the property tax burden is not fully within the town's control. For each dollar of a Dalton family's property tax bill, 64 cents go to schools, 22 cents go to the county government and 14 cents go to the town's own operations. (2020, first tax bill.) Only the last item -- the town's own operations such as roads, emergency services and our local town offices -- is under the town's full control.

Schools are the largest tax expense. With regional schools governed by a regional school board, Dalton taxpayers end up paying their "share" of regional educational expenses without direct control over these expenses.

County taxes are second only to schools. Surprisingly, Dalton taxpayers pay much more for county government (whose services are largely invisible here) than we do for our own town services. The Coos County budget is very large and grows very fast. We vote as part of a group of towns for one county commissioner of a three-person county commission. A broad delegation of state representatives from the county exercises budget oversight. As a result, county expenses, the second largest part of Dalton's tax bills, is outside of local control.

The last part of our tax bills, the town's own spending for town services, is controlled by the selectboard and ultimately by Dalton voters. This part of the tax bill has been managed effectively, but it accounts for only 14% of the total bill.

With 86% of Dalton's property taxes outside of town control, our tax bills will continue to rise regardless of the best efforts of our town officials. What is to be done?

An appropriate way to help struggling taxpayers is to seek additions to the town's tax base with a focus on uses that more than pay for themselves (that is, they have high tax assessments and require relatively few government services). Industrial uses contribute the most to the town's finances on a net basis (high tax assessment with small expenses); commercial uses are in the middle (medium tax assessment with small expenses); and residential uses make the least net contribution (low tax assessment with associated school expenses).

With industrial and commercial land and buildings (other than utilities) at well less than 10% of the tax base, there is a great deal of room for tax base improvement by encouraging appropriate industrial and commercial development. And this depends substantially on land use regulation. Businesses will not locate where the rules are unclear, the costs of approvals are high or they are not welcome.

We suggest that the proposed zoning ordinance should be revised to add an "industrial" zone and one or more "commercial" zones. There should be clearly stated rules and limits on the facilities and businesses in these zones (such as a site plan review regulation) so as to provide clarity to businesses who would consider locating here and to protect the character of the rural residential areas.

Our suggestion is a significant variance from the approach taken in the proposed zoning ordinance. The proposed ordinance as it now stands would require a "variance" for any substantial new or expanded business use, while we propose instead a clear set of rules for development in new industrial and commercial zones.

This is an important difference. A variance is a difficult, convoluted, one-off approval that is granted or denied based on a long, complex series of different court cases. There are many uncertainties in "land use regulation by discretionary, one-off variances". This creates disincentives for businesses thinking about operating in Dalton and confusion and unequal treatment for residents looking for consistent protections. We believe businesses thinking of locating here, and town residents seeking protection from undue adverse impacts, would be better served by a simple, directly-worded, clear set of rules on industrial and commercial uses.

As per the 2011 Master Plan, an appropriate area for the industrial zone may be the block of land accessed from Route 116 in Bethlehem. Another potential industrial or commercial area is the location of the now-multiple gravel pits on Route 142. Other commercial areas could include the area of the Dalton Road/Bridge Hill intersection and parts of French Road. The town center (area of the old Town Hall, the fire station and the old school/town offices) could be a limited special commercial zone aimed at attracting low impact businesses that support the historic town center.

These proposals would require some additional drafting. We would ask the Planning Board to do this work so that, rather than the challenges of the “variance” approach, our residents and potential new businesses have the clarity and increased certainty and protections of a carefully considered set of rules.

Please note: by including appropriate industrial and commercial zones as we are suggesting, the town is in no way saying “yes” to Casella or giving them a foot in the door. This has nothing to do with Casella, a topic we address below, or with any other potentially high-impact, invasive uses. We are simply suggesting changes to the proposed ordinance to make it more workable in terms of expanding the tax base by encouraging appropriate commercial and industrial development.

5. For literally hundreds of years Dalton has featured active agricultural and forestry-based land uses. Dalton’s 2011 Master Plan and the emergency temporary zoning ordinance supported these activities as do most comparable small New Hampshire towns. However, with one small exception, the town’s proposed new zoning ordinance makes no provision for agriculture or forestry. While state law expressly protects many agricultural and forestry activities as a matter of right or by presumption when a town zoning ordinance is silent, to avoid confusion the proposed new ordinance should be changed so that “agriculture” and “forestry”, with their broadest state law meanings, are expressly permitted in Dalton.

Dalton’s 2011 Master Plan highlights the importance of agriculture and forestry, uses which have long been part of Dalton’s history and culture.

“As traditional land uses in Dalton, forestry and agriculture should be encouraged in the rural land use area.”

The emergency temporary zoning ordinance, adopted by voters last year, is also clear:

“674:26 Agricultural Use Under Interim Zoning Ordinance. – “Agricultural use” shall mean land used for agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, silviculture and animal and poultry husbandry. Any such uses are permitted under an interim zoning ordinance [note: as a matter of right, with no permit, but slaughtering and commercial raising of animals requires special exception]...”

We’ve surveyed the zoning ordinances of many small New Hampshire towns comparable to Dalton, including Alstead, Bath, Benton, Brookfield, Dorchester, Gilsum, Jefferson, Lyman, Milan, Nelson, Stratford and others.

Most of the comparable small towns we looked at expressly authorize agriculture, forestry and related and incidental activities “as a matter of right”, with no permits needed.

Here are just a few examples:

Piermont:

PERMITTED USES [note: as a matter of right, with no permit]

2.1 Agriculture -- Agriculture, including dairying, poultry raising, or other generally accepted land uses for farm purposes is permitted in any district. ...

2.4 Forest Products -- The growth and harvesting of forest products is permitted in any District providing the disposal of slash conforms to the requirements of RSA 224:44-b.

<http://townofpiermontnh.org/wp-content/uploads/2014/03/Zoning-Ordinance-2017.pdf>

Alstead:

Both “Agriculture” and “Forestry” allowed in all districts as a matter of right, with no permit, per Alstead’s very useful, practical approach of a simple “table of uses”.

https://632b4d2a-289a-4bfd-a518-d62759e2a69c.filesusr.com/ugd/4ec2c0_5ef867684774426b_adc3062ef8b92029.pdf

Dorchester:

A. Rural District 1. Uses a) The following shall be permitted uses in the Rural District [note: as a matter of right, with no permit]: 1) One and two-family dwelling units, including single unit manufactured housing. 2) Home business and cottage industry. 3) **Agricultural and Forestry enterprises and uses.** 4) Church, including parish house and other religious uses. 5) Community center, park or playground operated by governmental unit 6) **Accessory uses customarily incidental to permitted uses.** 7) One Accessory Dwelling Unit (ADU) per Single Family Dwelling Unit, as that term (ADU) is defined in Article X. (Emphasis added.)

<https://www.townofdorchester.org/resources/32be3c61-d0d7-4ea7-b996-91d03bd004ef>

These local zoning provisions are informed by state law, including the definition of “agriculture” (RSA 21:34-a; note that agriculture includes forestry); the mandate that farming shall not be prohibited in any zoning district (RSA 674:32-c); the state law presumption that all other agricultural operations and activities are permitted as a matter of right when not specifically addressed (RSA 674:32-a); special protections for agritourism (RSA 674:32-d); and limited grants of zoning authority over certain agricultural activities, subject to an appeals process (RSA 674:32-b).

As the drafters of Dalton’s proposed zoning ordinance consider any particular limitations on agriculture, they will want to be fluent with the details of these state law provisions to ensure the ordinance is compliant.

The new zoning proposal does have one agriculture provision: a set of standards and requirements for raising or slaughtering animals or poultry for commercial purposes. This is taken from the emergency temporary zoning ordinance. This provision could be maintained by including the bracketed language in our proposal below. **However, while a special exception might be appropriate for a slaughtering operation, we do not believe any approval should be required for simply raising livestock for commercial purposes. Dalton families should be allowed to raise a few beef cattle and sell them without being caught up in zoning!**

Taking into account the importance of encouraging agriculture and forestry, the approach of zoning ordinances in other towns, applicable state law provisions and the structure of Dalton’s proposed new zoning ordinance, we would propose these specific additions to the proposed new zoning ordinance to address agriculture and forestry.

Add to the list of purposes:

“Encourage the Traditional Uses of Agriculture and Forestry”

Add to the definitions:

“Agriculture: Shall have the meaning set forth in RSA 21:34-a as it may be amended from time to time. For the avoidance of doubt, this includes, without limitation, all operations or activities of a farm, any practice or activity on the farm incident to, ancillary to, or in conjunction with such farming operations, agritourism, and farm roadside stands provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.”

“Forestry: Means the management, growing, harvesting, sale and transport of trees, timber, logs, pulp, firewood, woodchips and other wood products and any practice or activity incident to, ancillary to, or in conjunction with such forestry operations, including as set forth in RSA 21:34-a as it may be amended from time to time.”

Add to land use regulations:

“Agriculture and Forestry are permitted in all districts as a matter of right [, subject to the requirements of Article IV, 4(a) regarding the [raising or] slaughtering of animals or poultry]. Such uses, activities and operations shall comply with all applicable federal and state laws, regulations and rules, including best management practices.”

6. The new zoning proposal should not “hide” from the Casella landfill question. If town officials believe the consensus in town is to “just say no to Casella” and they believe this can be done via zoning, then let’s pursue this approach by having an up and down vote on an ordinance that directly prohibits this type of landfill. Taxpayers shouldn’t have to spend potentially millions of dollars on lawsuits and legal fees by stringing out a long, expensive litigation process of “zoning variance” denials and court appeals (which is what we would expect under the new zoning ordinance as currently proposed). If our town officials tell us zoning is not a silver bullet for the Casella proposal, then what’s the rush to vote on a new comprehensive zoning ordinance now?

Nothing in the new zoning proposal directly or indirectly addresses the Casella landfill proposal. Instead, the proposed ordinance allows only residential and limited small commercial uses, sometimes by right and sometimes by special exception. Any other use requires a discretionary, one-off “variance”. This includes larger commercial uses (no matter how non-invasive), any industrial use and a large industrial facility such as the Casella proposal.

How might this play out? If Casella applies for a variance, we believe the variance would likely be denied because the wording of the proposed zoning ordinance and ordinance’s references to the 2011 Master Plan are stacked heavily against large industrial uses. After the variance is denied, Casella would likely appeal to the lower courts, there would be a lower court decision, the losing party (Casella or town) would appeal to the state supreme court, the state supreme court would deal with some of the issues and remand the case back down to the lower court for more proceedings, there would be another lower court decision, more appeals, and on and on.

If the experience of the town of Bethlehem is an example, this litigation process could run for many years and cost Dalton taxpayers literally millions of dollars.

There’s a different way to do this. Here’s a direct approach, from the Town of Milan’s zoning ordinance:

“5.04 Uses Not Permitted

- 1. Nuclear Power Plants**
- 2. Woodchip Power Plants**
- 3. Commercial Waste Sites and Landfill Operations (emphasis added)**
- 4. Tire Dumps**
- 5. Manufactured Housing Parks**
- 6. Junk Yards”**

http://www.townofmilan.org/images/Zoning_Ordinance1_20133.pdf

This approach does not, of course, provide a guarantee against large legal bills for taxpayers. Casella could ask a court to invalidate this ban on commercial landfills. But the question for the

court would be simple and clear, and the town would not have to go through a lengthy, expensive, and we believe largely pre-determined “variance” process.

Which approach is better for the town and for taxpayers? To answer, more information from our town officials is needed .

We would respectfully ask the Planning Board and the Selectboard to tell Dalton residents whether Dalton town zoning can “stop” Casella.

If the boards tell us yes, zoning can stop Casella, then we would ask the boards to tell Dalton residents why the approach of the current zoning proposal (force Casella to file a “variance” request and then deny it and litigate) is better than a simple, clear, Milan-like “no” in the proposed zoning ordinance.

Is there some tactical advantage to the “variance” approach? Can this be explained to town voters?

If there isn’t any such advantage, why not let town voters have a simple up and down vote on a clear zoning ordinance that prohibits the Casella landfill proposal?

And if the boards tell Dalton residents that in fact the town can’t use zoning to “just say no” to Casella, because Casella is right that the town’s zoning authority is largely preempted by the state’s solid waste laws, then what’s the rush to vote on a comprehensive new zoning ordinance now?

Why wouldn’t the town instead spend the next year listening to the views of Dalton residents about the key land use questions facing the town and making the needed updates to the Master Plan? And consider a new zoning ordinance only after the updated Master Plan is in place?

Until these very basic questions are answered, we expect many Dalton residents will be unable to make a decision on whether to support the new zoning proposal.

7. Dalton is a “live and let live” town without a strict regulatory culture. While any zoning requires some cultural adjustment, the proposed new zoning ordinance may be perceived as too restrictive, discretionary and burdensome. In comparison to zoning ordinances in comparable towns, Dalton’s proposed zoning has a very short list of permitted land uses. Instead it relies heavily on one-off special exceptions or one-off, discretionary, judgmental approvals (variances) for vast swathes of customary land uses. Standards that are too strict or too broadly worded give an effective veto over many appropriate land uses and create unexpected zoning traps for the unwary Dalton property owner. The proposed ordinance should be reviewed and reworded, provision

by provision, to try to make it more rules-based, less one-off/discretionary and less restrictive. This will be a better fit for the town.

The examples below show just some of the many situations where, under the proposed new zoning ordinance, a Dalton resident can't do something on her land as a matter of right but will instead need a "zoning permit" from the selectboard or a "special exception" or a discretionary "variance" from the Zoning Board of Adjustment (ZBA).

- a. **Can I add a small 4'x8' deck to the outside of my house?** **No.** You'll first need to get a "zoning permit" from the selectboard.
- b. **I'm tired of losing the electricity during storms. Can I get an outdoor generator installed at my house?** **No.** You'll first need to get a "zoning permit" from the selectboard. [A generator is not an "outbuilding" and doesn't fall into any other category permitted as a matter of right.]
- c. **Can I put a tiny storage shed (6'x6') out back on a concrete slab I pour myself?** **No.** You'll first need to get a "zoning permit" from the selectboard. [Poured concrete slab.]
- d. **Can I set a granite bench in the front yard? A permanent metal fire pit out back? A jungle gym, climbing wall and slide for the kids, anchored to concrete piers? A permanent deer hunting platform stand I make myself and lag bolt onto some trees?** **No.** You'll first need to get a "zoning permit" from the selectboard. [None of these items is an "outbuilding" and the proposed ordinance makes no provision for these kinds of structures as a matter of right.]
- e. **I plow driveways in town during the winters as my main job. I keep my truck at home, do maintenance on it, and take customer calls and keep my business books at home. Can I put a sign outside saying "Joe's Plowing, call 837-2222"?** **No.** You'll first need to get a "zoning permit" from the selectboard. [The business is not "consulting type services" so a permit is needed regardless of the sign. And the sign would be "outside evidence of the business".]
- f. **I fix small engines. My business is word of mouth. Customers bring the engines to me when they're not working and come over to pick them up after I get them fixed. Can I do this business at home?** **No.** You'll first need to get a "zoning permit" from the selectboard. [Small engine repair is not a "consulting type service" and customers come to the home.]
- g. **I make handmade craft jewelry and wooden games and sell them on the internet via Etsy. Can I do this business in my home and schedule the UPS truck to come to my house three times a week to make pick-ups? I live on a back road that has only a couple of other houses.** **No.** You'll first need to get a "zoning permit" from the selectboard or a "special exception" or a discretionary "variance" from the ZBA. [The selectboard may not grant the "zoning permit" if they find that the UPS pickups on a quiet road are "objectionable effects". The ZBA may not grant the "special exception" if the property owner can't "show by compelling evidence" that this use won't "cause...traffic" beyond "de minimis" amounts. If a "special exception" is not granted by the ZBA, the

only way to proceed would be through an application for a discretionary “variance” (and this might not be approved by the ZBA, particularly if the neighbors complain.)]

- h. I’ve been home all day for several months now because of the pandemic. Can I make some money by doing telephone or internet sales from my house? No.** You’ll first need to get a “zoning permit” from the selectboard. [Sales is not a “consulting type service”.]
- i. My daughter’s business is management consulting. She came up from the city to live with me because of the virus. To get some peace and quiet, can she do her management consulting business from the house next door where her grandmother used to live? Grandma moved permanently to a retirement home and the house is empty. No.** You’ll first need to get a “special exception” from the ZBA. [Even though this is a “consulting type service”, “home based business” is defined as a business operating out of the residence of the business owner or a family member, and the empty house is neither. So the selectboard can’t issue a “zoning permit” for this business and a “special exception” is needed.]
- j. Can I keep a rooster at my house? Maybe not, particularly if your neighbors live close by and complain.** You may need to get a discretionary “variance” from the ZBA. [Depending on how the ZBA feels about this, they could say “no” if they find that the rooster’s crack-of-dawn crowing constitutes prohibited “undue noise” and decide not to loosen this standard.]
<https://www.seacoastonline.com/news/20190930/roosters-crowing-violates-portsmouth-zoning-rules>]
- k. I grow vegetables in my garden, make apple cider and honey, pick berries, make wreaths and holiday decorations and harvest other natural products from my land. Can I put up a year-round farm stand in front of my house and sell what I produce? No.** You’ll first need to get a “zoning permit” from the selectboard or a “special exception” or discretionary “variance” from the ZBA. [Year-round farm stands aren’t permitted as a matter of right and seasonal ones aren’t either if the structure is on a concrete slab or footing or if the farm stand provides the majority of income. The selectboard would not issue the “zoning permit” if they determine there are “objectionable effects”. The ZBA would not issue a “special exception” if the property owner can’t prove the farm stand won’t generate more than “de minimis” traffic or other effects. In that case the only way to proceed would be to apply for a discretionary “variance”.]
- l. I have a 5-acre lot with 3 acres of good fields and pastures out back. Can I buy a beef cow, fatten it up and then sell it? No.** You’ll first need to get a discretionary “variance” from the ZBA. [A “special exception” won’t work because your lot is too small. And even if you had 100 acres you’d still need a “special exception” from the ZBA.]
- m. Can I start up a corn maze for paying customers on the 10-acre field I own across the road? The road is dead-end. I live at the end of the road and there are three houses before mine. No.** You’ll first need to get a “special exception” or a discretionary “variance” from the ZBA. [This is not a home-based business because the lot across the road is not where the home is located and so a “zoning permit” won’t work. A “special exception” may not be approved by the ZBA if the property owner can’t “show

by compelling evidence” that this use won’t “cause...traffic” beyond “de minimis” amounts. If a “special exception” is not granted by the ZBA, the only way to proceed would be through an application for a discretionary “variance” (and this might not be approved by the ZBA, particularly if the neighbors complain).]

- n. **I live on Dalton Road and I just inherited a house on Forest Lake. Can I run it as an Airbnb?** **No.** You’ll first need to get a “special exception” from the ZBA. [Airbnb doesn’t fall within the “home-based business” definition.]
- o. **I plan to subdivide a house lot out for my daughter. Can I have a logger come in and clear out the trees?** **No.** You’ll first need to prepare and file the subdivision application with the Planning Board. [Subdivision applications are required “before any land clearing”.]
- p. **My daughter and her best friend are up here from the city because of the pandemic. Her friend works remotely for Amazon on a full-time basis. Can her friend conduct her Amazon business out of my house?** **No.** You’ll first need to get a “variance” from the ZBA. [This doesn’t qualify as a home-based business because the friend is not part of the family. A “special exception” for a “small business” will not work because the business is for Amazon, a publicly-traded company.]
- q. **I own a small lot with 170’ of road frontage. The lot was created many years ago, before Dalton had any land use regulations. Can I build a house on the lot?** **No.** You’ll first need to get a discretionary “variance” from the ZBA.

This list could go on and on but we’ll stop here.

We believe many of these land use situations will be “traps for the unwary”. Many Dalton property owners will simply not know that these activities are prohibited without an advance approval from the town. Others may not make any attempt to comply with the zoning rules because they have a negative reaction to the complexities, burdens and perceived heavy-handedness of the regulations.

If these unintended effects come to pass, a culture of non-compliance may emerge. This would place a large burden on the selectboard, which is responsible for zoning enforcement.

Would a proposed new zoning ordinance with a lighter regulatory touch be a better solution? We would respectfully recommend the proposed ordinance be reviewed, provision-by-provision, with this aim.

We have a particular concern about the standards for approval of home-based and small businesses. We see these standards as inconsistent, sometimes too strict and without any logical tiering.

These are the relevant provisions:

- **“De minimis: too trivial or minor to merit consideration, especially in law.”**

- “Undue: beyond what is reasonably or typically expected in a rural residential environment.”
- General prohibition: “No use shall be permitted which will cause undue noise, traffic, dust, pollution, emission, adverse effect on adjacent properties, etc.”
- Standard for zoning permit for home-based business: “No objectionable effects result from a home-based business, such as, but not limited to, excessive noise, traffic, dust.”
- Standard for special exception for small business: “The proposed use shall not cause hazard to health, property values or safety through fire, traffic, unsanitary conditions or through excessive noise, vibration, odor or other nuisance feature.”
- Standard for all special exceptions: “The applicant can show by compelling evidence that the business will not, and cannot reasonably be foreseen to, cause noise, traffic, pollution, odor, or diminution of property values, beyond de minimis amounts.”

Our suggestions:

(x) The standard for all special exceptions is too strict. “Compelling evidence” is too tough a burden on applicants. And “de minimis” is a flawed and circular definition -- if there is any discussion of, for example, noise or traffic as part of the ZBA proceeding, then the noise or traffic question is obviously not “too trivial or minor to merit consideration”. We suggest deleting both “compelling evidence” and “de minimis”, and revising this standard to it more closely follows the general prohibition on “undue” adverse effects. Without these changes, we believe it may be nearly impossible for an applicant to satisfy the special exception standard, particularly if there are any complaining neighbors.

(y) Why is a separate adverse effects standard needed for special exceptions for small business? Having two competing definitions -- the general special exception one and the small business special exception one -- creates confusion. We would suggest deleting the separate standard for small business.

(z) The “no objectionable effects” standard for zoning permits for home-based businesses is way too strict. “No objectionable effects” has a plain meaning. If any single objectionable effect can be found, the zoning permit cannot issue. This creates an effective veto over zoning permits for home-based businesses. We would again suggest using a formulation with “undue”, similar to the general prohibition.

8. Dalton’s rural town character is degraded by accumulations of junk cars, burned out, collapsed or dilapidated buildings and travel trailers or RVs used for permanent living without basic sanitary features. As recommended by the 2011 Master Plan, the proposed new zoning ordinance should include specific provisions aimed at cleaning up the town’s junk yards and dilapidated buildings. The zoning proposal should also address permanent use of camping trailers and RVs.

We believe Dalton's proposed new comprehensive zoning proposal should address town eyesores such as junk yards, dilapidated buildings and travel trailers/RVs used for permanent living when they don't have adequate sanitary facilities. These features are not only eyesores. They can be safety hazards and they also diminish property values and the town's sense of identity and pride.

The 2011 Master Plan was clear on these land use issues:

“More broadly, our community feels strongly about protecting the attractive rural, visual appeal of Dalton. To that end, the town should consider adopting appropriate and reasonable guidelines to limit the accumulation of junk and other eyesores. This may be one of the most important ways to protect the character of the rural/residential areas of town.”

“It is especially important that in residential areas unsightly collections of junked automobiles or other eye sores should be discouraged.”

As noted above, we've surveyed the zoning ordinances of small New Hampshire towns comparable to Dalton.

Most of the comparable small New Hampshire towns we looked at have clear prohibitions in their zoning ordinances on junk yards, dilapidated buildings and permanent living in camping trailers/RVs.

Here are some examples. We believe these would be appropriate starting points for drafting provisions to add to the proposed zoning ordinance.

Junk yards

“Junk Yard. Any place of storage or deposit, whether in connection with another business or not, where two (2) or more unregistered, old or second-hand motor vehicles, no longer being used nor intended to be used or in condition for legal use on the public highways are held. This includes vehicle parts equal in bulk to two or more vehicles.”

“Uses Not Permitted. [1]. Dumping will not be permitted. Owners of property may use their own land for disposal of their own refuse in conformity with State law. [2]. Junk yard or outdoor storage of unregistered or inoperative automobiles.”

http://www.lymannh.org/sites/g/files/vyhlf821/f/uploads/lymanzoningordinance_final_mar_14_2017.pdf

Dilapidated buildings

“DILAPIDATED BUILDINGS. No owner or occupant of land in any district shall

permit dilapidated buildings, buildings damaged by fire or other catastrophe to remain, but must remove, repair or replace such building, bringing it into conformity with all then existing federal, state and local laws within one year.”

https://drive.google.com/file/d/0B5n8_bddeb0bakstMzFXOGFTQ3FRODNaakJmN1Q1Zw/view

Camping trailers/RVs

“RECREATIONAL VEHICLES 1. It shall be unlawful to park a recreational vehicle except in accordance with the following regulations:

“A. In a campground, which meets all state standards.

“B. (1) The owner of a recreational vehicle or tent may place it on his own lot and use it for living quarters on a temporary basis without a permit, provided that there is a dwelling unit or mobile home on the lot which has adequate provision for sanitary disposal of sewage waste and refuse...

“(2) Any other recreational vehicle or tent may be placed on a lot and used for living quarters on a temporary basis, provided such temporary structures are not permitted to remain occupied more than 180 days in any one calendar year... No more than two recreational vehicles or tents will be permitted on a lot. The permit shall be prominently displayed on such recreational vehicle or tent. The application shall be signed by the land owner and the owner of the trailer or tent, and shall demonstrate to the satisfaction of the Board of Selectmen that adequate provisions have been made for sanitary disposal of sewage, waste and refuse, either in a existing residence or through a self-contained unit...

“E. Recreational Vehicles shall include, but not to be limited to, the following (as defined in RSA 216-1:1 V ffl): (1) Motorhome or van (2) Pickup camper (3) Recreational Trailer (4) Tent Trailer.”

http://www.bath-nh.org/uploads/5/1/5/6/51567281/zoning_ordinance_-_ammended_02142014.pdf

9. The proposed new zoning ordinance speaks in terms of “zoning permits” issued by the selectboard. This is nothing more than a judgment that a building project is allowed under town zoning. When a Dalton property owner gets a zoning permit to construct a house, this is not a “building permit”, “certificate of occupancy” or any assurance that the project meets applicable state building code standards. The property owner could still face enforcement actions for building code violations or encounter financing problems because building codes aren’t met. Town boards should explain these risks to property owners.

The New Hampshire state building code applies to all construction in New Hampshire. Towns have the option to adopt the state building code (and additional codes) and establish an enforcement mechanism including the issuance of building permits and certificates of occupancy.

As best we can tell, Dalton has not adopted the state building code or set up an enforcement mechanism, building permits or certificates of occupancy. Thus, the question of whether a new home, a new garage or a major renovation “meets code” may be left rather up in the air. While state officials technically have administration and enforcement authority, this authority may not be regularly used in Dalton.

There is potential for confusion by the “zoning permit” mechanism in the proposed zoning ordinance.

It should be made clear to property owners that when the selectboard issues a zoning permit, this says nothing whatsoever about whether building codes are met. The zoning permit is not a building permit or a certificate of occupancy.

As recommended by the New Hampshire Municipal Association:

“If the municipality is not enforcing the state building code, make sure that owners, contractors and lenders are not misled by the documents and procedures used to administer the zoning ordinance or other regulations.”

<https://www.nhmunicipal.org/town-city-article/legal-q-and-local-administration-state-building-code>

10. The Planning Board should explain to Dalton residents that the proposed new zoning ordinance is now “in effect” for all practical purposes even though it has not yet come up for a town vote. Under state law, as of the day the new zoning proposal was published for comment (November 22), town residents can no longer apply for permits for any project that would not be allowed under the new ordinance. They’ll have to wait until the new ordinance is voted on at the March town meeting (or withdrawn earlier).

What does this mean? It means if anyone is hoping to build something in Dalton they can no longer rely on the emergency temporary zoning ordinance that was previously adopted by the town. They now need to study the provisions of the proposed new zoning ordinance. They can safely proceed only if their project can be constructed “as a matter of right” under the new ordinance.

See RSA 676:12. <http://www.gencourt.state.nh.us/rsa/html/LXIV/676/676-12.htm>.

11. Zoning administration -- that is, zoning permits, inspections, enforcement and other routine determinations -- should be fair, objective, transparent and 100% free of politics. But with the town once again split into competing factions, there may be a concern that applying the zoning ordinance could become part of factional battles. This can be addressed by having an independent zoning administrator rather than leaving zoning determinations to the elected selectboard. If voters approve, administration of town zoning should be placed, to the maximum extent possible, in the hands of an independent appointed zoning administrator who is widely recognized as a fair, competent, non-political person.

This approach is taken by a number of other New Hampshire towns. For example, here is the zoning administrator provision from the town of Alstead:

“C. ZONING OFFICER

“The administrative and enforcement officer for this ordinance shall be known as the Zoning Officer and shall be appointed by the Board of Selectmen. The Zoning Officer shall administer this Ordinance literally and shall not have the power to permit any use of land or Buildings which does not conform to the provisions of this Ordinance. Until a Zoning Officer is appointed or if a vacancy exists in the position of Zoning Officer, the Board of Selectmen shall perform these duties.”

“D. ENFORCEMENT AND PENALTIES

“1. This Ordinance shall be enforced by the Zoning Officer, if any Building or use of land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of this Ordinance. The Zoning Officer shall institute, in the name of the Town, any appropriate action, injunction, or other proceeding to prevent, restrain, correct or abate such construction or use or to prevent in or about the premises any act, conduct, business, or use constituting a violation.”

https://632b4d2a-289a-4bfd-a518-d62759e2a69c.filesusr.com/ugd/4ec2c0_5ef867684774426b_adc3062ef8b92029.pdf

If there is a desire for more insulation from the political process, the zoning administrator could be required to be appointed from a list of nominees submitted by the Planning Board or the Zoning Board of Adjustment or both boards jointly.

Thank you in advance for your consideration of our comments. Please feel free to contact us if you have any questions or if we can provide any additional information. We would be happy to offer our time to help with any drafting if you feel we could be of assistance!

With best regards,

Sandy and Jim

Sandy and Jim Dannis

Cc: Selectboard (selectmen@townofdaltontown.com, admin-assistant@townofdaltontown.com)