

Dalton: Casella Wants To Negotiate With Town, Selectmen Say No

Public Hearing On Draft Zoning Ordinance Scheduled For Dec. 9

- Robert Blechl
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A public hearing has been scheduled for Dec. 9 on Dalton's proposed zoning ordinance, but with COVID-19 health and safety guidelines, it won't look like the town's July 2019 hearing on emergency temporary zoning, pictured here. (File photo by Robert Blechl)

As a public hearing on Dec. 9 nears on Dalton's draft zoning ordinance, which will go to a final vote at a town meeting in March, Dalton selectmen told Casella Waste Systems they wouldn't negotiate the company's proposed host community agreement (HCA) until it files a local zoning application.

That did not sit well with Casella representatives, who are pushing selectmen to talk and are charging them with not being fully transparent with residents.

Shortly after the company presented the HCA to the town on Aug. 31 — an agreement it says would provide the town with \$71 million in payments and services during 25 years, including \$2 million a year in direct payments — selectmen sought a legal opinion from the town attorney to determine if Casella will need to file a zoning application with the town in addition to the permits it is filing with the state.

At a special town meeting in July 2019, in response to a proposed 180-acre landfill near Forest Lake State Park, Dalton residents passed emergency temporary zoning, allowed under New Hampshire statute until it lapses after the second annual town meeting, voters approve a permanent ordinance, or voters continue with an additional year of temporary zoning.

In a Nov. 2 letter to Casella Engineer John Gay, Casella Division Manager Kevin Roy, Casella Regional Vice-president Brian Oliver, and Dalton property owner, Douglas Ingerson Jr., the Dalton Board of Selectmen said, "Upon consultation with town legal counsel, the Select Board has determined that submission of a land-use plan/building plan zoning application is required under the provisions of the emergency temporary zoning ordinance enacted by the citizens of Dalton."

They said, "The Select Board will not consider or commence negotiation of a host community agreement until a zoning application has been submitted. The town will not finalize such an agreement without appropriate zoning approvals in place."

In a Nov. 16 response letter, Oliver said the planned landfill is in the early state permitting process. Casella does not yet own the Ingerson property, and the planning board is proposing a new ordinance for the town meeting. It is unclear what the town's zoning regulations will look like six months from now.

It is also undetermined what form of approval a landfill would need from the town, said Oliver, who asked the board, in its role as a zoning enforcement officer, to inform the company if it believes a variance or a special exception would be required, and to explain the reasoning.

The New Hampshire Department of Environmental Services regulates the siting, construction, and operation of landfills. Local land use regulation is substantially limited by the state's regulatory framework and cannot have an exclusionary effect, said Oliver.

(Several New Hampshire Supreme Court rulings do give towns authority, such as the authority to designate a landfill district and determine how large it can be. Casella sought a 100-acre expansion to Bethlehem's 61-acre landfill district through an amendment to that town's zoning, but Bethlehem voters twice rejected it, thus prompting the company to look to Dalton for a new landfill site).

In his letter, Oliver said Dalton's current draft ordinance does not appear to address land-filling as a use. Depending on how the ordinance is interpreted, it either allows land-filling as a matter of right or special exception or purports to prohibit it.

"Negotiation of the HCA gives the town the opportunity to obtain contractual terms that are outside of its regulatory authority," wrote Oliver. "This is not something we are going to resolve by exchanging letters."

Now that the board has taken a position, he said the company renews its suggestion to discuss attorneys about the scope of the town's zoning authority so Casella and the town can better understand each other's interpretation of the law and identify any issues in dispute.

"We ask that as officials elected to represent the entire town, you consider your decision to impose conditions on further discussion of the draft HCA," Oliver said to selectmen. "In our conversations with many of your constituents, a recurring theme is that the board has not given the public its perspective on the terms of the HCA ... There is no legal or logical reason to defer public discussion or negotiation of the draft agreement until the zoning issue is resolved, and imposing artificial conditions on simply having discussions and hearing from the public reduces the opportunity for Dalton residents to gather the information they need to fully understand this project."

Public Hearing And Ordinance