

THE STATE OF NEW HAMPSHIRE

COOS, SS.

SUPERIOR COURT

Adam Finkel and Jon Swan

v.

James Dannis, Pam Kathan, Vic St. Cyr, Robin Pilotte, and the Town of Dalton

Case No. 214-2023-CV-00021

**MOTION TO DISMISS**

NOW COME defendants James Dannis, Pam Kathan, Vic St. Cyr, and Robin Pilotte, by and through counsel, and respectfully moves that this Honorable Court DISMISS the complaint in this matter, and in support thereof states as follows:

**FACTS ALLEGED BY PLAINTIFFS**

1. The plaintiff Adam M. Finkel is a member of the Dalton Planning Board. *Decl.* at ¶1.
2. The plaintiff Jon Swann is a member of the Dalton Conservation Commission. *Decl.* at 2.
3. The Town received a petition containing the requisite number of signatures pursuant to RSA 673:18, II, putting the following question to Dalton voters by official ballot at the upcoming annual town meeting: “Are you in favor of abolishing the planning board as proposed by the petition of the voters of this town?” *Decl.* at Exhibit #1, *Compl* at ¶21.
4. The Town received a petition containing the requisite number of signatures pursuant to RSA 36-A:1, to put the following question to Dalton voters at the upcoming annual town meeting: “Are you in favor of abolishing the conservation commission and rescinding the provisions of RSA Chapter 36-A as proposed by the petitioner of the voters of this town?” *Decl.* at Exhibit #2, *Compl* at ¶21.

5. The plaintiffs allege that defendants Dannis, Kathan, St. Cyr, and Pilotte, collectively referred to as the “Article Petitioners” have drafted and circulated the two petitioned warrant articles described above. *Compl.* at ¶15.
6. The plaintiffs allege that “the Article Petitioners are seeking.
7. The plaintiffs allege that “the Article Petitioners are not actually seeking to abolish the two land use boards,” *Compl* at ¶22, but rather “to reconstitute the Planning Board and the Conservation Commission with members who will support the landfill project.” *Compl* at ¶17.
8. The Complaint asserts that this reconstitution of the Planning Board and Conservation Commission is “the true purpose of the Article Petitioners’ proposed warrant articles....” *Compl.* At ¶25.

### **LEGAL STANDARD ON MOTION TO DISMISS**

In reviewing a motion to dismiss, the standard of review that must be applied by this Court is “whether the allegations in the [plaintiffs’] pleadings are reasonably susceptible of a construction that would permit recovery.” *Tessier v. Rockefeller*, 162 N.H. 324, 329 (2011) (quoting *Gen. Insulation Co. v. Eckman Constr.*, 159 N.H. 601, 611 (2010)). “The court must vigorously scrutinize the complaint to determine whether, on its face, it asserts a cause of action.” *Id.* (quoting *Williams v. O'Brien*, 140 N.H. 595, 597 (1995)) (emphasis and quotation omitted). The Court must “assume the [plaintiffs’] pleadings to be true and construe all reasonable inferences in the light most favorable to [them].” *Id.* However, the Court need not, “assume the truth of statements in the [plaintiffs’] pleadings... that are merely conclusions of law.” *Id.* The Court must “then engage in a threshold inquiry that tests the facts in the petition against the applicable law, and if the allegations constitute a basis for legal relief, we must hold that it was improper to grant the motion to dismiss. *Id.* (quoting *Eckman Constr.*, 159 N.H. at 611 (citations omitted)).

## ARGUMENT

The plaintiffs are not entitled to the relief sought in the complaint. Nothing in the statutory scheme, judicial precedents, or history and tradition of town meeting authorizes this Court to strike a warrant article from the town meeting warrant: (1) based on the anticipated or speculative actions of future town meetings or the subjective future intent of individual selectboard members, petitioners, or voters; or (2) based on a claim that the language in an article does not describe each and every potential effect passage of an article may have, either in the present or in the future. For these reasons, the complaint should be dismissed.

Our State's long tradition of self-government through town meeting has been called by eminent authorities "as pure a democracy as anywhere exists...." Loughlin, *Local Government Law*, §211 (Third Ed.2011). In recognition of the democratic nature of town meeting, courts reviewing actions taken at town meeting in our state have long placed substance over form and have construed language liberally to ensure that the will of the people can be put into effect. See, *Town of Goshen v. Casagrande*, 170 N.H. 548, 551 (2018); *McMahon v. Town of Salem*, 104 N.H. 219, 220 (1962)("town meetings do not consistently express their purposes with legal precision and nicety and...votes adopted by such meetings will be liberally construed to give legal effect to language inartfully employed to express the corporate purpose")(internal quotation omitted). These precedents reflect our state's profound dedication to the principle that the annual direction of town government should be decided by the people assembled together as a body politic, and should not be held hostage by lawyers' arguments. Fortunately, in this case, the statutes governing town meeting are neatly aligned with the determination of the plain intention of the articles and against the claims of the plaintiffs

The right of citizens to present petitions for consideration by their fellow town residents is well-established and jealously protected. RSA 39:3 provides that “[t]he right to have an article inserted in the warrant conferred by this section shall not be invalidated by the provisions of RSA 32.” This statutory language “indicates that the legislature views the insertion of an article under RSA 39:3 (Supp. 1975) *as a ‘right.’*” *Woodside v. Selectmen of Town of Derry*, 116 N.H. 606, 607 (1976)(emphasis added). Further, the statute reflects “a clear legislative intent that the selectmen have no discretion whether to insert an article in a warrant in compliance with RSA 39:3” *Id.* Further, “if the board of selectmen shall refuse to insert an article in the warrant after being petitioned to do so, it is guilty of a violation.” RSA 39:3-b. The commitment of our system of local governance to allowing citizens to petition the residents of their town on matters related to town governance can scarcely be doubted.

The plaintiffs ask this Court to strike a properly petitioned warrant article from the 2023 Town of Dalton annual town meeting warrant because they claim it violates RSA 39:2. That statute states that “the subject matter of all business to be acted upon at the town meeting shall be distinctly stated in the warrant, and nothing done at any meeting, except the election of any town officer required by law to be made at such meeting, shall be valid unless the subject thereof is so stated.” RSA 39:2, *Compl.* at ¶31. They argue that the omission of the defendants’ “true purpose...omits the true subject matter of the articles and denies voters the ability to make a rational decision on them.” *Compl.* at ¶25.

The heart of the plaintiffs’ claim is that the individual defendants’ subjective *future* intentions render the *present* “subject matter” of the Articles unclear and misleading. This, they claim amounts to a violation of RSA 39:2 because “[t]he voters are being told that an affirmative vote will cause the respective land use boards to be ‘abolished,’ when that is not what will

actually happen.” *Compl.* at ¶33. According to the plaintiffs, the individual defendants have the “objective of temporarily suspending the two land use boards, and of reconstituting” them in the future. *Compl.* at ¶33. Therefore, the plaintiffs’ theory goes, “the voters, in weighing the petitioned warrant articles, will not be ‘enabled to act deliberately and intelligently.’” *Compl.* at ¶33.

### STATUTORY CONSTRUCTION

Responding to the plaintiff’s claim for relief requires this court to engage in statutory construction to determine whether the plaintiffs have stated a claim upon which relief can be granted. As stated above, the plaintiff’s claim for relief relies upon RSA 39:2. Applying ordinary rules of statutory construction should lead the court to conclude that nothing in that statute supports the plaintiffs’ claim for relief.

The standard rules of statutory construction include that “the goal of a court should be to apply statutes in light of the legislature’s intent in enacting them, and in light of the policy sought to be advanced by the entire statutory scheme.” *State Employees Ass’n of New Hampshire, SEIU, Local 1984 v. New Hampshire Div. of Personnel*, 158 N.H. 338, 343 (2009). Further, “When construing the meaning of a statute, [a court must] first examine the language found in the statute, and where possible, ... ascribe the plain and ordinary meanings to the words used” *Id.* A court should not “consider what the legislature might have said or add language that the legislature did not see fit to include.” *Id.* Finally, a court must “construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result.” *Northern New England Telephone Operations, LLC v. Town of Acworth*, 173 N.H. 660, 667 (2020).

Application of these standard rules of statutory construction establishes that the statute the plaintiffs rely upon does not support their claim. The first sentence of RSA 39:2 states that “the warrant for any town meeting shall be under the hands of the selectmen, and shall prescribe the place, day and hour of *the meeting*...” (Emphasis added). The language requiring the selectmen to warn that a meeting is to occur at a specific time and place makes it clear that the town meeting being referred to is the same meeting for which the selectmen have issued the warrant, and not some other meeting in the future. The third sentence, upon which the plaintiffs’ claim most heavily relies, states that “the subject matter of all business to be acted upon at *the town meeting* shall be distinctly stated in the warrant....” This reference to “the town meeting” in the third sentence plainly refers back to the same “town meeting” to be warned by the selectmen in the first sentence. It clearly does not refer to some other town meeting to occur in the future, and for which the selectmen have not given notice of a time and place.

The selectmen have posted a warrant for a town meeting to occur at 7:00 PM on March 14, 2023. See Exhibit #1. That warrant makes no reference to any other town meeting to occur at some other date. For purposes of the plaintiffs claim, the March 14, 2023 town meeting is the only town meeting under consideration.

If it had wanted to, the legislature could have used language that required the subject matter of business to be acted upon at future town meetings to be included in the warrant. It did not do so. Likewise, the legislature could have required the warrant to disclose all future plans held by selectmen or petitioners who place articles on the warrant. It did not do this either. To the contrary, the clear statutory language requires only that the subject matter of the business to be discussed be stated in the warrant.

Finally, the statutory construction suggested by the plaintiffs' complaint would lead to an absurd result that was clearly not intended by the legislature. There is no suggestion in any New Hampshire statute or in any case law suggesting that the motives or future intentions of anyone voting for, advocating for, or petitioning any warrant article have any legal significance. Indeed, it is difficult to imagine how any such law would operate. What would be the burden of proof on a challenger to prove that some person intends to take future actions? Who would be covered by such a future conduct inquiry? Does it create a special burden on "Article Petitioners," as plaintiffs have chosen to characterize the defendants here? Does it apply to selectmen? Plaintiff's complaint does not provide any hint whatsoever how such a new, complex statutory scheme would operate, likely for the very reason that the logical and predicable implication of the claim they advance would result in a completely unworkable and chaotic system completely at odds with our tradition of local democratic governance.

#### **PLAINTIFFS MISSTATE THE CONSEQUENCES OF THE VOTE**

Second, plaintiffs' claim that "the voters are being told that an affirmative vote will cause the respective land use boards to be abolished, when that is not what will actually happen" is simply incorrect as a matter of law. An affirmative vote on the issues will result in *precisely* the result that the land use boards will be abolished. It may come to pass that some future town meeting could take action reestablishing a conservation commission or a planning board or both. Or it might now. But if the Town votes in the affirmative on both Articles, the result will be that when the citizens wake up on the morning of March 15, 2023, the planning board and the conservation commission will have been abolished, precisely as stated in the warrant. And that situation will continue until some other legally authorized action is taken by the Town. Plaintiffs'

claim that any other circumstance will be the of the March 14 vote is simply wrong and should be rejected by this Court.

**THE ARTICLES ARE PROPERLY WORDED TO APPRISE THE VOTERS OF THE  
SUBJECT MATTER OF THE VOTE AS REQUIRED BY LAW**

Third, even *assuming arguendo* that RSA 39:2 applies as the plaintiffs allege, the Articles still comply with all statutory requirements. RSA 39:2 requires the warrant to distinctly state the “*subject matter* of all business to be acted upon....” It does not require a warrant article to state the legal effect or practical consequences of a vote to approve or disapprove a warrant article, nor does it require the article to anticipate future actions of the legislative body. RSA 39:2 simply requires that a warrant article “adequately notif[y] votes that those interested in [the subject matter] should attend [the meeting].” *Grant v. Town of Barrington*, 156 N.H. 807, 810 (2008)(abrogated by statute on other grounds). In this case, the warrant notifies voters that the subject matter of the future of the planning board and the conservation commission will be up for discussion. This is sufficient notice to comply with the requirements of RSA 39:2.

Further, the article addressing the planning board tracks the precise language required by statute, word for word. The legislature adopted a specific provision governing petitions to abolish previously adopted planning boards. RSA 673:18 provides:

a petition to abolish the planning board... shall submit the proposal to the town in substantially the following form: “Are you in favor of abolishing the planning board ... as proposed by petition of the voters of this town....”

This is the exact language found on the town warrant. See Exhibit #1. The plaintiffs’ assertion that the warrant should contain words other than this statutorily mandated language is unsupported by legal authority, would require the Court to add language that the legislature specifically declined to include, and should be rejected.



## CONCLUSION

For the foregoing reasons, the complaint in this matter should be dismissed.

## PRAYER FOR RELIEF

WHEREFORE, the individual defendants James Dannis, Pam Kathan, Vic St. Cyr, Robin Pilotte, respectfully move that this Honorable Court:

- A. Dismiss the complaint; and
- B. Grant such other relief as may be just and proper.

Respectfully Submitted  
James Dannis, Pam Kathan, Vic St. Cyr, and  
Robin Pilotte  
By their attorneys,  
Lehmann Major List, PLLC

March 8, 2023      */s/Richard J. Lehmann*

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Richard J. Lehmann (Bar No. 9339)  
6 Garvins Falls Road  
Concord, N.H. 03301  
(603) 731-5435  
[rick@nhlawyer.com](mailto:rick@nhlawyer.com)

## CERTIFICATION

I hereby certify that a copy of this pleading was this day forwarded to opposing counsel via the court's electronic service system.

March 8, 2023      */s/Richard J. Lehmann*

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Richard J. Lehmann

# EXHIBIT #1



2023  
WARRANT

## Dalton

The inhabitants of the Town of Dalton in the County of Coos in the state of New Hampshire qualified to vote in Town affairs are hereby notified that the Annual Town Meeting will be held as follows:

### First Session of Annual Meeting (Official Ballot Voting)

Date: March 14, 2023  
Time: 8:00 AM to 7:00 PM  
Location: 756 Dalton Rd., Dalton, NH 03598  
Details:

**Second Session of Annual Meeting (Transaction of All Other Business)**

Date: March 14, 2023  
Time: 7:00 PM  
Location: 756 Dalton Rd., Dalton, NH 03598  
Details: Meeting start to follow in-person voting

## GOVERNING BODY CERTIFICATION

We certify and attest that on or before February 27, 2023, a true and attested copy of this document was posted at the place of meeting and at [townofdalon.com](http://townofdalon.com) and that an original was delivered to the Town Clerk.

[illegible]



**New Hampshire**  
Department of  
Revenue Administration

**2023  
WARRANT**

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**Article 01 Election of officers**

To elect all necessary officers for the year.

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**Article 02 BY PETITION: Abolish Planning Board**

PETITION WARRANT ARTICLE: To see if the town of Dalton will vote "Are you in favor of abolishing the planning board as proposed by the petition of the voters of this town?"

The Select Board does not recommend this warrant article. Voting will be by official ballot.

(Majority Vote Required)

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**Article 03 Purchase Replacement Highway Dump Truck**

To see if the town will vote to raise and appropriate the sum of \$335,000 (gross budget) for the replacement of the Highway Department Dump Truck, and to authorize the issuance of not more than \$335,000 of bonds or notes in accordance with the provisions of the Municipal Finance Act (RSA 33) and to authorize the municipal officials to issue and negotiate such bonds or notes and to determine the rate of interest thereon; And further to raise and appropriate the amount of \$12,000 for payments on this bond or note in 2023." Recommendations required.

The Select Board recommends this warrant article.  
(3/5 ballot vote required).

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**Article 04 BY PETITION: Elected Planning Board**

PETITION WARRANT ARTICLE: To see if the town of Dalton will vote "Are you in favor of the Planning Board members being elected pursuant to RSA 673:2 II (b) (1)?" The membership of the Planning Board will remain at five (5) regular members. The terms will be determined in accordance with RSA 673:5 II."

Voting will be by official ballot.

(Majority Vote Required)

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**Article 05 Operating budget**

To see if the town will vote to raise and appropriate the sum of Nine Hundred Fifty-five Thousand, One Hundred Dollars (955,100) for the General Town Operations.

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**Article 06 Town Building CRF**

To see if the Town of Dalton will vote to raise and appropriate the sum of Ten Thousand Dollars (\$10,000.00) to be added to the Town Owned Buildings Improvement, Expansion and Renovation Capital Reserve Fund.

The Board of Selectmen recommends this warrant article.

(Majority vote required.)



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**Article 07 Sewer Pump CRF**

To see if the town will vote to raise and appropriate the sum of Two Thousand Dollars (\$2,000) to be added to the Sewer Pump Renovation and Replacement Capital Reserve Fund.

Select Board recommends this article.

(Majority Vote Required)

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**Article 08 Highway Dept CRF**

To see if the town will vote to raise and appropriate the sum of Twenty-Five Thousand Dollars (\$25,000) to be added to the Highway Department Heavy Equipment Capital Reserve Fund.

Select Board recommends this article.

(Majority Vote Required.)

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**Article 09 Paving CRF**

To see if the town will vote to raise and appropriate the sum of Seventy-Five Thousand Dollars (\$75,000) to be added to the Paving Capital Reserve Fund.

Select Board recommends this article.

(Majority Vote Required.)

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**Article 10 Fire Dept Vehicle Equipment CRF**

To see if the town will vote to raise and appropriate the sum of Ten Thousand Dollars (\$10,000) to be added to the Fire Department Vehicle Equipment Capital Reserve Fund.

Select Board recommends this article.

(Majority Vote Required.)

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**Article 11 Fire/EMS Equipment CRF**

To see if the town will vote to raise and appropriate the sum of Ten Thousand Dollars (\$10,000) to be added to the Fire/EMS Equipment Capital Reserve Fund.

The Select Board recommends this article.

(Majority Vote Required)

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**Article 12 Legal Fund CRF**

To see if the Town of Dalton will vote to raise and appropriate the sum of Five Thousand Dollars (\$5,000) to be added to the Legal Fund CRF previously established.

The Select Board recommends this article. (Majority vote required.)



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**Article 13    Outside Auditing Firm**

To see if the town will rescind the election of an auditor in favor of hiring a certified public accountant or a public accountant licensed by the state under RSA 309-A:8 to conduct the annual audit as recommended by 21-J:19

The Select Board recommends this warrant article.  
(Majority Vote Required)

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**Article 14    BY PETITION - Abolish the Conservation Commission**

PETITION WARRANT ARTICLE: This warrant is to see if the people will vote "Are you in favor of abolishing the conservation commission and rescinding the provisions of RSA Chapter 36-A as proposed by the petition of the voters of this town?".

The Select Board does not recommend this warrant article.  
(Majority Vote Required)

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**Article 15    BY PETITION - Public Hearing re: Crime and Public**

PETITION WARRANT ARTICLE: To see if the town of Dalton will vote "To request the selectboard to hold a series of open, public meetings to gather community input into crime and public safety in Dalton and to explore potential alternatives for law enforcement, including a dedicated Dalton town police officer or officers".

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**Article 16    Town Emblem**

To see if the town will vote to approve an official Town of Dalton emblem for use on advertising, signage, website and business materials.

The Select Board recommends this warrant article.

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**Article 17    Other Business**

To transact any other business that may legally come before the meeting.