

Town of Dalton, NH
Board of Selectmen
756 Dalton Road
Dalton, NH 03598

Dear Members of the Board:

This will respond to your letter of November 2, 2020.

Just to be clear, Granite State Landfill, LLC (“GSL”) is still very early in the permitting process for its planned facility. It does not yet own the property on which it proposes to site the facility, and it is just beginning state permitting. We also understand that the planning board will be proposing a new zoning ordinance in March, so it is unclear what the town’s zoning regulations will look like six months from now. Even if we assume that you are correct that GSL requires some form of local zoning approval it is far too soon to seek it.

In addition, it is difficult for us to respond to the merits of your letter because it does not say what form of approval you believe GSL will need. We respectfully request that the board, in its role as zoning enforcement officer, inform us whether the board believes that GSL requires a variance or a special exception and explain its reasoning to us.

Now that the board has formally raised the issue of zoning, we think it is useful for us to provide a brief explanation of our understanding of the pertinent law. We hope that this explanation will help the board to understand why we have said that it is through negotiation of the Host Community Agreement (“HCA”) that the town can best participate in the development of this project.

It is the Department of Environmental Services that 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. The town’s current zoning ordinance does not appear to address landfilling as a use. Depending on how the ordinance is construed, it either allows landfilling as a matter of right (or by special exception) or it purports to prohibit it. If it allows landfilling as a matter of right GSL would need no ZBA approval. If it prohibits landfilling it is preempted by state law.

If the board maintains that GSL requires a special exception we would need to explore the scope of review the ZBA proposes to undertake. Given that the application of local land-use ordinances cannot be exclusionary and cannot interfere with or be inconsistent with state regulation, the ZBA’s review could not result in exclusion of the landfill and the criteria the ZBA would ordinarily use to assess a special exception application would be largely preempted. Negotiation of the HCA gives the town the opportunity to obtain contractual terms that are outside of its regulatory authority.

This is not something we are going to resolve by exchanging letters. We have suggested on several occasions that our counsel have a discussion with the town’s counsel about the scope of the town’s zoning authority so GSL and the town can better understand each other’s interpretation of the law and identify any issues that are in dispute. Now that the board has taken a position, we renew our

suggestion that the attorneys sit down and try to reach agreement on what form of local approval may be required and what is within the ZBA's jurisdiction.

Finally, we ask that as officials elected to represent the entire town you reconsider your decision to impose conditions on further discussion of the draft Host Community Agreement (HCA). 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. You will remember that the board asked us to put a proposal in writing, which we did in August. The only response the board has given is its November 2 letter. Many Dalton residents have told us that the HCA would have a profound and positive financial impact on their lives and they do not understand why the board is unwilling to listen to the public and share the board's perspective on the HCA and the proposed project.

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.

We look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Oliver", with a stylized flourish at the end.

Brian Oliver, Region Vice-President