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Injunction Seeks To Stop Elimination Of Conservation Commission, Planning Board

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Jon Swan, of Dalton, pictured here during a public hearing in July 2019 in Dalton on a proposal for temporary emergency zoning, is counter-suing and seeking attorney's fees from Casella Waste Systems in the defamation lawsuit that Casella filed against him in April 2020. (File photo by Robert Blechl)

An injunction has been filed at Coos Superior Court in an effort stop the proposed elimination of the Dalton Conservation Commission and Dalton Planning Board, both of which will be presented to voters through two petitioned warrant articles at the March 14 town meeting.

The 8-page complaint argues that residents would be taking the votes “based on incomplete information,” which violates the New Hampshire statute on town meetings, and that the articles are unlawful and unenforceable.

Plaintiffs and Dalton residents Adam Finkel, a new alternate member of the Dalton Planning Board, and Jon Swan, chairman of the Dalton Conservation Commission, filed their request for expedited temporary, preliminary and permanent injunctive relief against James Dannis, Pam Kathan, Robin Pilotte, and Vic St. Cyr, a paid consultant for Casella Waste Systems, and the town of Dalton on Wednesday.

“The action seeks to remedy a petitioned warrant article on the ballot for Dalton town meeting that deliberately misleads the public about its goals and objectives, omits the true subject matter of the article, and denies voters the ability to make a rational decision,” wrote Jeremy Eggleton, attorney for Swan and Finkel.

“Defendants Jim Dannis, Pam Kathan, Vic St. Cyr and Robin Pilotte (the ‘article petitioners’) are Dalton residents who publicly support the efforts of a regional solid waste processor to construct a landfill facility at a location in the town of Dalton,” he said. “The article petitioners have drafted and circulated two petitioned warrant articles that, as drafted, ask the voters of Dalton to decide whether the town should (1) abolish the town planning board and (2) rescind the conservation commission.”

During the March 14 town meeting, the planning board question will go to a ballot vote throughout the day.

The conservation commission question will be a traditional town meeting vote during the evening business part of the meeting.

In the complaint, Eggleton said that the planning board has denied certain requests by the proposed landfill operator relating to the construction of a landfill, including a request for a lot line adjustment that was important for the project to move forward.

“The article petitioners are seeking to reconstitute the planning board and the conservation commission with new members who will support the landfill project,” wrote Eggleton. “But instead of seeking to fill the two boards with new members whose views align with theirs in the normal course of board turnover, as provided for by New Hampshire law, the article petitioners have petitioned for the inclusion of two warrant articles that would abolish the planning board and conservation commission.”

But the article petitioners are not actually seeking to abolish the two land use boards and “have disclosed their objectives to a small group of like-minded individuals,” he argues.

Eggleton cited a social media post by Dannis stating, “Dalton voters can ‘abolish’ our captured town boards. The Dalton majority can ‘take back’ our the boards. We can do it now, at the upcoming March town meeting. How? We can SIMPLY ABOLISH THEM. If the planning board and conservation commission don’t quickly change course and start acting in good faith for the majority of our town, we can VOTE THEM OUT OF EXISTENCE. All it takes is a petition and a town vote. And it’s a secret ballot vote, just like on permanent zoning. So no intimidation.”

Eggleton then italicized wording from Dannis stating, “Later on, when we have a new selectboard, we can bring these boards back. The new selectboard can appoint a planning board and a conservation commission who will act for the whole town.”

In another pamphlet only for “insiders,” the article petitioners admitted that the petitioned articles only seek a “temporary suspension” of the two land use boards, not an abolishment or rescission, he said.

In the request for injunction, Eggleton said, “The omission of the true purpose of the article petitioners’ proposed warrants articles is misleading to the voters of Dalton, omits the true subject matter of the articles, and denies voters to make a rational decision on them.”

The town of Dalton is named as a defendant because it must be named to effect the legal relief requested, he said.

In the first count, for declaratory judgment, of the two-count complaint, Eggleton cites the 1979 New Hampshire Supreme Court case *Melton v. Personnel Commission* and said Finkel and Swan are members of land use boards whose rights as individuals are directly affected by the petitioned articles and who would lose their jobs on the boards if the articles pass, which, he argues, is “one of the article petitioners’ specific, but unadvertised, objectives.”

“The article petitioners have crafted petitioned articles that omit informing Dalton’s voters about the outcome of an affirmative vote on the petitioned articles,” he wrote.

Citing New Hampshire RSA 39:2, the statute on town meetings, Eggleton argues that “The subject matter of all business to be acted on at town meeting shall be distinctly stated in the warrant ...”

Citing the 1964 state Supreme Court case McKinney V. Riley, he said that the objective of specific articles in a warrant is to give information to the voters of the subject matters to be acted on in town meeting, so that the voters may be enabled to act deliberately and intelligently.

“The article petitioners’ objective of temporarily suspending the two land use boards, and of reconstituting the two land use boards with members whose views align with theirs, is ‘not distinctly stated in the warrant,’” said Eggleton. “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.”

In addition, there is a statutory process for amending the membership of both a conservation commission and a planning board, and neither body’s enabling statute authorizes abolishment of the board as a statutory method for amending the constitution of membership, he said.

Finkel’s and Swan’s five-part request asks the court to declare that the two petitioned articles violate RSA 39:2; mislead and defraud the public concerning the outcome and effect of a vote on the questions; leave the intent of the voters in doubt; prevent the voters from making a rational decision; and impair the function of the commission’s and board’s enabling statutes.

In a proposed order, Finkel and Swan ask the court to remove, or cause the removal, of the two petitioned articles from the town meeting warrant prior to the March 14 vote and not give effect to an affirmative vote.

Or, in the alternative, they ask to have the town include in its annual report an explanation of the articles, stating that the petitioners do not intend to abolish the board and commission permanently, but to abolish them temporarily and reconstitute them “at later date with new members who have different viewpoints concerning the issues brought before the board.”

According to the case summary viewed Friday, a preliminary hearing has been scheduled for April 3.

In an email on Friday evening, Eggleton told The Caledonian-Record that the plaintiffs will be moving to accelerate the hearing so it can be held prior to the March 14 town vote and he hopes to file that motion on Monday.

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