



March 9, 2022

**To:** The Honorable Members of the Dalton Planning Board  
via Carl Lindquist, Planning Board Chair

**From:** North Country Council Regional Planning Commission  
Kaela Tavares, Planning & Economic Development Coordinator

**Premise:** *The Dalton Planning Board was asked, by the NHDES, to provide input as to the substantial completion of a previously issued, Alteration of Terrain (AOT) permit, for construction of a drag racing strip, and associated site improvements.*

**Purpose:** The purpose of this memorandum is to describe the context of this request relative to state statute and local regulations and provide guidance to the Dalton Planning Board in considering this matter. Please note, North Country Council's staff does not include legal counsel, as such guidance provided here does not constitute a legal opinion.

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State Regulatory Context:

Alteration of Terrain (AOT) permits are issued by NHDES for proposal to dredge, excavate, place fill, mine, transport forest products or undertake construction in or on the border of surface waters of the state. Additionally, permits are required for any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede natural runoff patterns. *Per RSA 485-A.17 "Terrain Alteration"*

Once issued, such permits are valid for a five (5) year period. Requests for permit extension may be made to NHDES. NHDES shall grant an extension of up to five (5) additional years, if the applicant can demonstrate seven (7) listed criteria, listed in 483-A:17, II-d (a) through (g). Of these enumerated criteria, listed below, (g) describes interaction with municipal site plan, or subdivision plat permits. Specifically:

"(g) The permit has not previously been extended, unless the subdivision plat or site plan associated with the permit has been deemed substantially complete by the governing municipal planning board in accordance with RSA 674:39, II, in which case subsequent extensions of the permit are allowed."

As such, we look to the provisions of RSA 674:39, II "*Five-Year Exemptions*," which discuss vesting of permits related to Local Land Use Planning and Regulatory Powers.

"II. Once substantial completion of the improvements as shown on the subdivision plat or site plan has occurred in compliance with the approved subdivision plat or site plan or the terms of said approval or unless otherwise stipulated by the planning board, the rights of the owner or the owner's successor in interest shall vest and no subsequent

change in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees adopted pursuant to RSA 674:21 and 675:2-4, shall operate to affect such improvements.”

Reading on, within RSA 674:39, III, Substantial completion of the improvements (as introduced in subsection II) are discussed as follows:

“III. The planning board may, as part of its subdivision and site plan regulations or as a condition of subdivision plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:

(a) “Substantial completion of the improvements as shown on the subdivision plat or site plan,” for the purposes of fulfilling paragraph II.”

#### Municipal Regulatory Context:

The town of Dalton’s Emergency Temporary Zoning provisions passed in 2019. At the time of the landowner’s initial application to NHDES in 2011, the community did not have a Zoning Ordinance, or Site Plan Regulations adopted or in effect. Dalton did have an adopted Subdivision Regulation in place at said time, however the proposal does not include the subdivision of land. As such, no municipal land use permits, site plan or subdivision plat approvals, were required or issued, and no thresholds established to define substantial completeness.

Currently, the town of Dalton has adopted an Emergency Temporary Zoning Ordinance, under the provisions of 674:24-29 which is currently in effect and controls development proposals. The Land Use regulations adopted and in place today, do not include a definition of “substantial completion of the improvements” discussed within RSA 674:39 and contemplated within RSA 483-A:17, II-d (g). However the Ordinance does speak to the applicability of the Emergency Temporary Zoning relative to existing conforming or non-conforming uses. As stated in RSA 674:28, I. reads:

“All nonconforming properties in active use when an interim ordinance is passed and adopted may continue indefinitely in their present use.”

As such, all new development, undertaken after adoption, needs to comply with the provisions of the Emergency Temporary Ordinance.

#### Potential Actions:

Given the context above, the Dalton Planning Board appears to have two (2) paths to consider related to the requested from NHDES relative to the AOT permit and the NHDES authority to issue extensions of said permit.

Path 1 – With no requirement for local site plan or subdivision permits in place at the time of AOT permit issuance, the Planning Board may choose to provide NHDES with correspondence, describing that no municipal permits were required of the applicant for the proposed development, additionally, no method has been established to determine substantial completeness, pursuant to RSA 674:39, II. As such, the Dalton Planning Board finds that the provisions of 487-A, II-d (g) do not apply to this extension request.

Path 2 – Alternatively, the Dalton Planning Board could determine that the current provisions of the Town of Dalton’s Temporary Emergency Zoning, may require the applicant to provide evidence of the “active use” of the site, to determine if the proposed use has progressed to such a point that it would require no additional permitting from the Town of Dalton. In making such a determination, the Town of Dalton may request the property owner provide evidence of progress on said development in order to determine if *additional* municipal permissions, pursuant to the Temporary Emergency Zoning, such as site plan review are required. Such evidence could include as-built progress plans, or a status report prepared by a qualified professional. If the Dalton Planning Board chooses to pursue Path 2, the Planning Board should note that the Emergency Temporary Zoning Ordinance does not include a definition of “substantial completion of improvements,” as such the evidence collected, could be used to notify NHDES that the use is, or is not, considered a non-conforming use as described within 674:28, I., and whether or not additional municipal site plan review is required.

Respectfully Submitted,

A handwritten signature in black ink that reads "Kaela Tavares". The signature is fluid and cursive, with a long horizontal stroke at the end.

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