March 6, 2014

Dear Citizens of Dublin,

It's likely you have seen and heard a lot of information concerning proposed amendments to the Zoning Ordinance, and especially about Article 6. We feel it is imperative that certain information be clarified in order for the townspeople to make an informed decision on March 11.

The amendment would NOT allow drive-through restaurants in Dublin. The amendment in Article 6 must be read in conjunction with Article X, Paragraph A.1., which states "A use of a type not listed in the Table of Use shall not be permitted" and Section C. 10 of the Ordinance's Table of Uses, which allows "Restaurants, not including drive-throughs." Since restaurants with drive-throughs are not listed, they are not permitted anywhere in town. The proposed amendment does not change that prohibition.

Accordingly, the proposal would allow drive-throughs only for permitted non-restaurant purposes, i.e. convenience stores, pharmacies, or banks (which are specifically welcomed in Dublin by the Master Plan).

Furthermore, the proposal allows drive-throughs by right only in the Neighborhood Commercial District (the small area centered around the intersection of Routes 101 and 137). Anywhere in the Village or Rural District such a use would require a Special Exception from the ZBA, which would not be granted unless the applicant could prove that: "The proposed use will not adversely affect the value of adjacent property. An adverse effect on adjacent property is one which would limit the use of neighborhood property by causing such problems as excessive noise, traffic, dust, fumes, glare or other conditions that are associated with the intended use but are not typical of permitted uses within the area." (Article XII, Paragraph D).

The applicant would also need to show that the proposed use is compatible with the surrounding land uses, and comply with all other zoning requirements, site plan review requirements, and any specific requirements imposed by the Planning Board or ZBA as conditions of approval. Given this, the likelihood of drive-throughs proliferating throughout town is slight.

The proposed amendment does not contradict the Master Plan. The Board, with the help of three members of the committee that wrote the Master Plan (none of whom recalled any conversations about drive-throughs at Master Plan Committee meetings), reviewed the Plan prior to voting on the proposal, and the consensus was that there was no conflict. Among the relevant provisions discussed:

- "Dublin should actively designate areas where small business activities can occur" (to date, it has with regard to the Neighborhood Commercial District)
- A goal of "Encouraging appropriate economic growth".
- Protect town scenic gateways on Route 101. The Board discussed whether this provision was relevant, and, while agreeing the scenic gateway was important, came to the consensus that the Neighborhood Commercial District was not intended to be part of the 'scenic gateway' as business uses (none of them especially scenic) have been ongoing in this area of town since before zoning.

New Hampshire law does not prevent the Planning Board from proposing changes that are not specifically allowed in the Master Plan. Section 674:2 of the N.H. Revised Statutes Annotated refers to the Master Plan as a "guide" and an "aid" to the Planning Board. The Master Plan is, according to the Supreme Court of N.H., a "merely a general guide to aid planning boards" Treisman v. Bedford, 132 NH 54 (1989)*. In another case, the Court ruled "The sole purpose of the
The Board has the discretion to propose changes not specifically called for in the Master Plan when it thinks it appropriate. It has done so before, including recent amendments to our land use ordinances to comply with a new state law requiring each municipality to make affordable housing options available. The law does not require the Master Plan to be amended first, nor does it require any additional notices, hearings, or votes beyond those required for zoning amendments.

**The Planning Board was not wrong to place the proposal on the ballot.** The idea of placing the issue on the ballot for a public vote was reviewed in advance by Town Counsel at Upton & Hatfield, LLP, one of the top municipal law firms in the state. Their opinion was that this approach was acceptable, and that the proposed amendment can be placed on the ballot. It is not a case of the Planning Board abdicating their responsibilities, but rather an acknowledgement of the democratic principle that the will of the townspeople, as expressed through their votes, should determine the issue. The Board had the Town’s legal counsel, Upton & Hatfield, LLP, review all the proposed amendments, as well as all meeting minutes, public hearing minutes, and notices. Their opinion was that the Board’s process was reasonable and in compliance with State laws. Said counsel also reviewed this letter to ensure that all references to the Dublin Ordinance and to N.H. statutory and case law were accurate.

We ask that citizens do their own research on this matter. Look up the law. Review the Ordinance and the Master Plan. Please cast your vote for or against the proposed amendments based on the facts and the law.

Sincerely,

**The Dublin Planning Board**

* The Treisman v. Bedford case that helped define the legal role of Master Plans, was argued (and won) before the New Hampshire Supreme Court by Upton & Hatfield, LLP, the firm we turn to for legal advice.