

To: Durham Planning Board / From: Joshua Meyrowitz, 7 Chesley Dr / Aug 10, 2022

Public Hearings without Hearing from the Public

Please include in the legal record for Toomerfs' application, this response to me from Michael Behrendt to complaints I and others voiced in early-to-mid 2021 about the public, at times, not being able to speak at Public Hearings before Planning Board motions are made and Planning Board votes are taken – while applicants are allowed not only to speak prior to the deliberations, but even to interrupt and guide the Board in its deliberations, motion-formation, and voting.

Planner Behrendt responded to my complaints on this issue by email on May 10, 2021, 5:32 pm:

The Planning Board is under no obligation to give the public the opportunity to comment on specific items prior to voting on those items. The Planning Board's practice has been to keep the public hearing open through the entire process once the hearing has opened and then to close it only at the very end during final deliberations. The board generally follows this procedure during a meeting:

- 1) applicant presents
- 2) Planning Board asks questions, makes comments, or discusses matters (They usually try to keep this time short since the public is waiting for the hearing to open)
- 3) The public hearing is opened; the applicant may or may not respond to comments
- 4) The public hearing is closed for that evening (adjourned to the subsequent meeting).
- 5) The board discusses the project with no input from the applicant nor the public

The board can discuss any matters that it wishes to discuss and it may take any appropriate votes either under 2) or 5). [bold added]

The Durham Planning Board's intermittent practice, as justified above, of advancing and discussing motions and taking formal votes at Public Hearings while welcoming input only from the Toomerfs without *routinely* allowing any public input (as described above as "may take any appropriate votes...under 2" – before the public is allowed speak), violates common understanding (and perhaps the formal legal requirements) for a "Public Hearing." Even when this problem has diminished or been fixed at subsequent hearings, what was deliberated on and voted on in *prior* meeting is not undone.

The process overall has reflected profound and persistent discrimination in favor of Toomerfs and other applicants and distorted the fairness and thoroughness of the review process. If a matter is set for a "Public Hearing," the normal process ought to be that the Board open the floor to public comment on the subject of the hearing *before* motions are formed and votes are taken.