

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

ORLAC Input on Church Hill Parking Plan? Or Lack Thereof?

I now know enough about the Oyster River Local Advisory Committee ([ORLAC](#)) and the Designated River Corridor, as detailed in [Kay Morgan 7-25-22](#), to know that I do not yet know enough to write a definitive statement about what should have and possibly still could occur with respect to ORLAC's input on the Toomerfs' parking lot plan for Church Hill Woods.

I also know that Michael Behrendt has shared with the Planning Board a long sequence of email correspondence between himself, ORLAC Chair Eric Fiegenbaum, Applicant Tim Murphy, etc. I won't reproduce it here.

Here, I plan only to add to legal record for this application a small segment of the narrative about which I am familiar (and feel frustrated over).

On July 25, 2022, I gave a short public comment to the Durham Conservation Commission on "The Fate of Church Hill Woods." At the end, I inquired of the Commission if they knew anything about ORLAC's advisory role on such projects. At that point, Town Planner Michael Behrendt, at the Commission table, jumped in saying (at 09:33 into the meeting):

"Oh, yeah, I can respond. As you know, the Oyster River Advisory Committee is asked to comment on projects within, I forget, a certain distance from the Oyster River. And, this question was raised a while back and we checked on it, and it's outside their purview. They could comment if they wish, but they didn't. It's beyond that distance."

Emily Friedrichs, who was in the chambers, as a resident of Garden Lane, to make a public comment on another topic, then rose to report that her research confirmed that the Toomerfs' project was indeed well within the purview of ORLAC.

On July 27, 2022, Michael Behrendt confirmed to me by email that "The site IS in the jurisdiction of the ORLAC. Yes." In a longer chain of correspondence he forwarded to me he noted that: "19 Main Street is subject to comment by the LAC but they never offered comments after we informed them about the project. After informing them, it is up to the LAC to respond if they wish to."

Michael's long email chain included this excerpt (with the mandatory "shall inform," as I bolded):

483:8-a Local River Management Advisory Committees; Establishment;
Duties....Municipal officials, boards, and agencies **shall inform** such committees of actions which they are considering in managing and regulating activities within designated river corridors.

I and another resident independently contacted ORLAC Chair Eric Fiegenbaum about the possibility of presenting on the Church Hill Woods parking proposal to the Committee at their monthly meeting on July 28. Mr. Fiegenbaum responded on July 28, 2022, at 2:47 pm (in a single email to both me and the other resident), writing in part (bold added):

I did spend some time this morning reviewing old emails, hoping I did not miss any, to jog my memory.... The emails should have cleared up the question about whether the parking lot project was in the designated corridor, it is.

As I read the LAC statute and DES rules, we comment on requests brought by towns for projects within the corridor and on certain DES applications in the corridor.

Part of the correspondence with Durham was around when we would comment, if requested. There was more to the discussion, but the discussion lead the ORLAC to develop the document you [the other resident] attached, called Checklist for Project Evolutions. That document was partly offered as a tool that a municipality or applicant could use to figure out when they might want the ORLAC to comment on a project. It is still a work in progress, but lets the municipality and applicant what items are concerns to us.

The ball may have gotten dropped as to whether Durham wanted us to comment back in May of 2021. **I don't see that I have a request from Durham.**

More recently I thought the parking lot was not approved due to an issue as to whether it had structures, which are prohibited. ?? That was maybe a determination of a Durham committee other than the PB. ??

I believe my members will want a municipal entity to request a comment from us. It makes sense in terms of our efficient use of time, and my interpretation of the statute.

I then wrote to Michael Behrendt (cc-ing Tod Selig) at 4:42 pm, the same day (with an excerpt from Fiegenbaum, starting at "The ball may have gotten dropped" to the end of the quote above, leading Michael Behrendt to send this reply an hour later (with a long thread of emails):

From: **Michael Behrendt** <mbehrendt@ci.durham.nh.us>

Date: Thu, Jul 28, 2022 at 5:43 PM

Subject: Main Street #19 - RE: ORLAC or LACK thereof Re: Main Street #19 - Oyster River LAC - email from Josh Meyrowitz

To: Joshua Meyrowitz <prof.joshua.meyrowitz@gmail.com>

Hi Josh (cc to Planning Board, Town Administrator, and Toomerphs),
I informed the chair of the LAC about the project in December 2020, highlighted in green below (in the email chain) in keeping with the requirement in the statute. When they are informed the decision is theirs whether or not to provide comments. I am hesitant to reach out to them a second time given that the Planning Board is now in deliberations on this project. I am copying the Planning Board here so if the board wants me to contact the LAC again I can certainly do that.

Michael Behrendt...

I responded at 7:38 pm (typos corrected):

From: Joshua Meyrowitz <prof.joshua.meyrowitz@gmail.com>
Sent: Thursday, July 28, 2022 7:38 PM
To: Michael Behrendt <mbehrendt@ci.durham.nh.us>
Cc: Todd Selig <tselig@ci.durham.nh.us>
Subject: ORLAC or LACK OF Attention to ORLAC Review

Michael,

I am stunned to have just received the email message below from you saying that, since you contacted the Oyster River Local Advisory Committee (ORLAC) in **Dec 2020**, "in keeping with the requirements of the statute," you are "hesitant to reach out to them a second time."

Surely, you remember that Dec 2020 was *before* the April 13, 2021 (ZBA ruling), and surely you saw that I just sent you a brief email, citing Eric Fiegenbaum, ORLAC chair, saying that he heard (correctly) that the plan had been turned down as forbidden structured parking, and thus assumed that ORLAC input would be moot -- and that ORLAC "**members will want a municipal entity to request a comment from us.**"

Moreover, aspects of the plan that would be relevant to ORLAC's consideration have continuously evolved. The term "revised plans" appears six times on the application site, and all refer to changes since Feb 2021, with the most recent from May 2022.

You are saying you've been waiting to hear from ORLAC, without your ever updating them on the post-ZBA ruling revival of the plan (a questionable stance), and ORLAC is saying (more reasonably) that given the April 2021 ZBA ruling, they assumed the plan was dead, pending hearing otherwise from you.

This reminds me of the classic Gahan Wilson cartoon of the skeleton at a door with its hand bones on the door knocker. The skeleton is holding a donation cup saying "School for the Blind" and the door has the sign "School for the Deaf."

Is this standoff situation really the best that the Durham Planning Department can manage?

Best, Joshua

P.S. I hope that you and the Planning Board have also given close attention to [Kay Morgan 7-25-22](#). But it should not be the role of individual citizens to bring up and monitor these oversight requirements.

Michael then responded as follows, with a more elaborate version sent the next morning, at 9:42 am, copying the Planning Board and the applicant:

From: **Michael Behrendt** <mbehrendt@ci.durham.nh.us>
Date: Thu, Jul 28, 2022 at 8:17 PM
Subject: Re: ORLAC or LACK OF Attention to ORLAC Review
To: Joshua Meyrowitz <prof.joshua.meyrowitz@gmail.com>

Josh,

As I stated before, this decision is up to the Planning Board.

Michael

Sent from my iPhone

In summary, this standoff situation, with each side waiting for the other, resulting in the mandated advisory role not being enacted in this significant threat to the Oyster River watershed, as documented in multiple citizen and expert testimony, does not strike me as appropriate for a town of Durham's stature and signals that some changes in procedure are necessary.

Please also review: "**Links to, and excerpts from, sample citizen input to the Planning Board on Environmental Impacts of the Church Hill Woods Parking Proposal,**" [Joshua Meyrowitz 8-9-22](#) (text, 6 pages)

Thank you for your attention.