

From: [Michael Behrendt](#)
Subject: Main Street #19 - comments on expert testimony - email from James Bubar
Date: Tuesday, July 19, 2022 2:44:57 PM

To the Planning Board,
Please see James's comments below.

Karen,
Please post under Town Planner's Correspondence for 19 Main Street.

Michael Behrendt

Durham Town Planner
Town of Durham
8 Newmarket Road
Durham, NH 03824
(603) 868-8064
www.ci.durham.nh.us

From: James Bubar <jamesabubar@gmail.com>
Sent: Tuesday, July 19, 2022 11:36 AM
To: Michael Behrendt <mbehrendt@ci.durham.nh.us>
Subject: Re: Main Street #19 - comments on expert testimony - memo from Robin Mower

I think that I told you I was qualified as an expert witness in 7 States. In some States, I had to be represented by Counsel if I was going to testify, which was done under oath. Those are official State judicial procedures and the hearings are managed by a Commission Attorney. I liked that process as it kept the biased opinions of those with an axe to grind but no evidence out of the way.

We don't have that luxury. We don't have a Hearing Attorney to separate the wheat from the chaff. No disrespect intended to the foresters, but I have never seen their expertise documented by anyone other than 3rd parties. I don't dispute what they say but it is a little presumptive to ask you to figure out who

has expert standing and who doesn't. Additionally, it is not always clear whether they are providing citizen comments versus expert testimony and at times it looks like maybe both. I think you should simply have one section with Applicants documents (et al) and another for Citizen Documents.

Perhaps a third for Expert Documents, where you would put the information received from 3rd parties hired to review comments, traffic study, HISS maps, etc. I would include in this grouping, DPW, Police and Fire input. If someone wants to represent their comments as expert testimony then I would require that they submit their full resumé (which should be verified), their comments documented with appropriate references (which also should be verified), and then should indicate who they are representing (if they are not a resident then they can't represent themselves). I would be pleased to assist in the verification process. I would also make them sign a standard declaration certifying that the information they are providing was prepared by them, or under their direction, and is true and complete to the best of their knowledge and ability. At one time, I was the Vice-President and Treasurer of 8 subsidiaries and would wake up dreaming about that declaration, I signed it so many times.

It is not that fine a line between formality and bureaucracy. We allow conspiracy theories to be presented during Public Comment/Hearing, and we do with them as we feel appropriate, but expert testimony, as Ms. Mower contends, should and must be taken very seriously. Experts should bear the burden of defending their comments and there should be liabilities if they fail in fulfilling their obligations to provide complete and truthful testimony. As qualified experts they should be liable to the applicant if it is found they provided false and misleading testimony.

On Tue, Jul 19, 2022 at 10:09 AM Michael Behrendt
<mbehrendt@ci.durham.nh.us> wrote:

To the Planning Board,
Robin is correct in her comments based on my experience. Her point is well taken about comments from Rich Hallett and John Parry. I do struggle a little with where to put comments. Traditionally, we place all documents

submitted by the applicant in the top section including any emails and letters from the applicant. We place everything from citizens and other parties in the bottom section under "Citizen Comments." I had placed comments from abutters' attorneys under Citizen Comments but was questioned about that so I moved attorney's comments to the top since they probably merit special treatment. I don't want to have to make this kind of judgment parsing where comments go. There probably is a better way. Perhaps Citizen Comments should be relabeled as "Comments from citizens, attorneys, and other professionals not representing the applicant" or something like that but that is a lot to say.

Michael Behrendt

Durham Town Planner

Town of Durham

8 Newmarket Road

Durham, NH 03824

(603) 868-8064

www.ci.durham.nh.us

From: Karen Edwards <kedwards@ci.durham.nh.us>

Sent: Tuesday, July 19, 2022 8:35 AM

To: Barbara Dill <barbaradill@gmail.com>; Chuck Hotchkiss <cmhdte@gmail.com>; Emily Friedrichs <emilyfriedrichs@gmail.com>; Heather Grant <hcgrant51@gmail.com>; James Bubar <james@bubar.org>; Lorne Parnell <nlparnell@comcast.net>; Nicholas Germain <nbgermain@icloud.com>; Paul Rasmussen <pnrasmus@gmail.com>; Richard Kelley <richard.kelley@hdrinc.com>; external forward for stobias <Sally.tobias@me.com>; William McGowan <wfmcg@icloud.com>

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

Subject: FW: 19 Main Street | comments on expert testimony

From: RobinM <melodyofharpists@gmail.com>

Sent: Tuesday, July 19, 2022 8:17 AM

To: Michael Behrendt <mbehrendt@ci.durham.nh.us>; Karen Edwards <kedwards@ci.durham.nh.us>

Subject: 19 Main Street | comments on expert testimony

Greetings,

Please forward the attached document to the Planning Board, include it in the July 27th meeting packet, and post it to Citizen Comments for the 19 Main Street parking lot application.

Thank you.

Regards,

-- Robin

Robin Mower

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James A Bubar