

From: [Michael Behrendt](#)
Subject: Main Street #19 - Change in procedures | urgent - letter from Robin Mower ***
Date: Wednesday, July 27, 2022 12:55:19 PM
Attachments: [20220727 Mower to PB 19 Main procedures.pdf](#)

To the Planning Board (and Robin Mower, Todd Selig, and the applicant),
My thank you to Robin Mower for giving this important issue some thought and preparing the attached letter.

Here are my responses to the numbered items in the attached letter.

Regarding the one vote, I meant a vote at one specific meeting. There would need to be a separate vote on the conditional use, and then probably a separate vote on compliance with the Site Plan Regulations, and then the draft Notice of Decision. Some of these details may merit further guidance from the Town Attorney. When a conditional use and site plan is fairly straightforward at the end of the process it is likewise a fairly straightforward matter with the final deliberations and final vote. On complex, controversial, and long-running projects like 19 Main Street, it seems that much is not straightforward. It is difficult to coordinate the public hearing, deliberations, conditional use, site plan review, preparation of the draft NOD, final vote, etc. because the various parts tend to keep moving. Again, there would probably be three separate votes at one meeting.

I am happy to explain the process tonight. I agree that would probably be helpful for all. See the corresponding numbers in the attached letter for my responses here:

1. As I note above, I did not mean to imply there would be just one final vote. I would expect there to be three separate votes.
2. I do not recall the board ever voting first on the application and then my preparing the draft notice at a subsequent meeting. There may have been a separate vote on a conditional use earlier in the process a few times but not a vote on the application in the last ten years since I have been here. The vast majority of projects are not particularly controversial.

When the review has run its course and the issues seem to be largely addressed then I prepare a draft notice. In these cases I infer that the board is fine with the application so I prepare the draft based on that. The board does not need to direct me to do so though it certainly can. It will often discuss with me where the application stands and when it will be ready for final action. Then, the task at the final meeting involves only the board reviewing the draft notice and often changing some of the conditions.

3. I do not know what you are referring to. The board asked me to prepare the document in this fashion incorporating references that would be useful for the board in considering each criterion, similar to what Rick Taintor did for the Mill Plaza project. I simply included references that seem germane.
4. That will be up to the board. The Town Attorney has guided the board that it is best to discuss each conditional use criterion in detail but not to vote separately on each one. After that discussion the board takes one vote overall on the conditional use, stating the reason for its vote. Assuming that the board closes the public hearing on August 10, it will then determine how it wishes to continue its deliberations for the conditional use, the site plan, and any draft notice.
5. The review process is a complex process, especially for large and controversial projects. There is no perfect system. We continually wrestle with how to improve the process. At least now, I think we have arrived at a workable process for dealing with public hearings and deliberations on large and controversial projects. But there will be different opinions on how best to proceed and each detail can remain challenging. There are legal nuances: for example, I originally thought that the board would not accept written comments during an adjournment period. The Town Attorney clarified that we need to accept them. I earlier thought that voting during deliberations to get to the notice made sense. Likewise, the Town Attorney clarified that it would be best to have the votes all at one final meeting. For these nuances there is

no bible. Each community evolves its own procedures under the broad framework of the state statutes.

Michael Behrendt

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From: RobinM <melodyofharpists@gmail.com>
Sent: Wednesday, July 27, 2022 9:04 AM
To: Karen Edwards <kedwards@ci.durham.nh.us>
Cc: Michael Behrendt <mbehrendt@ci.durham.nh.us>
Subject: 19 Main Street | Change in procedures | urgent

Greetings, Karen --

Please forward this email and attached letter to the Planning Board ASAP (legally important for tonight's meeting) and also post the letter (but not the email) under Citizen Comments for the 19 Main Street application website.

Thank you.

Regards,

-- Robin

Robin Mower

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