

From: [Michael Behrendt](#)
To: [Karen Edwards](#)
Subject: FW: Main Street #19 - public comments
Date: Wednesday, June 15, 2022 1:16:32 PM

Karen,
Please post under 19 Main Street under Town Planner Correspondence.
Thanks.

Michael Behrendt

Durham Town Planner
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From: Michael Behrendt <mbehrendt@ci.durham.nh.us>
Sent: Wednesday, June 15, 2022 1:16 PM
To: Monica Kieser <MKieser@hpgrlaw.com>
Cc: Tim Phoenix <TPhoenix@hpgrlaw.com>
Subject: Main Street #19 - public comments

Hello Monica,
I am copying the Planning Board here as well. The board did not choose the approach of closing the public hearing and then renotifying. It would be inappropriate for the board to consider changing its course now that I have let the public know about the process. The board did not wish to receive oral comments at the meetings and we will not receive any oral comments until July 27. I think the board's intent was to not receive written comment now either, but based on the Town Attorney's guidance we must legally accept written comments. We would certainly prefer that any new comments, written now or offered verbally at the hearing, be only for new information but according to Laura, we cannot legally limit people's written comments now (I don't know how we would do that anyway). I think the board will want to limit verbal comments on July 27 to any new information to the extent that we are able to

do that. Some of our intention when the board took its vote on June 8 may not be realized because we were not fully aware of the legal aspects of adjourning the hearing, since this is a new procedure for us. The board's decision to adjourn was certainly legal but some of our comments about the parameters of an adjournment were not accurate. The Town Attorney has clarified the requirements so we better understand this approach and will be more clear going forward.

Michael Behrendt

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From: Monica Kieser <MKieser@hpgrlaw.com>
Sent: Wednesday, June 15, 2022 12:21 PM
To: Michael Behrendt <mbehrendt@ci.durham.nh.us>
Cc: Tim Phoenix <TPhoenix@hpgrlaw.com>
Subject: RE: Main Street #19 - public comments

Michael,

Respectfully, please review the DCAT for last week's meeting beginning at 3:59 mark when Lorne Parnell makes a motion to adjourn the public hearing until 7/27 seconded and supported by all members. Tim Phoenix raised, as a point of order, whether comment would be allowed to be received up until July 27th and the board said No. Discussion about various scenarios continued until 4:04:45. During this time Board Members repeatedly and specifically said that they wanted a stopping point and wanted to be in deliberation with no public input from anyone. New comment would be permitted on 7/27 and would **only** be permitted on new information or the draft Notice of Decision.

I know Laura was not at the meeting. Is she suggesting this was an unlawful

decision? Certainly if notice is required at Town expense in the scenario the board clearly desires this can be done now, right?

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

Sent: Wednesday, June 15, 2022 11:54 AM

To: Monica Kieser <MKieser@hpgrlaw.com>

Cc: Tim Phoenix <TPhoenix@hpgrlaw.com>

Subject: RE: Main Street #19 - public comments

Monica,

They didn't select that last option. It's just continued to July 27 with no new notices. In the future that might be a better option so that we don't get written comments in the interim and can probably better manage comments we get at the new hearing. The Town would need to pay for the notices but the \$300+ would be worthwhile.

Michael Behrendt

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From: Monica Kieser <MKieser@hpgrlaw.com>

Sent: Tuesday, June 14, 2022 7:04 PM

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

Cc: Tim Phoenix <TPhoenix@hpgrlaw.com>

Subject: Re: Main Street #19 - public comments

Michael,

I thought the board specifically chose the last option below (in bold). They said the public hearing was adjourned until 7/27 to allow deliberations, but that comment on a draft notice to approve or deny would be permitted at that time.

Monica

Sent from my iPhone

On Jun 14, 2022, at 4:21 PM, Michael Behrendt <mbehrendt@ci.durham.nh.us> wrote:

To the Planning Board (and abutters),

I want to share guidance I received from Town Attorney Laura Spector on the public hearing for 19 Main Street. As I mentioned this is the first time we have used this approach so there are some details we needed to clarify. The Town Attorney conveyed to me:

- The public hearing is continued to July 27 as noted. We won't take any comments at the intervening meetings (June 22 and July 13) to allow the board to start its deliberations.
- The public hearing remains open so we must accept written comments now. We will convey those comments to the Planning Board as soon as we receive them in the customary fashion. People can write whatever they wish but we strongly encourage people to provide new information rather than provide the same comments offered earlier.
- We will resume the public hearing on July 27 and accept verbal comments at that meeting.
- There was some question if the board could cancel the public hearing on July 27 if there was no new information but we need to hold that hearing since it was specifically continued to that date.

The Town Attorney suggested another possible approach on larger or more complex applications. The board could simply close the public hearing for deliberations and then reopen it later near the end with new public notices (sent at the Town's expense). In that case the board would not accept any written comments when the hearing is closed and could explicitly limit comments to specific new issues when the new hearing is held. At any rate, two approaches to consider in the future.

Michael Behrendt

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