

# Memorandum

To: Town Council

From: Jeff Nutting



Re: Combined Town Council & Planning Board Public Hearings

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The Council is scheduled to have a discussion on whether to engage combined public hearings with the Town Council and the Planning Board at the same time, in order to streamline the hearings on zoning changes to make the process more efficient for residents.

This memo outlines some of the logistics to consider when having this discussion:

1. Residents currently have multiple opportunities to weigh in on proposed zoning changes or permitting matters by holding separate public hearings. By holding combined meetings, are residents being deprived multiple opportunities to weigh in on public policy? Furthermore, are residents being deprived an opportunity to weigh in on policy before two entities who may have differing views on public policy?
2. Are combined meetings diluting the intent of the separation of powers between the Council and Planning Board as outlined in state law, the Town Charter and Town Code?
3. What will be the voting procedure? Separate votes or combined votes? Will all votes occur at the same time or separately?
4. Where will all of the members sit of both Boards? Assuming the Council sits at the traditional rostrum, where will the Planning Board members sit? And do they sit with equal policy approval stature, regardless of the 9-5 advantage the Council has in membership?
5. Who will members of the public address? Both bodies at the same time, or individually?
6. Does Franklin TV have the capacity to mic up or show on camera all Planning Board members?

These are just a few of the questions that have come to mind that the Council may want to consider when having this discussion. I have also attached the Town Attorney's memo on this issue from last October for your reference.



355 East Central Street  
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**MEMORANDUM**

TO: Franklin Town Council  
FROM: Mark G. Cerel, Town Attorney *MGC*  
RE: Zoning Bylaw Amendment Process: Whether Town Council and Planning Board and Town Council Satisfy Statute by Holding a Single Public Hearing  
DATE: October 7, 2016

You have asked me to provide you with my legal opinion whether the statutory requirement contained in G.L. Chapter 40A, Section 5 that both the Planning Board and Town Council hold a public hearing may be satisfied by the two bodies holding a single joint public hearing. The short answer is "yes": the first sentence of the second paragraph of G.L. Chapter 40A, Section 5 reads, in relevant part:

No zoning ordinance or bylaw or amendment thereto shall be adopted until after the planning board in a city or town and the city council . . . has each held a public hearing thereon, together or separately at which interested persons shall be given an opportunity to be heard. (emphasis supplied).

However, Section 5 is a lengthy statute which appears to have conflicting provisions; as an example, the first sentence of the fourth paragraph reads in relevant part:

No vote to adopt any such proposed ordinance or bylaw or amendment thereto shall be taken until a report with recommendations by a planning board has been submitted to the . . . city council or twenty-one days after said hearing has elapsed without submission of such report.

Query: What is the need for this provision, if the statute provides that the bodies may hold a joint hearing?

There are also practical and policy considerations for the Planning Board and Town Council to each hold a separate public hearing. Practical considerations: logistics

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for the scheduling and conduct of a joint meeting; policy considerations: additional opportunity for members of the public to attend and/or provide input.

In summary, it is my opinion that, while a single joint hearing is legally permissible,\* the better practice is for the Planning Board and Town Council to continue the current practice of holding two separate public hearings.

MGC:ce

\*In preparing this memorandum, I also reviewed the Franklin Town Charter, Town Code Chapter 4 Administration of Government, and Town Council Procedures Manual and found nothing mandating two separate hearings or, conversely, prohibiting a single joint public hearing.