RECD 7-7-1992 AT

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July 7, 1992

VIA FAX AND REGULAR MAIL

Mrs. Maryann P. Boord
First Selectman
Town of Durham
Town House Road
Durham, CT 06422

Re: Route 17 Traffic Signal Referendum

Dear Maryann:

At its June 25, 1992 meeting, the board of selectmen voted to schedule a special town meeting on July 7, 1992 to consider appropriating $35,000 from the highway project reserve fund to install a traffic signal on Route 17 near the library.

At the same meeting, the board of selectmen voted to remove the item from the call of the special meeting and to submit the issue to the voters at a referendum on July 15, 1992. The selectmen also scheduled a public hearing for Monday, July 13, 1992 to discuss the referendum question.

You have asked on whether it is necessary for the town actually to hold the special town meeting on July 7, 1992. As I understand it, the only agenda item on the special town meeting would have been the street light question. For reasons given below, I do not believe it necessary for the town actually to hold the special town meeting.

The selectmen removed the agenda item from the call of the meeting under the authority of C.G.S. §7-7. §7-7 permits the selectmen, not less than five days before any town meeting, on their own initiative to remove any item on the call for submission to voters by referendum. §7-7 also permits the selectmen to "...submit any item which, in the absence of such a vote, could properly come before such a meeting to the voters at a date set for such vote...." I interpret this last language as empowering the selectmen to submit an issue to referendum even without placing it on the town meeting agenda, so long as the town meeting could properly have considered the question.

If the town meeting were convened, it would serve no useful purpose. It need not discuss setting the referendum date, because the selectmen have already done that. It need not discuss the

merits of the referendum question, because the selectmen have already provided for a public hearing for that purpose on July 13, 1992.

In the case of Concerned Citizens of Sterling vs. Town of Sterling, 204 Conn. 551 (1987), the Sterling board of selectmen followed a procedure similar to that which the Durham selectmen adopted when calling this referendum. After certain residents of Sterling petitioned the selectmen for a town meeting to consider a proposed sale of town land, the selectmen on March 13, 1986 published notice of a town meeting on March 20, 1986. They simultaneously indicated that they had voted to remove the sale from the meeting agenda and submit it to a referendum to be held on March 27, 1986. Then the town held the referendum at which the voters approved the sale of land. Although an appeal followed, no one seems to have suggested that the board of selectmen violated the law either by removing the proposed sale from the town meeting agenda or by failing to hold the town meeting at the originally scheduled time. So we have at least one reported case in which the proposed procedure was used without objection.

Please let me know if you have any questions.

Very truly yours,

POLINER, POLINER & ROSEN, P.C.

Kenneth H. Antin

Kenneth H. Antin

KHA:mab