

DEVELOPMENT REVIEW BOARD TOWN OF EAST MONTPELIER

Rules of Procedure and Conflict of Interest Policy

Adopted as amended June 7, 2011

Amended February 21, 2012

Amended October 1, 2013

Section I: Authority.

The Development Review Board (“Board”) of the Town of East Montpelier hereby adopts the following rules of procedure (hereinafter referred to as these Rules) in accordance with 24 V.S.A. § 4461(a) and 1 V.S.A. §§ 312(e), (f), and (h).

Section II: Policy.

These Rules are adopted to ensure consistent and fair treatment of applicants, interested persons, and participants, orderly and efficient public proceedings, and compliance with state and federal law. These Rules shall also ensure that no Board member will gain a personal or financial advantage from his or her work for the Board, so that the public trust in municipal government will be preserved.

Section III: Definitions.

A. “Conflict of interest” means:

1. A direct or indirect personal or financial interest of a Board member, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending before the Board; or
2. A situation where a Board member has publicly displayed a prejudgment of the merits of a particular proceeding before the Board. This shall not apply to a member’s particular political views or general opinion on a given issue; or
3. A situation where a Board member has not disclosed ex parte communications with a party in a proceeding before the Board, pursuant to Section XII of these Rules.

B. “Deliberative session” means a private session of the Board to weigh, examine, and discuss the reasons for and against an act or decision, from which the public is excluded. There shall be no taking of evidence or submission of testimony, nor shall a

deliberative session be publicly noticed. The Board may enter deliberative session by majority vote, and shall be deemed to be in deliberative session from the close of the final public hearing until the issuance of a written decision.

- C. “Executive session” means a session of a public body from which the public is excluded, pursuant to 1 V.S.A. § 313. Such private session may only be held for one of the reasons permitted by the statute, and no binding action may be taken in executive session.
- D. “Ex parte communication” means direct or indirect communication between a member of an appropriate municipal panel and any party, party’s representative, party’s counsel or any person interested in the outcome of any proceeding before the panel, that occurs outside of a public proceeding, and concerns the substance or merits of the proceeding.
- E. “Official act or action” means any legislative, administrative or quasi-judicial act performed by any Board member.
- F. “Public deliberations” means the weighing, examining, and discussing, in a public proceeding, the reasons for and against an act or decision, but expressly excludes the taking of evidence and the arguments of parties.
- G. “Recuse” means to remove oneself from a particular Board proceeding because of a real or perceived conflict of interest.

Section IV: Regular Officers.

The Board shall consist of nine regular members. Annually in the month of September, or at other times throughout the year as needed, the Board shall hold an organizational meeting and elect by majority vote, a Chair and a Vice Chair.

- A. The Chair shall preside at all meetings, hearings, and deliberative sessions, decide all points of order or procedure, and appoint members to any committee of the Board. The Chair may administer oaths and may request the attendance of witnesses and the production of material germane to any issue under consideration. The Chair, Vice Chair, or Acting Chair, who presided at the hearing is authorized to sign decisions on behalf of the Board.
- B. The Vice Chair shall assume the duties of the Chair whenever the Chair is absent, or at the Chair’s request. Whenever the Chair and the Vice Chair are absent, or at their request, the members present shall elect an acting chair who shall assume the duties of the Chair.
- C. It shall be the duty of all members to review the minutes and other official records of Board meetings and actions, and correct and ratify these when appropriate and necessary.

- D. The Board shall designate a recording secretary. The secretary may be a non-member. The secretary may be the administrative officer. The secretary shall conduct all official correspondence subject to these rules at the direction of the Board; shall send out all notices required by these rules of procedure; keep the minutes of the Board's proceedings showing vote of each member upon each question or, if absent or failing to vote, indicating this; including the names and addresses of all witnesses and interested persons, a summary of the facts on which the decision is based, and the decision rendered; and shall keep records of its examinations and other official actions; all of which shall be filed timely with the town clerk as a public record. The Board may, at its discretion and with the consent of the administrative officer, delegate one or more of these responsibilities to said administrative officer.

Section V: Membership Terms

Members shall serve three-year terms, under a three member rotational schedule. The Selectboard will reappoint or replace members each May. Those Board members with expiring terms shall notify the Selectboard of their interest in continued service no later than the end of the prior March. Any member who intends to resign prior to the end of the term shall provide as much advance notice to the Selectboard as reasonably possible.

Section VI: Regular and Special Meetings and Order of Business for Meetings.

Regular meetings shall generally be held in the Town Office at 7:00 p.m. on the first Tuesday of the month, or as warranted. The Chair may cancel meetings at any time.

- A. Special meetings may be called by the Chair, provided at least 24 hours notice is given to each member and the time and place of each special meeting is publicly announced at least 24 hours before the meeting.
- B. A quorum shall consist of a majority of the entire Board.
- C. Members may participate by telephone as long as the absent member can hear everything that is occurring at the meeting and everyone present at the meeting can hear the Board member.
- D. All meetings shall be open to the public unless the Board has entered a deliberative or an executive session. The Board may only hold an executive session pursuant to the reasons permitted by 1 V.S.A. § 313, and only after a majority vote to enter executive session.
- E. There shall be an agenda for each meeting, with time allotted for each item or group of items to be considered. Those who wish to be added to the agenda shall contact the administrative officer to arrange for a convenient time. Generally, the order of business shall be:
 - 1) roll call;

- 2) public comment period as noted under G below;
- 3) public hearings, as scheduled;
- 4) action on held cases;
- 5) action on new cases;
- 6) reading and approving minutes from previous meetings;
- 7) reports of committees;
- 8) other business; and
- 9) adjournment.

At the Chair's discretion, the hearings portion of the meeting may be moved up for the convenience of those attending.

- F. The Chair shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 V.S.A. § 312(h).
- G. At each meeting, there shall be a ten-minute period of time reserved for public comment near the beginning of the meeting. The Chair may extend or reduce this period of time as necessary. Speakers may participate at other times throughout a meeting but only when recognized by the Chair. Such comment shall be limited to three minutes per speaker, unless by majority consent the Board sets a different time limit. The Board shall apply consistent time limits to all recognized to speak.
- H. Notice for hearings on the adoption, amendment, or repeal of the bylaw and other regulatory tools shall be pursuant to 24 V.S.A. § 4444, as amended.

Section VII: Public Hearings and Order of Business for Hearings.

Public hearings shall be conducted as quasi-judicial proceedings pursuant to 1 V.S.A. § 310(5)(B). Hearings shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1), (2), as amended. Except as provided for in O below, participation at hearings shall be limited to the applicant and to those granted interested person status.

The Chair shall conduct the hearing in the following manner:

- A. Open the hearing by reading the warning of the hearing.
- B. Review the order of events, remind all present that the proceeding will be conducted in an orderly manner, and make copies of these Rules available.
- C. Request disclosure of conflicts of interest and ex parte communications.
- D. Review the definition of interested persons in 24 V.S.A. § 4465(b).
- E. Explain that, pursuant to 24 V.S.A. § 4471(a), only an interested person who has participated in this proceeding may appeal any decision issued in this proceeding.

- F. Ask all who believe they meet the definition of interested person to identify themselves, demonstrate why they qualify for interested person status, and to provide contact information.
- G. The Board may grant or deny interested person status, subject to the definitions established by 24 V.S.A. § 4465(b). The Board may hold a short deliberative session to consider interested person status, and shall issue its decision immediately upon returning to open session.
- H. Direct the applicant or his/her representative and all interested persons to step forward and take the following oath: *I hereby swear or affirm that the evidence I give in the cause under consideration shall be the whole truth and nothing but the truth (so help me God) or, (under the pains and penalties of perjury).*
- I. Accept written information presented to the Board.
- J. Invite the applicant or applicant's representative to present such application or proposal.
- K. Invite Board members to ask questions of the applicant or applicant's representative.
- L. Invite interested persons to present information regarding the application or proposal.
- M. Invite the applicant, applicant's representative, or interested persons to respond to information presented.
- N. Invite more questions or comments from members of the Board.
- O. The Chair may allow members of the public who were denied interested person status and other members of the public to make comments or ask questions regarding the application or proposal after being duly sworn.
- P. Allow final comments or questions from the applicant or applicant's representative.
- Q. Upon motion and majority approval, the Chair shall either adjourn the hearing to a time certain, or close the proceedings by stating that this is the final public hearing on the matter.
- R. Upon final adjournment, the Board shall be deemed to be in deliberative session until a written decision is issued.

Section VIII: Site Visits.

Site visits shall be open to the public; however, no testimony shall be taken and no ex parte communication shall occur. Site visits shall be held pursuant to the following conditions:

- A. If, prior to a hearing, the Chair determines that a site visit will be necessary, the site visit shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1), (2) if it is scheduled to occur before the hearing.
- B. If necessary, the Board may recess a hearing to a time certain to conduct a site visit at a property that is the subject of an application before the Board.
- C. The minutes of the proceeding shall reflect that a site visit was held, who was present, and the nature and duration of the site visit.

Section IX: Service List.

The secretary shall create a list of individuals present at the hearing. The list shall include those who participated orally and those who participated in writing. The list shall clearly designate those who were granted or denied interested person status by the Board. All decisions of the Board shall be mailed to those on the list. Those on the list not granted interested person status shall be supplied with any decisions issued by the Board on request. The list shall include:

- A. The names of those who participated, and the names of those who were granted or denied interested person status.
- B. The mailing address of each of these persons.

Section X: Filing of Appeals.

- A. Appeals to the Board may be made at any time by an interested person affected by any decision of the administrative officer and by applicants for a conditional use permit, a nonconforming use change, or a hardship variance. Such appeal shall be filed with the administrative officer on a form approved by the Board. An appeal taken with respect to a decision of the administrative officer must be filed within 15 days of the date of such decision and a copy of the notice of appeals filed with the administrative officer.
- B. The applicant shall provide the administrative officer with all information requested by the Board, and any such additional information and data as may be required to advise the Board fully with reference to the application or appeal, whether such information is called for by the official forms or not. No application or appeal will be considered by the Board unless it is submitted on the form required.

Section XI: Decisions.

The Board shall make decisions in open meeting or in deliberative session. Deliberative sessions are not open to the public and shall not be warned. [1 V.S.A. §§ 312(e), (f)] Members of the Board who have not heard all testimony and reviewed all evidence

submitted for a particular application or proposal shall not participate in that proceeding. Absent Board members may participate in the decision after reviewing audiotapes or transcripts of the proceedings and record documents. The following rules shall apply to voting on decisions:

- A. Motions shall be made in the affirmative.
- B. The Chair has the same voting rights as other members and can make motions.
- C. All members present are expected to vote unless they have recused themselves. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
- D. The final decision on any application or appeal to the Board shall be in the form of a resolution, which must be approved by a majority of the membership of the full Board. [1 V.S.A. § 172; 24 V.S.A. § 4461(a)] The basis of each decision shall include a detailed summary of the facts upon which the determination is made. In the case of variances, the Board shall grant variances and render a decision in favor of the appellant/applicant if all the statutorily required facts listed in 24 V.S.A. § 4469(a) or (b) are found. The variance decision shall specifically state the exceptional difficulty or unusual hardship upon which the appeal/referral was based and which the Board found present. All decisions shall state in detail what conditions and safeguards are required or any time limitations prescribed.
- E. Within 45 days after the hearing, the administrative officer shall send the final decision by certified mail to the applicant/appellant. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing, as set forth in Section IX above, and a copy of the decision shall be filed with the administrative officer and the clerk of the municipality as a part of the public records of the municipality. [24 V.S.A. § 4464(b)(3)]
- F. For the purposes of the appeal deadline on the Board's decision, the decision shall be considered as having been issued on the date that it is mailed to the applicant by certified mail.
- G. A file of all materials and decisions relating to each case shall be kept by the administrative officer as part of the town records. The administrative officer shall also file a copy of decisions with the town clerk for inclusion in the land records when appropriate. All records of the Board shall be a public record subject to the Vermont "Right-to-Know Law," 1 V.S.A. §§ 315-319, as now provides or is hereafter amended.
- H. Unless otherwise specified, any conditional use, variance, or nonconforming use change authorization shall expire if a zoning permit is not obtained by the applicant within 180 days from the date of authorization by this Board.

- I. The Board may reject an appeal or a request for reconsideration without hearing and render a decision, which shall include findings of fact, within ten days of the date of filing of the notice of appeal, if the Board considers the issues raised by the appellant in his appeal have been decided in the earlier appeal. [24 V.S.A. § 4470]
- J. If the Board fails to render a decision within 45 days of adjourning the hearing, the Board shall be deemed to have rendered a decision in favor of the applicant and granted the relief requested by the applicant on the last day of such period.

Section XII: Conflicts of Interest.

Participation, disclosure of conflicts, and recusal shall be governed by the following procedures:

- A. **Participation.** A Board member shall not participate in any official action where he or she has a conflict of interest in the matter under consideration. A Board member shall not, personally or through any member of his or her household, business associate, employer or employee, represent, appear for, or negotiate in a private capacity on behalf of any person or organization in any proceeding pending before the Board.
- B. **Disclosure.** At all hearings, the Chair shall request that Board members disclose all potential conflicts of interest. When recognized by the Chair, any interested person may request disclosure of potential conflicts of interest.

Nonetheless, after disclosing a conflict or perceived conflict, if a member who believes that he or she is able to act fairly, objectively, and in the public interest, shall submit a one-paragraph statement describing the matter under consideration, the nature of the potential conflict of interest, and the reason(s) why the member believes he or she is able to act in the matter fairly, objectively, and in the public interest.

This statement shall be signed by the member, and filed as part of the minutes of the proceeding pertaining to the matter under consideration.

- C. **Recusal.** A Board member shall recuse him or herself from any matter in which he or she has a conflict of interest, pursuant to the following:
 - 1. The applicant or any interested person may request that a member recuse him or herself due to a conflict of interest. Such request shall not constitute a requirement that the member recuse him or herself.
 - 2. A Board member who has recused him or herself from a proceeding shall not sit with the Board, deliberate with the Board, or participate in that proceeding as a Board member in any capacity.

3. If a previously unknown conflict is discovered, the Board may take evidence pertaining to the conflict, and if appropriate, adjourn to a short deliberative session to address the conflict.
4. The Board may adjourn the proceedings to a time certain if, after a recusal, it may not be possible to take action through the concurrence of a majority of the Board. The Board may then resume the proceeding with sufficient members present.

Section XIII: Ex Parte Communications.

Ex parte communication is prohibited. Any Board member who inadvertently conducts ex parte communication must disclose such communication as required below.

- A. **Disclosure.** At each hearing, the Chair shall request that members disclose any ex parte communications. Board members who have received written ex parte communications shall place on the record copies of all written communications received as well as all written responses to those communications. Members shall prepare a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person making the ex parte communication.

Section XIV: Progressive Consequences for Failure to Follow the Conflict of Interest Procedures.

In cases where the conflict of interest procedures in Section XII have not been followed, the Board may take progressive action to discipline an offending Board member. In the discipline of a member, the Board shall follow these steps in order:

- A. The Chair shall meet informally, in private, with the Board member to discuss possible conflict of interest violation.
- B. The Board may meet to discuss the conduct of the Board member. Executive session may be used for such discussion. [1 V.S.A. § 313(4)] The Board member may request that this meeting occur in public. If appropriate, the Board may admonish the offending Board member in private.
- C. If the Board decides that further action is warranted, the Board may admonish the offending Board member at an open meeting and reflect this action in the minutes of the meeting. The Board member shall be given the opportunity to respond to the admonishment.
- D. Upon majority vote, the Board may request that the offending Board member resign from the Board.

Section XV: Removal.

Upon majority vote, the Board may request that the Selectboard remove a Board member from the Board. Board members may be removed for cause by the Selectboard upon written charges and after public hearing. [24 V.S.A. § 4460(c)]

The Board may also recommend to the Selectboard replacement of any member who has missed three consecutive meetings without a reasonable justification.

Section XVI: Amendments.

These rules may be amended at any regular or special meeting by a majority vote, provided that each Board member has been presented a written copy of the proposed amendment at least 24 hours before the meeting at which the vote is taken. Only those amendments that are presented to the members prior to the meeting may be amended at that meeting.

Adopted November 30, 1972, except as hereinafter noted:

September 3, 1980 – Amended Article VI Sec. 8.

December 8, 1997 – Revised recommendations.

May 22, 2000 – Article II: Insert new Sec. 4; renumber old Sec. 4 as Sec. 5.

February 20, 2007 – Major revision.

June 7, 2011 – Revised to apply to Development Review Board.

February 21, 2012 – Revised Section IV(A) to allow Chair, Vice Chair, or Acting Chair to sign decisions.

October 1, 2013 – Revised Section VI preamble decreasing regular meetings to the first Tuesday of a month