

**Town and Village of Waterbury
DEVELOPMENT REVIEW BOARD
Rules of Procedure and Conflict of Interest Policy**

Section I: Authority

The Development Review Board of the Town and Village of Waterbury (the "Board") hereby adopts the following rules of procedure (hereinafter referred to as the "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 and 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, and so that the public trust in municipal government will be preserved.

Section III: Adoption & Amendments

The Rules shall be those adopted by the Board in accordance with 24 VSA § 4461(a). Upon adoption of the rules, the Administrative Officer shall file a copy of these rules and all amendments with the City Clerk as a public record and post a record of the Rules in one or more public places.

These Rules may be amended at any regular or special meeting by a majority vote of the Board, provided that each Board member has been presented a written copy of the proposed amendment at least twenty-four (24) hours before the meeting at which the vote is taken.

Section IV: Regular Officers

The Board shall consist of seven (7) regular members. As soon as is practical following the annual Town Select Board appointments, or at other times throughout the year as needed, the Board shall hold an organizational meeting and elect from the appointed Board members by majority vote, a Chair, Vice Chair and Clerk.

- A. The Chair shall preside at all meetings, hearings, and deliberations, 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.
- B. The Vice Chair shall assume the duties of the Chair whenever the Chair is absent, or at the Chair's request. The Clerk shall assume such duties whenever the Chair and the Vice Chair are absent, or at their request.
- C. It shall be the duty of all Board 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 Clerk shall take minutes of all meetings, unless delegated to staff.
- E. Upon majority vote, the Board may request that the legislative body remove a Board member from the Board. Board members may be removed for cause by the legislative body upon written charges and after public hearing. 24 V.S.A. § 4460(c).

Section V: Alternate Members

The Selectboard shall annually, or as needed, appoint up to two alternates who may temporarily serve as Board members in the event of a recusal or absence of one or more members.

- A. An alphabetical roster of all alternate members shall be kept by the Board. The assignment of alternates will begin with the first alternate in alphabetical order and rotate through the list until all alternates have served and then the rotation will be repeated.
- B. Whenever a regular member recuses him or herself or is otherwise unable to serve on the Board, the Chair of the Board, or his or her designee, may appoint an alternate to serve temporarily as a member of the Board by selecting an individual from the roster as provided in Paragraph A, above. Whenever necessary for the Board to conduct its business or to take an official act, the Chair of the Board, or his or her designee, shall appoint an alternate to serve temporarily as a member of the Board by selecting an individual from the roster as provided in Paragraph A, above.
- C. If the Chair of the Board does not appoint an alternate as permitted or required under Paragraph B, a majority of the members of the Board present and voting may appoint an alternate to serve in accordance with Paragraph B.
- D. An alternate member who is appointed to serve temporarily as a Board member shall be required to be a Board member from the time of the first meeting until a final decision is made on any application heard by the Board during the time period that the alternate was appointed as a Board member and shall participate in the review of and decision on such applications. Participation includes attending deliberative sessions and any continuance of a public hearing if the application has been tabled or adjourned to another date.
- E. The Board may decide at any point in its review of an application that it would like to request that an alternate be appointed temporarily as a Board member to participate in the review of and decision on said application. Any alternate appointed for this purpose may participate in the decision on an application only if he or she has reviewed the audiotape of the proceedings and any evidence submitted. If the Board has closed the hearing on the application, the Board may reopen the hearing if the Board determines that additional information or evidence is needed before it can make a decision.

Section VI: Regular and Special Meetings

Regular meetings to conduct business of the Board shall be held in the municipal offices at 6:30 p.m. on the first and third Thursdays 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 twenty-four (24) hours notice in advance is given to each Board member and the time and place of each special meeting is publicly announced at least twenty-four (24) hours before the meeting.

- B. A quorum shall consist of a majority of the entire board.
- C. Board 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, by majority vote, has entered a deliberative or 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. The Chair shall determine the content and order of the agenda.
- F. All business shall be conducted in the same order as it appears on the agenda, except that by consent of a majority of the Board, the Chair may alter the order of items to be considered and/or the time allotted.
- G. At each meeting, there shall be a ten minute period of time reserved for public comment near the end of the meeting. The Chair may extend or reduce this period of time as necessary. Speakers may participate at other times throughout the 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. The Chair shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 V.S.A. § 312(h).
- I. The Board shall convene a joint meeting at least once a year with the Waterbury Planning Commission to discuss adoption, amendment, or repeal of the bylaws and other regulatory tools.
- J. 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

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. The Chair should conduct the hearing in the following manner:

- A. Open the hearing by reading the warning of the hearing, as it appears on the agenda.
- 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 take an appeal of any decision issued in this proceeding.
- F. Ask all who believe they meet the definition of interested person to identify themselves and to provide contact information. The Board shall only make determinations as to party status in proceedings for appeals of administrative officer decisions. As these Rules do not differentiate between persons with interested person status and those without, anyone seeking to participate in a proceeding may do so, subject to these Rules and those

established by the Chair. Members of the public who are not interested persons may offer comment on an application, after recognition by the Chair. The Chair shall limit such public comment to three (3) minutes per speaker, unless by consent of a majority of the Board, the Board sets a different time limit. The Board shall apply consistent time limits to all recognized to speak.

- G. Direct the applicant or his/her representative and all interested persons to step forward and take the following oath: *I hereby swear 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).*
- H. Accept written information presented to the Board.
- I. Invite the applicant or applicant's representative to present such application or proposal.
- J. Invite Board members to ask questions of the applicant or applicant's representative.
- K. Invite interested persons and members of the public to present their information regarding the application or proposal.
- L. Invite the applicant or applicant's representative to respond to information presented.
- M. Invite more questions or comments from members of the Board.
- N. Invite more questions from interested persons and members of the public.
- O. Allow final comments or questions from the applicant or his/her representative or members of the Board.
- P. 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.

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 scheduled immediately prior to a public hearing. Such site visits shall be publicly noticed in accordance with 24 V.S.A. §§ 4464(a)(1), (2).
- B. If necessary, the board may recess a hearing to conduct a site visit at a property which is the subject of an application before the board.
- C. If necessary, the board may adjourn a hearing to a time certain to conduct a site visit at a property which is the subject of an application before the board.
- D. 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 staff shall create a list of all individuals who participated. The list shall include those who participated orally and those who participated in writing. All decisions of the Board shall be mailed to those on the list. The list shall include:

- A. The names of those who participated in the proceedings.
- B. The nature and content of participation by those who participated.
- C. The mailing address of each of these persons.

Section X: Voting

Members of the Board who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not vote. Except that absent Board members may participate if they have reviewed the audiotape and minutes of the proceedings, and any evidence submitted. 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 all members and can make motions.
- C. A motion and a second shall be required for a motion to have the floor.
- D. All Board members present are expected to vote unless they have recused themselves.
- E. Abstentions are strongly discouraged and shall not count towards either the majority or the minority.
- F. For a motion to pass, it must receive the concurrence of a majority of the entire Board, regardless of how many are present. 1 V.S.A. § 172; 24 V.S.A. § 4461(a).

Section XI: Decisions

The decision shall set forth the findings of fact and conclusions of law reached by the Board on the matter.

- A. The decision shall be reviewed and signed by the member of the Board who presided as the Chair or Vice Chair at the hearing if it accurately reflects the Board's findings of fact and conclusions of law, and any applicable conditions as determined by the Board.
- B. The Board may attach additional reasonable conditions, safeguards, and time limitations necessary and appropriate under the circumstances to implement the purposes of the Vermont Planning and Development Act and the Town's plan and bylaws. 24 V.S.A. § 4464(b)(2).
- C. The Board shall issue a written decision within forty-five (45) days of the adjournment of the public hearing. 24 V.S.A. § 4464(b)(1).
- D. The Board may reject an application for rehearing or reconsideration without a hearing and render a decision thereon, which shall include findings of fact within ten (10) days of the date of filing of the application if (a) the Board concludes the issues raised by the applicant in his or her application have been decided in an earlier appeal, and (b) there has been no substantial change in the evidence, facts, regulations, law or circumstances of the case. The decision shall be rendered, or notice given, as in this Section.

Section XII: Conflicts of Interest

Participation, disclosure of conflicts, and recusal shall be governed by the Town of Waterbury Conflict of Interest Policy, as adopted on March 18, 2013, as amended.

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. 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 in the record copies of all written communications received as well as all written responses to those communications.

- B. 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, which shall become a part of the record of the proceedings.

Section XIV: Attendance

If any Board member misses more than one-third of the meetings in any consecutive three-month period, the Board may recommend that the Selectboard replace that member.

Section XV: Definitions

- A. "Board" means the Development Review Board.
- B. "Board member" means a regular member of the Development Review Board or an alternate who has been appointed to serve temporarily as member of the Development Review Board.
- C. "Conflict of interest" shall have the same meaning as used in the Town of Waterbury Conflict of Interest Policy, as adopted on March 18, 2013, as amended.
- D. "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 need a deliberative session be publicly noticed. By motion and majority vote, the Board may enter deliberative session during a hearing to consider a matter before it.
- E. "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.
- F. "Ex parte communication" means direct or indirect communication between a member of an appropriate municipal panel and any party, party's representative, party's counselor 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.
- G. "Official act or action" means any legislative, administrative or quasi-judicial act performed by the Board.
- H. "Recuse" means to remove oneself from a particular board proceeding because of a real or perceived conflict of interest.

Adopted by the Development Review Board on 5th day of DECEMBER, 2013


Jeffrey Larkin, Chair,
Development Review Board