

# Town of Wilmington

## Development Review Board Rules of Procedure & Ethics

September 5, 2019

### I. SOURCE OF AUTHORITY:

The Wilmington Development Review Board shall be governed by the provisions of Chapter 117, Title 24, by the Municipal and Regional Planning and Development Act, by all other applicable State statutes, local laws and ordinances, and these procedures, which are supplemental to the **Municipal Administrative Procedure Act (MAPA)** in 24 V.S.A. Chapter 36.

### II. PURPOSE:

Pursuant to 24 V.S.A. Section 4461, “An appropriate municipal panel shall elect its own officers and adopt rules of procedure, subject to this section and other applicable state statutes, and shall adopt rules of ethics with respect to conflicts of interest.” The purpose of these procedures is to assist the Town of Wilmington Development Review Board (hereinafter referred to as the “Board”) with carrying out its duties, meeting its responsibilities, and avoiding misunderstandings by establishing rules of procedure. By identifying what is required of the hearings, record-keeping, and Board determinations, cases may be handled more effectively and efficiently, resulting in greater protection for the Town and more equitable treatment for applicants and interested parties.

### III. GENERAL ORGANIZATION:

A. The Board shall consist of five (5) Regular Members and up to three (3) Alternates.

B. The Board shall organize and elect, by the majority vote of all Regular Members present and voting, a Chairperson, a Vice-Chairperson, and a Clerk, annually at the first regularly scheduled meeting subsequent to the annual appointment by the Town of Wilmington Select Board. Vacancies in these roles shall be filled by an election at the next regularly scheduled meeting.

1. **CHAIRPERSON:** The Board shall elect annually from its Regular Members, by a majority vote, a chairperson. All public meetings shall be held at the call of the Chairperson and at such times as the Board may determine. The Chairperson shall be considered the Chairperson of the Board for all matters attended to at that meeting and all future meetings during the one year term.

(a) **Duties:** The chairperson shall call the meeting to order, preside over all meetings and hearings of the Board, maintain order, decide all questions of order and procedure (subject to these rules), and shall appoint any committees found

necessary to carry out the business of the Board. He or she shall administer oaths and compel the attendance of witnesses and the production of material germane to any issue appealed.

(b) Signature: The Chairperson's signature shall be the official signature of the Board and shall appear on all decisions of the Board.

2. VICE CHAIRPERSON: The Vice-Chairperson shall assume the duties of the Chairperson in his/her absence.

(a) Signature: The Vice-Chairperson's signature shall be the official signature of the Board in the absence of the Chairperson.

3. If neither the Chair nor Vice-Chair is available, the Board shall elect a temporary Chair. (MAPA, 24 V.S.A. § 1205)

4. CLERK: A majority of the Board shall elect a Clerk from among the Regular members of the Board. By a majority vote of a quorum of the Board, in lieu of electing a member of the Board as Clerk, the Board may vote to delegate the duties of the Clerk to a non-member appointee. The Clerk shall keep the minutes of all Board meetings and proceedings. All minutes shall be filed promptly with the Town Clerk as a public record. The Clerk shall keep track of members' attendance at meetings. If the Clerk is temporarily unable to perform these functions, the Board shall elect a temporary clerk.

5. ALTERNATES: Up to three (3) Alternates may be appointed by the Select Board and shall fill in for any Regular Member who is disqualified or is otherwise unable to serve.

#### IV. ETHICS

A. CONFLICTS OF INTEREST: A Conflict of Interest (COI) is a situation in which a person or organization is involved in multiple interests, financial or otherwise, one of which could possibly corrupt, or be perceived to corrupt, the motivation or decision making of that individual or organization. Board member shall be excused from that portion of a meeting or hearing where a conflict of interest exists or is perceived to exist. Any Board member having a conflict of interest or a potential for perceived conflict of interest shall notify the Zoning Administrator as soon as they become aware of the conflict. The Zoning Administrator shall promptly notify the Board chair, who shall make the final determination on the conflict of interest.

B. RECUSAL: Recusal is disqualification from a hearing due to a real, perceived or possible Conflict of Interest (COI), bias, or prejudice in matters of the hearing. A Board member may recuse themselves from a specific hearing based on their judgement that their participation has real or perceived COI, bias, or prejudice in the matter. A Board member may be challenged by any other party to recuse themselves. The final decision on recusal lies with the Board member in question.

C. EX-PARTE COMMUNICATIONS: Ex-parte communications are any oral communication, discussion, statements, questions, concerns, or suggestions between a Board member and any member of the public regarding a hearing occurring outside of a

publicly warned hearing. Regarding ex-parte communications, the Municipal Administrative Procedure Act (MAPA 24 V.S.A. Chapter 36 § 1207) requires that:

- a. A sitting Board member shall not communicate, directly or indirectly, with a party, party's representative, party's counsel, or any person interested in the outcome of the proceeding, on any issue in the proceeding, while the proceeding is pending, without notice and opportunity for all parties to participate.
- b. No Board member shall communicate on any issue in the proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any person interested in the outcome of the proceeding, on any issue in the proceeding, while the proceeding is pending.
- c. A sitting Board member who receives an ex parte communication any issue relating to the proceeding and a member who receives any ex parte communication shall place on the record all written communications received, all written responses to those communications, and disclose orally the substance of all oral communications received, all responses made, and the identity of each person making the ex parte communication.

Ex-Parte communications should be avoided if at all possible by directing all comments to be presented in a publicly warned hearing or to the Zoning Administrator. If an ex-parte communication occurs, the Board member shall present the content of the communication in writing to the commission or orally present the communication for consideration at the next appropriate hearing for the public record. If the ex-parte communication is considered to have influenced or biased the Board member sitting on the case the Board member may recuse themselves from the case. The decision of whether to recuse themselves from a case lies with the Board member having the possible COI, bias, or prejudice.

D. PENDING CASES: Members should not talk about a case with any applicant or agent who has a pending case in front of the Board until the decision is rendered and all the appeal periods have passed.

#### V. ATTENDANCE:

A. Any regular member of the Board who is unable to attend a meeting shall notify the Zoning Administrator as soon as possible that he/she cannot attend. The Zoning Administrator shall then notify an Alternate, requesting his/her attendance. The Alternates shall be called in a rotating basis.

B. A provision for continued service on the Board by any member shall be a good attendance record.

C. Any member with unexcused absences for three (3) consecutive regular meetings or six (6) regular meetings in a twelve (12) month period may, by the majority vote of the entire Board, be recommended to the Select Board for removal from the Board. Valid excuses shall include such things as, but not limited to, illness, vacation, a death in the family, or other municipal business.

## VI. GENERAL PROCEDURES for CONDUCT of MEETINGS & HEARINGS

A. *Roberts Rules of Order, Newly Revised* shall determine procedural matters unless otherwise specifically set forth in these Procedures or in the Municipal Administrative Procedures Act (MAPA).

B. The Board shall conduct all meetings in accordance with the Open Meeting Law 1 V.S.A. §§ 310-314.

C. The Chairperson or acting chair shall determine what is a reasonable amount of time for members of the public to express their opinion and shall ensure that order is maintained at all times pursuant to 1.V.S.A. § 312 (h). If a meeting or hearing is to reconvene at a later date, it shall be deemed sufficient to constitute proper notice of that later session, if an announcement made before adjournment of the previous session of the meeting or hearing specifies the time, date and place of that later session. (MAPA, 24 V.S.A. § 1204 (c).

### D. Meetings:

1. A regular meeting of the Board shall be held on the first and third Monday of the each month to hold hearings. When the first or third Monday of the month is a Holiday the Board will hold a regular meeting on the Tuesday immediately following the holiday or at such other time as is agreed to by the Board and any pending applicants. If there are no hearings, no meeting shall be held.

*a. No more than **two (2)** hearings shall be scheduled by the Zoning Administrator, for any given meeting night, without the express approval of the Board Chair, Vice Chair or acting Chair.*

*b. Under no circumstances shall more than **three (3)** hearings be scheduled for any given meeting night without the prior approval of the Board.*

2. The Board may schedule work sessions and joint meetings with other Boards and commissions to complete its work. The Board may schedule special meetings regarding any related matter as it sees fits.

3. Minutes. Draft minutes of all meetings shall be written and distributed by the Board Clerk. Copies of the minutes shall be sent to all Board members, including alternates, and filed in the office of the Town Clerk as a public record. They shall also be posted on the Town's website. Minutes shall be approved by a majority of the Board at the next meeting of the Board.

4. The Board may convene at the site if the Board feels a site visit will aid in their understanding of a proposed project. Site visits are intended to familiarize Board members and the public with the site on which a project or activity has been proposed; **it is not a hearing**. If a quorum of the Board is present at a Site Visit, it is an open meeting and its date and time must be announced and/or posted in accordance with state law. Board members should avoid ex-parte discussions as reviewed in section IV (C) of this document.

## E. Hearings

### 1. The Chairperson shall:

- a. Open the hearing by reading the warning of the hearing.
- b. Identify any interested parties as defined by 24 V.S.A. § 4465 (b).
- c. Direct the applicant or person setting forth a proposal, and all interested parties who wish to speak on the proposal, to take an oath to tell the truth.
- d. Identify the assigned hearing manager who will:
  - Ask the applicant to present such application or proposal.
  - Open the discussion to the members of the Board.
  - Ask interested parties who have comments with regard to the application or proposal to give their name and make their comment.
  - Provide the applicant or the person setting forth the proposal shall then be given an opportunity to respond.

(1) Interested parties, as defined by 24 VSA § 4465, unable to attend a hearing may submit position statements in the following manner:

(i). Designate another person, who shall be present at the hearing, to read their statement into the hearing record. The designated person shall be sworn in pursuant to Section VI (E)(c), above, of these Rules of Procedure.

(ii). Submit a notarized written statement of their position requesting that same be read into the hearing record by the Chairperson or presiding officer.

e. Allow more questions or comments from members of the Board or interested parties.

f. At the discretion of the Chair, allow members of the public to make comments or ask questions regarding the application or proposal. All testimony of parties, witnesses and members of the public must be made under oath or affirmation. Irrelevant, immaterial or unduly repetitious evidence shall be excluded 1.V.S.A. § 1206.

g. Written commentary from the Public, *not personally present* at the hearing may, at the discretion of Chairperson or presiding officer be accepted at the hearing. The written commentary may be presented in the following manner:

(i). Designate another person, who shall be present at the hearing, to read their statement at the hearing. Said individual shall be sworn in separately, pursuant to Section E. h. of these Rules of Procedure.

(ii). Submit a notarized written statement requesting that same be read at the hearing by the Chairperson or presiding officer. If allowed by the Chairperson or presiding officer, said statement(s) shall be read at the end of the hearing.

2. Decisions:

a. Members of the Board shall not participate in the decision unless they have heard all testimony and reviewed all other evidence submitted for the Board's decision (MAPA, 24 V.S.A. § 1208 (a))

b. Members who have not attended every session of the Board in a contested hearing may participate in the decision if they have listened to the recording of the testimony they have missed (or read transcripts of the testimony) and have reviewed all exhibits and other evidence, prior to deliberation. (MAPA, 24 V.S.A. §1208 (b))

c. Deliberative sessions and/or email may be used to draft the Findings of Fact and Conclusion of Law.

d. A written Findings of Fact and Conclusions: The decision shall set forth the findings of fact and conclusions reached by the Board on that matter. This decision shall be reviewed and signed by the member of the Board who presided as Chairperson or Vice Chairperson at the hearing if it accurately reflects the findings of fact and conclusions, and any applicable conditions as determined by the Board. A decision shall be considered final when the Chairperson (or Vice-Chairperson in the absence of the Chairperson) signs and dates the Findings of Fact, Conclusions of Law and Decision.

e. Conditions to Approvals: The Board may attach additional reasonable conditions, safeguards, and time limitations necessary and appropriate under the circumstances to implement the purposes of the Vermont Municipal and Regional Planning and Development Act and the municipality's plan and bylaws.

VII. AMENDMENTS

A. These rules and procedures may be amended at any regular meeting of the Board by an affirmative vote of a quorum of the Board.

B. These rules and procedures shall be reviewed annually at the meeting in which officers are elected and shall be posted on the Town's website.

Adopted by the Development Review Board on October 3, 2016.