

TOWN OF STOWE  
DEVELOPMENT REVIEW BOARD  
RULES OF PROCEDURE  
Adopted 04-07-15

I. ESTABLISHMENT OF RULES OF PROCEDURE

- A. Authority: The Development Review Board (Board or DRB) of the Town of Stowe shall be governed and have the powers accorded by the provisions of all applicable state statutes, specifically including 24 V.S.A. §36, Municipal Administrative Procedures Act, the Stowe Zoning and Subdivision Regulations and these Rules of Procedure as initially adopted by the Board on August 5, 2003.
- B. Adoption of These Rules: The Development Review Board Rules of Procedure shall be those adopted by the Board in accordance with 24 VSA § 4461. Upon adoption of the rules, the Administrative Officer shall file a copy of these rules and all amendments with the Town Clerk as a public record and post a copy in one or more public places.
- C. Amendments: These rules may be amended at any regular meeting by an affirmative vote of a majority of the Board provided that such amendment has been presented in writing to each member of the Board at least 48 hours preceding the meeting at which the vote is taken.
- D. The Board shall follow Roberts Rules of Procedures (as amended) for small boards when not in conflict with these rules or state statutes.

II. MEMBERS, OFFICERS AND DUTIES

- A. Members: The Board shall consist of seven (7) members. Alternate members may be concurrent members of the Planning Commission. Members shall inform the staff and/or Chair of any anticipated absences. A member who misses three meetings in any one year without having first informed the staff or Chair will be asked to resign.
- B. Alternate Members: Alternate members will serve when there is a vacancy, absence, or conflict of interest of a regular member. Alternate members shall continue with an application for the duration of its review. The Zoning Administrator will notify the alternate members when their services are required. The first alternate member who responds that they are available will serve as the alternate for the regular member who is not available. Regular members will rejoin the Board after the Alternate member steps down following final action on that application.
- C. Election of Officers: The Board shall elect a Chair and a Vice Chair from among its regular (not alternate) members in June of each year. The terms of office of the Chair and Vice Chair are for one (1) year and an officer may serve more than one term. Should both the Chair and the Vice Chair be absent from a meeting, an Acting Vice Chair shall be elected by majority vote from those members attending and will serve just for that meeting.
- D. Duties of the Chair: The Chair shall preside over all meetings and hearings of the Board, maintain order, and decide all questions of order and procedure subject to these rules. The Chair may administer oaths and compel attendance of witnesses and the production of material germane to any issue appealed. The Chair may designate an Alternate member to serve in case of the absence or disqualification of a regular member. The presiding officer shall cause the proceedings to be recorded.
- E. Vice Chair: The Vice Chair shall perform all of the duties of the Chair in the Chair's

absence or when the Chair is not presiding.

- F. Acting Vice Chair: In the absence or disqualification of both the Chair and Vice Chair, the Acting Vice Chair shall perform the duties of the Chair.
- G. Secretary: A Secretary, who may or may not be a member of the Board, or the Planning staff, shall be appointed by a majority of the Board. The Secretary shall perform the following duties:
  - 1. Keep the minutes of all Board actions and proceedings, showing the vote of each member upon every question, or if absent, disqualified, or failing to vote, shall so indicate; and shall include in the minutes the names and addresses of all witnesses, and a summary of the facts on which the decision is based and the decision rendered.
  - 2. Preserve and keep the records of the Board's examinations and other official actions by causing those to be given into the custody of the Zoning Administrator;
  - 3. Cause to be filed all minutes and records of examination and other official actions with the Town Clerk as a public record. (The Secretary may use the Administrative Officer to transmit those minutes and records of examination and official actions to the Town Clerk.)
- H. Administrative Officer: The Zoning Administrator, or his/her designee, who shall not be a member of the Board, shall be the Administrative Officer for the Development Review Board. In that role, the Administrative Officer shall be responsible for the orderly and efficient administrative processes concerning all aspects of the Board's function and shall have the following duties:
  - 1. Conduct official correspondence subject to these rules and at the direction of the Board;
  - 2. Issue the proper forms and compile all information, maps, and records for the Board's review;
  - 3. Send and/or post all notices required by law and by these rules of procedure;
  - 4. Inform persons who are to come before the Board of these rules of procedure and the bylaws which pertain to that person's appearance before the Board;
  - 5. Receive all minutes and records of examination and other official actions from the Secretary of the Board and see they are properly filed with the Town Clerk; and
  - 6. Maintain copies of the minutes and records of examination and other official actions of the Board separate and apart from those filed with the Town Clerk.
  - 7. Provide an orientation to new Board members.
- I. Vacancies: The Administrative Officer or his/her designee shall give immediate notice of any vacancy on the Board to the Selectboard. If the office of Chair or Vice Chair becomes vacant, the Board shall fill that office by election from amongst its regular members for the unexpired term at the next regular meeting of the Board.

### III. GENERAL RULES

- A. Submissions and Completeness Review: All applications, fees, site plans and other items for review are required one month prior to the DRB hearing date. Plans shall be

deemed substantially complete by the Zoning Administrator before the application will be scheduled and warned for a hearing. A recommendation from the Stowe Historic Preservation Commission, if required, must be obtained before the application is warned. A technical review meeting with the appropriate town staff shall be required in advance of the submittal cut off for all projects deemed to have an impact on town services. This shall include, but is not limited to, construction of new private or public roads, new connections to town utilities, or construction of utilities proposed to be accepted by the Town. Submittals shall include the items required by the applicable bylaws, unless waived by the Zoning Administrator, upon a determination that such information is probably not necessary to determine if the project will comply with the Zoning and/or Subdivision Regulations. A partially completed application may be submitted to the DRB for review when requested by the applicant in order to complete additional plan development after an initial DRB hearing. The applicant must, in writing, identify what sections of the appropriate regulations are not being requested to be initially reviewed. After the initial review, the DRB will recess the hearing to a date certain in order for the applicant to complete the additional materials for review. Partial submittals are only permitted for preparation of more detailed engineering plans such as stormwater management or final grading plans and other situations where the Zoning Administrator determines that the applicant would benefit from attending a hearing before completing the final plans.

- B. Records: A file of all documents, physical evidence, public proceedings, and decisions showing the vote, absence, or failure to vote of each member upon each question shall be kept by the Administrative Officer as part of the records of the Development Review Board. All records of the Board shall be public records except for legal opinions from the Town Attorney and draft decisions used in deliberation.
- C. Fees: The Selectboard shall determine such fees as may be necessary for the filing of notices and the processing of hearings and action thereon.

#### IV. MEETINGS

- A. Regular Meetings: Regular meetings of the Development Review Board shall be held on the 1st and 3rd Tuesdays in each calendar month, unless no applications are pending or there is no other business to transact, in which case the meeting may be canceled.
- B. Site Visits: The Board may convene at the site at the request of an interested party or 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. Members may visit a site individually or as a Board. In either case, the presiding officer shall make a record of the site visit observations. Other Board members or parties shall be given the opportunity to supplement these observations. If a quorum of the Board is expected to be present, the site walk would be an open meeting and its date and time must be announced and/or posted in accordance with state law. If a member visits the site individually, he or she shall present that information at the appropriate hearing or meeting.
- C. Special Meetings: Special meetings of the Board may be called by the Chair or by a majority of the members of the Board provided that at least 24 hours written notice of the time, place, and business of such meeting shall be given each member of the

Board. Action items requiring public hearing notice shall conform to the notice requirements in 24 V.S.A. §4447 and will not be scheduled for a special meeting.

- D. Order of Business: The order of business at all regular meetings of the Board will generally be as follows, however, changes in the order of the agenda may occur:
    - 1. Call to order and recognition of quorum.
    - 2. Review and take action on recessed and warned applications. The agenda order of the applications shall be established by the Administrative Officer in conjunction with the Chair.
    - 3. Review, correct, and accept the minutes of the preceding meeting.
    - 4. Other business.
    - 5. Adjournment
  - E. Recess of Meeting or Hearing: The Board may recess a meeting or hearing if all the applications or appeals cannot be disposed of on the day set. No further public notice shall be necessary provided that the date, time, and place of the recessed meeting or hearing shall be announced before adjournment.
  - F. Request for Recess: An applicant may request, in writing, a recess. Such a request will be reviewed by the Board and may be granted at the Board's discretion. The Board may grant a recess for the following reasons:
    - 1. Change in schedules that do not allow the applicant or his representative(s) to attend the hearing.
    - 2. Request to make additional changes to the project plans after being heard at a hearing.
    - 3. Request to be heard when more than four Board members will be present.
    - 4. Any other reasons the Board finds reasonable.
  - G. Failure to appear (except appeals of the Zoning Administrator's Notice of Violations): If an applicant fails to appear for a scheduled hearing, such hearing will be rescheduled for the next available meeting. If the applicant fails to appear for the rescheduled hearing, the application will be considered with the available information and without testimony of the applicant.
  - H. Failure to appear (Appeals of the Zoning Administrator's Notice of Violations): An appellant's failure to appear for an appeal of a Notice of Violation hearing will result in the appeal being considered with the available information and without testimony of the applicant.
  - I. Deliberations: All meetings of the Board and its committees shall be open to the public; however, the Board reserves the right to enter into deliberate sessions. No minutes shall be taken during deliberations, nor shall such deliberations be recorded as part of the record. All decisions made during closed deliberations shall be put in writing and signed as prescribed in Section VIII below.
  - J. Submissions: If an applicant has written submissions for the Board's consideration, there should be 9 copies included with the original application. Written submissions made at a hearing will likely result in the Board's recessing the hearing to a future date in order to read and consider the information presented.
- V. CONFLICT OF INTEREST All members of the Development Review Board shall abide by the Town of Stowe Ethics & Fraud Policy for Public Officials (as amended). In addition, all members of the Board shall comply with the provisions of 12 V.S.A § 61(a)

and 24 V.S.A. § 1203 when they conduct hearings make findings. No disqualified member shall preside at the hearing or be counted by the Board in establishing the required quorum. If the Chair is disqualified, the Vice Chair shall preside. In the event the Vice-Chair is unable to preside, the Board shall elect an Acting Vice-Chair for the proceedings.

## VI. CONDUCT OF HEARING OR REVIEW OF ALL APPLICATIONS

- A. Order of Hearing or review of applications: Hearings and review of applications shall generally be conducted in accordance with the applicable rules as set forth in 3 V.S.A. §810. The order of proceedings shall be as follows, unless the DRB, in its discretion, determines otherwise:
1. Roll call.
  2. Statement of the case and reading by the Chair or designated staff of the public notice for the hearing and of correspondence and reports concerning the appeal, application, or petition.
  3. Presentation of his/her case by the applicant along with the witness in favor of the appeal if applicable.
  4. Examination of applicant's witnesses by the Board.
  5. Cross examination of applicant's witnesses by interested parties.
  6. Presentation of a case by any interested party or parties.
  7. Cross examination of opposition witnesses by the applicant.
  8. Rebuttals.
  9. Recess or adjournment of hearing or discussion of application.
  10. Deliberation -Review criteria applicable to application.
  11. Development of Findings of Fact, Conclusions, and Conditions (See VIII).
- B. Representation: Any interested party may appear in person or be represented by an agent or attorney.
- C. Record of Proceedings: Proceedings at public hearings shall be recorded either electronically (including videotape) or by a court stenographer at the discretion of the Board. A transcript of the proceedings shall be made available at the request of any party upon payment of the reasonable costs thereof.
- D. Presentation of Evidence: All evidence upon which the applicant or other party wishes to rely shall be presented at the hearing and made part of the hearing record.
1. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form, to expedite the presentation of direct testimony of a witness, provided that the witness is available for direct testimony and cross examination at the hearing on this evidence.
- E. Oaths: All oral testimony by witnesses shall be given under oath or affirmation administered by the Chair or, in the Chair's absence, the Vice Chair or the Acting Vice Chair, if one is serving for this proceeding.
- F. Examination: The Development Review Board members may examine witnesses. The Chair, or Vice Chair/Acting Vice Chair if presiding, shall rule on the relevance and may limit the scope of examination to ensure relevancy and expedite the business of the Board.
- G. Rules of evidence: Rules of evidence as applied in civil cases in the superior courts of the state shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to provide facts not reasonably susceptible to proof

under those rules, evidence not ordinarily admissible and not precluded by statute may be admitted if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

- H. Documentary Evidence: Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties may be given an opportunity to compare the copy with the original.
- I. Rehearing: An application for rehearing may be made in the same manner as provided for in the original application. The Board may reject an application for rehearing without a hearing and render a decision thereon, which shall include findings of fact, within 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, or circumstances of the case. The decision shall be rendered, or notice given, as in decisions under Section VIII of these Rules of Procedure.
- J. Ex-parte Communications: While an application is pending, conversations between Board members and any person other than their legal counsel or staff regarding the substance of a particular hearing or application outside of the regular meeting are considered ex-parte contact and are inappropriate.
  - 1. A presiding officer shall not communicate, 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, without notice and opportunity for all parties to participate.
  - 2. No other members of the board sitting in a contested hearing 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, while the proceeding is pending.
  - 3. A presiding officer who receives an ex parte communication on 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 a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person making the ex parte communication.
  - 4. No member shall have ex-parte communications with the Zoning Administrator when there is an appeal of a notice of violation.

## VII. VOTING

- A. Quorum: For the conduct of a meeting or hearing and the taking of any action a quorum shall be present. A quorum for the Development Review Board shall consist of four (4) members. If a quorum of the Board is present at a meeting, that quorum may transact all matters that may or are required to come before it.
- B. Motions: Upon conclusion of the evidentiary portion of the hearing, the DRB may, by motion, direct the Administrative Officer to prepare draft Findings of Fact for the Board's consideration. All motions require a second. The making or seconding of a motion does not, in all instances, imply support for the motion. A failure to obtain four affirmative votes shall be considered a denial. An abstention shall not be treated

as either a positive or negative vote.

- C. Qualification to vote: A board member shall not participate in the decision unless they have heard all of the testimony and reviewed all other evidence submitted for the Board's consideration. Members who have not attended every session of the hearing may participate in the decision if they have listened to the recording of the testimony they have missed (or read the transcripts of this testimony) and reviewed all exhibits and other evidence prior to deliberation.

#### VIII. DECISIONS MADE BY THE DEVELOPMENT REVIEW BOARD

- A. Majority Vote: The decision on any application or appeal to the Development Review Board shall be made after a motion, a second and the affirmative vote of the majority of the Board.
- B. 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 adopted by the Board and signed by the member of the Board who presided as Chair or Vice Chair at the hearing if it accurately reflects the findings of fact and conclusions, and any applicable conditions as determined by the Board.
  - 1. A final decision of the Board shall be in writing and shall separately state findings of fact and conclusions law.
  - 2. The findings shall explicitly and concisely restate the underlying facts that support the decision. They shall be based exclusively on evidence contained in the record of the hearing.
  - 3. Conclusions of law shall be based on the findings of fact.
  - 4. The final decision in any case involving local Act 250 review of municipal impacts shall include notice that it constitutes a rebuttable presumption under the provisions of 10 V.S.A. § 151 and notice that presumption may be overcome in proceedings under 10 V.S.A. § 151.
  - 5. The Administrative Officer shall cause copies of the decision to be delivered to each party.
  - 6. Transcriptions of the proceedings shall be made upon the request and upon the payment of the reasonable costs of transcription by any party.
- C. 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. An application for the amendment or removal of a condition from a previously granted approval shall require a new warned public hearing and will be subject to review by the Board under the bylaws then in effect and other applicable standards.
- D. Stay of Enforcement: If a notice of appeal includes a request for a stay of enforcement, the board may, after a public hearing, grant or deny the stay.

#### IX. REFERRALS AND EVALUATION REQUESTS

- A. Referral to State Agencies: Any application subject to state agency review under Section 7 and 11 of the Stowe Zoning Regulations shall not be made final by the Board prior to the expiration of thirty days following submission by the Board of a report to the designated state agency describing the proposed use, the location requested, and an evaluation of the effect of such proposed use on the municipal and

regional plans.

- B. State Agency Report to the Board: The State Agency Report to the Board may be introduced into the hearing record as evidence.
- C. Request for Other Official Evaluation: As relevant and necessary for the conduct of the hearing, the Board may request from an appropriate municipal department or official, an evaluation of the impact a proposed development application will have on traffic, the environment, or community services and finances. This information or report may be presented as testimony at the public hearing and shall become part of the public record.