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# **RULES OF PROCEDURE AND ETHICS MANUAL**

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**VERMONT LAND USE**

**Education & Training Collaborative**

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## I. OVERVIEW

Vermont's municipal zoning boards operate at varying levels of complexity and formality. While some deliberate in public and allow anyone to participate in their hearings, others deliberate in private and limit participation to statutory "interested persons." Some utilize professional staff to conduct preliminary reviews and draft decisions, while others rely exclusively on board members to review applications and draft decisions.

In light of these and other variations, we have developed two models that meet the statutory requirement for rules of procedure and ethics with respect to conflicts of interest. Rules of Procedure and Conflict of Interest Policy I (Rules I) were designed for boards that hold less formal proceedings, where the chair handles administrative issues for the board, and where the board deliberates in public. Rules of Procedure and Conflict of Interest Policy II (Rules II) were designed for boards that hold more formal proceedings, utilize staff for administrative support, and use a private deliberative session to conduct their deliberations. Of course, many boards fall somewhere in the middle and may wish to amend these models to take advantage of the most appropriate features of each.

In addition to these general distinctions, Rules I and Rules II make different provisions for interested persons and conflicts of interest. Under Rules I, boards are not required to make an interested person determination, except in cases of zoning administrator appeals. In all other matters, the board affords the general public and interested persons the same participation rights. However, Rules II requires boards to determine whether individuals meet the statutory definition of interested persons, and limit participation based on that determination. Each set of Rules also contains a handout to help the public understand the participation requirements necessary to preserve their appeal rights, and a "service list" for documenting participation and determination of interested person status.

Both Rules I and Rules II contain conflict of interest provisions and specify when disclosure and recusal are required; however Rules II also contains a progressive discipline policy that provides boards with a mechanism to address persistent violations of the conflict of interest policy.

## II. HOW TO USE THESE RULES

Both sets of rules were designed so that boards could adopt them with minimal changes. However, boards will need to make certain changes prior to full implementation. Throughout Rules I and II, there are [bracketed terms] indicating where terminology or numbers should be changed to suit the needs of different boards. For example, the term "AMP," referring to appropriate municipal panel, is widely used throughout the rules. A development review board (DRB) adopting these rules would want to insert "DRB" in place of "AMP." Additionally, there are many places where boards may wish to adjust bracketed items, such as time limits for speakers at open hearings.

### **III. WHY HAVE RULES OF PROCEDURE?**

One reason boards should adopt rules of procedure is that such rules are now required by state law. Act 115 of the 2003 adjourned session requires local “appropriate municipal panels” – including planning commissions performing development review, zoning boards of adjustment, and development review boards – to adopt rules of procedure and rules of ethics with respect to conflicts of interest by September 1, 2005. 24 V.S.A. § 4461(a). However, both rules of procedure and conflict of interest policies have long been a best practice for conducting fair and orderly public hearings and making sound and timely decisions. Without rules of procedure and conflict of interest policies, it is difficult to meet either the legal requirements for quasi-judicial proceedings, or the public’s expectation for orderly public proceedings.

#### **Legal Requirements**

The Fourteenth Amendment to the U.S. Constitution requires government officials (such as local zoning boards) to provide citizens with due process when depriving them of life, liberty, or property. *Black’s Law Dictionary* defines due process as “the conduct of legal proceedings according to established rules and principles...including notice and the right to a fair hearing ...” Thus, at a minimum, the U.S. Constitution requires local zoning boards to provide citizens with orderly proceedings, adequate notice, and the right to a hearing.

Adopting rules of procedure is one of the best ways to provide due process for everyone involved in local land use review, including applicants, neighbors, citizens and members of the board. To this end, these rules promote the following:

- Impartial decision making;
- Proceedings that are free from conflicts of interest;
- Proceedings that inspire public confidence;
- Proceedings that are reasonably efficient; and
- Proceedings that invite public participation and guide it accordingly.

#### **The Importance of Order in Local Zoning Proceedings**

Any time a planning commission, zoning board of adjustment, or development review board conducts development review, individuals’ rights are at stake and, as described above, constitutional concerns are present. For this reason alone, zoning proceedings must be orderly. In addition, zoning proceedings often require boards to digest a great deal of information quickly, to interpret and apply zoning bylaws to the facts of a particular situation, and to issue a decision that complies with the timelines and procedural requirements of state law. An error in any one of these areas increases the likelihood of appeal and may prove costly for the municipality. In addition, the subject matter of zoning proceedings – deciding what people can and cannot do with their property and managing the future growth and development of the community – elicits powerful responses from applicants, interested persons, board members, and the public. With all of these issues at play, the importance of orderly proceedings cannot be overstated.

## **The Role of the Chair**

Much like the moderator at town meeting, the job of the chairperson is to effectively manage participation by the participants. Most importantly, the chair's role is to ensure that those who have a right to participate realize that right, and to allow for those in attendance to be heard. However, it is important to remember that the chair is more than a neutral facilitator. The chair of a small board, such as a local zoning board, has the right to vote, the right to make and second motions, and the right to question participants, just as any other member of the board. Such participation is crucial in boards with as few as three or five members. If the chair of a five-member board does not vote, the board faces the real possibility of deadlock in the form of a 2-2 vote on a project. Such a vote would leave the board's decision in jeopardy, and open the board up to the specter of deemed approval.

Finally, while many boards elect the most senior member as chair, the most important attributes for a chairperson are the ability to facilitate a meeting or hearing and knowledge of the planning and zoning process. These attributes may or may not be linked to the length of one's tenure on the board. Moreover, a long-serving member may be more effective as a regular member where he or she can focus on analyzing the matter at hand instead of running the meeting.

Whoever is elected chairperson, rules of procedure and an agenda with timeframes are critical for ensuring orderly and efficient meetings and hearings.

## **IV. ADMINISTRATIVE REQUIREMENTS**

### **Authority of the Appropriate Municipal Panel**

Act 115 introduced the term "Appropriate Municipal Panel," or AMP. Using this term was a way for the Legislature to encapsulate the terms "planning commission," "conducting development review," "zoning board of adjustment," and "development review board" into one term. There is no need, however, to change the name of your board to the AMP. Local zoning boards, whether they are a planning commission (PC), zoning board of adjustment (ZBA), or development review board (DRB), should retain those titles.

The authority of these boards is designated by state law and by local zoning regulations. 24 V.S.A. § 4460(e). Generally speaking, in municipalities with a PC and a ZBA, the planning commission is responsible for preparing the town plan and zoning regulations, and hearing applications for site plan and subdivision approval. The ZBA is responsible for hearing applications for conditional use, variances and appeals of administrative officer decisions. Where the town has eliminated the ZBA in favor of a DRB, the DRB reviews all development review requests, while the PC focuses exclusively on the preparation of the town plan and zoning regulations.

## **Officers**

Both Rules I and II require boards to conduct an annual organizational meeting to elect officers. Most boards will choose to elect a chair, vice chair, and secretary. We discussed the chair's role above. The vice chair typically fills in for the chair in the chair's absence, and the secretary frequently takes minutes for the board. While there is nothing wrong with this practice, it can sometimes be difficult for the secretary to participate in the proceedings. For this reason, many boards hire staff to take their minutes.

## **Meeting Times**

Regular meeting times should be decided on at the annual organizational meeting, should be kept on file, and made available to citizens who request information, to the local media, etc. These Rules require boards to formally adopt their regular meeting times and incorporate them into their Rules of Procedure.

## **Number of Board Members**

The legislative body of the municipality sets the number of board members in accordance with state law. For example, a planning commission can have not less than three nor more than nine members. 24 V.S.A. § 4322. Therefore, the selectboard of a town can set the membership at three, five, seven or nine members.

In towns where the PC performs development review functions, the ZBA can have between three and nine members, as determined by the legislative body. 24 V.S.A. § 4460(b). In towns where the DRB performs all development review functions, the DRB may have not less than five, but not more than nine members, as determined by the legislative body. 24 V.S.A. § 4460(b).

Once established by the selectboard, the number of board members should be codified in Section IV of the Rules.

## **Cancellation**

Canceling a meeting may be necessary because of weather conditions or the inability of a participant to attend. Section VI of both sets of Rules provides a procedure for the chair to follow when canceling a meeting, which he or she may do at any time, as necessary.

## **Quorum Requirements**

State law defines a quorum as "not less than a majority of the members of the panel." These Rules establish the same threshold. However, state law also requires zoning boards to make decisions by the concurrence of a majority of all of their board members. 24 V.S.A. § 4461(a). For example, a seven-member board must have four votes to take any action. Failure to attract at least four votes on a seven-member board exposes the board to the prospect of deemed approval if it fails to act within the required timeframe. To avoid this prospect, boards conducting development review are strongly discouraged from holding meetings or hearings with less than a



full board, even if a quorum is present. For a further discussion of quorum requirements, see *Concurrence of a Majority* on page 12 of this manual.

These Rules do, however, allow for the use of alternates, which can help avoid the problems presented by the requirement for the concurrence of a majority to take action.

### **Alternate Members**

As a remedy to the problems presented when a board lacks the votes to take action, state law allows ZBAs and DRBs to utilize alternate members to fill in for a regular member who cannot participate in a proceeding. 24 V.S.A. § 4460(c). *There is no law permitting PCs to use alternates.* Section V of both sets of Rules establishes a policy for the use of alternates. In these Rules, alternates are to be used when a regular member of the board is absent or has recused him or herself from the proceedings. Alternates are to be appointed by the legislative body, and shall fill in on an alphabetical basis, so that alternates cannot be picked for a particular matter based on beliefs about how they will judge the project.

Alternates have full voting rights and must abide by the same rules of procedure and ethics regulations that apply to regular board members. Once appointed to hear a proceeding, alternates must remain on the board until a decision is reached in that particular proceeding.

## **V. MEETINGS, HEARINGS, AND DELIBERATIVE AND EXECUTIVE SESSIONS**

### **The Difference Between Meetings and Hearings**

A *meeting* of a local board occurs whenever a quorum of the board gathers to discuss the business of the board. 1 V.S.A. § 310(2). In a meeting, all members of the public are on equal ground and all participation is subject only to reasonable rules established by the chair. 1 V.S.A. § 312(h).

A *hearing* is the public portion of a quasi-judicial process, where a board acts in much the same way and has some of the same powers and authority as a court. Vermont law does not define a hearing, though *Black's Law Dictionary* defines a hearing as “any setting in which an affected person presents arguments to an agency decision-maker.” In a hearing, an affected person’s rights are at stake. As discussed above, those rights are constitutionally protected. When conducting hearings, the board may choose to offer affected persons (also known as parties) greater participation rights than the general public. For example, boards may choose to incorporate an interested person determination into their hearings and afford interested persons greater participation rights than members of the general public. Rules II provides a mechanism for making that determination.

Many times, zoning boards will begin the evening in a *meeting* where they are discussing the general business of the board. At some point, the board will open a *hearing* on a particular zoning application. To most of the people in the room, this distinction is imperceptible;

however, because of the different legal requirements for meetings and hearings, boards should be cognizant of when they are meeting and when they are holding a hearing. If boards do not make an interested person determination and, by extension, afford interested person status to all who are present, the distinction between a meeting and a hearing is much less significant.

Thus, the chief difference between a meeting and a hearing is that a hearing is part of a quasi-judicial proceeding, whereas a meeting is not. In a quasi-judicial proceeding, the rights of individuals are at stake and thus boards *may* choose to focus more of their efforts on the affected parties than on the general public. Hearings must be held in public, as it is only the *deliberations* of quasi-judicial proceedings that are specifically exempted from Vermont's Open Meeting Law. 1 V.S.A. § 312(e).

### **Deliberative Session**

Deliberative session is not defined in statute, but it is defined by these rules as “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.” The privacy of deliberative session allows the board to freely discuss the evidence presented without undue pressure or influence from the applicant, interested persons, or the public at large. Only quasi-judicial boards may use deliberative session.

Some boards, however, choose to deliberate in public. Rules I define such “public deliberations” as 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.” Boards which prefer to conduct their deliberations in public should adopt Rules I, which have been crafted with a preference for deliberating in public. If the board has adopted Rules I and decides there is a need to deliberate privately, the board must vote to enter deliberative session.

Under Rules II, there is a presumption that the board is in deliberative session once the final public hearing is adjourned. In contrast to Rules I, the general rule is that a motion and vote are not required to enter deliberative session.

Whether a board chooses to deliberate in a private, deliberative session, or chooses to conduct public deliberations depends on the preferences of the members, the nature of the application, and the culture of the community. Above all else, it is the responsibility of the board members to fairly apply the bylaws to the application at hand. Sometimes the public is best served when the members deliberate in public; other times, the public is best served by a private deliberation.

### **Executive Session**

Unlike deliberative session, which is only available to boards when acting in a quasi-judicial capacity, executive session is a private session that is available to boards when they are holding a *meeting*, but need to discuss a matter which fits one of the eight exemptions provided by the Open Meeting Law. For a local zoning board, there are only two contexts in which we can envision the proper use of executive session:

- the evaluation of the administrative officer (zoning administrator); or

- the evaluation of a board member.

Note that while the PC, ZBA and the DRB do not have removal authority over the ZA or another member, executive session may still be appropriate.

These two scenarios fit into the Open Meeting Law provision that permits executive session to be used for “the appointment or employment of a public officer or employee.” 1 V.S.A. § 313(3). To enter executive session, a member of the board must make a motion to enter executive session, indicating clearly the reason for requesting this action. The board may only enter executive session by majority vote. When in executive session, the board must limit its discussion to the matter(s) referenced in the initial motion to enter executive session. No votes may be taken in executive session. If action is to be taken after the executive session, the vote must be taken in the course of an open meeting and recorded in the minutes.

For all other actions, the board must work in public, unless deliberative session is appropriate. If you are considering using executive session, you may want to consult with your municipal attorney regarding its proper use.

## **VI. MANAGING THE PUBLIC HEARING**

As explained above, an orderly hearing and a fair hearing go hand-in-hand. Having an established set of rules and administering them in a consistent manner is essential for ensuring fairness.

### **Recommended Order of Proceedings**

Section VII of both Rules provides a procedure for conducting public hearings. At the outset of any hearing, the chair is required to review the order of events, remind all present of the importance of order, and make copies of the rules available. Prior to taking evidence on the application, the chair should request the disclosure of any conflicts of interest and/or ex parte communications. Section XI of both Rules provides a procedure for managing conflicts of interest.

After disposing of any conflict of interest issues, the chair should review the definition of interested persons found in 24 V.S.A. § 4465(b), and explain that only those interested persons who participate in the pending proceeding may be able to appeal the decision to the Environmental Court. We have developed an interested person information sheet for each set of Rules that can be distributed to members of the public. See pages 22 and 33.

Generally, boards that have adopted Rules I will not make an interested person determination at this point. After explaining the appeal requirements, the chair may move on to the rest of the hearing and allow both members of the public and interested persons to participate equally. However, prior to hearing an appeal of an administrative officer decision, even Rules I boards must first determine if the party bringing the appeal is an interested person.

## **Interested Person Determination**

Boards that have adopted Rules II, or have adopted Rules I and are hearing an appeal of an administrative officer decision, will make a determination as to interested person status. Pursuant to Section VII of the Rules, boards will require those persons requesting interested person status to identify themselves and demonstrate the reason(s) why they are requesting interested person status. The board will then make a decision – in deliberative session, if necessary – on whether to grant or deny interested person status. Those not granted interested person status would not be able to participate as a full party in the hearing. However, both sets of Rules provide an additional period of time for public comment in order to preserve the appeal rights of individuals who were not granted interested person status. Boards may conditionally grant interested person status if it is not clear what that person’s interest in the proceedings is, in order to preserve his or her rights to eventually appeal the decision.

## **Documenting Participation**

Act 115 also requires local zoning boards to keep a record of those who participated at the local level: “In any hearing, there shall be an opportunity for each person wishing to achieve status as an interested person under subsection 4465(b) of this title to demonstrate that the criteria set forth in that subsection are met, and the panel shall keep a written record of the name, address, and participation of each of these persons.” Moreover, another statute goes on to state “An interested person who has participated in a municipal regulatory proceeding under this title may appeal a decision rendered in that proceeding by an appropriate municipal panel to the environmental court. Participation in a local regulatory proceeding shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding.” 24 V.S.A. § 4471(a).

The purpose of these new requirements is to ensure that only those who have participated at the local level have the right to appeal decisions of the local board. The law now requires boards to keep a record of who participated and what the nature of that participation was. We recommend boards use a sign-in sheet to collect information about who attended a hearing, who spoke, who participated by submitting written documentation, and what issues were discussed. Though in-person participation is preferable, boards must accept written testimony as well as in-person participation. Both sets of Rules contain a Model Service List to assist with this documentation. See pages 23 and 34.

## **Service List**

In addition to the sign in sheet, the secretary of the board or a staff person should also create a service list. The service list documents who participated in the proceedings and can be used to provide all participants with the decision of the board, as required by 24 V.S.A. § 4464(b)(3). All decisions must be sent by certified mail to the applicant and the appellant in matters of appeal. Copies of the decision must also be mailed to every person or body appearing or having been heard at the hearing. A best practice is for the service list to include the applicant, the appellant (if applicable), anyone who participated, and anyone else who requests to be on the list.

## **Other Hearing Procedures**

Many boards require those who testify to take an oath prior to speaking. We think this is a best practice for conveying the importance of the proceedings. Both Rules provide for this practice.

## **VII. MAKING A GOOD DECISION**

The decision is the articulation of the board's determination of whether the proposed project should be approved under the existing zoning regulations. A good decision is a fair and impartial application of the facts presented during the hearing to the bylaw. Moreover, a good decision is based not on personal beliefs about development and the environment, but on the rules and regulations that were adopted to guide development in the community.

Rules I boards will make all of their decisions in "public deliberations," as defined in Section III of the Rules. Public deliberations is the term used for boards that allow the public to observe, but not participate in their deliberations. If, for some reason, a Rules I board wants to deliberate in private, it may do so, but only after there has been a motion and a majority vote of the entire board to enter deliberative session.

Rules II boards will make their decisions in deliberative sessions, which are not open to the public and are also defined in Section III. Deliberative session allows boards to make their decisions in a neutral environment, where the board is able to freely discuss, without undue pressure, the reasons for and against granting an approval. This process is analogous to the process of a jury deliberating in private during a court proceeding.

### **Concurrence of a Majority**

A critical issue for a local zoning board, as with all other public bodies, is the requirement that the board make its decisions by the concurrence of a majority. As discussed above, the rule for taking action or making a decision on a zoning board is that a majority of the members of the board must concur in their vote to approve a project. This means that if only four members of a seven-member board are available, the board is able to convene, but all four must agree in order to take any action. Here are the voting requirements for a local zoning board to take action:

- 3-Member Board – 2 members concurring in their vote
- 5-Member Board – 3 members concurring in their vote
- 7-Member Board – 4 members concurring in their vote
- 9-Member Board – 5 members concurring in their vote

This rule is spelled out in Chapter 117, which states, "For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of the members of the panel, and any action of the panel shall be taken by the concurrence of a majority of the panel." 24 V.S.A. § 4461(a).

## **Ability to Participate After Review of Audio Taped Proceedings**

A board member may miss a hearing and still wish to be a part of the board for the decision making process. These Rules permit members to participate after review of audio taped proceedings where the board and interested persons have stipulated in writing that an absent board member may listen to the proceedings, or read a verbatim transcript, and participate in the decision. In a municipality that has adopted the Municipal Administrative Procedure Act (see 24 V.S.A. Ch. 36, and, in particular, 24 V.S.A. § 1208(b)), such participation is possible as well, though both sets of Rules would need to be amended to reflect adoption of the Municipal Administrative Procedures Act.

## **VIII. ISSUING THE DECISION**

Once a board has completed the public hearing process and has finished deliberations on whether to grant a permit, the board must issue a formal decision expressing its opinion on the application. A number of legal requirements must be observed when issuing such a decision.

### **Legal Requirements of Issuance and Notification**

In all zoning review proceedings, the board must issue its decision within 45 days of the final public hearing. When a decision is not made within 45 days of the final public hearing, the application may be deemed approved.

A decision of the board is considered “issued” on the date on which it is sent via certified mail to the applicant and to the appellant in matters on appeal. Copies of the decision must also be mailed to every person or body appearing and having been heard at the hearing. A copy of the decision must be filed with the zoning administrator, as well as recorded in the office of the municipal clerk. 24 V.S.A. §§ 4464(b)(3), 4449(c)(1).

### **Findings and Conclusions**

Decisions of the board must be clearly written so that the articulation of the board’s decision is clear to the applicant, to interested persons, and to anyone else involved in the proceeding. The law establishes a bare minimum that boards must follow in issuing a decision: “Decisions shall be issued in writing and shall include a statement of the factual bases on which the appropriate municipal panel has made its conclusions and a statement of the conclusions. The minutes of the meeting may suffice, provided the factual bases and conclusions relating to the review standards are provided in conformance with this subsection.” 24 V.S.A. § 4464(b)(1).

Presently, it is not uncommon for zoning boards to allow the minutes to serve as their decision. While this complies with the minimum thresholds established by the statute, the spirit of the law is that boards issue a written decision laying out the bases for granting or denying the permit, and clearly articulating the reasons for making that decision. A well written decision can help the applicant and interested persons better understand why the board made its decision, and can reduce the possibility of appeal. (*Templates for findings of fact and decisions are available at [www.VPIC.info](http://www.VPIC.info).*)

## **IX. RULES OF ETHICS WITH RESPECT TO CONFLICTS OF INTEREST**

### **Why Have Rules of Ethics?**

As noted above, state law also now requires appropriate municipal panels to adopt rules of ethics with respect to conflict of interest by September 1, 2005. 24 V.S.A. § 4461(a). Conflict of interest policies have long been a best practice for managing conflicts. In small towns, where everybody knows everybody, conflict of interest policies can be particularly useful for ascertaining whether a conflict exists and, if necessary, mitigating or eliminating the conflict.

### **Types of Conflicts**

Conflicts of interest can be broken down into four basic categories: those where a board member has a *personal* interest in a proceeding; those where a board member has a *financial* interest in a proceeding; those where a board member has exhibited *bias or prejudice* prior to hearing a case; and those where a board member has failed to disclose and/or rectify *ex parte* communications. Both Rules contain definitions for each type of conflict in Section III, Definitions.

### **Disclosure**

As discussed above, powerful forces are at play in local zoning proceedings, such as constitutional rights and individual and community values regarding private property and environmental protection. With these issues on the table, transparency is crucial for maintaining public trust. Disclosure of a conflict (or a potential conflict) is one of the best ways to achieve that goal of transparency. Under both sets of Rules, board members are required to disclose any real or perceived conflicts of interest or ex parte communication, and the chair is directed to ask for such disclosure at the beginning of the hearing.

Under both Rules, after disclosing a real or perceived conflict, a member may either choose to recuse him or herself (see below) or may choose to continue in the proceeding, provided the member provides a statement of why he or she is still able to act fairly, objectively, and in the public interest. Under Rules I, the statement may be oral but must be noted in the minutes of the proceeding. Under Rules II, the statement must be provided in writing, signed by the member, and filed along with the minutes.

### **Recusal and Use of Alternates**

Under both Rules, board members are required to recuse (remove) themselves from a proceeding in which they have a real or perceived conflict of interest that prevents them from acting fairly, objectively, and in the public interest. Such recusal is an act taken by a board member of his or her own volition. Vermont law provides no authority for boards to require a member to recuse oneself. However, failure to recuse when circumstances suggest recusal is appropriate is grounds for removal as discussed below.

Under Rules I, the applicant or any person may request that a member recuse him or herself. Under Rules II, such request may only come from an applicant or an interested person. In either case, a recused member may not sit with the board, deliberate with the board or participate in any capacity as a board member.

When a member has recused him or herself, it is wise to insert an alternate member into that proceeding to hear the case. Alternates should be used in accordance with Section V, Alternates, of Rules I and II.

### **Removal Provisions**

While removal of board members is not common, it does happen from time to time and there are various rules on removal that board members should be aware of.

Most board members are appointed for a set term. At the expiration of such term, board members should be re-appointed. If there is no re-appointment, the board member is technically no longer a member of the board. This, however, does not constitute “removal.” Actual removal of board members is subject to the requirements of state law. Planning commissioners can be removed at any time, for any reason, or for no reason at all, so long as there is a unanimous vote of the legislative body. 24 V.S.A. § 4323(a). Elected planning commissioners cannot be removed from office.

Members of zoning boards of adjustment and development review boards can also be removed by the legislative body, but only for cause, after written notice and a public hearing. 24 V.S.A. § 4460(c). Section XIII of Rules I permits a board to *request* that the legislative body remove a member of the board. While the authority to remove is vested with the legislative body, the ZBA or DRB members are in the best position to observe behavior that provides cause for removal. For example, if a member fails to recuse oneself from a proceeding in which he or she is clearly conflicted, the zoning board may, upon majority vote, request that the member be removed by the legislative body.

However, Rules II establish a progressive discipline procedure that may be followed where board members have violated the conflict of interest provisions of the Rules. Rules II permits the board to conduct an inquiry into the conduct of the board member and, if appropriate, to privately admonish the board member. Eventually, the board may publicly admonish the board member and, if necessary, request the board member to resign from the board. The board has no authority to enforce that request or to remove the board member on its own motion. However, Section XIV permits the board to *request* that the legislative body remove the offending board member. The progressive discipline policy is only available under Rules II and only for violations of the conflict of interest provisions.

## **X. THE AMENDMENT PROCESS**

From time to time, the board will need to amend provisions of these Rules, as local circumstances require. For example, a board that has adopted Rules I may wish to adopt the



progressive discipline procedures found in Rules II if it is having a lot of difficulty with conflicts of interest. In any case, the amendment process for both sets of Rules is the same. When amendments are necessary, the board, acting through a majority of its members, may amend them as necessary, pursuant to Section XIV of Rules I and Section XV of Rules II.

## **XI. CONCLUSION**

As mentioned throughout this manual, rules of procedure and rules of ethics with respect to conflict are critical tools for ensuring Constitutional protections and conducting efficient and effective meetings and hearings. We hope this manual proves valuable to the local boards and commissions charged with managing the local development review process.

# APPROPRIATE MUNICIPAL PANEL (AMP)

## Rules of Procedure and Conflict of Interest Policy I

### Section I: Authority.

The [AMP] of the Town of \_\_\_\_\_ 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 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, so that the public trust in municipal government will be preserved.

### Section III: Definitions.

- A. “Board” means the [AMP].
- B. “Board member” means a regular or alternate member of the [AMP].
- C. “Conflict of interest” means any one of the following:
  - 1. A direct or indirect personal 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 [AMP].
  - 2. A direct or indirect 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 [AMP].
  - 3. 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.
  - 4. 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.

- 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 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.
- G. “Official act or action” means any legislative, administrative or quasi-judicial act performed by any board member.
- H. “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.
- I. “Recuse” means to remove oneself from a particular board proceeding because of a real or perceived conflict of interest.

#### **Section IV: Regular Officers.**

The [AMP] shall consist of [five] regular members. [After Town Meeting but prior to May 1], or at other times throughout the year as needed, the [AMP] shall hold an organizational meeting and elect 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 members to review the minutes and other official records of [AMP] 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].

## **Section V: Alternate Members.**

The Selectboard shall annually, or as needed, appoint up to two alternates who may temporarily serve as [AMP] 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 [AMP]. The assignment of alternates for active duty will begin with the first alternate in alphabetical order and rotate through the list until all alternates have served and rotation will be repeated.
- B. Whenever a regular member has a conflict of interest or is expected to be on extended absence from the [AMP], the chairperson of the [AMP], or his or her designee, shall appoint an alternate to serve as an active member of the [AMP] by selecting an individual from the roster as provided in paragraph A.
- C. If the chairperson of the [AMP] does not appoint an alternate as required under paragraph B, a majority of the members of the [AMP] present and voting may appoint an alternate to serve in accordance with paragraph B.

An alternate member who is called upon to serve shall be required to be a part of the [AMP] until a final decision is made on any application heard by the [AMP] while serving as an active member. Participation includes attending deliberative sessions and any continuance of a public hearing if the application has been tabled or adjourned to another date.

## **Section VI: Regular and Special Meetings.**

Regular meetings to conduct business of the [AMP] shall be held [in the Town Hall at 7 p.m. on the first and third Tuesdays 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, 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. Those who wish to be added to the agenda shall contact the [AMP Chair] to arrange for a convenient time. The Chair shall determine the content of the agenda.

- F. All business shall be conducted in the same order as it appears on the agenda, except that by majority consent, the Chair may alter the order of items to be considered and/or the time allotted.
- G. The Chair shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 V.S.A. § 312(h).
- H. At each meeting, there shall be a [ten minute] period of time reserved for public comment near the [end, beginning] 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.
- I. 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. Hearings shall not exceed [three hours] in length unless approved by a majority of members present.

Public comment may be offered during the hearing with the permission of the chair. Such comment, if recognized, 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 persons recognized to speak.

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 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 not make any determination as to party status

in all proceedings except 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.

- 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.
- Q. The board shall then conduct public deliberations, or may vote to enter deliberative session. See Section III-D of these Rules, 1 V.S.A. § 312(e).

### **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 [Clerk] 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: Decisions.**

The board shall make its decisions by public deliberation, unless by majority vote it has determined to make a decision in deliberative session. Deliberative sessions are not open to the public and need 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 if they have reviewed the audiotape of the proceedings, and any evidence submitted, subject to the written consent of the applicant and all interested persons. 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. No second shall be required for a motion to have the floor.
- D. All 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).
- G. The board shall issue a decision within 45 days of the final public hearing.

## **Section XI: 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 [AMP].
- B. **Disclosure.** At all hearings, the Chair shall request that board members disclose all potential conflicts of interest. When recognized by the Chair, any person may request disclosure of potential conflicts of interest.

Nonetheless, after disclosing a conflict or perceived conflict, a member who believes that he or she is able to act fairly, objectively, and in the public interest, shall disclose the nature of the potential conflict of interest, and the reason(s) why he or she is able to act in the matter fairly, objectively, and in the public interest. This shall be noted in the minutes of the proceeding.

- 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 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 XII: 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 in 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, which shall become a part of the record of the proceedings.

### **Section XIII: Removal.**

Upon majority vote, the board may request that the legislative body remove a board member from the [AMP]. Board members may be removed for cause by the legislative body upon written charges and after public hearing. 24 V.S.A. § 4460(c). Planning commissioners may be removed at any time by unanimous vote of the legislative body. 24 V.S.A. § 4323(a).

### **Section XIV: Amendments.**

These rules may be amended at any regular or special meeting by a majority vote, provided that each [AMP] member has been presented a written copy of the proposed amendment at least 24 hours before the meeting at which the vote is taken.

**TOWN OF \_\_\_\_\_**  
**RULES OF PROCEDURE I**  
**INTERESTED PERSON INFORMATION SHEET**

**Who are interested persons?**

Interested persons are those persons who, under Vermont law, have the right to appeal an act or decision of the [insert name of Town] zoning administrator or [DRB/ZBA/PC]. Interested persons include:

- The applicant or, if the applicant does not own the subject property, the person owning title to property.
- A municipality that has a plan or bylaw at issue in an appeal, or any municipality adjoining that municipality.
- A person owning or occupying property in the immediate neighborhood of a property that is the subject of any zoning decision or act who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will violate the municipal plan or bylaw.
- Any ten persons, either voters or landowners, who, by signed petition to the [DRB/ZBA/PC], allege that the decision or act, if confirmed, will violate the municipal plan or bylaw. The petitioners must designate one person to serve as their representative.
- Any department or administrative subdivision of the State owning property within the municipality, and the Agency of Commerce and Community Development.

**Why is interested person status important?**

Though many members of the public may be interested in a zoning permit application, only statutorily-defined interested persons may appeal a decision of a zoning administrator or [DRB/ZBA/PC]. If an interested person fails to make a timely appeal, all interested persons are bound by the officer's or [DRB/ZBA/PC] decision or act.

**Interested persons must participate in a hearing to protect their appeal rights.**

Only those interested persons who have participated in a [DRB/ZBA/PC] proceeding may appeal a decision rendered in that proceeding to the Environmental Court. Pursuant to State statute, participation consists of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding.

*Applicant* \_\_\_\_\_

*Application No.* \_\_\_\_\_

*Date of Hearing* \_\_\_\_\_

**TOWN OF \_\_\_\_\_**  
**INTERESTED PERSONS RECORD AND SERVICE LIST**

Under the 2004 revisions to Chapter 117, the [DRB/ZBA/PC] has certain administrative obligations with respect to interested persons. At any hearing, there must be an opportunity for each person wishing to achieve interested person status to demonstrate compliance with the applicable criteria. 24 V.S.A. § 4461(b). The [DRB/ZBA/PC] must keep a written record of the name, address and participation of each person who has sought interested person status. 24 V.S.A. §4461(b). A copy of any decision rendered by the [DRB/ZBA/PC] must be mailed to every person or body appearing and having been heard by the [DRB/ZBA/PC]. 24 V.S.A. § 4464(b)(3). Upon receipt of notice of an appeal to the environmental court, the [DRB/ZBA/PC] must supply a list of interested persons to the appellant in five working days. 24 V.S.A. §4471(c).

This Interested Persons Record and Service List is intended to be used by the Clerk, or designated staff of the [DRB/ZBA/PC], to record information regarding persons who have sought interested person status. A separate Interested Persons Record and Service List should be used for each application considered by the [DRB/ZBA/PC]. This Interested Person Record and Service List can be used in conjunction with a separate sign in sheet.

| Name                    | Address                 | Participated in Hearing?                                    | Evidence/Statement of Consent Offered |
|-------------------------|-------------------------|---|---------------------------------------|
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |

| Name                    | Address                 | Participated in Hearing?                                    | Evidence/Statement of Concert Offered |
|-------------------------|-------------------------|---|---------------------------------------|
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____<br>_____<br>_____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |

# APPROPRIATE MUNICIPAL PANEL (AMP)

## Rules of Procedure and Conflict of Interest Policy II

### Section I: Authority.

The [AMP] of the Town of \_\_\_\_\_ 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.

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- 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 nor 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.

- 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.
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- 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 members to review the minutes and other official records of [AMP] meetings and actions, and correct and ratify these when appropriate and necessary.
- D. [Staff] shall take minutes of all meetings.

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

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- B. Whenever a regular member has a conflict of interest or is expected to be on extended absence from the [AMP], the chairperson of the [AMP], or his or her designee, shall appoint an alternate to serve as an active member of the [AMP] by selecting an individual from the roster as provided in paragraph A.
- C. If the chairperson of the [AMP] does not appoint an alternate as required under paragraph B, a majority of the members of the [AMP] present and voting may appoint an alternate to serve in accordance with paragraph B.
- D. An alternate member who is called upon to serve shall be required to be a part of the [AMP] until a final decision is made on any application heard by the [AMP] while serving as an active member. Participation includes attending deliberative sessions and any continuance of a public hearing if the application has been tabled or adjourned to another date.

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- F. All business shall be conducted in the same order as it appears on the agenda, except that by majority vote, the Chair may alter the order of items to be considered and/or the time allotted.
- G. The Chair shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 V.S.A. § 312(h).
- H. At each meeting, there shall be a [ten minute] period of time reserved for public comment near the [end, 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.
- I. 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. Hearings shall not exceed [three hours] in length unless approved by a majority of members present. 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 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, 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 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 shall 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. Such comments shall be limited to [three minutes] per person, unless by majority vote the board sets a different time limit.
- 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 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 and 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.**

[Staff] 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. All documents filed with the board must be submitted to interested persons on the list. Those on the list not granted interested person status shall be supplied with any decisions issued by the [AMP]. 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 nature and content of participation by anyone, whether or not granted interested person status.
- C. The mailing address of each of these persons.

### **Section X: Decisions.**

The board shall make decisions 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 review audiotapes of the proceedings, subject to the written consent of the applicant and all interested persons. 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. No second shall be required for a motion to have the floor.
- D. All 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).
- G. The board shall issue a written decision within 45 days of the final public hearing.

## **Section XI: 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 [AMP].
- 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 XII: 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 XIII: Progressive Consequences for Failure to Follow the Conflict of Interest Procedures.**

In cases where the conflict of interest procedures in Section XI 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 XIV: Removal.**

Upon majority vote, the board may request that the legislative body remove a board member from the [AMP]. Board members may be removed for cause by the legislative body upon written charges and after public hearing. 24 V.S.A. § 4460(c). Planning commissioners may be removed at any time by unanimous vote of the legislative body. 24 V.S.A. § 4323(a).

### **Section XV: Amendments.**

These rules may be amended at any regular or special meeting by a majority vote, provided that each [AMP] 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 which are presented to the members prior to the meeting may be amended at that meeting.

**TOWN OF \_\_\_\_\_**  
**RULES OF PROCEDURE II**  
**INTERESTED PERSON INFORMATION SHEET**

**Who are interested persons?**

Interested persons are those persons who, under Vermont law, have the right to appeal an act or decision by a made by the [insert name of Town] zoning administrator or [DRB/ZBA/PC]. Interested persons include:

- The applicant or, if the applicant does not own the subject property, the person owning title to property.
- A municipality that has a plan or bylaw at issue in an appeal, or any municipality adjoining that municipality.
- A person owning or occupying property in the immediate neighborhood of a property that is the subject of any zoning decision or act who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will violate the municipal plan or bylaw.
- Any ten persons, either voters or landowners, who, by signed petition to the [DRB/ZBA/PC], allege that the decision or act, if confirmed, will violate the municipal plan or bylaw. The petitioners must designate one person to serve as their representative.
- Any department and administrative subdivision of the State owning property within the municipality, and the Agency of Commerce and Community Development.

**Why is interested person status important?**

Though many members of the public may be interested in a zoning permit application, only statutorily-defined interested persons may appeal a decision of a zoning officer or [DRB/ZBA/PC]. Additionally, pursuant to this [DRB/ZBA/PC]'s Rules of Procedure, only interested persons may participate in a hearing on a matter before the [DRB/ZBA/PC]. If an interested person fails to make a timely appeal, all interested persons are bound by the officer's or [DRB/ZBA/PC] decision or act.

**Interested persons must participate in a hearing to protect their appeal rights.**

Only those interested persons who have participated in a [DRB/ZBA/PC] proceeding may appeal a decision rendered in that proceeding to the Environmental Court. Pursuant to State statute, participation consists of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding.

*Applicant* \_\_\_\_\_

*Application No.* \_\_\_\_\_

*Date of Hearing* \_\_\_\_\_

**TOWN OF \_\_\_\_\_**  
**INTERESTED PERSONS RECORD AND SERVICE LIST**

Under the 2004 revisions to Chapter 117, the [DRB/ZBA/PC] has certain administrative obligations with respect to interested persons. At any hearing, there must be an opportunity for each person wishing to achieve interested person status to demonstrate compliance with the applicable criteria. 24 V.S.A. § 4461(b). The [DRB/ZBA/PC] must keep a written record of the name, address and participation of each person who has sought interested person status. 24 V.S.A. § 4461(b). A copy of any decision rendered by the [DRB/ZBA/PC] must be mailed to every person or body appearing and having been heard by the AMP. 24 V.S.A. § 4464(b)(3). Upon receipt of notice of an appeal to the environmental court, the [DRB/ZBA/PC] must supply a list of interested persons to the appellant in five working days. 24 V.S.A. § 4471(c).

This Interested Persons Record and Service List is intended to be used by the Clerk, or designated staff of the [DRB/ZBA/PC], to record information regarding persons who have sought interested persons status. A separate Interested Persons Record and Service List should be used for each application considered by the [DRB/ZBA/PC]. This Interested Persons Record and Service List can be used in conjunction with a sign in sheet.

| Name  | Address                 | Interested Person Status Requested?                         | Grounds for Interested Person Status Request  | Status Granted?   | Participated in Hearing?                                    | Evidence/Statement of Concern Offered |
|-------|-------------------------|---|---|---|---|---------------------------------------|
| _____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Applicant/owner<br><input type="checkbox"/> Municipality with plan bylaw at issue<br><input type="checkbox"/> Property owner in neighborhood<br><input type="checkbox"/> Ten-person group<br><input type="checkbox"/> State of Vermont | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Applicant/owner<br><input type="checkbox"/> Municipality with plan bylaw at issue<br><input type="checkbox"/> Property owner in neighborhood<br><input type="checkbox"/> Ten-person group<br><input type="checkbox"/> State of Vermont | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Applicant/owner<br><input type="checkbox"/> Municipality with plan bylaw at issue<br><input type="checkbox"/> Property owner in neighborhood<br><input type="checkbox"/> Ten-person group<br><input type="checkbox"/> State of Vermont | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |

| Name  | Address                 | Interested Person Status Requested?                         | Grounds for Interested Person Status Request  | Status Granted?   | Participated in Hearing?                                    | Evidence/Statement of Concern Offered |
|-------|-------------------------|---|---|---|---|---------------------------------------|
| _____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Applicant/owner<br><input type="checkbox"/> Municipality with plan bylaw at issue<br><input type="checkbox"/> Property owner in neighborhood<br><input type="checkbox"/> Ten-person group<br><input type="checkbox"/> State of Vermont | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Applicant/owner<br><input type="checkbox"/> Municipality with plan bylaw at issue<br><input type="checkbox"/> Property owner in neighborhood<br><input type="checkbox"/> Ten-person group<br><input type="checkbox"/> State of Vermont | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Applicant/owner<br><input type="checkbox"/> Municipality with plan bylaw at issue<br><input type="checkbox"/> Property owner in neighborhood<br><input type="checkbox"/> Ten-person group<br><input type="checkbox"/> State of Vermont | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Applicant/owner<br><input type="checkbox"/> Municipality with plan bylaw at issue<br><input type="checkbox"/> Property owner in neighborhood<br><input type="checkbox"/> Ten-person group<br><input type="checkbox"/> State of Vermont | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |
| _____ | _____<br>_____<br>_____ | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Applicant/owner<br><input type="checkbox"/> Municipality with plan bylaw at issue<br><input type="checkbox"/> Property owner in neighborhood<br><input type="checkbox"/> Ten-person group<br><input type="checkbox"/> State of Vermont | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | <input type="checkbox"/> Yes<br><input type="checkbox"/> No | _____<br>_____<br>_____               |

1. “Interested person” means any one of the following:

A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case. 24 V.S.A. §4465(b)(1). This is typically the applicant, or if the applicant does not own the property, the property owner.

The municipality that has a plan or bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality. 24 V.S.A.4465(b)(2).

A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person’s interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. 24 V.S.A. § 4465(b)(3).

Any ten persons who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal. 24 V.S.A. § 4465(b)(4).

Any department and administrative subdivision of this state owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development of this state. 24 V.S.A. § 4465(b)(5).