



**Hinesburg Development Review Board**  
**RULES OF PROCEDURE & CONFLICT OF INTEREST POLICY**  
Adopted March 20, 2012

**Section I: Authority.**

The Development Review Board of the Town of Hinesburg 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). The DRB shall be governed by these Rules, the provision of all applicable state statute, applicable Hinesburg land use regulations (e.g., Zoning, Subdivision, Official Map), and where applicable the Town Plan.

**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 Development Review Board (DRB).
- B. "Board member" means a regular or alternate member of the DRB.
- 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 DRB.
  - 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 DRB.
  - 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 may be 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 the DRB and any party, party's representative, party's counsel or any person interested in the outcome of any proceeding before the panel, which 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.
- J. "Support staff" means Planning & Zoning Department staff that assist the DRB with the development review process – e.g., meeting/hearing notifications and legal warnings, writing and distribution of staff reports and draft decisions, maintaining all DRB records, distribution and recording of official DRB decisions, taking meeting minutes, etc. Staffing levels are determined jointly by the DRB, the Planning & Zoning Department, and the Selectboard. Current DRB support staff includes the Director of Planning & Zoning, the Zoning Administrator, and the Planning & Zoning Administrative Assistant (also serves as the DRB recording secretary).

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

The DRB shall consist of seven regular members appointed by the Selectboard, serving three year terms, or completing a term, if appointed to fill a midterm vacancy. After January 1, but prior to March 1, or at other times throughout the year as needed, the DRB shall hold an organizational meeting and elect by majority vote, a Chair, Vice Chair and Clerk.

- A. Regular DRB members shall attend all meetings and arrive on time unless staff has been notified in advance of the member's absence or delay. Members shall prepare for each meeting by reviewing staff reports, meeting minutes, and other materials sent to the member before the start of the meeting.

- B. 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. The Chair may participate in all matters before the DRB in the same manner as any other regular member – e.g., make motions, pose questions, vote on motions, etc.
- C. 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.
- D. Support staff shall take minutes of all meetings. In the absence of support staff, the Clerk shall take meeting minutes.
- E. The Chair, the Vice Chair, or the Clerk shall be authorized to sign official DRB decisions and approved plans or survey mylars.

**Section V: Alternate Members.**

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

- A. To the extent possible, at least one alternate shall be present at all DRB meetings in order to serve as an active member of the board in case a regular member has a conflict of interest or is unable to attend. Support staff shall work with the two alternates to rotate and provide for equal participation.
- B. Support staff will provide alternates with copies of all DRB material in the same manner as a regular member to help ensure ready participation when needed.
- C. Alternates hearing an application shall, to the extent possible, stay with the review of the application until a decision is reached. If the application moves to another level of review (such as to preliminary or final subdivision review), the alternate need not participate if all regular members are available. However, if an alternate is needed for a later step of the review process, the one who reviewed the early step of the project shall receive priority.

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

Regular meetings to conduct business of the DRB shall generally be held on the first and third Tuesday of each month, starting at 7:30pm at the Hinesburg Town Office. 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 seven member board – i.e., at least four members. A quorum is required to conduct any business with the exception of announcements or review and approval of meeting minutes.
- 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, generally structured as follows.
  - 1) Review/Approval of minutes from previous meeting(s)
  - 2) Public hearings on applications
  - 3) Other Business – e.g., announcements, public to be heard, etc.
  - 4) Deliberations – may be public deliberations or in a closed deliberative session

Those who wish to be added to the agenda shall contact the Planning & Zoning Department to arrange for a convenient time. Although the agenda is typically set by support staff based on applications received, the Chair ultimately has discretion over the composition 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. Meetings shall not exceed 3 hours in length unless approved by a majority of the members present.
- 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).

#### **Section VII: Public Hearings and Order of Business.**

- A. Public notification - 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. Generally as follows:
  - 1. Posting of hearing notice in at least 3 or more public places (e.g., Town Office, Hinesburg Post Office, Lantman’s Grocery Store, Carpenter-Carse Library, Laundry mat).

2. Delivery of hearing notice to abutting landowners.
3. Posting of hearing notice within view from the public right of way most nearly adjacent to the property in question. Not required for certain types of review.
4. Publication of the hearing notice in an applicable newspaper (e.g., Burlington Free Press, Hinesburg Record, etc.). Not required for certain types of review.

B. Hearing Order of Business - The Chair shall set aside time for public comment during the hearing. The Chair may limit the amount of time for each speaker, but in so doing shall apply a consistent time limit for all persons recognized. The Chair shall conduct the hearing in the following manner:

1. Open the hearing by reading the warning of the hearing.
2. Review the order of events, including the time for public comments, and remind all present that the proceeding will be conducted in an orderly manner. Explain that pursuant to state statute, only interested persons who provide testimony during this proceeding have the right to appeal DRB decisions to the Environmental Court. Ask the applicant and audience members to put their contact information on the sign in sheet.
3. Invite the applicant or applicant's representative to present the application or proposal.
4. Invite board members to ask questions of the applicant or applicant's representative.
5. Invite representatives from other Town of Hinesburg boards to provide information or comments regarding the application.
6. Invite interested persons and members of the public to present their information regarding the application or proposal.
7. Invite the applicant or applicant's representative to respond to information presented.
8. Allow final comments or questions from the applicant or his/her representative or members of the board.
9. Upon motion and majority approval, the Chair shall either continue the hearing to a date/time certain, or close the hearing. If the hearing is closed, the Chair shall explain to the participants that the Board will issue a written decision within 45 days, and that this decision will be provided to everyone who provided testimony.
10. After the hearing is closed, the board may begin deliberations – either immediately or at the end of the meeting. The board may conduct public deliberations, or may vote to enter a deliberative session that is closed to the public.

### **Section VIII: Site Visits.**

Site visits are intended to enhance the DRB's understanding of the proposed development, and as such, are encouraged. Site visits are for observation only and are not the place for substantive discussion of the project. They do not constitute a public hearing, and no quorum of DRB members is necessary. 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, or adjourn a hearing to a date/time certain, to conduct a site visit at a property which is the subject of an application before the board. In such situations, no additional public notification is necessary.
- C. The minutes of the next meeting shall reflect that a site visit was held, who was present, and any relevant observations for the record.

#### **Section IX: Decisions.**

The board shall issue decisions in writing, and 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, do not include minutes, and need not be warned pursuant to 1 V.S.A. §§ 312(e), (f). The only purpose of deliberative sessions is to reach a decision on the evidence presented for an application at a public hearing. The DRB may not hear testimony or consider new evidence at a deliberative session.

Members of the board who have not heard all relevant testimony and reviewed all evidence submitted for a particular application or proposal shall not participate in that decision. Absent board members may participate if they have reviewed a recording of the proceedings (at least audio version) and any evidence submitted. The following rules shall apply to voting on decisions:

- A. Motions shall be made in the affirmative.
- B. The chair has the same voting rights as all members and can make motions.
- C. 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.
- 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. The decision shall be considered issued on the date that the board votes on it.
- H. The Chair, Vice Chair, or Clerk shall sign decisions after the decision has been finalized by support staff pursuant to the board deliberation and vote. Similarly, after inspection by support staff for conformance with the decision, approved survey plats/mylars and other approved plans (those required to be recorded with the Town Clerk) shall be signed by the Chair, Vice Chair, or Clerk.

### **Section X: Conflicts of Interest.**

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

- A. **Participation.** Each board member shall decide whether he or she has a conflict of interest as defined in Section III(C). However, if by a majority vote of the entire board, the board finds that a member has a conflict of interest as defined in Section III(C)(1) or (C)(2) or (C)(3), that member shall be barred from participating in the matter under consideration. Except as noted below, 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 DRB. A board member may represent his or her own application before the DRB, concurrent with recusal from review of the application. A board member may also represent his or her concerns as an interested party (e.g., as an abutting landowner), concurrent with recusal from review of the application.
- B. **Disclosure.** At all hearings, board members shall disclose all 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. 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 XI: 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 all hearings, board members shall 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 relate 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 XII: Removal.**

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

#### **Section XIII: Amendments.**

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