

# **BRATTLEBORO DEVELOPMENT REVIEW BOARD**

## **Rules of Procedure and Conflict of Interest Policy**

### **Section I: Authority.**

The Development Review Board of the Town of Brattleboro 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.

### **Section III: Definitions.**

- A. “Board” means the Development Review Board.
- B. “Board member” means a regular or alternate member of the Board.
- 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 Board.
  - 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 Board.
  - 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 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.
- 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 Board shall consist of seven regular members. Immediately prior to the first meeting of the Board in July, or at other times throughout the year as needed, the Board 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 deliberative sessions, 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 Board meetings and actions, and correct and ratify these when appropriate and necessary.
- D. The Clerk shall take minutes of all meetings.

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

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

- A. An alphabetical roster of all alternate members shall be kept by the Clerk. 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 Board, the chairperson of the Board, or his or her designee, shall appoint an alternate to serve as an active member of the Board by selecting an individual from the roster as provided in paragraph A.
- C. If the chairperson of the Board does not appoint an alternate as required under paragraph B, a majority of the members of the Board present and voting may appoint an alternate to serve in accordance with paragraph B.
- D. An alternate member who is called upon to serve shall be required to be a part of the Board until a final decision is made on any application heard by the Board 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 shall be held in the Selectboard Meeting Room of the Municipal Center at 7 p.m. on the first and third Wednesday 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 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 Clerk to

arrange for a convenient time. The Chair shall determine the content of the agenda after consultation with the Clerk.

- 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 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.

### **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. Confirm that the hearing has been properly warned.
- 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 affirm that the evidence I give in the cause under consideration shall be the whole truth and nothing but the truth 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.
- P. Allow final comments or questions from the applicant or applicant's representative.
- Q. Upon motion and majority approval, the Board shall vote on the application or proposal or 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 without a vote on the application or proposal, 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.**

The Clerk 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 Board. 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 may 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 or videotapes with soundtracks of the proceedings. 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 Board for which the Board member has not recused himself or herself.
- 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 or Vice 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 Board. Board members may be removed for cause by the legislative body upon written charges and after public hearing. 24 V.S.A. § 4460(c). The Board may vote to recommend to the Select Board that a member be removed if that member has missed three or more consecutive meetings.

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

These rules may be amended at any regular or special meeting by a majority vote, provided that each Board 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 BRATTLEBORO***  
***RULES OF PROCEDURE***  
***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 Brattleboro zoning administrator or Development Review Board 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 Development Review Board, 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 Development Review Board. Pursuant to this Development Review Board's Rules of Procedure, members of the public who are not interested persons may participate in a hearing on a matter before the Development Review Board after all interested persons have presented information regarding the application or proposal. If no interested person makes a timely appeal, all interested persons are bound by the officer's or Development Review Board's decision or act.

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

Only those interested persons who have participated in a Development Review Board 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 BRATTLEBORO**

### **INTERESTED PERSONS RECORD AND SERVICE LIST**

Under the 2004 revisions to Chapter 117, the Development Review Board 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 Development Review Board 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 Development Review Board 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 Development Review Board 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 Development Review Board, 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 Development Review Board. 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
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Applicant/owner <input type="checkbox"/> Municipality with plan bylaw at issue <input type="checkbox"/> Property owner in neighborhood <input type="checkbox"/> Ten-person group <input type="checkbox"/> State of Vermont	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Applicant/owner <input type="checkbox"/> Municipality with plan bylaw at issue <input type="checkbox"/> Property owner in neighborhood <input type="checkbox"/> Ten-person group <input type="checkbox"/> State of Vermont	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Applicant/owner <input type="checkbox"/> Municipality with plan bylaw at issue <input type="checkbox"/> Property owner in neighborhood <input type="checkbox"/> Ten-person group <input type="checkbox"/> State of Vermont	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____

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_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Applicant/owner <input type="checkbox"/> Municipality with plan bylaw at issue <input type="checkbox"/> Property owner in neighborhood <input type="checkbox"/> Ten-person group <input type="checkbox"/> State of Vermont	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Applicant/owner <input type="checkbox"/> Municipality with plan bylaw at issue <input type="checkbox"/> Property owner in neighborhood <input type="checkbox"/> Ten-person group <input type="checkbox"/> State of Vermont	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Applicant/owner <input type="checkbox"/> Municipality with plan bylaw at issue <input type="checkbox"/> Property owner in neighborhood <input type="checkbox"/> Ten-person group <input type="checkbox"/> State of Vermont	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Applicant/owner <input type="checkbox"/> Municipality with plan bylaw at issue <input type="checkbox"/> Property owner in neighborhood <input type="checkbox"/> Ten-person group <input type="checkbox"/> State of Vermont	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____
_____	_____ _____ _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Applicant/owner <input type="checkbox"/> Municipality with plan bylaw at issue <input type="checkbox"/> Property owner in neighborhood <input type="checkbox"/> Ten-person group <input type="checkbox"/> State of Vermont	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____

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).

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