

**TOWN OF BERLIN**  
**DEVELOPMENT REVIEW BOARD (DRB)**  
**Rules of Procedure and Conflict of Interest Policy – October 2006**

**Adopted 10-17-06**

**Section I: Authority.**

The DRB of the Town of Berlin 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 DRB

B. **“Board member”** means a regular or alternate member of the DRB

C. **“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 from the close of the final public hearing until the issuance of a written decision.

D. **“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.

E. **“Ex parte communication”** means direct or indirect communication between a board member 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.

F. **“Official act or action”** means any legislative, administrative or quasi-judicial act performed by any board member.

G. **“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.

H. **“Recuse”** means to remove oneself from a particular board proceeding because of a real or perceived conflict of interest.

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**Section IV: Regular Officers.**

The DRB shall consist of five regular members. After Town Meeting but prior to May 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. 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 DRB meetings and actions, and correct and ratify these when appropriate and necessary.
- D. The Recording Secretary shall take minutes of all meetings.

**Section V: Alternate Members.**

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

- A. A roster of all alternate members shall be kept by the DRB.
- B. Whenever a regular member has a conflict of interest or is expected to be on extended absence from the DRB, the chairperson of the DRB, or his or her designee, shall appoint an alternate to serve as an active member of the DRB by selecting an individual from the roster.
- C. If the chairperson of the DRB does not appoint an alternate as required under paragraph B, a majority of the members of the DRB 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 DRB until a final decision is made on any application heard by the DRB 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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**Section VI: Regular and Special Meetings.**

Regular meetings shall be held in the Town Offices 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 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 Zoning Administrator. The Chair shall determine the content of the agenda after consultation with Zoning Administrator. Only applications which are deemed complete by the Zoning Administrator and the Chair will be put on the agenda.
- 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 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 persons recognized to speak.

**Section VII: Public Hearing 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.

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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 the Zoning Administrator to present information regarding the application or proposal. Invite other 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.

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- 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 adjourn 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 Recording Secretary 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 requesting a copy of the decision and providing their correct and complete mailing address. All documents filed with the board must be made available to interested persons on the list for their review. 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 reviewed evidence submitted for a particular application or proposal shall not participate in that proceeding. Absent board

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members may review the minutes and 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: Conflict of Interest.**

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

**A. General prohibition**

No board member shall be beneficially interested in any matter requiring the discharge of his/her public office. The purpose of this subchapter is to prohibit the use of public office for financial or other advantage, whether direct or indirect, by any means or methods whatsoever.

**B. Specific conflicts**

A board member shall be disqualified from any proceeding in which his/her impartiality might reasonably be questioned including, but not limited to, instances where:

- 1. The board member, a near relative or business associate has a property or financial interest which might be substantially affected, favorably or adversely, by the decision of the board.
- 2. The board member has a personal bias or prejudice toward any party; or
- 3. The board member has previously expressed an opinion as to the proper disposition of a specific case or controversy involving the exercise of his or her discretion, while acting in a quasi-judicial capacity.

**C. Specific prohibition**

A board member who is disqualified by virtue of a conflict of interest shall not vote upon, participate in the discussion of, or otherwise sit as a member of the board upon the matter from which he/she is disqualified. He/she may, however, enter an appearance as a party and be heard in all respects as a member of the public might be heard in the same proceeding.

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**D. Announcing a conflict**

If a town officer recognizes that he or she might have a conflict of interest or if another person raises an objection to the participation of any board member, he or she shall state the nature of the conflict as soon as may be possible and the board member shall thereupon disqualify himself or herself from further participation if there is a conflict of interest.

**E. Determination of conflict by other than the board member**

If a question of a member's disqualification under section 62 of this chapter is brought to the attention of the board by any party or person or by another board member and the member does not disqualify him or herself, then the board shall consider the factual basis for the question and shall decide the matter by majority vote with the challenged member abstaining before any other business is conducted. A formal vote shall be taken on every question of a conflict. Once the vote is taken, the board shall return to the business before it and no further time shall be devoted to the issue of that conflict. A full report of the issue and discussion shall be made in the minutes of the meeting.

**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 state the substance of all oral communications received, all responses made, and the identity of each person making the ex parte communication.

**Section XIV: 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 XV: 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. Only those amendments which are presented to the members prior to the meeting may be amended at that meeting.