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Town of Highgate VT
Development Review Board
Rules & Procedure and Conflict of Interest Policy

Section I: Authority and Purpose

The Development Review Board (DRB) of the Town of Highgate hereby adopts the following rules of procedure (hereinafter referred to as "rules") in accordance with 24 VSA 4461(a) and 321€, (f), and (h).

Legal Requirements
The DRB is required to adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct under 24 VSA 4461(a), and must conduct its proceedings in accordance with Vermont's Open Meeting Law.

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 make an effort 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, to make and second motions, and the right to question participants, just as any other member of the board.

Finally, while most 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.

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 service on the DRB, so that the public trust in municipal government will be preserved. Anything not explicitly conveyed in these bylaws shall be governed by Robert's Rules of Order.

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Section III: Definitions

A. "DRB" means the Development Review Board.
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 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, an individual with a close personal relationship to a board member 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, business associate, employer or employee, an individual with a close personal relationship to a board member in the outcome of a cause, proceeding, application or any other matter pending before the DRB.
   3. A situation where a board member has publically displayed or expressed a prejudgment of the merits of a particular proceeding before the DRB. 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 DRB, pursuant to Section XII of these rules.
D. "Deliberative Session" means a public or private session of the DRB to weigh, examine, and discuss for and against an act or decision, from which the public may be excluded. There shall be neither taking of evidence nor submission of testimony, nor is a deliberative session required to be publicly noticed. The DRB 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 VSA 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 regarding any proposal 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. "Recuse" means to remove oneself from a particular DRB proceeding because of a real or perceived conflict of interest.

Section IV: Appointment and Removal of Members

The DRB shall consist of seven regular and two alternate members appointed by the Selectboard. Appointment to the DRB shall be for a term of three consecutive years. Members may be appointed to successive terms without limitation. Any member desiring reappointment, or a towns person desiring an appointment to the DRB, must submit a letter of

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interest to the Selectboard. At a meeting held in April of each year, the DRB shall hold an organizational meeting and elect by majority vote, a Chair and Vice Chair from its members. Vacancies in these offices may be filled for the unexpired terms only by majority vote of the DRB.

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 DRB. 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, recused or at the Chair's request. In the event that both the Chair and Vice Chair are absent or recused, the remaining longest servicing member of the board shall assume the duties of the Chair.
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.

Alternate members are appointed to temporarily serve as board members in the event or a recusal or absence of one or more regular members.

A. Whenever a regular member is recused or is expected to be absent from the DRB, the chairperson of the DRB, or his or her designee, may request that an alternate serve as an active member of the DRB by selecting an individual from the roster.
B. 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.

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

Section V: Regular and Special Meetings

Regular meetings shall be held in the Municipal Building Community Room, or other publicly accessible location, as warranted based on the number of projects pending. Meeting length shall be at the discretion of the Chair in concurrence with the majority of members present, but should generally not exceed 3 hours. 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 four participating members of the board.

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C. Board members may participate by telephone or other communication device 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 DRB has entered a closed deliberative or executive session. The DRB may only hold an executive session pursuant to the reasons permitted by 1 VSA 313 and only after a majority vote to enter executive session.
E. All business shall be conducted in the same order as it appears on the agenda, except the Chair may alter the order of items to be considered as needed, such as to accommodate a late or missing project applicant.
F. The Chair shall rule on all questions of order or procedure and shall enforce these rules pursuant to 1 VSA 312(h).
G. At each meeting, speakers may participate on an agenda item but only when recognized by the Chair. Such comment may be limited to three minutes per speaker, unless the Chair sets a different time limit.
H. Notice for hearings on the adoption, amendment, or repeal of the bylaws and other regulatory tools shall be pursuant to 24 VSA 4444, as amended.

Section VI: Executive Session

A. The DRB may hold an executive session from which the public is excluded after the affirmative vote of majority of its members present. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session. Minutes of an executive session need not be taken, but if they are, shall not be made public. The DRB may not hold an executive session except to consider one or more of the following:
   1. Contracts, mediation, civil actions, or prosecutions, where premature general public knowledge would clearly place the municipality, other public body, or person involved at a substantial disadvantage.
   2. Discussion of the conduct of a board member
   3. A clear and imminent peril to the public safety.
   4. Discussion or consideration of records or documents excepted from the access to public records provisions of section 317(b) of 1 VSA. Discussion or consideration of the excepted record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains.
B. Attendance in executive session shall be limited to members of the DRB, and, at the discretion of the DRB, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

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Section VII: Proceedings and Order of Business

All meetings shall be conducted as quasi-judicial proceedings pursuant to 1 VSA 310(5) (B). Proceedings shall be publicly noticed in accordance with 24 VSA 4464(a) (1), (2), as amended.

The Chair shall conduct the proceeding in substantially the following manner.

A. Open the proceeding by reading the warning of the proceeding.
B. Ask all who are interested in an agenda item to identify themselves at the time of proceeding on the item of interest and to provide contact information
C. Direct the applicant or his/her representative and all persons wishing to participate in a proceeding to take the following oath: *I hereby swear or 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.*
D. Accept written information presented to the DRB, including but not limited to staff and other boards / commissions' recommendations.
E. Invite the applicant or applicant's representative to present such application or proposal.
F. Invite DRB members to ask questions of the applicant and/or applicant's representative.
G. Invite the public to present information regarding the application or proposal.
H. Invite the applicant, applicant's representative and members of the public to respond to information presented.
I. Invite DRB members to ask any additional questions or provide comments.
J. Allow final comments or questions from the applicant or applicant's representative.
K. The Chair shall either adjourn the proceeding to a time certain, continue the proceeding without a time certain subject to additional public notice being provided as to the time and place of any future proceeding, or close the proceedings.
L. If new information becomes available or if the DRB finds it needs more information to render its decision after the close of the proceeding, but before the DRB decision, then the DRB may re-open the proceeding. No information can be received while the proceeding is closed.
M. Upon final adjournment, the DRB shall set a time and place for a deliberative session, which shall be public unless otherwise stated.
N. The proceeding for any application shall be deemed to start the first time it appears on the DRB's agenda and if a public hearing has been warned it shall also be open at that particular DRB meeting. In no event shall a proceeding (i.e. public hearing or not) extend for a period of more than six (6) months. In case of extenuating circumstances, the DRB may grant up to two (2) extensions of up to three (3) months each. If an initial extension is granted and the application lies dormant (no revised plans, information submitted) for the three (3) months during the extension, the DRB shall not grant another extension.

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Section VIII: Site Visits

Board members are encouraged to visit each site individually, however, no testimony shall be taken and no ex parte communication shall occur. Site visits by a quorum of the DRB shall be held pursuant to the following conditions:

A. If, the Chair determines that a site visit by a quorum of the DRB will be necessary, the site visit shall be scheduled and the date, time and place shall be announced during the meeting.
B. If necessary, the DRB may recess a hearing and conduct a site visit at a property which is the subject of an application before the DRB.
C. If necessary, the DRB 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 DRB.
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: Decisions

The DRB may make decisions in deliberative session. Deliberative sessions may or may not be open to the public and agendas are to be posted at least 24 hours in advance. 1 VSA 312(e), (f). Members of the DRB who have not heard all testimony and reviewed all evidence submitted for a particular application or proposal shall not participate in that proceeding, unless such absent DRB members review video or audio recording 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 member and can make motions.
C. A 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 succeed, it must receive the concurrence of four participating members of the DRB, regardless of how many members are present. 1 VSA 172; 24 VSA 4461(a).
G. The DRB shall issue a written decision within 45 days of the close of the final proceedings.
    1. In the case when a public hearing took place, a written decision signed by the Chair of the DRB constitutes a final decision. This written decision shall include any conditions of approval.
    2. In the case when no formal public hearing took place, the motion made by the board at the end of the proceeding constitutes a final decision.

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Section X: Conflicts of Interest

A. **Procedures.** Participation, disclosure of conflicts, and recusal shall be governed by the following procedures:
   1. **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.
   2. **Disclosure.** Board members with a conflict of interest shall state so prior to commencement of the proceeding. (Refer to Section III of these bylaws for details on how to recognize a conflict 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, if a member who believes that he or she is able to act fairly, objectively, and in the public interest, shall state on the record the nature of the potential conflict of interest, and the reasons(s) why the member believes he or she is able to act in a matter fairly, objectively, and in the public interest. This statement shall be part of the minutes of the proceeding pertaining to the matter under consideration.
   3. **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:
      a. 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.
      b. The DRB may, by majority vote (exclude or recuse) one of its members if there is a reasonable public perception that a conflict of interest exists.
      c. A board member who has recused him or herself from a proceeding shall not sit with the DRB, deliberate with the DRB, or participate in that proceeding as a board member in any capacity.
      d. If a previously unknown conflict is discovered, the DRB may take evidence pertaining to the conflict, and if appropriate, adjourn to a deliberative session to address the conflict.
      e. The DRB 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 DRB. The DRB may then resume the proceeding with sufficient members present.

B. **Ex Parte Communications.** Ex parte communication is prohibited. Any DRB member who inadvertently conducts ex parte communication must disclose such communication as required below.
   1. **Disclosure.** At each hearing, 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 or state the substance of any and all oral communications received, all responses made and the identity of each person making the ex parte communication.

C. **Progressive Consequences for Failure to Follow the Conflict of Interest Procedures.** In cases where the conflict of interest procedures in Section IX have not been followed, the

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DRB may take progressive action to discipline an offending board member. In the discipline of a member, the DRB shall follow these steps in order:

1. The Chair shall meet informally, in private, with the board member to discuss possible conflict of interest violation.
2. The DRB may meet to discuss the conduct of the board member. Executive session may be used for such discussion. 1 VSA 313(4). The board member may request that this meeting occur in public. If appropriate, the DRB may admonish the offending board member in private.
3. If the DRB decides that further action is warranted, the DRB 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.
4. Upon majority vote, the DRB may request that the offending board member resign from the DRB. The DRB shall then notify the Selectboard of this majority vote.

Section XI: Amendments

These rules may be amended at any regular or special meeting by a two-third vote of the number of regular board members, 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.

Signatures:	Date:
Richard Trombley	9.11.2014
Paulette Desarreau	9/11/2014
Woodbury E. Rowe, Jr.	9/11/2014
[illegible]	9-11-14
Julie C Rew	9-11-14